VOLUME II of III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Beaufort County

Honorable Diane Schafer Goodstein, Circuit Court Judge

DEMETRIUS PRICE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001580

APPENDIX

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Pages 501-1000

INDEX

INDEX i

TRIAL TRANSCRIPT DATED NOVEMBER 16-20, 2009 1

APPLICATION FOR POST-CONVICTION RELIEF 989

AMENDMENT TO PCR APPLICATION 996

RETURN 998

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JUNE 6, 2018 1002

PLAINTIFF'S EXHIBIT 1 1081

PLAINTIFF'S EXHIBIT 2 1083

PLAINTIFF'S EXHIBIT 3 1090

ORDER OF DISMISSAL 1093

INDICTMENTS 1113

SENTENCE SHEETS 1121

BRIEF OF PETITIONER 1125

BRIEF OF RESPONDENT 1144

OPINION #5031 (filed September 5, 2012) 1179

OPINION #27470 (filed December 23, 2014) 1196

THE COURT: That's right. Which inconsistencies are you talking about? Which witnesses you talking about?

MR. DEYSACH: Witnesses that haven't testified admittedly, Your Honor. Potential witnesses.

THE COURT: Then their credibility is not put into issue until they testify.

MR. DEYSACH: Yes, your Honor.

THE COURT: Gentlemen, I apologize for this. I just got a note a few moments ago, and Judge Mullen wants to talk with me very briefly about a point. She has got a conference call at 12:45 on an issue in a case that I had some involvement in in a mediating capacity. I need to answer that question real quickly. It's not likely -- obviously, you won't be able to be finished by 12:45 because you have a lot more to go. If I can stand down for just a moment and leave everybody in place, I should be back here immediately.

I apologize for this except -- when I get a note from another judge, and she's got a very important conference call involving about four separate lawyers involving a right convoluted case that hopefully is going to be settled, I'm going to try to expedite that if I can.

Ladies and gentlemen, I apologize to you. This is a case I'm trying, and this is a case that you're hearing. We don't have anything more important than that to do. But

I'm going to have to take about five minutes away from this case to try to assist in the resolution of that other one.

I'm going to ask you all to stand right where you are and we'll be at ease. You all can confer, talk among yourselves about anything except the case instead of sending you back to the jury room, and I'll be right back.

(OFF THE RECORD.)

THE COURT: Thank you, folks. Thank you for your patience, and I apologize for the interruption.

All right, Mr. Deysach. I'll try not to interrupt you again.

MR. DEYSACH: That's fine, Your Honor.

BY MR. DEYSACH:

Q. All right, let me ask you this question. We talked a little bit about you showing photo lineups to Marcus, Malik, and Sharita on the 29th of July?

A. Yes, sir.

Q. And you were at the hospital when this happened?

A. That's correct.

Q. Correct? And you spoke with each one of them outside of the presence of the other when you did your photographic lineup procedure, correct?

A. That's correct.

Q. And the reason why you do that is that you don't want what one of the people says to influence anything that one

of the other people are going to tell you, correct?
A. Yeah, we don't want them to see what the other person has picked out.
Q. Because that might influence what the second person tells you?
A. Yes, sir.
Q. Right? And so that is why you keep those subjects separated when you do this procedure, correct?
A. That's correct.
Q. And with the interviews, you interviewed most of the witnesses separately, without other witnesses around each other, correct?
A. Yeah, that's correct.
Q. But on September 3rd of 2008, you interviewed Deon and Deverol together in the same room.
A. That's correct.
Q. Even though you know that having two witnesses together can influence what the other says.
A. At that point in time, September 3rd, we were not showing them photo lineups.
Q. So, what you're saying is that that stuff that we talked about before only applies to the photo lineups, not to people actually telling you information about what happened on the day of the offense? That's what you're telling the jury?

A. No, I'm telling the jury the interview -- that there are times when it is important, of utmost importance that people are separated. And then there are times when it's not as important.

Q. So, it's -- okay. All right. Fair enough. All right. Let me ask you this. Changing the subject, back at the scene of the offense, [redacted], the execution of the search warrant.

A. Okay.

Q. All right, back to the beginning. All right. There was blood present in the entryway to the apartment, correct?

A. Yes, sir.

Q. Did you ever dust for any fingerprints anywhere in that area?

A. Again, as I testified before, that I'm not the only investigator there processing for evidence. That was not a portion of my duties in that search warrant execution.

Q. Did anybody else dust for fingerprints?

A. I do not recall.

Q. Did you ever review any fingerprint evidence in the course of investigating the case?

A. I did not.

Q. Did you have -- so, no information as far as you know? No fingerprinting was done?

A. No. As far as I know, there were no latent evidence collected.

Q. Okay.

A. I don't know what was done by other people.

Q. Okay. So -- all right. You do not know if an attempt was made, correct?

A. I don't know what the other investigators did in the process as they were doing their specific duties throughout that process and that crime scene. I know that there was no latent evidence lifted or collected from that scene. Okay.

Q. I know this is a fine point, and I think you've answered my question that no fingerprint evidence was collected, correct?

A. Correct. I don't know if there was an attempt to or not.

Q. Right. You don't know if there was an attempt?

A. That's correct.

Q. You anticipated my question. All right. As lead investigator, did you ever ask anybody to make that attempt?

A. Again, going back to what we previously discussed, Sergeant Viens was the investigator that was tasked with the management of the evidence processing at the scene, collection and documentation and things of that nature.

Q. So, did you ever ask Sergeant Viens to collect fingerprint evidence?

A. I did not ask her to.

Q. Did you ever watch her try and do it?

A. I did not.

Q. All right. What about looking for any fibers? Did anybody search for any fibers inside that area?

A. I do not know.

Q. Any fingerprints? Were any footprints left inside that area?

A. I do not recall.

Q. Did you review the pictures for footprints?

A. I reviewed the pictures; I don't recall what the pictures contained.

MR. DEYSACH: All right. That's all I have, Your Honor.

THE COURT: Thank you.

WITNESS: Thank you, Mr. Deysach. Oh, Mr. Deysach.

MR. DEYSACH: I left the report up there?

WITNESS: Yeah.

MR. DEYSACH: Thank you.

WITNESS: You're welcome.

THE COURT: Mr. Deier, could you and Mr. Deysach approach a minute, see how we're doing on time?

(OFF-THE-RECORD BENCH CONFERENCE.)

507

THE COURT: Folks, I was trying to get some idea about how long the continuing examination of Investigator Calhoun may take. And even though you've had some breaks this morning, it can extend well into your lunch hour. So, we're going to break a little early and get you back a little early to try to get through the testimony of Investigator Calhoun.

I apologize for the interruptions this morning. Some of them were necessary to the process, and one of them was caused by me that didn't have anything to do with this case. It was something to do with another case, and I realize that's not the easiest thing to follow. I have noticed, however, throughout this you all have been paying close attention, and some of you are taking notes to help you aid your memory in that regard. So I take some consolation in the fact that you all are keeping up with this.

Having said that, I'm going to let you go to lunch now, but I want you back at 2:00. That's just a little over an hour. I hope that's enough time, given the breaks that you already had, to return to the jury room 2:00. We will continue with the testimony of Investigator Calhoun at that time.

Please do remember do not discuss this case in any manner whatsoever. Thank you.

508

(THE JURY EXITS AT 12:52 P.M.)

THE COURT: Investigator Calhoun, I hadn't intended to make this testimony a career for you, but it looks like it. I remind you again that you cannot talk about your testimony while you're on the stand.

WITNESS: Yes, sir.

THE COURT: And the reporter reminded me, thankfully, of the sidebar conference which we had during the direct testimony of Investigator Calhoun. You can step down, Investigator.

WITNESS: Thank you, sir.

(THE WITNESS EXITS THE STAND.)

THE COURT: And it had to do with some testimony and the fact that Investigator Calhoun testified that he had been in touch with the Violent Crimes Unit over in Savannah in order to get some information to where Mr. Simuel could be located.

At that point in time, Mr. Deysach made a timely objection and a motion, which we heard at sidebar very briefly, or noted at sidebar very briefly to be argued out of the presence of the jury.

Mr. Deysach, I'll be glad to hear from you further in that regard.

MR. DEYSACH: Your Honor, the testimony was something to the effect of the contact of the Violent Crimes Unit

509

down in Savannah, and they knew that -- to check at this furniture store for Mr. Simuel.

I think that the only inference that the jury could draw from that is that the Violent Crimes Unit of the police in Savannah knows where Mr. Simuel lives or have tabs on Mr. Simuel. It's improper character evidence is the way I see it, and it's prejudicial, although you ruled 403 and 404. On that basis, I had asked for a mistrial at the time at the sidebar, and I do that now on the record.

I said in the alternative I would like a curative instruction. I think the time has passed. I realize that the bell has rung, and to offer the curative instruction wouldn't do anything but to draw the jury's attention back to what was said. So, at this time I wouldn't really see that as an alternative, so I'm not asking for that.

THE COURT: All right. I note that two things. One, and it occurred since that time, and that is that Investigator Calhoun has testified, over objection of course, that both of -- Mr. Simuel and Mr. Price have records for crimes of violence. The jury then could put those two things together. They were entitled, in my view, to hear about the crime of violence, and could see that perhaps there was some connection in the background as to how or where they might obtain their information pertaining to Mr. Simuel.

510

Moreover, the question that followed that, thankfully, were rather innocuous. They knew the worker had worked at a furniture store in Savannah and that furniture store was called. And the information was accurate because as a result of that call, Mr. Simuel called them back.

So, I think the overall impact of that was what it -- in those two respects, the fact that there was some information which would have -- could answer why the Violent Crimes Unit might have some background on Mr. Simuel. That is, because he has a record of some conviction for violent crime. And, secondly, because the information that was related was rather innocuous. He's working at a furniture store. So, the prejudicial impact of it is blunted by those two factors. The motion for mistrial is respectfully denied.

If you, during the time we're nearing the end of the trial you want to rethink the issue of curative instruction, if you send a proposed one up, I'll be happy to deal with it. I don't disagree with you in your assessment. They probably have forgotten about all that right now in the great scheme of things, and you may choose not to give it. I'll leave that to you and be glad to consider that for you if it's raised again.

MR. DEYSACH: Thank you very much, Your Honor. And right now, I think what I would I guess ask for, that any

511

evidence that -- an instruction to the effect that any evidence that there is a conviction for a crime of violence, I guess, versus violent crime, that a conviction of such against Mr. Simuel is to be taken only for the purposes of the possession of a pistol by a person convicted of such a crime. And in that way, that could mitigate in some ways the bad character evidence and direct them to use that towards the different charge.

THE COURT: I've already done that once, but I will do it again in my final charges to the jury.

MR. DEYSACH: Thank you.

THE COURT: All right. Thank you.

Gentlemen, anything else before we break? Mr. Robinson, from the state?

MR. ROBINSON: Nothing from the state, Your Honor.

THE COURT: Mr. Deysach?

Mr. Deier?

MR. DEYSACH: No, sir, your Honor.

MR. DEIER: No, sir.

THE COURT: Thank you. We'll start back at 2:00.

(OFF THE RECORD.)

THE COURT: Thank you, ladies and gentlemen. Please be seated. Good afternoon.

Mr. Geier, is the defense ready to proceed to the cross-examination of Investigator Calhoun?

MR. GEIER: Yes, Your Honor.

THE COURT: Gentlemen, is everybody else ready?

MR. DEYSACH: I am, Your Honor.

THE COURT: Good.

MR. ROBINSON: State's ready.

THE COURT: Thank you.

Good. If you can bring us a jury.

Investigator, you can resume the stand, please. Thank you, sir.

WITNESS: Thank you.

(THE JURY ENTERS AT 2:07 P.M.)

THE COURT: Ladies and gentlemen, we now continue as Investigator Calhoun is subject to cross-examine by Mr. Deier.

Mr. Deier.

MR. DEIER: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. DEIER:

Q. Good afternoon, Sergeant Calhoun. How you doing?

A. Fine. Thank you.

Q. That's good. I believe that Mr. Deysach laid a lot of groundwork for me, so I'm going to kind of cut to the chase.

A. Sure.

Q. During your investigation, when you initially got to the house on the 28th, you said you went into the master

bedroom. Did you do a search of that area?
A. After obtaining a search warrant, yeah.
Q. All right.
A. I joined other investigators that were already there as I was collecting blood DNA evidence from the stairwell on first arrival.
Q. Did you have occasion to go to the master bathroom?
A. I don't recall going into the master bathroom. I was at one point in time in the closet just outside of the master bathroom.
Q. As you made your way through the apartment, did you see -- I should say you went to the common area. Is that correct?
A. Yes.
Q. Okay, and did you just do a sweep as you were going through there? Not necessarily a search, but a look around?
A. I don't remember looking -- the only thing I remember about the common area, the living room, I guess you're getting to that being in disarray to my living standards.
Q. So, to get to the master bedroom and bathroom, you have to go through the common area and also the kitchen, I believe, is on the right?
A. Yes. As you're making a straight line from the top of the stairs to the master bedroom door, the kitchen would be

on your right and the master -- the living area would be on the left.

Q. As you walked through, did you notice marijuana blunts sitting out in plain view?

A. I remember at some point in time seeing some marijuana blunts. I don't remember the location as to where it was during the collection of the evidence.

Q. Is it fair to say there was blood sort of all over the place?

A. There was several areas of blood throughout, what I saw, throughout the residence.

Q. I believe you all determined it was from -- obviously not Deon, but Deverol Cannick walking around?

A. Yeah. That's what we believe it to be from.

Q. Right at the entryway to the master bathroom?

A. I don't recall noticing that, sir.

Q. If you saw a picture, do you think it would refresh your memory?

A. I would be more than happy to look at a picture. I just don't know if I would recall ever seeing that. I don't believe I actually ever made entry into the master bathroom.

Q. If that's the case, I'll move on. Did you ever see at any time the shirt that Deon Cannick was wearing the date of the shooting?

A. I don't recall seeing the shirt on the day of the shooting.
Q. You seen Deverol's shirt, though. Is that correct?
A. Yes, sir.
Q. Have you ever seen Deon's shirt?
A. I don't recall seeing his shirt.
Q. So, as far as you're aware ---
A. As far as I'm aware, I have not seen it.
Q. Also, you came in. You said you hang around the entryway looking at evidence that was there. Is that correct?
A. Yes, sir.
Q. Did you see any evidence of forced entry?
A. No, I didn't see any. If you're referring to the door jamb being destroyed or the door dent, broken from forced entry, no, I did not.
Q. And again I'm going to turn to your interviews with several of the folks who testified previously, and again I will assume that your testimony would be identical. I heard Mr. Deysach talking about how important it was to get these facts right.
A. Yes, sir.
Q. All right. You had occasion to speak with Ms. Sharita Willingham on July 28th, I believe, at the scene?
A. I didn't speak with her at the scene.

Q. Where did you speak with her?
A. I spoke with her at the hospital.
Q. Okay, and when you spoke to her, she stated to you that one of them had a silver gun, but was unsure who had it and if it was a revolver or a pistol. Is that correct?
A. I would have to refer to my report to be certain of that.
MR. DEIER: May I approach, Your Honor?
THE COURT: Yes, sir.
BY MR. DEIER:
Q. I'm going to hand you copies that I have marked up a little bit but ---
A. Okay. That is correct.
Q. Thank you. Investigator Calhoun, moving on to Deon, okay? My suspicion is again you're going to need a copy of your report.
MR. DEIER: Your Honor, may I approach?
THE COURT: Yes, sir.
BY MR. DEIER:
Q. Sergeant Calhoun, I'm going to hand you page 13 of your police report.
A. Thank you.
Q. Beginning at the second large paragraph there.
A. Yes, sir.
Q. It's titled: Interview of Deon Cannick, Savannah

Memorial Hospital, 8/22/08. Three lines down, Mr. Cannick stated, didn't he, that Tiah's uncle tried to call him that morning. That he ignored the calls every time he called?

A. Yes.

Q. And he also stated that Tiah was -- Tiah's uncle was using her brother's cell phone to call.

A. Yes, sir.

Q. And then we're down on the next line. He also said that Martin had told Deon that these two guys were there earlier looking for Deon.

A. Yes, sir.

Q. Interview with Deon and Deverol. Is it fair to say this first portion of it is exclusively the Deon portion?

A. Yes, any reference to where it says Deon.

Q. The second line of that first paragraph, you were again interviewing Deon. He told you that he had talked about getting some pills so he could make extra money. But he would have had those talks weeks before the shooting?

A. Yes, sir.

Q. The next paragraph down, second line, he also told you that Martin had told him during this interview again that two guys were outside asking for him?

A. Yes, sir.

Q. And then the last, well, the second to last line and the last line of that same paragraph, Deon told you that:

He was overcome with a crazy feeling as the two approached him?

A. Hold on a second. Where is that at?

Q. The last line, second to the last paragraph.

A. Okay. I'm sorry. Yes.

Q. According to your report and the best of your memory, these are the actual statements that Deon Cannick made at that time?

A. Yes.

Q. Had fingerprints been collected at the scene, would there be some sort of record of it?

A. Yeah, there would. If we collected latent evidence for fingerprints, they would have been submitted into evidence.

Q. And, again, that's belaboring the point, but you have not seen any of those?

A. No. To my knowledge, they do not exist.

MR. DEIER: All right, I have no further questions of this witness.

THE COURT: Mr. Robinson, redirect?

MR. ROBINSON: Briefly.

REDIRECT EXAMINATION BY MR. ROBINSON:

Q. Outside this apartments, what's the terrain like?

A. There is a lawn, some shrubbery, and a sidewalk.

Q. Let me ask you. You have been in law enforcement

since 1996. Can you get footprints off a sidewalk?
A. No, sir.
Q. Can you get footprints off a lawn?
A. No, sir.
Q. That several days after the incident that you got some warrants for these two defendants, did your investigation of this case end when you got those warrants?
A. Oh, no, sir.
Q. How long did it last? How long were you working on this case even after the warrants were served?
A. I would say a couple of months.
Q. And so during that investigation, you're gathering new facts. Is that right?
A. Yes, new information and facts.
Q. And you also testified on direct that you processed the stairwell. Is that right?
A. That's correct.
Q. So, while there may have been other investigators upstairs in the rooms or outside, you processed that stairwell. Is that right?
A. That's correct.
Q. Were there any drugs found in the stairwell?
A. No, sir, there were not.
Q. Were there any guns found in the stairwell?
A. No, sir, there were not.

Q. Did you have any reason to dust the stairwell for fingerprints?

A. No, sir.

Q. Did you have any reason to dust the entryway at the landing at the base of the stairwell for fingerprints?

A. No, sir.

Q. If you had had a reason to dust for fingerprints in the area that you processed, could you have done that?

A. Yes, sir.

MR. ROBINSON: Beg the court's indulgence.

THE COURT: All right.

MR. ROBINSON: That's all I have, Your Honor.

THE COURT: Thank you.

Mr. Deysach, any follow up on any of those points?

MR. DEYSACH: I don't have anything.

THE COURT: All right. Mr. Deier?

MR. DEIER: No, Your Honor.

THE COURT: Thank you, sir. You may step down.

(THE WITNESS EXITS THE STAND.)

THE COURT: Mr. Robinson.

MR. ROBINSON: The state calls Dr. Gage Ochsner.

LEWIS GAGE OCHSNER, JR., BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your full name for us.

WITNESS: My name is Lewis Gage Ochsner, Jr.,

O-C-H-S-N-E-R.

VOIR DIRE EXAMINATION BY MR. ROBINSON:

Q. Dr. Ochsner, where do you work?

A. Memorial University Medical Center in Savannah.

Q. And what is your position there?

A. I'm chief of trauma services and surgical critical care.

Q. Will you describe your education and background to become chief trauma surgeon at that hospital?

A. Yes. I went to medical school at Tulane University Medical School in New Orleans. I did my residency internship with the National Naval Medical Center in Bethesda. I did my surgical residency at San Diego Naval Hospital. And then I did a fellowship in trauma and surgical critical care at the Washington Hospital Center in Washington D.C.

I was active duty in the military. Was appointed to the University -- Uniformed Services University and worked as a liaison officer there until I achieved enough academic credibility to then get out of the military and take over the head of trauma service.

Q. Have you published any writings on the subject of trauma surgery?

A. Yes, I have.

Q. Could you briefly describe the volume, how many things

on trauma surgery have you published?

A. I've published between fifty and sixty articles and journals, medical journals related to trauma. I have written six book chapters. I have given close to a hundred regional, national, and international meetings I've been invited to speak at. I am the president of the Western Trauma Association. I am the immediate past president of the Georgia Surgical Society. I am a member of the American College of Surgeons convening on trauma. I am about to become president of the staff at Memorial University Medical Center.

Q. And are you currently a professor with the Mercer University Medical School?

A. Yes, I am.

Q. And that's in the area of trauma surgery?

A. It's in the Department of Surgery that I'm at. I teach mainly trauma surgery, yes.

Q. And in addition to your publications, you treat patients. Is that right?

A. Yeah, sure do.

Q. Have you ever treated gunshot victims?

A. Yes. When I was doing my training and for four years in Washington D.C., we were the murder capital of the United States and firearm injuries.

Q. So, is it fair to say you've treated a significant

number of gunshot victims in the past?

A. Yes.

MR. ROBINSON: Your Honor, at this time I would move that Dr. Gage Ochsner be recognized by the court as an expert in the field of medical surgery, trauma surgery.

THE COURT: Thank you. Mr. Deier?

MR. DEIER: No objection, your Honor.

THE COURT: Mr. Deysach?

MR. DEYSACH: I guess I would ask how many times he's been qualified as an expert in the field of trauma surgery by the courts.

WITNESS: Twenty-five, thirty times maybe.

MR. DEYSACH: I don't have any objection to him being qualified as an expert in trauma surgery.

THE COURT: Thank you. Dr. Oschner is an expert in trauma surgery and critical care. So qualified.

You may examine the witness. Thank you.

MR. ROBINSON: Your Honor, at this time I would like to approach the witness.

THE COURT: Okay.

MR. ROBINSON: Strike that. I would like to tell the court that defense counsel has stipulated that the contents of this disk are x-rays that pertain to Deon Cannick, and that they are the same ones that are on the big screen over there for authentication purposes.

THE COURT: Do you want to have that marked?

(DVD OF X-RAYS MARKED AS STATE'S EXHIBIT NUMBER 24 FOR IDENTIFICATION.)

DIRECT EXAMINATION BY MR. ROBINSON:

Q. Doctor, you have previously examined the contents of this disk on that screen. Is that correct?

A. That is correct.

Q. And these are the x-rays of Deon Cannick. Is that right?

A. Yes, they are.

Q. When he was treated at Savannah Memorial. Is that correct?

A. Yes.

MR. ROBINSON: I'd move that the contents be admitted into evidence.

THE COURT: Gentlemen, any objection?

MR. DEYSACH: We don't, Your Honor. We've taken the state at its word that what's on there is what he's about to show, and so I would ---

THE COURT: Thank you.

MR. DEYSACH: No objection.

THE COURT: What's the number, please?

COURT REPORTER: 24.

THE COURT: State's 24 without objection.

(DVD OF X-RAYS MARKED INTO EVIDENCE AS STATE'S EXHIBIT

NUMBER 24.)

BY MR. ROBINSON:

Q. Dr. Ochsner, did you admit Deverol Cannick to Savannah Memorial Hospital on the 28th?

A. Yes.

Q. Do you recall what time of the day or night that was?

A. I just need to qualify that. I remember caring for him sometime. I just need to refer to the record for specifics. I believe it was late afternoon. The reason I remember that is because there's a turnover shift.

We received two gunshot victims. My partner assumed one because he was coming on call and I was leaving, which was at about between 4 and 5:00 p.m.

Q. Beg the court's indulgence.

(A PAUSE.)

Q. All right, Dr. Ochsner.

A. Yes.

Q. If you could come down and talk about this. Just be careful with these steps. Just stand here, and here is the microphone. What are we looking at?

A. Well, these are representative cuts of a CAT scan. And for purposes of explanation, this particular thing is called a transverse cut on the CT scan. So, if you would imagine that a person is laying with his feet towards you, his head is that way, and the scanner ---

Q. If this is our patient, how would he ---

A. Yes, just like that.

Q. Okay.

A. And it's taking cuts like this.

Q. By cuts, you mean images?

A. Images, and they're like sections. It's like getting a knife and cutting through and looking at it. For instance, here is a wind pipe, here is a vertebral body, here is the lungs. This is the right side and this is the left side.

Q. Okay, and about where on the patient is that cut?

A. This cut is coming from the first rib, right about here.

Q. Right at the top of his -- base of his neck?

A. Yes.

Q. Everybody see that, base of the neck? And now I'm just going to scroll, and just explain to the jury what we're seeing.

A. These cuts are going to be towards you, where we go from the neck down to the chest.

Q. Just -- this one?

A. Yeah, but I can't...

Q. It's the -- this one?

A. This is not the spine, this is the second ---

Q. Oh, I'm sorry.

THE COURT: Gentlemen, if I could ask both of you to keep your voices up, please, sir? The question as well as the answer.

BY MR. ROBINSON:

A. This particular CAT scan does not reflect the individual I cared for. This is the other individual.

COURT REPORTER: I'm sorry, you need to keep your voice up, please.

WITNESS: Okay. Technical glitch.

MR. ROBINSON: Just a moment. This is a -- I beg the court's indulgence just a moment.

WITNESS: That is not Deon's CAT scan. We're going to load that up now.

MR. ROBINSON: Thank you.

BY MR. ROBINSON:

A. The actual image over on the right side was not the full CAT scan, was saved from a previous -- it would not load the whole scan.

THE COURT: Is this a different disc? Do we need to get a different number on this, Mr. Robinson?

MR. ROBINSON: No, Your Honor. They're from the same disc.

THE COURT: Thank you.

BY MR. ROBINSON:

A. This particular cut is a little bit higher in the neck

than the one we saw before this. Probably about this level. It's below the Adam's apple. This is the windpipe again. This is actually the collarbone, starting to come in here.

Q. What are these?

A. Those are metallic fragments most likely from a missile or bullet going through the clavicle or collarbone. You can understand that we are going from the neck towards the feet, so we're going down in this direction with these cuts. Here is the injury to the collarbone. You start to see injuries. It's called a pedicle. Keep going down. More metallic fragments. These are two different cuts. That's why it seems to take a long time to go down.

If you can stop just a second.

This is a normal, roughly normal vertebral body. And again, we have some views of the spine that are like blocks on top of it. This is cutting through that block. That's the block you usually see on the front. This is a little -- you can feel on the back of your neck. That's called the spinous process, and these are the lateral masses that the spine blocks sort of sit on each other. The spinal cord runs through this area right here.

So, you see fractures already of the vertebral body here. Again, these are some metallic fragments left as the missile goes through in this direction. And you can

basically see this is just blown wide open, basically exploding these vertebra.

And, again, that's where the spinal cord is supposed to be. Again, there's a big piece of metal where the spinal cord is supposed to be. And then passing out behind -- so, it's sort of coming from -- in a downward direction, cutting from the front to the back. And that's not any kind of normal vertebra. This is where actually the windpipe spreads to different airways to go to the lungs.

Q. There's no more injury here?

A. No. Well, except for possibly some damage, bruising to the lung.

Q. All right. Let me have you take the witness stand.

A. Okay.

(CT SCAN RECONSTRUCTIONS MARKED AS STATE'S EXHIBIT NUMBER 25 FOR IDENTIFICATION.)

Q. Dr. Ochsner, do you recognize these?

A. Yes. Yes, I do.

Q. And what are these?

A. These are what are called CT scan reconstructions, or different cuts, the -- of Deon, and these are -- instead of slicing it this way, it's slicing it up and down like this. So, you're looking at the spine from the side. That's what it would look like.

Q. Is this a fair and accurate representation of the

x-rays of Deon?

A. Yes.

MR. ROBINSON: Your Honor, I would move this be admitted into evidence.

THE COURT: Gentlemen?

MR. DEIER: No objection.

MR. DEYSACH: No objection.

THE COURT: 25 without objection.

(CT SCAN RECONSTRUCTIONS MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 25.)

BY MR. ROBINSON:

Q. Let me have you come down and talk about this for just a second.

MR. ROBINSON: Can everyone see that?

Q. All right. What's our top view?

A. This is what's called a CT scan reconstructions, or different cuts of, of Deon. And these are, it's slicing it this way, up and down like this that that if you were looking at it from the side, the spine It's the first view, arms above, so as they come through, they get a clean shot of the chest. And so it's like a regular x-ray, but it's sort of a whole body x-ray. And then that's what they viewed, from the side view, where the grids can come through.

Q. And what are these views?

A. These are what are called sagittal views, which are if you look at them from the side. So, this is just a spine being evaluated in slices from, like, the right side to the left side.

Q. So, is it fair to say he would be facing like this?

A. Yes, and the cuts go through the spine in this direction.

Q. So, describe for the jury the nature of the injury based on these sort of views of the patient in profile.

A. If you remember before, we talked about where it sort of came in up here around the left area of the collarbone right there, this photograph. And it's going from the front to the back in an anterior to posterior direction, down towards the lower part of the back in this trajectory. I think these views sort of demonstrate that. These are the posterior elements.

The spinal cord resides here. So, you can see here is some metallic fragments left from a bullet. Here the posterior elements that are pretty much blown apart. Here you can see that area is just destroyed as well as vertebral bodies. And these are nice and square. I think it's pretty evident this is -- these are broken. These are broken, the posterior elements where the spinal cord is, is actually just gone, just destroyed in that area. It's a different way of presenting the path of the bullet.

MR. ROBINSON: Beg the court's indulgence.

Q. Based on these views, can you, using this mannequin and using this piece of wire, can you describe the path of the bullet through Deon?

A. Yeah. I can give a general direction.

Q. Sure.

A. This is -- this is the collarbone, on the left. And the collarbone junction, right here.

Q. Which direction?

A. Laterally in this direction. Across the midline, going out the opposite side, posterior on the left, exiting to the right of the spine, posterior.

Q. So, would that be consistent -- if the bullet was traveling horizontally, would that be consistent with the patient being bent over?

A. Yes.

Q. Please just have a seat. Thank you.

You've been in trauma surgery for a long time. Is that right?

A. Yes.

Q. And you have posted a lot of material on trauma surgery. Isn't that right?

A. That's correct.

Q. Would you characterize this as a violent injury?

A. I would characterize it as a violent, devastating

injury.

Q. You've also been qualified by this court as an expert. Isn't that correct?

A. Yes.

Q. Could this violent, devastating injury have killed Deon?

A. Absolutely.

Q. And why is that?

A. When he was taken first to a referring hospital where they stabilized his airway, he was in profound shock: low blood pressure, rapid heart rate, difficulty controlling his breathing. And patients in that situation, if you don't secure the airway to ensure good oxygen to the bloodstream, they die.

So, the first thing we do is to secure the airway, which was done at the referring hospital. Then he had blood loss associated with all the muscle tissue and bone injury that he had, so we instituted fluid. When he got to us, he had a breathing tube in. He had very low blood pressure because on top of that, he had something called neurogenic shock.

Q. What is neurogenic shock?

A. Neurogenic shock is when the spinal cord is damaged, usually high up in the thoracic and cervical region, the upper back/neck. The normal tone that we have in our blood

vessels is relaxed. So, there's no tone in the blood vessels to keep the blood pressure up, so the blood pressure gets ---

MR. DEIER: Your Honor, I object to this, Rule 403.

THE COURT: What's the objection?

MR. DEIER: Your Honor, I believe that this is prejudicial, and I believe probative value is outweighed.

THE COURT: No, sir. One of the -- it goes to the elements of the offenses charged in this regard. I note your objection. It's proper for him to render testimony. I'll allow it.

Go ahead.

MR. ROBINSON: Thank you, Your Honor.

BY MR. ROBINSON:

Q. Okay. Please continue.

A. So, when the spinal court is transectored or damaged, then in that situation -- or severe fatal head injuries where individuals cannot maintain normal tone of blood vessels, which we all have to keep the blood pressure up -- so then your blood vessels dilate. The blood pools as you get a very, very low blood pressure. That low blood pressure then does not allow circulation to the coronary arteries of the heart, and death can ensue very rapidly.

Q. Briefly, what treatments was he given?

A. We gave him fluid resuscitation, and then we had to

use something called pressors, drugs like adrenaline, things that cause your blood vessels to tighten down to maintain the blood pressure to avoid that inadequate blood profusion of the coronary arteries, bleeding to death.

Q. Were there any surgeries to deal with the fluid in his chest?

A. He had a, from about -- from the left side, he did have a collapsed lung with some blood in there. So, we provided a tube to reexpand that lung and to eliminate the blood.

Q. And subsequently was there any surgeries to repair the spinal cord damage?

A. Yes. He had extensive -- I believe it was -- I'd have to look, but it was either five or six metal vertebral fixations. So, four to five to six vertebrae had to be stabilized and secured with metal rods and plates.

Q. And that's done surgically. Is that correct?

A. Yes.

Q. And were there any bronchoscopies performed?

A. Yes. The first night that he was in our care, the right upper lobe of his lung collapsed, probably from some of the blood in the left side. And we had a to do a bronchoscopy to reexpand that right upper lobe.

Q. And just so the jury understands, what's a bronchoscopy?

A. It's a scope that we put down through the breathing tube into the airway. And then we go out to either the right or left side and wherever the obstruction is -- usually it's caused by blood or mucous-- and we usually suck that out and it usually reexpands.

MR. ROBINSON: Your Honor, I have no further questions for this witness. Please answer any of these lawyers questions.

THE COURT: Thank you. Mr. Deier, cross-examine?

MR. DEIER: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. DEIER:

Q. Good afternoon, Doctor.

A. Good afternoon.

Q. My name is Chris Deier. I represent Demetrius Price in this case.

Doctor, if you would, put this back.

A. Sure. It isn't going to be exact.

Q. All right. So, that is the -- I'm sorry, that is the basic trajectory of the bullet?

A. That is what would be the basic trajection.

Q. And it's fair to say just -- again, just for purposes of this demonstration, that really the exit wound was somewhere about there?

A. Yes.

Q. So, center back rather than just off to the ---

A. Yes.
Q. --- the right?
A. Right, yeah.
Q. Okay. You can go ahead, have a seat back.
Now, Doctor, when Mr. Robinson first had you do this, he asked you if this was consistent with the victim being bent over, and you said yes. Is that correct?
A. Yes.
Q. So, I guess it's also fair to say that it would not be consistent if the victim would be standing erect. Is that fair to say?
A. I -- it could be consistent with the victim standing erect if it was being -- if someone was above him.
THE COURT: The question that he answered previously had a premise that the bullet was traveling horizontally, and in that particular case, he would have been leaning over. I think that was a qualifying element of the question that Mr. Robinson had asked. Thank you.
MR. GEIER: Yes, Your Honor.
BY MR. GEIER:
Q. Doctor, is it your feeling to a reasonable degree of certainty that Deon Cannick's paralysis was instant?
A. Yes.
Q. So as soon as the bullet hit, he's paraplegic?
A. Should have been, yes.

Q. So, if you're standing up and this happens to you, what's the effect?

A. You should fall.

Q. When you treated Deon Cannick, obviously there was a gunshot wound to the neck and one to the back. When people come in, do you do a -- sort of a secondary evaluation of the patient, see if there's other injuries?

A. Yes, we do.

Q. Do you recall if there were any other injuries?

A. I would have to look at his sheet. I know that he had a collapse of his lung, and he had some blood in his left chest.

MR. DEIER: May I approach, Your Honor?

THE COURT: Yes, sir.

(MEDICAL REPORT MARKED AS DEFENDANT PRICE'S EXHIBIT NUMBER 2 FOR IDENTIFICATION.)

BY MR. GEIER:

Q. Doctor, I'm going to hand you what I believe is your report. If you'll take a look at it.

A. This was the resident dictation of his history and physical.

Q. Did you have a hand in preparation of that document?

A. I reviewed it.

Q. You reviewed it?

A. Correct.

Q. Based on your review of the document, does that appear to be the document that your resident created?
A. That would appear to be the initial evaluation of the patient in the emergency department.
Q. After looking at that, are the findings in there consistent with your recollection?
A. Yes.
Q. Did they do a secondary check of the exterior of Deon Cannick?
A. I don't understand what you mean by secondary.
Q. Any secondary injuries, any significant injuries found to the exterior?
A. Well, the comments -- on the exterior? May not have seen anything.
Q. So, there's no notation of any bruising?
A. Not on that, and I don't remember if there was any other bruising.
Q. No broken legs, broken bones?
A. There is comment about some rib fractures.
Q. Those were secondary to the gunshot wound?
A. Most likely posteriorly where the rib articulates with the thoracic bone structure.
Q. So, you believe that the gunshot created that? Or was that something else?
A. No, I believe the gunshot created that.

Q. So, as far as you know, the gunshot wound and everything that came from the gunshot wound were the only injuries that were suffered by Deon Cannick at that time?

A. That is from what I can recall and see documented. Yes, that's it.

MR. DEIER: One moment.

THE COURT: All right, sir.

MR. DEIER: I have nothing further of this witness, Your Honor.

THE COURT: Thank you. Mr. Robinson?

MR. ROBINSON: I have nothing further of this witness.

THE COURT: Thank you.

Doctor, you can step down. You may be excused. Thank you for coming.

WITNESS: Thank you, sir.

(THE WITNESS EXITS THE STAND.)

MR. ROBINSON: The state calls Dr. William Bromberg.

THE COURT: Dr. Bromberg, please.

WILLIAM BROMBERG, M.D. BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your full name for the record.

WITNESS: James Bromberg, B-R-O-M-B-E-R-G.

VOIR DIRE EXAMINATION BY MR. ROBINSON:

Q. Dr. Bromberg, where do you practice?

A. Memorial Hospital in Savannah, Georgia.

Q. How long have you been in practice there?
A. Seven years.
Q. Do you have a specific field you practice?
A. I practice trauma surgery and surgical critical care.
Q. And how long have you been practicing trauma surgery, surgical critical care?
A. Since the end of my fellowship in 2002.
Q. And will you describe your education and training in that field?
A. Certainly. I graduated the University of Virginia with a B.A. in Biology in 1992. I graduated the University of Virginia School of Medicine with an M.D. degree in 1996. I underwent post-graduate training at Lehi Valley Hospital in Allentown, Pennsylvania, for five years and ended in 2001, where I completed my residency in general surgery . I then completed a one-year fellowship in surgical critical care at Lehi Hospital in Allentown, Pennsylvania. Since then, I've been practicing in Savannah.
Q. Have you done any academic work in the field of trauma surgery?
A. Yes, sir. Savannah Memorial Hospital is a level-one trauma center that requires us to be academically productive. I've published a number of papers in general surgery and in trauma. I'm active in trauma societies and general surgical societies.

Q. And are you currently an associate professor of surgery at Mercer Medical College?

A. Yes.

Q. Are you a member of any professional societies?

A. Yes. The Eastern Association for the surgery of trauma, the Georgia Surgical Society, the Southeastern Surgical Society. And I'm a candidate member of WST, and I'm a fellow of the American College of Surgeons.

Q. Have your publications, the things that you've had published, been in peer review publications?

A. They have.

Q. In addition to your academic work, do you treat trauma patients?

A. Yes.

Q. And have you ever treated -- in that regard, have you ever treated gunshot victims?

A. Yes.

MR. ROBINSON: Your Honor, at this time the state moves that this witness be recognized as an expert in the field of trauma surgery.

THE COURT: Mr. Deier, *voir dire*?

MR. DEIER: I have no objection, Your Honor.

THE COURT: Mr. Deysach?

MR. DEYSACH: No *voir dire*, Your Honor. No objection.

THE COURT: Without objection, I find Dr. Bromberg is

so qualified.

DIRECT EXAMINATION BY MR. ROBINSON:

Q. Dr. Bromberg, did you admit Deverol Cannick to the Savannah Memorial Hospital on July 28th of last year?

A. I did.

Q. And about what time of the day or night was that?

A. Late afternoon, near shift change. So, around 5:00, I believe. I'd have to look at my notes to be specific.

Q. All right.

MR. ROBINSON: May I approach the witness?

THE COURT: Yes, sir.

(FULL BODY SCAN MARKED AS STATE'S EXHIBIT 26 FOR IDENTIFICATION.)

BY MR. ROBINSON:

Q. Doctor, I'm going to show you what's been marked as State's Exhibit Number 26 for identification. Do you recognize this?

A. I do.

Q. What is that?

A. That is the topogram, which is the full body initial scan of the first image of a CT scan done on Mr. Cannick at Hilton Head Hospital prior to his transfer to our institution.

Q. Is this the injury that you treated him for?

A. Yes.

MR. ROBINSON: Your Honor, I move that State's Exhibit 26 be admitted into evidence.

MR. DEIER: No objection.

THE COURT: Without objection. State's 26 admitted in evidence.

(FULL BODY SCAN MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 26.)

BY MR. ROBINSON:

Q. Next, I'm going to show you what's already been marked as State's Exhibit Number 24. This is the disc, CD that you had previously viewed of Deverol Cannick's x-rays. Isn't that correct?

A. Yes.

MR. ROBINSON: Your Honor, I have previously shown this to defense counsel; they have stipulated to its authenticity. I move that it be admitted into evidence.

MR. DEYSACH: Without objection.

MR. DEIER: Without objection.

THE COURT: 24 in evidence.

MR. ROBINSON: May I publish 24 and 26 to the jury?

THE COURT: Yes.

BY MR. ROBINSON:

Q. Dr. Bromberg, let me ask you to come down off the witness stand. Which views are we ---

A. CT chest.

THE COURT: Doctor, once you begin your testimony, I'm going to ask if you can turn and face the general direction of the court reporter so she can hear, okay?

WITNESS: Yes, sir.

BY MR. ROBINSON:

Q. Let's begin with number 26, Doctor. Be sure and speak up. Tell the jury what that is.

MR. ROBINSON: Can everybody see this?

A. This is an anterior-posterior view of Mr. Cannick. He is -- his head is at the top. Obviously his feet are down here at the bottom. Right side is on the right one, R. Left. This one is marked R. Left is over here. Here is heart. You can see the vertebral column. This is the level of his diaphragm, the muscle underneath the lungs. And here is his right lung and his left lung. That foreign object is consistent with a bullet. He had a -- those white marks are just part of the blood pressure cuff. The other stripes you see across are just wires for monitoring.

Q. Okay.

MR. ROBINSON: Ladies and gentlemen, can you all see this?

Q. Now, using our mannequin, what angle is this a view of?

A. I took CT scans. The general view of CT scan is looking at slice of a salami. The salami is laying flat.

The patient's head is away from you, so the head is over here. The patient's feet would be towards you, lying face up. So, the right side, again, is on our left-hand side and the left side is on the left.

This particular cut, you see the patient's heart full of blood. We give the patient a chemical in the vein to make their blood show up on the CAT scan. So, that's, we call that intravenous dye, and so blood is going to be very bright. Bones are also extremely bright. Air on this particular cut is black. And these are his lungs, the left lung and right lung.

And this very, very bright object which shows that shine, that is shadowing because it does not pass any x-rays through it at all, and that's a foreign object, in this case consistent with the bullet that we found.

Q. Assuming the mannequin is our patient, where on the patient is this particular slice?

A. This is about a little above the breastbone. So, if you'd like me to -- this cut would be approximately like that.

Q. Okay. Well, if we scroll, tell us which direction we're going in and what we're looking at.

A. We are moving down, so it would be like this through the body.

Q. And what are we looking at here?

A. This is -- if you go up one more slice -- the opposite direction, I'm sorry. This is lung and this is injury in the lung. It's bruising in the lung. And as we went up, we saw that the foreign objects all to the right side. So, the track is a little down to up. So, as we come down, we can see injury to the lung.

You can see how the lung fills up the entire chest cavity, where on this side there's this level of fluid. This gray stuff is fluid, in this particular case blood. So, there's injury to the lung and there's bleeding in the chest or blood in the chest. Shall I continue?

Q. You can do it.

A. Is that okay?

Q. That's fine. Please do.

A. As we come down now, we see the tip of the liver. On the right side the liver comes up like this on the right side. And the liver and the kidney on the right side are a little higher than the spleen and the stomach on the left side. The liver is this big thing over there.

And the liver is supposed to be this nice, bright -- when you get IV dye, it's this nice, bright, clean, homogeneous mass. It's not supposed to have this dark, gray thing. That's a laceration or injury to the liver. The heart is ending right about here. This is the major blood vessel that goes to the body. This is the aorta that

goes down, and splits and goes to each leg. And this is the big blood vessel that goes through the liver and back to the heart.

And now you can see the liver is that very large organ right here. Again, you can see that dark area. It should not be there in the liver. That's abnormal. That's consistent with laceration and injury.

And then we begin to see this extremely bright material. This extremely bright material is intravenous contrast. It's the dye that we give in the vein that then goes to the heart and goes through every blood vessel. But it's supposed to stay in the blood vessels. When we're starting to see it like that, it's pouring out of the blood vessel into the liver through laceration. That is actually active bleeding. It's a still image of active bleeding. It's like if you took a picture of a water fountain and you see the water flowing up in the area, what you're seeing there is the blood flowing out of the liver.

And this continues along the path of injury, and it continues out to the tip of the liver. And that is outside the liver, free bleeding into the abdominal cavity. And then the injury path passes through the stomach area. We don't see that very well. And then it came in around here. And you can also see these little dots of air that there should not be in the abdomen. This is actually in the

stomach, this air. These little dots should not be here.
Q. Can I interrupt you?
A. Yes, sir.
Q. Now you're looking at this slice. Before, we were up here. Where on our patient would that be?
A. It would be -- his ribs would have ended on this side, but we're below the breast bone. So, it would be on a person -- these ribs go down a little lower than your breast bone. So, here is the breastbone ending. Your ribs end here. So, it's sort of like this slice is about here.
Q. And so the internal bleeding was about where?
A. It was -- his active bleeding was all within his abdominal cavity, below the level of the diaphragm. We did not see any active bleeding in the chest, but we have evidence of bleeding in the chest from the blood there, but we didn't have that bright flush in the chest. So, all this active bleeding at the time of this film was in his abdomen.
Q. Okay. In the cuts that, that continue down, are there further injuries?
A. No. There's more evidence of blood. There's blood pooling down lower, and that's just gray stuff over here. That is blood and fluid outside of where it should be. But there's no other visible injury.
Q. All right. Just -- do you need to see any more images

to describe the injuries?

A. No.

Q. Have a seat back on the witness stand.

MR. ROBINSON: Beg the court's indulgence.

(A PAUSE.)

BY MR. ROBINSON:

Q. All right, sir, where was the entrance wound?

A. There was one wound.

Q. You want to point to our mannequin again?

A. I can describe it. It's similar to the angle I pointed the wooden stick. It was still within the, I would say rib cage on the left side of the abdomen. The tract of the injury dropped across the patient's abdominal cavity: essentially through their stomach, then through their liver from tip to dome. That hump is the dome of the liver. And then through the diaphragm -- the muscle underneath the lungs that helps you breathe -- through the lung, and then there was a foreign object consistent with a bullet in the soft tissues of the mid right chest.

Q. Dr. Bromberg, what treatment was Deverol Cannick given for his injuries?

A. He was obviously admitted to the trauma center. After reviewing the CAT scan, he was taken to our angiography department, where they placed a catheter into the artery in his leg. That catheter went up to the liver and they were

able to stop that active bleeding in the liver by placing coils, which are little metal springs, into the blood vessel that block up the blood vessel and then stop blood flow from going through it. It allows you to stop bleeding from the inside, almost like Stop Leak in a radiator.

Q. After the angiography, what was the next -- what was the other treatments he received?

A. He was taken from angiography directly to the operating room where he underwent an exploratory laparotomy.

Q. What is that?

A. We make an incision from under the breastbone to basically the patient's lower abdomen and look around for other injuries which we expected to find. At that time, we found injuries to his stomach which were repaired, injuries to his liver which were not -- bleeding arterially. In other words, no bright red pumping blood, but they continued to bleed -- you stopped the artery bleeding with the angiography. You can't stop vein bleeding with the angiography. That we stopped with stitches and with packing. And then we fixed a hole in his diaphragm, and we drained the blood out of his right chest.

Q. Did you participate in those surgeries?

A. I did.

Q. At that time, what did you do about the bullet?

A. We left it there.
Q. Was it left there permanently?
A. No. He returned to my office complaining of pain at that site, and so we took it out at a later date. We expected to leave it permanently if it wasn't causing him any problems.
Q. Do you recall when you removed the bullet?
A. I don't remember the exact date. It was some weeks after his admission.
MR. ROBINSON: Beg the court's indulgence?
THE COURT: Okay.
BY MR. ROBINSON:
Q. Would it refresh your recollection to look at your office notes?
A. I would appreciate that. Yes.
MR. ROBINSON: May I approach the witness?
THE COURT: Yes.
BY MR. ROBINSON:
Q. When did you take the bullet out?
A. On the 8th of September, 2008.
Q. And that was done by you. Is that correct?
A. Yes.
Q. And when you took the bullet out, who did you give it to?
A. I gave it to my office nurse.

Q. And what is her name?
A. We go through a lot of office nurses. I'm sorry, I have that documented but not in this document. I'm sorry.
Q. Do you know what she did with it?
A. Yes. She gave it directly to security because I knew we had to maintain the chain of custody.
Q. Quickly, using this photograph here, can you just point out, come down off the witness stand, point out the path of the bullet through Deverol Cannick based on the injuries that you observed?
MR. ROBINSON: Let the record reflect the witness is demonstrating the path from the lower left side to upper right side.
Q. Is that correct?
A. Yes.
Q. Just have a seat. As a trauma surgeon, you've treated gunshot wounds in the past, have you not?
A. Yes.
Q. In your opinion, could an injury like this have killed Deverol Cannick?
A. Not only could it have killed him, I have never seen such active bleeding in an abdominal CT scan for such a long length of time without the patient being either extremely ill or dying. Yes.
Q. So, is it fair to say this is a violent injury?

A. Yes.

MR. ROBINSON: Doctor, I have no further questions.

Your Honor, the state would pass the witness.

Doctor, please answer any questions these lawyers would have.

THE COURT: Mr. Deysach?

MR. DEYSACH: Thank you very much.

CROSS-EXAMINATION BY MR. DEYSACH:

Q. Good afternoon, Doctor. My name is Ian Deysach. I represent Lucius Simuel in this case.

Really, the main question I have is where does the bullet enter the patient? Where on his body?

A. It's the -- around or below the lower left ribs.

Q. Can you stand up and show us for me?

A. Yes. Right here.

Q. All right.

A. I don't recall exactly how anterior or posterior the entrance was, but it was almost ---

Q. It was on this side. But you're saying to an area. But you're saying that there is some margin for error in this direction or this direction?

A. In, in my memory. Obviously, the hole is where it was.

Q. I'm asking about your memory. So, what kind of margin for error are we talking about? How far off?

A. A hand's breath.

Q. So, somewhere within that area?

A. Yes.

MR. DEYSACH: I have nothing further, Your Honor.

THE COURT: Mr. Deier?

MR. DEIER: Your Honor, I have no questions.

THE COURT: Thank you. Redirect?

REDIRECT EXAMINATION BY MR. ROBINSON:

Q. One thing I overlooked, Doctor. Was Deverol Cannick -- did he have any other injuries?

A. This is ---

MR. DEYSACH: Beyond the scope of cross.

THE COURT: I sustain the objection.

MR. ROBINSON: I have nothing further of this witness.

THE COURT: Dr. Bromberg, you can step down. Thank you so much for coming.

WITNESS: Thank you, sir.

(THE WITNESS EXITS THE STAND.)

MR. ROBINSON: The state calls Charlie Carlson.

THE COURT: Charlie Carlson, please.

CHARLIE C. CARLSON, III, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your full name for us and spell your last name.

WITNESS: Charlie C. Carlson, III, C-A-R-L-S-O-N.

DIRECT EXAMINATION BY MR. ROBINSON:

Q. Mr. Carlson, where do you work?

A. I work at Memorial Health University Medical Center in security.

Q. Were you working there during 2008 and all of this year?

A. Yes, I was.

Q. Did you -- in February of this year, did you turn over a -- strike that. What does security do?

A. Security maintains safety and security in the hospital or Memorial campus and all its property.

Q. Do you maintain an evidence locker?

A. Yes, we do.

Q. What kind of things do you keep in there?

A. Anything that's collected from surgery: bullets, fragments, knives, confiscated, confiscated materials such as drugs, drug paraphernalia, that type of thing.

Q. And where are those things kept? Where are those things kept?

A. Now or then?

Q. In 2008.

A. In 2008 they were kept in the same safe inside -- department safe in dispatch.

Q. And did you have access to that safe?

A. At that time I did.

Q. When items are deposited there, are they tampered with in any way?

A. No, they're not tampered with, but people -- we'll also keep patient valuables in there as well.

Q. Is access to that safe limited to security personnel?

A. It's actually limited even further than that. It's limited to the on-duty supervisor.

Q. Are you one of those?

A. At that time I was.

Q. And who is Jovan Murphy?

A. Jovan Murphy was the interim lieutenant or interim supervisor at that time of A shift, the other day shift.

MR. ROBINSON: May I approach the witness, Your Honor?

1: Yes, sir.

(CHAIN-OF-CUSTODY DOCUMENT MARKED AS STATE'S EXHIBIT NUMBER 27 FOR IDENTIFICATION.)

BY MR. ROBINSON:

Q. I'm going to show you what's been marked for identification purposes only as State's Exhibit Number 27. What is this?

A. This is a chain-of-custody document that shows the chain of custody from where the evidence came from, who it went to. After that, place it in the evidence locker, which law enforcement officer or detective agency it's given to.

Q. Was that -- but it's -- what's on the form?
A. On the form is the victim's name, race, age, date of birth, social, address. And under that is the description of the evidence, which in this situation is a bullet. Then after that is chain of custody, where it shows that it's received from Cheryl Martin, LPN, licensed practical nurse, by Javon Murphy, who was the interim lieutenant at the time.
Q. What date was it received by Javon Murphy from Cheryl Martin, from the nurse?
A. August 8, 2008, at 4:49.
Q. Okay. Is there another signature? Is there another name underneath Javon Murphy's name?
A. Yes. My name.
Q. And what does that indicate?
A. That means I received it from him, which was after the evidence locker. And after me it's turned over to Sergeant Calhoun.
Q. And it was received on what date?
A. By Sergeant Calhoun was 16th of February 2009 at 12:30 p.m.
Q. So, when was the bullet deposited in the security vault?
A. August 8th of 2008.
Q. Are you sure it's August?

A. Oh, September, excuse me.
Q. So, between September 8 and February 16, where is that bullet?
A. That bullet was in the department safe and after I became manager of the security department, I took all the evidence and put it in an evidence locker to keep it separate from the patient valuables.
Q. So, between September 8th and February 16th was it tampered with in any way?
A. No.
Q. Now, the three people listed, are you the only people that touched that bullet to your knowledge?
A. To my knowledge, that's the only three people.
MR. ROBINSON: Your Honor, I have no further questions. Please answer any of the court's questions.
WITNESS: Thank you.
CROSS-EXAMINATION BY MR. DEYSACH:
Q. Good afternoon, Mr. Carlson.
A. Good afternoon.
Q. I'm Ian Deysach. I represent Lucius Simuel in this case. On September 8th, you were one of the shift managers in security at Savannah Memorial?
A. Yes.
Q. And the other one was Jovan?
A. Yes.

Q. And what was his last name?
A. Murphy.
Q. Javon Murphy. It was Javon Murphy who received the piece of evidence that we're talking about?
A. Yes.
Q. You put it into the safe, correct?
A. Yes.
Q. The safe that only you and Mr. Murphy have access to?
A. Not just me and him but also the night shift lieutenants as well.
Q. How many of those are there?
A. There's only two.
Q. Two. There's a total of four people who have access to that?
A. Yes.
Q. And it's in there also, you said, with patient valuables?
A. At that time.
Q. At that time, and then there was a change sometime before February 16th where the evidence and valuables were separated, correct?
A. Yes.
Q. And at that time, you personally moved this piece of evidence from the safe to what you called an evidence locker?

A. Yes.
Q. And who had access to that evidence locker?
A. Access to the evidence locker is the same people, four lieutenants.
Q. And have there been some turnover in that period of time?
A. As far as lieutenants, no.
Q. Just the same four people?
A. During that period of time, same four people.
Q. And we're talking about the time from September 8th to February 16th?
A. Yes.
Q. And then on February 16th, you guys relinquished custody of the piece of evidence, correct?
A. Let me go back. We did hire two new lieutenants for day shift.
Q. And they had access to the lock and safe?
A. They had access.
Q. And you relinquished custody of this piece of evidence on February 16th?
A. Yes.
Q. And you're the person who personally relinquished the custody?
A. Yes.
Q. And you said you gave it to Sergeant Calhoun?

562

A. Yes.

MR. DEYSACH: Nothing further, Your Honor.

THE COURT: Mr. Deier?

MR. DEIER: Nothing of this witness.

THE COURT: Mr. Carson, you can step down.

(THE WITNESS EXITS THE STAND.)

MR. ROBINSON: The state calls Deverol Cannick. Deverol Cannick.

THE COURT: Mr. Cannick is one of the victims in this case. We'll take a break before we start his testimony.

MR. ROBINSON: Very well.

THE COURT: Ladies and gentlemen, we'll take an afternoon recess at this point in time. We'll start back around 4 or shortly thereafter. Please go to the jury room. Don't discuss the case among yourselves.

(THE JURY EXITS AT 3:32 P.M.)

THE COURT: All right, folks, we'll be in recess for about fifteen minutes.

(OFF THE RECORD.)

(THE JURY ENTERS AT 3:50 P.M.)

THE COURT: Ladies and gentlemen, we continue now as the state offers additional evidence and testimony.

Mr. Robinson.

THE COURT: Mr. Robinson?

MR. ROBINSON: The state calls Deverol Cannick.

THE COURT: Mr. Cannick, come forward please, be sworn.

DEVEROL CANNICK, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your full name for us and spell your last name.

WITNESS: My name is Deverol Cannick, C-A-N-N-I-C-K.

DIRECT EXAMINATION BY MR. ROBINSON:

Q. Deverol, do you go by Devin Cannick?

A. Yes, sir.

Q. Devin, where were you living on July 28th of last year?

A. I was living in Plantation Point.

Q. And what was the apartment number?

A. It was [redacted] Plantation Point, sir.

Q. And how long had you been living there?

A. A few months.

Q. Who was living with you?

A. My girlfriend, my two younger brothers, and I have another brother visiting.

Q. And what happened on July 28th?

A. On July 28th?

Q. What were you doing on July 28th?

A. On July 28th when I woke up that morning, we woke up and we were playing video games.

Q. And what happened after you were playing video games?
A. There was a knock on the door.
Q. And what happened after you heard a knock at the door?
A. My brother came up and told me this girl named Tiah's uncle was at the door.
Q. And what happened after that?
A. He asked me what he wanted, and I said I didn't know. Do you know what he wanted, and I said I didn't know. So, I went down there to see what was going on. I went down to the door.
Q. What happened after you went down to the front door?
A. When I went down to the door, I opened the door and I shut it behind me. And once I got out there, I saw these two guys out there.
Q. Did you recognize either of them?
A. I recognized the guy on the left once I got out. He was Lucius Simuel.
Q. Did you know his name?
A. At that time I did not know his name. I only knew him as Tiah's uncle.
Q. Who was Tiah's uncle to you?
A. He was nothing to me.
Q. Was he something to one of your brothers?
A. No, sir.
Q. And who was Tiah to one of your brothers?

A. Tiah was Deon's girlfriend.
Q. Was Tiah Deon's girlfriend when he went to the door?
A. No.
Q. When you went outside, was there anyone there besides the two of them?
A. No.
Q. And what happened when you were speaking to them?
A. When I was speaking to them, the first -- the conversation first started and Lucius told me there was this guy I was telling you about, and I didn't know what was going on because he never told me about a guy. I never spoke to him. He pointed to that guy over there.
Q. All right, and then what happened after the conversation?
A. After that, he asked me if I wanted any pills.
Q. Which person asked you if you wanted any pills?
A. That guy right there in the white shirt.
Q. Meaning the uncle or the person ---
A. The other guy.
Q. And what did you say?
A. I said no. I don't want any.
Q. What happened after that?
A. He pulled out a small bag of a white substance, what appeared to be cocaine.
Q. When he pulled that out, what did you say? What

happened next?
A. He asked me if I wanted some of that as well.
Q. And what did you say?
A. I said no.
Q. And what happened after that?
A. Before I knew anything, I just saw two bags being pulled out. And I was being pushed back towards the door inside my apartment.
Q. Who had the guns?
A. I saw a gun on the right and a gun on the left. Both guys had guns.
Q. Did you have a gun?
A. No, sir, I didn't.
Q. Were you expecting them to come that day?
A. No, sir.
Q. Did you call either of them to come that day?
A. No, sir.
Q. And what happened next?
A. They pushed me back into the house and the front, said where is the iron at, meaning, where are the guns.
Q. Did they say -- meaning, where are the guns?
A. No.
Q. Is that --
A. That, that's the slang when they came and they said, where is the iron at. That's what that means, where are

the guns.

Q. What did you say to them when they came inside?

A. I said please don't do this.

Q. Did you say anything else to them?

A. I didn't have much chance to say much.

Q. And what happened next?

A. Before I knew it, that guy just reached up and shot Deon.

Q. Where was Deon?

A. Deon had run downstairs once he heard the commotion. Once they pushed me back inside, he come down to see what was going on. And once he was coming, my dog kind of ran down as well, and he was kind of holding the dog.

Q. Come down from the witness stand and show the jury kind of what Deon's posture was when he was coming down the stairs.

A. He was coming down the stairs and he was reaching. He was holding the dog. When he was holding the dog, he was reaching like this but looking up because the guy had a gun, like, pointed right at him. And he was, like, please don't shoot me.

Q. And where were you?

A. I was standing right here at the door, and Lucius was standing next to me. At first the other guy was standing here, but he ran past and went up and did like this to

Deon.

Q. Just have a seat up on the witness stand. Did you do anything to try to keep them from coming inside?

A. I kind of resisted, but it wasn't much I could do. They were kind of much bigger than me.

Q. How did you resist?

A. It wasn't much resistance because they just kind of pushed the door in and pushed me in behind them. When I saw the guns, I wasn't trying to put up too much.

Q. Did you throw any punches?

A. No, sir.

Q. What did you do with the door?

A. I didn't touch the door, whatever. They just closed it once they came in.

Q. And what happened as Deon was coming down the stairs?

A. As Deon was coming down the stairs, when my dog came?

Q. That's right. What happened next?

A. When Deon came down the stairs, Nina ran past him and he grabbed her by the collar, and he was kind of bending down and holding her back.

Q. Then what happened?

A. The guy just walked up and put his gun by Deon.

Q. And what did he do with the gun?

A. He shot my brother.

Q. And what happened after he shot your brother?

A. He fell.
Q. Where did he fall?
A. He fell down the stairs.
Q. And what did the guy with the gun do?
A. I don't know. I think they just ran off.
Q. And what did you do?
A. I was running all around. I didn't know what to do. I just didn't -- I couldn't believe they shot Deon.
Q. When you say you were running all around, where did you go?
A. I was running up the stairs and around.
Q. Did you ever make it up the stairs, back in the living room?
A. Sort of but not really. I was just, like, running around.
Q. Did you stay in the apartment?
A. No, sir.
Q. Why not?
A. After I realized I didn't know who they were or anything, so I just went outside to try to see if I could see their car or something.
Q. And what happened when you went outside?
A. When I went outside, I saw them standing there arguing.
Q. What, if anything, did you hear them say?

A. I don't know what they were arguing about.
Q. Did you hear them say anything?
A. No, sir. Once I realized they was there, I just dropped on the ground and just laid there.
Q. When you came out, did they see you?
A. Yes.
Q. What did they do?
A. At first they was kind of looking at me, and I laid down because I didn't want them to think I was trying to see what they was doing.
Q. When you came outside, could you see guns?
A. Yes.
Q. Do you remember what the guns looked like?
A. One was a revolver, handgun, and one was a black automatic handgun.
Q. Which person had the gun?
A. The uncle had the black automatic handgun, and the other guy had the revolver.
Q. And of those two, which gun was used to shoot Deon?
A. The revolver.
MR. ROBINSON: Beg the court's indulgence.
Q. Did you ever try to grab their hands when they were inside?
A. No, sir.
Q. How did you realize you had been shot?

A. As soon as they shot, my hand instantly swole up.

MR. ROBINSON: May I approach the witness?

THE COURT: Yes, sir.

(PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 28 FOR IDENTIFICATION.)

BY MR. ROBINSON:

Q. Devin, let me show you what's been marked State's Exhibit 28 for identification purposes. What is that?

A. That's the view of my apartment.

Q. Is that the front door?

A. Yes, sir, it is.

Q. Is that a fair and accurate representation of what your front door looked like on that day?

A. Yes.

THE COURT: Any objection, gentlemen?

MR. DEIER: No objection, your Honor.

MR. DEYSACH: No objection.

THE COURT: 28 admitted without objection.

MR. ROBINSON: May I publish this to the jury?

THE COURT: Yes, sir.

(PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 28.)

BY MR. ROBINSON:

Q. All right, Devin, come down from the stand, over here.

THE COURT: Step over to the other side if you don't

mind, please, sir.

BY MR. ROBINSON:

Q. Devin, if you'll speak up so the court reporter can hear you. Those number markers weren't there on the day this happened, were they?

A. No, sir.

Q. You can use the pointer. You don't have to, but when you came outside the front door, where were the two guys?

A. They were over here.

Q. And how far did you get out the door?

A. I got about right to that line right there.

Q. And when you got to the door, when you came outside and saw them, what did you do?

A. I didn't know they were still there, so I kind of panicked and was about to run back in the house, but I thought they would shoot me. So, I just laid down.

Q. And which way did you lay down?

A. I laid flat on my stomach with my head closest to the door, and my feet were down here.

Q. And what did you do with your hands?

A. My hands was like this, above my head.

Q. And where were you shot?

A. When they first shot, they shot at my hand. It swoled up, and after that, they hit me right here at my side.

Q. Do you remember feeling the shot to your side?

A. No, sir.
Q. All right, you can go back to the witness stand.
After you were shot, while you were laying down flat, what did you do?
A. After I was shot, I jumped up and the ran back in the house. And I said they shot me. They shot me, too. They shot me.
Q. Is it fair to say you were panicking at that time?
A. Yes. I was panicking.
Q. While you were panicking, what did you do?
A. I was running around in the apartment looking for the keys, trying to take Deon to the hospital.
Q. When you came back inside, where was Deon?
A. Deon was still laying on the stairs.
Q. Were you able to move him?
A. No, sir.
Q. Where did you look for the keys?
A. I was just running around everywhere looking for them.
Q. Did you do anything other than look for the keys?
A. No, sir.
Q. Did you try to call 9-1-1?
A. Yes, I did. I'm sorry, I did call 9-1-1. I was running around and I had dialed 9-1-1. I was running around with the phone to my ear, but I forget I called them.

Q. What happened after that?
A. After that, we found the keys and we all got -- we found the keys, and I personally ran downstairs and cranked the car up and came back inside. And we were all getting ready to leave to go to try to make it to the hospital.
Q. When you say we, who do you mean?
A. Me, my girlfriend, my brother, and Deon.
Q. And how did you all get -- did you all move Deon to the car?
A. Yes, my brother did. I wasn't able to.
Q. What happened after that?
A. Once we got in the car, we started leaving the neighborhood. We got as far as the front gate and the ambulance and everything was there.
Q. What happened after you got to the front gate?
A. After we got to the front gate, I was in the car, I saw the ambulance. I jumped out and I ran toward the ambulance, told them I was shot, could they please help me. They put me in it.
Q. You described doing a lot of things after having been shot. Were you in pain at this time?
A. No, sir, I wasn't in pain.
Q. Were you never in pain?
A. I was in pain when I got hit in my hand and never really kind of felt the wound in my side until I laid down,

and my adrenaline started rushing a little bit.

Q. Where were you when you laid down and the adrenaline started rushing?

A. When I first tried to lay down, I was in the house. My girlfriend told me to lay down. I was running around, moving around too much, and I tried it for about three seconds. And after I laid there for a second, I said no, I can't lay down.

Q. Why did you say that?

A. Because I thought I was going do die.

Q. Were you in pain when you got yourself in the ambulance?

A. No, sir. I can't really remember much pain.

Q. Do you remember going to the hospital?

A. Yes, sir, I do.

Q. Do you remember being transferred to the second hospital?

A. Yes, sir, I do.

Q. How did you get to the second hospital?

A. I got to the second hospital by helicopter.

Q. When did you -- when did you wake up from your treatment?

A. The first time I woke up after being outside the ambulance, I was in Hilton Head Hospital; the second time I woke up, I was getting off the helicopter at Savannah

Memorial.

Q. Do you remember talking to the investigators after this happened?

A. Yes, sir, I do.

Q. And where were you when you talked to the investigators?

A. I was in the hospital.

Q. Do you remember being shown some lineups with the photographs?

A. Yes, sir, I do.

Q. Was anybody else with you when you looked at those photographs?

A. No, sir. I was in my hospital bed.

Q. Were the investigators with you?

A. Yes, sir.

Q. Do you remember picking out -- do you remember whether you were able to pick out any photographs?

A. Yes, sir. I chose photographs.

Q. Let me ask you, first of all. The person that you say you saw with the revolver, do you see him in court today?

A. Yes, sir, I do.

Q. And where is he?

A. He's right there in the light shirt, sir.

Q. Is he wearing a coat and tie?

A. No, sir. He isn't.

Q. Is that the person that shot your brother?
A. Yes, sir. That is.
Q. Did you know who he was on that day?
A. No, I didn't.
Q. Had you ever seen him before?
A. I've never seen him in my life before that day.
Q. Were you able to pick out the other person?
A. Yes, sir. I was.
Q. Do you see that person in the courtroom today?
A. Yes, sir, I do.
Q. And where is he?
A. He's right there in the blue shirt with the tie.
Q. Is he wearing a coat?
A. No, sir. He isn't.

MR. ROBINSON: Madame Court Reporter, let the record reflect respectively first the witness identified Demetrius Price, the defendant. And, secondly, the witness identified defendant Lucius Simuel.

BY MR. ROBINSON:

Q. Let's back up, Devin. When this occurred, were you working?
A. No, sir, I wasn't.
Q. Where was the last place that you worked?
A. I worked at Target and right before I had that job, I was working at Kroger's as well.

Q. And when did you move into the apartment?
A. I was staying there about five or six months.
Q. And what were you doing for money while you were living in these apartments?
A. Okay, occasionally I sold dogs, drugs.
Q. And what kind of drugs did you sell?
A. I sold weed, a little bit of cocaine.
Q. Other things besides cocaine?
A. Some pills.
Q. And by weed, you mean marijuana?
A. Yes, sir, I'm sorry. Marijuana.
Q. And what kind of pills did you sell?
A. Prescription pills sometimes or X pills.
Q. Did you have any of those things in the apartment when this happened?
A. Yes. It was -- came to the apartment.
Q. What kind of things did you have in the apartment?
A. I had drugs in my apartment.
Q. What kind of drugs did you have in your apartment?
A. I've had cocaine, weed, pills.
Q. Did you have any -- did you have any guns?
A. Yes, sir. I own guns.
Q. What kind of guns did you have?
A. I had a .45. I had a .32.
Q. Had you ever shot those guns?

A. Yes, I have.
Q. How long did you have them?
A. I had them maybe about a year.
Q. Prior to the incident?
A. Well, I had the .32 longer, but I may have had the .45 about five or six months.
Q. Did you have any of those guns on your person when you went -- did you have them on you when you went to answer the door?
A. No, sir. When I answered the door, I had on a tank top and basketball shorts.
Q. Before you went outside, after Deon got shot, did you go get your guns?
A. No, sir, I didn't.
Q. Do you remember where they were in the apartment when Deon got shot?
A. They were probably put up somewhere because we didn't keep them around, like -- they were probably put up in the closet or something where no one could find it or something like that.
Q. Did you ever tell your girlfriend about the drugs?
A. No. I tried to hide it from her. I was ashamed.
Q. How did you hide it from her?
A. I basically just lied to her about it. I didn't tell her everything that she needed to know. She knew I smoked,

but she didn't know.

Q. She knew you smoked what?

A. I smoked marijuana.

Q. As far as you know, could you still get charged with being in possession of those drugs?

A. Yes, I could.

MR. ROBINSON: Beg the court's indulgence.

Q. When you went out, were you able to see who shot you?

A. No, sir, I wasn't.

MR. ROBINSON: That's all the questions I have of this witness. Devin, please answer these lawyers' questions.

THE COURT: Mr. Deysach.

MR. DEYSACH: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. DEYSACH:

Q. Good afternoon, Mr. Cannick.

A. Hello. How are you?

Q. Okay. You also go by the nickname Reese?

A. Yes, sir.

Q. And you're the brother of Deon, correct?

A. Yes, sir.

Q. Brother of Malik, correct?

A. Yes, sir, I am.

Q. Malik Campbell and Marcus Campbell, correct?

A. Malik Campbell and Marcus Campbell are my brothers as well as.

Q. And you're the boyfriend of Sharita Willingham, correct?
A. Yes, sir, I am.
Q. Mr. Robinson just asked you, as far as you know, you can still be charged with the drugs that were found in your house. Do you remember that?
A. Yes, sir, I do.
Q. At this point have you been charged with any of the drugs in your house?
A. No, I haven't.
Q. Have you been charged with any of the guns in your house?
A. No, I haven't.
Q. And at the time, you had cocaine in the house, correct.
A. Yes, sir.
Q. You had marijuana in the house, correct?
A. Yes, sir.
Q. And you had hydrocodone pills in the house?
A. Yes, sir.
Q. Is there another name for those kind of pills?
A. My family calls them Lortab.
Q. Lortab.
A. Yes, sir.
Q. And you kept all that in the master bedroom, correct?

A. Yes, most of the time.
Q. And your girlfriend and you, Sharita, shared that room, correct?
A. Yes, sir.
Q. And so what you're telling us is that even though she shared the room where you stored your drugs, that she had no idea that you were selling drugs, correct?
A. No, sir. She had no idea.
Q. She had no idea that Deon was selling drugs, did she?
A. No, sir.
Q. Before this day, you already knew Lucius Simuel, didn't you?
A. Before this day, I met Lucius on one occasion, but I can't say that I know him.
Q. So, you're saying -- but you have met him?
A. I met him on one occasion.
Q. And that occasion was at the apartment, wasn't it?
A. He came to my apartment on one occasion to drop off Tiah to see Deon.
Q. And he came into your apartment, didn't he?
A. Yes, sir, he did.
Q. And he smoked weed with your brother in the apartment, correct?
A. Yes, sir, he did.
Q. And he talked to you while he was in the apartment,

didn't he?
A. No, sir, he didn't.
Q. Did he -- he gave you his phone number while he was at the apartment?
A. No, sir, he didn't.
Q. You talked to him on the phone before, correct?
A. I hadn't talked to him on the phone.
Q. But you knew his phone number, correct?
A. No, I didn't.
Q. You knew his phone number to get in touch with him?
A. No, I never had his. No, sir.
Q. So, you never told an EMS driver on the way to the hospital -- you never tried to tell them Lucius Simuel's phone number?
A. No, sir. I only tried to remember the number that my brother gave me before I left from him. He told me to tell anybody I could tell that Tiah's uncle was the one who shot us and tried to give me a 706 number.
Q. That's the area code you're talking about, or just the prefix?
A. That's just the first three digits of the number. It's not the area code.
Q. All right. So, you're saying that Deon tried to give you this information after the shooting?
A. As I was jumping out of the vehicle to get into the

ambulance, Deon's last words were tell them that Tiah's uncle shot us.

Q. Okay, tell them that Tiah's uncle shot us. Okay, so -- okay, and then called out the phone number?

A. Yes, sir.

Q. Okay. So, those are the last things that you hear he say before he goes to the ambulance?

A. Yes, sir.

Q. And so Deon is still conscious at this point?

A. Yes, sir, he was.

Q. But -- so, it wasn't you that knew the phone number? It was Deon that knew the phone number?

A. Yes, sir.

Q. But you had asked Deon to get in touch with Lucius about the ecstasy pills, right?

A. No, sir, I didn't.

Q. Did you know that Deon talked to -- had talked to Lucius on the phone?

A. No, sir, I don't believe he did.

Q. Okay. Did -- when you met Lucius, you're saying you never talked to him about ecstasy pills, correct?

A. No, sir. We never had a conversation.

Q. You said that Sharita didn't know that you were selling drugs in July of 2008. Did she know that you were a member of the gang, Gangsta Disciples?

A. No, sir.
Q. Did she know that Deon was a member of the same gang?
A. No, sir.
Q. You stated that -- you kind of told everybody the guns that you owned, and I didn't write it down, but what were those guns that you owned?
A. I owned a .45 and .32.
Q. Those are the only two guns you owned at the time?
A. Yes, sir.
Q. Did you own other guns at other times before that?
A. No, sir.
Q. So, those are the only two guns that you ever -- have ever owned?
A. Yes, sir, they were.
MR. DEYSACH: Mark this, I guess Defense 3, Simuel.
(PHOTOGRAPH MARKED AS DEFENDANT SIMUEL'S EXHIBIT NUMBER 3 FOR IDENTIFICATION.)
BY MR. DEYSACH:
Q. I'm going to ask you if you recognize what's in that picture.
MR. DEYSACH: I'm approaching the witness Your Honor. I didn't ask for permission.
A. Yes, I recognize what's in this picture.
Q. Can you tell the jury what's in this picture?
A. It's a picture of ---

MR. DEYSACH: Well, do I need to ---

MR. ROBINSON: May I see it, Your Honor?

(COUNSELORS CONFER.)

BY MR. DEYSACH:

Q. Can you tell us what it is?

A. It's a picture of my uncle holding guns.

Q. So, that's not you in that picture?

A. No, sir, that's not me.

Q. Who is your uncle?

A. My uncle is Kelly Garner.

Q. I got you.

A. My mother's brother.

Q. And did you -- were you in possession of that notebook on July 28, 2008?

A. No, sir. This wasn't my notebook.

Q. Okay. Was that in your master bedroom at the time? I'll take it from you.

A. No.

Q. At the time of July 28TH, you didn't have any ecstasy pills in the house, did you?

A. Yes, I did.

Q. Oh, you did? Where were they?

A. I can't remember exactly where they were.

Q. Would they not have been in your master bedroom?

A. Yes, probably.

Q. Did you tell Deon that you wanted to buy some ecstasy pills in order to make some extra money?
A. No, sir, I didn't.
Q. I'm going to ask you -- I hand you Defendant's Exhibit Number 1. I'll ask you if you recognize that.
A. No, sir, I don't.
Q. Did you have a mask in your home at the time of July 28th?
A. No, sir.
Q. All right. So, now I'm going to move to actually July 28th. You said that when you woke up, you and your brothers started playing video games?
A. Yes, sir.
Q. And you heard, you heard Deon's phone ring, correct?
A. Yes, sir.
Q. And Deon's phone is a blue flip phone, cell phone, right?
A. Yes.
Q. It was at the time. That's really what I'm asking.
A. Yes. He did have that type of phone at the time, sir.
Q. And you saw Deon answer that phone, didn't you?
A. No, sir. I didn't see him answer his phone.
Q. So -- all right. You never saw him answer his phone? Okay. When you heard a knock on the door, you went to the balcony of your home to look down and see who it was,

didn't you?
A. No, sir, I didn't.
Q. And after you heard the knock on the door and looked down from the balcony, didn't you see Martin and Jesse?
MR. ROBINSON: Judge, I object to the form of the question. He just said he did not look down from the balcony.
THE COURT: That's right. I'll sustain the objection as to the form of the question.
BY MR. DEYSACH:
Q. So, when the door -- when you heard the knock on the door, there was no phone call that preceded it, that came before?
A. No, sir.
Q. And you never told Deon that Jesse and Martin were at the door, did you?
A. No, sir.
Q. Do you know Martin Guzman and Jesse Reese?
A. Yes, sir, I do.
Q. You saw Deon go down to answer the door, correct?
A. Yes, sir.
Q. You saw Deon bring marijuana down to the front door, didn't you?
A. No, sir, I didn't.
Q. So -- and Deon only went down to the front door once.

He didn't go down to the front door, come back up, grab marijuana, and then go back up, did he?

A. I never saw Deon grab marijuana, sir.

Q. If he had -- you were in the living room when all this happened, right?

A. Yes.

Q. And you would have seen that, right?

A. Yes.

Q. So after Deon is at the door, he comes up to get you, right?

A. Yes, sir.

Q. And he tells you that Tiah's uncle is at the door, correct?

A. Yes, sir.

Q. And he asks you what do they want?

A. Yes, sir.

Q. He doesn't tell you anything about what they want, correct?

A. No, sir.

Q. He never told you anything about what they talked about down at the front door, did he?

A. When he came back up, he just told me they was at the door. And he was confused because he didn't know what they wanted.

Q. And he thought you may know what they wanted?

A. No, sir. I was confused as well as. I was wondering why they were popping up at my home.
Q. Okay, but you go downstairs to meet with them, right?
A. Yes. I went to the door to see what they wanted.
Q. Okay, and you walk outside of your door, correct?
A. Yes, sir.
Q. And you shut the door behind you, right?
A. Yes, sir.
Q. So, the door is already all the way shut?
A. The door could have possibly been partially shut. It could have been shut, but I know the door was closed behind me, but I can't tell you whether it was shut all the way.
Q. But you're the one who closed it, right?
A. Yes.
Q. And so at that time, you said Lucius told you this is the guy I was telling you about, right?
A. Yes.
Q. And you're telling the jury that that statement just confuses you, right?
A. Yes.
Q. And that you talked to them for a minute, correct?
A. It wasn't, like, it was a minute. It was more like a few seconds. And before I knew it, they had guns.
Q. Isn't it true that you let them inside?
A. No, sir, I didn't.

Q. Didn't you tell -- do you remember talking to Sergeant Calhoun on July 30th at the hospital?
A. Yes, sir.
Q. And at that time, this was just two days after the shooting, right?
A. July 30th.
Q. Right?
A. Yes, sir.
Q. And he's the investigator that's working the case, right?
A. Mr. ---
Q. Mr. Calhoun.
A. --- Calhoun, yes, sir.
Q. And you wanted to give him all the information that you could so that he could investigate the case, right?
A. Yes, sir, I did.
Q. You didn't want to lie to him then, did you?
A. No, sir, I didn't.
Q. And at that point, the case was still really fresh in your mind, wasn't it?
A. Yes, it was.
Q. Because it had just happened two days ago, right?
A. That's ---
Q. Do you remember telling Investigator Calhoun that you eventually opened the door?

A. No.
Q. Now, once you get inside, that is when Nina comes down the stairs, Nina, your dog?
A. Once we were inside, I don't know how long it took Nina to realize there was someone else in there because once I got in, it was kind of a bit of commotion. But I -- pretty shortly after, Nina came around the corner ---
Q. And Nina comes down the stairs before Deon comes down the stairs. Is that correct?
A. Yes.
Q. And that you're saying that Deon catches Nina halfway down the stairs?
A. Deon caught Nina before she could get all the way downstairs, yes.
Q. Okay, and you're saying that at this point, the two guys who are in your house have guns, right?
A. They already had guns.
Q. Right, and they're ---
A. Before they came in, they had their guns drawn.
Q. At any rate, once they're inside the house, the guns are out is what you're saying?
A. The guns were out while they were outside standing next to me, before we entered my apartment.
Q. So, the guns weren't out when you were inside?
A. They were out the whole time. Once they took the guns

out, they never put them away.

Q. So, when Deon comes down the stairs, the guns are out?

A. Yes, sir. They had their guns drawn and their guns were out.

Q. And instead of letting Nina go, he holds on to Nina, correct?

A. Yes, sir.

Q. Now, when you all are playing video games Nina, was in the living room, right?

A. Nina was probably in my room because I didn't want her out because if I let her out, she likes to roam around the apartment. And I had puppies around, and I didn't want her puppies to be feeding on her. It was time to take the puppies away from her.

Q. So, you had Nina shut in your bedroom door?

A. Nina was in the room at one point in time, yes.

Q. And the room, the door is closed to the room?

A. Yes, sir, it was.

Q. Okay, and the puppies are playing on the balcony or in the living room?

A. The puppies were playing on the floor.

Q. In the living room?

A. Somewhere in the house.

Q. Could it have been on the balcony?

A. No.

Q. And Lyssa was where?
A. Lyssa was in the other bedroom.
Q. With the door closed?
A. Yes, sir.
Q. The puppies were Nina's, right?
A. Yes.
Q. And so you're saying that Nina goes down the steps and Deon catches up with her, correct?
A. Yes.
Q. And when Deon sees the two guys with the guns, he continues to restrain Nina, right?
A. Yes, sir.
Q. Nina never tried to bite any of the two guys, did she?
A. Nina came down the stairs growling, but she never lunged at them, took a bite or anything. Deon was holding her.
Q. Never had a chance to bite one of the guys, correct?
A. She didn't have a chance to bite them because Deon didn't let her get close enough.
Q. Got you. Even when, even when Deon is shot, she never bites the two guys?
A. No, sir.
Q. You were there when Deon was ordered to put his hands up, correct? Or not?
A. Deon just put his hands up, said Don't shoot.

Q. So he let go of Nina when he did that?
A. I don't know we whether he put both hands up or one or how Nina got out of there, but once a shot was fired, I didn't see a trace of Nina. She was nowhere to be found once we heard shots.
Q. All right. After Deon is shot, the two guys immediately leave the house, correct?
A. They got out of there pretty quickly.
Q. They didn't hang around for forty-five seconds or anything like that?
A. They ran out the door, and I thought they were gone.
Q. And you ran around the house for a little bit. Is that correct?
A. I ran around the inside of the apartment. Is that what you're saying?
Q. Yes. That's my question.
A. After Deon got shot, I was running around. Yes, sir.
Q. So, you had to run upstairs, correct?
A. Yes, sir.
Q. And you ran into the living room, correct?
A. I was running all over the place. I was panicked; I was confused.
Q. You were angry?
A. No, I wasn't angry.
Q. You just watched Deon get shot and you weren't angry?

A. I was more scared for his safety and in fear of his life.

Q. And did -- after you saw Deon get shot, you're telling the jury first of all that when he came to the door, you never had a gun, right?

A. No, sir.

Q. And that Deon, when he came to the door or when he tracked down Nina, he didn't have a gun, right?

A. No, Deon didn't have a gun.

Q. And that when you run around the apartment after Deon gets shot, you don't go get one of your guns, do you?

A. No, sir.

Q. And what you do then is run out of your apartment chasing two guys who you're telling us are armed, right?

A. When I left out of the apartment, I didn't expect to see those guys still standing there. By the time I went out there, I thought they had done left and...

Q. Wasn't the purpose of leaving the apartment to find out what kind of car they were driving?

A. Before they could get a chance to pull off, I figured in my head that if I ran out there real quick, maybe I could see what kind of car they were driving. As I got out the door, they were standing right there.

Q. Which surprised you, right?

A. That surprised me, yeah.

Q. Because you were -- you would have expected them to be -- have run, correct?

A. Yes, sir.

Q. But you testified that they were outside arguing, right?

A. Yes.

Q. And that's when you heard Lucius say to his friend why did you shoot Little Dude, why did you shoot Little Dude, right?

A. Yes, I heard him say that.

Q. And that's when you heard it, when you came outside?

A. I heard him say it sometime during the event. I'm not sure whether he said it while we were outside or not because he said you shot Little Dude a couple of times. He was in a panic state himself.

Q. And then you testified that when they came outside, there was arguments, but you don't know what they said, right?

MR. ROBINSON: Judge, I object to the form of the question. The witness did not testify there was an argument going on.

THE COURT: The jury will rely on their recollection, but I'll allow him to answer the question.

BY MR. DEYSACH:

Q. Was there argument outside? I'll ask it that way.

A. I heard them talking to one another. I don't know whether they were arguing, but they were going back and forth with one another.

Q. Okay.

A. And they were talking loud enough where it could be an argument.

Q. Okay. All right, and so when you walk out and you see them, you're saying they still have their guns drawn?

A. Yes, sir.

Q. And this is broad daylight, right?

A. Yes.

Q. And you get -- instead of running back inside, you testify that you lay on the ground?

A. Yes, sir.

Q. And you testify you hear gunshots, right? Is that what you said? You heard gunshots at that point?

A. When I was shot, I heard the gunshots.

Q. And you felt it in -- your hand had swole up?

A. Yes, I was shot in my hand first.

Q. All right, and so at this point, had you already called 9-1-1?

A. Had what, sir?

Q. I wonder if you called 9-1-1 after Deon got shot or if 9-1-1 didn't get called until you got shot?

A. While I was running around on my cell phone, it's a

possibility that I called because one time didn't go through because we were running around and nobody never said anything on the phone.

Q. So, you never spoke to a 9-1-1 operator?

A. Yes, I did. I called twice.

Q. Was that before you were shot or after you were shot?

A. I called after I was shot.

Q. And so at that point, you assumed the ambulance was on the way, right?

A. Yes, sir.

Q. And instead of waiting for the ambulance, you decided to load up Sharita's car and drive to the hospital, right?

A. Yes. We decided it was a possibility that Deon wouldn't make it or I wouldn't make it, so we decided to go directly to the hospital.

Q. You thought it would be far is what you're saying, right?

A. I thought we would get medical attention quicker, yes.

Q. The reason that you left the house wasn't for medical -- what you're saying is that it was for medical attention purposes and not because you didn't want to let the police find the illegal stuff that was in your house?

A. I was so concerned about Deon laying there just not moving. We was more worried about getting him to the hospital at the time. And I was shot myself, so I

definitely wasn't thinking about any of that.
Q. So, you ---
A. I was thinking about either my injuries or getting Deon help as well.
Q. So, what you did is you picked him up and took him to the car, right?
A. No. I couldn't physically pick him up myself.
Q. You had help?
A. No, I never picked him up. My brother picked him up.
Q. But you moved him? Or he was moved?
A. I didn't move him, but he was moved.
Q. All right. Gotcha. Somebody called another brother of yours to get the dogs out of there, right? Do you know?
A. I don't know, sir.
Q. You're saying you didn't call anybody? You didn't call a family member?
A. No, sir. I found out about the dog situation once everything else -- a few days later, maybe a week or two, I found out what happened with that.
Q. All right. So ---
A. I was in the hospital at the time.
Q. Taking you back up to July 30th, two days after the incident at the hospital, all right?
A. All right.
Q. The conversation that you had with Investigator

Calhoun, he showed you a -- he showed you two photo lineups, correct?

A. Yes, I saw some lineups.

Q. And I guess you testified earlier that you chose pictures?

A. Yes, I chose pictures from the lineup.

Q. And you pointed out the people in the courtroom who were in those pictures, right?

A. Yes, sir, I did.

Q. And when you picked out the picture of Mr. Price, you identified him to Officer Calhoun as the person who shot you, didn't you?

A. I identified him as one of the suspects who shot us.

Q. You did not identify him as the person with the uncle who possessed the revolver and shot both Deon and Deverol? You did not?

MR. ROBINSON: I object. He's asking the witness about what's in the officer's report. This witness didn't generate the officer's report.

THE COURT: I think he's asking the witness what he told the officer, as I understood the question, what he saw. I'll allow him to answer.

BY MR. DEYSACH:

Q. Okay, I guess I'll reask it hopefully in a way that -- when talking with Officer Calhoun, you identified Demetrius

Price as the person with the uncle who possessed the revolver and shot both Deon and Deverol, correct?

A. I identified him as the person that shot Deon. I'm not sure whether he shot me because I wasn't looking when I was shot.

Q. Really what I'm asking you right now is what you told the officer at the time. If you told them what I asked you or if you don't remember, you can tell me that. Or if you do, you can tell me that. But the question is fairly specific. On July 30th with Investigator Calhoun, did you identify Demetrius Price as the person with the uncle who possessed a revolver and shot both Deon and yourself?

A. I identified Mr. Price as the shooter.

Q. Of you?

A. I identified him as -- I saw him personally shoot Deon.

Q. Okay.

A. Now, I didn't say that he shot me.

Q. Okay.

A. Because I couldn't see who exactly shot me. Do you understand?

Q. I understand. I was just asking you if you said it. And you had answered me that, no, you did not say it, correct?

A. Can you say that one more time?

THE COURT: I think he's answered the question.

Q. Okay. Thank you. Do you remember telling Officer Calhoun on July 30th that you tried to grab the gun from Lucius and get it away?

A. When they pushed me back into the house, it was kind of like they were trying to overpower me and bully me around and, you know, just barged their way into my home, and I couldn't put up much of a struggle. If I did -- I resisted at first, but I couldn't put up much of a struggle because it was two guys to one, and I didn't know what to do.

Q. But you did not fight over a gun?

A. Well, I'm not going to say we fought over the gun because I never attempted to grab his gun or anything like that. If we were involved in any type of confrontation, it was of them coming in and pushing me around to get into my home. That's when they were grabbing all over me, trying to move me around to get in.

Q. And my next question is slightly different. Did you tell Officer Calhoun on the 30th that you grabbed Lucius's gun and tried to get it away? Did you tell him that?

MR. ROBINSON: Judge, I object. Asked and answered. Just answer the question on what he told the officer.

THE COURT: Well, I'm not sure that he's asked that specific question. I'll allow him to answer. Go ahead.

BY MR. DEYSACH:

Q. The question is, again, slightly different. Not describe what happened. Did you -- but I'm asking did you tell the officer on July 30th that you grabbed Lucius's gun and tried to get it away?

A. No, sir, I didn't.

Q. Did Lucius introduce you to his friend?

A. No, sir. He just said this is the guy right here, and he started talking.

Q. Okay. Isn't it true that the guys -- the talking about the iron, they didn't say where is the iron. They said you got any more iron. Isn't that true?

A. No, sir.

Q. After you're inside of your apartment, did you shut the door behind you?

A. No, sir. They shut the door.

Q. So, it was shut by one of the two guys?

A. Once they came in, I was no longer in control. They controlled everything.

Q. And do you have a peephole on your door at your apartment? Did you at the time?

A. Yes, sir.

MR. DEYSACH: I don't have anything further.

THE COURT: Go ahead, Mr. Deier.

CROSS-EXAMINATION BY MR. DEIER:

Q. Good afternoon, Devin.
A. Hello.
Q. My name is Chris Deier. I represent Demetrius Price. Do you see this picture okay?
A. Yes, sir. I can see.
Q. Is that bike there during this incident?
A. I'm sorry?
Q. Was that bike there? You see there's a bike there by the entryway. Was that bike there while this was all going on?
A. I'm not sure whether it was or whether it came after, but that bike was frequently right there.
Q. Whose bike is that?
A. That's my brother's bike.
Q. Which brother?
A. My brother Deon.
Q. So, it may have been there, may not have been there?
A. May have, may not.
(PHOTOGRAPHS MARKED INDIVIDUALLY AS DEFENDANT PRICE'S EXHIBITS 4, 5, 6, 7, 8 FOR IDENTIFICATION.)
BY MR. GEIER:
Q. Devin, I'm going to hand you what has been marked as Defendant's Exhibit 4 for identification.
THE COURT: Is that for Defendant Price?
MR. DEIER: Yes, Defendant Price. Thank you, Your

Honor.

THE COURT: Thank you.

BY MR. GEIER:

Q. Go ahead and take a look at that. And I'm going to hand you, while you still have that exhibit, Defendant's Exhibit 5 for identification, Price. Defendant's Exhibit 6 for identification, also Price.

Mr. Cannick, I handed you pictures 4, 5, and 6, defendant's exhibits for identification. Starting with number 4, can you identify what that is?

A. This is a view of my apartment from a different angle.

Q. What angle?

A. I'm not sure how to word it, but it's at an angle, kind of angled as if the person was standing there shooting this way. I don't know what angle that is, but it's a view of it looking from this angle. I don't know how to word that.

Q. But that is your apartment right there, isn't it?

A. Right here, [redacted]. On the corner.

Q. And that's looking down a sidewalk?

A. Yeah, I can say that that's down the sidewalk.

Q. All right. Now the next one, which was number 5, what is that a picture of?

A. This would be the opposite direction of the view of the building that I live in.

Q. Okay. So, in this -- we've got the apartments on the left and the woods on the right. Is that fair to say?
A. Yes.
Q. And that is your apartment there at the end?
A. At the far end on this photo. My apartment is located at the far end.
Q. This one is number 6 for identification. And what are we looking at there?
A. This is kind of on the side of my building.
Q. And so what is on -- looking at that picture, what is sort of out of the picture on the left?
A. The number?
Q. No. If I were, if I were walking down in front of this apartment and I was heading to the left, what is over here?
A. The parking lot.
Q. Parking lot, and then if I was looking at that side of the apartment and I took a right, where would I go to?
A. Where would you take a right at?
Q. If I was walking this way, so towards the right of the picture.
A. So, if you would walk this way, what would you see?
Q. Uh-huh.
A. When you arrive at that corner? When you arrive at that corner, you would see the angle of that last photo I

just saw.

Q. Okay. Now, are these three photos true and accurate depictions of your apartment complex at the time of the incident?

A. Yes. That's my building. I would say that that's an accurate picture.

MR. DEIER: Your Honor, at this time I'd move to admit Defendant Price's Exhibits 4, 5, and 6.

THE COURT: Any objection, Mr. Robinson?

MR. ROBINSON: No objection by the state.

THE COURT: Thank you.

MR. DEIER: Your Honor, may I publish to the jury?

THE COURT: 4, 5, and 6 in evidence without objection.

(PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS DEFENDANT PRICE'S EXHIBITS 4, 5, 6.)

BY MR. DEIER:

Q. All right, sir. Mr. Cannick, I have a couple of photographs here I'm going to get you to look at. I'm going to first hand you what has been marked as Defendant's Exhibit 7, Price. Will you take a look at this? Do you recognize the contents of that photo?

A. Yes, sir.

Q. Why don't you tell us what that is.

A. That's a view of my apartment with what looks like someone standing on the stairs. But it's also a view of

the banister that sits there along -- you walk up the steps and in the background I see my furniture, chairs, few other ---

Q. Is that a true and accurate representation of what your apartment looked like the day of the incident?

A. Yes, sir.

Q. Now I'm going to hand you what has been marked for identification as Defendant's 8, Price. Take a look at that, too, please. Do you recognize the contents of that photo?

A. Yes, sir.

Q. And what's in that?

A. This is a view from the living room area. A view from the living room area, kind of on the other side of the banister.

Q. Is that a true and accurate representation of what your apartment looked like the day of the incident?

A. I don't know whether it looked like that that day, but it looks pretty messy. It possibly was like that, yes.

MR. DEIER: Your Honor, at this time defense moves to put in Defendant's Exhibit for Identification 7, 8, Price.

THE COURT: Mr. Robinson?

MR. ROBINSON: I am going to object for the record because the witness said there was some discrepancy about whether or not it looked that messy on the day in question.

THE COURT: That is number 8. Number 7 I think he testified is a fairer representation.

MR. ROBINSON: That's correct, Your Honor.

THE COURT: I'll allow 7 in. 8 for the time being, I'm going to leave it out until we get some more foundation laid.

(PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT PRICE'S EXHIBIT NUMBER 7.)

MR. DEIER: May I publish number 7?

THE COURT: You sure can.

BY MR. DEIER:

Q. All right, Mr. Cannick, let's reexamine what has been marked as Defendant's Exhibit Number 8 for identification, Price. If you'd look at that again? Is what you're saying usually the apartment looks a little better than it does in that picture?

A. I'm saying I don't know if this is taken before or after they came in or whatever. I don't know whether they done beat up the place or what.

Q. So, the furniture may have been moved around?

A. The furniture?

Q. Yeah. Is that fair to say?

A. The furniture is where it should be, but I don't know if it's messy because maybe the police came in there and moved things or -- and they were looking around. I don't

know.

Q. Is there something specific you can point to that's different in this picture than what your recollection is?

A. I'd say that the footrest for the chair normally is in place. It's not off in the middle like that. Trash, shoes and stuff wouldn't have been all out there. Is that what you mean?

Q. So as we sit here right now, you can't say that's a direct representation of what your apartment looked like the day of the incident. Is that fair to say?

A. This isn't an accurate ---

Q. Depiction of what your apartment looked like that day?

A. No. Not going to say this is accurate.

Q. Okay.

A. I don't know when this photo was taken, before or after.

Q. You said that after you got shot -- I'm sorry, after Deon got shot.

A. Yes, sir.

Q. You ran around all over the place to try to figure out what to do?

A. Once Deon got shot, I was running around looking for the keys, yes.

Q. And then once you got shot, sort of did the same thing. You were running around all over the place?

A. Yes, I was running around after I got shot as well.
Q. Do you recall where you -- you said you laid down. Where did you lay down?
A. Kind of like at the head of the stairs at the top of the stairwell. Like, if you walked in the door and made it to the top of the stairs, I laid down, like, right there, in the view were this right here. Right there, in line with the stairwell.
Q. Did you go to the bathroom at all when you were running around after you had been shot?
A. I have no idea. I was running around different places. I was frantic; I didn't know what to do.
Q. You don't recall if you went to the bathroom or not?
A. Which bathroom? There were two.
Q. The master bathroom.
A. No, I don't recall.
Q. Now, turning again to your interview with Sergeant Calhoun on July 30th, didn't you tell him that Deon and -- I'm sorry, Demetrius and Lucius pulled their guns out once they were inside?
A. No. I didn't say that. They pulled their guns out from the time they came -- when they came, they pulled those guns out and they pushed me back in. They never put those guns up. So once I saw them with those guns, they always had them and they was pointed at me.

Q. Now, you said you didn't really make a grab for anybody's gun, but you were struggling a little bit when you came in?

A. Yes, sir.

Q. When you spoke to Sergeant Calhoun on July 30th, didn't you tell him that the struggle or any sort of struggle didn't ensue until after Deon was shot?

A. No, sir. I didn't tell him that. I don't recall telling him we had a struggle. If I recollect, I feel like they shot Deon and got out of there as quick as possible. I don't even understand how they got past me without shooting me as well.

Q. Do you recall the interview, the joint interview you had with Deon September 3rd?

A. No, sir.

Q. You don't recall having an interview with both you and your brother?

A. Yes, I had an interview but I don't remember the specific occasion. I'm going to say that I don't remember the incident.

Q. So, you don't recall telling Sergeant Calhoun that after Deon was shot, you turned your focus to him and attended to him for a while?

A. When I looked down at Deon, I was running up and down the stairs screaming they shot Deon, they shot Deon. I

didn't really help him too much like I should have. I should have just stayed with him and helped him.

Q. Now, earlier you said that after you ran around after Deon got shot, before you got shot, you ran around trying to figure out what to do. And then you decided to go outside again after folks who just shot your brother. Why? Why did you go out there again?

A. I went out there to at least see what kind of car they was in.

Q. And the reason you did that was so you could tell the police who did this, right?

A. Yes, sir, the reason I did it.

Q. Now, there was really no reason to do that, right, because you already knew who one of the people were. You could have called up the police and told them.

A. I didn't know, I didn't know his name at the time. I only know him as Tiah's uncle. I didn't know who he was. If I told them Tiah's uncle, maybe they wouldn't find him or something. That's what I was thinking. I ran out there. I ran in hopes of seeing somebody who I could say they did it. I didn't know who they was. I only knew of Tiah's uncle.

Q. You rented this apartment with Sharita. Is that right?

A. Yes, sir.

Q. You were both on the lease?
A. Yes.
MR. DEIER: One moment, Your Honor.
THE COURT: Yes, sir.
(A PAUSE.)
BY MR. DEIER:
Q. Are you aware that you had over 20 grams of cocaine in your room?
A. Yes. I don't know exactly how much it was, but I'm not going to say that I didn't know that it was there.
Q. Mr. Cannick, were any of your statements to the police recorded? Was there a tape recording?
A. I don't know. Once maybe.
Q. Once maybe. You don't recall which time, though?
A. I was interviewed a lot of times.
Q. How many times were you interviewed in this?
A. I don't know how many times.
Q. More than five?
A. No.
Q. More than two?
A. Yes.
Q. More than two, and one of the times you may have been recorded?
A. Yes.
Q. Thank you.

MR. DEIER: Your Honor, I have no further questions. Thank you.

THE COURT: Mr. Robinson, redirect?

REDIRECT EXAMINATION BY MR. ROBINSON:

Q. I just want to get a couple of things clear, Devin. You testified on direct, during the course of your testimony you testified that you went outside, stepped outside and the door closed behind you. Isn't that right?

A. Yes, sir.

Q. And that's when you first confronted the two men with the guns. Isn't that right?

A. Yes, sir.

Q. Once you got back inside the apartment, did you do anything to keep them from coming in?

A. It wasn't much I could do, sir. I couldn't, I couldn't barely react. They was pushing all on me. If I would have probably moved, I probably would have gotten shot a lot quicker.

Q. You also testified on cross that when you got to the gate of the apartment, the last thing Deon said to you was to tell someone that Tiah's uncle did this. Isn't that right?

A. Yes, he did.

Q. You also testified that you saw the person with Tiah's uncle shoot Deon. Isn't that right?

A. Yes, sir, I did see it.
Q. If the person that was not Tiah's uncle is who you saw shoot Deon, then why would Deon have told you to tell them that the uncle is the one that did that?
MR. DEYSACH: I would, I would object to that question.
THE COURT: I'll sustain the objection. I don't know how he would know how someone else would have done something.
MR. ROBINSON: Beg the court's indulgence.
THE COURT: All right, sir.
BY MR. ROBINSON:
Q. Finally, what kind of gun did Tiah's uncle have?
A. Tiah's uncle had a black automatic handgun.
Q. What kind of gun did the other guy have?
A. The other guy had a revolver.
MR. ROBINSON: I have nothing further.
THE COURT: Any follow up, gentlemen? Mr. Deysach?
MR. DEYSACH: None from me, Your Honor.
THE COURT: Mr. Deier?
MR. DEIER: None.
THE COURT: Thank you. You can step down, Mr. Cannick.
MR. ROBINSON: May he be excused, Your Honor?
THE COURT: Any objection if he's excused?

618

MR. DEYSACH: I have no objection.

THE COURT: Without objection, he may be excused.

(THE WITNESS EXITS THE STAND.)

THE COURT: Ladies and gentlemen, we're going to stop for the day now. It's that time of day, so I'm going to let you go home and ask that you be back in the jury room again tomorrow morning at 9:30. We'll resume the trial again tomorrow.

I remind you as always not to discuss this case among yourselves or with anybody else. And don't let anybody else talk to you about it. Have a safe trip home. I'll see you tomorrow morning at 9:30. Thank you.

(THE JURY EXITS AT 5:19 P.M.)

THE COURT: Mr. Robinson, anything further from the state before we break for the day?

MR. ROBINSON: Nothing, Your Honor.

THE COURT: How many more witnesses will you have?

MR. ROBINSON: Three or four.

THE COURT: Anything further from the defense before we break for the evening?

MR. DEIER: No, Your Honor.

THE COURT: Mr. Deysach?

MR. DEYSACH: No, sir.

THE COURT: All right. We'll start back in the morning at 9:30.

619

(WHEREUPON, THE CASE IS AT EASE.)

THURSDAY, NOVEMBER 19, 2009

(COURT RESUMES AT 9:31 A.M.)

THE COURT: Gentlemen, good morning. I have received a note late yesterday afternoon from the jury on their way out. I will read part of it to you. Then I'm going to ask you to assemble at the bar to read the other part. It maybe somewhat instructive:

> Your Honor, it is the sense of the jury that we'd like to start at 9:30, shorter lunch, work late, and finish as soon as the lawyers are able.

Signed by the foreperson.

There's also a question at the bottom, a rhetorical question perhaps, but I think it's one that y'all all need to read. It might have some instructional quality for everyone.

(OFF-THE-RECORD BENCH CONFERENCE.)

THE COURT: There are probably lessons to be learned by both sides of the aisle about that question, and I'll ---

MR. DEIER: Thank you, Your Honor.

THE COURT: --- whatever instructional value it has, as I'm sure you all will glean it. Thank you.

All right, are we ready for the jury now? Mr.

620

Robinson, is the state ready?

MR. ROBINSON: State is ready.

THE COURT: Mr. Deier?

MR. DEIER: We're ready.

THE COURT: Mr. Deysach?

MR. DEYSACH: We are ready, Your Honor. I do have one issue about a witness, Mr. Malik Campbell. Assuming we are able to subpoena and if he's still under state's subpoena, I'd ask they not release him until I get a chance to interview him.

THE COURT: I understand.

Mr. Robinson, do you all have Mr. Malik Campbell subpoenaed?

MR. ROBINSON: I do. The date of his subpoena was the first day of the trial, but he should be here.

THE COURT: Just as long as he's not released from your subpoena until ---

MR. ROBINSON: I have not released him if he is here.

THE COURT: Very good.

MR. ROBINSON: One other thing I wanted to mention, Judge. I think there was an oversight yesterday when some evidence was admitted. There were two discs of x-rays that were admitted. Only one got marked.

THE COURT: Okay.

MR. ROBINSON: The first disc was marked; the second

621

was not.

THE COURT: Okay. Both of them were used, is that right?

MR. ROBINSON: They both were used, they both authenticated, they both were entered. And just for the record ---

THE COURT: We can have the second one marked now.

MR. ROBINSON: I think would be marked -- the first one was 24, 24. So, the second one could be 24-A.

THE COURT: That will be good.

I know that's without objection, gentlemen?

MR. DEIER: It is, Your Honor.

MR. DEYSACH: Yes, sir.

THE COURT: Thank you.

(JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 5.)

(DVD OF X-RAYS MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 24-A.)

(THE JURY ENTERS AT 9:35 A.M.)

THE COURT: Thank you once again, ladies and gentlemen, for your promptness. And I'm delighted that we were able to get you here almost at 9:30, whatever time it took logistically to get you here. We are ready to start on time.

And I have shared your note with the attorneys in this

case, and I'm sure they will be duly instructed by that and appreciate you all's suggestions in that regard, and your willingness to work late and take a shorter lunch hour if that's what's necessary to move this case along.

The state is continuing to offer some testimony in this case.

Mr. Robinson.

MR. ROBINSON: Thank you, Your Honor. May it please the court? The state calls Sergeant Angela Viens.

ANGELA VIENS, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your full name. Spell your last name for the record.

WITNESS: Angela Viens, V-I-E-N-S.

DIRECT EXAMINATION BY MR. ROBINSON:

Q. Sergeant Viens, how long have you been with the sheriff's office?

A. Thirteen years.

Q. Did you participate in the investigation of the burglary and shooting that happened July 28, 2008?

A. Yes, sir.

Q. What did you do in that case?

A. My task on that date was to collect and inventory all of the evidence that was collected from the residence.

Q. Did you respond to the scene?

A. I did.
Q. And what's the first thing you did when you got to the scene?
A. I met with Sharita Willingham, who was seated in the patrol vehicle. Spoke to her briefly. And then I met with my team of investigators and tasks were assigned.
Q. And what is the next thing you did after you speak with Sharita?
A. That would be met with personnel at Plantation Point apartments to view the video surveillance they have in place of the entrance and exit gates at the apartment complex.
Q. And did you view footage of cars coming and going from the entrance of the apartments?
A. Yes, sir.
MR. ROBINSON: May I approach the witness, Your Honor?
THE COURT: Yes, sir.
BY MR. ROBINSON:
Q. Staff Sergeant, I'm going to show you what's already been admitted into evidence State's Exhibit 15 and 17. Do you recognize these?
A. Yes.
Q. What are those?
A. These are photos of a vehicle entering and exiting the gates at Plantation Point. But there should also be one

maybe with a tag number on it.

Q. I think you're referring to State's Exhibit Number 16. Point of clarification. On those photographs, are the colors accurate?

A. They're pretty accurate.

Q. Is there any -- anything wrong with the colors?

MR. DEIER: Your Honor.

THE COURT: That's right. If you could be a little more specific. She said they're pretty accurate, so if you want to refine it somewhat, that question somewhat.

BY MR. ROBINSON:

A. They are not black and white photographs. I mean, you can infer ---

Q. Are the colors exact?

A. No.

Q. What's wrong with the colors?

A. I mean, the photos are grainy. You can obviously tell by looking at the shrubbery and the greenery this was in July, that ---

Q. Let's look at the color of the car.

A. Okay.

Q. What color is the car?

A. It looks to me to be like a pewter, maybe a tan metallic.

Q. All right. After you look at the -- after you

obtained -- looked at those images, what's the next thing you did? After you looked at the surveillance video, what's the next thing you did?

A. I had spoken with Sergeant Holmes earlier, and we knew that one of the possible suspects was from Georgia. We watched probably fifteen minutes of video prior to and after when the 9-1-1 calls were received. And I did identify this vehicle as having a Georgia tag on it.

We contacted intelligence division and had the Georgia tag run through LEMS to find out who it was registered to.

Q. What is LEMS?

A. LEMS is law enforcement -- I don't know what the acronym stands for, but we're able to access NCIC from our workstations rather than having to go through a dispatch center.

MR. ROBINSON: May I approach the witness?

THE COURT: Sure.

BY MR. ROBINSON:

Q. I'm going to show you a previous exhibit admitted as State's Number 16. Is that a photograph of the car tag you referred to earlier?

A. Yes, sir.

Q. Is that the tag you ran?

A. Yes, sir.

Q. Who was that tag registered to?

A. Demetrius Price.
Q. After you ran the tag, what is the next thing that you did?
A. From there I believe we -- Sergeant Calhoun obtained a search warrant at that point. We met back at the apartment to start processing.
Q. And by processing, does that mean searching?
A. Yes, sir.
Q. And clarify for the jury what your role was during the search.
A. My role during the search was to inventory and collect evidence. There was a team of people there that were tasked with doing searches. Rather than four or five people collecting evidence at the crime scene, it's easier for accountability if one person is tasked with collecting and inventorying the items. That was my task.
Q. So, is it fair to say -- when you use the word inventorying, you are walking around maintaining a written list of what is collected?
A. And packaging the items, yes. And keeping them in a central location so that we don't lose evidence or evidence isn't compromised.
Q. And there's been previous testimony certain investigators searched certain parts of the scene. Since you were involved in inventorying, was there any part of

the scene you were limited to?

A. As far as?

Q. Did you go anywhere?

A. Yes.

Q. You went everywhere evidence was found?

A. Yes.

MR. ROBINSON: May I approach the witness?

THE COURT: Yes.

(PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS 29, 30, 31, 32, 33, 34, 35 FOR IDENTIFICATION.)

BY MR. ROBINSON:

Q. Staff Sergeant, I'm going to show you what's been marked for identification purposes as State's Exhibit 29 through 35. Will you look at those?

A. Sure.

Q. Beginning with 29. Take your time.

A. Okay.

Q. Beginning with 29, what is that?

A. Item number 29 was our item number 2, which is a shell casing located on the sidewalk in front of the apartment.

Q. You don't need to hold it up. Is that a fair and accurate representation of what was found at the scene and inventoried by you?

A. Yes, sir.

Q. What is picture number 30 of?

A. Number 30 is our 2 and 3 which is -- item number 1 is a shell casing found in the grass. Item number 2 is the same shell casing depicted in 29. Item number 3 is a cigarette butt, and it shows item number 4 that is simply a stack of our evidence markers.

Q. That's just a picture of the front door. Is that right?

A. That is correct.

Q. With markers on what was found, the things found?

A. Yes, sir.

Q. What is number 31?

A. I remember item number 31 is a close-up photo of shell casing that is item number 2.

Q. 32?

A. 32 is a projectile that was found near the front door, I believe under the mat, close to the mat. 33 is a shell casing that was found. We actually had to bring the metal detector out to find this one on the sidewalk. You can't really see where it's found between item number 1 and this, in the grass.

Q. 34?

A. 34 is a copper jacket, is actually wrapped around a lead projectile.

Q. 35?

A. 35 is, I believe, is going to be a lead projectile.

That's what that is.

Q. Are those fair and accurate representations of the items that are in the photographs?

A. Yes.

Q. Are those fair and accurate representations of where they were found by law enforcement during the search?

A. Yes, sir.

MR. ROBINSON: Your Honor, I'd move that State's Exhibit 29 through 35 be admitted into evidence.

THE COURT: Any objection as to those?

MR. DEIER: Let me just take a look real quick.

(A PAUSE.)

MR. DEYSACH: I have no objection, Your Honor.

THE COURT: Without objection, 29 through 35 in evidence. Thank you.

(PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS STATE'S EXHIBITS 29, 30, 31, 32, 33, 34, 35.)

MR. ROBINSON: Your Honor, may I publish these to the jury?

THE COURT: Certainly.

MR. ROBINSON: Staff Sergeant, if you could come down and stand?

THE COURT: If you'd stand on the other side where Mr. Robinson is standing, please. That way, you could be facing the court reporter. Thank you.

BY MR. ROBINSON:

Q. All right, Staff Sergeant, this is exhibit number 30. What did the marked -- numbered, marked indications refer to?

A. Number 1, again, is the same as in the photograph.

THE COURT: I'm sorry, if you'd speak up.

WITNESS: Can you hear me?

THE COURT: Yes, ma'am. Please speak up.

BY MR. ROBINSON:

A. Okay, number 1 is a projectile. Number 2 is also -- I'm sorry, a shell casing. Number 2 is a shell casing, and number 3 is a cigarette butt.

Q. What is number 4, if you recall?

A. Number 4, we carry our evidence markers in a stack in numerical order so that when we find something, we can just pick them up and put them down. That's simply the stack of the evidence markers.

Q. So, number 4 is of no evidentiary value?

A. No evidentiary value.

Q. Another exhibit, 29, what is that?

A. That is a shell casing.

Q. And is that where it was found?

A. Yes, sir.

Q. This is exhibit 31. What is that?

A. That is an overhead view of that same shell casing.

Q. Same shell casing. What is that?
A. That is a shell casing, the third shell casing that was found later.
Q. Is that where it was found?
A. That is where it was found.
Q. What is that item?
A. That is a copper jacket off of a lead projectile.
THE COURT: What number is that, please?
MR. ROBINSON: This is number 34.
THE COURT: Thank you.
BY MR. ROBINSON:
Q. And what is this?
A. That is the front door.
Q. So, is this inside of the residence?
A. Inside of the front door. And this is a closet, I believe.
Q. This is exhibit 35. What is that?
A. That is a lead projectile, I believe.
Q. And where was that found?
A. Inside the front door. That may be a larger -- you may be able to see it, a larger view.
MR. ROBINSON: Beg the court's indulgence.
Q. Where is that?
A. That's in the closet, in the downstairs closet.
Q. As you're coming through the front door, where is the

downstairs closet?

A. On the right side of the door.

Q. And ---

THE COURT: What is that number, referring to the downstairs' closet?

MR. ROBINSON: That's State's Exhibit Number 35.

(PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 36 FOR IDENTIFICATION.)

BY MR. ROBINSON:

Q. Let me add one additional photograph. Do you recognize this State's Exhibit 36 for identification?

A. That is inside the front door, and that's the closet door.

Q. Is that a fair and accurate representation of the closet door?

A. Yes, sir.

Q. When you were participating in the search?

A. Yes, sir.

THE COURT: Any objection?

MR. DEYSACH: None from me, Your Honor.

MR. ROBINSON: Your Honor, I'd move that State's Exhibit Number 36 be admitted into evidence.

THE COURT: Without objection, in evidence. Thank you.

(PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT

NUMBER 36.)

MR. ROBINSON: May I publish to the jury?

THE COURT: Yes, sir.

BY MR. ROBINSON:

Q. Is that State's Exhibit Number 36?

A. Yes.

Q. So, that's the entrance to the closet?

A. Yes, sir.

Q. So, if you open up that closet door, will you see the location where the jacket that you described being in 35, is that where you found it?

A. Yes.

Q. You can resume the stand.

Sergeant Viens, is it fair to say that all those items were collected by you?

A. Yes, sir.

Q. And were they placed in evidence?

A. Yes, sir.

Q. Who received them?

A. Corporal Roberts.

Q. Who is Corporal Roberts?

A. She is one of our evidence custodians.

MR. ROBINSON: Beg the court's indulgence one moment.

Q. Let's move on to the other things that were found. Were there any guns found in the apartment?

A. Yes.
Q. Where were those?
A. There were four guns found in the apartment. There were two found in the guest bedroom and two found in the master bedroom closet.
Q. What kind of guns were they?
A. A Rossi .38 special, a Davis Industries .32 caliber semiautomatic, a .35 caliber, and a Ruger revolver.
MR. ROBINSON: May I approach the witness?
(FLOOR PLAN MARKED AS STATE'S EXHIBIT NUMBER 37 FOR IDENTIFICATION.)
THE COURT: Yes, sir.
BY MR. ROBINSON:
Q. Show you what's marked State's Exhibit Number 37 for identification. What is this?
A. That looks like a floor plan from the apartment except the entry is on the other side. It's actually on the right-hand side of the apartment rather than the left-hand side.
Q. With regard to the living -- the location of the living room and the bedrooms and the other rooms, is this a fair and accurate, accurate scheme of the layout of the apartment?
A. Yes.
Q. But for the stairwell?

A. Yes, sir.

(COUNSELORS CONFER.)

MR. DEIER: Your Honor, while I appreciate the state's graphics, I just -- this isn't the apartment. That this isn't even the floor plan of the apartment. I don't believe it accurately represents what it looked like. It's not representative of the -- it's not representative at all of what it looked like.

THE COURT: Well, now the officer has testified that it was. I suppose that your objection would be more likely raised in cross-examination. She has testified that except for the location of the entranceway, the doorway, that it does appear to be an accurate representation. She's the authenticating witness in this regard. If there's some difference in opinion about that, then certainly you can raise those differences on cross-examination.

MR. DEIER: Yes, sir.

MR. ROBINSON: Your Honor, I'd move State's Exhibit Number 37 be admitted into evidence.

THE COURT: Over the objection of defense counsel.

(FLOOR PLAN MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 37.)

MR. ROBINSON: May I publish it to the jury?

THE COURT: Yes, sir.

BY MR. ROBINSON:

Q. Officer, if you could step down. Just point to the rooms where the guns were found.

A. This is going to be considered the second bedroom, the guest bedroom, and this would have been the master bedroom.

Q. And is that where the guns were found?

A. There were two guns found here and two guns were found here.

Q. And where were they in the rooms?

A. A suitcase in this bedroom and jacket pocket in -- I believe I'd have to check my notes -- in a closet in the master bedroom.

Q. If you recall, was there any blood on the guns?

A. No, not blood on the guns.

THE COURT: Is that diagram going to be marked in some way to aid this jury when they get back in there, assuming they don't remember every word of this testimony and every location given.

MR. ROBINSON: Certainly.

Bailiff, is there a red marker in the closet?

Beg the court's indulgence. Or blue, any color, it doesn't have to be red. Any color is fine.

THE COURT: If it can be given to the jury. I'm confident that their memory is better than mine.

MR. ROBINSON: I apologize for not having been prepared in that regard, Your Honor.

THE COURT: That's all right.

BY MR. ROBINSON:

Q. I found something. Staff Sergeant, if you could come down and just mark this again. I apologize to the bailiff for his trouble.

A. I was going to leave a little M for master and G for guest, if that's okay.

Q. That's fine.

A. This magic marker isn't going to stick.

Q. That's okay. Just put an orange dot where -- circle, dot, where the guns were found approximately.

A. Okay. There's obviously stuff on the shelves and stuff in here. There was one gun found on the shelf between some jeans. Another one found, I believe, in a coat pocket in the closet. There was a suitcase found in this bedroom that had one weapon in it, and then a jacket in the closet.

Q. Put dots there.

A. I mean, I could only see...

Q. Darken these. I think I would -- one final question. If you would come down, we'll use this schematic again. If you could just put a blue dot in the locations where the marijuana was found.

THE COURT: She hasn't testified yet about finding any marijuana, I don't believe.

MR. ROBINSON: I'm getting ahead of myself.

THE COURT: But she can go ahead while she's down there and do it. Let's don't say ---

Sergeant, while you're down there, why don't you tell where the marijuana was found and where you got it. You're getting some good exercise. Just take a little time for the jury.

BY MR. ROBINSON:

Q. I apologize for my awkwardness.

A. That's okay.

Q. Was there any marijuana found?

A. There was marijuana found.

Q. Okay. Where was it found?

A. There were two bags of suspected marijuana found in a left front jacket pocket and a right jacket pocket in this closet.

Q. Okay. Let's mark that.

A. There were blunts found in an ashtray by the computer in the living room. There was a Timberland box of two bags of marijuana found in a closet in the guest bedroom.

Q. Okay. Was there any cocaine found?

A. Oh, yes.

Q. Where was it?

A. I'll just go through the whole list of everything.

Q. Don't just go through the whole list. Where was the

cocaine found?

A. Do you want me to finish the marijuana?

Q. Please do. I was just getting ahead of myself.

A. There was marijuana found in a drawer in the kitchen, and suspected marijuana plants in the attic and the master bedroom.

Q. Is that all the marijuana?

A. Let me just go through one more time my list.

Q. And this is a list that you made?

A. This is the list that I made. Suspected cocaine was found in the suitcase in the bedroom. And there was, there was a baggy of suspected cocaine under the cabinet in the master bathroom. Two bundles of hydrocodone tablets were found in the Timberland box in the master bedroom closet. Two bags of suspected cocaine was found in a pocket of a leather jacket in the master bedroom. Suspected cocaine again in the same drawer as the marijuana in the kitchen.

Q. Okay.

A. Also an unidentified pill, and that was it.

Q. Okay. Thank you. After the search, did you determine whether any 9-1-1 calls were made?

A. That was determined before the search. That's how we actually got to Plantation Point or actually Plantation. I did make a request for the 9-1-1 calls to be recorded and sent over to us.

Q. Okay. Have you listened to those recordings?
A. I have.
Q. Are they time stamped?
A. They are time stamped, I think, electronically by our dispatch center.
Q. Could you listen to the time stamps?
A. Yes.
Q. Do you know what times those 9-1-1 calls were made?
A. I believe around 13:31.
Q. Do you know about how many were made?
A. There was a call from a neighboring apartment regarding shots fired. There was a call from the apartment itself, and I then I believe a second call from the neighboring apartment.
Q. Other than the first call at 13:31 -- by 13:31 you mean 1:31?
A. 1:31.
Q. How much longer -- how much later did the other calls come, if you recall?
A. I think within a minute or two.
MR. ROBINSON: Your Honor, I have nothing further of this witness. The state would pass the witness. Staff Sergeant, please answer these lawyers' questions.
THE COURT: Mr. Deysach, you can cross-examine.
CROSS-EXAMINATION BY MR. DEYSACH:

Q. Just a few, questions, Sergeant Viens. My name is Ian Deysach. I represent Lucius Simuel. When you execute the search warrant, do you move things around while you're doing it?

A. As far as?

Q. The way that the -- the way that the evidence is photographed, do you try to photograph it as it was when you come upon it?

A. Our normal protocol is to photograph, do overall photographs. And then when we're collecting evidence, then we'll actually photograph the item itself.

Q. So, the first walk-through you photograph as it is. Then you have to move things to find them?

A. Correct.

Q. So, when you first photograph the closet door, it was closed, correct?

A. Yes, sir.

Q. And that's the closet in the downstairs entryway?

A. I didn't take the photographs, but it should have been as it was.

Q. Okay, and the bike that's at the front door, nobody had moved that around, had they, before the picture was taken?

A. I don't know. There was a lot of activity at the apartment before I got there.

Q. Okay. So, you're saying it's not procedure to move things around like that, but that you wouldn't be in a position to know whether or not somebody moved that bike?

A. That is correct.

Q. All right. You talked about the drugs and the guns that you found, and I'm not going to go back through that, but I want to ask you about a few other things that you found. In the, in the -- I guess you called it the guest bedroom, you found brass knuckles, correct?

A. Yes.

Q. And then you collected those?

A. That is correct.

Q. And you documented it. Do you remember finding a mask?

A. I know that there was a mask in that bedroom. I don't know that we collected it. I didn't collect a mask.

Q. Did you see a mask?

A. I did.

Q. I'm showing you what's been marked as Defendant's Exhibit 1, Simuel, and ask you if you recognize it.

A. That looks like a mask that was found in the room. But I don't have it documented specifically where it was found.

Q. Is that a fair and accurate depiction of the mask?

A. Yes.

Q. Okay.

MR. DEYSACH: I'm going to ask that Defense Number 1 Simuel be admitted into evidence.

THE COURT: Mr. Robinson?

MR. ROBINSON: Your Honor, I'm going to object at this time. Defense exhibits previously shown another witness that was a resident in the apartment, he did not recognize it. I think, considering there's been a conflict of testimony before the jury about whether or not this was recognized to be in the apartment, I object to it being admitted on that basis.

THE COURT: That is the quintessential decision for a jury to make. When one witness says yes and one witness says no, the jury has to decide which is correct. This witness has identified that as an accurate representation of the mask that was found somewhere in the bedroom. Defense can admit it in evidence over the objection.

(PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT SIMUEL'S EXHIBIT NUMBER 1.)

MR. DEYSACH: May I publish it to the jury?

THE COURT: Yes.

BY MR. DEYSACH:

Q. And when you collected all the -- you testified you collected the drugs and you took them to whom?

A. The drugs were turned over to Corporal Thomas of the

Drug Task Force. He assumed custody of those items so that they could be weighed and submitted for testing. I took everything else and turned it in to evidence.

Q. Were you in charge of deciding whether or not to look for fingerprints?

A. That's something that we do procedurally, I think.

Q. Just about every time?

A. Yes, sir.

Q. Did you attempt to collect fingerprints?

A. I myself did not.

Q. Did you ask somebody to?

A. I didn't ask anybody to. It was done. My master sergeant was on scene and gave directions as far as what was done. We wouldn't have left the scene without processing for fingerprints.

Q. So, you don't have any idea who made the attempt?

A. No.

Q. Did you collect the swabs of possible DNA evidence?

A. I did.

Q. And where did you take those?

A. I took two swabs from the doorway and stairwell, two swabs from the doorway on the floor, a swab from the living room floor, a swab from the right bathroom floor, a swab from the stairwell on the right side, a swab from the stairwell on the railing side.

Q. I was really asking what you did with the swabs after you took them.
A. I submitted in to evidence.
Q. It's fair to say you took a number of swabs, though?
A. Yes.
Q. And let me ask you -- asking about a .45 caliber AMT gun that you found.
A. Okay.
Q. And you are saying that you did not see anything like blood on that gun?
A. No.
Q. And you didn't swab the gun either, did you?
A. No, sir.
MR. DEYSACH: Court's indulgence?
THE COURT: All right.
(A PAUSE.)
BY MR. DEYSACH:
Q. You also found a ledger in the apartment, correct?
A. There was a piece of paper that I would call a ledger.
Q. And you also collected cell phones, correct?
A. Yes.
Q. How many cell phones did you collect?
A. Oh, gosh. Four, I believe.
MR. DEYSACH: That's all I have, Your Honor.
THE COURT: Mr. Deier?

CROSS-EXAMINATION BY MR. DEIER:

Q. Good morning, Sergeant Viens.

A. Good morning.

Q. My name is Chris Deier. I'm the attorney for Demetrius Price. In your investigation, how many cell phones did you find in the apartment?

A. We collected four, I believe. Yes.

Q. Where were they at in the home?

A. There was a cell phone on the floor. A cell phone on the counter, kitchen counter. Another cell phone on the kitchen counter, and a cell phone in the bedroom on the right side of the stairs, which would have been the guest bedroom.

Q. Guest bedrooms and bedrooms. I want you to look at what's previously been marked as State's Exhibit 37. All right, so you, you've been in the Cannick apartment?

A. Yes.

Q. All right. Now, is it fair to say in the Cannick apartment, when you open the front door and walk up the stairs, the living room is on your left?

A. Yes, the stairs actually would be right here where this says storage. There's stairs and closet ---

Q. I see.

A. --- on the lower level. The closet is on the lower level. You go upstairs to the actual living quarters of

the apartment.
Q. And so is there anything over here? Your recollection from the actual ---
A. No. No.
Q. --- apartment. So, is there anything up here?
A. There's a window and then there's patio upstairs.
Q. And so, again, you walk up the stairs, left is the living room and master bedroom. Otherwise it's fine?
A. Yes.
Q. What about the kitchen? Is the kitchen shown there accurate to your recollection?
A. The kitchen is accurate.
Q. All right. How about the locations of the bathtub in the master bath and the guest bath? Are those accurate to the best of your recollection?
A. To the best of my recollection, this one I'm almost certain was. The other I'm not quite sure about, but I believe it is the same.
Q. Thank you. Sergeant, I'm going to hand you what's previously been marked Defendant's Exhibit 8 for identification. Would you look at that?
A. Okay.
Q. All right. What do you see in that picture? What is that a picture of?
A. The living area. This would be the short wall coming

up the stairwell.

Q. All right, and based on your recollection, is that a fair and accurate depiction of what the living area looked like at the time?

A. I believe so.

Q. And you testified previously, previously testified, didn't you, that you came up, you took photos?

A. I did not take photos.

Q. The sheriff's department came up took photos, and then after the photos had been taken ---

A. True.

Q. --- you went through? You started digging?

A. Yes.

MR. DEIER: Your Honor, at this time I would move to move Defendant's Exhibit 8 for identification, Price.

MR. ROBINSON: No objection from the state.

THE COURT: Thank you, sir. Defense 8 admitted without objection.

(PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT PRICE'S EXHIBIT NUMBER 8.)

(PHOTOGRAPH MARKED AS DEFENDANT PRICE'S EXHIBIT NUMBER 9 FOR IDENTIFICATION.)

(PHOTOGRAPH MARKED AS DEFENDANT PRICE'S EXHIBIT NUMBER 10 FOR IDENTIFICATION.)

BY MR. DEIER:

Q. Sergeant, I'm going to hand you what has just been marked Defendant's Exhibit 9 for identification, Price. Can you take a look at this? Tell me what that's a depiction of.

A. That is a bathroom.

Q. Can you tell, based on what you see in there, whether that's the master bath or the guest bathroom?

A. The master bath -- I would have to see the progression of photographs that came before this one. I do see what appears to be blood on the floor, and blood was collected from the floor in the right bathroom. So, I, I'm going to take an educated guess, based on my notes, that this is probably the guest bathroom.

Q. You went into the guest bathroom at some point during your investigation?

A. Yes, sir.

Q. And so do you have any reason to believe that's not the guest bathroom?

A. Huh-uh. No. Like I said, to be certain, I would have to have the progression of photographs before that one.

Q. Now, looking back to this photo, however -- again, you say there was blood?

A. What appears to be blood on the floor, yes. Right here in the very bottom.

Q. And what is right next to the blood?

A. A towel. Are you referring to the white -- it looks like a towel.

Q. I'm going to hand you what's been marked Defendant's Exhibit 10 for identification, Price. Take a look at that.

A. Okay.

Q. What does that appear to be?

A. A toilet.

Q. Does that appear to be the toilet that was in the previous exhibit?

A. If you could give me the other photograph.

Q. Sure.

A. I could reference the trash can, just to be certain. Yes.

Q. Now, going back to 9 for identification, Price, is there blood inside the bathroom itself in this picture?

A. I can't tell from this photograph. There is again what appears to be blood on the floor here.

Q. And that's at the threshold?

A. At the threshold, correct.

Q. Then if you get a closer look at the toilet, does that appear to be blood next to the toilet?

A. There was some blood at the base of the toilet and looks to be blood. I would say possibly that it is blood.

Q. Did you personally do the metal detector sweep?

A. No.

Q. Were you present for that?
A. Yes.
Q. Did they just sweep the general area in front of the apartment?
A. Well, we knew that there were three, at least three gunshot wounds between the two victims. After Sergeant Holmes had been to the hospital, we had collected two shell casings. Just out of making sure we covered everything, brought it out to make sure that there wasn't a third one. The third one was located in the grass on the sidewalk.
Q. So after you found that, you were done?
A. Well, they covered the area around the front door, yeah.
Q. And, again, outside you found three shell casings?
A. Three shell casings.
Q. And you found one projectile underneath the mat?
A. At the mat at the front door.
Q. Did you see any evidence of a ricochet or anything like that in the concrete out there?
A. If it was something obvious, it would have been indicated or noted in the report somewhere, but I don't know.
Q. You're aware that a bullet was found within Deverol Cannick?
A. I don't know.

Q. Referring to the 9-1-1 tapes, you said there was two from a neighbor?

A. I believe there were two from a neighbor. She called, I think, to report the shots fired. And I think there may have been a follow-up call after that.

Q. From the same neighbor?

A. I think so.

Q. How long ago has it been since you listened to those?

A. A couple of weeks.

Q. So, at least fairly recently?

A. Yes, sir.

Q. In both instances, is it fair to say it occurred immediately after the shooting?

A. Yes.

Q. Based on your hearing of the tape, do you believe that the speaker was under some stress at the time that she called?

A. Yes.

Q. Why don't you tell us, then, the contents of each call.

A. Have they not been played yet?

Q. No.

A. No.

MR. ROBINSON: Judge, I object to the hearsay, the content of the calls. They're hearsay.

THE COURT: The hearsay rule we've been dealing with this area is 803(2), which establishes the guideline. Mr. Deier has adduced testimony which indicates that the, whoever the person was, was describing something that happened at the time or immediately after it happened and while the event was ongoing. That comes under 803(1), which is present sense impression. 803(2) relates to declarant being under stress and excitement caused by the event. It appears to me under either or both of these rules it would be admissible.

Do you want to address those?

MR. ROBINSON: I'll withdraw the objection, Your Honor.

THE COURT: Thank you. Over objection -- the objection is withdrawn.

Ms. Viens, you can testify about the evidence obtained.

BY MR. DEIER:

Q. Let's start with the first one.

A. The first one, I believe, was to call and report gunshots. The lady was scared. I think she was in the bathroom and wanted to call her fiancé or something.

Q. So, what did she say on that one?

A. There were several shots.

Q. Was she able to identify which apartment it came from

in the first call?
A. I don't think in the first call.
Q. All right. Let's turn to the second call. You heard that one as well?
A. From her or the actual -- from the ---
Q. From her.
A. Uh-huh.
Q. And in that call, she did identify what apartment it came from, didn't she?
A. I think she said the neighboring apartment.
Q. And she specifically said which one it was?
A. The unit number? Did she give a unit number?
Q. Uh-huh.
A. I don't know if she did or not. I can't ---
Q. She indicated, though, in that call that she knew who the occupants were of that apartment?
A. She did not call them by name. No, I don't believe so.
Q. Didn't she say that those people were bad?
A. That's a possibility.
Q. And that they needed to be arrested?
A. I don't know that she said they needed to be arrested.
MR. DEIER: Just one moment, Your Honor.
Q. Sergeant Viens?
A. Viens.

Q. Do you recognize this disc?

A. It says 9-1-1 calls and the handwriting on there looks like Irene Reese's. If it's not in the evidence bag, I can't say for certain that's the 9-1-1 called in. But it says 9-1-1 calls with our case number.

Q. That is your case number?

A. I believe so, yes. On the top of my report.

Q. Okay.

MR. DEIER: Well, Your Honor, at this time I would move to introduce this tape into evidence so I can play the contents of it.

THE COURT: The only difference is the officer says it looks like it says 9-1-1 calls and this case number, but she has not authenticates the calls on there as being the accurate ones. And she can't testified about that since it's not coming from her case file. One way to do it is to play it outside the presence of the jury and let her confirm it. If we can do that, then you can get it in.

MR. ROBINSON: More than happy to do that, Your Honor.

THE COURT: All right, ladies and gentlemen, I'm going to send you to your jury room. We have to deal with this matter of law outside your presence. It will take just a few moments. We're not going to take any more of your time and, frankly, we're going to try to use this time to expedite any process. Don't talk about the case.

(THE JURY EXITS AT 10:48 A.M.)

(A PAUSE.)

(TAPE OF 9-1-1 CALLS MARKED AS DEFENDANT PRICE'S EXHIBIT NUMBER 11 FOR IDENTIFICATION.)

MR. ROBINSON: I'll recognize that disc as being the copy that I provided with defense counsel.

THE COURT: Right.

MR. ROBINSON: And I will stipulate that all of the contents of the 9-1-1 calls are on the disc.

THE COURT: Okay.

MR. ROBINSON: However, I do move that the court play all the phone calls in the interest of adhering to the rule of completeness.

THE COURT: Right.

MR. ROBINSON: So that it is not selectively presented to the jury.

THE COURT: All right. So, all of the calls would be the one from the apartment in question, as well as the neighboring apartment. Is that what you're talking about?

MR. ROBINSON: That's correct.

THE COURT: Okay. All right, Mr. Geier, what say you to that?

MR. GEIER: I'll stipulate to that, Your Honor. I have no problem.

THE COURT: Okay. Now, the jury hadn't had a chance

yet to go to the bathroom, so we've got a few more minutes to make use of this time, and here's how I want to use it.

If there are any other photographs that need to be, that were going to be introduced -- gentlemen, I want you to listen up, please. Mr. Robinson, please, sir.

MR. ROBINSON: Apologize.

THE COURT: If there are any other photographs that are going to be offered during the presentation of the state's case, I would like for you to take this time, please, to get those marked and to review them with the state's -- with the defense counsel to see if we can't make better use of the time.

MR. ROBINSON: Your Honor, we're not, we're not offering any more photographs.

THE COURT: Okay, any other evidence that you intend to offer that defense counsel needs to review before it can be admitted. Obviously, it would have been best if I'd thought of this on Monday, but I didn't.

MR. ROBINSON: I'll make those arrangements.

THE COURT: If you've got some other evidence, let's see if we can't at least make this jury disabuse themselves of the impression this is the first time anybody in this courtroom has ever seen any of this stuff being put into evidence. So, I know it's been exchanged before, I know that, and I know they've seen it. But the jury is getting

the impression that, my goodness, you know, it looks like nobody looks at anything until we get in the trial, and they're trying to get it into evidence. And then it's like reinventing the wheel or discovering fire or something.

MR. ROBINSON: Your Honor, the only things we have left to offer are the shell casings and projectiles which this witness has already testified to.

THE COURT: Right.

MR. ROBINSON: However, we do need the evidence custodian to testify with regard to chain of custody, and I will, I will be calling them shortly.

THE COURT: I understand, and that, and that will be fine. I realize that this -- that Staff Sergeant Viens can't testify about all that stuff. But if it's going to come in through another witness, at least it can be shown to these folks in advance so when the evidence custodian does testify, they'll know what you're talking about, okay?

MR. ROBINSON: Thank you, Your Honor.

THE COURT: All right, Staff Sergeant, you can step down. You can't talk about your testimony while you're off the stand. We're going to start back at quarter of the hour in about seven minutes.

COURT REPORTER: Judge, I've marked 11 I.D.

THE COURT: 11 for I.D., is that the tape?

COURT REPORTER: That's the tape, yes, sir.

THE COURT: It's now in in evidence. Thank you.

(TAPE OF 9-1-1 CALLS MARKED INTO EVIDENCE AS DEFENDANT PRICE'S EXHIBIT NUMBER 11.)

(OFF THE RECORD.)

(COPPER JACKETED PROJECTILE MARKED AS STATE'S EXHIBIT NUMBER 38 FOR IDENTIFICATION.)

(PROJECTILE MARKED AS STATE'S EXHIBIT NUMBER 39 FOR IDENTIFICATION.)

(.45 SHELL CASINGS MARKED AS STATE'S EXHIBIT NUMBER 40 FOR IDENTIFICATION.)

(.40 SHELL CASING MARKED AS STATE'S EXHIBIT NUMBER 41 FOR IDENTIFICATION.)

(.45 SHELL CASING MARKED AS STATE'S EXHIBIT NUMBER 42 FOR IDENTIFICATION.)

(COPPER JACKET, SLUG MARKED AS STATE'S EXHIBIT NUMBER 43 FOR IDENTIFICATION.)

MR. ROBINSON: We have marked the last six exhibits, and they will be admitted with the evidence custodian, and they have been shown to defense counsel. We're ready to proceed.

THE COURT: Thank you. Appreciate that.

Is the 9-1-1 tape queued up and ready to go? Defendant's Exhibit 11, I understand?

COURT REPORTER: Yes, sir.

(THE JURY ENTERS AT 10:48 A.M.)

THE COURT: Ladies and gentlemen, thank you for your patience. We've taken some time in this courtroom to get some other evidence premarked to expedite this process. Hopefully things will move a little bit more smoothly.

Mr. Deier, you can continue your cross-examination.

BY MR. DEIER:

Q. Let's go ahead and play the 9-1-1 tape.

A. Okay.

(WHEREUPON, DEFENDANT PRICE'S EXHIBIT NUMBER 11 IS PLAYED IN OPEN COURT.)

BY MR. DEIER:

Q. Okay, Sergeant, is that the 9-1-1 tape that you heard?

A. Yes.

Q. I'm going to hand you what's been previously marked as Defendant's Exhibit 3, Simuel, for identification. Could you look at this, please?

A. Uh-huh.

Q. Is that something that you all recovered from the apartment as well?

A. I don't know if we collected it or not. We did photograph it simply because of some of the symbols and stuff on there.

Q. Is that a true and accurate representation of what you saw in the apartment?

A. Yes.

MR. DEIER: Your Honor, at this time I'd move to admit previously marked Defendant's Exhibit 3 for identification Simuel.

THE COURT: Mr. Robinson?

MR. ROBINSON: I'll object for the record because another witness has already testified that he didn't remember that being in the apartment.

THE COURT: Thank you. Objection overruled. Comes in subject to defense counsel. Defense 3 in evidence.

(PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT SIMUEL'S EXHIBIT NUMBER 3.)

MR. DEIER: Your Honor, may I publish?

THE COURT: Yes, sir.

(A PAUSE.)

MR. DEIER: Your Honor, I have no further questions.

WITNESS: Thank you.

THE COURT: Mr. Robinson, redirect?

REDIRECT EXAMINATION BY MR. ROBINSON:

Q. Sergeant Viens, the first and last 9-1-1 calls were purportedly made by Jamie, you heard those, did you not?

A. I did.

Q. Did you attempt to make contact with her?

A. I did.

Q. Were you able to make contact with her?

A. No, sir.

Q. And you responded to the scene. Is that correct?
A. Yes.
Q. You responded how long after the shooting?
A. I don't know if I indicated my arrival time on here. I would say probably within the half hour because we would have at most come from the south end of Hilton Head.
Q. What efforts did you make to locate that caller?
A. I believe officers out there may have attempted to make contact with her while we were on scene. After I received the 9-1-1 calls, a phone number is usually attached with the call itself, and I called that number.
Q. And you were not able to make contact with her?
A. No, sir.
Q. So, you were not able to verify anything that you heard her say on that call. Is that right?
A. No, sir.
Q. Were any shell casings found inside the apartment?
A. None.

MR. ROBINSON: I have nothing further from this witness.

THE COURT: Thank you. Anything, Mr. Deysach?

MR. DEYSACH: None from me, Your Honor.

THE COURT: Thank you, you may step down. Without objection you may be excused. Thank you.

(THE WITNESS EXITS THE STAND.)

MR. ROBINSON: The state calls Sergeant Dejuan Holmes.

THE COURT: Sergeant Holmes, come forward, please, sir, and be sworn.

DEJUAN HOLMES, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

WITNESS: Dejuan Holmes, H-O-L-M-E-S.

DIRECT EXAMINATION BY MR. ROBINSON:

Q. Sergeant Holmes, did you investigate the shooting that happened on July 28th at Plantation Point Apartments?

A. Yes, sir.

Q. What's the first thing that you did as part of your investigation?

A. I was instructed by Master Sergeant Riley to respond to the Hilton Head Medical Center to meet the victims and any witnesses that may be there.

Q. And did you make contact with them?

A. Yes, I did.

Q. And were you able to interview them at that time?

A. Yes.

Q. What happened after that?

A. I went out to the [redacted] incident location at Plantation Point apartments in Bluffton.

Q. What did you do there?

A. I participated in the search warrant at the scene.

Q. After participating in the search warrant, what is the

next thing you did?

A. Myself and Sergeant Calhoun went over to Savannah Memorial Hospital where we met with witnesses that were in the house.

Q. Were you able to obtain statements at that time?

A. Yes.

Q. What is the next thing you did?

A. After that, the following day, myself and Sergeant Calhoun went back over to the location and met with witnesses again at the incident location.

Q. So, this is day two of the incident?

A. Yes.

Q. First day of?

A. It was 28th.

Q. 28th is the day of the incident?

A. Correct.

Q. The day you're talking about the is 29th. Is that correct?

A. Yes, sir.

Q. On what day did you develop suspects?

A. 29th.

Q. How did you develop Demetrius Price as a suspect?

A. During the investigation, we were given information that there was video at the front gate of Plantation Point Apartments. During the investigation, the video captured a

vehicle with Georgia tags leaving the location. At some point in time, the vehicle tags were ran and it came back to Demetrius Price.

Q. Did you make contact with Demetrius Price?

A. Yes, I did.

Q. Where did you do that?

A. Savannah. Savannah Metro Police Department in Savannah, Georgia.

Q. What date did you do that?

A. That was the 31st.

Q. The 31st?

A. Yes, sir.

Q. Was he in custody at that time?

A. Yes, he was.

Q. What time of day or night did you make contact with him at the location?

A. Not exactly sure. I believe it was midday. Afternoon.

Q. Was anyone else with you?

A. Investigator Calhoun was there for a short time.

Q. And did you talk to him?

A. Yes, I did.

Q. You were where when you talked to him?

A. We were in a room, a small interview room on the second floor.

Q. Was he cuffed?
A. No, he wasn't.
Q. Was he dressed in prison garb?
A. No, he wasn't.
Q. About how long did your interview with him last?
A. I'd say about an hour.
Q. When you met with him, did you advise him of his Miranda rights?
A. Yes, I did.
Q. How did you do that?
A. At the sheriff's office, we have a standard Miranda rights -- Miranda statements form that we read, and that was our -- I read it to him.
Q. And are all those rights listed on that form?
A. Yes, it is.
Q. Judging from his demeanor, was he able to understand -- did he seem to understand those rights?
A. Yes.
Q. Did you give him the option of signing the form?
A. Yes.
Q. Did he sign the form?
A. No, he refused. I asked him several times if he understood his rights and asked him to sign the form, but he refused to.
Q. But did you ask him if he understood his rights?

A. I did ask him if he understood the rights, and he said yes.

Q. Did you have warrants for his arrest at that time?

A. Yes, I did.

Q. Did you read the warrants to him?

A. Yes, I did.

Q. In the interview process, you testified that you read the Miranda rights form, that you read the warrants to him. Which came first?

A. I read the rights first.

Q. Then you read the warrants to him?

A. Correct.

Q. Did your questioning begin after that?

A. Yes.

Q. And did he agree to speak?

A. Yes.

Q. And what did you ask him?

A. I asked him about his location on the 28th of July.

Q. And what did he tell you?

A. He told me that he had -- the morning of the 28th, he woke up and went over to his girlfriend's house -- that was about 10:00 that morning -- to look for a job. He said he had been in Savannah on the 20th looking for a job, jobs. He said he went to his girlfriend's house at 10:00, at which time he called his girlfriend's mother, who is a

manager at the Sam's club in Georgia.

Q. Did he tell you who his girlfriend was?

A. He refused to tell me who his girlfriend was, where she stayed, who his girlfriend's mother was, and where she stayed.

Q. Did you ask him all those things?

A. Yes, I did.

Q. What is the next thing you asked him?

A. I then asked him what he did after calling or looking for a job. He said he left the location of his girlfriend's house and went down to a carwash somewhere on Victory Drive. He said he left his car there, and he and his friend went to that location nearby to have lunch or to get something to eat.

Q. Where is Victory Drive?

A. Victory Drive is a road in Savannah, Savannah, Georgia.

Q. Did he say what the carwash was called?

A. No, he didn't. He refused to tell me, give me that information also.

Q. Did he say who his friend was?

A. He refused to give me that information also.

Q. What else did he tell you?

A. He told me after coming back from the carwash -- correction. From getting something to eat, he went to get

his car and go on home. I asked him what time he gotten home. He said it was 3:00. He's sure it was 3:00 because his girlfriend got off work and was home by that time.

Q. What else did you ask him? Strike that. What did you ask him next?

A. I then asked him if he had been to Bluffton, and he said he had not gone to Bluffton that day. He had never been to Bluffton; he had no reason to go to Bluffton.

Q. What did you ask him next?

A. I asked him if his vehicle was in Bluffton, how it would have gotten there. And he said that someone from the carwash must have had his vehicle. But they didn't have time to go to Beaufort -- correction, gone to Bluffton and then back by the time he picked up his car.

Q. What did you ask him next?

A. I then asked him -- told him his vehicle was on video at the location. He said that someone must have taken his car over to Bluffton.

Q. What did you ask him next?

A. I then told him that his vehicle was on video, and he said that he was not at the location. Someone must have took his vehicle. And after that, I showed him a picture of -- from the location of his vehicle.

Q. Did you show him the still frames from the security video?

A. Yes, I did.
Q. Are those the pictures you showed him?
A. Yes, sir.
Q. And what did he say then?
A. He said that wasn't his vehicle because it didn't have any hubcaps.
Q. What did he say next?
A. I then showed him a second photo of his vehicle which showed the Georgia tag, which the tag was his vehicle, vehicle tag. It was registered to him.
Q. Did he say anything after that?
A. He said someone must have had his vehicle.
Q. That was after he told you it wasn't possible for someone to have gone to Bluffton with his car?
A. That's correct.
Q. Other than Demetrius Price, was anyone else with you during the questioning of Demetrius Price?
A. Initially Investigator Calhoun was present.
Q. At what point did he leave?
A. He left shortly after I read the warrants to Mr. Price. I guess he felt that I would build a rapport with Mr. Price, and it would be better for him to leave.
Q. At any time in your conversation with Demetrius Price, did you make any promises to him of any kind?
A. No.

Q. Did you make any threats of any kind?
A. No.
Q. No promises of leniency?
A. None at all.
Q. Is that the only -- were there any other occasions when you took statements from Demetrius Price?
A. No.
MR. ROBINSON: Beg the court's indulgence.
THE COURT: Yes, sir.
MR. ROBINSON: I have nothing further of this witness. Investigator Holmes, please answer these lawyers' questions.
THE COURT: Cross-examine?
MR. DEIER: Yes, sir.
CROSS-EXAMINATION BY MR. DEIER:
Q. Good morning, Investigator Holmes.
A. Good morning, Mr. Deier.
Q. All right, Investigator Holmes, when you interviewed Demetrius Price, you mentioned that you read his rights from a rights form?
A. Correct, sir.
Q. And he refused to sign that?
A. That's correct.
Q. Now, you didn't retain a copy of that form and write refuse, did you?

A. No, sir.
Q. That's commonly done in other types of criminal justice -- like DUI cases, isn't it?
A. Up to the officer.
Q. You just chose to get rid of that that day?
A. I didn't have any of these.
Q. Now, you took notes during this interview, didn't you?
A. That's correct.
Q. And at some time later, you took those notes and prepared an investigation form, correct?
A. That's correct.
Q. And you received training on how to create these reports and write those notes, didn't you?
A. Yes, sir.
Q. Both at the police academy and as you're coming up and you make sergeant.
A. Yes, sir.
Q. And you were taught to prepare complete and accurate reports, right?
A. Yes, sir.
Q. You were taught to include everything that's important in a case?
A. That's correct.
Q. And is it fair to say that the reason why it's important to put accurate information is that you're going

to rely on that later on?
A. That's correct.
Q. Rely both for your memory and also for the investigation so the solicitor can prosecute the case?
A. That's correct.
Q. How many different cases would you estimate that you've worked on over the last eighteen months?
A. Close to a hundred.
Q. You've probably interviewed tons of witnesses during that time?
A. Yes, sir.
Q. Probably interviewed a number of suspects during that time, too?
A. Yes, sir.
Q. Have you -- you take the notes. You type up the report. After you write the report, you review the report, don't you, to make sure it's accurate?
A. That's correct.
Q. And you actually have previously testified regarding the contents of this report with regard to this case, haven't you?
A. That's correct.
Q. And before you testified there, you probably reviewed the report, didn't you?
A. That's correct.

Q. And before you come up today, you probably took a look at this to make sure it was all -- refresh your memory, didn't you?

A. That's correct.

Q. Now, when you interviewed Demetrius Price on 7/31/2008, you actually asked him where he was on the 29th?

A. I asked him the 28th. The report says the 29th.

Q. And, again, didn't you testify the other day that you, in fact, asked him about the 29th?

A. I don't recall exactly what I said, but I know I looked at it, and I saw it was the 29th on my report. It was the 28th that I asked him about.

Q. Again, you don't know if you asked him about the 28th or the 29th at that time?

A. It was the 28th that I asked him about.

Q. You certain of that?

A. When I interviewed Mr. Price on the 31st, it was the 28th that I asked him about.

Q. And so then you interview him. He says I was there on the 28th -- I'm sorry, the 28th, you go through there, take down notes. You go back, you write up your report, you review your report and, in fact, the date was the 29th that ends up in your report?

A. That is correct, sir.

Q. And, again, we just went through all the things we

talked about while you prepared these reports, and you prepare the notes so you can remember?

A. Yes, sir.

Q. As you're sitting here, you can't testify that you are certain that you asked him about the 28th as opposed to the 29th.

A. I'm pretty certain it was the 28th that I asked him about.

Q. And so, again, if the record shows that you mentioned, you talked to him about the 29th and you previously testified to this matter, would you have any reason to dispute that at that time?

MR. ROBINSON: Judge, I object. He's asking about previous testimony. This is the first time this witness has taken the stand before the jury.

THE COURT: That's true, but we all know that he's testified outside the presence of this jury regardless. He's entitled to cross-examine.

MR. ROBINSON: I'll withdraw the objection.

THE COURT: Thank you.

BY MR. DEIER:

Q. If you were presented with that evidence as you testified, that you asked him about the 29th previously in this matter, would you have any reason to dispute that you testified to that?

A. If that's what I said on the record, that's on record. But I know when I interviewed, it was the 28th, sir.

Q. Now, you haven't changed your position since then because as this case has gone on. July 28th keeps coming up again and again and again, and you look at your report and say I asked about the 29th.

A. That's what I typed in my report. It is a mistake.

Q. Would you agree with me that the date an incident occurred is an important fact within a criminal investigation?

A. Yes, it is.

Q. Critical fact?

A. Yes, sir.

Q. And as far as you know, Demetrius Price was in Savannah all day on the 28th. Is that correct?

MR. ROBINSON: Judge, I object. This is asked and answered; we've gone over this repeatedly.

THE COURT: The question was as far as he knows whether it was Demetrius. Now, if he knows where Demetrius was, that's one thing; he can testify about that. But if he's going to repeat what Demetrius told him, then that's the way the question needs to be phrased. The question was does he know. So far as you know, was Demetrius in Savannah on the day in question. That is, the 29th. If he knows, he can answer. If he doesn't, he can't.

A. On the 29th, I don't know where Demetrius was.

MR. DEIER: I have no further questions, Your Honor.

THE COURT: Thank you.

Mr. Deysach?

MR. DEYSACH: Thank you very much, Your Honor.

CROSS-EXAMINATION BY MR. DEYSACH:

Q. Good morning, Investigator Holmes.

A. Good morning, Mr. Deysach.

Q. I want to ask you a couple of questions about your trip to Savannah -- your trips to Savannah Memorial Hospital. You accompanied Investigator Calhoun to the hospital. Is that correct?

A. That's correct, sir.

Q. And when you talked to witnesses in the case, you talked to them together. Is that correct?

A. Yes, sir.

Q. When you did the, when you did the photo lineup procedure, you did that together. Is that correct?

A. Yes.

Q. So, you're in the room with Investigator Calhoun as pictures of possible folks involved are being showed to the witnesses in the case?

A. That's correct.

Q. And one of those witnesses was Deverol Cannick, correct?

A. That is correct.
Q. So, you were there when -- you answered that already. All right. So, you were there when Deverol identified Demetrius Price as the person with the uncle who possessed the revolver, entered his apartment, and shot both Deon and Deverol? You were there when Deverol said that, right?
A. I was present during the interview and the showing of the photo lineup.
Q. Asking you specifically about that statement where he identifies Demetrius Price as the person with the revolver who shot, but it's Deon and Deverol. You were there for that, right?
A. Yes.
Q. And you heard him say it?
A. Pretty sure I did.
Q. And then you -- what day was it that you spoke with Demetrius Price again?
A. 31st. 31st of July.
Q. And when you spoke with him, did you have the warrants for his arrest?
A. Yes, sir.
Q. And did you -- were you there for the service of those warrants?
A. Yes, sir.
Q. And so the warrants at that time, two warrants for

assault and battery with intent to kill, were served on Demetrius Price, correct?

A. That's correct.

Q. One with victim of Deon, correct?

A. That's correct.

Q. And one with the victim of Deverol, correct?

A. Yes, sir.

Q. Were you there for the service of warrants on Mr. Simuel?

A. Pretty sure I was.

Q. And at that time, there were no warrants served on him for assault and battery with intent to kill, correct?

A. I would have to refer back to Calhoun's report.

MR. DEYSACH: Okay, I'm not exactly sure what page it's on, to be honest, but I can -- if I approach the witness?

THE COURT: Yes, sir.

MR. DEYSACH: I'll let him have Mr. Calhoun's report.

THE COURT: All right.

BY MR. DEYSACH:

Q. And I know the page where he talks about the application for the warrants, but I don't know if it says the same thing for service. But that is page -- I'll direct you to page 10, if you'd like.

A. His report says 31st and possession of a firearm

during commission of a violent offense.

Q. And no warrants for assault and battery with intent to kill?

A. No, sir.

Q. And so not for Deon and not for Deverol?

A. No, sir.

Q. All right, you were also at the hospital, I believe, the day before for a separate encounter with Deverol?

A. Yes, sir.

Q. July 30th, '08, you met with Deverol Cannick at the hospital, correct?

A. That's correct.

Q. You were with Investigator Calhoun at that time?

A. That's correct.

Q. And you were there when Deverol told you -- told y'all that he eventually opened the door. And if you need a little bit of assistance, the first paragraph of Deverol's statement, fourth line down towards the right side of the page, sentence beginning with Deverol.

MR. ROBINSON: Judge, I object. Is there a question there?

Q. Did you hear Deverol say that he eventually opened the door?

A. I don't recall him saying that, but it may be in his report, Calhoun's report.

Q. Would it help you if I pointed it out? I'm pointing out a little spot on page 9.

A. That's what it says. Correct.

Q. So, you were there when he said that?

A. Yes.

MR. DEYSACH: I don't have anything further, Your Honor.

THE COURT: Thank you. Mr. Robinson, redirect?

REDIRECT EXAMINATION BY MR. ROBINSON:

Q. Sergeant Holmes, when you interviewed Demetrius Price, you testified you read the warrants to him. Isn't that correct?

A. Yes, sir.

Q. Didn't the warrants indicate that the event happened on July 28th?

A. Correct.

Q. And you got the warrants how long after the day of the shooting?

A. I believe I got it that morning, the 31st. Morning of the 31st.

Q. Did your investigation end when you got the warrants?

A. No, sir.

Q. When you got the warrants, had there been any analyses of the shell casings found at the scene?

A. No, sir.

Q. Had any of those things been sent to the South Carolina Law Enforcement Division for scientific analyses?

A. Not to my knowledge.

Q. In fact, how long did this investigation last after the incident?

A. Several months.

Q. At any time, did Devin Cannick indicate to you that he gave either of the two people that were involved in the shooting, meaning the perpetrators, permission to come into his house?

MR. DEYSACH: I would object to the hearsay.

THE COURT: Not offering for the truth of the matter asserted. He's asking whether or not he told him that. I'll allow the question.

BY MR. ROBINSON:

Q. Did he indicate that he gave them permission to enter the house?

A. No, sir.

MR. ROBINSON: Nothing further of this witness.

THE COURT: Thank you.

Any follow up, Mr. Deysach?

MR. DEYSACH: I do just briefly, Your Honor.

RECROSS-EXAMINATION BY MR. DEYSACH:

Q. You applied for the warrants at -- you applied for the warrants after you'd done the lineup procedure with Devin.

It was after that, correct, that you applied for the warrants?

A. That is correct.

MR. DEYSACH: That's all I have.

THE COURT: Mr. Deier, I skipped you inadvertently. I didn't mean to skip you.

MR. DEIER: I have no questions, Your Honor.

MR. ROBINSON: I have one more question.

FURTHER EXAMINATION BY MR. ROBINSON:

Q. Were there ever any additional interviews of the victims after you got the warrants?

A. I believe there was. I'm not sure.

Q. Would it refresh your recollection to look at a Sergeant Calhoun's report?

A. Yes.

MR. ROBINSON: May I approach the witness?

THE COURT: Yes, sir.

BY MR. ROBINSON:

A. Yes, there was interviews conducted.

Q. In fact, he was interviewed on September 3rd, was he not?

A. That's correct.

MR. ROBINSON: I have nothing further.

THE COURT: Thank you. You can step down, Investigator.

(THE WITNESS EXITS THE STAND.)

MR. ROBINSON: Call Ken Whitler.

KEN WHITLER, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your full name for us and spell your last name, please.

WITNESS: My name is Kenneth H. Whitler. The last name is spelled W-H-I-T-L-E-R.

VOIR DIRE EXAMINATION BY MR. ROBINSON:

Q. Agent Whitler, where do you work?

A. I work for the South Carolina law enforcement division. That's also known as SLED.

Q. How long have you worked there?

A. Since 1997.

Q. What do you do there?

A. I'm a firearms tool marks examiner.

Q. And describe your education and training in that field.

A. There is no school that you go to to get a degree in firearms identification, which is what I do. You have to learn from other qualified examiners. And when I was employed in the FBI laboratory, I underwent the training program there for approximately two years. During this two-year period, you shoot literally thousands of bullets and cartridge cases and compare them to firearms. You work

on real cases with qualified examiners, and you also do a lot of reading and studying and working on test cases also.

At the end of the period when you worked with all the examiners, it has to be a unanimous decision that they decide that you have learned all that you can at that point, and they gave you a series of three tests. If you successfully complete the three tests, the FBI would certify you as a firearms tool mark examiner.

I successfully completed the training and was certified in 1991 as a firearms tool mark examiner. In 1997, I retired from the FBI and came back to South Carolina to work for SLED in their firearms department doing basically the same job.

Q. Have you ever testified in court before?

A. I've testified over two hundred times in various state, federal, and territorial courts.

Q. Have you ever been recognized as an expert in the field of ballistics and forensic analyses of firearms?

A. No.

Q. In what areas have you been qualified?

A. I've been qualified expert in firearms identification. Ballistics is another area.

MR. ROBINSON: Your Honor, at this time I'd move that agent Ken Whitler be recognized as an expert in the field of firearms identification.

THE COURT: Any *voir dire*?

MR. DEYSACH: I have some briefly.

VOIR DIRE EXAMINATION BY MR. DEYSACH:

Q. You said that you were certified in 1996?

A. '91.

Q. '91. Do you undergo recertification periodically?

A. We have a series of proficiency tests yearly that we undergo.

Q. And if you fail that test, you lose your certification?

A. Well, SLED doesn't certify you. You have proficiency tests that if you don't pass, then you have to have remedial training. But I've always passed all tests.

Q. You basically have to -- when was the last time you had one of those tests that SLED administers you?

A. Just within the last several months.

Q. And how many, how many questions can you get wrong on that test and still pass?

A. It is not a question test. You're given actual bullets or cartridge cases or tool marks to look at, and you either get it right or you get it wrong.

Q. It's a one hundred percent then. Is that correct?

A. Yes, sir.

Q. And if it's wrong, then you have to have more training?

A. Yes.
Q. And then they'll test you again?
A. Yes.
MR. DEYSACH: All right, I don't have any more *voir dire*.
THE COURT: Thank you.
Mr. Deier?
MR. DEIER: I have no questions.
THE COURT: Without objection then, Agent Whitler is qualified as an expert in firearms identification. Thank you.
DIRECT EXAMINATION BY MR. ROBINSON:
Q. Did you examine some firearms in this case?
A. Yes.
Q. What things did you examine?
A. In this case there were four firearms submitted. Two pistols and two revolvers and they ranged in caliber. There was a .45 caliber firearm., a .38 caliber firearm, a .32, and a .22.
Q. All right.
A. And I examined all those items.
Q. Were there any shell casings?
A. There was also three .45 caliber cartridge cases submitted, and two .45 caliber bullets, and one .38 caliber bullet jacket, and one lead core that was consistent with

being the core from a .38 caliber jacketed bullet.
Q. Could any of the shell casings have been fired by the four guns that you examined?
A. The three shell cartridge cases I entered microscopically compared to each other and determined that they were all fired by the same firearm. Of the four firearms submitted, only one was a .45 caliber. And when these cartridge cases were microscopically compared to test cartridge cases from that pistol, I determined that those cartridges cases could not have been fired from that gun due to differences in class characteristics.
Q. And the .45 caliber, is that an automatic or revolver?
A. It can be either. In this case, it was a semiautomatic pistol.
Q. Semiautomatic pistol?
A. Yes.
Q. What about the .45 caliber projectile?
A. The two .45 caliber ---
MR. DEYSACH: Your Honor, I have an objection at this time. It has to do with the chain of custody on the .45 caliber projectile that came from Savannah Memorial Hospital. There's a break in that chain that hasn't been closed yet by the solicitor or by the state. And before he can testify as to any opinion or testing that he's done on that, on that bullet, he has to -- the chain has to be

closed. And I can explain where I think the hole is if you'd like.

THE COURT: Well, the .45 caliber bullet as yet has not been offered into evidence. Is that right?

MR. ROBINSON: It has not.

THE COURT: All right. I'm trying to struggle with the relevancy of his testimony in the absence of the bullet coming in just yet. Let's talk about the chain of custody. Where is the hole, Mr. Deysach?

MR. DEYSACH: Your Honor, from the doctor who said that he removed the projectile from Deverol Cannick, said he handed or gave it to his nurse, who went unnamed. A nurse who was named but who is not identified as the nurse who got it from Dr. Bromberg, I believe his name was, gave it to somebody named Javon Murphy. So, we don't have that nurse to say that Dr. Bromberg -- we don't know who gave her that bullet, whether it was his nurse, somebody else's nurse or anything. We don't have the name of that nurse. And this is -- I would point out this is the trauma center at the hospital so it's not like there's just one bullet there.

THE COURT: Well, I'm going to allow him to testify about whether the bullet that he examined, wherever it came from, matched any of the weapons in question.

Now, before that has any probative value for this

jury's consideration, we're going to have to deal with the issue of that custody. It might well be that I resolve that it doesn't matter because the chain of custody, as you know, doesn't have to be perfect, especially when you're dealing with non-fungible goods. When you're talking about drugs or blood, that's one thing. If we're talking about hard items, that's another thing entirely. We may have to strike his testimony. The jury might not be able to consider it.

But I'm going to, rather than reverse this process and try to go back and plug the hole right now with a whole new list of witnesses, we're going to take them in their turn. And I take it somewhere along there line there's an evidence custodian, Ms. Roberts, who is going to testify about chain of custody and these other matters. For right now, I'm going to allow him to testify about whether or not the bullet in question he tested matched these guns.

Now, the cart is somewhat in front of the horse, Mr. Robinson, because right this minute I don't know what bullet he's talking about. I don't know whether it's going to be the same bullet that's going to be offered in evidence, through the testimony or not. How is he going to talk about that?

MR. ROBINSON: Your Honor, the state maintains the chain of custody was adequately described by the security

official at Savannah Memorial Hospital. Didn't identify the specific nurse from whom the security personnel received the bullet and ---

THE COURT: And I might not disagree with that once I look back at my notes. I might not disagree with that. But right now this witness is testifying about a bullet that's not in evidence.

MR. ROBINSON: That's correct.

THE COURT: Okay. So, now comes in bullets tested.

MR. ROBINSON: We can discuss about that particular bullet. Talk about ---

THE COURT: If you want to do it that way, that's fine.

MR. ROBINSON: That's fine. Okay.

BY MR. ROBINSON:

Q. Agent Whitler, you looked at two .45 caliber rounds. Is that correct?

A. That's correct.

Q. Please limit your testimony to the round that was intact, that was not pierced.

A. Which one?

Q. I believe that would be item 5.

A. Discuss item 5?

Q. And item 11.

A. Could you repeat your question?

Q. Projectile, .45 caliber projectile, item 5, could it have been fired by the same gun that fired the three shell casings?

A. There's a possibility.

Q. Moving on, you also examined a projectile and a metal jacket. What caliber weapon did that -- those two items come from?

MR. DEYSACH: Your Honor, at this time I'm going to make the objection as to relevance. I guess at this point, we really don't know what jackets and what items they're talking about right now because they haven't been put into evidence.

THE COURT: Well, he's identified one .38 caliber lead core. Is that correct?

MR. ROBINSON: That's correct.

THE COURT: And that's what you're talking about right this minute?

MR. ROBINSON: I am.

THE COURT: Okay. I don't think we can get confused on that as much as we could if we're talking about two other bullets in another situation. I don't know where the .38 lead core came from. I don't know its relevance right now. But I'll allow him to testify whether or not it was from the .38 revolver that's in question. Is that the question you're going to ask?

MR. ROBINSON: It is.

THE COURT: Go ahead.

BY MR. ROBINSON:

Q. Could the projectile jacket have been fired by any of the handguns that were submitted?

A. The .38 caliber fired bullet jacket under the four firearms submitted, it was the only one that was even calibered right, and it was of the -- it had the wrong rifling characteristics. So, that revolver could not have fired that bullet jacket. The core could have come from that bullet jacket or another one. I can't determine that. And it had no marks of value on it, so you can't identify a core to a particular barrel. So I can't -- but, again, I can say the bullet jacket was not fired by the .38 caliber revolver because of wrong rifling characteristics. And it couldn't have been fired by the other three firearms because different calibers.

Q. So, is it fair to say that, excluding item number 5, that the projectile, .45 projectile, the jacket, and the .38 projectile were not fired, were not fired, nor were the three casings fired by any of the guns submitted here, correct?

A. That's correct.

Q. Furthermore, is it fair to say that the .45 projectile core and the jacket do not match the three casings that

were submitted to you. Is that correct?
A. There was no .45 caliber core here. There's a .45 caliber that could not have been fired by the .45 caliber pistol that was fired because of class characteristics. And it couldn't have been fired by the other three because of caliber differences. The .38 and the .45 couldn't have been fired by the same gun for obvious class and caliber differences.
Q. The .38 and .45 can't be fired?
A. No. The .38 is smaller than the .45. The .45 wouldn't fit in the .38 firearm, and the .38 would slide down the barrel of a .45. One is too big and one is too small.
MR. ROBINSON: That's all I have of this witness. The state would pass the witness. Please answer any questions these attorneys might have.
THE COURT: Thank you.
Mr. Deysach.
MR. DEYSACH: Thank you.
CROSS-EXAMINATION BY MR. DEYSACH:
Q. The jacket in the floor -- by the way, my name is Ian Deysach. I represent Lucius Simuel in this case. Good afternoon.
A. Good afternoon.
Q. There is a bullet in a core that you tested, correct?

A. That's correct.
Q. And you just told me that you couldn't, you couldn't really say that the core came from the same, I guess, projectile as the jacket, right?
A. It could have been -- it was consistent with being a jacket from that type of bullet.
Q. Right.
A. But there's no way to be able to say that that bullet core came from that jacket because of damage.
Q. Okay. So, you're unable to really, to give an opinion other than to say it's possible that they came from the same projectile?
A. The same bullet, yes.
Q. That's possible?
A. That's possible.
Q. It's also possible that they weren't?
A. Yes.
Q. And there was a .38 caliber revolver that was submitted to you for testing, correct?
A. That's correct.
Q. And so you can't, as far as the core is concerned, you couldn't identify what gun the core was fired out of, right?
A. No. The revolver that was submitted had dust and dirt in the barrel; its firing pin was broken. It was unable to

be fired when it was received. Also, it was the wrong marking characteristics, so at least the bullet jacket did not come from that.

Q. But I'm asking about the core.

A. Cores, can't determine.

MR. DEYSACH: Okay. Thank you.

THE COURT: Mr. Deier?

MR. DEIER: I have no questions, Your Honor.

THE COURT: Redirect, Mr. Robinson?

MR. ROBINSON: I have nothing further.

THE COURT: Thank you, Agent Whitler. You can step down.

MR. ROBINSON: I'd ask the witness be excused.

(THE WITNESS EXITS THE STAND.

MR. ROBINSON: The state calls Jean Roberts of the sheriff's office.

JEAN ROBERTS, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your name and spell your last name, please.

WITNESS: Jean Ray Roberts. R-O-B-E-R-T-S.

DIRECT EXAMINATION BY MR. ROBINSON:

Q. Corporal Roberts, what do you do at the sheriff's office?

A. I work in the evidence room in Hilton Head.

Q. And what do you do there?
A. I receive evidence and transport the General Sessions cases over to the Beaufort evidence room.
Q. And how are they maintained in the evidence room?
A. Once I sign for it, I have access to it until I transport it over here to the Beaufort evidence room and it is put in to storage.
Q. While it is in your custody, who has access to it?
A. Nobody unless they sign for it.
Q. Who can sign for it?
A. The investigating officers.
MR. ROBINSON: May I approach the witness?
THE COURT: Yes, sir.
BY MR. ROBINSON:
Q. I'll show you something that's going to be marked as State's Exhibit 38 for identification -- 44, I apologize.
(EVIDENCE LOG MARKED AS STATE'S EXHIBIT NUMBER 44 FOR IDENTIFICATION.)
BY MR. ROBINSON:
Q. Do you recognize that?
A. Yes, sir. It's an evidence submittal form that I signed for on 7/29 at 14:09.
Q. And you signed for it. What does that mean?
A. That means it was given to me into custody.
Q. And does the form indicate from whom you received it?

A. Yes, sir. I received it from Angela Viens.
Q. And is it dated?
A. It is.
Q. What is the date?
A. 7/29/08.
Q. On that evidence form in the bottom, are there a number of things listed?
A. Yes, sir.
Q. On the bottom third of the items listed, what's listed? I believe they're marked.
A. I have a sealed paper bag with copper jacketed projectile; a plastic bag with a .45 shell casing from near sidewalk; a sealed paper bag with a .45 shell casing from sidewalk in front of apartment; plastic bag with two metal canisters, one with a copper jacket and one with lead slug; a sealed paper bag with a .45 auto shell casing from glass near sidewalk; and plastic bag with suspected ledger.
MR. ROBINSON: May I approach the witness?
THE COURT: Yes, sir.
BY MR. ROBINSON:
Q. Corporal Roberts, I'm going to show you what's previously been marked for identification as State's Exhibits 38, 40, 41, 42, and 43. I'd like to ask you if you can identify these.
A. Yes, sir. These are the items that were listed on

this form.

Q. Are they in the same condition that they were in when you received them?

A. Yes, sir, other than the seal that would have been there when I received the paper bags have been opened by somebody.

Q. And who sealed those bags?

A. The officers sealed the bag before I take it.

Q. Who can unseal it?

A. When it is needed and processed someplace else, the people that are doing the processing break the seal.

Q. While it is stored in your custody, do you have any reason to break the seal?

A. No, sir.

Q. From the items you identified, is there any notation on the items indicating that they have left your custody?

A. The items, the bags that I signed, the evidence bag that I signed is not signed again. The things that were taken to SLED may have additional signatures on it, but the actual evidence bag that I signed does not have any other ---

Q. Is that standard?

A. Yes, sir. They have their own bags and their own type of chain of custody. So, once I transport it and refile it away, then what the other agencies, how they do a chain of

custody is different than how we do it is different.

MR. ROBINSON: Beg the court's indulgence. I have nothing further from this witness.

EXAMINATION BY THE COURT:

Q. Ms. Roberts, between the time you received those items into your custody on July 29, 2008, at 4:09 in the afternoon, have they left your custody.

A. Yes, sir. I transport them over to Beaufort, and they are stored in the Beaufort evidence room.

Q. All right. When did you do that?

A. I cannot tell you for sure, sir. I keep them -- at times, I transport them the same day. Sometimes it takes me two or three days depending on my volume of work. And whether the officers that turned in the stuff that was on the whole sheet, if they may need it again, sometimes I will hold on to it for a day or two before I transport it.

Q. You said when you received it from Sergeant Viens, you signed for it. Is that right?

A. Yes.

Q. And you delivered it to the evidence custodian in Beaufort who signed for it then?

A. No, sir. We are all the same entity. I am simply a satellite office. I simply receive it over there so the officers don't have to come all the way to Beaufort. Therefore, we do not have to make a chain of custody among

the four people that work in evidence here in the Beaufort office.

Q. That makes sense. Do you -- when did you get them back from the Beaufort office?

A. I do not receive them back.

Q. So, that's the first time you seen them since you brought them over here?

A. Yes, sir.

THE COURT: Thank you, ma'am. Cross-examine?

MR. DEYSACH: I have no questions, Your Honor.

THE COURT: Thank you.

MR. ROBINSON: One follow-up question.

REDIRECT EXAMINATION BY MR. ROBINSON:

Q. Is it fair to say when you have those items and you're in transit from the south end, the Beaufort office, that they are still in evidence?

A. Oh, yes, sir. When I transfer evidence from Beaufort to Hilton Head, nobody has access to my vehicle. It is always locked. I am not allowed to stop anywhere unless it is a major disaster on the road. And at that time if I have to leave my vehicle, it is locked.

MR. ROBINSON: Nothing further.

THE COURT: Thank you, Ms. Roberts. You can step down.

WITNESS: Thank you, sir.

(THE WITNESS EXITS THE STAND.)

MR. ROBINSON: The state calls Ramona Cooper.

RAMONA COOPER, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your full name and spell your last.

WITNESS: Ramona Q. Cooper, C-O-O-P-E-R.

DIRECT EXAMINATION BY MR. ROBINSON:

Q. Ms. Cooper, you work at the sheriff's office?

A. Yes, sir.

Q. And what do you do there?

A. I'm an evidence technician.

Q. And what does an evidence technician do?

A. We're responsible for taking in the evidence that is collected by case officers, storing it, and preserving it until it needs to either go to a laboratory or to court.

Q. Where are you stationed? Are you on north side of Broad River or on the south side?

A. Yes, sir. I'm on the north side of the Broad River bridge.

Q. Evidence has two places they keep it?

A. Yes. We have a temporary holding facility at Hilton Head, which is what we call a satellite office, and the main office here in Beaufort.

Q. Is that where you are, the office in Beaufort?

A. Yes, sir.

MR. ROBINSON: May I approach the witness?

THE COURT: Yes, sir.

(REQUEST FOR ANALYSIS MARKED AS STATE'S EXHIBIT NUMBER 45 FOR IDENTIFICATION.)

BY MR. ROBINSON:

Q. I'm going to show you what's been marked for identification purposes as State's Exhibit Number 45. Do you recognize that?

A. Yes, sir.

Q. And what is that?

A. This is a request that is made by the case officer/investigator to have items analyzed at SLED for forensic purposes. And this encompasses the actual request and the receipts that are generated by SLED once they take them.

Q. Is your signature on the final page?

A. Yes, sir.

Q. And what is the caption underneath your signature?

A. Delivering officer.

Q. What does that, what does that mean?

A. What that means is since the evidence is stored in our facility, somebody has to take it to Columbia, to SLED, for them to do what they need to do. So what I did, I transported it from here to there for them to do their

examination.

Q. Is it fair to say that you -- given that your signature is on that document, what did you transport?

A. Whatever is listed on this document as being taken up there at the time.

Q. What? What?

A. We have a .45 AMT handgun, a Davis Industries P32 handgun, a Rossi .38 handgun, a Burgo .22 revolver handgun, copper jacketed projectile, another copper jacket, a lead slug, and it looks like three .45 shell casings marked CBC.

Q. Did you transport those items to SLED?

A. Yes, I did.

Q. To your immediate left are some items. Can you examine those, State's Exhibits 38 through 43?

(A PAUSE.)

Q. Are those the items you transported to SLED?

A. Yes, they are.

Q. Are they in substantially the same condition that they were when you transported them?

A. They have been examined by and markings made by SLED upon their inspection. So, they had to have been opened.

Q. So, in other words, those items were opened while they were at SLED. Is that correct?

A. Correct.

MR. ROBINSON: I have nothing further of this witness.

705

THE COURT: Thank you. Cross-examination, gentlemen?

MR. DEIER: No, Your Honor.

THE COURT: Mr. Deysach?

MR. DEYSACH: No, Your Honor.

THE COURT: Thank you.

Thank you, ma'am. Ms. Cooper, you may step down.

(THE WITNESS EXITS THE STAND.)

MR. ROBINSON: Your Honor at this time I move ---

WITNESS: Thank you.

THE COURT: One moment.

MR. ROBINSON: Your Honor, at this time I move those items be entered into evidence.

THE COURT: Any objection, gentlemen?

MR. DEYSACH: I think we've got -- but the one item I made my objection about before, I don't think that's included in this evidence. But no, no objection.

THE COURT: Without objection. Thank you.

MR. ROBINSON: Exhibit 38, Exhibit 41, Exhibit 42, and Exhibit 40.

(COPPER JACKETED PROJECTILE MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 38.)

(.45 SHELL CASINGS MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 40.)

(.40 SHELL CASING MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 41.)

706

(.45 SHELL CASING MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 42.)

THE COURT: And 45 as well, is that in evidence, the report? Whether that's in evidence or not, that was the list.

MR. ROBINSON: No, that's not into evidence.

THE COURT: All right.

MR. ROBINSON: Your Honor, Exhibit 39, that is the list.

THE COURT: It will be marked for ID.

MR. ROBINSON: What is 43, just to get house in order? I'd move that that be admitted into evidence as well.

THE COURT: What is 43?

MR. ROBINSON: That is the jacket and core.

THE COURT: Any objection to that, gentlemen?

MR. DEYSACH: No, Your Honor.

THE COURT: Thank you.

(COPPER JACKET, SLUG MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 43.)

MR. ROBINSON: Thirty-nine was not entered, Your Honor.

THE COURT: Okay. Thank you.

MR. ROBINSON: At this time, Your Honor, the state rests.

THE COURT: Thank you.

707

Ladies and gentlemen, that means you have now heard all the evidence and testimony that you will hear from the state in the presentation of its case in chief. Necessarily at this juncture in every trial of this sort, we have to take a break to discuss matters of law and for us to make plans for the continuation the rest of the process of the trial. It's a good time for us to do that right now because it's 12:15, and we'll send you to lunch.

I appreciate the fact you all are willing to take a short lunch hour. We have some matters of law that we're going to need to take care of that are going to take anywhere from fifteen to twenty and perhaps thirty minutes. Normally I would cut short the lunch hour to forty-five minutes. But I'm going to short ten it to at least an hour and get you back at 1:15. We'll be in a position at that time to resume the trial of this case.

I remind you as always that you may not discuss this case among yourselves or with anybody else or among yourselves when you get back in the jury room at 1:15. Thank you, folks.

(THE JURY EXITS AT 12:15 P.M.)

THE COURT: All right, Mr. Deier, I'll be glad to now to hear motions as to Mr. Price.

MR. DEIER: Well, Your Honor, Mr. Price at this time would like to make a motion for directed verdict. I think

708

it's clear that every occurrence witness that the state has brought up has questionable credibility to say the least. They've made a number of misstatements through the course of this investigation.

There's evidence of that, especially in light of Sergeant Calhoun's testimony of their prior statements inconsistent with what they stated on the stand, when they were on the stand. That they made a number of statements inconsistent as the course of the examination went on.

Again, they have a car that belongs to Mr. Price that's there at the scene. And then they have I guess only three people now, despite the fact there was a fourth there, only three people there that came in and testified anything about who anybody was.

Again, there's conflicting testimony about who held the revolver, who held a .45. At the beginning of this hearing, I think it was about the impression of everybody that Mr. Simuel had a revolver and that Mr. Price had a .45. Since that time, it's flip-flopped. Speaking of the .45 and the revolver, we don't have either of those weapons.

Now, I assume that the state will say, well, of course, they took it away from them. But as the investigator today testified to, they didn't even do a search of the immediate area. There's woods across the way

709

just right there not too far away from the front door of the apartment where this all happened.

So, again, I don't think the jury can find that there is proof beyond a reasonable doubt that A, it was, in fact Demetrius Price, who was there; B, that he was an aggressor; C, that there was any weapon -- or any weapon supposedly involved in this was taken away.

That's all I have, Your Honor.

THE COURT: Thank you. Mr. Deysach?

MR. DEYSACH: Thank you very much, Your Honor. I would also make a motion for directed verdict. I would make it on the following grounds. All right, I will start with assault and battery with intent to kill.

Identity of the shooter of Deverol Cannick, that's the indictment that charges Mr. Simuel with ABWIK and it identified Deverol Cannick as the victim. At no time during testimony did anybody testify that they had seen -- nobody testified really that Lucius shot Deverol. Deverol was the only person who testified who was in a position to see it. And he certainly -- he was clear that he never did say I identify Lucius Simuel as the shooter. In fact, there was, through the prior inconsistent statement procedure that I went through, evidence that he had actually pointed out somebody else, the co-defendant, as the shooter and so for -- that is one grounds for motion

710

for directed verdict.

I don't think there is any evidence in the record that Mr. Simuel would be the shooter. I think that the solicitor did, you know, imply that some firearms evidence would show us this or show us that. But the bullet that hit -- any of the bullets that hit Mr. Cannick or Deverol Cannick were not identified as coming out of a gun that Mr. Simuel would have been holding. And so that scientific firearms evidence really didn't go anywhere to explain that Mr. Simuel was the shooter of the bullet that hit Deverol at all. So, that's an identity argument.

I would say that they haven't shown, by the same token, any malice aforethought, any intent to kill, intent to cause bodily harm, any malignant heart, or anything through the participation in a, in a felony that results in the violent incident.

Now, I know we talked about the drug transaction that was there and that's stuff that I elicited. But I think under our law, under the law of South Carolina, which I don't have the case I use *Gore v. Leak* as the -- and Mr. McEnich, in his book, is the one who steered me in that direction as the -- for the authority that if that's the theory they're going under for the felony, that they're attempting to be committed has to be *malum in se*, instead of *malum prohibitim*. That mean's bad because it's bad as

711

opposed to bad just because it's prohibited. And I would say that selling -- drug possession is certainly one of those that is *malum prohibitim* because that's what a controlled substances is, a substance that you're only allowed to possess or control with a permit. And so it's just that permitting process that makes it illegal. And so it would be -- I guess I'm saying would be legal for some people to purchase, to possess that drug, just not Mr. Simuel. So, that's -- I don't see any malice aforethought. So, that is to the assault and battery with intent to kill.

The gun charges are the same. There's not a gun recovered, and there's not any bullet evidence that shows any of those bullets would have come from a gun that Mr. Simuel would have held. The burglary, I think that to send the burglary to the jury where there's not any forced entry, anything that physically matches up with what the -- with what the victims had said, there's no way that they can come to a verdict of guilty or -- they wouldn't be in a position to deliver a verdict of guilty. I think the appropriate thing to do would be to grant a directed verdict on all of those charges.

THE COURT: All right. Thank you.

MR. DEIER: Your Honor, I hate to ask for a second bite at the apple, but I was taken by surprise that we were going to do this right now. I just have one other point.

712

THE COURT: Go ahead.

MR. DEIER: Yesterday the state's own witness, the doctor who did the surgery on Deon, after state demonstrated that the injury was consistent with Deon Cannick being bent over and the shooter being basically on plane with him, Deon Cannick testified himself that prior to being shot, he let go of the gun and raised his hands at the instruction supposedly of Demetrius Price. And as the doctor so cogently pointed out, it's not inconsistent if you're erect if the shooter is above you. There isn't any testimony as to that. I again, I would reiterate, I don't think there's any evidence here that the state could prove that Demetrius Price had anything to do with that shot.

THE COURT: Thank you. Gentlemen, the salient rule of procedure that we follow in dealing with motions for directed verdict is rule 19 of the South Carolina Rules of Criminal Procedure. The cases cited under that rule give us, as a trial court, guidance of the application of that rule that applies to a particular case.

We begin with the fact that the evidence has to be viewed in a light most favorable to the state, and that we are concerned at this level only with the existence of evidence, not the weight. And that speaks to credibility is for the jury to determine, not for the trial court at this juncture. My only concern is whether or not the

713

evidence that has been presented so far, if taken in the light most favorable to the state, would produce direct evidence or circumstantial evidence of the guilt of the accused.

I don't have to recite all the evidence in this regard. The testimony of the victims alone is sufficient. Through the process of the identification, some by direct evidence, some by circumstantial evidence, of the two individuals as being the two men on trial in this particular case, Mr. Price and Mr. Simuel -- the subsequent photo identification and lineups of those individuals, the circumstantial evidence of the licence plate, the vehicle belonging to Mr. Price leaving the scene immediately after the crime itself -- all of this is evidence of the involvement of these two people as the perpetrators of the crime.

Specifically in regard to Mr. Simuel and the motions raised in that regard by Mr. Deysach, there's no evidence that his client fired a shot. In any event, the hand of one being the hand of all is an appropriate theory of law which would be instructed in this regard. And the fact that there may be some ambivalence about who did the shooting -- because whether a revolver was were used or whether an automatic was used, who shot whom in this regard or who shot one victim as opposed to who shot another --

714

all of those issues involve the hand of one being the hand of all. And the jury is entitled, if they believe the evidence they've heard thus far, to find both individuals guilty of the crime charged regardless of who actually did the shooting.

Insofar as the absence of malice is concerned, the inference of malice can be drawn. I'm aware of *State vs. Melcher*. I have it right here in front of me, and I'm aware of the fact that it applies to ABWIK cases. And it might well be that the evidence at the end of the day entitles the defendants to a charge that does not include the inference of malice. And this -- gentlemen, based on what I've heard, I'm going to allow it to infer malice from what has been introduced thus far because there has been no issue raised sufficient to eliminate that evidence from consideration that I can make and in looking at the status of the evidence right now.

As to the burglary and being no evidence of forced entry, the evidence was overwhelming from the victims that they tried -- he tried to hold the door, that they forced him, forced the door open. One of the eyewitnesses testified in that regard. The fact that there was no forced entry -- that is, no evidence of the door being pressured open or the lock being jimmied or anything -- of course does not defeat the crime of burglary.

715

As far as the guns not having been recovered, that is not fatal to either of the charges related to the weapons in this particular case. The testimony of the witnesses in this case is that both of them possessed weapons. That's sufficient for our purposes to survive the directed verdict motion.

So, as to all of the counts on indictments as to each of the individuals, there is sufficient evidence, taking that evidence in the light most favorable to the state, of which this jury could conclude if they chose to believe it that the defendants were guilty of any or all of the charges contained in the indictments. For that reason, the motions for directed verdict are respectfully denied.

MR. DEYSACH: Thank you, Your Honor.

THE COURT: All right. Gentlemen, let's deal with a couple of other housekeeping issues. First of all, Mr. Deier, Mr. Deysach, gentlemen, do you all wish me to instruct your clients on their rights to testify and not to testify?

MR. DEYSACH: You know, we've talked about it. I actually do have some witnesses that I do plan to call, three or four. I believe we can certainly get through them all today. And I think then it's most likely after we heard what they said that we would make the final decision.

THE COURT: Okay.

716

MR. DEYSACH: But any time you would like to instruct them is fine with me.

THE COURT: Well, we have a good time to do it right now while the jury is away. And I realize that that decision doesn't have to come right on the heels of my instruction. As you said, it can come at any time during the course of the trial before you close your case.

Mr. Deier, do you wish me to instruct Mr. Price in that regard?

MR. DEIER: Yes, sir. Again, I'd like to preserve our option to put him on the stand until after.

THE COURT: I understand. Yes, this is not a waiver or a promise in that regard whether or not you're going to present evidence or not.

Mr. Simuel, Mr. Price, if you would stand right where you are raise your right hands please.

(WHEREUPON, THE COURT ADMINISTERS THE OATH TO DEFENDANTS SIMUEL AND PRICE.)

THE COURT: Mr. Price and Mr. Simuel, in this particular case, you may be called to testify as witnesses in your own behalf in this case. That's a decision you will make along with the consultation of your lawyers sometime before your case is closed. Before you make that decision, however, I must instruct you about what your rights are under the law regarding your right to testify or

717

not to testify.

Under the Fifth Amendment of our United States constitution and a similar counterpart of our South Carolina constitution, no defendant in a criminal case can be forced or compelled to testify against himself. No one can be compelled to give evidence against himself. In a criminal charge, that is a right that applies to you. And you own that right, and only you can give up that right. And what that means is that you cannot be required in this particular case to take the stand and testify in your own behalf.

You may have heard me tell the jury that when they were sworn in before we began the trial of this case on Monday. And if you choose to exercise that right and if you choose not to testify, the jury will be told they cannot consider the fact that you did not testify in the consideration of your guilt or your innocence. They will be instructed you have a constitutional right not to testify. And if you choose to exercise that right, that that cannot and must not be used against you in their deliberations. They will be told they cannot even discuss that fact in their deliberations.

On the other hand, if you give up your right not to testify and if you choose to testify in this case, then you will be subject to impeachment and cross-examination by the

718

other lawyers in this case just as every other witness has been thus far. That means that you will be asked questions not only by your own attorney, but you will be asked questions by Mr. Robinson on behalf of the state and by the defendant's counsel if they choose to cross-examine you, and you can be impeached on any issue that is relevant to these proceedings.

Mr. Price, do you understand the right? That is, your right to testify and not to testify in this case?

DEFENDANT PRICE: Yes, sir.

THE COURT: Do you have any questions that you want to ask me about those rights?

DEFENDANT PRICE: No, sir.

THE COURT: Mr. Simuel, do you understand your right to testify or not to testify in this case?

DEFENDANT SIMUEL: Yes, sir.

THE COURT: Do you have any questions you want to ask me about those rights?

DEFENDANT SIMUEL: No, sir.

THE COURT: You can have a seat.

All right. Gentlemen, I assume that you all will make this decision eventually, and that your decision will be based fully with the knowledge of what your rights are and what you may and may not do in this regard if you choose to testify in your own behalf or if you choose not to testify,

719

as you have every right to do under our law.

All right, understanding now that, Mr. Deysach, that you may choose to offer some witnesses in this case, we'll break now and come back at a quarter after the hour to begin the afternoon's work.

Of course, Mr. Deier, as you know, the presentation of evidence by any defendant denies both defendants of the right of last argument under our rules.

MR. DEIER: Yes, Your Honor.

THE COURT: All right. Anything further before we break for lunch?

Mr. Deysach?

MR. DEYSACH: I'm sorry. Not to interrupt, Your Honor, I did want to -- I do have a copy of Mr. Simuel's record that I did want to kind of nail down that if he did testify, what prior convictions would be able to be used for impeachment by the solicitor. What he would intend to use for impeachment were Mr. Simuel to testify so that we could know with our eyes open as we go in.

THE COURT: Do you all want to discuss that during the lunch hour, or do you want to put it on the record? Can you do that?

MR. DEYSACH: We can do that.

THE COURT: The way that will be broached, as I said earlier, as I indicated earlier when we were talking about

720

the other issues in regard to the possession of a handgun by prohibited person. That's the rule in -- under Rule 609, I think, is akin to the red chief, Indian chief, somebody.

MR. DEYSACH: *Old Chief.*

MR. REYNOLDS: *Old Chief.*

THE COURT: *Old Chief*, thank you. You all are going to educate me before I leave on that case. That is to say, it's a generically written rule that applies to crimes of moral turpitude, crimes that show a propensity for dishonesty, things of that nature, and any crime or any conviction within the last ten years. And ten years, as we know, is from the date of the crime or from the day of release from incarceration, whichever occurred last, that carried a possible penalty more than a year in jail. So, the jury would be entitled to know that any defendant was committed -- was convicted of a crime carrying a possible penalty of more than a year in jail within the last ten years or released within the last ten years. That's as far as it can go.

MR. DEYSACH: Yes, Your Honor. The only thing left to argue about after that would be whether or not that balancing test that appears at the end of the rule came into play.

THE COURT: Exactly. And of course that's the reason

721

I word it that way: to try to make the balancing test a little easier for me to deal with. And the jury would be instructed, of course, that's the limited purpose, as we know.

Mr. Deier, anything further from you before we break?

MR. DEIER: No, Your Honor.

THE COURT: All right. Let's be back at quarter after the hour. We'll start at that time.

MR. DEIER: Thank you, Your Honor.

THE COURT: Thank you.

(OFF THE RECORD.)

(JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 6.)

THE COURT: Folks, I've got another question from the jury and it is: Can the jury ask a question in any way? I will instruct them in that regard that they can't. And, you know, I'll tell them they can ask questions during deliberations if they have some questions about that process. For years I told them that routinely as a part of my final charge. And my law clerk -- I mean my court reporter for many years the whole time I was on the bench eventually discouraged me from telling they could ask questions because invariably when I did, they would. And if I didn't tell them that, they would still ask questions if they needed to ask. So, it worked out pretty well.

722

Ms. Harris, I also do not tell them they can have testimony played back if they didn't hear anything right the first time. If they choose to ask that, we'll tell them. I don't encourage that, in any event. So I just tell them that we depend on the lawyers who are knowledgeable about the case to ask the questions that need to be asked. And the reason is that some of the questions are not asked is because the rules perhaps don't allow them to ask or perhaps for strategic reasons. But I'll let them know that that's not a matter for their concern.

All right, Mr. Deysach, is the defense ready to proceed?

MR. DEYSACH: We are, Your Honor. We have two witnesses waiting, ready to go. I have four coming at 2:00. And so I want to say in all candor with the court, let you know that those birds are not yet in the hand.

THE COURT: Well, perhaps in about thirty-five minutes maybe they'll be in place by that time. All right.

MR. ROBINSON: Your Honor, I wanted to mention one thing briefly.

THE COURT: Yes, sir.

MR. ROBINSON: I discussed with defense counsel the question of whether or not the defendants could be impeached using their prior convictions.

THE COURT: Right.

723

MR. ROBINSON: That's something the court discussed with us before the break. As the court is well aware, there are 609 analyses about that sort of two pronged -- the first prong is relatively objective. That is, whether or not the offenses fall within the previous ten years.

THE COURT: Right.

MR. ROBINSON: Having discussed both of them and all prior convictions of both defendants with both defense counsel, we sort of agree that the timing question is not an issue.

THE COURT: Right.

MR. ROBINSON: The only remaining question is the balancing. And so it is that sort of, if I may characterize it, that more subjective question which still remains before the court.

THE COURT: Right, and if -- which -- I was going to say which charges or which convictions give rise to the balancing concern? But of course the jury is not going to know what the convictions were for. So, rather than taking any more time right now because I think it -- at least you've got two witnesses in place but neither of those is the defendant. Is that right, Mr. Deysach?

MR. DEYSACH: Neither of those is the defendant.

THE COURT: Okay, and so there may be some -- we might have a break to be able to flush that out more without

724

making the jury wait. But you see my analysis of probative versus prejudicial can impact, I think made it somewhat easier -- at least I adopted this over the years to make it somewhat easier -- that if a defendant with a record takes the stand, the question is not Mr. So and So, were you convicted of murder, rape and mayhem in 2005. The question is Mr. So and So, in 2005 were you convicted of a crime that carried a possible penalty of more than a year in jail in such and such a county. And the answer is yes or no.

And, Mr. So and So, were you in April of 2006 convicted of another crime in such a county that carries a possible penalty of more than a year in jail? The answer is yes or no. And to some extent that, it seems to me, to blunt some of the prejudicial impact because the only reason the jury can consider that is on the issue of credibility. So, they don't need to know and should not know what the crime was because understand it happened to be a crime of moral turpitude. It really doesn't have any bearing on anything other than credibility. So, anyway that's what we try to do. But I'll address your concerns independently when we have a break this afternoon. We'll talk about that more.

MR. DEIER: That's fine, Your Honor.

THE COURT: Bring us the jury please.

(THE JURY ENTERS AT 1:27 P.M.)

725

THE COURT: Ladies and gentlemen, good afternoon and thank you once again for your prompt return.

I've received your question asking whether or not the jury can ask questions in any way. Our Supreme Court has over the years, most recently in 1949 because the question doesn't come up all that often, indicated it discourages strongly allowing jurors to ask questions. The purpose behind that is not to keep you all in the dark or not to require you to be ill informed about the issues that you have to consider. It is acknowledgement of the fact that the lawyers in the case, who know more about it than any of the rest of us do, have to be depended upon to ask the questions they need to ask in order to get whatever evidence they need to get before you for you to make a decision.

In a case of this sort, of course, the defendants have no obligation at all. They have no burden of proof. They don't have to ask any questions. The state, on the other hand, has the burden of proving the guilt of the defendants beyond a reasonable doubt. And so at least initially the state must present evidence and ask sufficient questions for you to be able to determine the guilt of the defendants beyond a reasonable doubt, or else the state has not met its burden of proof. The defendants, as I have said, don't have to ask any questions, and they don't have to present

726

any evidence.

In this case, they've chosen to ask questions. They've chosen to present evidence. And so we have to depend, you and I have to depend on the lawyers in this particular case in their presentation of their respective sides to ask the questions which they deem are important to be asked in order to get across the points which they are trying to get across to you.

And there are a lot of reasons why questions might not be asked you want to have asked. You might have some questions and might say, well, why didn't you ask that? And it might be a legitimate question in your own mind. And I can't answer why. I can tell you that there are a lot of potential reasons, and some of the reasons might be that the question might be an improper question under our rules. It might be one that under the rules of evidence, and you've heard objections to various questions throughout the time, and our rules of evidence outline for us the sort of questions that can and cannot be asked. That can be a reason. It might be for strategic reasons they choose not to ask a question. And there are other reasons as well which might lead to the decision by an attorney involved in a trial of a case not to ask a particular question.

Whatever those reasons are, we're not privy to them, and so we have to simply rely upon the questions to be

727

asked that need to be asked in order to get the point across to you. And if a party that has a burden of proof doesn't ask sufficient questions to allow you to determine whether or not the parties met that burden of proof, then they haven't met it. And so, you know -- and as I say, in this particular case the other side is trying to get a point across. They don't have a burden of proof, but if they're trying to get a point across and if they don't get it across, they simply haven't gotten their point across.

That's all I can tell you about that, Mr. Foreman and ladies and gentlemen. I wish I could elucidate more. I asked one of the witnesses a question a few minutes ago before we broke for lunch. It was a procedural question because it had to do with a ruling that I was going to have to make as a matter of law on some evidence, and it had to do with the chain of custody question.

You recall the two witnesses who testified in that regard. I wasn't trying to find out anything about a factual dispute that was involved. I just wanted to be sure that I was going to be able to have the information before me in order to rule on the admissibility of evidence. Now, the lawyers knew. I did not, but they knew another witness was going to come along and answer the questions I needed to have answered in order to fill that gap. And sure enough, the next witness, Ms. Cooper, did

728

come in and fill the gap on the chain of custody that we needed to have filled in in order for me to make that ruling. But that was a ruling, really, that was designed to deal with a matter of law.

Your concern, of course, is questions of fact and so it's a more difficult, more difficult area, obviously, of inquiry in that regard. I will tell you this. That during the course of your deliberation, you should have questions that occur to you. You're entitled to ask those questions then. You can write them down and send them out to us, and we take them up with the lawyers and bring you out.

Now sometimes, candidly, the answer to that question is I don't know. And sometimes the answer might be I can't answer that question, and sometimes I can. But in any event, I tell you that at least during your deliberative process there are provisions for you to ask questions if you need to ask them. And we'll do our best to answer them if we can.

I wish I could tell you more, Mr. Foreman and ladies and gentlemen, but under the rules that's the best I can do, all right?

Now, the state, as you know, has rested its case before we went to lunch. And now the defendants have a right to offer evidence and testimony if they choose to do so. But as you know, they're under no obligation to do so.

Mr. Deysach?

MR. DEYSACH: At this time -- I should have done this before lunch and I apologize for wasting the jury's time -- but I need to renew all the objections I made pretrial and during the state's case. And now I'm ready to proceed with witnesses.

THE COURT: All right, and I'll renew all my rulings in that regard. Thank you.

MR. DEYSACH: Thank you, Your Honor. At this time, the defense calls Malik Campbell.

MALIK CAMPBELL, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your full name and spell your last name.

WITNESS: My name is Malik Campbell, M-A-L-I-K.

DIRECT EXAMINATION BY MR. DEYSACH:

Q. Good afternoon, Mr. Campbell. My name is Ian Deysach. I represent Lucius Simuel in this case. Are Deon and Deverol your brothers?

A. Yes.

Q. Did you live with them at the time July 28, 2008?

A. Yes.

Q. Where did you all live?

A. Plantation Point.

Q. And did you live in [redacted]?

A. Yes.
Q. You were at home on July 28, 2008?
A. Yes, sir.
Q. Did you hear Deon's cell phone ring?
A. Yes.
Q. Did he answer it?
A. No.
Q. How many times did it ring?
A. It rung a couple times.
Q. You never answered it while you were there?
A. No.
Q. Did you hear a knock at the door?
A. Uh-huh. Yes.
Q. I guess, and we're obviously here for the incident that occurred. And I don't want to do too much set up, but we're talking about -- are we talking about just before the shooting happened? That's what I'm asking you about.
A. Yes.
Q. Did you go to the door?
A. No.
Q. Who went to the door?
A. Deon.
Q. Did Deon go by himself?
A. Yes.
Q. Did you see who was at the door?

A. No.
Q. So, you didn't know if it was Martin Guzman at the door?
A. I knew it was Martin, but I didn't see him because I never left.
Q. Okay. How did you know it was Martin?
A. Because he said Martin called his phone.
Q. Okay. Did you see Deon answer Martin's call?
A. Yes.
Q. Okay. So, he did answer the call from Martin?
A. Yes, for only Martin.
Q. Okay. When -- how much time passed between Martin's phone call and the knock on the door?
A. I think Martin might have called in between the time when they were calling the phone.
Q. Okay.
A. And, you know, when he saw Martin, he answered but he didn't want to answer for them.
Q. I understand what you're saying. But what my question is, is if you remember the amount of time that passes between Deon answering Martin's phone call and the knock at the door. Was it a matter of minutes? Was it hours?
MR. ROBINSON: Judge, I object to the leading.
THE COURT: No, it's kind of multiple choice. He doesn't suggest the answers necessarily. I'll allow it.

BY MR. DEYSACH:

A. Can you repeat that please?

Q. I want to know the amount of time between Martin's phone call that Deon answered and the knock at the door that you hear. And if you don't know exactly, you can just estimate.

A. A couple of minutes.

Q. Give or take? Is that what you're saying, a couple of minutes?

A. A couple minutes.

Q. All right. Did you ever see anybody besides Martin and Jesse at the door? I'm asking if you observed anybody at the door who was not Martin and Jesse and not your brothers.

A. Well, I didn't see. I didn't see Martin and Jesse.

Q. Okay.

A. I just knew they was down there because of the phone call.

Q. Okay. Did you see anybody down there who wasn't your brothers?

A. After the -- after the gunshot, yeah.

Q. So, you don't -- okay. So, when you hear the gunshot, where are you?

A. When I heard the gunshot, I was on my way to the stairwell to see what was going on. And before I could

make it around the stairwell, that's when I heard the shot.
Q. Where were the dogs?
A. I think, I think Lyssa might have been in the room and Nina, she might have just been hanging around, walking around us, you know, whatever.
Q. What about the puppies?
A. The puppies, I can't quite remember if they were in the living room. They probably was back in the bedroom, though. I believe they was back in the bedroom, in my brother's room.
Q. Now, when -- did you -- you have to remind me. When the door -- when there was a knock at the door, who answered it?
A. Deon.
Q. By himself?
A. Yes.
Q. After he answered the door, did he ever come back up to the living area?
A. Yes.
Q. When he came back up, did he meet with Deverol?
A. Yes.
Q. Did Deverol go back to the door?
A. Yes.
Q. Did he go by himself or with Deon?
A. I want to say that he want down with Deon, but I'm not

sure. I know at one point they both was downstairs together.

Q. Just not sure if they went down at the same time?

A. Yeah.

Q. Did you see Nina go downstairs?

A. Yes.

Q. Did she go downstairs by herself?

A. Yes.

Q. Did she go downstairs before or after Deon? Or with Deon?

A. I can't really remember because I was sitting down in the living room. And when Nina went down, both of my brothers -- I couldn't see them because they were down the stairs and I was upstairs in the living room.

Q. So, you're not sure if Nina went down before or after Deon? It's a fair answer.

MR. ROBINSON: Judge, I object to that. That's a leading question.

THE COURT: Rephrase the question.

MR. DEYSACH: I apologize, Your Honor. I'm not trying to lead him anywhere, and I'll do better about it.

THE COURT: It wasn't a leading question. The comment on the answer was -- I'll sustain the objection to that. Go ahead.

BY MR. DEYSACH:

Q. When you saw the guys at the door, where were you?
A. I was laying on the -- well, what guys are you talking about?
Q. Well, what guys came to the door?
A. Well, you know, Martin and Nicky.
Q. Right.
A. They came because Deon answered the phone.
Q. Right.
A. But the guys that popped up, I saw them after the first shot.
Q. So when the first shot is fired, you -- you don't see the shot, right?
A. No.
Q. When it's fired, you're on your way to the stairway -- when the shot is fired, are you on your way to the stairway?
A. When the -- can you repeat the question?
Q. I guess where were you when the shot is fired?
A. I was on my way to the stairwell.
Q. And you lay on the ground before or after the shot is fired?
A. It was like a chain reaction. The minute I heard the shot, my first instinct was to hit the ground.
Q. When you saw the guys that popped up, how many -- how many guys did you see with a gun?

A. Well, I never saw the weapons because once I heard the shot, my first reaction, I hit the ground and I don't know if I saw them coming down or I saw them, you know, by peeking up.

Q. Okay.

A. But all I could really remember was that I didn't really -- you know, because I wasn't trying to look at them like that.

Q. Okay. So, really did you -- the only, you knew there was a weapon or the reasons that you knew there was a weapon were because of sounds, not because of seeing it?

A. The shot that was fired.

Q. Right, and, of course, the injury that caused to your brothers.

A. Yes.

Q. So, you are or are not able to say that -- who was holding the weapon?

A. No, because I was almost afraid to look up, you know. But I don't know if I saw them as I was hitting the ground or if I, you know, peeked up, but I remember seeing.

Q. All right. Was your -- was Sharita next to you when this happened?

A. Sharita, she was standing up doing something. You know, she was kind of, like, by the dining room table. I don't know exactly what she was doing because we was

playing video games. I really wasn't paying attention, but I knew she was there.

Q. Was she next to you when this happened?

A. No. She was -- she was like -- she was, like, kind of standing by the dining room table.

Q. Did you ever see her -- I mean, did you ever see her near the stairway during the incident?

A. During the incident, I believe she walked over and peeked over the stairway to see who my brothers was talking to. But other than that, I don't know.

Q. All right. Did you make arrangements to -- for the dogs when you had to leave them in the apartment?

A. Did we make arrangements?

Q. Did you?

A. Did I?

Q. Yeah. Did you call somebody to get the dog?

A. I think it might have been a mutual thing. I think we all, you know, kind of got together, figured out what we was going to do with the dogs.

Q. Okay. Did you call 9-1-1?

A. Yes.

Q. Did you have an opportunity to meet with the police at Plantation Point Apartments? Did the police come?

A. After I called them?

Q. Yeah.

A. They came but we winded up meeting them to the gate. That's when we, you know, ran into them.

Q. And did the police ask you questions?

A. Yes.

Q. Did you tell the police to -- that they might want to talk to Martin Guzman?

A. Did I tell the police?

Q. Yeah.

A. I believe I did.

Q. Okay.

A. Because I know Martin, he was -- it was too close to the timing where he was there. So, he had to see at least somebody driving off or something. So, yeah, it's a possibility.

Q. Okay. Did you -- let me ask you this. Is your nickname Griff?

A. Yes.

Q. Did you ask Martin to tell the police something that wasn't true about him being at the apartment?

A. No.

Q. So, you didn't ask him to say something to cover up the marijuana purchase that he was making?

A. No.

MR. ROBINSON: Objection, asked and answered.

THE COURT: I'll sustain the objection as to making a

marijuana purchase. That's not in evidence.

MR. DEYSACH: Okay.

BY MR. DEYSACH:

Q. Did you tell the police that you were playing video games when the knock came at the door?

A. Yes.

Q. Did you ask Martin to tell the police that he was playing video games with you?

A. No.

Q. Did you ask Martin to tell the police that the phone had rang a number of times?

A. Did I tell Martin that?

Q. Yeah, did you ask him to do that?

A. Did I ask Martin to do what?

Q. Tell the police that he was there when Deon's phone was ringing.

A. No.

MR. DEYSACH: Court's indulgence.

THE COURT: All right, sir.

BY MR. DEYSACH:

Q. Do you remember talking to an officer named Singleterry that night or that day?

A. I really don't remember none of the officers by name.

Q. But you remember talking to some officers?

A. Yes.

Q. Do you remember telling the officer that you saw two black males in the doorway?

MR. ROBINSON: I object to the leading. If he wants to ask the witness what did he tell the officers, that's fine.

THE COURT: I'll sustain that.

MR. ROBINSON: I object to leading.

THE COURT: I'll sustain that objection. Thank you.

BY MR. DEYSACH:

Q. What did you tell Singleterry, or do you remember what you told the first officer at the scene?

A. Well, actually, like I said earlier, I didn't see the first officer until we made it to the gate. And I really didn't talk to an officer until I got to a substation.

Q. Okay.

A. So, I didn't talk to any officers on the scene.

Q. Did you, did you tell any of the officers that you only saw one of the males with a gun?

MR. ROBINSON: Judge, same objection.

THE COURT: I'll sustain the objection.

BY MR. DEYSACH:

Q. How many guns did you tell the officers that you saw?

A. Like I said, I never told any of the officers I seen any guns because I never seen any guns.

Q. Okay.

MR. DEYSACH: That's all I have, Your Honor.

THE COURT: Thank you.

Mr. Deier?

MR. DEIER: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. DEIER:

Q. Good afternoon. My name is Chris Deier. I'm the attorney for Demetrius Price. I'm sorry, did you say who came to pick up the dogs?

A. No, I didn't.

Q. Who was that?

A. Who came to pick up the dogs? My brother, my oldest brother.

Q. What's his name?

A. Cory.

Q. Did he pick up anything else from the house other than the dogs?

A. Not to my knowledge.

Q. After you all left, started heading out, it was you, Devin, and Deon, correct?

A. You asking when we left the house?

Q. No, I'm saying who left? Who left the house?

A. After the shootings?

Q. Yeah.

A. Me, Devin, Deon, and Sharita.

Q. Sharita? Sharita didn't stay behind?

A. No.

Q. Do you remember talking to Investigator Calhoun at the hospital the day of the shooting?

A. Calhoun?

Q. Uh-huh. He's a large, bald detective.

A. Uh-huh.

Q. Do you remember that?

A. Uh-huh.

Q. Okay. When you were talking to him, you wanted to make sure that the folks who did this got arrested, didn't you?

A. Yes.

Q. You wanted to give them all the information that you had?

A. Yes.

Q. You wanted to be truthful, right?

A. Yes.

Q. Now, when you spoke to Sergeant Calhoun, you told him you saw your brothers fighting with some guys. Do you remember that?

MR. ROBINSON: Your Honor, I want to object just for the record. There are two investigators that are large and bald. If he could just lay a little proper foundation?

THE COURT: You think you could clear it up a little bit?

MR. DEIER: Sure. The large, bald, caucasian investigator.

THE COURT: Sitting back there.

MR. DEIER: There he is, the good looking one.

BY MR. DEIER:

Q. So, you recall talking to him?

A. Yes.

Q. And did you recall saying to him you saw your brothers fighting with the subjects?

A. No, I didn't. Maybe it got mixed up or misunderstood, but I never said that.

Q. Okay. You don't recall at that time identifying the two shooters?

A. I identified one.

Q. You did?

A. Uh-huh.

Q. Didn't you just testify a few minutes ago that you only saw their eyes?

A. Well, when they showed me the -- when they showed me the mugshots, they only showed me mugshots and only one of the suspects was in the mugshot that they showed me.

Q. Who was that?

A. That was Lucius.

Q. You don't recall telling Sergeant Calhoun, giving them a description of what these folks looked like at the time?

A. Yes.
Q. Okay. Did you tell them that there was a dark-skinned male in a white shirt with a black pistol, a lighter skinned male with a dark polo shirt who also had a gun?
A. I remember describing because I got a brief description of them because I only glanced at them. But I don't remember saying anything about what they were holding in their hands because I didn't see any pistols.
Q. Okay. Again, I understand you don't recall speaking with Sergeant Singleterry at the scene, but you did speak with an officer at the scene, didn't you?
MR. ROBINSON: Objection. Asked and answered.
THE COURT: He indicated earlier that he didn't talk with -- didn't see any officers until they were leaving the gate or something like that. You can ask him when he first talked to the officer if that hadn't already been cleared up.
BY MR. DEIER:
Q. Okay. At the substation you spoke to an Officer Calendine. You do recall speaking with someone at the substation, correct?
A. Yes, sir.
Q. Do you recall saying Deon went down after a knock and Deverol went down a few seconds later?
A. It's a possibility because that's the way I remember

it happening. Deon originally answered the door.
Q. And then Deverol went down?
A. Later.
Q. Did you ever mention anything about Deon coming back upstairs?
A. Did Deon ever come back upstairs?
Q. Uh-huh.
A. Yeah, he originally came back upstairs to get my brother Devin so he could talk to the guys that was at the door.
Q. And then what happened?
A. Then that's when Devin went down with them. He went downstairs with them.
Q. Okay.
MR. DEIER: I have nothing further.
THE COURT: Mr. Robinson, cross-examination.
MR. ROBINSON: Thank you, Your Honor.
CROSS-EXAMINATION BY MR. ROBINSON:
Q. Before the shooting, Malik, you were playing Halo on the Xbox, weren't you?
A. Yes.
Q. And you approached -- walked away from the video game to approach the stairs because you heard the commotion downstairs, didn't you?
A. Yes.

Q. And isn't it fair to say that just as you got to the stairs, you hit the floor because you heard the shot, right?

A. Yes.

Q. And so you were looking down the stairs as you were lying on the ground. Is that right?

A. I glanced. I don't know if it was as I was dropping but after, but I remember taking a quick glance.

Q. Do you see the person in court that you picked out of a lineup in a photograph?

A. Yes.

Q. Will you point him out to the jury? Describe what he's wearing.

A. A blue shirt with a blue tie.

Q. Is he wearing a coat?

A. No.

MR. ROBINSON: Let the record reflect the witness has identified the defendant Lucius Simuel. I have nothing further.

THE COURT: Thank you. Mr. Deysach?

REDIRECT EXAMINATION BY MR. DEYSACH:

Q. Have you ever met Lucius before? Has he ever been over to your house?

A. Not while I was there.

MR. DEYSACH: That's it, Your Honor.

THE COURT: Thank you. Mr. Deier, any follow up?

MR. DEIER: I have nothing further.

THE COURT: All right, Mr. Campbell, you can step down.

(THE WITNESS EXITS THE STAND.)

THE COURT: Mr. Deysach.

MR. DEYSACH: The defendant would call Martin Guzman.

MARTIN GUZMAN, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your full name, spell your last name.

WITNESS: My name is Martin Guzman, last name M -- I mean, G-U-Z-M-A-N.

DIRECT EXAMINATION BY MR. DEYSACH:

Q. Good afternoon, Mr. Guzman. My name is Ian Deysach. I represent Lucius Simuel. I'm going to ask you some questions about July 28th of 2008. Can you -- did you call Deon Cannick that day?

A. Yes, sir.

Q. What did you call him about?

A. About buying a bag of marijuana.

Q. And what time did you call him?

A. I'm not sure. I don't remember that day.

Q. How long after you called him did you go over -- did you go over to his house?

A. Yes, sir, I did.
Q. How long after you called him did you go over to his house?
A. A couple of minutes.
Q. Who were you with?
A. Jesse Reese.
Q. What happened when you went to Deon's house?
A. I knocked on the door and Devin came out through the window.
Q. Came out through the window? How do you mean?
A. Oh, he -- the balcony, and I said I was looking for Deon.
Q. And so you're saying Devin didn't come to the door when you knocked on the door?
A. Yeah, he came out.
Q. What floor?
A. The second floor.
Q. Did you talk to him?
A. Yeah, I asked him for Deon.
Q. And then what did he do?
A. Who?
Q. Devin.
A. Went back in.
Q. What happened next?
A. Deon come down.

Q. How long were you waiting for Deon?
A. For a minute.
Q. When you were waiting for Deon, did anybody come up to you?
A. No, not at that time.
Q. Did somebody come up to you at some point? Did you talk to anybody outside of the apartment?
A. No. It was just with Jesse.
Q. Did anybody ask you to say anything to Deon?
A. That's after Deon came down and then I went back in.
Q. Okay. So, after Deon -- after Devin goes back inside the upstairs window, what happened next?
A. Deon came down.
Q. What did you and Deon do?
A. We talked about what I needed.
Q. Okay. Did you get it?
A. After he went back in.
Q. At that point, what happened next?
A. That's when the two men approached.
Q. And what did they say?
A. They asked me if Deon was in the house.
Q. And what did you tell them?
A. I said yeah.
Q. And what did they say?
A. They said that -- I quite didn't hear the name. I

know it was with an L-U, like Luke or something. Something like Luke's looking for him.

Q. And then what did those guys do?

A. They just kind of standing there.

Q. Okay. Did Deon come back to the door?

A. Yes, and that's when I received what I needed.

Q. Then what did you do?

A. Took off with Jesse.

Q. When you left, where was Deon?

A. Deon had went back in and Devin had come out.

Q. So, by the time you and Jesse leave, who is standing outside?

A. Devin.

Q. With who?

A. With the two men.

Q. Did you, did you see anybody fighting?

A. No, sir.

Q. Did you see any weapons?

A. No, sir.

Q. Did you, did you hear any shots?

A. No, sir.

Q. And could you see where those shots were coming from?

A. No, but I could tell that they were coming from that apartment building.

Q. Let me ask you this. Have you ever met, had you ever

met Lucius Simuel before this?

A. At the time whenever they came up, I can't see. I need prescription glasses. I have with me -- I wasn't wearing them that day, and I wear them. I couldn't tell who it was.

Q. Okay.

A. So, I really didn't know who it was that was standing there that day.

Q. If you saw him now, would you know whether or not you knew Lucius Simuel before that day?

A. Saw him now?

Q. Yeah.

A. I'm confused.

Q. Okay. My question is whether or not you knew Lucius Simuel before July 28th, '08, and your answer is, I think, I don't know because I can't really see.

MR. ROBINSON: Judge, I object to the narrating, leading question.

THE COURT: Actually summarizing his answer. I don't think he's necessarily suggesting the answer.

BY MR. DEYSACH:

Q. I guess my question is if you put your glasses on and looked at Mr. Simuel, would you know whether or not you knew him before July 28th?

A. I'm guessing so.

Q. Well, will you put your glasses on and look at him?
A. Okay.
Q. I'm asking you to look at the person at the defendant's house with the darker blue shirt and the blue tie. Can you see him?
A. Yes, sir.
Q. Did you know him before July 28, 2008?
A. I actually met him once. I didn't know it was him, though, that day. I met him once because Deon was going out with, I think, his niece.
Q. Okay. Can you describe in a little bit more detail the circumstance in which you met Mr. Simuel before July 28th?
A. I was with Deon in the neighborhood.
Q. What neighborhood?
A. Simmons Cay Apartments.
Q. You live in Simmons Cay Apartments?
A. Not no more, sir.
Q. Did you at the time?
A. Yes, sir.
Q. Do you know -- I want you to -- I'm going to ask you to compare the date July 28th of the shooting with the other time you had met Mr. Simuel and ask you how much time had passed between the first time you met him and the July 28th date.

MR. ROBINSON: Judge, I object to this question. This witness has just testified that he was not wearing his glasses on the day of this incident, was not able to see people who were at the door. So, if this is laying a foundation for in-court identification, there's improper predicate, insufficient basis for it.

THE COURT: Can you respond to that, please?

MR. DEYSACH: Well, that's not my -- I mean, the point of my question was really just the question itself. I'm not really laying a foundation. I just want to know -- he testified that he was with Deon and Lucius at the same time. And I want to know how close in time it was to the incident. That's the point in question.

THE COURT: I'll allow you to ask it.

BY MR. DEYSACH:

Q. I'll ask it again. The time you met Lucius Simuel or the time you met with Deon and Lucius Simuel in Simmons Cay Apartments, how much time was it between that and the day of the shooting?

A. I'm not really sure, sir.

Q. Can you give us a guess?

A. I think maybe, like, a month. I'm not really sure.

Q. Did the police call you about this incident?

A. No. It was actually Malik who called me.

Q. What's Malik's nickname?

A. Reese.
Q. Did Malik ask you to lie about what you experienced that day?
A. No, sir.
Q. Do you remember the names of the officers that came to your house to talk to you?
A. No, sir. Just one of them.
Q. Pardon?
A. Just one of them.
Q. One of their names?
A. Yes, just one of them.
Q. Which name do you remember?
A. D. Holmes.
Q. First initial D, last name Holmes?
A. Yes, sir.
Q. What did you tell Investigator Holmes when he came to your house to talk to you? What did you tell him about the incident?
A. I told him what happened. The first time I lied on my own about the drugs. I didn't want to put that in there. And the second time when they came, I knew that this was not anything to play with. I had to be serious and I had to tell the truth.
Q. When you lied to Holmes the first time, what did you say?

A. I said that I was playing video games.
Q. Where did you say you were playing those games?
A. At Deon's house.
Q. Did you say anything about whether or not the phone was -- whether or not Deon's phone was ringing?
A. No, I didn't.
Q. To Mr. Holmes on that day, you never said anything about that?
A. No, I didn't.
Q. When the police came back to you for another interview, do you remember what you told them?
A. Yeah. I told them the truth that time about what I was over there doing.
Q. Did you write a statement?
A. Yes, sir, I did.
Q. Do you have a copy of that statement?
A. Yes, sir, I do.
Q. Can you tell the jury what you wrote?
A. Do you want me to read it all?
Q. Sure.
A. The morning of the shootings, me and Nicky went over to Deon's house to get a $5.00 bag.
Q. Please speak up.
A. A $5.00 bag. We knocked at the door. Deon

came out. At that time, two men came walking down the path, and I let Deon know that two men were coming. Then I shook his hand and left. When I looked back, Deon had gone in and Reese ---

Q. Who's Reese? Sorry, to interrupt. Who's Reese?

A. Devin.

Q. Okay. Continue.

A. Was out there with two men. Walked off down the street. That's when I heard the shots. I told them maybe we should go back. Then I saw the two men running into a tan, khaki car and rode off. Then Nicky came to the neighborhood and I got a call from Griff. He asked me if I had seen anything. I said yeah. So, he let me know what was going on. Then he asked if I would talk to the detectives, so I waited for them. Then we talked about it. Then I came back home. Soon after, I received a copy of this statement.

MR. DEYSACH: That's all I have, Your Honor.

THE COURT: Thank you.

Mr. Deier?

CROSS-EXAMINATION BY MR. DEIER:

Q. Good afternoon, Mr. Guzman. My name is Christopher Deier. I represent Demetrius Price. You didn't live in Plantation Point, did you?

A. No, sir.

Q. But you were familiar with that apartment complex?

A. Yes, sir.

Q. The 600 building, that's not just, like, right inside the gate, is it?

A. No. You have to go down a little curve, and that's where it's at, right there.

Q. Okay, and you spoke to the investigators at some point in this case. You said that after you left, you went somewhere. Where did you go?

A. To the neighborhood.

Q. No. But -- so, after you left Deon's house, you started going back home?

A. Yeah.

Q. Okay. So, how far had you gone when you heard the shots?

A. I was right at that curve.

Q. Do you have any way of estimating about how far away it was? I mean, are we talking about a football field?

A. Not a football field.

Q. Maybe half that?

A. I wouldn't be able to tell.

Q. Okay.
A. It's -- the building here and the road just curves. Let's say the building is here. This is where I was.
Q. Now, when you ---
A. It wasn't that far.
Q. When you come out of Deon's apartment, you could take a right, right, to go back out of there?
A. No, that's ---
Q. You come downstairs from Deon's apartment, you took a right, right?
A. I was never in the house.
Q. Well, I know. So, you're walking out that way and you got a bunch of trees over here, a building, right?
A. Yes.
Q. So, you went all the way down that building and saw the street?
A. Uh-huh.
Q. And started making your way around that curve, right?
A. Yes, sir.
Q. Okay. Now, after you met with Deon, you got what you were looking for -- again, it was just your intention, along with Jesse, to get out of there?
A. Yes. We just wanted to go back and smoke.
Q. Okay. Now, real quickly, going back to your meeting with the detectives -- let's see, you met with Sergeant

Holmes and Sergeant Calhoun at the same time. Is that right?

A. Yeah.

Q. Did you state to him that while you were at Deon's apartment, you kept getting phone calls from a cellular phone and you did not answer them?

A. I quite don't remember.

Q. You don't remember saying that?

A. I don't remember the whole interview thing.

Q. No, this is just the day after, though, right?

A. It was the first interview -- that was that same day and then the one, the second interview was the second day.

Q. So, yeah, this was the second investigation with Investigator Holmes and Investigator Calhoun. So, this had just happened, right?

A. Yeah.

Q. And there isn't any reason why it wasn't fresh in your mind. Is that correct?

A. At that time, I used to smoke a lot. I don't smoke no more.

Q. So, you might have been high?

A. Yeah.

Q. The last question is, and I just ask you this to make sure I'm clear. You're standing there after you called Deon on the phone earlier, right?

A. Yes, sir.
Q. And he comes down and instead of telling him on the phone what you wanted, you had to tell him in person what you wanted, right?
A. No. I told him on the phone.
Q. You told him on the phone?
A. Yeah.
Q. So when he came down, he should have known what you were looking for?
A. Yeah, but he didn't know what I was trying to get because I was with Jesse.
Q. All right.
A. He didn't know what we were trying to get. I mean, we got it.
Q. So, he goes back upstairs and you're sitting up there waiting for him to get whatever it is he's getting. And you have two guys walk up, right?
A. Yes.
Q. And they said is Deon home, right?
A. Yes.
Q. And you said yes.
A. Right.
Q. And so they said tell him Luke or somebody is looking for him, right?
A. Yeah, somebody looking for him.

Q. They just stood there basically with you, waited for him to come down?

A. They were just standing there. Me and Jesse were standing over there, standing by his house.

MR. DEIER: I have nothing further, Your Honor.

THE COURT: Thank you. Mr. Robinson, cross-examination?

CROSS-EXAMINATION BY MR. ROBINSON:

Q. Martin, isn't it true that before you went to Deon's house, you were already smoking marijuana, weren't you?

A. Yes, sir.

Q. So, it isn't that you -- what's your answer?

A. Yes.

Q. So, it isn't that you might have been high before you went there. You were high when you went over there, weren't you?

A. Yes, sir.

Q. So, in addition to being high when you went to Deon's house you weren't wearing your glasses, were you?

A. No.

Q. So, you were not sober and couldn't see. Isn't that right?

A. That's right.

Q. You also testified on direct that your second interview with the police was the second day after the

shooting. Isn't that right?
A. Yes, sir.
Q. And the shooting was on July 28th, wasn't it?
A. Yes, sir.
Q. Okay.
MR. ROBINSON: May I approach the witness?
THE COURT: Yes, sir.
BY MR. ROBINSON:
Q. Do you recognize this?
A. Yes.
Q. What is that?
A. My statement.
Q. Is there a date at the top of it?
A. Yes, sir.
Q. What's the date?
A. '04.
Q. What is the month and day?
A. Oh, the month, 08/04/08.
Q. So, the statement was actually taken on August 4, 2008, wasn't it? The second interview was on August -- sorry, your second interview with the police was August 4, 2008, wasn't it?
A. Yes, sir.
Q. So, on direct when you testified that your second interview was on the day after the shooting, you were

mistaken then, weren't you?

A. Yes, because I don't quite remember those times. I don't quite -- I remember they came back. I wasn't thinking, you know, looking at my -- a, a calendar looking what day it was. I just knew they came back. They called me and they came back.

MR. ROBINSON: Beg the court's indulgence.

THE COURT: Okay.

Q. You testified on direct -- you read your statement from August 4th into the record just now.

A. Yes, sir.

Q. And in that statement you testified: I saw the two men running into a tan-khaki colored car. Isn't that what you read?

A. Yes, sir.

Q. And isn't that what you saw?

A. Yes, sir.

MR. ROBINSON: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

BY MR. ROBINSON:

Q. I'm going to show you what's previously been admitted into evidence as State's Exhibit 15 and 17. Do you recognize those?

A. Yes, sir.

Q. Isn't that the car you saw leaving the scene as you

were leaving Deon's apartment?
A. Yes, sir. Now, I don't know if the camera on this didn't get the color of it, I mean the car. That's the one, but I don't know if it's the camera they got out there, but this car is a khaki-tan color.
Q. But the color is just a little off. Is that right?
A. Yes, sir.
Q. The color is just a little off in this photograph, right?
A. Yes, sir. It doesn't really look like it's a good camera.
Q. And the two men ran and got into this car, didn't they?
A. Yes, sir.
Q. Is that ---
A. Yes, sir.
MR. ROBINSON: I have nothing further of this witness, Your Honor.
THE COURT: Thank you.
Mr. Deysach.
REDIRECT EXAMINATION BY MR. DEYSACH:
Q. Briefly, when the guys running from the car, did you see any weapons?
A. I think Jesse said that they had ---
Q. Just what you saw.

A. I can't see.

THE COURT: Mr. Deier?

RECROSS-EXAMINATION BY MR. DEIER:

Q. From the time that you heard the shots and you saw them running, how much time went by?

A. None. Maybe, like, a minute. I don't know. Less than that, probably.

MR. DEIER: Nothing further.

THE COURT: Mr. Robinson, any follow up?

MR. ROBINSON: Nothing from this witness, Your Honor.

THE COURT: You can step down. Thank you.

(THE WITNESS EXITS THE STAND.)

Mr. Deysach?

MR. DEYSACH: At this time I call Tiah Frazier, please.

TIAH FRAZIER, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your full name for us. Spell your last name.

WITNESS: Tiah Frazier, F-R-A-Z-I-E-R.

DIRECT EXAMINATION BY MR. DEYSACH:

Q. Good afternoon. What's the relationship between you and Lucius -- my name is Ian Deysach. I represent Lucius Simuel. What's the relationship between you and Lucius Simuel?

A. He's my uncle.
Q. Do you remember back to July 28th of 2008? Do you remember back that far?
A. Oh, yes, sir.
Q. Was Lucius living with you at the time?
A. Yes, sir.
Q. Did you get any phone calls that day?
A. Yes, sir.
Q. Who did you get a phone call from?
A. My uncle.
THE COURT: Would you help bend that microphone down a little bit? Thank you.
Ms. Frazier if you'll answer the question. The question was if you received a call and who was it from. If you'll answer that, please?
BY MR. DEYSACH:
A. Oh, I received more than one call.
Q. And the first call you received, who was that from?
A. Deon Cannick.
Q. Who is Deon to you?
A. He was an ex-boyfriend.
Q. Was he your ex-boyfriend at the time?
A. Yes, sir.
Q. How long had you all been broken up?
A. Like, two days or one.

Q. And how long were you guys together before that?
A. I don't know.
Q. How long had you known Deon?
A. Well, I knew him from school, from school year. So, it was -- this happened, like, over summer. So, I know him since the school year. So, I don't know exactly.
Q. Did Deon ask to talk to Lucius?
A. Yes, but he wasn't there. He stayed somewhere for the weekend.
THE COURT: You're going to have to speak up. Your voice is really low, and the court reporter and the jury is having some trouble hearing you.
WITNESS: Oh, I'm sorry.
BY MR. DEYSACH:
Q. Okay, did Deon tell you why he wanted to talk to Lucius?
A. No. He just asked for him.
Q. What did you tell Deon?
A. That he wasn't there. I could give him a contact number.
Q. Did you give him a contact number?
A. Yeah, but I think it was another house number or something like that or a cell phone.
Q. Do you remember what that number was?

A. No, sir.
Q. Do you remember talking to the police about this?
A. That evening?
Q. That day or near that day?
A. Yeah, I talked to them.
Q. Do you remember what you told them?
A. No, sir.
Q. Did you, did you end up writing a statement?
A. Yes, sir.
Q. Do you have a copy of that statement?
A. Yes, sir. It's at home.
Q. It's at home. Do you remember what you wrote in your statement?
A. I wrote two statements, two different statements.
Q. On separate days or on the same day?
A. I think it was separate occasions.
Q. I'm going to give you a copy of your written statement and see if it refreshes your memory.
A. Okay.
Q. Is that a copy of your statement?
A. Yes, sir.
Q. Did you write more, or is that the extent of what you wrote for the police?
A. That's all I wrote for the police.
Q. What did you write in that statement?

A. Which one? I wrote two.

Q. Well, it's the one that's one of two.

MR. ROBINSON: Your Honor, I object. A sidebar real quick?

(OFF-THE-RECORD BENCH CONFERENCE.)

(A PAUSE.)

THE COURT: Let me ask security and the bailiffs. Concerned about somebody might have a laptop that has a camera-equipped computer in the courtroom. They don't allow any more computers in here, please.

Does that address your concerns, please, ma'am? Thank you.

(JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 7.)

THE COURT: Cameras are allowed in the courtroom only under specific guidelines set up by our court. Among those guidelines, cameras may not be used to depict the jurors in any fashion or refer to the jurors. I can appreciate your concern in that regard. That's being looked into right now. Thank you.

Mr. Deysach you can continue.

MR. DEYSACH: All right.

BY MR. DEYSACH:

Q. Ms. Frazier, does your statement say on the date of the shooting Deon called you and asked for your uncle, and:

I told him my uncle wasn't with me.
A. Yes, sir.
Q. Does it say -- and this is what you wrote, correct?
A. Uh-huh.
Q. Does it say that Deon -- that he said he wanted to buy some pills?
A. Yes.
Q. Did you tell Deon that you could get the number?
A. Yes.
Q. Did you write the number in there?
A. Um. You want it.
THE COURT: What's your answer again, Ms. Frazier?
A. I asked did he want the number.
Q. Okay, did you give it to him?
A. Yes.
Q. Are we talking about the police?
A. The police? I gave the police number, yes.
Q. You wrote it in that statement, right?
A. Yes.
Q. And the police left with a copy of that statement?
A. Yes.
Q. Did you write -- and I'm, you know -- did you write anywhere:

Weeks before the shooting, my uncle took me and my brother to Deon's so we could hang

out because my brother was really cool with his little brother, Marcus, and me and Deon were going out.

A. Uh-huh.

THE COURT: If you'd say yes or no please, ma'am.

A. Oh, yes.

Q. Did you write:

So, my brother and Marcus turned on the Xbox, and me and Deon sat on the chair and watched.

MR. ROBINSON: I want to make it clear defense counsel is going back and forth between several statements. If he could just make clear which one he's questioning her about. There are two statements.

BY MR. DEYSACH:

Q. What you have in front of you is two pieces of paper, correct?

A. Uh-huh.

Q. And they are -- they are both -- they both have dates on them, correct?

A. Yes.

Q. And what are the dates on them?

A. Four, five -- August 4, 2008. Both of them have August 4, 2008.

Q. Okay. Now, the second piece of paper begins with:

Weeks before the shooting, et cetera, correct?

A. Uh-huh.

Q. And so, I mean, to catch back up where we were on that -- and before that, you were reading from the first piece of paper?

A. Yes.

Q. Did you write that Devin and your uncle: were in the living room with us watching my brother and Marcus playing the game while smoking?

A. Yes.

Q. Did you write that: We stayed for about thirty minutes and then went home?

A. Yes.

Q. And what you wrote in that statement -- is that the truth?

A. Yes, sir.

Q. Did you hear from Mr. Simuel later on the 28th of July, 2008?

A. What day?

Q. The day of the shooting.

A. Oh, yes.

Q. The question, I guess, did he call you?

A. Yes.

MR. DEYSACH: That's all I have right now.

THE COURT: Mr. Deier.

MR. DEIER: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. DEIER:

Q. My name is Chris Deier. I represent Demetrius Price. When you were talking to the police, did you tell them that you felt that Deon was trying to pimp you?

A. No.

Q. You never said that?

A. I never said that.

Q. Okay, and when you got that call the afternoon of the shooting, didn't Mr. Simuel say to you that Deon had tried to rob him?

A. Yes.

MR. DEIER: I have no further questions.

THE COURT: Thank you.

Mr. Robinson, cross-examination?

MR. ROBINSON: Briefly, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION BY MR. ROBINSON:

Q. Tiah, you weren't present when this shooting happened, were you?

A. No, sir.

Q. So, the only thing you know about this shooting is what your uncle told you. Isn't that right?

A. Yes, sir.

Q. And your uncle was living with you when this occurred.

Isn't that right?

A. Yes, sir.

Q. And you love your uncle, don't you?

A. Yes.

Q. And your -- but your uncle did call to tell you Deon had gotten shot, didn't he?

A. Yes, sir.

MR. ROBINSON: I have nothing further.

THE COURT: Thank you.

Mr. Deysach?

MR. DEYSACH: Nothing further of this witness.

THE COURT: Mr. Deier?

MR. DEIER: Nothing, Your Honor.

THE COURT: Ms. Frazier, you can step down.

(THE WITNESS EXITS THE STAND.)

THE COURT: In response to the inquiry about the Apple computer, security has checked. There's no camera in it.

Mr. Deysach?

MR. DEYSACH: Chris Battle.

THE COURT: Mr. Battle, come forward, please, be sworn.

CHRIS BATTLE, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

MR. ROBINSON: Your Honor, before this testimony begins, could we approach?

THE COURT: Yes, sir.

(OFF-THE-RECORD BENCH CONFERENCE.)

THE COURT: Folks, I may have to hedge on my offer to let you come back and ask me about what we're whispering about. There's no way in the world I can remember all this.

DIRECT EXAMINATION BY MR. DEYSACH:

Q. Good afternoon, Mr. Battle. My name is Ian Deysach. I represent Lucius Simuel in this case. Who is Lucius Simuel to you?

A. That's my uncle.

Q. Who is Tiah Frazier to you?

A. My sister.

Q. How do you know Deon Cannick?

A. They were friends and went to school.

Q. Okay, you went to school with Deon. Any other of his brothers?

A. His little brother, Marc.

Q. Do you know his other brothers? Do you know Deverol and Malik?

A. I know Malik, but I don't know Deverol.

Q. How long have you known them?

A. About seven months.

Q. From now or from ---

A. Well ---

Q. We're here obviously about July 28th. Seven months ago from July 28, '08 or seven months ago from now?

A. Well, it was about when we first met, about two years ago.

Q. Two years ago from now?

A. Yes, sir.

Q. All right. Do you remember July 28, 2008? Do you remember anything about that day?

A. Yes, sir.

Q. What do you remember?

A. Well, he called my sister and he asked about ---

Q. Who is he?

A. Deon called my sister and asked if Lucius was home. And she said he asked for the number. She gave it to him.

Q. Did you talk to Deon?

A. I didn't talk him on the cell phone.

Q. Did you leave a message?

A. No.

Q. How many times did you call Deon?

A. I'd say about three or four. I don't know. Somewhere around there.

Q. Did, did Lucius ever call from your phone?

A. Not that I remember.

Q. Did you have occasion to talk to the police about what happened on the 28th?

A. Yes, sir.
Q. Did you -- do you remember what day you talked to him?
A. No, sir.
Q. Do you remember what officer you talked to?
A. No, sir.
Q. Do you know if it was Officer Calhoun?
A. Calhoun, that's who it was.
Q. Did he ask you to write a statement?
A. I think so.
Q. Did you write a statement?
A. I'm pretty sure.
Q. I'm going to hand you a piece of paper and ask you if you recognize it.
A. Yes, sir.
Q. Is that your statement?
A. Yes, sir.
Q. Did you date your statement?
A. Yes, sir.
Q. What is the date?
A. 8/5/08.
Q. So August 5, 2008?
A. Yes, sir.
Q. All right. Did you write in your statement that the day of the shooting Deon called your house and asked you and your sister if your uncle was home?

A. Yes, sir.
Q. Did you write that: We said no?
A. Yes, sir.
Q. Did you write: Then he asked for his number because he wanted some pills?
A. Yes, sir.
Q. Did you write: We said we know nothing about pills but here is my uncle's number?
A. Yes, sir.
Q. Did you write then you: called my uncle and told him Deon asked about some pills?
A. Yes, sir.
Q. Did you write: Hours blew past without us hearing from my uncle?
A. Yes, sir.
Q. Did you write: Finally he called and told us the deal went bad and Deon and his brother got shot?
A. Yes, sir.
Q. Did you write: Minutes after that, the police came to our house questioning us about Deon and the shooting?
A. Yes, sir.
Q. Is that -- all that you wrote true?
A. Yes, sir.
Q. And did you sign the statement at the bottom?
A. Yes, sir.

MR. DEYSACH: That's all I have, Your Honor.

THE COURT: Mr. Deier?

MR. DEIER: I have no questions of this witness, Your Honor.

THE COURT: Thank you.

Mr. Robinson?

CROSS-EXAMINATION BY MR. ROBINSON:

Q. You weren't at Deon and Devin's house when they got shot, were you?

A. No, sir.

Q. So, the only thing you know about it is what your uncle told you. Is that right?

A. Yes, sir.

Q. And the only thing that you learned about it from your uncle was that Deon and his brother got shot. Isn't that right?

A. Yes, sir.

Q. And you like your uncle, don't you?

A. Yes, sir.

MR. ROBINSON: Nothing further.

THE COURT: Mr. Deysach?

MR. DEYSACH: Nothing.

THE COURT: Thank you. You can step down Mr. Battle. Thank you.

(THE WITNESS EXITS THE STAND.)

780

THE COURT: Ladies and gentlemen, we're going to take the afternoon recess at this point. We started a little early, and we've been at it for a little bit more than an hour and a half. We're going to take an afternoon recess. We'll start back at five after the hour, and I'll check with the lawyers in the meantime and see what the balance of their afternoon is going to be.

Remember, of course, not to discuss this case among yourselves in the jury room. Thank you.

(THE JURY EXITS AT 2:50 P.M.)

THE COURT: Mr. Deysach, how many more witnesses do you anticipate calling?

MR. DEYSACH: I have -- I think I just was going to recall Officer Calhoun for a small point about something Malik had said.

THE COURT: Okay.

All right, Mr. Geier, have you all got any idea about how long you might need, if any time, in your case?

MR. GEIER: Your Honor, I'd probably need to take a few minutes and talk to my client.

THE COURT: Sure. That's all right. That's okay.

MR. GEIER: How long it would be, I can't tell you just yet, but it won't be too long.

THE COURT: All right, thank you. All right, I'm just trying to figure out our work schedule today to see if we

781

can't at least finish all the testimony this afternoon, and that appears to be doable, based on what you all have told me.

All right, folks, we'll break, take about fifteen minutes. Thank you.

(OFF THE RECORD.)

THE COURT: Okay, both sides ready for the jury?

MR. ROBINSON: Yes, Your Honor.

THE COURT: Good.

MR. DEYSACH: Yes, Your Honor.

MR. GEIER: Your Honor, before Mr. Price makes the decision on whether or not he's going to testify, I'd like to be able to meet with him and his family.

THE COURT: Okay.

MR. GEIER: Can we go just right in there with that deputy outside?

THE COURT: After Mr. Deysach rests his case, we'll give you a break to do that.

MR. GEIER: All right. Thank you, Your Honor.

THE COURT: Now, before you go to do it, I believe security is going to have some say in that.

MR. GEIER: Thank you, sir.

(THE JURY ENTERS AT 3:08 P.M.)

THE COURT: Mr. Deysach, you can call your next witness.

MR. DEYSACH: Investigator Calhoun.

THE COURT: Investigator Calhoun, if you'll resume that stand, please, sir. You're still under oath.

WITNESS: Yes, sir.

TODD CALHOUN, HAVING PREVIOUSLY BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION BY MR. DEYSACH:

Q. Good afternoon, Investigator Calhoun.

A. Good afternoon.

Q. And I'll be brief. As part of your investigation, did you have the opportunity to talk to Deverol Cannick on the 30th of July, 2008 at Savannah Memorial Hospital?

A. Yes, sir.

Q. Did you memorialize that conversation in your report?

A. I believe so, sir.

Q. Do you have a copy of your report up there?

A. I do not, sir.

Q. Okay. Here is one.

A. Thank you.

Q. Can you find the spot in the report where that conversation is memorialized?

A. This is the interview with Deverol Cannick on July 30, 2008.

Q. Did Deverol tell you that he opened the door for the two people?

A. Let me find that here. As I stated in the report, Deverol eventually opened the door.

Q. Okay. Did Deverol pick Demetrius Price out of a photo lineup as the person who shot him?

A. He did indicate that he did identify Mr. Simuel and Mr. Price.

Q. Who did he identify as the person who shot both he and his brother?

A. He had indicated -- let me refer to my report to be specific. He referred to -- actually, would it be beneficial if I read the actual paragraph?

Q. The -- if you want to. I'm asking about the sentence that he begins with: Upon.

A. Upon showing Deverol a photo lineup, Deverol identified the registered owner, Demetrius Price, as the person with the uncle who possessed the revolver, entered his apartment unlawfully, and shot both Deon and Deverol.

Q. I'm sorry, the last word you said was?

A. Deverol.

Q. Okay. Did you, did you talk to Martin Guzman?

A. I did.

Q. Where did you talk to him?

A. I believe it was at his place of residence.

Q. Was that the -- was that on the day of the shooting?
A. I did not speak to Mr. Guzman on the day of the shooting.
Q. Okay. On page 9 of your report, do you memorialize a conversation you had with Mr. Guzman at his residence?
A. Yes, sir.
Q. Did Martin, did he tell you that he was at Deon and Deverol's playing the video games?
A. Again, if you would just bear with me for a moment and let me find that here.
(A PAUSE.)
A. Yes, sir.
Q. Did he tell you Deon kept getting phone calls on a cellular phone?
A. Yes, he did.
MR. DEYSACH: That's it, Your Honor.
THE COURT: Mr. Deier?
MR. DEIER: Thank you, Your Honor.
CROSS-EXAMINATION BY MR. DEIER:
Q. Good afternoon again, Sergeant Calhoun.
A. Good afternoon, sir.
Q. I also want to talk a little bit about the July 30th interview with Deverol Cannick. During your interview with Deverol, not only did he say that he eventually opened the door, but did he also say he opened the door and once they

were inside they pulled out guns?

A. As narrated in my report:

> Deverol eventually opened the door, and once inside both the uncle and his buddy pulled out guns and said shut up. Don't say anything.

Q. Actually, that next line then is: Uncle was holding a black pistol, like a .9 mm. or a .380. Is that correct?

A. That is correct.

Q. He was holding a revolver. Is that correct?

A. That is correct.

Q. And, again, I won't go into the whole taking of notes and all that stuff. That's true and accurate to the best of your knowledge?

A. Best of my knowledge, sir.

Q. I want to turn to one more thing. On the 28th of July, you interviewed Malik Campbell, did you not, at Savannah Memorial Hospital?

A. Yes, sir.

Q. And when you were talking with Malik -- you have the page there?

A. I do.

Q. Do you? Okay, you were talking with Malik. Did he not say he was at the top of the stairs and saw his brothers fighting with the subject?

A. Malik then went to the top of the stairs to see what was wrong and saw two subjects at the bottom of the stairs fighting with his brothers.

Q. In that same interview, Mr. Campbell identified supposedly each shooter by a general description, did he not?

A. That's correct. He said that:

> The shooter was a dark-skinned black male with hair on his chin and that he had a black-colored pistol. Malik said the shooter was wearing a white T-shirt, looked to be in his thirties, and was shorter than the other. Malik stated that the other suspect was a lighter skinned black male wearing a brown or black polo shirt and was also holding a gun.

I believe that's as far as the description goes.

MR. DEIER: One minute, Your Honor.

(A PAUSE.)

MR. DEIER: Nothing further, Your Honor.

THE COURT: Mr. Robinson?

CROSS-EXAMINATION BY MR. ROBINSON:

Q. Investigator.

A. Yes, sir.

Q. You've been asked a lot about what's in your report.
A. Yes, sir.
Q. Haven't you?
A. Yes, sir.
Q. And you've been asked a lot about your interviews with the witnesses, haven't you?
A. Yes, sir.
Q. And you've been asked a lot about the words that you put in your reports, haven't you?
A. Yes, sir.
Q. And you had a number of opportunities to review your report, haven't you?
A. Yes, sir.
Q. At this point in time, is it fair to say you have a good recollection of both what's in your report as well as your conversations with the witnesses in this case?
A. Yes, sir.
Q. Deverol Cannick never told you he gave any of the two people involved in this shooting permission to come into his house, did he?
A. He did not give anybody permission, sir.
MR. ROBINSON: Thank you.
THE COURT: Mr. Deysach?
MR. DEYSACH: I don't have anything further of this witness.

THE COURT: Thank you, Investigator. You can step down.

(THE WITNESS EXITS THE STAND.)

MR. DEYSACH: At this time I'd call PFC Singleterry.

DAVID L. SINGLETERRY, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your full name. Spell your last name, please.

WITNESS: My name is David Lawrence Singleterry. Last name spelled single, S-I-N-G-L-E, and the last part is T-E-R-R-Y.

DIRECT EXAMINATION BY MR. DEYSACH:

Q. Good afternoon, Mr. Singleterry. My name is Ian Deysach. I represent Lucius Simuel in this case. July 28, 2008, where did you work?

A. I worked at the Beaufort County Sheriff's Office.

Q. Did you respond to a shooting at [redacted] Fordings Isle Road, unit [redacted]?

A. I responded to that location, yes.

Q. Did you, did you write a report?

A. I did.

Q. And you knew at the time you wrote the report that there had been a shooting, right?

A. Yes, I did.

Q. So, you knew that it was very important to put

everything in your report accurately, right?

A. To the best of my ability, yes.

Q. And you took great care in making sure the report was accurate, correct?

A. From the knowledge I had at that time, that is correct.

Q. Very good, and do you have a copy of that report right now?

A. No, sir, I do not.

MR. DEYSACH: May I approach the witness?

THE COURT: Yes, sir.

MR. DEYSACH: If that's okay, Your Honor?

BY MR. DEYSACH:

I'd ask you if that's a copy of your report?

A. That would be correct, sir.

Q. Did you -- when you responded to that location on that day, did you talk to Malik Campbell?

A. Yes, I did.

Q. Did he, did he tell you whether or not he saw the two subjects?

MR. ROBINSON: Judge, I object. This is hearsay.

THE COURT: It depends on what the answer is. If it is an inconsistent statement to one he's given earlier in court, he can examine him on that issue. I don't know what the answer is. You all do.

How do you avoid the issue, Mr. Deysach?

MR. DEYSACH: Because I am trying to get to an inconsistent statement, Your Honor. I think that -- that's where I'm going. It's not a major point, but I did kind of want to get to the place in the story where the inconsistency occurs.

THE COURT: All right, I'll allow you to do that. We'll deal with -- we got an 801, Rule 801 situation. If not, depending on what the answer is, I'll allow it. Thank you. Go ahead.

BY MR. DEYSACH:

Q. Did he tell you whether or not he had seen both of the subjects?

A. I don't recall whether he seen both subjects. I do recall that he had said that he had seen -- that he was able to describe one of their guns, and recall that this had been over a year. I also remember that Mr. Campbell was understandably very emotional and frantic.

Q. Okay. So, did he describe to you one and only one gun?

A. If you'll give me a second to review my statement.

Q. Certainly.

(A PAUSE.)

A. From what I recall now after having reviewed my statement, I do recall that he did state that he had seen a

couple of males at the bottom of the stairwell because he had come to the top of the stairwell. He remembers seeing a gun. I don't remember if he stated whether he saw a second gun or not, but I do remember he stated he had seen one gun. It was a black gun and that after the rounds had started flying, he hit the ground.

Q. So, he told you then he seen the two people but only one gun?

A. Best as I can recall, yes.

Q. And are you using your report to refresh that recollection?

A. I am, yes.

MR. DEYSACH: All I have.

THE COURT: Mr. Deier?

MR. DEIER: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. DEIER:

Q. Good afternoon, Mr. Singleterry. How are you?

A. Fine, thank you.

Q. My name is Chris Deier. I represent Demetrius Price in this case. Give me just a moment; I need to look at these pictures here.

(A PAUSE.)

Q. Mr. Singleterry, I'm going to hand you what's already been marked State's Exhibit 9. Take a look at that for me, please.

A. Okay.
Q. Do you recognize what's in that photo?
A. I recognize the apartment complex and the location where the incident occurred.
Q. So, that's where it was. Tell me something. Was this bike there when you showed up?
A. I did not go up to the apartment complex. I stopped at the entrance to the actual apartment complex itself. That is where the black vehicle was located when I noticed that there was subjects inside being shot, and I stayed at that location. I never came up to the building until after the fact.
Q. So, in fairness, you just recognize this as Plantation Point Apartments, not necessarily the Plantation Point?
A. Being familiar with that location, yes.
Q. Okay. Thank you.
MR. DEIER: I have no further questions of this witness. Thank you.
THE COURT: Thank you.
Mr. Robinson?
CROSS-EXAMINATION BY MR. ROBINSON:
Q. Deputy Singleterry, you were the first member of the sheriff's office to arrive at this scene, weren't you?
A. I did not go all the way up to the actual scene of the accident, but I was the first one to arrive at the location

where the victims were at the time.

Q. My emphasis is not on the -- your arrival at the actual apartment. My question is you were the first member of law enforcement, the first member of the sheriff's office, to confront these victims?

A. That is correct.

Q. You were?

A. Yes, sir.

Q. And you saw them at the entrance of Plantation Point Apartments ---

A. Yes, sir.

Q. --- didn't you? And isn't it true that when you saw them, they were trying to take themselves to the hospital?

A. That is correct.

Q. And isn't it also true that you had to intervene to tell them no, the ambulance is on the way?

A. That is correct.

Q. And isn't it also true that this was a state of emergency?

A. Very much so. Yes.

Q. And isn't it fair to say that the people that you confronted as the first responder were in a frantic state of mind?

A. Extremely.

Q. And is it fair to say that Malik Campbell, when you

interviewed him, was in a frantic state of mind?

A. Yes, sir. That would be very accurate.

Q. Isn't it also true that when you confronted Malik Campbell, it had only been moments since he put his -- he helped put his two brothers who had been shot into a car to try to take them to the hospital?

A. It could not have been very long, sir. I can't attest to the exact amount of time, sir, but it couldn't have been very long.

MR. ROBINSON: I have nothing further of this witness.

THE COURT: Mr. Deysach?

MR. DEYSACH: Nothing, Your Honor.

THE COURT: Mr. Deier?

MR. DEIER: Nothing, Your Honor.

THE COURT: Thank you, Mr. Singleterry. You may step down.

WITNESS: Thank you, Your Honor.

(THE WITNESS EXITS THE STAND.)

THE COURT: Mr. Deysach?

MR. DEYSACH: May I approach?

THE COURT: Yes, sir.

(OFF-THE-RECORD BENCH CONFERENCE WITH MR. DEYSACH ONLY.)

THE COURT: Ladies and gentlemen, I need to send you to your jury room very briefly. Let me tell you what our

795

plans are.

We will be able to conclude the testimony, the trial testimony this afternoon. We will not be able to present the final arguments and the charge on the law because after the testimony is concluded, then I have to deal with the lawyers. We have to get things in order to present the final argument and the charge on the law. That process takes a while for us to accomplish out of your presence. We do that in order to make tomorrow's time a lot more efficient.

Our plans are for you to come back in the morning at 9:30 to hear the final arguments, and then the charge on the law which I will give you at that time. We hope, and our plans are, to have this in your hands well before lunch, or certainly before lunch. You'll be guests of Beaufort County for lunch tomorrow. When you see how little you're going to get paid for your work as jurors this week, you're going to be real glad you're getting a free lunch at the hands of the taxpayers tomorrow. So, don't make any plans for lunch tomorrow; you will eat lunch here. That's the best way to use your time.

Once this case is in your hands, you can take as much time as you want to with it, but we're going to work hard to make sure you get it in your hands if at all possible prior to lunch and as early as possible before that point.

796

But as you well know from this experience that you've have thus far these nearly four days in court this week, we can't find justice on a time -- on a stopwatch. It just doesn't work that way; there are things that have to be done. There's a small matter of the constitution that has to be complied with, and the laws that have to be complied with, and things of that nature. And we have to take some time to make sure that those things are being done.

And so you've been on our clock all week, and we'll be glad to get on your clock tomorrow. But until then, if you'll stick with us a while longer -- and we're going to take just a few minutes to see what's left of the afternoon work -- we'll let you go. You'll be back tomorrow at 9:30.

Step to the jury room. Please do not discuss this case among yourselves.

(THE JURY EXITS AT 3:30 P.M.)

THE COURT: Mr. Deysach, at the sidebar conference you asked me if I wanted to review with Mr. Simuel his information concerning his right to testify or not to testify. I simply will confirm for the record.

Mr. Simuel, you've had a chance to talk during the lunch hour with Mr. Deysach concerning whether or not you're going to testify in this case. Is that right?

DEFENDANT SIMUEL: Yes.

THE COURT: And you did that on the basis of the

797

information that I furnished you before we broke for lunch, and also on the basis of your conversations with him. Is that right?

DEFENDANT SIMUEL: Yes.

THE COURT: Based on those conversations, do you wish to testify in the trial of this case?

DEFENDANT SIMUEL: No, sir.

THE COURT: Thank you.

All right, Mr. Geier, I understand you want to talk with Mr. Price to determine whether or not he will testify, and you've asked if he could meet with his family. That matter, frankly, is in the control of security. Certainly you can meet with him in the conference room if you'd like.

As to whether the family meets with him, ladies and gentlemen, do you want to talk with me about that?

(OFF-THE-RECORD BENCH CONFERENCE WITH DEPUTY SHERIFFS.)

THE COURT: If you can talk in here, maybe come to the front row and sit behind you while you talk on this side of the room. If you want to go into the conference room, it will just have to be the two of you all and the officer, okay?

MR. GEIER: Thank you, Your Honor.

THE COURT: All right, folks, we'll stand down for ten minutes.

798

Is that enough time, Mr. Geier, you think?

MR. GEIER: Yes, Your Honor, although I might add maybe we should talk about what's going to come in and what's was not going to come in before we make the ultimate decision.

THE COURT: Okay. All right. As I understand it from Mr. Price's record, at the very least he has convictions for burglary, armed robbery, and aggravated assault. Assuming that they are within the applicable time, of course they would all be admissible, not as specific crimes but simply crimes that carry more than a year in jail.

Are there any other crimes that you would seek to impeach him on, Mr. Robinson?

MR. ROBINSON: Yes, Your Honor. Let me consult the copies.

(A PAUSE.)

MR. ROBINSON: Additionally armed robbery, obstruction, possession of a sawed-off shotgun, aggravated battery, burglary, aggravated assault, armed robbery.

THE COURT: Is that another armed robbery?

MR. ROBINSON: Just a moment, Your Honor. I don't want to say the wrong thing.

(A PAUSE.)

MR. ROBINSON: There's only one armed robbery.

THE COURT: Okay.

799

MR. ROBINSON: I believe there's also a possession with intent to distribute marijuana, and that's it.

THE COURT: Okay, an armed robbery, possession of a sawed-off shotgun, an aggravated battery obstruction, burglary, aggravated assault, PWID marijuana.

MR. ROBINSON: That's correct.

THE COURT: All right, Mr. Geier, what say you?

MR. GEIER: Your Honor, I'm going to refer to *State vs. Bryant*, 369 South Carolina 511.

THE COURT: Right.

MR. GEIER: Which is out of the Supreme Court in 2006. Would you like a copy of it, Your Honor? I have one for you if you'd like.

THE COURT: I can get it up on the computer unless you've got an extra copy.

MR. GEIER: Maybe I should give this one to the prosecutor.

THE COURT: Okay, give me just one moment. I can pull it up on my computer.

MR. GEIER: Thank you, judge. I'll give y'all a minute to review that.

(A PAUSE.)

THE COURT: What's the cite again?

MR. GEIER: Your Honor, it's 369 South Carolina 511, *State vs. Bryant*.

800

THE COURT: B-R-Y-A-N-T?

MR. GEIER: Yes, sir.

MR. ROBINSON: The southeastern cite, Your Honor, is 633 SE 2d 152.

THE COURT: I get a bunch of *State vs. Bryant*, but none of them match this.

MR. ROBINSON: Your Honor, I'm almost done. I can give you my -- this copy.

MR. GEIER: Your Honor, I have a cheat sheet that has all of the relevant parts with maybe one exception. I can hand this up to you. I have a part that's highlighted which you can take a look at.

MR. ROBINSON: Thank you, Chris.

(A PAUSE.)

THE COURT: Mr. Robinson, have you had a chance to look at it?

MR. ROBINSON: I have, Your Honor.

THE COURT: All right, Mr. Geier, I'll be glad to hear argument from you.

MR. GEIER: Thank you, Your Honor. Obviously, under the *State vs. Kolf* balancing test, we have a number of points here. You have:

> Impeachment value of the prior crime, point in time of the conviction, the witness's subsequent history, the similarity of the

801

past crime and the charged crime, the importance of the defendant's testimony, and the centrality of the credibility issue.

Mr. Price's conviction, initial round of convictions, occurred when he was sixteen years old in 1992. So, again it's a while back. He served quite a bit of time in prison for that, for those crimes. Ten years to be specific. He had another five years of probation that he had to serve. There was a probation violation in there for something that didn't end up going forward. But, nonetheless, it was a probation violation. And obviously there is the possession with intent to distribute.

Especially with the crimes from 1992, I think they are quite smaller to what we have before us today. I mean, we had a burglary. We had a aggravated assault, which is at least an ABHAN here if not an ABWIK. And so I think that it's pretty clear that he would be seriously prejudiced by having this come in.

Now, the other thing I'm concerned about is that if there's just an instruction or there's some sort of limitation on what prosecution can bring into this, it won't be enough to diminish that prejudice.

One, frankly under this case, I don't think it should come in at all. I know these things are probative for truthfulness. But because of the number that he has from

802

when he was sixteen years old, I think that in and of itself is prejudicial.

I would ask that everything that he's got with, I guess, the exception of possession with intent to distribute -- which, granted, has no real relation to what we've got here other than maybe as a secondary effect -- all of those things be suppressed. And that Mr. Robinson not be allowed to inquire into any of those things.

THE COURT: All right.

MR. GEIER: Thank you, Your Honor.

THE COURT: Thank you. The *State vs. Bryant* analysis involved whether or not a prior conviction for possession of firearm should be admitted in a case in which the defendant raised the defense of self-defense. The victim in this case had been shot six times. The police arrived. Mr. Bryant had a Mexican standoff with the policemen for some twenty to twenty-five minutes. SWAT team came in, broke into the house. The defendant, Mr. Bryant, by that time had shot himself in the stomach and was lying there. He was subsequently convicted of murder and of possession of a weapon. He had numerous prior convictions, and I haven't read all of then yet, but he did have some prior convictions against him in this regard.

The Supreme Court reversed his conviction, finding that:

803

> In this case, the petitioner's defense was that he acted in self-defense based solely on his own credibility or on his own testimony. Moreover, the only witness for the petitioner, the victim. And although the record contains evidence which may undermine the petitioner's self-defense theory, the record also contains evidence which supports his self-defense theory. Therefore, the state should not be allowed to attack his credibility with inadmissible prior convictions, especially where the credibility was essential to the defense. Accordingly, we hold the improper admission of his prior firearms conviction was not harmless.

Applying the Kulp -- the Golf -- I'm sorry, the *Kolf*, K-O-L-F, standards which Mr. Geier has read into the record, the one that is most likely to give rise to an improper prejudicial impact is the third one which says: The similarity of the past crimes and the charged crimes. And without a doubt, we have been cautioned not only in *Kolf* but in other cases, both state and United States Supreme Court cases, that when the crime charged has a similarity to the crime sought to be admitted for

804

impeachment purposes, that the prejudicial impact of that is raised considerably for obvious reasons.

The jury could conclude, well, he's on trial for armed robbery this time, and he had an armed robbery conviction in the past. So, he did it once; he must do it again. And in spite of all our instructions to the contrary, it is unlikely that in the real world the jury is going to be able to put those similarities aside and not give some weight to them, however improper it might be.

However, when the jury doesn't know the similarity of the past crime and the charged crime, then that prejudicial impact, in my view, is blunted, and certainly insofar as the similarity is concerned because the jury doesn't know. They don't know whether it's the same crime or a different crime.

Now, true, they could be left to guess, and that could be harmful in its own sense. But I don't think that the fact a person is testifying in his own defense and that his credibility is going to come into question in and of itself causes us to throw Rule 609 out and supplant it entirely with another rule that says if his testimony is going to be critical to his own defense, then any criminal record can't come in. Or at least a series of criminal records cannot come in.

There is a valid right of a jury to be able to

805

determine, if it can, the credibility of a person. And, in part, that credibility under our rules can be based on a person's prior conduct. We do that in the community every day; we base our view of whether somebody's telling the true on what we know about them in the real world. But when it comes to a courtroom setting, the jury doesn't know anything about anybody until they take the stand.

And, therefore, our rules have provided there are ways then to allow a jury to assess credibility of people whom they do not know, and whom they don't have any history of in the past as we would of our neighbors or people in our own hometown. And one of those ways is by the introduction of a prior criminal record. We do the balancing test. We do the best that we can to let the jury know that -- or let the jury be ignorant of the fact that the crime charged might be similar to the one which is sought to impeach him.

But there is no way we can, nor should we, insulate a testifying defendant or a witness or anyone else entirely from the effects of their past conduct insofar as those impact his credibility.

In this particular case, the jury is not going to know what any of these crimes are. They are going to know that he was convicted of crimes that carried a possible penalty of more than a year in jail on the dates in question. And they can be told that the armed robbery was in 1992. Of

806

course if he spent tens years in jail, he was out in 2002. The ten years runs from that date. We don't have to tell them all that. We don't have to tell them he's not getting credit for the fact that he was in jail for ten years. And so the fact that he didn't break the law during that period of time extends or tolls that ten-year period. And they can choose, if they wish, in their own minds to give limited weight to a conviction in 1992 or whenever these other events occurred.

But they have the right to know that he's violated the law in the past on those particular dates, and that the crimes with which he was involved carried a possible penalty of more than a year in jail without knowing what those crimes were.

I will note your exception in that regard, Mr. Geier, but I'm going to let the jury hear those.

MR. GEIER: Thank you, Your Honor.

THE COURT: All right, I'm going to give this back.

Okay, folks, now let's stop the clock again and see if we can't get back at 4:00. That's ten more minutes, and then we'll move from there on. Thank you.

(OFF THE RECORD.)

THE COURT: All right, Mr. Geier.

MR. GEIER: Your Honor, we're missing our solicitor.

(A PAUSE.)

807

MR. GEIER: Your Honor, we elect not to testify.

THE COURT: Elect not to, all right. Thank you.

And, Mr. Price, once again you have understood your rights in that regard. You've made that decision after talking with your lawyer and I think with your family's input. Is that correct?

DEFENDANT PRICE: Yes, sir.

THE COURT: Okay, and so your decision not to testify was made with the knowledge of what your rights are?

DEFENDANT PRICE: Yes, sir.

THE COURT: All right. Thank you. You can be seated.

Gentlemen, the jury will be brought in. Mr. Deysach, I will allow you to rest in the presence of the jury and then, Mr. Geier, you will rest in the presence of the jury.

Is there anything from the state in reply at this juncture?

MR. ROBINSON: Nothing from the state, Your Honor.

THE COURT: All right, good. Then I'll send the jury home, and we'll get them back at 9:30 tomorrow to listen to the arguments and charge. And after they're gone for the day, we'll deal with charge conference and any other motions that we need to deal with, okay? All right?

MR. ROBINSON: Thank you, Your Honor.

THE COURT: Bring us the jury, please.

(THE JURY ENTERS AT 4:02 P.M.)

808

THE COURT: Mr. Deysach.

MR. DEYSACH: At this time, Your Honor, Mr. Simuel's defense rests.

THE COURT: Thank you, sir.

Mr. Geier.

MR. GEIER: Your Honor, Mr. Price's defense rests.

THE COURT: Thank you, sir.

Mr. Robinson, is there anything from the state in reply?

MR. ROBINSON: Nothing. Nothing from the state, Your Honor.

THE COURT: Thank you.

Now, ladies and gentlemen, that means that you have now heard all of the evidence and testimony that you will hear in the trial of this case. As I indicated to you a few moments ago, you have yet to have the final arguments. That will be done tomorrow morning. The charge on law, that I will give you after you've heard the final arguments. And so I will send you home now a little bit earlier than usual, thankfully.

You have been very patient throughout this entire week. You've been attentive throughout the entire week, and we all appreciate that. I'm sure that you understand the importance of continuing to be attentive through the final phase of the trial of this case, which will begin at

809

9:30.

And I must insist once again that you not discuss this case with anybody, and don't let anybody talk with you about it. And when you get back into the jury room tomorrow morning at 9:30, don't talk about it among yourselves.

You have heard all the evidence in this case; you're not going to hear any more. And you've heard me tell you that you've the judge of the evidence, and so you may wish to know, well, why can't you talk about it since you've heard all you're supposed to hear about it. Well, you haven't heard quite all you're supposed to hear. You haven't heard the arguments and, importantly, you have not yet heard the law.

The oath that you took obligated you to well and truly try this case and render a true verdict according to the law and the evidence so help you God. You've heard the evidence but not yet the law.

And I know you must think that I must think you're the dumbest people in the world with no memory because before every time you leave that jury box, I say don't talk about this case. You'd be surprised how many jurors in other cases in spite of those admonitions do it anyhow, and we have to do it all over again. All of us as judges have been subject to that.

810

But really the reason is this. You fourteen people, you twelve jurors now and the two alternates if you all have a chance to sit in this case when deliberations begin, are the only people on the face of this globe who are going to be asked to render an opinion in this particular case. No one else's opinion counts except yours. Nobody else knows what you all know about this case. We don't care what they think; we just care what you think. And so please continue to abide by those instructions, and I'll see you tomorrow morning at 9:30. Have a safe trip home. Thank you.

(THE JURY EXITS AT 4:05 P.M.)

THE COURT: Gentlemen, at this juncture I will note the renewal of all the other motions that were made at the conclusion of the state's case and that have been made since that time, and I will renew my earlier rulings in those motions. If there are additional motions or additional grounds, I'll be glad to hear those at this time.

Mr. Deysach?

MR. DEYSACH: Thank you very much. I know you noted my renewal of the motion, so that is exactly what I would have done, and renew a directed verdict motion at this time for the same grounds. So, I'm not going to restate the grounds that I have already stated.

811

I did want to -- over last night, I did have an opportunity to read the *State vs. Cheeseboro* case that dealt with the destruction of evidence. And that was a motion that I had made earlier and I renewed, along with all my other motions.

And I did have just a couple more words I wanted to say to make sure I made the record on that. I'd asked for the same remedy as I have before. And the rule that I found in *State vs. Cheeseburger -- Cheeseboro* when it has to do with destruction of evidence is that there has to be bad faith, or an indication that there is something exculpatory in the material before it's destroyed, and that there's no other way to get comparable evidence.

Of course any, any defense attorney looks at that and realizes he's being asked to tell you whether -- if there's something exculpatory on something that's been destroyed feels like he been put in an untenable position. And I feel like that's exactly where I am right now. And how do I know that the evidence that I get from Mr. Holmes's report is as good as the notes that were destroyed without seeing the notes in the first place?

And so I feel like in this situation, as opposed to the situation with the gun in *Cheeseboro*, that the destruction, the -- I find it hard to believe that throwing the notes away is part of the procedure at the police

812

department like the way the situation occurred in *Cheeseboro*, which really is kind of a classic example of how it could happen by mistake. That this, there is no way that you could accidentally throw notes in the garbage can in that way.

And so I think that those are grounds, and I think that even with the rules of *Cheeseboro* that the remedies that I've asked for are still appropriate, which was the mistrial and dismissal.

THE COURT: All right. Thank you, Mr. Deysach. The *Cheeseboro* case obviously had to do with the destruction of a weapon. In fact, the murder weapon that was used in the commission of a very serious crime, the murder of two and the wounding of another. And the weapon, because it was discovered in a setting that did not arise out of the crime itself but out of a separate crime, somehow or other got mixed up, and I don't have to restate *Cheeseboro*. I am somewhat intimately familiar with it, as you realize from reading that opinion.

But, nonetheless, to put the shoe on the other foot, Mr. Deysach, and to comment on your untenable position, the converse of that would require a trial judge to presume bad faith or exculpatory evidence when that evidence has been destroyed or is missing for some reason. And *Cheeseboro* speaks to the fact that we cannot presume, or do not

813

presume bad faith, or that the evidence is exculpatory in the absence of some evidence to that effect.

I realize that the difficulty proving that when the evidence is gone is self-evident, to overuse a word. But in this particular case, the officer testified that he took his notes. They were rough, handwritten notes, and that he almost immediately converted or transcribed those or had them transposed in some other fashion. And he further indicated that the final report which was generated captured the spirit and the tone, if not the exact letter of the notes which he had taken.

And so for that reason, I am unwilling to make a presumption of bad faith, or to presume that there was something exculpatory that he left out for any reason. I note your exception in that regard but respectfully deny it and renew my earlier rulings in that regard. Thank you.

Mr. Geier.

MR. GEIER: Your Honor, I will rely on your observance of my renewal of my motions.

THE COURT: Okay, and indeed I do renew all of those earlier motions for the same reasons that we stated earlier.

Now, folks, if we can go over charge requests at this time, and what I propose to do is to go over charges that I have been accumulating during the course of this trial.

814

Indicate those to you, allow you to comment upon them, take exceptions to them if you wish to, or propose other charges. And I'll be here early in the morning if you want to submit any additional charges if you're not prepared to submit at this time.

My standard felony charge of course contains the presumption of innocence obviously. And the proof beyond a reasonable doubt definition that I use is from *Victor vs. Nebraska*. It's United States Supreme Court found at 114 Supreme Court 1239. It's a 1994 case. Our state adopted that same opinion. Judge Ed Cottingham was the judge in the case of *State vs. Darby*, D-A-R-B-Y, a 1996 Supreme Court case. I've just got the opinion number here in my notes. I don't have a final cite, but that definition defines reasonable doubt or proof beyond a reasonable doubt as proof that leaves you firmly convinced of a defendant's guilt. It goes on to say that there are very few things in this world that can be proved with absolute certainty, and the law doesn't require proof in criminal cases that overcomes every possible doubt. The jury is then instructed that based on their consideration of the evidence, they are firmly convinced that the defendant is guilty, they must find him guilty.

They're also told that if they think, after considering all the evidence, that there's a real

815

possibility that he's not guilty, then the state has not met its burden of proof and they must find him not guilty.

I tell you that not because that's the only definition out there that's acceptable under the law because there are many. And there are other definitions of reasonable doubt itself. My definition is of proof beyond a reasonable doubt. I do not define reasonable about. Reasonable doubt has been defined from time to time within our case law, and you know what it is. I just didn't want you all to get too far out on a limb and tell the jury you listen to the judge's charge and when he tells you about reasonable doubt, this is what he's going to tell you. Well, what I'm going to tell them is what I just told you, the guide in that regard.

I will instruct on the fact that the defendants in this particular case did not testify. The credibility of witnesses, of course, and expert witness testimony will be offered. Naturally, I will charge on the elements of the offenses in this particular case.

MR. ROBINSON: I have a question on that point, Your Honor.

THE COURT: Yes.

MR. ROBINSON: I want to inquire as to whether or not the court's charge on burglary first degree includes the, include some language saying that all that is required for

816

burglary first degree is crossing the threshold.

THE COURT: There does not have to be an actual breaking. Since that's been raised in this particular case, I will include something that's appropriate to that particular situation.

MR. ROBINSON: I wanted to make clear that because there's -- I didn't want the jury to have the impression that a burglary requires them to enter the living area. That all that's required is crossing the threshold and entry into the home.

THE COURT: Right. I will look that up, and whether I use those exact words or not, I will use something that speaks to that, at least speaks to that issue.

MR. ROBINSON: Thank you, Your Honor.

THE COURT: I will charge criminal intent. I will charge the identification charge, *U.S. vs. Telfaire*, T-E-L-F-A-I-R-E.

The burglary charge:

> In order to prove that the defendant entered the dwelling, the state does not have to prove that the defendant's entire body entered the dwelling. The smallest entry is sufficient. It may be any part of the body, such as a hand or foot or even an instrument such as a hook or other instrument, et

817

cetera. In addition, the state does not have to prove that force was used to gain entry.

That's a part of the standard charge on burglary in the first degree.

I will charge assault and battery with intent to kill. Mr. Deysach, Mr. Geier, I'm also inclined to charge assault and battery of a high and aggravated nature. There is some evidence in the record from which some of the testimony has indicated, indirectly though it might be, that this was something perhaps other than just a knocking down the door and going in there and shooting up everybody. And so there may be something there that is sufficient to indicate the absence of malice in this particular case. I will not charge assault and battery of a high and aggravated nature if both of you all object to that charge.

Mr. Deysach, what says the state -- the defendant?

MR. DEYSACH: We would request that charge.

THE COURT: Mr. Geier?

MR. GEIER: We would as well.

THE COURT: All right. I will charge the elements of possession of a weapon during the commission of a violent crime. I will charge the elements of the offense of possession of a handgun by a prohibited person from the statute itself.

818

I will charge the hand of one being the hand of all. I will charge the charge on confession. Included within that is a statement or an admonition to the jury that a statement allegedly given by one defendant, even if voluntarily given, may not be considered as evidence verses his co-defendant for any purpose whatsoever.

I will charge the fact that there are multiple defendants in this case and multiple counts, and that each charge or count must be considered separately and must be decided separately whether each individual is guilty or not guilty as to each charge, et cetera, to avoid the lumping together.

Gentlemen, those are things that have occurred to me during the week which would be appropriate, given the factual scenario which we are confronted with.

Mr. Robinson, I'll be glad to hear from you at this point in time for any exceptions to those charge or any request for additional charge.

MR. ROBINSON: No exceptions, Your Honor. I do want to inquire as to whether or not -- since the court mentioned that, based on the court's listing of the evidence, you decided to charge ABHAN to which we have no objection because of the absence of, the absence -- the jury may find that there was an absence of malice. My question is whether or not in the court's charge regarding

819

criminal intent if there is the standard language about how intent may be formed in an instant.

THE COURT: Yes.

MR. ROBINSON: Doesn't need to have been premeditated.

THE COURT: That's right. The issue of malice, of course when I define malice, I use that specific example that:

> It is not necessary that the malice exist for any particular length of time prior to the act in order to render the -- in order to satisfy the requirement. It is necessary if it is in the mind of the individual at any time prior to the act.

Criminal intent simply says that it's: A state which operates jointly with an act in the commission of a crime.

But I think that the question is whether or not the malice was there the time of the act. Is that what your concern is?

MR. ROBINSON: I just wanted to make sure that the question, there's no confusion, the jury doesn't get confused. With all the television shows about criminal cases, that they don't think of intent as motive. And motive is why you're doing it. Intending is what you're trying to achieve.

THE COURT: Right.

820

MR. ROBINSON: And my understanding that the statement of -- correction of the law regarding intent is that it can be formed in an instant. One doesn't -- so in this case, for example, there's been some evidence that one of the defendants, Lucius Simuel, contacted some relatives saying the deal went bad and that he never intended for anybody to get shot.

Well, I don't want the jury to think that, well, since he, since he said that, that there was never any intent. Just because he didn't go there with intent to shoot them doesn't mean that -- if he did, in fact -- I mean, you can still intend to shoot somebody even if you didn't go to the, even if you didn't go to the apartment with the intent to shoot. That's why I was curious as to the language regarding that the intent can be formed in an instant, Your Honor.

THE COURT: The exact definition which speaks to that without using those exact words says: Criminal intent is a state of mind which operates jointly with an act. So, the criminal intent has to be present at the time of the act.

MR. ROBINSON: I think that's fine, Your Honor. Thank you.

THE COURT: And on the malice, of course that point is emphasized even more when we're talking about malice under the assault and battery with intent to kill, when:

821

> Malice aforethought does not require that malice exist for any particular time before the act is committed, but it must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

They're told that twice, so I think that that will be there. And, of course, you can argue that.

MR. ROBINSON: Thank you, Your Honor. That's precisely it.

THE COURT: All right, Mr. Deysach, let me hear from you with any exceptions to those proposed charges and any requests for additional charges.

MR. DEYSACH: All right. Your reasonable doubt explanation, it sounded like you were pretty resolute. And I think that the line that you were talking about when you were going over it was that, you know, many times reasonable doubt is described to jurors as the type of doubt that would cause a reasonable person to hesitate to act. And I think that it's one that has been pretty instructive or been -- problem one that -- one of the definitions of reasonable doubt that's easiest to get your head around, as far I'm concerned, as opposed to describing what is beyond a reasonable doubt. And so I'm asking for

822

that language and hoping that you'll give it.

THE COURT: What language is that specifically?

MR. DEYSACH: The, that reasonable doubt is the type of doubt that would cause a reasonable person to hesitate to act.

THE COURT: I decline to do that, and I have used *State vs. Darby* ever since it came out because I found that the definition of reasonable doubt is the type of act that would cause a reasonable person -- type of act that would cause a reasonable person to hesitate to act. Between that blanket statement, which is good statement and good law on the face of it, in its interpretation by way of argument has been equated to things as superficial as trying to decide what necktie you're going to wear in the morning and hesitating to act on things of that nature, or what shoes you're going to wear with a particular outfit. And that is not an accurate statement of what the law means, of course. That's not an accurate statement of the interpretation. But I don't choose to jump into an argument when that comes and try to get things straight because, frankly, it creates some problems in and of itself. I simply choose not to define it that way and to define it the way that I do.

But I note your request in that regard and your exception to my charge in that regard. Okay.

MR. DEYSACH: The -- I do have a, I guess, more of a

823

question when it comes to the ABHAN verses ABWIK, the two instructions that you're going to be giving.

ABWIK is the unlawful act of violent injury accompanied with malice aforethought. And I think the theory that gets us down to ABHAN is that there's some legal provocation, sufficient legal provocation is that, and correct me if I'm wrong. But I in the past thought of assault and battery with intent to kill as the type of assault and battery that if the person were to die, it would be a murder, whereas the ABHAN would be the manslaughter. Is this -- if I'm -- is this not the law anymore?

THE COURT: It's not. As a matter of fact, we were told several years ago not to use that analogy anymore. We do, we do use the fact that -- I think the question was whether or not malice actually existed, could exist under that scenario.

When I'm defining the two, I defined as you indicated: The state has to prove beyond a reasonable doubt an unlawful act of violent injury to another person accompanied by malice.

And then we define malice. And then I say that:

> There is included by operation of law in the greater charge of assault and battery with intent to kill of assault and battery of a

824

high and aggravated nature. It is not listed in the indictment, but it occurs as a lesser-included offense by operation of law, and here are the elements of assault and battery of a high and aggravated nature.

Then I define and assault and battery then circumstances of aggravation.

I don't mention malice or the absence of malice in that, quite frankly, because that's a problem that created a reversible situation several years ago. But it will be clear that the state has to prove malice in order to get a conviction on the one, and it doesn't have to prove malice necessarily to get a conviction on the other.

So, that's the way I'll do it. And if you want to present something to me in the morning, to let me look at it that tracks the law, I'll be glad to look at it.

MR. DEYSACH: All right, and we can move on to the hand of one, hand of all charge that you propose to give. I think that the law on that is that -- their words are probably -- I'm not going to give an exact, but that there has to be some evidence of a plan to commit -- and I would argue not just in this case a drug deal but to commit a burglary at least, if not a shooting, before we could get to the type of plan that would qualify for the hand of one to be in the hand of all in this situation.

825

THE COURT: Well, let me tell you what I'm going to tell them and see how this tracks. Excuse me just a minute.

I charge you, ladies and gentlemen, that when two or more persons aid, encourage, and abet each other in the commission of a crime, all who are present are principals and equally guilty. Where two or more persons combine together to commit a crime and the crime is committed, all of those who are present to aid and abet and assist in the commission of that crime are equally guilty. The act of one becomes the act of all. The hand of one becomes the hand of all. It makes no difference by whose immediate agency the crime was committed. All are principal. However, mere presence at the scene of a crime, even with knowledge of the commission of the crime, without an intent to aid, abet, or assist in its commission, would not constitute guilt. So, the burden is upon the state to establish beyond a reasonable doubt that the defendants, that each of them were present and that they, he or they were there with a

826

criminal intent. That is to say with the intent to aid, encourage, and abet each other in committing the offenses charged.

MR. DEYSACH: All right. So, I guess the, in the offenses charged part of that is what explains to the jury that when, hypothetically, if you're going to a drug deal and somebody goes rogue, that the common -- the plan has broken down. So, I guess that...

THE COURT: Well, the question is not the, is not the plan to buy drugs. The question is the plan in this case to commit burglary in the first degree and to commit assault and battery with intent to kill, or assault and battery of a high and aggravated nature.

MR. DEYSACH: I just want to be sure that the jury is -- that that is made clear to the jury that the plan to sell the drugs doesn't automatically equal the plan to do a burglary or ABWIK.

THE COURT: Well, that might be an argument for you. I don't have any evidence in the record that there was a plan to sell drugs, do I?

MR. DEYSACH: A plan between the two, between the two defendants, or a plan of my defendant to sell drugs, an agreement between the two men who sit before us?

THE COURT: We've got the testimony from the state's witnesses that they didn't know anything about the drugs,

827

and they didn't want any drugs and didn't ask for drugs and weren't going to buy any, or weren't going to sell any. There is some other evidence in the record from which -- and I think you got that out through some of your last witnesses -- that somebody had called about bringing some drugs over, or wanting to know ---

MR. DEYSACH: Sure.

THE COURT: Wanting to buy some drugs or things of that nature. But nobody is on trial in this particular case for aiding and abetting in the sale of drugs. That's not the crime charged.

MR. DEYSACH: Right. That's the ---

THE COURT: The hand of one, the hand of all applies to guilt for the crime charged in this particular instance.

MR. DEYSACH: Right, and that's -- I agree with that. That's what I want the jury to understand. That's all.

THE COURT: Well, yeah, I'll talk about the crime charged. So, if y'all want to talk about something else, that's another matter. Just don't get outside the record in doing it. But I'm going to tell the jury just exactly what I read to you all a few minutes ago.

MR. DEYSACH: And I heard you also include some language in there about the mere presence.

THE COURT: That's right.

MR. DEYSACH: And that was going to be my next, my

828

next question.

THE COURT: That's right.

MR. DEYSACH: All right, I have -- I would, I would ask that as to -- I mean, for Mr. Simuel burglary, second would be appropriate. That -- well, it's hard to fathom, but under the theory that their, the intent -- that he doesn't have a gun, and that he doesn't cause the injury to Deverol or to Deon, which is, I think there is some evidence of that in the record. There is evidence that he said he didn't have a gun. And that if they were to believe that there wasn't this, this plan to do a burglary before, that -- and if he's doing it by himself, that that could be a burglary second if he's not one of the shooters. And the jury goes with the mere presence portion of your, of your instruction.

THE COURT: I'm not sure how they would, how they would get around the fact in this particular case that the evidence is there that...

(A PAUSE.)

THE COURT: Entering the dwelling without consent, and with intent to commit a crime, and is either armed with a deadly weapon, or causes physical injury to a person who is not a participant in the crime, or uses or threatens the use of a handgun or a

829

dangerous instrument, or displays what appears to be a knife, pistol, et cetera.

Now, that's the burden of the state. If they can't prove that you client did one of those things, then their option is not burglary in the second degree. It's not guilty.

MR. DEYSACH: Well, if they believe everything except for that, he was armed with a deadly weapon and he caused the injury to either Deon or Deverol, then, then -- and there is evidence he didn't have a gun and that he didn't shoot Deon or Deverol. And so then we'd just be left with the regular burglary second of a dwelling.

THE COURT: Well, of course you've got the hand of the one, hand of all being there that makes him under the law, if the jury believed it, accountable for everything that happened. And if they choose not to believe it, then he's not guilty. I'm not sure that under the facts of this case that, or under the law that...

(A PAUSE.)

MR. DEYSACH: Sounds like in causing a reasonable person to hesitate to act.

MR. GEIER: Right here.

THE COURT: Yes. That's right: Burglary in the second degree, if the person enters a dwelling without consent and with the intent to commit a crime therein. So,

830

that just deals with the fact that you go in without consent and you've got an intent to commit a crime, the crime itself is not complete.

You're also guilty of burglary in the second degree if you enter a building without consent. Well, we don't have a building in this case. We have a dwelling by definition, so that part of it doesn't apply.

So, I don't think that subsection A, which is the one you're talking about, section 16-11-312(a), fits the facts in this particular case. As a matter of fact, there's a case on a point within the annotations that speaks to that particular point.

I will give that some thought over the evening, but I don't think he's entitled to that. I don't see a burglary in this particular case. It's either a burglary first or there's not guilty, all right?

MR. DEYSACH: All right, and I don't, I can't think of any other things to bring up right this second, Your Honor.

THE COURT: Okay.

All right, Mr. Geier.

MR. GEIER: At this point, Your Honor, I would just simply echo the things that are relevant to my client that Mr. Deysach brought up rather than taking the court's time.

THE COURT: Okay. Gentlemen, let's talk about arguments now.

831

MR. DEYSACH: Your Honor, I think that there is one that Mr. Geier and I had talked about was whether self-defense would be an appropriate charge in this case, with the evidence that I would rely on that's in the record to support such a charge would be in Mr. Simuel's statement that was read out during the state's case that Deon pulled out a gun and said where is it at, as well as those statements that came in through my case that Deon tried to rob them. And so that...

THE COURT: I'll note that. I've got my self-defense charge out here because I had put it out here earlier in the week thinking there was going to be some testimony to establish those things. But, frankly, the self-serving statements in and of themselves without some evidentiary support I'm not sure are sufficient to give rise to self-defense charge.

There's some things that we don't know. For example, we don't know that the defendant actually believed that he was in imminent danger of losing his life or sustaining serious bodily harm, or that he actually was in such danger. So, I don't know how a jury would reach that conclusion. And since -- and if his defense is based on his belief of an imminent danger, and we really don't know whether he harbored that belief or not because there's no testimony that he believed that he was in imminent danger.

832

And secondly, that he had no other probable means of avoiding the danger, or losing his life, or sustaining serious bodily injury other that to act as he did. Saying that the deal went bad, on the one hand, doesn't meet that element in the face of proof to the contrary, evidence to the contrary. I won't say proof, but evidence to the contrary. That they forced themselves into the apartment of someone else, shot one person on the steps and another lying down on the ground outside, I don't think that those -- that the elements of self-defense can be met based on, or at least those two elements can't be met based on the proof in this particular case.

I'll give that some more thought, and I'll take *McEnich* [phonetic] home with me tonight and read a little bit of it to see. All right.

MR. GEIER: Your Honor, I'd just quickly add I believe that our standard for bringing in self-defense is incredibly low. It's a mere scintilla, and again the deal gone bad is one thing, but that they tried to rob us is obviously something that we were relying on.

If you should decide to grant that instruction, we'd also ask for a self-defense, reputation of violence based on the evidence that we brought in about the Cannicks' character.

THE COURT: That applies, of course, if the victims --

833

or in this case the defendants have knowledge about the reputation for violence, does it not?

MR. GEIER: Yes, Your Honor, and again I would point out Mr. Simuel is at least somewhat, if not intimately related with Deon and Deverol Cannick; he at least knows the family.

THE COURT: Right. I'm not sure that that's the same as evidence of knowledge of violent tendencies or things of that nature. And you're right. The scintilla level is low. Well, I don't say it's just a scintilla, but the evidence is relatively low. There's no burden that the law imposes upon the defendant. But, nonetheless, there does have to be some evidence on each of those four, each of those four elements. And the two that I brought out, I don't know how the proof in this particular case gives rise to the state of mind of the defendants in this case without them having testified as to what their beliefs were about being in actual danger and things of that nature. I don't think that the evidence rises to that level.

I note that, but I respectfully deny it. I will continue to look at it overnight, but I think it takes more than that.

MR. GEIER: Thank you, Your Honor.

THE COURT: All right, let's talk now about arguments. Mr. Deysach, Mr. Geier, how do all want to argue? Who's

834

going to go first? Can you all agree on that?

(DEFENSE COUNSELORS CONFER.)

MR. DEYSACH: I guess Mr. Geier is going to go in front of me, and I'll be after him.

THE COURT: All right. Mr. Robinson obviously goes last.

All right, Mr. Geier, how long do you think you might take in your final argument? I'll give you a range, five or ten minutes, give or take.

MR. GEIER: I would guess half hour, Your Honor.

THE COURT: Mr. Deysach, about how long do you think you might take?

MR. DEYSACH: I want to say the same thing.

THE COURT: Okay, Mr. Robinson.

MR. ROBINSON: I'm going to probably take a half hour as well, maybe more. Roughly half an hour.

THE COURT: All right. I can't remember. I may have tried cases with you all, with some of you before. I really can't -- I know I've certainly had the pleasure of having you in court before, but I don't know whether I've had a trial or not. And I tell lawyers that I don't ring a bell when you get to the end of your thirty minutes. But if I get the impression as you continue to go on beyond that point that you have completely forgotten how long you told me you were going to take, I'm going to find some

835

discrete way to let you know.

And, as I say, the real important issue is not the time that I keep. It's the time that the jury keeps on you, and this jury has already sent us messages that they are mindful of redundancies and repetitions. And so I trust that you'll be educated by that and not wait to be educated by a verdict in this particular case about that fact that they are intelligent, they've been keeping notes, and they've been following this case very closely throughout. You've been watching them, I've been watching them, and they have really been on top of this. So, I'll leave that up to you all.

The verdict form that I have, gentlemen, I have them here. I want you all to look at them. I only have one copy of each. I have a stack of verdict forms here attached to the indictments for Mr. Price, and the same for Mr. Simuel. The only difference is the name and the indictment numbers, but if you will look at that and take a minute to comment on that, if you would.

(A PAUSE.)

MR. ROBINSON: Your Honor, these verdict forms look fine to me. I did want to bring to the court's attention on the verdict form for *State vs. Lucius Simuel Jr.*

THE COURT: Right.

MR. ROBINSON: There is one typographical error.

836

THE COURT: Okay.

MR. ROBINSON: Under indictment numbers, it has the last one that says 1366.

THE COURT: Right.

MR. ROBINSON: That should be 2009, not 2008.

THE COURT: Okay. Good. Let me have that, and I'll make that change. Let me make sure I get that right one. That's Mr. Simuel. 1366 is, that's the possession by a prohibited person?

MR. ROBINSON: That's correct. That should be 2009.

THE COURT: 2009. Thank you. I'll make that change.

MR. ROBINSON: Thank you, Your Honor.

THE COURT: Mr. Deysach, Mr. Geier, any exceptions on you all's behalf other than the second, burglary second degree request as to you, Mr. Deysach?

MR. DEYSACH: None.

THE COURT: Okay. All right, anything further then before we break for the evening from the state, Mr. Robinson?

MR. ROBINSON: Nothing from the state, Your Honor.

THE COURT: Mr. Deysach?

MR. DEYSACH: No, Your Honor.

THE COURT: Mr. Geier?

MR. GEIER: No, Your Honor.

THE COURT: I'll be around here at 9:00 in the morning

837

if you have any sort of epiphany during the night that raises something else in your mind, charge request and things of that nature. If you'll be in or get it to me some time in the morning when I get here, we'll deal with it so as not to hold the jury up when they get back at 9:30.

All right, we'll be in recess until 9:30. I'll be here at 9:00 tomorrow morning. Thank you all.

MR. ROBINSON: Thank you, Your Honor.

(WHEREUPON, THE CASE IS AT EASE.)

FRIDAY, NOVEMBER 20, 2009

(COURT RESUMES AT 9:41 A.M.)

THE COURT: Madame Reporter, I completed a chambers conference a few moments ago regarding requests to charge. Mr. Deysach renewed his request for a charge on burglary in the second degree. I reviewed that with him and went over the stature and respectfully denied that request.

Mr. Geier also renewed the request for a self-defense charge. I denied that request also, citing and distinguishing the case of *State vs. Hendrix*, H-E-N-D-R-I-X, from the case at bar, and denied that request.

There was also a request to clarify the court's charge on malice. I gave them the charge I intend to give in this regard, and I think that that resolved their concerns in

that respect.

Mr. Deysach, do you want to put anything else on the record to memorialize the conference?

MR. DEYSACH: I think you did -- the only thing I would do is associate myself and Mr. Simuel with Mr. Geier's request for that self-defense charge.

THE COURT: All right, thank you.

Mr. Geier?

MR. GEIER: Nothing, Your Honor.

THE COURT: All right, gentlemen, the jury will be brought in. And, Mr. Geier, I understand that you will take the first of the closing arguments on behalf of Mr. Price, and then Mr. Deysach on behalf of Mr. Simuel. Is that correct?

MR. GEIER: Yes, Your Honor.

THE COURT: All right, and then the state will close. Depending upon how long those arguments are, we may take a brief break before charges. As you know, because of the number of offenses in this case, my charge will be somewhat lengthy, and I may choose to take a brief recess at that time before I instruct them on the law. I'll be governed by what I think their tolerance limits are at that point in time.

All right, is everybody now ready for the jury?

MR. ROBINSON: The state's ready, Your Honor.

839

MR. GEIER: We're ready, Your Honor.

MR. DEYSACH: Yes, Your Honor.

THE COURT: Bring us a jury.

(THE JURY ENTERS AT 9:45 A.M.)

THE COURT: Good morning, ladies and gentlemen, and thank you again for your prompt return as we are now prepared to go into the final phase of the trial of this case.

I received yesterday afternoon at the end of the day a request for copies of certain documents: a copy of Lucius's statement, a copy of Devin's statement of July the 30th to Officer Calhoun. Those statements were not offered into -- the formal noticed printed statements were not offered into evidence. The content of those statements was obviously read into the record. But the documents themselves were not offered into evidence, and there were some questions about whether the documents themselves could come into evidence under our rules. And for that reason they were not offered to all of the content of the statement, or portions of the statements were obviously offered under our rules. And so the short of it is I don't have that copy to present to you because they are not into evidence themselves.

Another question was about the four guns, where did they originate. There has been no evidence in that regard.

840

My recollection is that Officer Viens testified about where the guns were recovered from in the premises. But as to where they originated from, there is no evidence in that regard. So, the answer to that question is I don't know. And that's the best that I can do because there is no evidence beyond that in the record.

MR. GEIER: They were recovered from the apartment.

THE COURT: According -- Officer Viens's testimony indicated where they were recovered, that's right. She -- and I don't think there is any question they were recovered the search, execution of the search warrant on the apartment in question.

Is there any question about that, gentlemen?

MR. GEIER: No, Your Honor.

MR. ROBINSON: No, Your Honor.

THE COURT: Okay, all right. All right, that being said, folks, now we're ready to get on with the business of the final arguments. Mr. Geier, on behalf of Mr. Price, will present the first of the final arguments. And after he has presented his final argument, then Mr. Deysach, on behalf of Mr. Simuel, will present their argument. The state, which has the burden of proof in this case through Mr. Robinson, will present the final argument in that regard. After that has been done, we may take a brief break, depending upon the timing of the morning, before I

841

charge you on the law. And after you have received the charge on the law, then you will be able to discuss this case among yourselves.

I want to commend you again on your attentiveness throughout the trial. You have paid attention throughout this. Sometimes the testimony has gone long; we've worked long days on certain respects, but your attention has not faltered in that regard. You've been prompt. We haven't always been prompt, at least as far as you're concerned. We've been here, but we haven't been prompt for you always, but you've been prompt for us, and we appreciate that.

And I'm sure you understand the seriousness of this case, and the seriousness of it to both sides in this case, and so you've given it that attention. And I'm going to ask that you continue to give that same attention now to the lawyers as they present your final arguments to you.

Mr. Geier.

MR. GEIER: Thank you, Your Honor.

(JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 8.)

MR. GEIER: May it please the court?

THE COURT: Yes, sir.

MR. GEIER: Your Honor, Mr. Foreperson, members the jury, counsel, it's been a long week long for all of us. You've had to sit here and listen to a lot of testimony.

842

We've had to try to elicit a lot of testimony. I'm sure all the lawyers, and we've been up late at night, and this is when we're all a little punchy trying to get this case to its conclusion and get you to reach the right conclusion.

When I first came up here, I said that the truth in this case has been concealed. And here we are at the final day of trial, and hasn't it? Hasn't the truth been concealed in this case? I said that the truth was locked behind that door over there, and the only people who had the key were the state and their witnesses. They're the only ones who have the burden of opening that door, and isn't that door still locked? We still don't know what the truth is in this case. We may never know what the truth was in this case.

So, who concealed the truth? Let's start with who didn't. The Beaufort County Sheriff's Department did a solid job investigating this case. Now, I have a few complaints; there's a few things I wish they had done. I wish that they had asked Demetrius Price what he was doing on the right day, not the 29th. I wish they had looked for fingerprints, but they didn't. I wish they'd searched more than just immediately outside the door just feet away, probably not any further from where I am to where that door is to the forest. Who knows what they might have found in

843

there. Maybe more iron.

It'd be nice to know how -- you'll see the picture in a little bit -- a shell casing could end up standing on its end in the middle of some concrete. Try that at a party sometime. Flip that over and make that happen. Stuff like that doesn't happen.

It'd be nice to know what happened to some statements and to some notes. Some people said their statements were recorded. We don't have those.

It'd be nice if they'd explain to us how, if somebody is standing at least up a few stairs, but from some testimony halfway up some stairs, and gets shot and the bullet goes through it, and yet the core ends up down by the closet at the basement stairs, and the bullet itself ends up inside of a clothes closet.

It'd be nice to know how a relatively intact .45 projectile which was found outside ended up under a doormat.

It'd also be nice to know where Deon's shirt is. We don't know. We don't have it.

There's a lot of things we don't have in this case, and again it's not all the Beaufort County Sheriff's Department fault. It's partially, I guess, the solicitor's fault. There's evidence out there. Let's give it to the jury.

844

All that aside, the investigators in this case did a fantastic job in going in and interviewing people. They interviewed witnesses; they reinterviewed those witnesses. They interviewed the victims; they reinterviewed the victims. They maybe did too good of a job, but because they were doing all these interviews and investigations, because they didn't just settle for that first statement, we have a history, a record which we attempted to show you on the stand there how the story changed over time. If they'd just done the bare minimum, we wouldn't have that. We wouldn't see that the story morphed over time, but it has. If they hadn't done what they were supposed to do, maybe we couldn't have seen the proliferation of the big lie in this case.

Now, who concealed the truth? Deon Cannick concealed the truth, the victim. Deverol Cannick concealed the truth, the other victim. Sharita Willingham concealed the truth. While the state didn't call him, Malik Campbell, who was there, concealed the truth. Martin Guzman, who the state didn't call, concealed the truth. They all had this gelatinous story that every time they told something to somebody, to an investigator or to us as they were sitting on the stand, it was different. It was different.

Now, I also told you that the devil is in the details, and it was. The problem with a lie, a big lie, especially

845

one that's shared among a number of people, is that it's hard to remember what the lie exactly was. You can't cover all the details, and even if you do cover all the details, it's hard to remember because you didn't live it. When you don't live it, it's hard to remember.

Now, the state may say, well, this happened a year and a half ago. How could they be expected to remember small details of this case? I suggest to you that a lot of these details are not small, which we'll get into in a few minutes. But to the first question, I'd say we all have moments in our lives where our lives changed. And make no mistake. For all of those people in that apartment, I don't not think anybody can deny their life changed that day.

Now, I haven't had anything like that happen to me, but I've had life-changing events. First, my first child. I can remember with particularity what I did that entire day. He wasn't born until late afternoon, but I can remember what I had for breakfast. I remember where I went with my wife. I remember where we went to lunch. And we didn't know the child was coming that day because if we had, we wouldn't have been standing in the middle of Toys-R-Us when the water broke. But I remember facts and details that I can't remember what happened two days ago or three days ago or a week ago. But because it was a day

846

that changed my life, I remember those details.

Now, they may say, well, everybody's different. If I witness something and you witness something, because I'm me and you're you, we're going to see things differently, and that's true. But the lies in this case weren't just among person A and person B. They came from the same individual.

And again going back to my example with the birth of my child, my wife remembers everything about that day, too. And occasionally we quibble about how far we walked that day, or did I get bacon with my breakfast, or things like that. But by and large, on the points that have some, even little bit of materiality, we're at least similar. We're at least similar. And the story I would have told you about the birth of my child five years ago is largely the same as it is today.

So, when you have this lie that you're trying to put out there, and it's the big lie and you've got all the little lies you have to put out there to support the big lie, the lie gets bigger. It grows and eventually and it loses integrity. Deon Cannick, Deverol Cannick, Sharita Willingham are trying to keep that lie in check to keep it from spinning out of control.

Now, when I was thinking about what I was going to say to you and how I was going to present this argument to you and show you the lies that happened throughout the course

847

of this case and the course of this investigation, I thought, well, maybe I'll do this. I'll take each person and I'll say Deon Cannick said this on this date, and then he said this on this date, and then he said this on this date. And then I'd say, okay, and then we have regarding the same incident or part of the story Deverol Cannick said this, and then he said this, and then he said this, and then he said this. Then Sharita Willingham said this, on down the line. And then I'd mix them up together and say look. Look what Deon said versus Deverol. Look what Sharita said versus Deon. And I realized if I did that, my closing would probably take hours, and I'm not using hyperbole. I mean, it would probably take hours.

So, instead I decided I'm not going to do that. I'm only going to bring up the ones that I think are really important because you've seen it. That's what we've been doing here, at least defense attorneys have been doing here, for the past several days. That's why this case took so long. Because when somebody got up on the stand and said something that was different than what they said to a police officer just maybe the day of, maybe two days later, maybe a week later, maybe a month later, we had to expose that lie to you.

Now, it gets a little convoluted because witness says X. We say didn't you say Y? He says no, I didn't say

848

that. So, then we'd have to pull the officer up and say didn't he say Y? Yes, he said Y. That's how we prove up the inconsistent statements, and I imagine that it gets a little lost in translation. But again, this case probably would have been over days ago it weren't for the fact that we had to prove up those inconsistent statements.

So, what is the big lie? The big lie is the story, the grand story that you've heard from the beginning of this case. That Demetrius Price and Lucius Simuel for no reason burst their way into an apartment and for no reason shot Deon Cannick. And then they decided to leave, but they waited outside. And when Deverol Cannick came outside, they shot him. That's the big lie. And I suggest to you how on earth can the state prove that that's what happened that day based on all the lies that those witnesses told on the stand.

And I point out not only were some of the statements that were told in the past inconsistent with what they said there. They'd change their story on occasion on the stand itself depending on who asked them.

So, again instead of putting up charts or graphs or going through everybody's testimony and saying look, look, look here. See, he said this and then he said that. I want to pose some questions to you that I would like you, when you go back into deliberation room, to think about and

849

ask yourselves whether or not it makes sense.

The first question is what motive did Demetrius have to do this? Why would he do this? Why would Lucius do it? There hasn't been any explanation or reason as to why they would decide to do this.

The next question is let's say you say, you know, I think I have a reason why they'd do it. Well, why would they do it in the middle of the day in broad daylight?

The next question is, assuming they were going to do that, why would they do it to people who could identify them? Who knew who at least one of the guys was, and who could either say to police or to their friends that these guys did this, and we need to care of it. Why would they do that? Why would they do this when there are two witnesses who are independent of anybody except apparently some business relationships with Deon?

Why would they do it when they could be placed at the scene by those two people? Hey, we just saw these two guys walk by. Let's go in there, burst our way in, and shoot the place up. Maybe those guys will take off, and they won't remember that they saw us. That doesn't make any sense.

Why did Deon tell folks, the investigators in this case, that initially he was interested in getting some pills from Lucius to make a little extra money? And then

850

when he got on the stand, he said, well, no, no. I didn't, I didn't want any pills. Maybe Deverol wanted some pills. Why would he change his story at this point? Why does that make sense? Why, why would anybody care? We know they had tons of drugs in there. Why would you change that part of the story?

And again going back to Deon, what did Deon really do after I guess the first phone call he answered? If Martin Guzman called him up and said hey, man, I want some marijuana. Can you hook me up, and he said yeah, and a few minutes later there's a knock at the door, why would Deon go downstairs? Oh, that's right. You want marijuana. Hold on. You stay there, though. You know, that seems a little odd.

But then he also said that at that time, he sees Lucius and Demetrius. He goes back upstairs again, and he says he gets Deverol. He says those guys are down there; go find out what they want. I don't know. And instead of going back downstairs to go walk off with his friends to go play X-Box like he said he was going to do, he goes back and plays X-Box upstairs, presumeably with his brother.

That whole up and down and up and down, knocks at doors, the whole exchange, only Deon told that story, and yet there were three other people. And yet when you think back to what their testimony was, there was a knock at the

851

door. That they went down, and it was Lucius. Then it was Demetrius.

Again, fairly miniscule, little details, but why wouldn't you remember? Why wouldn't you remember coming back up and sitting there, playing a video game with your brother instead of, as Mr. Campbell said, Deverol and Demetrius both went down at the same time. He never said they ever came back.

Why would Deverol initially tell the police that after talking with Demetrius and Lucius, he reluctantly opened the door and they all went inside, and then closed the door and suddenly they pulled out guns? Later on he said no, no. I was outside. They pulled out guns, and they forced me inside. Again, this is a day that changed his life, and he can't remember exactly how these folks came in.

Why would Malik Campbell tell investigators soon after the accident that he saw his brothers downstairs fighting with two subjects? No else said that, but why would he say that? If Deon Cannick is halfway downstairs and he's holding a pit bull and there's a shooter down there, and imagine for a moment you're the shooter. Why would you, say, put your hands up and thereby let go of a vicious, vicious pit bull? Why would you do that?

What did the pit bull do? I've never owned a pit bull. They've got a reputation. I don't know if it's true

852

or not. But as Deon said, he raised this dog as a puppy, and throughout the whole thing, whether it being fighting down below, gunshots, whatever, the pit bull did nothing apparently. Now, Sharita said it tried to bite somebody, but she's the only one who said that.

What's going on with the pit bull? Why didn't the pit bull, if it really was there in Deon's hand, and growling, as he testified, why didn't the pit bull get shot? If you're faced with a person with a dog and you feel it's a threat and you have a gun, are you going to shoot the person who's controlling the weapon, the pit bull? Are you going to shoot the pit bull and thereby eliminate the threat? Apparently whoever shot Deon knew the pit bull was trained to not do anything, I guess.

Now, this is an important one here. Various witnesses testified that Deon again was bent over and holding this pit bull when Demetrius Price, or somebody that looked like him, shot at him. Now, Deon said on the stand in front of y'all, he told me I put my hands up, and that's when he was shot. We had the doctor in here. You can mess around with the dummy. And the solicitor asked him is that consistent with somebody being bent over and a horizontal shot towards him, and he said yes. Problem is that he testified he had his hands up.

Now, maybe the state will say he put his hands up like

853

that. If you believe that, think again as to where he said he was on the stairs. He said he was halfway up by the shoe. And then later on he said, well, I took a few steps down. But the location of the shooter didn't change, which was at the base of the stairs.

If you have an occasion to walk up some stairs, just go up a couple and think about it. If somebody were bent over, could I take a shot at somebody that went from high to low out the back without bending the laws of physics?

Why is it that anyone, let alone somebody who tragically lost the use of his legs, how could they fall down some stairs and suffer not even a bruise, not so much as a bruise, let alone a sprained ankle, sprained wrist, something, broken nose? Didn't sustain any injuries. You heard that from both Lieutenant Meyer and the doctor who examined him and the guy who did surgery on him.

Why would Deverol initially say that after Deon was shot, he grabbed for the gun of Lucius? And then later on he said no. After Deon was shot, I jumped up and ran all around the apartment. Doing what, he never told us what he was doing, but he ran all around the apartment.

Why would Demetrius and Lucius, assuming they did this, shoot Deon Cannick and wait there forty-five seconds, as Deon testified, just hanging out? Then he said they ran out the door because the dogs were barking and Sharita was

854

screaming, and it was getting too loud, and they were scared. But yet the blast from the gun wasn't enough noise that they were concerned about. They just decided to hang around forty-five seconds and have a discussion.

Then when they ran outside, they stopped. Dogs are barking; Sharita's screaming. A shot's been fired, and this gives Deverol time to run around upstairs and come out unarmed, so he says, to chase down two people who just shot somebody who he says provoked them. And he said I didn't know they were out there. I needed to I.D. the vehicle.

Why did Deverol have to go and I.D. a vehicle when he knew who one of the alleged shooters was? Now, he says I only knew him as Tiah's uncle. It's the same person who was able to tell Lieutenant Jeff Meyer with Bluffton Fire Department Tiah's uncle's phone number.

Now, I think he said no, it was Deon who said that, or Deon told me. Well, if Deon told him, he's got a remarkable recall which wasn't borne out by his inconsistent statements. He was told the number once and was able to repeat it when, as Lieutenant Meyer said, he was in bad shape. His eyes were sunken in. He looked like he was in really bad shape, and he could remember a phone number he'd heard once.

Why would you decide to call on 9-1-1 because you have two people who are seriously injured and rather than

855

waiting for emergency personnel, you decide to pick up somebody and put them in a car and drive to the nearest hospital which is in Hilton Head? They didn't think there was time. I would suggest there's probably some other reasons why they left.

Most importantly, the most important question I want you all to ask yourselves is why, when Deon gave his first statement and he discussed what happened after he was shot and he tumbled down the ground, and he lay halfway on the stairs, why he says he heard the two people yelling: Any more iron. Later he changed his statement to: Where's the iron. And Deverol came in and said, no, it was: Where's the iron.

Well, why would Deon say any more iron? Because he realized what that meant. That there were guns there already. That one of those two folks had guns. Otherwise, you wouldn't say any more.

These are the people that the state has put on to prove their case. People who have made those statements who are also admitted drug dealers, who are admitted gang members. And based solely on their statement, the state is trying to convict two people solely on their statement. There's not a police officer here that can come in and say I know because I saw this event happen. That's exactly how it happened. There is not a third-party independent

856

witness that can say yep, yep, I saw that. The only independent witnesses we had, again, changed their story when they were up on the stand. The only sort of independent witness that we had was the 9-1-1 caller who said those people are bad. You need to come down and arrest them.

Why else would you hesitate to believe the testimony of these people? Every single one, Deon, Deverol, Sharita, and even Malik who the state didn't call, are hoping against hope that their testimony is good enough to get the state a conviction. And, thereby, maybe they'll get another sixteen months of no charges filed against them in this case. They may be wrong, but you know they're hoping. You know they're hoping that if they can just get a conviction, maybe they'll just be able to walk free.

And what else would they say in this case other than these folks broke in and for no reason tried to shoot us and we ended up shot because what are they going to say? Well, we had a hand in it. We're the ones you caught. They're not going to say that.

And again I go back. All you've got is that testimony. You don't have the smoking gun. There's no weapons recovered. You don't have the third-party witness. You have a video tape of somebody going through a gate. That's what you had. You have some bullets to guns you

857

don't have. You have conflicting testimony from Sharita and Deon as to who is holding the pistol and who is holding the .45.

Now, this is my last chance to talk to you. And after I'm done, Mr. Deysach is going to come up and talk to you on behalf of Lucius. And my guess is that Mr. Deysach is going to say some of the same things that I said and probably cover some things that I just forgot. And then he's also probably going to say, well, if you don't really believe what I'm telling you, then it was all the other guy. I take that argument for what it's worth.

Then the state's going to come up, and they're going to have a chance presumably to rebut everything I said that they feel they need to rebut and everything that Mr. Deysach said. And they're going to try again to convince you that the shoddy evidence that they have in this case is enough to convict.

And again I suggest it's not because Mr. Price, as I told you before, is presumed innocent. He's presumed innocent, and in order to find him guilty of any of the charges, you have to look at each charge and say these are the elements of this charge. And they have to prove each and every element beyond a reasonable doubt.

And again, as I told you, you have a job because it's your duty to test the state and their evidence. And if by

858

my representation, by Mr. Deysach's representation, or through just your own good sense you come up with a reasonable doubt, the state has to dispel those reasonable doubts. Not one, not two, not five, but all of them. Every single reasonable doubt must be swiped away, and you all unanimously have to say you know what? There is no way it happened any way other than this.

I also want to say one thing, too, that's very important. Each one of you has the ability and the power to say no. Each one of you has the duty and the responsibility to have the courage to say no if you don't believe it. If you don't have the conviction that what they're saying is true, please have the duty and responsibility and the courage to say that.

I told you before that when this case was all over and the state rested -- and again, we ended up having to throw evidence on there because we thought there was more that you needed to hear and understand. But when it was all over, you would be able to come to one conclusion, and that's I just don't know what happened. Ladies and gentlemen, I'd say right now how could you know what happened? How could you understand and really know what happened based on what you've seen?

And I'm going to ask you again. For every single charge the state has brought against Demetrius Price,

859

examine it, test it, and reach the conclusion that he is not guilty, not guilty. Thank y'all very much.

THE COURT: Thank you, Mr. Geier.

Mr. Deysach.

MR. DEYSACH: Thank you very much, Your Honor. May it please the court?

THE COURT: Yes, sir.

MR. DEYSACH: Thank you for your attention. I know I may have developed a reputation for being redundant or wordy, and if that was a problem, I hope -- I apologize, and I'm going to try to avoid being redundant with what Mr. Geier just said.

But what I want to do is jump right into what I think the evidence shows, what type of a verdict that dictates, as opposed to just beating up on what the state didn't prove.

I think that there's a pretty good amount of evidence out there that's going to show what probably really did happen. And Mr. Geier talked about how the credibility of the Cannicks -- that would include Malik and Sharita -- how that has been compromised. Their lies are shrouded in part, in all the moving parts in this story. There is, there is Lucius and Demetrius. There's Deon and Deverol. There's Martin and Jesse, and there's Sharita and Malik, and between trying to figure out where everybody is at one

860

time, that the ambiguity in the confusingness [sic] has given a shroud to their lie that has -- kind of makes your brain hurt to try and figure it all out.

But I think that it is clear from what you heard that the relationship between Lucius Simuel and the Cannicks is closer than what the state or what the Cannicks led you to believe. And that is because Deon or Deverol, I think they said Deverol was able to give Lucius's phone number. That they had phone calls earlier that day that were not picked up that Deon had assumed were Lucius. That Deon admitted to having a relationship in which he talked to Lucius on the phone on occasion besides the time that he visited the very apartment where this occurred. And when Deon -- or when Lucius shows up at the apartment, he introduces -- he tells Martin, hey, Luke is here or something along those lines. You know, why would he ask Martin to do that if Deon wasn't going to know who Luke was?

The way that the -- what Martin told you, surprisingly candid, truthful, that he had actually spent time with Deon and Lucius together, not at the apartment, but in his neighborhood in Simmons Kay. And the way that the Cannicks referred to Lucius by first name on the stand betrayed familiarity. And what we are being asked to believe is that these guys know his phone number but don't know his name. And that is a little bit insulting, I

861

think, to my intelligence.

The Cannicks were drug dealers. That was something that I don't think is in dispute at all. The drugs that are found, they said they were drug dealers. There was customers waiting at the door when Lucius and Demetrius arrive. I mean, not only are they drug dealers. They appear to be busy drug dealers.

The reason that Lucius and Demetrius are there is not the reason that the state told you in the first place, but it is to sell the ecstasy pills. And in saying that, I have conceded some illegal activity on the part of my client. But in the interest of getting across to you and communicating to you the reality of the situation, that's what I'm doing.

We know that this is so because of what Chris and Tiah told you. Both of them said Deon called to ask for pills. Will you please get in touch with your uncle. Deon told you that, yeah, I had talked to Lucius about pills in the past, but that was because my brother had asked me to talk to him about pills. So, we actually do have a conversation between Deon and Lucius about these ecstasy pills. And they tell you, Deon and Deverol both, that when -- that Lucius introduced Demetrius to them when he arrives that day by saying this is the guy I was telling you about. And so by that, we know that there is a conversation in which

862

Lucius is telling Deon and Deverol about the guy with the pills. And so the reason for Lucius to be there is pretty clear: to introduce Demetrius to the Cannicks in order for a drug transaction to take place between those two.

Deverol opened the door to the apartment, not because he was tricked or forced, but so that he could conduct the drug transaction. You're not going to do a drug deal in broad daylight 1:00 in the afternoon in the middle of an apartment complex.

And the place was, I mean, seems to me to be a pretty nice place. And, in fact, the way the apartment is set up, it almost seems perfect for a drug dealer where if they want to do a drug deal, you don't have to go up into the living quarters. You can just step right inside into that foyer and do your business and then leave. And you're in an upstairs apartment, so I guess if you want to grow marijuana plants in the attic, you can do that, too. And so it was set up perfectly for drug dealing. And you can ask yourself, given all the drugs that were found, how many drug deals could have taken place in that very area? I submit quite a few.

I would say this. I would say that -- Mr. Geier talked about the credibility of Deon and Deverol, the Cannicks, being compromised. And so I'm going to point out to you that facts that the state tries to prove simply was

863

what Deon and Deverol said at one time or another, or from the stand, or to the police at some past in the past are not proof of anything. That is probably the evidence that they've put up with the least amount of credibility is what those Cannicks say because they have -- you know, Mr. Geier pointed it out. I'm not going to tell you why you should think that they're lying because it's been covered. But I'm going to tell you when you have somebody who's lying to you about something, you can't trust the liar. You can't trust the liar, and you certainly can't trust it in this context.

There is no sign of any forced entry. You would expect maybe -- if you're trying to bust into a place, you don't bust in like this. You bust in like this, you know? You use force. That would leave a mark on the door is what I'm saying.

And there's -- Deon's bike is parked right outside the front door. And in any type of a commotion that would have required force to open the door, to think that that wouldn't topple that bike is somewhat ludicrous.

The evidence that Lucius went inside is -- the only, the only stuff that the state presented to you on that score was what the Cannicks said. You know, was there a footprint, you know? And sadly, because there was the injury, there was blood and there were areas in which to

864

leave evidence of your presence, whether it's a fingerprint or a footprint or something that you would see that would indicate that there was one people, two people, four people, three people, however many people they want to tell you are in that tiny little area. And none of that is there. And so the only evidence that they have is what the Cannicks say.

And it's frustrating to rely on that because, I mean, the point I want to make about certainly Deverol's credibility is that the state is proceeding in a way which makes it seem like they didn't, they don't even believe Deverol when he told the police that Demetrius shot him. So, if they don't believe him, why should you?

The idea that the whole thing was a planned robbery, I know I touched on this briefly, but there's a few facts that demonstrate to you that that was no planned robbery. The police didn't charge anybody with an attempted robbery. There was no demand made for anything except for the thing about any more iron. And I know that we'll hear, I guess, later if the state plans to say oh, yes, this was a robbery intended to -- just for the purpose -- of drug dealers, just to take their guns. I don't think that that makes any sense. When you rob somebody, you ask for money. And there has never been any testimony that anybody made any demand for anything. And so to say that it's an attempted

865

robbery is just without any support, no support.

Broad daylight, Mr. Geier said. No attempt to disguise even though Lucius has that close relationship with the Cannicks. Giving the name to Martin and Jesse as they're coming up, not consistent with somebody who's -- you're just giving evidence to the police when you do that. And if robbery is your game, then that's just not the way you behave.

The Cannicks said Lucius had been there before, so he must have known about the pit bulls. He must have known about the pit bulls.

All right, so if it's not a robbery and it's a drug deal, I think everybody can agree that Deon and Deverol, they got shot. There's no question about that. That is one of the main -- the few facts that's not in dispute here, that they do get shot. And how does that happen? I think it's easy to say that, hey, it's just a drug deal that breaks down or a drug deal gone wrong. But what I think the evidence that's been in front of you shows, that if it's a drug deal that went bad, it's not because of Lucius or Demetrius but because of the Cannicks. That's what Chris and Tia -- Tiah told you that Lucius told them, the Deon tried to rob them.

When Martin tells the police that he was in the living room playing games and hearing the phone ring, he's telling

866

a lie that Malik asked him to tell. Martin said he talked to Malik before he talked to the police, and the story of playing video games, that's not hard to guess. But of the phone ringing multiple times without it being answered, that was information that was fed to him by Gripp he says is the person he talked to before that. And so by asking Martin to lie, it's a -- it's something that somebody is trying to hide would do. And so Malik was trying to hide something when he asked Martin to lie. And if it was just something that Lucius and Demetrius had done wrong, there wouldn't be that reason for lying.

Evidence in the record that Lucius is surprised when this happens: Why you shot Little Dude. Why'd you shoot him? Deverol says, you know, when he goes outside that there's some argument between the two.

All right, and if there is any question about whether the Cannicks are capable of -- whether we should believe then when they say that they didn't do anything to try to make this drug deal go wrong, that we didn't try to rob anything, anybody or anything, remember and ask yourself if the guys who aspire to this and have this in their apartment are capable of doing something like that. There's no good reason to have a mask like this in your apartment unless you're going to use it for a robbery. And I'm not saying that they had it on that day, but that's

867

what that's for, no question about that.

And I brought in the evidence, you know, of the gang stuff and the pit bull stuff. It's not to say hey, you know, these guys deserved to have something bad happen to them. It's to say that they are the ones who are capable. These guys that raised the pit bulls, that are members of a gang, that are dealing drugs, and they're just the type of people that would try and pull something like that off.

Lucius never had a gun. That's what's in his statement. The only people that say he's got a gun are the people who live in that apartment. Sharita wants to says he has a gun. Sharita doesn't even know that they deal drugs out of that apartment, no idea that there are drugs anywhere in this apartment. I don't even -- you know, I'm not even sure which all the marked, what each one of them represents. But it was, like, drugs here, here. In the kitchen, in each bedroom, in the attic, everywhere.

And so for her to say that, well, I don't they're dealing drugs, for her to say that she saw what was going on when Malik told us that she was in the dining room and that -- were leaning over a banister that's covered with different stuff and nothing seems to be disturbed, so Sharita didn't see anything. And so when she says he has a gun, it's not credible. And proof? No. Beyond a reasonable doubt? You've got to be kidding me.

868

Lucius did not shoot Deon or Deverol. He's not accused of shooting Deon. He is accused in this case of shooting Deverol. At no point during this trial did anybody talk to you, tell you from that stand I saw Lucius shoot Deverol. I'm Deverol. I saw Lucius, I saw Lucius shoot me. He never told you that, never told you that. But what he did tell the police two days afterwards is that Demetrius shot him, and that's why the police got the warrant against Demetrius.

And so what it is that the police found out that somehow changes that theory has never been made clear. I have no idea what is in the record, what evidence they have that makes them think that what Deverol told the police with his own mouth is somehow impossible.

All right, those facts that I've laid out and the reasons why this should be believed demonstrate a drug deal in that little area. And for some reason, probably because of something, a robbery, something that the Gangsta Disciples who lived there did required Demetrius to apparently try shoot his way out of there. And like I said, no evidence that Demetrius is in there other than just the people who lived there.

And what Deverol wanted everybody to believe was that he was chasing -- he owns guns, you know. He's -- the person who we demonstrated him to be, that he is not

869

chasing these guys with a gun? He's running out. They don't -- it stares us in the face that somebody just did something to his brother, and he's not going to want to take revenge with some of the firepower that he has in his house?

What would you -- and you don't even have to be a gang member to have this urge. To have seen something go wrong with one of your, not just a friend but your blood brother, your brother and want to exact some revenge. And then they want to come up here and tell us they were just trying to get a license plate number. They weren't trying to shoot them, right?

Deverol wants us to believe that he kind of -- it almost seems like a cartoon the way he does it because he's running out, and he gets so far out the house before he realizes that that they're there. That he's, like, stuck. And so he hits the ground, and that's when he's shot.

The problem with that idea is that the people who are shooting at him are not laying on the ground shooting at him like this. They're standing up, right? So, the shot that hits Deverol, as he testified, comes from some feet away and from somebody who's standing up. That shot wouldn't go straight across his body like the doctor testified, straight across his body. It'd be coming downward. And you would expect, if he's getting hit in the

870

left side, not for the bullet to lodge way over here on the right side, but to come out more on his stomach.

And you'd probably also expect to see a little bit of blood on the sidewalk in that area. And I think the area that we're talking about, I have a good picture of it. I think this is the picture of the front door. The area that we're talking about he said was over in this direction, and the guys were supposed to be standing over here, not, not attempting to get away, which is what you would expect after this, of somebody to be running. But just kind of standing there and dilly dallying. That around in here is where you would expect to see some of the blood on the sidewalk if what he's saying is true.

And it also makes you think that when he's got the injury to the hand and the injury to the side, that it may be consistent with him laying down on the ground, but I don't think so. But what it is consistent with is standing like this with your hand outstretched and getting shot at.

And, well, well, what is he shooting? Well, probably, probably the gun that ejects the shell casings that land in the area near where he says he was. And so I think that the testimony made clear that none of the guns that they find were matched to those shell casings.

But that no way means that none of -- that they didn't have the gun that shot that because the same person who

871

came and gets the pit bulls out of there, which are gone by the time the police come -- it's a lot easier to move a gun than a pit bull, I guess, or it would have been six pit bulls is the point I'm making. And so someone compromised -- I mean, time is quick. I mean, you know, it certainly was not a clean place. But if there's time to get rid of those dogs, there's also time to get rid of that gun.

And so using the evidence that the state puts up, there is a more believable, more likely scenario that takes place than what is described by the state's witnesses, okay? And the problem is that that scenario includes my client, Lucius Simuel, going to this house for the purposes of making an introduction for a drug deal. And so that means that he has done something illegal, right?

And my point is that he is not on trial for setting up the drug deal. Nor does setting up a drug deal make him responsible for everybody else's actions after that. That he is not on trial for those drugs any more than the Cannicks are on trial or have been charged for levels of drugs, guns, and other things that were found -- really just drugs and guns -- that are found in their apartment.

And so for your verdict to speak the truth, it can't be one that says, well, Lucius shouldn't have been there in the first place, so we're going to, you know, mark guilty here, or mark guilty there. It has to be whether or not he

872

has committed the crimes that are charged.

And you're not allowed to assume that he has or has not been charged with those other offenses. That's just not anything that's before you right now. And so what's before you is not whether or not Lucius comes with un -- with clean hands, but whether or not he's guilty of the ABWIK and the burglary that he's charged with. And so that's, that's my difficulty is explain to you why that's, why that's important.

And I guess the easy thing to say is that it is a far cry from setting up a drug deal or making introductions for a drug deal, from shooting somebody, from breaking into their house. And so to find someone guilty of burglary and assault and battery with intent to kill when what they've done is set up a drug deal would be a conviction that didn't reflect reality. And delivering verdicts that reflect that reality is what we're here to do.

Now, what I've done is given you what I believe the evidence shows, and it is not my job, it is not my job to prove to you that's what happened, okay? And by doing so, I ran the risk of telling you that -- confusing you. And you might go back in there and say, well, Deysach's version, maybe it happened, but maybe it's a little bit more likely that -- the state's version.

That's not the way it works. If this is possible, if

873

it's at all possible, if it's at all possible that the reason that anybody is inside that little stairway is for a drug deal, invited in for a drug deal and not because they forced their way in, you must, you must find them not guilty for burglary. Burglary is entering ---

MR. ROBINSON: Your Honor.

THE COURT: Yes, sir.

MR. ROBINSON: Your Honor, I object. That's a misstatement of the law that it's -- if it is, if it is at all possible.

THE COURT: Right. I'll sustain that objection.

MR. ROBINSON: Thank you.

THE COURT: I will correctly charge the jury in a few moments what we mean by proof beyond a reasonable doubt. Thank you.

MR. DEYSACH: And I apologize, too. And, you know, obviously you may take it that I'm trying to maximize the case that's the state's burden. And I would just warn you against them saying anything to you, and I'm guilty of it. The judge just told me I was wrong.

But if the state says anything to you that says they are minimizing what their burden is, I want you to listen to that, too, and make sure that they don't try to lower their bar any more than what it's supposed to be because proof beyond a reasonable doubt is the court's way of

874

making sure that innocent people don't get convicted, right?

And so if there is the reasonable -- if there is reasonable doubt, you know, that what I'm saying happened happened, or another version happened that's consistent with innocence, then what the duty is is to find not guilty.

And so explaining it is one thing. Explaining why it exists is another because it's -- when that burden does not get honored, then it is people like not just Lucius but Demetrius, too, that get caught up. You know, they're the ones who are going to end up suffering.

So, that's why I'm asking you. You've got to, you got to hold to the burden. That's what the case is about. That's what the oath that you took is about. This isn't about the car wreck on 278 that we saw in jury selection. This is about convictions. And like I said, I don't think, I don't think anybody needs to be explained what the consequence of a conviction is.

Also obviously making the point on the burglary not guilty, assault and battery not guilty. They don't even have the right person. I don't want you to hold Lucius responsible for something that somebody else did.

The judge is going to charge you about the state of mind that needed to be present for this to happen. And

875

when this happens without any plan between Lucius and Demetrius, when the shooting happens without any plan and without any expectation of it happening, happening by Lucius, you're not going to be able to hold him responsible for something that somebody else did.

And I want you to listen to the judge, listen to the law. And please when you're back in there, remember some of those things I said. And if there's other things that bother you about the case, doesn't mean they don't bother me, too. It just means I didn't have a chance to say them.

I want to thank you all, and this is it. That's all I have. Thank you.

THE COURT: Thank you, Mr. Deysach.

MR. DEYSACH: Thank you.

THE COURT: Mr. Robinson.

MR. ROBINSON: Thank you, Your Honor. May it please the court?

THE COURT: Yes, sir.

MR. ROBINSON: Ladies and gentlemen, you just heard discussions about some of the evidence that's presented and almost none of the law. I'd like to review the evidence with you and discuss the law with you.

I represent the state. I have the burden of proof. The burden of proof is proof beyond a reasonable doubt, and the first piece of evidence is this: these two defendants,

876

Demetrius Price and Lucius Simuel, are presumed innocent.

I want to begin by telling you the way this case started. Lucius Simuel had a simple plan. He had been to the apartment of Deon and Deverol Cannick to smoke weed. He knew that Deon was his niece's boyfriend and a teenager who was selling marijuana. He knew that Deon had an older brother who was selling more than just marijuana: marijuana, pills, and cocaine. A month or so later, he decides to rob them. And so he gets together with Demetrius Price and comes from Savannah to Bluffton.

But the reason you're here, the reason this case is here, the reason these charges are what they are is because the plan broke down. They might have been trying to rob them. They might have thought hey, I can steal their money. I can steal their drugs. But the problem is they got inside and the stranger, the person who didn't know Deon and Devin, the person who'd never been there before, Demetrius Price, panicked.

They got inside the house. They saw the boys, and then here comes this dog. They were both armed and when this kid came down with the dog when he thought he was in control of the situation, he panicked. Bam, and he shot Deon.

Now, that's not what Lucius was planning to have happen. Lucius had been there. He'd hung out with these

877

kids; he fraternized with them. He wasn't expecting this kid to get shot before they even got to ask for money. And so what did they do? They never even got to get anything out of their efforts. They retreated.

Deverol Cannick -- the person who was most likely to have interacted with them because he was the one who was dealing drugs, or dealing more drugs than just marijuana to his buddies from Simmons Kay -- reacted. When he went outside to see -- just, my brother's been shot. He thinks they will have run off. They didn't run off. They were standing right outside the door, as he said, going back and forth loud enough, maybe loud enough to be arguing.

And when they saw him, what they did was they turned their guns on him because at that point, the panic was over. The plan had failed, and Devin was a witness. And so they tried to kill the witness.

That is what this case is about. It's about, as I said to you in the beginning, it's about a burglary that turned into a shooting because of decisions that were made by these two defendants.

You've heard a lot of discussion about the testimony. I'm going to discuss the physical evidence, the visual evidence. And in addition, I'd like to include in my discussion some of the defenses', some of the defenses' evidence.

878

These are photographs. You've already seen them. This is Demetrius Price's car arriving at Plantation Point Apartments at 1:27 p.m. on July 28, 2008. Law enforcement, in the interest of clarity, they use military time and so they, instead of calling it 1:00 p.m., they call it 1327. And since that's the way the 9-1-1 calls are time stamped, that's what I've done just for this diagram, this little graph.

At 1327, a car registered to Demetrius Price arrives at Plantation Point Apartments. Five minutes later at 13:32:47, 1:32 and 47 seconds, a neighbor named Jamie calls 9-1-1: Oh my gosh, oh my gosh, I just heard three gunshots. You heard her voice. Ma'am, where are you? Did you see anything? No. I heard the shoots. I went to my bathroom. I'm hiding. 1327 while this car is at the apartments where these victims live.

Five seconds later, another call to 9-1-1 because they've got more than one operator. It's Devin. How do you know it's Devin? You hear the voice say: I've been shot; I've been shot twice. You hear their voice. You hear how frantic they are. You hear the desperation.

A little bit more than thirty seconds later, another 9-1-1 call, and this is probably from Malik. He's the one who says I need an ambulance. Where? Plantation Point Apartments, apartment [redacted]. Why? Two people have been

shot. When he says two people have been shot, he's referring to his brothers. Who shot them? I don't know. And that's consistent with what Malik testified to. I was at the top of the stairs. I heard a shot. I hit the ground. I looked down and saw two people. I saw their eyes. He also testified he wasn't at the apartment when Lucius came there a month or so earlier to smoke weed with Deon.

And finally, there's some other 9-1-1, 1334. Don't know who that's from. Caller didn't speak into the phone. We just hear the screams. You just hear the screams, mostly of the girl, Sharita. Where he at? Where he at? Where's the keys?

Now, there's another 9-1-1 call that comes at 1340 five minutes after Demetrius's car leaves. Jamie calls back and says listen, I just want you to know those boys are dangerous. They've got pit bulls, and I've called animal control on them. Were they involved in any of this? I'm just assuming they were. When law enforcement tried to find this person, nowhere to be found.

Did that help you make a decision about whether or not to believe these victims? No, because these victims told you they have pit bulls, told you they had drugs. So, what we know is that when the shooting happened, when the horror was unleashed, Demetrius's car was there. And we brought

880

the sound of the shooting into the courtroom. That isn't police statements. That isn't testimony under oath. That isn't this nice, controlled courtroom, this nice, controlled environment. That is the real shooting.

Now, let's discuss the testimony, and before I do, I want to use an image for you. This is our dummy. You've seen him all week long, kind of silly looking. Y'all have lots more eyes than I do. You're looking at this from one side. When you look at this, you see some shoulders, backside, the heels. You don't see a nose, don't see any eyes, don't see any lips. So, as far as you know, you're just -- you only see this is from this side. You don't know if it's got eyes, lips, or a nose. If you turn it from this side and you were to only see it from this side, it's got one ear, one eye, one nostril, and you can see part of one arm.

How about if you turn it on this side full? You see both eyes, both nostrils, lips, ears, both hands, the ribs, groin area. Now, if you have people who only see this from one side, their description of it is going to be different. But that doesn't mean they're not all talking about the same thing. They had different perspectives; they had different perspectives.

Now, I submit to you, ladies and gentlemen, that the eyewitnesses in this case had different perspectives. When

881

this shooting happened, Malik was playing Halo. When this shooting happened, Sharita had just been playing with the puppies. When this shooting happened, Deon was on the stairwell. Devin was at the base of the stairs. They all saw the same thing from different points of view. So, therefore, they're going to describe it different ways.

And, in addition, when this shooting happened, they weren't in this calm, peaceful, stable environment where they're in the same seats and every yes sir, no sir, yes Your Honor. They're in their home, and people showed up at their house that they weren't expecting.

You heard Deon say I thought it was awkward that he showed up. I'd just dumped his niece. Devin said only time they ever talked to these guys. It's weird them showing up at our house. You heard the defense witnesses Tiah and Chris say I tried to call Deon, but he didn't answer his phone.

And one other thing I wanted to mention about the testimony. These 9-1-1 calls that got made, there was another phone call. There was another phone call that was made that day. Tiah and Chris Battle, Tiah Frazier and Chris Battle told you about it. Lucius Simuel, after the shooting, called Tiah and Chris and said yeah, the deal went bad. Deon and Devin got shot.

You've heard all the 9-1-1 calls. Lucius made a phone

882

call, but he didn't call 9-1-1. Did he have any remorse? Did he have any sorrow? Was he, like, oh my gosh, he just shot the Little Dude? That is not in evidence because that didn't happen because he was involved in the shooting; he was involved in the shooting.

Now I'd like to go through the witnesses in a little more detail. Devin was only one that was present for the shooting. Mr. Geier asked you why aren't there any third-party witnesses? Why aren't there any cops who saw this? That was part of the plan. You're going to rob a drug dealer, you're not going to do it in front of the police station. I mean, it'd be nice if we had shootings in the nunneries. Then all the nuns could just come in and talk about what happened. But if you're going to rob a drug dealer, one of the advantages of that is a drug dealer isn't going to call the cops because he's got drugs in his house. You can get away with that.

Devin is the only one who saw the shooting, both shootings. He said he was overpowered. These guys just took control. Two guys came in. One had a revolver; the other had an automatic. Saw his brother get shot, saw it. Saw this defendant, Demetrius Price, shoot his brother.

And I asked. Devin never saw his car. How could Devin Cannick have identified Demetrius Price as the shooter if he never saw a car? Because the way the

883

detectives knew to put Demetrius Price's photo in a lineup is because he was the registered owner of the car. Devin didn't anything about that. He said that's the guy. Didn't hesitate -- that's the guy sitting -- in his hospital bed. And you say Devin testify.

One of the things that makes your job so tough is you have to decide from that witness stand who's telling the truth and who's not. You saw Devin's demeanor. You saw how it was for him to talk about seeing his brother get shot. I submit to you that he was telling the truth.

Now let's talk about Devin's injuries. We've got some really good visuals on this. I'll keep it simple. That's a bullet. It was put there on July 28th. The expert witness Dr. William Bromberg testified that it went in a diagonal motion. It entered down here and got lodged up here. Devin testified he went outside, saw the guys with the guns. They were still there, and he turned around and got down on the ground. I submit to you that he saw them raise their guns. The first shot that was fired is the one that hit him in the side as he was getting down on the ground, getting down on the ground. You're bent over. Bang. Comes across. That's why this bullet went in an upward motion, cut through his liver, cut through his diaphragm, and nearly killed him. As Dr. Bromberg said, he had never seen a patient with this much internal bleeding

884

that did not die or wasn't seriously sick.

He also got shot in his hand. What's significant about that? Well, let's look at the photographs. This is the stack numbers of no evidentiary value. Shell casings right here. Another one of the projectiles was found right there underneath the doormat. It is State's Exhibit Number 38. Found, found right there. That's, ladies and gentlemen, I submit to you that's the round that hit his hand. When his hand swelled up, got down on the ground. Bang, hit his hand.

As for the shooting of Deon, this is a little bit more -- this, too, is complicated. Deon is coming down these stairs. Now, when he was asked this, he said a guy told him to put his hands up. And one of the things that is indisputable is that the injury which Dr. Gage Ochsner called devastating, which he also testified could have killed him, went diagonally through him. You can see this where the bullet fragments went diagonally through him.

If you're coming down the stairs and you're reaching down to grab the dog's harness, and equally as important Demetrius Price is coming up the stairs and holds the gun up like this, the bullet's going to go sideways and Devin -- Deon's going to go -- bang, bang right through him. Shattered his spine. Shattered his spine.

Furthermore, what shattered his spine? This did, two

885

things found inside the house: a core and a jacket. This is what did it. It's in evidence, Defense Exhibit number 43.

Now, you saw from the X-rays when Deon got shot, there were metal fragments in the X-rays. Lit right up. The bullet broke apart. Part of it was still in Deon when they took the X-rays. The other two parts exited the back. Remember Jeff Favor said we got there. I log rolled him. I could see his spine. That's an exit wound.

Well, if you're coming down the stairs, and just as -- what happened is just what Dr. Ochsner said. He said -- Mr. Geier asked him if you got shot like this, what would happen? He said you'd fall down. Well, what did Deon do? He fell down and when he fell down, the bullet landed on the ground where he fell because once that bullet is traveling, once it's hit him, its direction changes. It loses its force; it loses its velocity, and so it landed on the floor.

Or even if it landed on the steps, even if it landed on the steps, you heard testimony Deon ran up and down the stairs a couple of times. Sharita and Malik carried -- had to come down the stairs, the two of them, and carry Malik outside. They might have kicked it down the steps. That's very plausible. Either way, there is no question that this bullet was fired inside their house, inside their house.

886

One of the final things I want to discuss is the testimony that got a little rough yesterday, the firearms expert, Ken Whitler from SLED. These items were all admitted into evidence. You can look at them. I want to clarify that.

Inside the house, four handguns were found. And we didn't enter them into evidence, but he talked about them because he examined them, and the evidence custodians testified they transported them to him, so he examined the four guns that were found inside house.

It was a .45 automatic, a .32 automatic, a .38 revolver, and a .22 revolver. Now, Ken Whitler fired all these guns, and he looked at the three .45 shell casings, the .45 projectile, the core, and the jacket. And what he told you was none of these guns were used in the shooting, and that's significant.

It's significant for two reasons. First of all, it corroborates what law enforcement found when they searched the house on the day of the shooting. Angie Viens, Angela Viens came in and was writing down everything as they found it. Where did you find it? Where did you find it? The orange dots are where the guns were found.

Now, admittedly the stairwell's on this side. Bedroom, closet, closet, closet. Todd Calhoun processed the stairwell that I just showed you. No guns on the

887

stairwell. Furthermore, no blood on the guns, no blood on the guns. Deon had been -- I'm sorry, Devin had been shot in the hand. No blood on the ground.

The EMTs arrived at 1342. You heard on the 9-1-1 calls at 1333 ten minutes earlier them saying get the keys, get the keys, get the keys. 1344 you just hear the screams. It's maybe two minutes, if that. Ninety seconds after the shooting.

Ladies and gentlemen, these two gunshot victims didn't have time to go hide the guns from the shootout; they didn't have time to do that. I submit to you that's not reasonable. It's not reasonable.

And more than anything -- that's the second part about Ken Whitler's testimony. It's confirmed by the science. The guns couldn't have shot the rounds. They didn't shoot the rounds. In fact, one of the guns, the revolver -- now these are, these are -- the core and the jacket are both from a .38. He said this .38, pin didn't work, and the barrel was dusty. If you've been firing guns, there's not going to be dust in the barrel.

His discussion of the .45 also, the rifling characteristics, they're different. Rifling is when the bullet is leaving the barrel of the gun because when a, if I may, when the bullet is fired, it has to be spun so that it will go straight, and that leaves marks on the casings.

888

Rifling's different. Sorry. What about the shell casings? Sorry. Different. Different.

And so that's the significance of his testimony. There were two guns used in this shooting: a .38, or .357, and a .45 automatic, and it wasn't any of these. Wasn't any of these.

And finally, that's the significance of the shooting outdoors. That tells you something about this shooting outdoors. When Devin went outside, I think what the defense wants you to think is Demetrius was firing two guns. There is no testimony from the victims, from the eyewitnesses, from the people who got shot that either person that came inside had two guns.

Now, I suppose it's plausible that when they came outside and saw Devin, saw this witness, that Lucius handed his gun to Demetrius so that Demetrius could shoot them both. What I submit to you is that Devin -- Demetrius shot Deon inside, and Lucius shot Devin outside because Lucius knew who he was. And he may not have planned to shoot Deon, but he didn't want to get caught.

And is there anything that supports that? You bet there is. Lucius made a statement a couple of days after the incident when he says wasn't expecting anybody to get shot. During this whole thing, he was being greedy and wanting money. He also said I'm the one who set this whole

889

thing up. I got myself into this, and I'm going to have to deal with the consequences. He knew what happened.

And then later in transit, knows he's in trouble, says to the officer, man, do you believe in God. And then what does he tell the officer? Well, I just told you eighty percent of the truth. You've got to figure out the rest.

Ladies and gentlemen, I submit to you that this investigation, one of the reasons we kept talking, we kept talking to these victims, talking to these witnesses, it's because they got the other twenty percent. They got the other twenty percent.

Finally, there is one important piece of evidence, small but very important, that was not discussed in either of the previous closings. There's one piece of evidence that's not dispute. Lucius Simuel and Demetrius Price have convictions for crimes of violence. Not in dispute, and so it was illegal for them to be in possession of guns. They weren't supposed to have guns anyway.

So, now let me discuss a little bit of the law. Of course the judge is going to instruct you. You follow his instructions, but it's important for what I have to prove, so let me discuss it briefly.

Assault and battery with intent to kill, it's a big, long word. It's something simple. It's the unlawful act of a violent nature to a person of another with malice

890

aforethought, an unlawful act. It's not legal to shoot a gun at somebody.

Of a violent nature, a violent nature. You've seen what one bullet did to Deon's spine. Shattered it. That's a violent nature. You've seen what the other bullet did to Devin's intestines -- I'm sorry -- his insides. Massive internal bleeding. Nearly killed.

With malice aforethought, expressed and implied. That's kind of some old fashioned expression. What that means is malice aforethought, and what the judge is going to tell you, that malice aforethought doesn't mean you have to have gone to the scene with malice and desire to cause harm. It can be formed in an instant. And the law says it can be expressed or implied, or implied. That means you can infer it from the injury.

I submit to you, ladies and gentlemen, if you fire a .38 revolver at someone at close range, that is implied malice. It shatters their spine. If you fire a .45 automatic at someone twice and it hits them here, that's malice. It's not a kiss on the cheek; it's not affection. Malice.

Burglary, burglary first degree is when a person enters a dwelling without consent with intent to commit a crime in the dwelling, in the dwelling. No question this is a dwelling. All the witnesses told you who lived there,

891

who lived in the apartment. In cross-examination, Mr. Geier asked either Deon or Devin was your name on the lease. Yeah, my name was on the lease. They lived there; this is a dwelling.

Without consent. You've seen photographs that are in evidence. I'm just going to show them to you so you can see them again. You see the blood on the wall, see all the blood on the wall? They didn't give these guys permission to come in the house. There was a lot of conflicting testimony about, well, who opened the door first. Did he let them in? Did he come outside and shut the door behind him? How did the entry occur?

The important thing is, going back to that question about perspectives, did these guys have permission to come in the house? And the answer from all the evidence, from all those perspectives is no.

Now, they -- once you've been shot and you've got to talk about it a couple different times, we could easily understand how memories about little details can wane, but one thing is clear. They didn't let them in the house, and if they did, it was not for the purpose of getting shot. And that's one thing the judge is going to explain to you about burglary. Burglary doesn't have to, necessarily have to be forceful. It can be by ruse, by trick. And so maybe they -- I submit to you they did.

892

They tricked them into opening the door. Hey, man. We're here, we're just here to sell you some drugs. Oh, okay. Maybe I want some drugs. Drug deal's over, guys. Drug deal's over. Where's the iron at, any iron? They didn't want to get shot.

And in addition to those things, a person can be armed with a deadly weapon, causes physical injury to a person, uses or threatens the use of a dangerous instrument, or displays a weapon, all those things we've got. We got injuries in the house. We got display of a deadly weapon. We got use of a deadly weapon.

The next charge, this is also a -- it goes along with the other charges, possession of a weapon during commission of a violent crime. It sounds technical; it's not. ABWIK, assault and battery with intent to kill, is a violent crime. Burglary first is a possession -- is a violent crime. If you have a weapon in your possession when you commit one of those crimes, that's also an offense. You can't commit a burglary with a gun and not also commit that other offense. It goes right along with the other two.

And finally, the other offense that I mentioned, possession of a handgun by prohibited persons. You can't shoot somebody if you're not in possession of a handgun, and both defendants have conviction of prior, of prior crimes of violence.

893

Ladies and gentlemen, you saw a lot of evidence. It's been a long week, a longer week than I thought it would be, but I know you've been very patient and very attentive. I don't have time to discuss everything. I think that given your very careful attention, there's no need for me to.

There's one thing I want to make real clear to you. All the people in that apartment, most of them -- yeah, Sharita, Malik, Devin -- at least all the people who didn't go into a coma, all identified Lucius Simuel. Lucius admitted to being there. Lucius was in the house; Lucius was in the house. Lucius was there. Lucius knew the boys got shot. Lucius didn't call 9-1-1. The only, the other thing is they all identified Lucius, picked him right out.

Demetrius, he was picked out by Devin. Devin is the only person that went out, that answered the door, saw him come up the stairs. Sharita looked over once and only saw the beginning of the break-in. Malik fell down, looked down the side, looked down the side. Only saw the end.

Only one person can identify Demetrius. Martin Guzman has glasses that he wasn't wearing and was high. He didn't see people standing there. He remembers them saying Luke or Lou, something like that.

Now, his vision must be better from far away because he saw a car. He couldn't see who was there. The only person who could see who was there was Devin. And all of

894

you saw him testify.

If you have a stabbing on a pirate ship, the only person who can tell you about the stabbing is the pirates. If you have a shooting at a drug house, the only people who can tell you about the shooting are the drug dealers. If I was trying to prove the moon landing, I could call NASA in here. I'm not trying to prove moon landing. I'm trying to prove that a drug dealer got shot.

You've heard all the evidence. We're grateful for your time and for your attention. I'd ask once you've heard the law the judge is going to explain to you that you find both of these defendants guilty of burglary first, assault and battery with intent to kill, possession of a weapon during a violent crime, and possession of a pistol by a prohibited person.

The judge is going to explain to you about how the hand of one is the hand of all. Two people show up and one commits the crime, both are culpable.

MR. DEYSACH: That's a misstatement of law, Your Honor.

THE COURT: It's not. It's just not a complete statement of the law, and I'll charge them as to a complete statement.

MR. ROBINSON: Listen to his charge about the hand of one is the hand of all. The judge is going to explain that

895

to you. Both can be culpable. I'm asking you to find these two defendants guilty of those offenses.

This was a horrible thing that happened. Deon Cannick is going to spend the rest of his life in a chair. He's not going to stand up at his wedding day; he's not going to march when he finishes high school or college. Devin may never feel safe in his home again, which is one of the most basic things we have is feeling safe in the home.

Your duty is to weigh the evidence and render a true verdict. I'm confident that you'll do that. Thank you for your time.

THE COURT: Thank you, Mr. Robinson.

Ladies and gentlemen, you've heard the arguments, and now I'm prepared to render the charge. My charge is scripted; I have it here in front of me. I don't necessary read every word of it, but I refer to it. And so I can tell you that it's going to take about forty to forty-five minutes because of the various crimes and the necessity of my explaining those crimes and the elements to you.

You've been in place now for about an hour and forty minutes, and I'm prepared to go forward. But if any of you all need a brief break, a restroom break before we start that, if any one of you needs it, then we'll take a brief break.

FOREPERSON: We'll take five.

896

THE COURT: All right. All right, let's take -- I'll tell you what. Knock on the door when you all are ready. We'll take ten minutes or so, and if you'll knock on the door, we'll be ready when you all are. Thank you. Don't discuss this case yet amongst yourselves.

(THE JURY EXITS AT 11:22 A.M.)

THE COURT: Gentlemen, thank you so much. You kept well within the time frame you had given me, and I appreciate that.

MR. ROBINSON: You're welcome, Your Honor.

(OFF THE RECORD.)

MR. ROBINSON: Your Honor, are these the verdict forms?

THE COURT: Yes, sir.

MR. ROBINSON: I did notice numerical typos. On Demetrius Price, page 2, it says indictment 2009-GS-07-64. I think that should be 69.

THE COURT: Okay. That's right. It should be.

MR. ROBINSON: Similarly, Lucius Simuel, the 2009.

THE COURT: Okay, let me make this change.

MR. ROBINSON: I'm sorry.

THE COURT: That's count 3 on his indictment, right?

MR. ROBINSON: Yes, Your Honor.

THE COURT: Okay.

MR. ROBINSON: The thing on Lucius Simuel's was

897

corrected on page 2, but one page 1 at the caption at the top, the bottom indictment number 1366, that also should say 2009.

THE COURT: Okay, now lead me through that again. I'm looking at Lucius Simuel. I'm looking at page 1.

MR. ROBINSON: Page 1 where it says numbers.

THE COURT: Yes.

MR. ROBINSON: The bottom indictment number, 1366, that should say 2009.

THE COURT: I've got it marked on mine. That's count 4?

MR. ROBINSON: That's count 4.

THE COURT: I've got it marked. It didn't show, perhaps it didn't show up on ---

MR. ROBINSON: I'm just talking about one page 1.

THE COURT: Oh, the top of it. Okay. Okay, thank you.

MR. ROBINSON: And that's, other than that, I think they look just fine.

THE COURT: All right, good. Thank you for bringing that to my attention. All right, good enough.

I understand the jury is ready, gentlemen. All right, is everybody ready for the jury to come out?

MR. ROBINSON: Yes, Your Honor.

MR. DEYSACH: Yes, Your Honor.

898

THE COURT: Okay, you can bring us a jury.

(THE JURY ENTERS AT 11:46 A.M.)

THE COURT: Now, Mr. Foreman and ladies and gentlemen of the jury, please give me your attention for a few more moments now because you have indeed been patient throughout the trial of this case, and you have listened very patiently to the arguments that have been made ablely by the attorneys for the defendants and the attorney for the state in this regard.

And I ask that you continue to give that same attention to me now as I charge you as to what the law is because it is my responsibility under our constitution to instruct you as to what the law is that is applicable to this case. And it is your duty as jurors to accept the law as I charge it to you now to be the correct law, and to apply the law that I give you to the facts of the case that you find to exist.

As jurors, it is your exclusive duty to decide all issues of fact in the case. And for that purpose, you have to determine the effect and the value, and the weight, and the truthfulness of the evidence and the testimony that you have seen and heard because both the state and the defendants have a right to expect that you will conscientiously consider and evaluate the evidence. And that you will apply the law of the case to that evidence to

899

the end that both the state and these defendants will receive a fair and impartial trial at your hands.

Throughout the course of this trial, when I use the words defendants, I am referring to Mr. Lucius Simuel, Jr., and Mr. Demetrius Price. Mr. Simuel and Mr. Price have been indicted by the grand jury of Beaufort County. The indictments are similar. They are exact for each of the two of them, and they are both charged with the same offenses.

Mr. Price and Mr. Simuel are charged with burglary in the first degree, and those indictments read that they did here in Beaufort County on or about July the 28th of last year enter the dwelling of Deon Cannick and Deverol Cannick, located at [redacted] Fording Island Road, unit [redacted], without the consent of the owners and with the intent to commit a crime while they were there. And that in addition, they were armed with a deadly weapon in violation of the law.

They are also both charged with assault and battery with intent to kill. That indictment accuses them with committing an unlawful act of violent injury upon the victim Deverol Cannick in one case and Devin Cannick in the other. Specifically, they are charged with shooting the victims with a handgun in violation of the law.

They are also both charged with possessing a handgun

900

or visibly displaying what appeared to be a handgun during the commission of a violent crime, the violent crime being burglary in the first degree.

And finally, they are both charged with possession of a handgun when they are a class of prohibited persons. That is, persons who are not allowed to possess handguns under our law.

Now, ladies and gentlemen, the indictments which I've just summarized for you I remind you again are neither evidence, nor are they proof of the charges that they contained. They are simply charging papers, legal documents that tell you or me or anybody else who reads them what these charges are all about.

I remind you that the defendants have pled not guilty to the charges contained in those indictments. The legal effect of a plea of not guilty by a defendant in a criminal case is to place the burden of proof on the state to prove by evidence the guilt of the accused beyond a reasonable doubt before you, as a jury, can convict him and find him guilty. The defendants are both presumed in law to be innocent of the charges contained in those indictments.

It is a cardinal and fundamental rule of our law of evidence that a defendant, regardless of the nature of the charges or the number of the charges or the seriousness of the charges against them, will always be presumed innocent

901

of the charges for which they've been indicted unless and until their guilt has been proven by evidence that satisfies you, as a jury, beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory; it is not an empty legal phrase. The presumption of innocence has been likened to a robe of righteousness which is placed about the shoulders of a defendant, and it assigns to that defendant the class known as the innocent. And that presumptive robe of righteousness continues to rest about the shoulders of a defendant until it has been stripped from his person by evidence, evidence that satisfies you of his guilt beyond a reasonable doubt.

The presumption of innocence accompanies a defendant from the time of his arrest. It follows him throughout every stage of these proceedings. Indeed, it even continues to exist to his benefit when you go to your jury room to deliberate in this case. The perception of innocence continues to exist until you, as a jury, reach the conclusion that the state has proven his guilt beyond a reasonable doubt. So, that then is a burden upon the state, not just in this, but in every case of this sort: to prove the defendant guilty beyond a reasonable doubt.

Some of you may have served as jurors in other cases before, and you may have served as jurors in civil cases. And if you served as a juror in a civil case, the judge

902

told you that it is only necessary for the party in that case that has the burden of proof to present evidence to you that is more likely true than not true in order for the side that has the burden prevail. But in criminal cases, the state's proof has to be more powerful than that. Here it must be proof beyond a reasonable doubt.

So, what did we mean by proof beyond a reasonable doubt? Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Now, there are very few things that you and I know in this world with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt beyond a reasonable doubt. And so if based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there's a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Reasonable doubt might arise from evidence in the case, or it might arise from the lack of evidence in the case. But you ladies and gentlemen have to determine whether or not reasonable doubt exists as to the guilt of these defendants, or either of them.

I charge you that a defendant is entitled to every reasonable doubt which rises in the case. And so if on any

903

issue of fact which is necessary to a conviction and a verdict of guilty you have a reasonable doubt as to how that issue should be resolved, it is your duty to resolve that reasonable doubt in favor of the defendant. Because the defendant, as I have told you, ladies and gentlemen, is never required to prove his innocence. But the state is required in law to prove every essential element of the offense charged against him by evidence that satisfies you, as a jury, of the guilt of the defendant beyond a reasonable doubt before you can convict the defendant and find him guilty.

And I instruct you now and emphasize to you in that regard that the fact that the defendants in this case did not testify in their own behalf is not a factor to be considered by you in any way in your deliberation and in your consideration on the question of their guilt or innocence. It must not be considered by you in any manner whatsoever. It must not weigh against the defendant or the defendants in any respect whatsoever because the defendants have a constitutional right to remain silent. And if they choose to assert that constitutional right, that fact cannot and must not be considered by you in your deliberation.

And so under your oath, then, you are to reach no inference and draw no conclusion whatsoever from the fact

904

that these defendants did not themselves testify. That fact should not even be discussed by you in the jury room because the burden of proof, as I have said, is upon the state. The defendants have no obligation to prove their innocence, and the burden remains upon the state to prove guilt beyond a reasonable doubt. And the fact that the defendants did not testify is not a factor to be considered by you in determining their guilt or their innocence.

And so if then upon the whole case, you have a reasonable doubt as to the guilt or the innocence of the defendants, each defendant is entitled to that reasonable doubt. They would be entitled to an acquittal and a verdict of not guilty. But, on the other hand, if upon the whole case you find the state has proven by evidence that satisfies you, as a jury, of the guilt of a defendant beyond a reasonable doubt, then in such circumstances it is equally your duty to convict that defendant and to find him guilty.

During the trial, ladies and gentlemen, each of us, you and I, have our certain duties to perform. As a trial judge, it is my responsibility to preside over the trial of this case. And I also have the responsibility to rule upon or pass upon the admissibility of the evidence that has been offered during the course of this trial. And so you are to consider only the competent evidence before you.

905

That is the testimony from this witness stand, and the items or exhibits that have been offered into evidence during the course of this trial, and any stipulations that have been made. You are to disabuse anything that I have overruled in this case or that I have stricken from the record in this case, if there's been anything during the trial of this case.

I have the additional duty to charge you as to what the applicable law is of the case, and that's what I'm doing now. As the presiding judge, I'm made the sole judge of the law, and you must accept the law as I state it to you now to be the correct law. You may have brought with you into your service as jurors this week some preconceived ideas about what you think the law is. Or you might have some decided preference about what you would like the law to be. Well, I tell you now if your preconceived ideas about the law, or of your preferences about the law disagree with what I'm now telling you the law actually is, under your oath you're to forget what you would like for the law to be or you think the law is because you're bound by that oath to accept the law precisely as I state it to you now.

Now, in every case tried in this court before a jury, as you know, you, the jury, become the sole and exclusive judge of the facts of the case. You're the judge of the

906

fact; I'm the judge of the law. Our constitution has said that as a trial judge, I can't comment upon the facts of the case. I can't hint to you or intimate to you any opinion that I might have about the facts of the case. I'm not allowed an opinion under the law. And so you're not to gather anything that I have said from anything that I have said during the course of this trial, or anything that I am saying to you now during the course of this charge that I have an opinion about the facts of the case because that is solely a matter for you to determine as jurors then. It is your duty, as I have told you, to determine the effect and the value and the weight and the truthfulness of the evidence that has been offered during the course of this trial.

Now, as you determine what the facts of the case are, there are a lot of things that you can take into account. You must first of all pass upon the credibility of the witnesses who have testified during the trial of this case. Credibility is just a legal word in this application that means believability. You have to decide, then, the believability of the witnesses. And you have to also decide the effect and the value and the weight that you will give to the testimony that they have offered.

Now, you don't make those decisions in a vacuum. There are a lot of things you can take into account. You

907

can take into account the appearance, the matter of the witness as he or she testified from the witness stand. We sometimes call that the demeanor of the witness. You can ask yourself what was the ability of that witness to know the things that the witness was telling you about. You can ask yourself did the witness have a cause or a reason or an interest to be served by the testimony they were giving. Was the testimony of a witness made stronger by other evidence, or was it made weaker? Was the testimony of a witness consistent, or was it inconsistent because as jurors, ladies and gentlemen, you've got the right to believe a small portion of the testimony of a single witness and to disbelieve the larger portion of the testimony of that same witness, or you can do it the other way around. Believe the larger part, disbelieve the smaller part. You can believe everything that a witness tells you, or you can believe none of what a witness tells you.

But what we ask you to do, ladies and gentlemen, is to exercise your good common sense, your sound judgment, and your experiences in life. And you apply those abilities that each of you has that you have accumulated throughout your lifetime of experiences. And you bring those to bear on what you have seen and heard in this courtroom, and using those things, you will be able to determine the truth

908

of this case. And once you have done that, you will apply the truth that you find to the law that I am now giving you. And those two things will come together to result in a verdict which will speak the truth of this case.

I now want to instruct you as to the elements of the offenses charged in these indictments. And I'll begin with the charge on the first indictment that I read to you of burglary in the first degree.

Under our law, and I cite the section for the record, section 16-11-311. The law provides that a person is guilty of burglary in the first degree if the person enters a dwelling without the consent of the person in charge, and with the intent to commit a crime in that dwelling. And either when going into the dwelling, or while in the dwelling, or while leaving the dwelling, either that person or another participant in the crime is armed with a deadly weapon. Or causes physical injury to person who is not a participant in the crime. Or uses or threatens the use of a dangerous instrument. Or displays what is or appears to be a pistol or revolver or some other firearm.

Now, the elements that have to be proven are -- and each of these has to be proven beyond a reasonable doubt for the state to meet the burden that is upon it -- is, first of all, that the person entered a dwelling. And secondly, that the entering was without consent. And

909

thirdly, that they went in, or he went in with the intent to commit a crime. Now, those are necessary elements, and each of those three have to be proven as a threshold matter before you even consider the fourth element which has to be proven. And the fourth element can be proven in one of several ways.

In addition to proving that the defendant entered a dwelling, and without the consent of the person in charge, and with the intent to commit a crime, the state must also prove one of the following. That while going into that dwelling or in the dwelling or leaving the dwelling, either that person or another participant in the crime was armed with a deadly weapon. Or that that person or another participant in the crime caused physical injury to someone who is not a participant in the crime. Or that that person or another person who is a participant threatened the use of a dangerous instrument. Or that that person or another participant displayed what appeared to be a pistol or revolver or some other firearm.

Now, while it is absolutely necessary that the state prove the first of those three elements, each of them, beyond a reasonable doubt, it does not have to prove all of those other four sub elements that I gave to you. They don't have to prove that the defendant or another participant was armed with a deadly weapon, and caused

910

physical injury, and used or threatened a dangerous instrument, and displayed what appeared to be a firearm. It is sufficient if they prove at least one of those.

And so a defendant, then, being charged with first-degree burglary, the state has to prove beyond a reasonable doubt that the defendant entered a dwelling without consent. And I tell you now that a dwelling is a building or a portion of a building in which a person sleeps. A residence, in other words, an apartment, those are examples of dwellings in the eyes of the law.

Now, in order to prove that the defendant entered the dwelling, the state does not have to prove that the defendant's entire body entered the dwelling. The smallest entry is sufficient. It may be any part of the body such as a hand or a foot, or even an instrument such as a hook or some other instrument. And in addition, the state does not have to prove that force was used to gain entry because if a person enters a dwelling by using deception or artifice or trick or misrepresentation to get consent to enter, that is an entry without consent.

Next, the state must prove beyond a reasonable doubt that the defendant intended to commit a crime, either a felony or a misdemeanor, at the time of the entry because the mere entry into a dwelling without consent is not a burglary. If intent to commit a crime is formed after the

911

entry, it is not burglary.

On the other hand, if the defendant intended to commit a crime at the time of the entry, it is a burglary even if the intent should be abandoned at some time after the entry. And it doesn't matter whether the intended crime was not completed. And so intent may be shown by acts of the defendant and other circumstances from which you might reasonably infer intent.

And finally, the state has to prove beyond a reasonable doubt one of the following. That while entering, or in the dwelling, or when fleeing, the defendant or an accomplice was armed with a deadly weapon. Or when entering the dwelling, or while in the dwelling, or when fleeing, the defendant or an accomplice caused physical injury to anyone not a participant in the crime. Or while entering, or in the dwelling, or when fleeing, the defendant or an accomplice threatened or used what appeared to be a dangerous object. Or when entering, or while in the dwelling, or when fleeing, the defendant or an accomplice displayed what appeared to be a revolver, pistol, or some other firearm.

Now, ladies and gentlemen, if the state is able to meet all the elements of the offense of burglary as I have just instructed you, then it has met its burden of proof. If the state fails to meet any of the elements of the

912

offense that I have just charged you, then it has failed to meet its burden of proof. And the defendant, either or both of them, according to your view of the evidence, would be entitled to a verdict of not guilty in that case.

Now, ladies and gentlemen, the defendants are also charged with assault and battery with intent to kill. In order to prove a defendant guilty of assault and battery with intent to kill, the state has to prove beyond a reasonable doubt that the defendant intentionally committed an unlawful act of violent injury or a violent nature to the person of another without just cause or excuse and with malice aforethought. So, I want to define for you, first of all, what we mean by assault, and what we mean by battery, and what we mean by malice aforethought.

What is an assault? An assault occurs when a person unlawfully attempts or offers to commit a violent injury to somebody else when that person had the present ability to carry it out and to complete the attempted injury. An assault, in other words, is the intentional creation of a reasonable fear of immediate bodily harm. It is not necessary that the attempted injury or harm actually take place.

For example, if someone were to walk up to another person on the street and draw back his arm or his fist or a stick, as if to strike that other person, and when he had

913

the present ability to carry it out, that person has committed an assault on the other person. Even though he didn't touch a hair on the person's head, by putting that person intentionally in fear of reasonable bodily harm, immediate bodily harm, that person has committed an assault.

So, what is a battery? Well, the battery is the completion of the assault. It is the unlawful touching of that other person by one who commits the assault by a part of the accused's body, or by some object the accused puts in motion. So, the battery is the completion of the assault by using or applying force to some other person, however slight it might be, in a rude, angry, or resentful manner without legal justification for doing that.

Using my earlier example, if a person walked up to that individual in the street and actually carried out the assault by striking the person with his fist or with a stick or with some other object, that would be the battery, assault and battery.

Now, in order to prove the defendants guilty of assault and battery with intent to kill, they have to prove, the state has to prove that the assault and the battery were accompanied with malice aforethought. And so what do we mean by malice aforethought? Malice means a hatred. It is an ill will. It is a hostility toward

914

somebody else. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury, or under circumstances that the law would infer an evil intent.

Malice aforethought does not require that malice exist for any particular length of time before the act is committed. But malice must exist in the mind of the defendant just before and at the time the act is committed. And, therefore, there must be a combination of the previous evil intent and the act itself.

Malice aforethought can be expressed, or it might be inferred. That doesn't mean that there are two types of malice. It just means that malice can be shown in more than one way. That is either by direct evidence or by inference from the facts and circumstances which are proven.

Expressed malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for someone, or doing any other acts in preparation to show that the deed was within the defendant's mind, that would be expressed malice.

Now, malice may be inferred from the conduct of a person if that conduct shows a total disregard for human

915

life. Inferred malice may arise when the deed is done with a deadly weapon. A deadly weapon is any article or instrument which is likely to cause death or bodily harm when the conduct in connection with that bodily -- with that deadly weapon shows a heart fatally bent on mischief and totally disregarding any social consequence.

And so if facts are proven beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, that inference would simply be an evidentiary fact. And you would take it into account with all the other evidence in the case and give it the weight that you decide it should receive.

I tell you that a specific intent to kill is not an element of assault and battery with intent to kill, but there has to be a general intent to commit serious bodily injury. Now, intent means obviously intending the result which actually occurs. In other words, it's something which is not accidentally or involuntarily done. An intent can be shown by acts and conduct of the defendant and other circumstances from which you may naturally or reasonably infer intent.

For example, evidence of the character of the assault, the character of the instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or injuries may be considered in

916

determining the intent with which the assault was committed. And it can be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to take somebody else's life.

I tell you again that that inference, like all inferences, are simply evidentiary facts, matters to be taken into account and given the weight that you think they should receive according to your view of the evidence.

Now, ladies and gentlemen, included within the greater crime of assault and battery with intent to kill is a lesser-included crime of assault and battery of a high and aggravated nature. That is not a part of the indictment, but by operation of law, the greater charge of assault and battery with intent to kill carries with it the lesser charge of assault and battery of a high and aggravated nature.

So, what are the elements of that offense? Well, assault and battery is exactly the same in assault and battery of a high and aggravated nature as it is in assault and battery with intent to kill. That definition does not change. But instead of the malice requirement, assault and battery of a high and aggravated nature must be accompanied by circumstances of aggravation.

Now, so in order to prove someone guilty of assault

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and battery of a high and aggravated nature, the state has to prove, first of all, that the defendant committed an assault and a battery, and that it did so under circumstances of aggravation.

And so what are examples of circumstances of aggravation that the law recognizes? Circumstances of aggravation include the use of a deadly weapon, the intent to commit a felony, the infliction of serious bodily injury, any great disparity between ages and physical conditions of the parties. These are only examples of circumstances of aggravation, and I offer them to you only as examples of those circumstances of aggravation to aid you in your consideration in that regard.

I remind you that the burden of proof is on the state to prove the elements of any offense charged beyond a reasonable doubt before a defendant can be convicted of that particular offense.

Now, ladies and gentlemen, next the defendants are charged with possession of a weapon during the commission of a violent crime. Section 16-23-390 makes it illegal to possess a firearm or display what appears to be a firearm during the commission of a violent crime. I tell you, ladies and gentlemen, that under our law, among others, violent crimes are assault and battery with intent to kill and burglary in the first degree.

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In other words, then, for the state to meet its burden of proof of convicting either or both of these defendants of possessing a firearm during the commission of a violent crime, first of all, the defendant has to be convicted of a violent crime. In this particular case, that is either burglary in the first degree, or assault and battery assault with intent to kill. And secondly, that person must be shown by the state beyond a reasonable doubt to have possessed or did display what appears to be a firearm during the commission of that violent crime. Those are the two elements of that particular offense.

And the final charge in the indictment are possession of a handgun by a prohibited person. It is unlawful under our law for a person to possess a handgun if that person has been convicted of a crime of violence in any court in the United States. There are two elements of that offense. First of all, that a defendant was in possession of a handgun. And secondly, that that defendant had a conviction for a crime of violence.

Now, ladies and gentlemen, in this particular case the state has offered testimony of one of its witnesses that the defendants both had records for crimes of violence. I tell you that you may consider that evidence, if you believe it to be true, for a limited purpose and for a limited purpose only. And that limited purpose is to

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determine whether or not the element of this particular offense has been proven beyond a reasonable doubt. You may not consider a record of a prior conviction of a crime of violence by either or both of these defendants as evidence that they committed the other offenses charged in this particular case. You may consider it only for the limited purposes which I have just instructed you.

Now, ladies and gentlemen, criminal intent is always a necessary element of each crime that has to be proven by the state beyond a reasonable doubt. And criminal intent is always a matter that has to be determined by you as a jury from the surrounding circumstances. You'd probably just rather I just let my voice run out and have to stop at this point, but I couldn't take the chance.

Criminal intent, then, is a matter that has to be shown from the circumstances surrounding a situation because there's no way to prove intent to a mathematical certainty. There's no way that medical science can let us dissect a person's brain and look there and figure out what that person had in mind. So, the law says that criminal intent may be inferred from the circumstances which were shown to have existed at the time. And that's how you, as a jury, make the determination as to whether or not the element requiring intent was present because criminal intent is a state of mind. And it operates jointly with an

920

act in the commission of a crime.

It is a mental state. It is a conscious wrongdoing, and so it's up to you, as a jury, to determine what the defendant intended to do based on the circumstances shown to have existed. And I tell you that the state has to prove criminal intent beyond a reasonable doubt, just as it has to prove each and every other element of the offenses charged, as I've explained that to you.

I tell you, ladies and gentlemen, that when two or more persons aid or encourage or abet each other in the commission of a crime, all who are present are principals and are equally guilty. Where two or more persons combine together to commit a crime and the crime is committed, all those who are present to aid and abet and assist each other in the commission of that crime are guilty. The act of one becomes the act of all; the hand of one becomes the hand of all. It makes no difference by whose immediate agency crime is carried out. All are principals.

I tell you, however, that mere presence at the scene of the crime, even with knowledge of the commission of a crime, but without an intent to aid or abet or assist in its commission would not constitute guilt. And so the burden is on the state to establish beyond a reasonable doubt that the defendants, that each of them were present, and that they were there with a criminal intent. And that

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is to say with the aid -- with the intent to aid or encourage or abet each other in committing the offenses charged in this instance.

One of the issues in this case is the identification of the defendants as the perpetrators of the crime, and the prosecution has the burden of proving identity beyond a reasonable doubt. And you, the jury, must determine whether the state has established the identity of a defendant beyond a reasonable doubt. If you're not convinced beyond a reasonable doubt that the defendant was the person who committed the crime, then obviously you would find the defendant not guilty.

And you have to consider the credibility of each identification witness in the same way that you would any other witness. And you should consider the capacity and the opportunity of that witness to make a reliable observation on the matter covered in their testimony. And if after considering the testimony you have a reasonable doubt as to the accuracy of the identification, you must find the defendant not guilty.

Now, ladies and gentlemen, the state has the burden of proof, as I have told you, and the state seeks to make that burden of proof by offering -- to meet that burden of proof, I should say, by offering two types of evidence. One is direct evidence, and the other is circumstantial

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evidence.

Now, direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact such as an eyewitness. That's a person who comes in here and says I saw this happen, or I heard this being said and tells you that. That's direct evidence.

Now, circumstantial evidence is proof of a chain of facts and circumstances which indicates the existence of another fact. An example that I give, a rather innocuous example that I give probably in the Lowcountry South Carolina is not real apropos, but it has to do with a winter scene. If you can imagine a cold winter February and before you go to bed, you look out across your lawn, and you see the brown, dead grass of winter. You get up the next morning and you see that your lawn is covered with snow, and in the snow you see footprints that come up to your door. And so what can you conclude from that circumstantial evidence that you observe the next morning? Well, the first thing you know is that some time after you went to bed, it snowed. You didn't see a single flake fall, but you knew that it's so. And the next thing that you can conclude by circumstantial evidence is that after it snowed, somebody came up to your front door. You don't know who it was; you didn't see them, but you know that they were there. That's circumstantial evidence.

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Now, ladies and gentlemen, the law doesn't make any distinction between the weight or value to be given to either direct or circumstantial evidence, and it doesn't require a greater degree of certainty of circumstantial evidence than it does of direct evidence. And you should weigh all the evidence in this case. And after weighing all the evidence, if you're not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Now, ladies and gentlemen, there has been admitted into the record of this case statement or statements alleged to have been made by the defendants in this case. And before you can consider these statements as evidence for any purpose, you must first consider whether or not four questions have been satisfied. You first have to ask yourself did the defendant make a statement. And secondly, you have to ask was the defendant warned of advised of his constitutional rights. And thirdly, you have to ask did the defendant knowingly and intelligently waive those rights. And finally, you have to ask yourself was the statement given voluntarily.

Now, the fact that I have admitted into evidence through the testimony of witnesses in this case statements should not be considered by you as evidence that the defendant made the statement; or that the constitutional

924

safeguards were, in fact, given and waived; or that the statement was voluntarily given because those are issues that you, ladies and gentlemen, have to determine. And the state has to prove beyond a reasonable doubt each of those four essentials or the four requirements which I have just stated to you before you can consider the statement as evidence for any purpose whatsoever.

First of all as to the first requirement, did the defendant make the statement. Well, obviously if you conclude that the defendant didn't make the statement, then you don't go any further; you totally and completely disregard the statement. But if you conclude that the defendant did make the statement, then you go to the next step, and that is was the defendant warned of his constitutional rights. Because under our law, when a person is in custody or deprived of his freedom and by a law enforcement officer, he has to be warned of his constitutional safeguards before any questions can be asked.

He must be told that he has a right to remain silent. That any statement that he does make can and will be used against him in a court of law. That he has a right to select a lawyer of his own choice and if he cannot afford one, one will be appointed to represent him without cost. That he has a right to consult with a lawyer before he

925

makes a statement. And that he has a right to have his lawyer present with him during all interviews.

Now, if you determine these warnings were not given before any statement was made, before the questions were asked, or that he was not given the chance to exercise those rights, then you would disregard the statement, and you could not consider it in any way whatsoever.

But if you find that he did make the statement, and that his warnings were given to him, and that he had a right to exercise -- had the opportunity to exercise those rights, then you would ask yourself did he knowingly and intelligently waive those rights.

Therefore, you must determine if the other elements have been proven, that he gave up the constitutional right to remain silent, and the right to an attorney and the other rights which I've just explained to you because if you find that he did not knowingly and intelligently waive those rights, then any statements which he gave cannot be used against him.

But if you find that he was given his rights, that he did make the statement, that he had a right to exercise those rights and chose to waive them, then you would finally ask yourself was the statement given voluntarily. That means was it the expression of his own free will. That it was not induced by some pressure, by some threats,

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by some promises, by some hope of reward or coercion or intimidation because a statement is not voluntary and can't be used against someone if it is a product of an essentially constrained mind, or comes as a result of some coercion.

But if the statement is voluntarily and of his will to make it, it can be used against him. If it is not voluntary, it cannot be used against him. And when you decide whether it's voluntary or not, you can consider all of the facts and circumstances surrounding the making or the taking of the statement regarding its voluntary nature.

Now, ladies and gentlemen, I tell you that the state has to prove by evidence each and every requirement about which I just instructed you before you can consider a statement for any purpose whatsoever. I tell you in addition to that that a statement which is allegedly given by one defendant, even if it is voluntarily made, may not be considered as evidence against his co-defendant for any purpose whatsoever. It can only be used against the person who made it because in this particular case, as you know, there are two defendants and there are four separate charges. And you must consider each charge separately, and you must decide separately whether each individual defendant is guilty or not guilty of each charge alleged in these indictments. It is your duty, then, to give separate

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consideration to each individual defendant on each separate charge alleged in the indictments.

In other words, you may, if the evidence warrants it, find each individual defendant guilty or not guilty on each charge alleged in the indictment. Your verdict does not have to be the same as to each defendant or as to each charge. That is to say where two persons are charged with crimes, if the evidence warrants it, you may convict all of the defendants or acquit all of the defendants on any or all of the charges contained because you will be asked to write a separate verdict on each defendant and as to each charge.

Now, finally, ladies and gentlemen -- that's a word you've been hanging on to for a while, finally. Finally, let me tell you that you don't serve as jurors in this or in any case as partisans or advocates for the state of South Carolina or for these defendants. You don't serve as jurors to publish your enemies, nor to reward your friends. You have been chosen by both the state of South Carolina and these defendants to be fair and impartial jurors. It is your duty, then, by your joint deliberations to determine the truth of this case, giving to the defendants the benefit of every reasonable doubt on each and every issue. And then to the facts which you find to be true, applying the law which I have just given you, and thus

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arriving at a verdict which speaks the truth of this case. That's what the word verdict means. It comes from the Latin saying that means a truthful saying.

And once you've done that, you will have satisfied the oath that you took a long time ago before you began your service as jurors in this case to well and truly try this case, and to render a true verdict according to the evidence and the law so help you God. We have a right to expect that you will do just that, and that you will do nothing less than that.

Now, I'm going to give the forms of the verdict now to the foreman because he's the one that has to fill them out. There are two separate verdict forms: one as to defendant Lucius Simuel, and it's indicated by his name here at the top; and the other as to the defendant Demetrius Price, indicated by the name at the top. Other than the difference in the names and the indictment numbers, their verdict forms are exactly the same, and I'll review those with you now.

The first choice of verdicts as to each of these two defendants deals with the crime of burglary in the first degree. There only two possible verdicts in that particular case as to that particular indictment: we, the jury, find the defendant guilty if the state has met its burden of proof as to each of the elements of the offense

929

as I have instructed you; or not guilty if the state fails to meet its burden of proof as to any of those elements in the charge.

The second form of the verdict speaks to the charge of assault and battery with intent to kill. There are three possible verdict forms for you to select among in this particular case. The first is: We find the defendant guilty of assault and battery with intent to kill. If the state has met its burden of proof in regard to the elements of that charge, your verdict would be guilty.

If you find the state has failed to meet its burden of proof as to the elements of assault and battery with intent to kill, then you would consider the lesser-included charge of assault and battery of a high and aggravated nature. If the state meets its burden of proof as to the elements of that particular offense, your verdict would be guilty. If the state has failed to meet its burden of proof as to that offense or the greater offense charged, your verdict would be not guilty.

The third possible verdict form speaks to the possession of a weapon during the commission of a violent crime. Once again, there are only two possible verdict forms: we find the defendant guilty, or we find the defendant not guilty, depending upon whether or not the state has been its burden of proof.

930

And finally, there is a charge of possession of a handgun by a prohibited person. Once again: we find the defendant guilty, if the state meets its burden of proof; we find the defendant not guilty, if the state fails to meet its burden of proof.

I remind you again that you consider these charges and these individuals each separate from the other because, as you have seen, you will write a separate verdict as to each charge and to each defendant. And your decision on one charge and one defendant does not necessarily control your charge on another.

Now, whatever the verdict is, it has to be unanimous. I have given the verdict form to the foreperson because he's the one that's got to fill it out, but obviously it would not be his verdict alone. The verdict has to be unanimous; all twelve of you have to agree as to what the verdict shall be.

And, Mr. Foreman, you're not authorized to write the verdict, nor to sign the form until all twelve of your number have agreed as to what the verdict should be.

I'm going to send -- excuse me -- I'm going to send you to your jury room right now, but I ask you to wait just a few moments before you begin your deliberations. As hard as you might find it to believe, in the time I've been talking to you, I could have left something out, or I may

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have misstated something. And if I have, I'll bring you out to correct it. But if I do not have to bring you back out, we will send in the items of evidence. Once the items of evidence have been delivered, then that that will be your signal to begin your deliberations. Please not begin until then.

And once you have begun your deliberations, you will deliberate until you've reached a verdict. At which time, Mr. Foreman, you will fill out that verdict form or those verdict forms, sign them and knock on the door and advise the bailiff, and we'll bring you out to receive the verdict.

If during the course of your deliberations you have a question that you would like for us to try to answer -- and I emphasize the fact try to answer -- you have to write that down. Knock on the door, give it to the bailiff. I'll discuss it with the lawyers first, and then we'll bring you out to deal with that question.

Your lunch is probably already there. It will be there momentarily. You can deliberate while you eat if you want to. Or if you want to eat and not deliberate, that's up to you. As I told you yesterday, you've been on our clock all week. In just a few minutes, we're going to be on yours. You take whatever time you need to reach decisions that you're being required to reach in this

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regard.

Retire to your jury room right now, Mr. Foreman, ladies and gentlemen. Please don't discuss this case among yourselves until we send in the items of evidence.

And, Ms. Moore and Mr. Carr, if you'll stay right where you are, please.

(THE JURY EXITS AT 12:32 P.M.)

THE COURT: Mr. Robinson, other than previously noted, are there any exceptions or requests for additional charge from the state?

MR. ROBINSON: Nothing from the state, Your Honor.

THE COURT: Thank you.

Mr. Deysach, other than previously noted, are there any exceptions or requests for additional charge from Mr. Simuel?

MR. DEYSACH: Nothing new, Your Honor. Just the same old ones that have already been stated. Thanks.

THE COURT: Thank you.

Mr. Geier, other than previously noted, are there any exceptions or requests for additional charge from the defendant Price?

MR. GEIER: No, Your Honor.

THE COURT: Thank you.

All right, folks, if you all would review the evidence and make sure it's all together, and tell the bailiff at

933

that time, we'll turn them lose.

(ATTORNEYS REVIEW EVIDENCE WITH THE COURT REPORTER.)

(THE COURT DISMISSES THE ALTERNATES.)

(JURY DELIBERATIONS BEGIN AT 12:35 P.M.)

THE COURT: All right, folks, we will stand at ease until we hear from the jury.

(OFF THE RECORD.)

THE COURT: Please be seated. Folks, I've received another request from the jury: Your Honor, please give us a written summary of the conditions for ABWIK.

I will charge them again as I have done before on ABWIK as well as ABHAN. I know they haven't asked for ABHAN, but their inquiry into ABWIK does not end the inquiry. Depending upon the decision with regard to that, they could well, under my instructions, then be required to examine the evidence in regard to the lesser-included charge. So, I'll give them both. I'll simply recharge what I did before.

And then when we finish this and send them back, if you want to try to work in that plea sometime.

MR. ROBINSON: We're ready any time, Your Honor.

THE COURT: Okay, since we're all back out here.

All right, bring us the jury, please.

(JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 9.)

934

(A PAUSE.)

THE COURT: They've got another question, folks. They want to send them all out at the same time.

BAILIFF: I'll bring -- Your Honor, may I bring the jury with the question?

THE COURT: If you'll bring the question first.

BAILIFF: Yes, sir.

THE COURT: I need to talk with the lawyers about it first.

(A PAUSE.)

THE COURT: The next question:

> The hand of one becomes the hand of all. Please clarify what this means. Does it apply to all four counts against the defendants?

Specifically, it would not apply, in my view, to counts 3 and 4. What do you say to that, Mr. Robinson?

MR. ROBINSON: The state agrees. The hand of one is the hand of all applies only for the burglary first and the ABWIK charges on each defendant.

THE COURT: All right. All right, I will recharge them on that and clear that up, okay?

Okay, that's Court's Exhibit Number?

COURT REPORTER: 10.

THE COURT: 10. I've got more than you all have got.

935

(JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 10.)

THE COURT: All right, any exceptions, gentlemen, before I bring the jury out to deal with those two issues? Mr. Deysach?

MR. DEYSACH: Thank you very much, Your Honor. That second question, what does it mean as part of what they say, the hand of one is the hand of all. What does this mean, does it apply to all charges I think was the substance of the note, the note. You just answered the question. Does it apply to all charges, what does it mean. I assume that you are going to read the hand of one, hand of all part again?

THE COURT: Exactly.

MR. DEYSACH: Of course the place that I want there to be less confusion with the jury is that part of your instruction that says for the crime charged. And I'm afraid that, that -- I just want to make sure that that's included and made clear to the jury.

THE COURT: I understand, just the valid part.

Okay, bring us the jury, please, sir.

(THE JURY ENTERS AT 1:49 P.M.)

THE COURT: Ladies and gentlemen, I have your questions, and I am able to answer these questions, I hope. We will see momentarily whether sufficiently.

936

You've asked to give you a written summary of the conditions for assault and battery with intent to kill. I'm not allowed to send the charges in as such in printed form. In our script, our charges have certain alternative parenthetical statements in them. They have citations of law which are below them and things of that nature so that we don't have anything clean to submit to you. So, I must give those to you again.

And we'll just focus on assault and battery with intent to kill first. And because your decision in that particular instance may not necessarily end your inquiry, I will charge you briefly on the lesser included of assault and battery of a high and aggravated nature.

I remind you that assault and battery with intent to kill requires proof beyond a reasonable doubt that the defendant intentionally committed an unlawful act of a violent nature to somebody else without just cause or excuse and with malice aforethought.

I take it that I do not need to belabor the definition of assault, which is the threat to do bodily harm, and battery, which the actual carrying out of that. And so I will skip over that and get to the requirement of malice aforethought.

Malice is a hatred. It is an ill will. It is a hostility toward somebody else. It is the intentional

937

doing of a wrongful act without just cause or excuse, and with an intent to inflict injury, or under such circumstances that the law would infer an evil intent.

Malice aforethought does not require that malice exist for any particular length of time before the act is committed, but malice must exist in the mind of the defendant just before and at the time the act is committed. And, therefore, there has to be a combination of a previous evil intent and the act itself.

Malice aforethought can be expressed, or it might be inferred. There are not two types of malice, but expressed and inferred simply means there are more, is more than one way in which malice may be shown to exist. That is by direct evidence or by inference from the facts and circumstances which are proved.

So, expressed malice, as I told you earlier, is when a person speaks words which express a hatred or an ill will. Threats, for example, are an example. Or when the person made preparations beforehand to do the act which was later accomplished. For example, lying in wait, performing some other acts of preparation which show that the deed was in the defendant's mind at the time, that would be expressed malice.

Malice can be inferred from conduct which shows a total disregard for human life. Inferred malice can arise

938

when the deed is done with a deadly weapon. A deadly weapon obviously is any article or instrument which is likely to cause death or bodily harm.

And so if facts are proven beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, that's an inference that is simply an evidentiary fact. And you can consider that, along with all of the other evidence in the case, and give it the weight that you think it should receive.

I tell you that a specific intent to kill is not an element of assault and battery with intent to kill, but there has to be a general intent to commit serious bodily injury. And intent means intending to do the result. It's something that's not done accidentally, not involuntarily.

An intent can be shown by acts and conduct of the defendant and from other circumstances from which you might naturally and reasonably infer intent. For example, the evidence of the character of the assault, the character of the instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or injuries may be considered in determining the intent with which the assault was committed.

An intent can be inferred when it is demonstrated that the defendant acted voluntarily and willfully in committing an act, the natural tendency of which is to destroy

939

another's life.

I remind you again that any inference which is submitted or you may draw from the evidence presented simply creates an evidentiary issue for you to determine. And you give the weight that you think it is entitled to receive according to your view of the evidence.

Now, as I indicated to you, assault and battery of a high and aggravated nature is a lesser-included offense of assault and battery with intent to kill. It still requires the element of the assault and of the battery. But it also carries with it, in addition to the assault and battery, some circumstance of aggravation such as the use of a deadly weapon, or the intent to commit a felony, or the infliction of serious bodily injury, or the great disparity between ages or physical conditions of the parties, and things of that nature. Those are examples of aggravation which, if accompanied by the assault and the battery and proven beyond a reasonable doubt, could meet the state's burden in connection with that particular charge.

Without creating a dialogue which is somewhat problematic, and obviously I know it would be a wonderful situation if we could just talk back and forth among ourselves, but unfortunately our rules don't allow that. But have I seemed to touch on some issues that you all had questions about in those instructions, ladies and

940

gentlemen? Is there anything that I have told you that I need to try to clarify, try to do some other way?

(THERE IS NO AUDIBLE RESPONSE BY THE JURY.)

THE COURT: All right, you next have asked about the hand of one becoming the hand of all:

> Please clarify what it means, and does it apply to all four counts charged against defendants?

That's a valid question, and I should have made that clearer, frankly, when I charged you initially.

And so I tell you, ladies and gentlemen, once again that when two or more people aid, encourage, and abet each other in the commission of a crime, all who are present are principals and equally guilty. Where two or more persons combine together to commit a crime and the crime is committed, all of those who are present to aid and abet and assist in the commission of that crime are guilty. The act of one becomes the act of all; the hand of one becomes the hand of all. It doesn't make any difference by whose immediate agency the crime is committed. All are principals.

But at this point in time, let me tell you that this, the hand of one and the hand of all, only applies to the crime of burglary in the first degree, and assault and battery with intent to kill, or assault and battery of a

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high and aggravated nature. It does not apply to the two weapons charges because those are individual charges against each individual defendant in this regard. The hand of one, the hand of all does not apply to possession of a weapon during the commission of a violent crime, or the possession of a handgun by a prohibited person.

However, the hand of one and the hand of all as I am instructing you now does apply, if you find it to exist, to the charge of burglary in the first degree, and assault and battery with intent to kill, and of a high and aggravated nature.

So, it makes no difference by whose immediate agency the crime is committed. All are principals. However, mere presence at the scene of a crime, even with knowledge of the commission of the crime, but without an intent to abet or assist in its commission, does not constitute guilt. And so the burden is upon the state to establish beyond a reasonable doubt that the defendants, that each of them were there present, and that they were there with a criminal intent. That is to say with the intent to aid, encourage, and abet one another in committing the offenses of assault and battery with intent to kill, or assault and battery of a high and aggravated nature, and burglary in the first degree.

Does that address your concerns in regard to that?

(THERE IS NO AUDIBLE RESPONSE BY THE JURY.)

THE COURT: All right, thank you, folks. If you will continue deliberating, and let us know if we can try to help you further. Thank you.

(THE JURY EXITS AT 1:58 P.M.)

THE COURT: Mr. Robinson, any exceptions or requests for additional remarks in connection with those things?

MR. ROBINSON: Nothing from the state, Your Honor.

THE COURT: Thank you.

Mr. Deysach for Mr. Simuel?

MR. DEYSACH: I, while hearing your explanation, thought that another -- I know it might be repetition or redundant about the instruction you give them that they are two separate defendants and deserve consideration separately on each charge. I thought that when the hand of one, hand of all stuff started getting broached, that maybe some of those instructions as to that had gotten a little pushed aside.

THE COURT: Could you be more specific? What would, what ---

MR. DEYSACH: I think your -- you have an instruction toward the end that said you are to consider each defendant and each charge separately, something along those lines.

THE COURT: In connection with the gun charges, that's right.

943

MR. DEYSACH: That's what you just instructed.

THE COURT: Right.

MR. DEYSACH: The first set of instructions, and I asked, I guess, for something even before, right when the initial instructions, before we even started the evidence was letting the jury know -- of course I'm going to, I guess, telegraph what my concern is. And that is that they paint both defendants with the same brush. And I want to make sure that that doesn't happen, so we have an instruction that kind of keeps that from happening.

THE COURT: Right. I have -- I think that they have been thoroughly instructed in that regard prior to the trial of this case, during the preliminary instructions, during my final charge. I charged them that independently. And when I gave them the verdict form to go over with them, I emphasized that yet again. They've heard three times already. I don't think they're likely to stray in that regard. I'll note your exception in that regard but respectfully decline.

Mr. Geier?

MR. GEIER: Yes, Your Honor. I just wanted to ensure that you instruction on the ABWIK didn't include the language that was excluded by *State vs. Belcher*.

THE COURT: Well, it did to some extent because the facts in *State vs. Belcher* I don't think are applicable

944

here. *State vs. Belcher* is limited to those situations involving self-defense, things that nature. However, I did in my instruction emphasize that the defendant intentionally commits an act, which were concerns that were laid out in the *Belcher* case obviously, the *Belcher* instructions.

(A PAUSE.)

THE COURT: *State vs. Belcher* is B-E-L-C-H-E-R, Madame Reporter.

It's stated several times throughout the opinion that most of the time, as in *Belcher*, the concern is is someone acted in self-defense or in such another way that might tend to mitigate their conduct:

> Today we return to the rationale underlying Hopkins, Lavell, and Jackson and hold that where evidence is presented that would reduce, mitigate, excuse, or justify a homicide or assault and battery with intent to kill caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon. The permissive inference charge concerning the use of a deadly weapon remains a correct statement of law where the only issue presented to the jury is whether

945

the defendant has committed murder or assault and battery with intent to kill.

And so in this particular case, I have ruled, of course over you all's objection, that the self-defense charge does not apply in this regard. Now, if I'm wrong on that, then I'm wrong on several other levels, and I'm certainly wrong in charging as I have just done.

But under the circumstances of that, and given the fact that I have found that self-defense does not lie in this particular case, I don't think that I have transgressed the *Belcher* mandate.

I realize that you all have argued within your argument something that would try to indicate the mitigation of the action. And, frankly, it was that reason that I went back to my charge after I told you what I was going to do and added the preliminary words about intentionally committing an unlawful act of violent nature without just cause or excuse. That's part of the rationale, as I've said, expressed in the *Belcher* case. And I put that in there, although I don't think to comply with *Belcher*. But at least to sort of comport with the arguments that you had given, and to give the jury, let the jury know that in any event, *Belcher* notwithstanding, self-defense or lack of it not withstanding, that the unlawful act has to be an intentional one, and it has to be without

946

just cause or excuse.

And, of course, throughout the charge, that is repeated when I'm talking about specific intent. Intent means intending the result which occurs. It's not accidental and so forth.

Let's see, and there's somewhere else in there that I have emphasized that. Yes, the intentional creation of -- no, that's not it. Excuse me. Yes, the intentional doing of a wrongful act without just cause or excuse is a part of the definition for malice.

So, I think that I have accurately conveyed that part to the jury, which I think they needed to know in any event. But I don't think that I needed to go any deeper into *Belcher* than I did. I note that your exception, Mr. Geier, in that regard.

MR. GEIER: Thank you, Your Honor.

MR. DEYSACH: I'll associate myself with that objection. I'd like to get on board.

THE COURT: Yes, sir. Thank you. Okay.

All right, folks, we will wait on the next missive.

(OFF THE RECORD.)

THE COURT: Ladies and gentlemen, we are advised the jury has reached a verdict. Are both the state and the defense ready to receive the verdict?

MR. ROBINSON: The state is ready.

947

MR. DEYSACH: We're ready, Your Honor.

MR. GEIER: Ready, Your Honor. Thank you.

THE COURT: Ladies and gentlemen, those of you who are spectators in the courtroom and have an interest in this case and have followed throughout the course of this trial, I appreciate the fact that you have exercised restraint and exercised the proper degree of decorum that this courtroom requires. And I expect you, as the verdicts of the jury are announced, to maintain that same degree of restraint and dignity and decorum that you have shown throughout.

None of us knows what the verdict is going to be at this point in time, but I would imagine one side of the courtroom is going to be disappointed; the other side is going to be relieved. None of us know where those feelings are going to fall. And so if you feel like that you cannot control your emotions at this in time regardless of what that verdict is going to be, I'm going to ask that you leave the courtroom now because if you stay here, I'm going to expect you to be the same dignified and restrained people that you've been throughout this trial. Thank you.

Bring us the jury.

(THE JURY ENTERS AT 2:54 P.M.)

THE COURT: Ladies and gentlemen, have you reached a verdict?

FOREPERSON: Yes, sir, we have.

948

THE COURT: Is it unanimous?

FOREPERSON: Yes, sir.

THE COURT: Would you pass it forward to the bailiff, please?

CLERK OF COURT: State of South Carolina, County of Beaufort, in the Court of General Sessions, indictment numbers 2008-GS-07-1761, 2008-GS-07-2009, 2008-GS-07-1762, 2009-GS-07-1366, *State of South Carolina vs. Lucius Simuel, Jr.* Indictment number 2008-GS-07-1761, burglary in the first degree, we find the defendant guilty. Indictment number 2008-GS-07-2009, assault and battery with intent to kill, we find the defendant guilty of assault and battery with intent to kill. Indictment number 2008-GS-07-1762, possession of weapon during the commission of a violent crime, we find the defendant guilty. Indictment number 2009-GS-07-1366, possession of a handgun by a prohibited person, we find the defendant guilty.

State of South Carolina, County of Beaufort in the Court of General Sessions, indictment numbers 2009-GS-07-00068, 2009-GS-07-0066, 2009-GS-07-00069, 2009-GS-07-01365, *State of South Carolina vs. Demetrius Price*, verdict.

Indictment number 2009-GS-07-00068, burglary in the first degree, we find the defendant guilty. Indictment number 2009-GS-07-00066, assault and battery with intent to

949

kill, we find the defendant guilty of assault and battery with intent to kill. Indictment number 2009-GS-07-00069, possession of weapon during the commission of a violent crime, we find the defendant guilty. Indictment number 2009-GS-07-1365, possession of a handgun by a prohibited person, we find the defendant guilty.

All verdicts are signed and dated by the foreperson.

THE COURT: Thank you.

Ladies and gentlemen, if this is the verdict of each of you, please indicate by raising your right hand.

(THE JURORS COMPLY.)

THE COURT: Thank you. You can put them down.

Do the defendants desire polling?

MR. DEYSACH: Yes, Your Honor.

THE COURT: All right, ladies and gentlemen, you are going to be polled now. That means that the clerk of going to read your names individually. And when your name is called, if you will stand in place right where you are, and he will ask you the following questions: were these your verdicts, and are these still your verdicts. And you will gave whatever the appropriate answer to that question is. Please, he will call you by number not by name, all right? So, if you don't know your number, look at your tag because that's what he's going to call you by.

All right, thank you, Mr. Clerk.

950

CLERK OF COURT: Juror number 131, was this your -- were these your verdicts?

JUROR: Yes.

CLERK OF COURT: Are these still your verdicts?

JUROR: Yes.

CLERK OF COURT: Juror number 53, were these your verdicts?

JUROR: Yes.

CLERK OF COURT: Are they still your verdicts?

JUROR: Yes.

CLERK OF COURT: Juror number 30, were these your verdicts?

JUROR: Yes.

CLERK OF COURT: Are they still your verdicts?

JUROR: Yes.

CLERK OF COURT: Juror number 194, were these your verdicts?

JUROR: Yes.

CLERK OF COURT: Are they still your verdicts?

JUROR: Yes.

CLERK OF COURT: Juror number 49, were these your verdicts?

JUROR: Yes.

CLERK OF COURT: Are they still your verdicts?

JUROR: Yes.

951

CLERK OF COURT: Juror number 12, were these your verdicts?

JUROR: Yes.

CLERK OF COURT: Are they still your verdicts?

JUROR: Yes.

CLERK OF COURT: Juror number 156, were these your verdicts?

JUROR: Yes.

CLERK OF COURT: Are they still your verdicts?

JUROR: Yes.

CLERK OF COURT: Juror number 235, were these your verdicts?

JUROR: Yes.

CLERK OF COURT: Are they still your verdicts?

JUROR: Yes.

CLERK OF COURT: Juror number 69, were these your verdicts?

JUROR: Yes.

CLERK OF COURT: Are they still your verdicts?

JUROR: Yes.

CLERK OF COURT: Juror number 64, were these your verdicts?

JUROR: Yes.

CLERK OF COURT: Are they still your verdicts?

JUROR: Yes.

952

CLERK OF COURT: Juror number 75, were these your verdicts?

JUROR: Yes.

CLERK OF COURT: Are they still your verdicts?

JUROR: Yes.

CLERK OF COURT: Juror number 229, were these your verdicts?

JUROR: Yes.

CLERK OF COURT: And are they still your verdicts?

JUROR: Yes, sir.

THE COURT: Mr. Deysach, are there any other matters before the jury is dismissed from Mr. Simuel?

MR. DEYSACH: No. I will be making a motion for a new trial, but I think it's appropriate to dismiss the jury, sir.

THE COURT: Yes, sir.

Mr. Geier, any further matters before the jury is dismissed from Mr. Price?

MR. GEIER: No, Your Honor.

THE COURT: All right, thank you.

Ladies and gentlemen of the jury, I want to thank you for your involvement as jurors in the trial of this case. Throughout this trial, you have been attentive. As I've said, you've been very patient, and you've been thoughtful and deliberate in your consideration of the questions which

953

we have presented to you. You have asked us questions, and we have tried to answer them. It is obvious that you did not rush to judgment in this matter.

There is still the matter of sentencing which I must perform in just a few moments, and we will deal with those things. You have some time invested in this. If you'd like to stay, you may, but you don't have to stay. You are free to go in just a moment when I let you go.

I would like for you, if you could, remain in the jury room for just a moment until I finish my matters. I would like to come and express to you personally my gratitude for the work that you've done this week. It has been a grueling task that we have placed on your shoulders. It is a difficult thing to sit in judgement of a fellow human being, and you didn't ask for the task, but you've undertaken it.

I never comment upon a verdict which a jury reaches. I am delighted, as I have said, that you have the difficult job, and I have the easy job. But I do comment about the quality of your service, your punctuality, your patience, your thoughtfulness, your attention throughout this trial. That's all that we have any right to ask of jurors, and you've given us everything that we had any right to ask of you.

You will get a check in the mail in the next few days.

954

It's not going to begin to pay you for the time that you've invested with us this week. You will realize that you have in large measure made a sacrifice of your time. I hope you will add to the small amount of that check the gratitude of each of us who makes up this system for what you have done and be repaid in some way. And I hope you've gained a better appreciation by virtue of your service this week of how important folks like you are to the system that we are all a part of and that all of us serve in some way. Thank you very much.

If you would like to go to your jury room now, you can. If you want to stay for the sentencing, you have every right to do that. I'll leave that up to you.

(SOME MEMBERS OF THE JURY EXIT AT 3:02.)

THE COURT: All right, Mr. Deysach, I'll be glad to hear first from you for motions on behalf Mr. Price -- Mr. Simuel, I'm sorry.

MR. DEYSACH: Thank you very much, Your Honor. At this time, I'd move for a new trial and a judgement notwithstanding the verdict. I'll stand on the similar grounds I made up for the directed verdict motion, as well as, as well as the same motion I made at the end of my case.

I don't believe there was enough evidence in the record to find Mr. Simuel guilty of the burglary first and

955

the assault and battery with intent to kill, particularly as to the elements of entry without consent. As well as the identity issue as far as assault and battery with intent to kill, as well as the gun issues as far as there being enough evidence in the record to conclude beyond a reasonable doubt that he was, in fact, in possession of a gun during this time.

I would also add as a basis, and I didn't do it contemporaneously with the notes, and it really was that in retrospect, that it occurred to me that the notes that came from the jury asking for certain pieces of evidence before the deliberation period had begun could possibly indicate that there is some deliberation that took place before the period was appropriate. So, that's another ground that I would like to add to my motion for a new trial.

I will have some motions as to sentencing, but I don't know if they are appropriate right this second.

THE COURT: All right, Mr. Geier?

MR. GEIER: Your Honor, I would actually join in Mr. Deysach's motion as well on similar grounds. Actually, to the extent they apply to Mr. Price on all grounds.

THE COURT: Thank you.

In regard to the motions that were previously made and renewed at this time, the motions for directed verdict and similar motions which have been made throughout the trial

956

of this case, I simply renew my earlier rulings. This was the quintessential factual issue for a jury determination. The facts were sufficient before the jury for the jury to reach the verdict which it did, in fact, reach.

In my consideration right now, I consider the evidence in the light most favorable to the state, and I conclude that there was more than sufficient evidence, taking it in that light, for the jury to have reached its decision. As a matter of fact, even if the harsh light of the light most favorable to the state is not cast upon the evidence in this particular case, there is still no reason for me to quarrel with the jury's verdict in this instance.

As to the additional issue of the notes that were passed up during the course of this trial, I will note that those notes in large measure came from the foreperson. He's been attentive throughout the trial of this case. All of the jurors, most of them have been taking notes. And many of those notes, frankly, would be left when with the bailiff as the jury was leaving the courtroom. And so the fact that we got notes at that juncture is not indicative of premature deliberations. It is indicative of a concern of one of those jurors. In this case, happened to be the foreperson. And in other cases, we got jurors -- notes from another juror, as I recall, that indicated that there were questions they wanted to ask, information which they

957

wanted to be furnished in order to raise questions which they had in their minds. I find that that is not indicative of premature deliberations, just the contrary in this regard.

But noting all of those things, I respectfully deny the motions for a new trial and JNOV, finding that the verdict is well within the bounds of the evidence presented to the jury.

All right, is the state ready to proceed to sentencing?

MR. ROBINSON: Yes, Your Honor.

THE COURT: All right, is the defense ready?

MR. DEYSACH: We are, Your Honor, and as well as those motions for directed verdict and new trial, also reviewing the objections that I made during the trial. I just wanted to make sure I didn't leave that out by mistake.

THE COURT: Okay. I think the record is adequately preserved in that regard. Thank you.

(A PAUSE.)

THE COURT: Mr. Foreman, while you're still here, can we get you to date these two forms yet? If you'll just fill in the appropriate date, the 20th of November, on the blank.

FOREPERSON: Yes, sir.

THE COURT: Thank you.

958

MR. ROBINSON: Your Honor, I beg the court's indulgence while I finish out the sentence sheets.

THE COURT: Okay.

MR. ROBINSON: This will only take a moment.

(A PAUSE.)

THE COURT: I thought you might have considered at least the possibility of a guilty verdict and maybe had some of these done.

MR. ROBINSON: I apologize, Your Honor.

THE COURT: All right, sir.

(A PAUSE.)

MR. ROBINSON: Again, I apologize again, Your Honor. This is all of them. This is Demetrius Price, and this is Lucius Simuel, Jr.

Your Honor, at this time I wanted to let the court know that the state is proceeding under South Carolina Code Section 17-25-45, recidivist statute three-strikes law. I have left that box unchecked so that the court could check it.

THE COURT: I understand.

MR. ROBINSON: Both defendants were noticed by the state that they were eligible for mandatory life without parole. The -- in that regard, defendant has been -- has prior convictions from Chatham County, Georgia, for armed robbery, aggravated assault, and burglary first.

959

THE COURT: Which? Which one is this, please, sir? Which defendant?

MR. ROBINSON: This is Demetrius Price.

THE COURT: Okay, and what is the record again?

MR. ROBINSON: Aggravated assault, burglary, and armed robbery.

THE COURT: Okay.

MR. ROBINSON: Lucius Simuel has a prior conviction for false imprisonment. The elements of false imprisonment match the South Carolina elements for kidnapping. I have the Georgia statute here if the court would like to review it, as well as the South Carolina kidnapping statute. 17-25-45 makes clear that provided the elements of the out-of-state conviction match the elements of a South Carolina offense, that they are compatible. Would you like to see these statutes?

THE COURT: I'm familiar with that statute. I'll need to see the Georgia statute, but I'm familiar with 17-25-45. Thank you.

MR. ROBINSON: I may have passed you the wrong thing, Your Honor. I think this is the false imprisonment statute. Yes, that's it.

THE COURT: Okay.

MR. ROBINSON: Well, they're both right.

(A PAUSE.)

960

THE COURT: Mr. Geier, in regard to Mr. Price, is there any question about the issue of notice in this regard?

MR. GEIER: No, Your Honor.

THE COURT: Okay, Mr. Deysach, on behalf of Mr. Simuel, is there any question about the issue of notice?

MR. DEYSACH: Not to notice, Your Honor. Simply the, simply the underlying offense.

THE COURT: I understand.

All right, Mr. Solicitor, let me hear from you and any of the victims in this case on the issue of sentencing. And then, Mr. Geier, Mr. Deysach, I'll be glad to hear from you all on the issues of law to be raised and any other legal issues you want to raise at that time.

MR. ROBINSON: Thank you, Your Honor. May it please the court? As Your Honor knows, this case occurred on July 28th of last year. The defendants' rap sheets were run by law enforcement after they were charged. I got the case immediately several days after. In fact, this incident occurred when our office was right next door to Plantation Point Apartments. I went to the scene several days afterwards.

Upon seeing their prior convictions from the neighboring jurisdiction in Georgia, I requested certified copies, which are -- have been marked and to which I

referred during the course of this trial. They were provided to me by the -- there were certified copies provided to me by the Chatham County courthouse. They include both the defendants' sentencing sheets, as well as their indictments. In addition to the qualifying charges which make them eligible for the recidivist statute, they have numerous other convictions.

In the case of Demetrius Price, he has a possession with intent to distribute marijuana. He was on parole when this event occurred. He was taken into custody by his parole officer.

In the case of Lucius Simuel, he has prior convictions for robbery wearing a mask, as well as for discharging a firearm in public, and other charges.

There was testimony during the trial that the victims in this case had guns. However, the state's theory of the case, which has been borne out by the jury's verdict, demonstrates that there is a vast gulf between the victims and the defendants in this case. The defendants in this case came from Georgia to South Carolina ---

THE COURT: Now, I was here during the trial.

MR. ROBINSON: All right.

THE COURT: So, I'm pretty familiar with the facts.

MR. ROBINSON: Well, I just wanted to say to the court that I think that the imposition of the mandatory life

962

without parole, these defendants, given their criminal convictions, is not only required by law, but just under the facts of the case.

Let me check with the victims. Just a moment, Your Honor.

THE COURT: Thank you.

(A PAUSE.)

MR. ROBINSON: Your Honor, may Deon Cannick address the court?

THE COURT: Yes, sir.

Mr. Cannick, if you'll come forward? You can come right up here toward that rail. That's good; that's fine right where you are.

MR. DEON CANNICK: I'll be brief, Judge.

THE COURT: Yes, sir. Take whatever time you need.

MR. DEON CANNICK: I woke up on July 28th and played video games. I didn't really didn't know that my life would change so much that day.

You know, being in a wheelchair, you're not able to do all of the things that normal people are able to do. And it isn't just the fact that on July 28th I got shot and I ended up in a wheelchair. It was the fact that my life was ruined, you know, because having a baby is totally different from getting shot. When you get shot, you're very panicked, very scared of dying, and I just thank God

963

that I lived through this ordeal. That I was able to see my family grow up. And I'm just very fortunate that my brother didn't die or I didn't die.

You know, I just, I just wanted to tell the court that, you know, God has a plan for everyone, and I believe his plan for me was to make a difference in someone else's life. That's why he kept me here, and I'm going to do that. I'm going to make a difference in someone else's life.

THE COURT: Thank you.

Mr. Robinson, do any of the other victims wish to be heard?

MR. ROBINSON: No, Your Honor.

THE COURT: Is there anything further from the state on the issue of sentencing?

MR. ROBINSON: No, Your Honor.

THE COURT: Thank you.

All right, gentlemen, I'll be glad to heard from Mr. Simuel first of all, Mr. Deysach, on the issue of sentencing, and then, Mr. Geier, from you and Mr. Price.

MR. DEYSACH: Thank you very much, Your Honor. The first issue I want to bring up is the false imprisonment statute that the state contends qualifies as the same thing as kidnapping, I guess, here in South Carolina.

I think that if you read the statute of the false

964

imprisonment and you match it up with the kidnapping statute here in South Carolina that they do not match. And while there may be some words that appear in both, that is not the test to be applied in this case. You have to match up the elements.

I found the South Carolina Court of Appeals case *Hinton vs. The South Carolina Department of Probation.* It's 357 S.C. 327. I do have extra copies for both the court as well as the solicitor.

THE COURT: All right, if you'll hand it up, please. Thank you.

MR. DEYSACH: That case begins by dealing with the issue of whether or not an out-of-state abduction conviction is -- qualifies as a violent charge. And after the court deals with the fact of whether an out-of-state conviction applies under the violent classification statute, they conclude that it does. But when they go on to match up the elements of abduction with the elements of kidnapping in our state, they find that there is not a perfect match. And even though the two, the two charges are quite, quite similar in nature, I would point out the differences that in -- I think the same elements test is what *Hinton* tells us we should embark upon.

And the first difference between the statutes that jumps out at you is the -- how each deals with the issue of

965

parental kidnapping. That under the false imprisonment statute, if it were a parental kidnapping situation, it could still end up as a false imprisonment. Whereas here in South Carolina, there is an exception carved out in our statute for parental, a parental-type of a kidnapping situation. That means that somebody could commit an offense with those types of facts in Georgia, be guilty of false imprisonment, and in South Carolina be guilty -- not guilty of kidnapping.

And I point that out because we know that even if we look at the indictment -- you know, we're not, we're not in a position to judge the facts of what happened to give rise to the conviction in Georgia because we know from this case even though we deal with that, even though there are elements enunciated in an indictment, that we're not bound by those.

In this case, the burglary first indictment alleged that Mr. Simuel possessed a weapon. But I think the court instructed the jury that they could find that, or that somebody gets hurt, or the weapon is brandished by somebody. And so just because something appears in an indictment -- and in this case it was a conviction for a lesser included.

I would point out also in the false imprisonment statute that not only is there that parental situation.

966

The element of detained appears in the false imprisonment statute. And if you look in the kidnapping statute, that word does not appear.

Now, the word detained when I look it up in a *Black's Law Dictionary* means to -- they'll say to retard, to slow down. It's a much slighter type of a, I guess, verb than what -- anything that appears in the kidnapping statute here in South Carolina.

And even if we find that that is kind of a slight difference, the *Hinton* case shows us that differences just like that are the types of things that would render an out-of-state conviction and statute not applicable to the life without parole statute.

The false imprisonment in Georgia carries a maximum of ten years. Certainly it was long -- it was over ten years ago that it happened. And certainly nobody when he was convicted and sentenced did not -- wasn't told that it would be somehow a strike later on. I don't, I don't -- I've had it ruled on me in the past that that wasn't required.

But the main point that I want to get across is that while there are actions that could apply under both the kidnapping and the false imprisonment statute, that there are actions that would constitute a false imprisonment that would not be kidnapping here in South Carolina. And for

967

that reason, we're not allowed to go looking and digging up the court records. If there is a fact that needs to be proven in order to establish something, a jury is required to find that fact, and would have to be beyond a reasonable doubt. And so those are the bases that I have to explain to you why false imprisonment does not qualify under our recidivist statute.

THE COURT: All right, Mr. Robinson, what say you to that distinction?

MR. ROBINSON: Your Honor, I haven't had time to read *Hinton*. My understanding of our recidivist statute is that plain language says:

> A person must be -- life without parole must be imposed for a most-serious offence, or a federal, or out-of-state conviction that would be classified as a most-serious offence under this section.

False imprisonment, it is true that Lucius Simuel, Jr., pled guilty to a lesser included of Georgia's kidnapping statute as part of a plea. Relevant language that I'd like to draw the court's attention to is they both use the language -- Georgia says:

> A person commits the offense of false imprisonment when in violation of the personal liberty of another. He arrests,

968

confines, or detains such person without legal authority.

Kidnapping statute under 16-3-910 in our code says: Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, or abduct, or carry away another other persons.

We're talking about the exact same language, precisely the same language. Now ---

THE COURT: Well, one word is the same, confine.

MR. ROBINSON: One word is the same, yes, sir. The state takes the position that both statutes use several synonyms for that word.

THE COURT: Right.

MR. ROBINSON: But that under the plain language of the recidivist statute, it says: For an offense that would be classified as a most serious offense. And in both cases, the sentence carry -- our sentence caries thirty years. Their false imprisonment carries ---

THE COURT: Not more than ten.

MR. ROBINSON: Not more than ten.

I do think that since they have some identical verbiage and they both carry penalties that are well over a year and a day, well into the high class felony classifications, that their false imprisonment statute does match our kidnapping. Our kidnapping statute does not have

969

any degrees. We have a single kidnapping statute with a wide-ranging punishment. Georgia, however, has degrees of kidnapping.

THE COURT: In that regard, can you tell me what their kidnapping statute actually says because obviously ---

MR. ROBINSON: I can.

THE COURT: Okay.

MR. ROBINSON: In fact, I can present it to the court if ---

THE COURT: Yes, that would be helpful so I can see what the distinction is.

MR. ROBINSON: I think the circumstances under which the Georgia kidnapping statute was charged at his previous conviction is similar to the circumstances in which kidnapping is charged in our state in the sense that any time there is -- it was part of a -- it was one of the charges of armed robbery. And any time there's an armed robbery where is victim is held up, kidnapping is also charged because by virtue of holding the person up by presenting a weapon, they confine them. They limit their movement. It's not something -- it's not a kidnapping so elaborate as to require ransom or exportation of the victim.

And that is -- and so in that way, the false imprisonment, they simply chose that lesser included

970

because its language, because it uses the word confine, still fits that narrow application of when a robbery is committed. The victim is confined by having been robbed.

THE COURT: I understand.

MR. ROBINSON: And that is precisely the way our kidnapping statute is used.

THE COURT: Okay. All right, thank you. I've got these to consider.

Two things. First of all, I've look at the Georgia kidnapping statute. Requires a greater degree, in my view, of misconduct than our kidnapping statute does. The Georgia kidnapping statute says:

> A person commits the offense of kidnapping when such person abducts or steals away another person without authority or warrant and holds such other person against his or her will.

So, abducting or stealing away is a necessary element of the Georgia kidnapping statute. Abducting or stealing away are not necessarily elements of the South Carolina statute. It does refer to abducting and carrying away as something that does constitute kidnapping, but it also refers to unlawfully seizing or confining. It also talks about inveigling or decoying or kidnapping, et cetera, but we focus on seizing or confining. And as we know, it has,

971

whether advisable or not, it has become almost *de rigueur* in our state or prosecuting attorneys, any time there is an armed robbery in which a clerk is made to sit still while they rifle the cash register, the charge of kidnapping arises because the person's movement has been limited in some way.

And that has been upheld as a valid application of our statute because under our statute, as has been suggested, there is a wide range of misconduct and a wide range of sentencing. We have a sentencing from zero to thirty years. I don't think it has a five-year minimum. It's a zero to thirty-year sentence possibility for kidnapping. The Georgia kidnapping statute is not more than twenty or twenty-five years depending upon levels of the offense.

And so recognizing, then, that our statute involves a wide range of misconduct from lawfully seizing or conflicting all the way up to kidnapping, abducting, and carrying away, and that the Georgia statute seeks to divide those things, those levels of misconduct, into two separate offenses, but one of them -- that is, false imprisonment -- contains the elements or at least some of the elements of the kidnapping offense. I find, therefore, that under the direction of section 17-25-45 and the application of that statute which refers to the -- whether it would constitute a most-serious offense under our law, and since confining

972

someone, unlawfully seizing or confining someone would be a most-serious offense under our law, then the Georgia false imprisonment which makes it unlawful to arrest or confine or detain, which I would submit are synonyms for those other words, brings into application the recidivist statute. And so the motion, then, to disallow the consideration of the prior false imprisonment in Georgia as a triggering act is respectfully denied.

The appellate review, of course, is reserved. And I would like for the record to reflect the false imprisonment of Georgia, the kidnapping statute of Georgia, and the *Hinton vs. South Carolina* case which has been cited by Mr. Deysach.

All right, Mr. Deysach, anything further?

MR. DEYSACH: Just briefly, Your Honor. I think, I guess I want to make sure if I can get a ruling on this, whether you attempted to use the same elements test in making your ruling, or if you did not use a same elements test.

THE COURT: I used the provision of 17-25-45 that says: A federal or out-of-state conviction for an offense that would be classified as a most-serious offense under this section. And in arriving at that conclusion, I looked at the elements of our statute which I've just referred to, confining as being a most serious offense. And, therefore,

973

a Georgia statute that says confining would have to be considered, in our view, in my view, a most serious. So, to that extent, I have used the same elements test.

MR. DEYSACH: Okay. How have you dealt with the parental kidnapping situation, then, for which an exception is carved out of, out of the South Carolina kidnapping but not so in the false imprisonment?

THE COURT: Because it doesn't apply in this particular case because we're not dealing with that, in the first instance. And in the second instance, the Georgia kidnapping statute also carves out two elements of our kidnapping offenses to set up a greater offense. And, therefore, the fact that Georgia has set up two levels of kidnapping, or maybe even three if you count the parental situation, does not necessarily mean that because we have lumped it all together under a single statute, since our single statute is a most serious offense, then I see it as a distinction without a difference.

MR. DEYSACH: I just, last thing is, is just want to make sure that when you decided that the parental situation did not apply, were you looking to the facts of the case that Mr. Robinson brought up?

THE COURT: I was looking at the elements of the offense.

MR. DEYSACH: Okay. I ---

974

THE COURT: I don't know what the facts were.

MR. DEYSACH: Okay.

THE COURT: I don't know what the facts of the Georgia case were that he pled to. And thankfully under the law, we don't have to do that, and we're not required to do that. We simply look at the elements of the offense and ask ourselves. In Georgia, these are the elements of the offense. Do we have a South Carolina statute that, under those same elements, would qualify as a most-serious offense and make the comparison that way. I don't know any other way to do it without retrying every out-of-state case before we apply 17-25-45 to an out-of-state conviction. I don't know how else to do it. How else would you do it?

MR. DEYSACH: I would -- you would do a same elements test making sure that there's not an element of, I guess, behavior that would qualify as a false imprisonment that he would have been convicted of. That if he happened to do the same thing across the state line, he wouldn't being convicted of kidnapping.

THE COURT: Right.

MR. DEYSACH: And so if that's at all a possibility -- I've heard you kind of, I've heard you say detain and arrest may be synonyms. But I think if you look at the *Hinton* case, there are other -- they see a difference in the difference between our kidnapping statute and somebody

975

who, without privilege to do so, knowingly and by force or threat restrained somebody and created a risk of physical harm with threats and fear and did those same things. But they found that the abduction statute had some -- it may be semantic or slight differences.

THE COURT: Right.

MR. DEYSACH: But different enough. And so if there is a situation that he could have gotten convicted of in Georgia, that whether it's the parental situation or whether it's detention, that would not be a kidnapping here. Then that does not trigger the recidivist statute because I can see a statute in Georgia that would be more narrow than a statute here.

THE COURT: Right.

MR. DEYSACH: And qualify, but this one is more broad because while there are, there are some of the same words used -- one of the same words that's used is "or," and so we have a lot of or's connecting here. So, because he was convicted of false imprisonment in Georgia does not mean that he confined somebody. That is one of the choices that a jury or a judge or him if he pled could have proceeded under, but there are others. And so -- and some of those others would not qualify as kidnapping here in South Carolina.

THE COURT: Well, if he arrests or confines or detains

976

such person without legal authority, those are the three. And I think that all of those are synonymous with what is contained in our statute, are they not?

MR. DEYSACH: I don't believe detain is because detain, arrest and, I guess, seize are -- detain, if you look it up even in *Black's Law Dictionary* is a slowing down. I mean, I can see seeing that word in a statute and saying, well, I'd better plead to it because it's going to be pretty -- a lot easier to prove that I detained somebody than it is that I seized, arrested, or confined them.

And further, there is the bit about the parental situation where you could confine -- here in South Carolina, you could confine your natural-born child who's under fourteen, I believe, and you would be committing a misdemeanor under that statute. You could do the same thing to a certain person and you would be committing false imprisonment.

THE COURT: And that may very well be a distinction that the Appellate Court is willing to look at again as they did in *Hinton*. But I don't know that I can do anything or say anything other than I have said and given the reasons for my ruling so that if I'm wrong, you've got me.

MR. DEYSACH: I think we've covered it.

THE COURT: Okay. Thank you very much.

977

All right, Mr. Geier.

MR. GEIER: Your Honor, I was appointed about four months ago on this case, and one of the first things I did was look at this statute and figure out if I could find a way, as Mr. Deysach has tried to find. And unfortunately my hands are tied.

THE COURT: Yes, sir. Yours is a different situation.

All right, Mr. Simuel, Mr. Price, come around, gentlemen. Mr. Simuel, I'll be glad to hear from you.

MR. DEYSACH: Your Honor, I'd like to say a few words on his behalf.

THE COURT: Oh, I'm sorry. I didn't mean to cut you off.

MR. DEYSACH: Yeah, I was just -- I did the law stuff, but I didn't tell you about the person.

THE COURT: Okay.

MR. DEYSACH: Lucius, who's thirty years old, has three children and has considerable family here in the courtroom. Pastor Marion Simuel -- I'll ask them to stand up when I say their name. Pastor Marion Simuel, Lucius's uncle; Pastor Ethel Simuel, his aunt; Jessica Battle, his sister, also is Tiah's mother.

THE COURT: Right.

MR. DEYSACH: Diane Byrd, who's Lucius's mother; Lester Byrd, his stepdad; and Charlene Simuel, his wife.

978

And there's been others who have been in and out of the courtroom during this week, and it's really more -- and they're good people.

THE COURT: Right.

MR. DEYSACH: And it reflects well on Lucius that he has such great folks that love him, and I, you know, I know him through work. But I see what it is in him that they like. And so I think people are surprised sometimes when you can describe a client of yours who's accused of something bad, and the jury made their finding, and I even admitted to him that the reason that he was even in that situation was, was a mistake in the first place.

THE COURT: Right.

MR. DEYSACH: And I still stand by him, and I didn't tell the jury anything that I didn't believe was true.

THE COURT: I understand that.

MR. DEYSACH: And they may have believed some of what I said or none, but -- and it's possible they believed what I said and still thought it satisfied the elements of what he was accused of.

But I do want you to know and he wants you to know that I think during the trial was a little talk of a letter that Mr. Simuel sent to Investigator Calhoun. And in that letter he expressed that he prayed every night for the victims in the case. And there is -- it weighs heavy on

979

his heart, what happened to them. And what the case was about is the level of legal fault in everything. But that doesn't make much of a difference when it weighs on somebody's heart.

THE COURT: Right.

MR. DEYSACH: And so I want you to know, and I want, I want them to know, and really it's not me wanting. It's him wanting them to know that that does weigh on his heart.

And that I think he wants you to know, Your Honor, because he respects you and the way that the court or the trial proceeded, you know, with a lot of -- I think it proceeded with honor and that people behaved well. The jury, the gallery, the lawyers, and certainly the judge, Your Honor. And so he wishes to express to you and others that, that it, you know -- he wants to express that it didn't exactly happen the way that it, that it was played out. And that's not an attempt to escape some moral culpability because it's a different, it's a different ball of wax.

THE COURT: I understand you.

MR. DEYSACH: But I want you to know, and I'm telling you this not just as a lawyer but as a person. He's somebody that if you met in any circumstance, you would like. And that's why he's got the good family behind him. And those are the things I think I wanted you to know.

980

I've told him to be careful about what he would say at sentencing. It's on record; he's here with his lawyer. So, anything he says if there was an appeal or any type of a reversal would affect him. I'm going to leave that final decision up to him, knowing that saying anything about the case wouldn't be smart. But I am going to leave that up to him.

THE COURT: All right, thank you, Mr. Deysach. I appreciate that.

(A PAUSE.)

MR. DEYSACH: I think he, I think he indicates that I was able to give voice to everything he wanted.

THE COURT: Very good. Thank you.

Mr. Geier, I'll be glad to hear from you and Mr. Price.

MR. GEIER: Thank you, Your Honor. Again, I was appointed to this case four months ago. I was the second attorney that was appointed to Mr. Price. I guess, respectfully, his prior attorney wasn't real diligent.

THE COURT: Right.

MR. GEIER: And after I met with Mr. Price the second time, he said to me you're already twice as good as the last one that you had.

Now, I didn't feel particularly good about myself, but I got to say in the four months that I've been appointed on

981

this case, I've probably seen Demetrius I'd say an average of maybe once a week. There've been, it's a couple of weeks where I didn't see him because I had other things going on unfortunately.

In that time, I've found Demetrius to be incredibly intelligent, very well spoken. During this past week, he's been taking notes and posing questions. And I got to say in the seven years or so I've been an attorney, I've had a lot of smart people sitting next me in various situations both in criminal and civil cases, and he is among the sharpest that I've had next to me. I mean, he really is.

His sister and girlfriend are here. His sister had to step out. His girlfriend is here, Teresa Price -- Ms. Price, if you'd like to stand up, please -- to support him. His mother passed away unfortunately while he was incarcerated for this. His aunt has been coming regularly, but she has to leave at 2 every day or else she'd be here as well.

Let me just touch briefly on Demetrius's history. You know he's got this long and unfortunate criminal record, but I'd point out to the court, and unfortunately I wasn't able to find a way around this either. His convictions came at age sixteen. He and, you know, some of his friends did something they shouldn't have done. Rather than going through the entire trial, he pled guilty to essentially

982

everything that his lawyer at the time told him to plead to, a very competent attorney in Savannah. And he spent ten years in prison for that. So, from sixteen to twenty-six, he was in prison.

His later part of his youth was taken away from him unfortunately. Once he got out, he had a few minor issues. But by and large, he stayed on the straight and narrow.

And I will echo to some extent Mr. Deysach when I say Demetrius I think accepts, at least to the extent that he can accept at this point in the game, the verdict for the jury. However, he also has his own view as to how things went. And I'd say that it's just a shame Demetrius was put in a position and grew up the way he grew up because I truly believe that had he been given the chance that most people get, he could have been something really special.

THE COURT: Thank you, Mr. Geier.

MR. GEIER: And I believe Mr. Price has something he would like to say this.

THE COURT: Mr. Price, I'll be glad to hear from you, sir

DEFENDANT PRICE: You know, I feel like the day everybody was born, we were committed to life without parole on earth. We kept on trying, though. Eventually, we made it to the moon. I'm going to make it to that moon.

THE COURT: Thank you, sir.

983

(A PAUSE.)

THE COURT: Mr. Deysach, I am sensitive to the concerns that you have raised about the comparisons of Georgia statute, quite frankly. The fact that the Georgia statute under which Mr. Simuel was convicted apparently carries only up to ten years in jail; ours carried up to thirty. Obviously, there is distinction there, and so I'm aware of the fact that they have looked at that crime in certain respects differently from the way we look at kidnapping.

But I don't think the law, as I have indicated, indicates that it has to be totally similar. Has the same elements, then they qualify. And I could stand to be wrong on that. And if the Court of Appeals tells me I'm wrong -- and they have before -- you know, I would not feel that an injustice has been done, quite frankly, if Mr. Simuel gets resentenced to the sentence imposed by law this particular case. But I have reached a decision based on the things that I've told you, and I feel that's what the law mandated that I do.

SENTENCE OF THE COURT:

Mr. Price, Mr. Simuel, on the charges of possession of a weapon during the commission of a violent crime, under your respective indictments, the sentence for each of you is that you be committed to the State Department of

984

Corrections for a period of five years.

Mr. Simuel, Mr. Price, on the charge of possession of a weapon by a prohibited person, the sentence for each of you is that you be committed to the Department of Corrections for a period of five years.

Mr. Price and Mr. Simuel, on the charges of assault and battery with intent to kill, the sentences for each of you is that you be committed to the State Department of Corrections for the balance of your natural life without the possibility of parole under section 17-25-45.

Mr. Price and Mr. Simuel, under the indictments charging each of you with burglary in the first degree, the sentences are that you each be committed to the State Department of Corrections for the balance of your natural life without the possibility of parole under section 17-45 -- 17-25-45.

All of the sentences will run concurrent to each other. You will get credit for whatever time you have already served. Good luck to you.

MR. GEIER: Thank you.

THE COURT: Folks, this court will stand in recess.

(CASE LAW MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER 11.)

--- END OF TRANSCRIPT OF RECORD ---

985

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR BEAUFORT COUNTY, SOUTH CAROLINA, ON THE 16TH, 17TH, 18TH, 19TH, AND 20TH DAYS OF NOVEMBER, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Elizabeth B. Harris

ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

JUNE 13TH, 2010

Office of the Clerk of Court
RANDOM STRIKE SHEET

JUDGE NAME : Kinard, J. Ernest
TRIAL TYPE : Criminal
PANEL ID : 2008GS0701761
COURTROOM CTR

DESCRIPTION : STATE V SIMUEL & PRICE

Sorted by: Random Nbr
Trial

	NAME	JUROR NBR	RACE	SEX	STATE/ PLAINTIFF chal	DEFENDANT Strk	DEFENDANT Court	REMARKS
1	Reed, Lizzie P	195	B	F	( )	( )	(X)	
2	Peters, Ruth E	186	W	F	( )	(X)	( )	
3	Kurtz, Pamela L	131	W	F	( )	( )	( )	✓
4	Drake, Angela D	53	B	F	( )	( )	( )	✓
5	Armistead, Regina J	5	W	F	( )	(X)	( )	
6	Smith, Jesse A	220	W	M	( )	(X)	( )	
7	Butler, Stacey L	30	W	F	( )	( )	( )	✓
8	Nance, Kendra B	179	W	F	( )	(X)	( )	
9	Grime, Julie R	84	W	F	( )	(X)	( )	
10	Williamson, Evelyn A	246	W	F	( )	(X)	( )	
11	Ray, Starling S III	194	W	M	( )	( )	( )	✓
12	Mumma, Stellena B	177	W	F	( )	(X)	( )	
13	Jaccard, Scott	115	W	M	( )	(X)	( )	
14	Huckabee, Patricia J	107	W	F	( )	(X)	( )	
15	Marotta, Robert G	152	W	M	(X)	( )	( )	
16	Payne, Bonnita H	185	W	F	( )	(X)	( )	
17	Powell, Orlando R	192	B	M	(X)	( )	( )	
18	Deveer, Robert K JR	49	W	M	( )	( )	( )	✓
19	Barrett, Stuart W	12	W	M	( )	( )	( )	✓
20	Mcaden, Jill M	155	W	F	( )	(X)	( )	
21	Mcalister, Alora L	156	W	F	( )	( )	( )	✓
22	Hamm, Marlene P	89	W	F	( )	(X)	( )	
23	Vanderberg, Cynthia	235	W	F	( )	( )	( )	✓
24	Palau, Ashley E	184	W	F	( )	(X)	( )	

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DESCRIPTION: STATE V SIMUEL & PRICE

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Trial

	NAME	JUROR NBR	RACE	SEX	STATE/ PLAINTIFF Chal	DEFENDANT Strk	Court	REMARKS
25	Houston, Mary A	103	B	F	(X)	( )	( )	
26	Gonzalez, Reulito P	80	A	M	( )	(X)	( )	
27	Evans, Roberta	69	B	F	( )	( )	( )	✓
28	Mccaffrey, Hugh R	157	W	M	( )	(X)	( )	
29	Hart, Paula P	93	W	F	( )	(X)	( )	
30	Eisaman, Karen L	64	W	F	( )	( )	( )	✓
31	Friedman, Elsbeth S	75	W	F	( )	( )	( )	✓
32	Thomas, Christina H	230	B	F	(X)	( )	( )	
33	Kolbe, Eileen R	129	W	F	( )	(X)	( )	
34	Taylor, Stephen E	229	W	M	( )	( )	( )	✓
35	Zebro, Helga	250	W	F	( )	(X)	( )	
36	Moore, Kimberly C	172	W	F	( )	( )	( )	✓
37	Carr, James S	33	W	M	( )	( )	( )	✓
38	Petitt, Jerry S	188	W	M	( )	( )	( )	
39	Taylor, Monica	228	B	F	( )	( )	( )	
40	Vanderworken, Wanda A	236	W	F	( )	( )	( )	
41	Lorenz, Terrence B	143	W	M	( )	( )	( )	
42	Bundy, Robert J	27	W	M	( )	( )	( )	
43	Keaton, Patricia I	124	W	F	( )	( )	( )	
44	Sayers, Tonya L	206	W	F	( )	( )	( )	
45	Isaacs, Vickie L	114	W	F	( )	( )	( )	
46	Dyer, Joey E	58	W	M	( )	( )	( )	
47	Herbkersman, William G	97	W	M	( )	( )	( )	
48	Mcmurray, Thomas B	164	W	M	( )	( )	( )	

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Trial

	NAME	JUROR NBR	RACE	SEX	STATE/PLAINTIFF Chal	DEFENDANT Strk	DEFENDANT Court	REMARKS
49	Mckillen, Janice L	163	W	F	( )	( )	( )	
50	Gaddis, Joseph G JR	76	W	M	( )	( )	( )	
51	Pinckney, Cleve	189	B	M	( )	( )	( )	
52	Humpherys, Carol S	109	W	F	( )	( )	( )	
53	Fick, Bonnie M	70	W	F	( )	( )	( )	
54	Costa, Tanya M	42	W	F	( )	( )	( )	
55	Amagliani, Michael J III	4	W	M	( )	( )	( )	

Total Number of Jurors: 55

** END OF REPORT **

FORM 5

2015-CP 07-1771

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Demetrius Price SCDC# 338142
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR POST-CONVICTION RELIEF

FILED
JUL 17 PM 3:38
CLERK OF COURT
BEAUFORT CO. S.C.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence Beaufort S.C.
3. Name(s) of co-defendant(s) (if any) Lucius Simuel
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) Sentence was imposed,
   (b) J-337444, J-336922
   (c) J-336919, J-336918
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) November 20th, 2009
   (b) ____

Revised 3/2003

(c) ____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere ____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. COURT OF DIRECT APPEAL

ii. ____

iii. ____

(b) the result in each such Court to which you appealed:

i. DISMISSED DIRECT APPEAL

ii. ____

iii. ____

(c) the date of each such result:

i. SEPTEMBER 5, 2012

ii. ____

iii. ____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. ____

iii. ____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) ____

(c) ____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) INEFFECTIVE ASSISTANCE OF COUNSEL/VIOLATED SIXTH
(b) AND FORTEENTH ADMENDMENT. WILL AMEND LATER
(c) ____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) ____
(b) ____
(c) ____

12. Prior to this application have you filed with respect to this conviction: APPEAL

(a) any petition in a State Court under South Carolina Law? N/A
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NONE
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NONE
(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:
i. COURT OF DIRECT APPEAL
ii. ____
iii. ____
iv. ____

(b) the name and location of the Court in which each was filed:
i. COURT OF APPEAL
ii. POST OFFICE BOX 11549
iii. COLUMBIA SOUTH CAROLINA 29211
iv. ____

(c) the disposition thereof:
i. APPEAL WAS DISMISSED
ii. ____
iii. ____

iv. ____

(d) the date of each such disposition:

i. SEPTEMBER 5, 2012

ii. ____

iii. ____

iv. ____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. ____

iii. ____

iv. ____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. ____

iii. ____

(b) the proceedings in which each ground was raised:

i. N/A

ii. ____

iii. ____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) SEE ABOVE

(b) ____

(c) ____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? NO

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. NONE

ii. CHRIS GEIER BEAUFORT S.C.

iii. KATHERINE HUDGINS P.O. BOX 11589 COLUMBIA S.C. 29211

(b) the proceedings at which each such attorney represented you:

i. N/A

ii. TRIAL ATTORNEY

iii. APPEALATE DEFENDER

19. State clearly the relief you seek in filing this application:

SENTENCE VACATED

20. Are you now under sentence from any other court that you have not challenged?

NONE

994

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

√ (1) I am the applicant in this action and I believe I am entitled to redress.

√ (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Demetrius Price
Applicant

SWORN or affirmed to and subscribed before me this
10 day of July ; 2015.

Lillian S. Glover
Notary Public

My Commission Expires: March 4, 2025

Revised 3/2003

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of BEAUFORT)

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Demetrius Price

SWORN to and subscribed before me this 10 day of July, 2015.

Lillian S. Glover (L.S.)
Notary Public

My Commission Expires: March 4, 2025

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	FOR THE 14th JUDICIAL CIRCUIT
)	
Demetrius Price)	
Applicant)	2015-CP-07-1771
Vs.)	
State of South Carolina)	Amendment to PCR Application
Respondent,)	
)	

Applicant by counsel hereby amends his July 17, 2015 PCR application to add the following grounds for relief

1. Trial counsel provided ineffective assistance of counsel by failing to advise his that he could testify at his Jackson v Denno hearing without waiving his 5th Amendment right not to testify during the trial.
2. Trial counsel was ineffective for failing to move severance and have the two codefendants tried separately
3. Failure to object to inappropriate comments made by the court in the presence of the jury at p. 360 l. 7-11.
4. Failure to seek voir dire of officers Calhoun and Holmes whether they coached each other during the Jackson v Denno Hearing. p. 154 l.13- p. 155 l. 7
5. Failure to object to ABWIK verdict form
6. Failure to Solicitor's closing argument in which he vouched for the credibility of the State's witnesses. p. 883 l. 6-10.
7. Failure to seek a mistrial based upon the State's destruction of potentially exculpatory evidence. Officer Holmes testified that he took notes of Price's statements to police officers. The State did not provide these notes to the Defense as part of their Rule 5 obligations. Based upon the testimony of Officer Holmes, the notes were destroyed.
8. Once the court agreed to charge on ABHAN, trial counsel was ineffective for not objecting to the court charging on inferred malice.

Respectfully Submitted,

James Falk, Counsel for Applicant

CERTIFICATE OF SERVICE

Undersigned certifies that on May 29, 2018 a copy of the above was mailed to Megan Jameson, Esq. and Christian Saville at PO Box 11549 Columbia, SC 29203, and emailed to respective counsel at mjameson@scag.gov and csaville@scag.gov.

James Falk
Counsel for Applicant

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Demetrius Price, #338142, Applicant, v. State of South Carolina, Respondent.	)	2015-CP-07-1771 **RETURN**

In response to the post-conviction relief application filed on July 17, 2015, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. Applicant was indicted by the December 2008 term of the Beaufort County Grand Jury for one (1) count of Assault and Battery with Intent to Kill (2009-GS-07-66), one (1) count of Burglary, First Degree (2009-GS-07-68), and one (1) count of Possession of a Weapon During a Violent Crime (2009-GS-07-69). Applicant was indicted by the June 2009 term of the Beaufort Grand Jury for one (1) count of Possession of a Weapon by a Prohibited Person (2009-GS-07-1365). Chris Geier, Esquire, represented him. On November 16, 2009, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Thomas W. Cooper, Jr. sentenced Applicant to confinement for life without the possibility of parole for the counts of Assault and Battery with Intent to Kill and Burglary, First Degrre. Applicant was sentenced to five (5) years for each count of Possession of a Weapon During

the Commission of a Violent Crime. The sentences set to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Price, 400 S.C. 110, 732 S.E.2d 652 (Ct. App. 2012). The Remittitur was issued on December 23, 2014.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
   a. "Violated sixth and forteenth (sic) admendment (sic)"

For the purpose of this Return, Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegation as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C.

at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.