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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of General Sessions

Kristi L. Harrington, Circuit Court Judge

Case No. 2017-000800

RECEIVED
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SC Court of Appeals

The State,

Respondent,

v.

Eric D. McCall,

Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY

DOCKET NO. 98-GS-08-668 &
98-GS-08-669

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF TRIAL PROCEEDINGS

-VS-

ERIC DERANCE MC CALL,

NOVEMBER 16, 1998
MONCKS CORNER, SOUTH CAROLINA

Defendant.

BEFORE:

THE HONORABLE R. MARKLEY DENNIS, JR., Judge, and a Jury.

APPEARANCES:

BRENT ALAN GRAY, ESQ.
DEPUTY SOLICITOR

- and -

THAD DOUGHTY, ESQ.
ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

PERCY BEAUFORD, ESQ.
ATTORNEY FOR THE DEFENDANT

BY: HEATHER GAYLE BURNS, R.M.R.
CIRCUIT COURT REPORTER

1 appear to be none.

2 This matter, ladies and gentlemen,
3 what I'm going share with you now is what's
4 alleged. None of this of course should be
5 considered by you as evidence or facts in
6 this case because it is merely -- it's taken
7 from this, these two pieces of paper, and
8 these are nothing more than -- we call them
9 indictments. They really are -- just really
10 set forth the charges which accuse Mr. Mc
11 Call of committing certain criminal offenses
12 and that's what brings us to the courtroom
13 and that really is the significance of the
14 two pieces of paper. Nothing more.

15 But I'm going to share this with you
16 so you can answer certain additional
17 questions that I will have. But it's
18 alleged that Mr. Mc Call in Berkeley County
19 on or about February twenty-third, 1998
20 while near the corner of Westminster
21 Boulevard and Foster Creek Road in Goose
22 Creek, with malice aforethought and while
23 acting with other co-defendants, used a
24 pistol to shoot Kevin Keyes, that the wounds
25 from this shooting proximately caused or

1 directly caused Mr. Keyes's death and he did
2 die from these wounds.

3 It's further alleged that by use of
4 force and violence they did take from
5 Mr. Keyes at that time an automobile, a
6 motor vehicle, which he was operating and
7 that constitutes the charge of carjacking.

8 I share that with you to find out
9 first of all whether any member of the jury
10 panel has read anything about such an
11 alleged incident, watched, seen any
12 television about such an alleged incident,
13 heard anybody talk about it, have any prior
14 knowledge at all. Please stand.

15 Thank you. Yes, Mr. Brown?

16 THE JUROR: Surely anyone that listens
17 to the T. V. would know about it.

18 THE COURT: All right. Thank you, sir.
19 All right. We will need you to stand, all
20 of you that have -- that heard about it or
21 read about it or saw it on the T.V.

22 We'll start and we'll go through
23 the -- through this process. What I'm going
24 to ask you is you're to identify yourselves
25 and tell me what you whether you saw it on

1 this matter with anyone or among yourselves.
2 If so, please say I have and will -- I will.

3 (Whereupon, the jury signifies they
4 will.)

5 THE COURT: Thank you. And you have
6 not, as I understand, is that correct? Each
7 of you have -- raise your hands, please.
8 You have not?

9 (Whereupon, the jury raises their
10 hands.)

11 THE COURT: Thank you. They have not.

12 Ladies and gentlemen, that oath that
13 you just took is a very important oath, not
14 just for this trial but an important oath
15 for the entire process, because what you
16 have just promised is what you indicated
17 yesterday that you would do throughout this
18 process and throughout this trial. And
19 simply stated it's that you would be fair
20 and impartial. That you would use your
21 common sense, your sense of logic and
22 reason, you would apply that to the evidence
23 in this case.

24 What's important, though, is this.
25 You now have become a judge in this case. I

1 told that you our system depended on two
2 judges working together to help resolve
3 these disputes. You now have become that
4 judge. You individually and collectively
5 are the sole judges of the facts, and of
6 course it's my responsibility to be the
7 judge of the law. What does that mean?

8 That means that our roles are well
9 defined and they do not overlap at any
10 point. There is an interesting example and
11 I'll share it with you of how we will work
12 together and it really does illustrate that
13 point, that our roles are quite different
14 but yet it requires both of us to perform
15 the task that we have received when we
16 started this process. Mine through
17 assignment, yours through selection.

18 Now, this trial like any trial has
19 four parts and it could probably be
20 subdivided even more, but for my purposes
21 and yours there are four significant parts
22 of a trial. Opening statement. The
23 evidentiary portion. Closing argument. And
24 charge.

25 They are each different. There are

1 through this process, through this
2 evidentiary process. I'll take care of
3 resolving the legal issues, you take care of
4 resolving the factual issues. At the end
5 you will be instructed to combine the law
6 with the facts, and reach a decision which
7 as your oath just said that you would do,
8 speaks the truth of this controversy.
9 That's the commitment you made to both
10 sides. I'm sure that you will honor that
11 commitment.

12 I look forward to trying this case
13 with you, and it's an honor to serve with
14 each one of you.

15 I ask you now to please give your
16 attention to the attorneys as they give the
17 opening statements on behalf of their
18 clients.

19 Mr. Gray.

20 MR. GRAY: Thank you, your Honor.

21 May it please the Court.

22 THE COURT: Yes, sir.

23 MR. GRAY: It all must have been very
24 scary for Kevin. It was pitch black dark.
25 And he was shot four times. In his own car.

1 By people Kevin let get into his car.

2 It must have been awfully scary for
3 Kevin when he realized he'd been shot. He
4 panicked. He got out of his car and ran, as
5 fast as he could, to the first house he
6 could come to. And he jumped up on the
7 porch, ran to that front door and beat the
8 front door and bled all over the front door
9 and cried for help. At the home of a
10 stranger.

11 It must have really gotten scary for
12 Kevin when big strong Kevin realized his
13 strength was failing him. And he fell down.
14 And he collapsed on cold cement of this home
15 of a stranger. All the while the people who
16 shot him, his killers, sped away in his car.

17 As scary as all of that must have
18 been for eighteen-year-old Kevin Keyes this
19 morning must be awfully scary for Eric
20 McCall. Because you see Eric McCall sits
21 right there in front of you and sees what's
22 happening and this trial beginning, and he
23 knows, Eric McCall knows that he was one of
24 the killers that sped away in that car.

25 As the judge told you yesterday, we

1 introduced myself. My name is Brent Alan
2 Gray and I'm the Deputy Solicitor for
3 Berkeley County. I want you to meet a few
4 other people. Thad Doughty, sitting next to
5 me, a prosecutor in our office. Next to him
6 is a man named John Plitsch. He is a
7 detective for the Berkeley County Sheriff's
8 Department, and you will hear from him.

9 On the pew behind us are the Keyes
10 family. And that's his father. His name is
11 William, and you'll hear from him. His
12 mother, Johnnie Keyes. His two sisters,
13 Kevin (sic) and Karen. His uncle Bernard
14 and his wife Crystal. They're all here
15 today.

16 As the judge told you, the defendant
17 has been charged with carjacking and murder.
18 And the judge told you also that he will
19 explain these crimes to you and give you the
20 elements of those crimes at the end of this
21 case.

22 But let me go ahead and tell you
23 this. It won't be complicated. Murder in
24 South Carolina is exactly what we all think
25 of murder as. It's the killing of another

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1 human being, with malice a forethought.
2 Meaning he thought about it and he killed
3 him. That's all there is to it.

4 Carjacking unfortunately has become
5 a crime now in South Carolina. They've had
6 to make a special crime for carjacking.
7 It's just what you think it is. It is
8 forcing someone to give you their car,
9 however do you that. In this case with a
10 couple of pistols. And four gunshots. So
11 don't worry about that. You'll understand
12 the elements of carjacking and murder.

13 And you can relax, too, because the
14 facts of this case are going to be as simple
15 as those crimes are. Just as tragic as
16 those crimes are. But simple.

17 In a few minutes you'll begin to
18 hear this story. And I'll tell you that it
19 all took place in February of this year, on
20 a Sunday night, Monday morning scenario.
21 Late Sunday night, February twenty-second
22 through Monday morning, February
23 twenty-third.

24 You're going to hear from Mr. Keyes
25 that Kevin, an eighteen-year-old college

1 student, came home from the dormitory.
2 Visited with his family. Got things to take
3 back to school. On his way back to school
4 he stopped at an apartment in Goose Creek
5 where he knew, you'll hear, very casual, not
6 hardly at all, one of the occupants of that
7 apartment. A girl named LiTisha Williams.
8 Ms. Williams had two roommates. A man named
9 Von Killingbeck, and Eric McCall. You'll
10 hear that Kevin agreed to give them a ride
11 somewhere. You'll hear they didn't get far.
12 They got a few blocks and the two roommates,
13 Mr. Mc Call and Von, whipped out two pistols
14 and shot him. That's the facts. Simple.
15 Tragic.

16 You'll hear that, Von and LiTisha and
17 Mr. Mc Call fled the scene, as you would
18 expect, and they ran to Orangeburg where
19 Von's brother Trey lived. You'll hear from
20 Trey. You'll hear from the other roommates
21 that lived at that house at Orangeburg.
22 They're all students at South Carolina State
23 University, and they'll tell you what went
24 on when they got there, that they had a
25 Maxima. Kevin's car. They had the supplies

1 that Kevin's father had sent for his son to
2 take back to school.

3 You'll hear the roommates tell you
4 exactly what Eric and Von and LiTisha said
5 happened. And guess what? They said that
6 they killed a guy.

7 You'll hear the roommates that lived
8 with him beforehand, the other roommates, a
9 woman named Monique and a boy named Quinton.
10 They all lived in this apartment. They're
11 going to say they talked about it
12 beforehand, that they wanted to carjack
13 somebody. That they wanted to flip a car,
14 which you'll learn means steal it, chop it
15 up for parts.

16 You're going to see pictures of that
17 Maxima. You're going to see the guns that
18 took the Maxima and the life of Kevin Keyes.

19 And finally, ladies and gentlemen,
20 at the very end of this trial, you're going
21 to hear from Eric McCall in the State's
22 case. It's true the defendant has no burden
23 of proof today. He may or may not testify
24 in this trial. But you're going to hear his
25 confession.

1 And this is not a trial where you're
2 going to hear the police version of Mr. Mc
3 Call's confession. You're going to hear a
4 fifty-five minute audio tape of Mr. Mc Call.
5 And Mr. Mc Call's going to tell you exactly
6 what happened. And he's going to confirm
7 exactly what all the other witnesses said
8 happened and that is we were in the back
9 seat, Von fired his gun once, and then I
10 fired mine two, maybe three times. Which is
11 exactly correct. Kevin was shot four times.
12 Those are the facts.

13 The judge mentioned the law to you
14 sand I will say just briefly a little bit
15 about the law because he's in charge of it
16 and he's going to tell you all about it when
17 it is over.

18 But as he already mentioned the
19 State has the burden of proof to prove
20 Mr. Mc Call guilty beyond any reasonable
21 doubt. And I tell you that that's the
22 standard that has always been in place in
23 this country for every single criminal
24 defendant that ever has stood trial here or
25 anywhere else.

1 And I tell you that not to lessen
2 that standard but I tell you that because
3 it's a standard that we know we have.
4 That's the burden we have, the State of
5 South Carolina. And I tell you that because
6 we're absolutely, one hundred percent
7 confident we'll meet that burden in this
8 trial.

9 And I'm not confident because of
10 myself. Has nothing to do with me at all or
11 my police officers or anyone else that's
12 going to testify. I'm confident for two
13 reasons. One, because of good strong
14 evidence that you're going to hear from
15 these witnesses, you're going to see from
16 these photographs. Good strong evidence.
17 And secondly, more importantly, I'm
18 confident because of you. Because I promise
19 you this. You listen to what's said from
20 the witness stand, you look at these
21 exhibits, and you hear Eric McCall tell you
22 what happened. You'll know, beyond any
23 reasonable doubt, that Eric McCall took a
24 Maxima and took the life of Kevin Keyes.
25 Thank you.

1 THE COURT: Thank you, Mr. Gray.

2 Mr. Beauford.

3 MR. BEAUFORD: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. BEAUFORD: Counsel for the State.

6 Good morning. My name is Percy Beauford.

7 We were introduced yesterday. I represent
8 Eric McCall. You've heard the solicitor in
9 his presentation and the opening statement.
10 One thing you need to know about opening
11 statement. It's not a point to invoke pity,
12 passion, or anger. It's a road map, a road
13 map of what to come.

14 Eric McCall stands -- sits here
15 innocent of the crime charged. In this
16 trial you're going to find out that Eric
17 McCall was just at the wrong place at the
18 wrong time, and that's what this case is
19 going to show. That he was at the wrong
20 place at the wrong time.

21 Solicitor may prove some of the
22 facts that he says, but again when the
23 outcome at the end of this case, you will
24 see using your life experience that
25 everybody was just at the wrong place at the

1 wrong time.

2 And I ask that you hold the State to
3 its burden of proving beyond a reasonable
4 doubt and if you do that, you will come to
5 the true and just verdict, not only for the
6 State but for Eric McCall. Thank you.

7 THE COURT: Thank you, Mr. Beauford.

8 You may call your first witness.

9 MR. GRAY: Thank you, your Honor. The
10 State calls William Keyes.

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15 W I L L I A M R O N A L D

16 K E Y E S, having been called as a witness
17 in the presence of the jury, is duly sworn
18 and testifies as follows:

19 DIRECT EXAMINATION BY MR. GRAY:

20 Q Mr. Keyes, tell the jury what you do for a
21 living, please.

22 A I'm retired. I'm retired military and I'm
23 also a retired -- a defense police officer.

24 Q Okay. How long were you in the military?

25 A Twenty years.

1 conference, in the presence of but out of
2 the hearing of the jury.)

3 THE COURT: Mr. Sewell, you're free now
4 to remain in the courtroom or if you wish to
5 leave, you're free to leave as well but you
6 need to remain here and not return to
7 your -- all-right.

8 MR. GRAY: Your Honor, the State calls
9 John Damone.

10

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13 J O H N N I C H O L A S

14 D A M O N E, having been called as a witness
15 in the presence of the jury, is duly sworn
16 and testifies as follows:

17 DIRECT EXAMINATION BY MR. GRAY:

18 Q Deputy Damone, what do you do for a living?

19 A I'm a Deputy Sheriff with the Berkeley
20 County Sheriff's Office.

21 Q And what does your duties entail with
22 Berkeley County?

23 A Routine patrol, answering calls.

24 Q How long have you been in law enforcement?

25 A Ten years military, four years with the

1 Berkeley County Sheriff's Office.

2 Q Deputy, were you on duty the Sunday night,
3 February twenty-second, Monday morning, February
4 twenty-third of this year?

5 A Yes. Yes, I was.

6 Q And when you were on duty that night did
7 you have occasion to respond to a call on
8 Westminster?

9 A Yes, I did.

10 Q And what county was that scene in, is that
11 scene in?

12 A County of Berkeley.

13 Q Tell us what time you responded there.

14 A It was approximately right before midnight.

15 Q Okay. When you arrived tell us what was
16 going on at the scene.

17 A When I arrived on scene the dispatcher had
18 given us call of a man down at 103 Westminster. When
19 I arrived on scene I called for a ten thirty-three,
20 which is a emergency transmission over the radio
21 only. I saw a young black male lying on his back on
22 the porch of 103 Westminster. I secured the scene,
23 making sure there be no danger for any of the
24 residents or the E M S crew which I knew was standing
25 by to come on scene.

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1 Went to the man, canceled -- the ten
2 thirty-three is the emergency transmission only, and
3 called for central to send the E M S unit in.

4 Q Had anyone else responded when you
5 responded?

6 A Not yet, sir.

7 Q And when you arrived could you tell whether
8 or not the man on the porch was injured?

9 A Yes, he was. He was seemed to be in
10 distress. There was blood on his clothing.

11 Q Was he conscious?

12 A Yes, he was.

13 Q Did you speak with him?

14 A Yes, I did.

15 Q Did he tell you what had happened to him?

16 A His words were -- I asked him what had
17 happened first. First he asked for a drink of water
18 which I told him I couldn't give him that, the medics
19 would have to decide whether he can get that or not.
20 Then I asked him again partner, what happened to you?
21 And his words were they jacked me.

22 Q Did you recover any personal property near
23 the victim?

24 A I recovered his wallet and I recovered a
25 pager.

1 Q I'm going to ask you, Deputy Damone, if you
2 can identify what's been marked as State's exhibit
3 number three?

4 A This is the pager that I recovered from
5 Kevin Keyes.

6 Q Okay. And where was that in relation to
7 his body?

8 A It was underneath him.

9 MR. GRAY: Okay. Your Honor, the State
10 would move this in as exhibit -- exhibit
11 number three.

12 MR. BEAUFORD: No objection.

13 THE COURT: Very well. State's exhibit
14 number three, a bag containing evidence into
15 evidence without objection.

16 (At this time the bag and pager
17 previously referred to are received and
18 marked as State's exhibit No. 3 in
19 evidence.)

20 Q And, Deputy, did you observe any other
21 property or personal property at the crime scene?

22 A Not to my recollection.

23 Q Let me ask you if you recognize State's
24 exhibit number nine in evidence.

25 A Yes, sir, I do. This was a shoe that we

1 located on Foster Creek Drive.

2 Q Okay. How close was that to Mr. Keyes?

3 A Approximately seventy-five yards.

4 Q Okay. Let me ask you if you recognize
5 what's in evidence as State's exhibit number ten.

6 A That is a comb that we located on Foster
7 Creek Drive.

8 Q Okay. Okay. Is that the shoe you're
9 talking about, that photograph of the shoe --

10 A Yes, sir, it is.

11 Q -- that's on the street?

12 And that comb you're talking about, is
13 that the pink item in that picture?

14 A Yes, sir.

15 Q Okay. Mr. Damone, how long did you stay
16 there with Mr. Keyes?

17 A With Mr. Keyes, I was there approximately I
18 would say fifteen to twenty minutes before they took
19 him by ambulance to the hospital.

20 MR. GRAY: Thank you. If you'll answer
21 Mr. Beauford's questions, please.

22 THE COURT: Cross-examine.

23

24 CROSS-EXAMINATION BY MR. BEAUFORD:

25 Q Officer Damone, is part of your duties as a

1 investigating officer, investigating crimes or what-
2 ever, to generally ask what happened?

3 A Yes, sir. I asked him what happened to
4 you.

5 Q And the only other question you generally
6 ask is who did it?

7 A Yes, sir.

8 Q And did you ask him that question?

9 A Yes, sir, I did. But he wouldn't answer
10 those questions.

11 MR. BEAUFORD: No further questions.

12 THE COURT: Redirect.

13 MR. GRAY: Yes, your Honor.

14

15 REDIRECT EXAMINATION BY MR. GRAY:

16 Q Mr. Damone, as you questioned him was he
17 having difficulty speaking?

18 A Absolutely, sir.

19 MR. GRAY: Thank you.

20 THE COURT: Re-cross, Mr. Beauford.

21 MR. BEAUFORD: Just one minute, your
22 Honor.

23 THE COURT: Yes, sir.

24 MR. BEAUFORD: Yes.

25

1 RECROSS-EXAMINATION BY MR. BEAUFORD:

2 Q Officer Damone, during the fifteen or
3 twenty minutes that you were there was he always
4 conscious?

5 A He seemed to be, sir, but I had to get out
6 of the way in order for the E M S workers to start to
7 attend to him.

8 Q How long were you there before E M S came?

9 A They were on scene. They were only waiting
10 for me to clear the area so that it was safe for them
11 to roll up.

12 Q And those were the only questions that you
13 asked him, what happened and what other question did
14 you ask?

15 A My main question was what happened. And at
16 that time I had to move aside in order for E M S to
17 start to work on this man and get him ready for
18 transport.

19 MR. BEAUFORD: Okay. No further
20 questions.

21 THE COURT: You may come down,
22 Mr. Damone. You're free to leave or you may
23 stay, whatever your pleasure is, and remain
24 in the courtroom if you wish to stay.

25 Call your next witness.

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MONIQUE VARNER, having
been called as a witness in the presence of
the jury, is duly sworn and testifies as
follows:

DIRECT EXAMINATION BY MR. GRAY:

Q Monique, how old are you, please?

A Eighteen.

Q And where do you live?

A 233 Aim Drive.

Q And what city is that?

A Goose Creek, South Carolina.

Q I'm sorry.

A Goose Creek, South Carolina.

Q Do you live with your family?

A Uh-huh.

Q Who are the members of your family?

A My mother Janet Brown and my father William
Brown, my little brother William Brown and my little
sister Shannay Brown.

Q Okay. Do you have a brother that lives
elsewhere?

A Uh-huh.

1 Q What is his name?

2 A Dominique Varner.

3 THE COURT: Excuse me just a second,
4 Miss Varner. Let me say something to you at
5 this point, and please what you're doing is
6 perfectly normal, I do it all the time as
7 well, but during this proceeding the lady
8 that's seated in front of you is taking down
9 what you're saying and you have just
10 responded twice "uh-huh", and we do that as
11 our communication, but we -- it's important
12 that you verbalize your response so she's
13 clear on what your response is. Okay?

14 THE WITNESS: Okay.

15 THE COURT: So help me if you will,
16 and excuse me for interrupting. You may
17 continue.

18 MR. GRAY: Thank you, your Honor.

19 Q Monique, do you go to school anywhere?

20 A Yes, I do.

21 Q Where do you go to school?

22 A North Charleston High.

23 Q Do you remember where you were living in
24 February of 1998?

25 A Yes, I do, sir.

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1 Q Where were you living?

2 A Two thousand Harbour Lake Drive, Pine
3 Harbour Apartments, A-8.

4 Q And with whom were you living?

5 A Von, LiTisha, and Dominique.

6 Q What is Von's last name?

7 A ~~Killingbeck.~~

8 Q Did Mr. Mc Call ever move into that
9 apartment while you lived there?

10 A Yes, he did.

11 Q Tell us about that.

12 A He moved in -- well, he used to come over
13 there ever day and then he just started staying
14 there.

15 Q And do you recognize someone in this room
16 as being Mr. Mc Call, the person who stayed --

17 A Yes.

18 Q Who is that?

19 A Right there.

20 Q And you're identifying the defendant?

21 A Uh-huh. Yes.

22 Q When you lived in that apartment did you
23 have a boyfriend?

24 A Yes, I did.

25 Q What was his name?

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1 A Quinton Hawkins.

2 Q Are you Quinton's girlfriend any more?

3 A No.

4 Q How long, Monique, have you known Von
5 Killingbeck?

6 A All my life.

7 Q How come?

8 A He's my cousin.

9 Q Did you come to know a girl named LiTisha
10 Williams?

11 A Yes, I did.

12 Q How'd you come to know her?

13 A Well, she moved in our apartment with Von.

14 Q Okay. Did LiTisha Williams have a
15 connection to Von Killingbeck?

16 A Yes, she did.

17 Q What was LiTisha's connection?

18 A His girlfriend.

19 Q And how long have you known Mr. Mc Call,
20 the defendant?

21 A A month.

22 Q A month from now or a month prior to the
23 incident we're talking about?

24 A Prior to the incident.

25 Q Did Mr. Mc Call have a girlfriend when he

1 lived with you?

2 A I guess. He had a lot. I don't know --

3 Q I'm sorry.

4 A I don't know how many he had. I don't
5 know.

6 Q Did he sometimes bring girls there?

7 A Uh-huh. Yes.

8 Q When you all lived together, how did you
9 all live in this one little apartment?

10 A Me and Quinton slept in the living room and
11 my brother had his own room, and Von had his own
12 room. So him and LiTisha slept in the room, and
13 Eric.

14 Q He -- Eric stayed in the room with LiTisha
15 and Von?

16 A Yes.

17 Q In the time that Mr. Mc Call stayed in your
18 apartment, did you ever hear him discuss stealing a
19 car?

20 MR. BEAUFORD: Objection.

21 THE COURT: Excuse me?

22 MR. BEAUFORD: He's leading the
23 witness.

24 THE COURT: Overruled.

25 Q Did you ever hear in the month that Mr. Mc

1 Call lived in the apartment with you, did you hear
2 him discuss stealing a car?

3 A Yes, I did.

4 Q What would he say about that?

5 A He would just say let's go jack a car or
6 whatever.

7 Q And who would he say that to?

8 A Von.

9 Q How often would he talk about that?

10 A Two times a week.

11 Q Okay. Who else was in the discussions when
12 he would talk about that?

13 A Him and Von.

14 Q Was LiTisha there?

15 A She was there but she wasn't in the
16 discussion.

17 Q Did Mr. Mc Call -- how long did he continue
18 to talk about stealing a car?

19 A Until up to the incident. Like a week
20 before the incident.

21 Q Okay. Did he ever say what he intended to
22 do with the car if he stole it?

23 A Take it to Orangeburg and flip it.

24 Q Did you learn what that meant in talking to
25 them?

171

1 A I guess get money for it. I don't know.

2 Q And who would he say he wanted to take the
3 car to Orangeburg and flip it to? Who would he talk
4 to about that?

5 A Von.

6 Q Monique, did you ever see weapons in the
7 apartment?

8 A Yes, I did.

9 Q Who had weapons?

10 A Von and Eric.

11 Q What type of weapons were they?

12 A Guns.

13 Q Okay. What did Von's gun look like?

14 A Brown and black.

15 Q I'm going to show you what's been marked
16 for identification as State's exhibit number eleven.
17 Did his gun resemble that?

18 A That, yep. Yes.

19 Q I'm sorry?

20 A Yes.

21 Q What part of that gun is brown?

22 A The part you hold.

23 Q Okay. The handle?

24 A Uh-huh.

25 Q I'm going to ask you if you look at State's

1 exhibit number twelve for identification. Does that
2 look like a familiar gun to you?

3 A Yes.

4 Q Whose gun does that look like?

5 A Eric's.

6 Q How would you happen to see them with
7 weapons in your apartment?

8 A Von would carry his around and I just saw
9 Eric when I opened the door one morning he was
10 cleaning it.

11 Q Monique, do you remember what you did the
12 weekend of February the -- Saturday would be the
13 twenty-first, Sunday twenty-second, Monday
14 twenty-third of this year?

15 A Yes.

16 Q What did you do that weekend?

17 A Friday I went to the doctor and when I came
18 back from the doctor I went to Jamestown with
19 Quinton.

20 Q Why did you go to Jamestown?

21 A To visit his mother.

22 Q How long did you stay in Jamestown?

23 A Till Monday.

24 Q When you came back on Monday, where did you
25 go?

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1 A Two thousand Harbour Lake Drive, Apartment
2 A-8.

3 Q Is that the apartment Mr. Mc Call was
4 living in then?

5 A Yes, sir.

6 Q Is that the apartment Mr. Von Killingbeck
7 was living in?

8 A Yes, sir.

9 Q Did LiTisha live there then?

10 A Yes, sir.

11 Q Do you remember what time you got back on
12 that Monday night?

13 A Around seven.

14 Q Who brought you back to the apartment?

15 A Quinton's uncle took me.

16 Q What's his name?

17 A Tony.

18 Q When you arrived at the apartment on Monday
19 night, who was there?

20 A Dominique.

21 Q And who again is Dominique?

22 A My brother.

23 Q Okay. You can't tell us what your brother
24 said, but did you have a conversation with your
25 brother?

69

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1 A Yes, I did.

2 Q Did -- can you describe how your brother

3 was acting when you talked to him?

4 A Nervous.

5 Q After your discussion with Dominique, did

6 you see the defendant that evening, Eric?

7 A ~~Yes.~~ Yes, I did.

8 Q When did you see him?

9 A Like thirty minutes after we had a

10 conversation.

11 Q Okay. And what night is this?

12 A Monday.

13 Q How -- how did you see Eric?

14 A They came and -- him and Von came in the

15 door and Trey came in the door and they started

16 packing his stuff.

17 Q Okay. Who is Trey?

18 A Von Killingbeck's brother.

19 Q Had you seen him before?

20 A Yes.

21 Q They came in the apartment and what were

22 they packing?

23 A Everything that was in the room, cloths.

24 Q Did they appear to be in a hurry?

25 A Yes.

1 Q Did you speak to Von and Eric?

2 A Yes, I did.

3 MR. BEAUFORD: Objection, your Honor.

4 He's leading this witness.

5 THE COURT: Sustained. Rephrase your
6 question.

7 Q When they got in the apartment, what did
8 you do in relation to Von and Eric?

9 A I went to Von and asked him --

10 Q You asked --

11 A -- questions.

12 Q You can't tell us what he said. What did
13 you ask him?

14 A I asked him what he did.

15 Q Okay. Did you speak to anybody else?

16 A Yes.

17 Q Who else did you speak to?

18 A Eric.

19 Q And where was Eric when you spoke to him?

20 A Outside.

21 Q What was he doing outside?

22 A Putting cloths in the trunk, box of
23 clothes.

24 Q What did you ask Eric?

25 A What they did.

1 Q And what did Eric say?

2 A He said they shot somebody.

3 Q Did he tell you who he shot?

4 A No.

5 Q Did he tell you if anybody else was
6 involved in that?

7 A Yes.

8 Q What -- who did he tell you was involved?

9 A Von.

10 Q Did they leave your apartment that night?

11 A Yes.

12 Q Did Eric tell you where they were going?

13 A No.

14 Q Where did you see -- did you see Eric
15 again?

16 A Yes, I did.

17 Q Where did you see him again?

18 A The next morning.

19 Q What morning would that be?

20 A Tuesday.

21 Q How'd you happen to see him Tuesday?

22 A He came back to get the -- to get the
23 speakers.

24 Q Who was in the apartment when he came back
25 the second time?

1 A Myself and Quinton and my brother,
2 Dominique.

3 Q Did he take something from the apartment
4 that day?

5 A Uh-huh. Speakers.

6 Q I'm going to ask you if you can identify
7 what's in evidence as State's exhibit number fifteen?
8 What is that a photograph of?

9 A Tisha's speakers.

10 Q Are those the speakers that Eric took from
11 your house?

12 A Yes.

13 Q Is that a photograph of those speakers?

14 A Yes.

15 Q When you saw Eric on Tuesday, did you speak
16 to him then?

17 A Yes, I did.

18 Q What did you -- did you ask him then?

19 A I asked him to repeat a question that I
20 asked him the day before, what did they do.

21 Q What did Eric say on Tuesday?

22 A He said that -- I asked him if he shot the
23 boy and he told me no, Von shot him.

24 Q How long was he there that day?

25 A About twenty minutes.

1 Q Did Eric tell you where he was going when
2 he left?

3 A No.

4 Q After speaking with Eric, what did you do?

5 A I went back in the house.

6 Q Okay. Did you call the police?

7 A No, I didn't.

8 Q How come?

9 A Because I didn't know if they were talking
10 about the same incident that happened, so I didn't
11 know because they didn't say nobody's name, so --

12 Q Were you aware that there had been a
13 shooting in your area?

14 A Yes.

15 Q Monique, have you had occasion to speak to
16 the police about this incident?

17 A No.

18 Q Did the police come to your apartment?

19 A Oh, yes, they did.

20 Q Did you speak to them?

21 A Uh-huh.

22 Q Okay. What day did that happen?

23 A The same, Tuesday.

24 Q Before or after Eric was there?

25 A After.

179

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1 Q Did you tell them what Eric had said to
2 you?

3 A Yes, sir.

4 Q Monique, in the time that Eric lived in
5 your home, did you of see his car?

6 A Yes, I did.

7 Q ~~What type of car did he drive?~~

8 A A CRX.

9 Q I'm going to ask you if you can identify
10 what's in evidence as State's exhibit number
11 thirteen. What is that a photograph of?

12 A Eric's car.

13 Q Is there anything unusual about Eric's car,
14 on the car?

15 A A clown, a joker.

16 Q Okay. And where is that joker?

17 A On the back window.

18 Q I'm going to ask you if you can identify
19 State's exhibit number fourteen?

20 A Yes.

21 Q What is that?

22 A A clown.

23 Q Okay. And whose car in that clown on?

24 A Eric's.

25 Q Okay. I'm going to ask you to look at

180

75

1 these photos, at that -- the photograph of the car.

2 A Yes.

3 Q Is that the photograph of what's on the
4 back of his car?

5 A Yes.

6 Q When he left your home, was he driving that
7 vehicle?

8 A No.

9 Q What kind of car was he driving that day?

10 A A Saturn.

11 Q Monique, did you know who Kevin Keyes was?

12 A Yes, I did.

13 Q Did you know him to have any connection
14 with any of your roommates whatsoever?

15 A No, I didn't.

16 Q How did you know who Kevin Keyes was?

17 A I went to school with him.

18 Q Had he ever been to your apartment to your
19 knowledge before then?

20 A No.

21 Q Thank you, Monique. If you'll answer
22 Mr. Beauford's questions, please.

23 THE COURT: Cross-examine.

24 MR. BEAUFORD: Yes.

25

1 CROSS-EXAMINATION BY MR. BEAUFORD:

2 Q Monique, you testified that on the morning
3 or Monday morning, Von, Eric, and Trey came to the
4 apartment?

5 A Yes.

6 Q And during that time you said you asked
7 Eric what happened?

8 A Yes.

9 Q And he said Von and --

10 A Hissself.

11 Q Hissself shot --

12 A Yes.

13 Q On the next day when Eric came alone
14 without Von he told you Von shot him?

15 A Yes.

16 Q You and Eric don't get along. Isn't that
17 correct?

18 A Yeah, we do.

19 Q You've known Eric for about a month?

20 A Yes.

21 Q And how long has he lived in that
22 apartment?

23 A A month.

24 Q He lived the entire month in that
25 apartment?

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1 A Uh-huh. Yes.

2 Q Did you pay rent at that apartment?

3 A Not out of my own pocket, but. . .

4 Q Did Quinton pay rent at the apartment?

5 A No.

6 Q Did you work at the time?

7 A Yes.

8 Q Where were you working?

9 A Mc Donald's.

10 Q And what was your hours at Mc Donald's?

11 A From -- sometime from five to close.

12 Q When would be the time that you would see

13 Eric at the apartment?

14 A When I come home. Sometimes when I come

15 home from work or in the morning before I go to work.

16 Q And is your testimony that he and Von would

17 just be talking about carjacking somebody --

18 A Yes.

19 Q -- but Eric had a car?

20 A Yes.

21 Q Did Von have a car?

22 A He had one, but it wasn't working.

23 Q If you know who did Eric know in

24 Orangeburg?

25 A I don't know.

1 Q You testified that Eric wanted to take the
2 car to Orangeburg?

3 A Uh-huh. Yes.

4 Q Who did Von know in Orangeburg?

5 A His brother.

6 Q Was that the same Trey that came back with
7 him?

8 A Yes.

9 Q But it's your testimony that Eric wanted to
10 go to Orangeburg to take the car, have it flipped or
11 however you may say it?

12 A Huh?

13 Q What was your understanding of why they
14 were going to Orangeburg?

15 A To flip a car.

16 Q And that's where Trey lived?

17 A Uh-huh.

18 Q And Trey is Von's brother?

19 A Yes.

20 Q What time did you see them on the Monday?

21 A Monday.

22 Q Monday night?

23 A Eight.

24 Q Eight o'clock. And what were they driving?

25 A The CRX and some white car. I don't know

1 the white car.

2 Q So they were driving two cars at that time?

3 A Yes.

4 Q Who was in which car?

5 A I don't know who was in which car. What --

6 Von was packing his stuff in the CRX and Eric was

7 packing some stuff in the white car.

8 Q The CRX is Eric's car?

9 A Uh-huh. Yes.

10 Q What was Trey doing?

11 A Packing, too. He was in the house packing.

12 Q On Tuesday, you said that Eric came back to
13 the house?

14 A Yes.

15 Q And he was driving a Saturn?

16 A Yes.

17 Q Who's Saturn was it?

18 A I don't know.

19 MR. BEAUFORD: No further questions.

20 THE COURT: Redirect.

21 MR. GRAY: No, your Honor.

22 THE COURT: You may come down, Miss

23 Varner. You're free to leave or you may

24 remain in the courtroom, if you wish.

25 MR. GRAY: Your Honor, the State calls

1 Quinton Hawkins.

2 THE COURT: Okay.

3

4

5

6

Q U I N T O N L A W R E N C E

7

H A W K I N S, having been called as a

8

witness in the presence of the jury, is duly

9

sworn and testifies as follows:

10

THE COURT: Mr. Hawkins, you're going

11

to need to speak into that mike. Pull it

12

down so it's closer to you. Thank you, sir.

13

DIRECT EXAMINATION BY MR. GRAY:

14

Q Quinton, how old are you, please?

15

A Twenty-one.

16

Q Lean forward, please, so we can hear you.

17

Where do you live now?

18

A Jamestown.

19

Q And where were you living in February of

20

1998?

21

A Goose Creek.

22

Q And where in Goose Creek?

23

A Pine Harbour.

24

Q What apartment number?

25

A I can't remember.

186 81

1 Q Who did you live with in February of 1998?

2 A Girlfriend Monique Varner and her brother
3 and Von and Eric.

4 Q Okay. Monique is your girlfriend. She
5 lived there?

6 A Yes.

7 Q Von who? You know what Von's last name is?

8 A No, I don't.

9 Q And Eric, do you know, is Eric in the
10 courtroom, that you lived with?

11 A Yeah.

12 Q Okay. Where is he?

13 A Right there.

14 Q You all lived in one apartment?

15 A Yes.

16 Q How long had you known Von?

17 A Know Von like four months.

18 Q How long had you known Eric?

19 A Like a month.

20 Q Did Von have a girlfriend?

21 A Uh-huh. Yes, he did.

22 Q What was her name?

23 A Tisha.

24 Q Did Tisha also stay there?

25 A Yes.

187

82

1 Q Do you recall whether or not Eric had a
2 girlfriend?

3 A He had several girlfriends.

4 Q Were any of his girlfriends white?

5 A Yes.

6 Q In the time that you and Eric lived
7 together in that apartment did you ever hear him
8 discuss stealing automobiles or cars?

9 A Yes.

10 Q Tell the jury what he would say about that.

11 A They going to get -- they get cars, try to
12 get money for it.

13 Q And how often would he talk about that?

14 A Like often.

15 Q When did he stop talking about that?

16 A When he stop?

17 Q Uh-huh.

18 A After the incident happened.

19 Q Did he talk about stealing cars up until
20 that incident?

21 A Yes.

22 Q Who would he talk to about stealing cars?

23 A Von and people in the house, who live in
24 the house.

25 Q Did Eric ever say what his intentions were

188

83

1 if he stole a car, what he was going to do with it?

2 A Yes. Flip it.

3 Q What does flip it mean?

4 A Like flip it for money. Like take it to a
5 chop shop or something like that.

6 Q Did he say where he was going to do that?

7 A Yes.

8 Q Where?

9 A Orangeburg.

10 Q Did you ever help them flip a car or steal
11 a car?

12 A No.

13 Q Quinton, did you ever see in the time you
14 lived there in that apartment any weapons?

15 A Yes.

16 Q What kind of weapons did you see?

17 A A nine.

18 Q A nine?

19 A Yeah.

20 Q Who had a nine?

21 A Eric.

22 Q And what do you mean by a nine? What type
23 of weapon is that?

24 A Nine millimeter.

25 Q Is it a pistol?

189

84

1 A Yes.

2 Q Ask you to look at what's been marked as
3 State's exhibit number twelve. Does that look
4 familiar to you?

5 A It's Eric's gun.

6 Q Okay. Did anyone else in the apartment
7 have a gun?

8 A Von.

9 Q What kind of gun did he have?

10 A Forty-five.

11 Q What color was his forty-five?

12 A I think -- I think it was silver.

13 Q Okay. How often did you see Eric's gun?

14 A See it often because he always keep it on
15 him.

16 Q Do you remember, Quinton, what you did on
17 the weekend of Saturday, the twenty-first of
18 February, Sunday, the twenty-second of February, and
19 Monday, the twenty-third of February?

20 A I went to my mom's house.

21 Q Okay. With who?

22 A Monique.

23 Q And where did your mom live then?

24 A Jamestown.

25 Q What day did you come home from Jamestown?

190

85

1 A I think it was like Tuesday.

2 Q Okay.

3 A Tuesday.

4 Q When you came home from Jamestown, who was
5 in the apartment or did you -- yeah. Well, who was
6 in the apartment when you came home?

7 A When I came home the only person there
8 first was Dominique.

9 Q And what did you do when you got home?

10 A I went in, unpacked my stuff, and went to
11 the store, the Dollar Store.

12 Q What did you go to the Dollar Store for?

13 A For a hair comb.

14 Q And when you came back, what was going on
15 at the apartment?

16 A Von, Eric, and Von's brother when I arrived
17 there.

18 Q Is that the same day you came back from
19 Jamestown?

20 A Yes.

21 Q What were they doing at the apartment?

22 A Taking their stuff out of the apartment.

23 Q Okay. What kind of stuff?

24 A They cloths. I don't know. Any
25 belongings. That's all.

1 Q What were they doing with them?

2 A They just were like putting in the car,
3 like everything.

4 Q Did you speak to Eric that evening?

5 A Yes. I spoke to Eric.

6 Q What'd you talk to Eric about?

7 A I just tell Eric, Dominique tell me what
8 happened, and I just tell him to avoid the trouble I
9 said and I asked --

10 Q I'm sorry. Say that again.

11 A I asked him if he want to sell his gun.

12 Q And you asked him if he want to sell his
13 gun?

14 A Yes.

15 Q What did he say?

16 A He said no, he needed it for protection.

17 Q Did Eric leave that night?

18 A Yes.

19 Q Did Von leave?

20 A Yes.

21 Q Did Trey leave?

22 A Yes.

23 Q Did you go with them?

24 A No.

25 Q When did you see Eric again or did you see

1 him again?

2 A Yeah. He came back the next day.

3 Q When?

4 A The next day.

5 Q What were you doing when he came back?

6 A He be in the house at --

7 Q First, who was in the house with you?

8 A Me and Monique.

9 Q When Eric came back, what did he do?

10 A Gets his -- some speakers and he gets
11 something out of Von car. I don't know what he did.
12 I think a radio or something.

13 Q Okay. Whose speakers did he get?

14 A Tisha's.

15 Q Quinton, I'll ask you to identify what's in
16 evidence as State's exhibit number fifteen. Do you
17 recognize that photograph?

18 A Yeah, I do. Tisha's speakers right here.

19 Q Okay. Are those the speakers that Eric
20 took from the house on that day?

21 A Yes.

22 Q Okay. Is this a photograph of those
23 speakers?

24 A Can hardly see it. That's it right there.

25 Q Okay. When Eric was in your house on

1 Tuesday, did you talk to him again?

2 A Yes.

3 Q What did you talk to him about on Tuesday?

4 A About the incident, what had happened.

5 Q What did you -- what did you say to him?

6 A I asked him who shot him.

7 Q And what did Eric say?

8 A He said Von done it.

9 Q Okay. Did Eric say anything else about
10 that incident, whether he was involved?

11 A He was. They won't find no evidence like
12 that because he clean it up.

13 Q Who cleaned it up?

14 A He did.

15 Q Who is he?

16 A Eric.

17 Q What did he say he cleaned up?

18 A The bullets and his gun.

19 Q Did he leave again?

20 A Did he leave again?

21 Q Uh-huh.

22 A Yes.

23 Q Have you seen him since then --

24 A No. Just here today. Right now.

25 Q -- until today?

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1 When he left, did you call the police?

2 A No. I had talked to a cop outside but he
3 like ain't know what was going on.

4 Q Okay. Did you ever have occasion to speak
5 to the police again?

6 A No.

7 Q ~~What type of car did Eric drive when he~~
8 lived in your home?

9 A A blue Civic. Honda Civic.

10 Q Let me ask you if you can identify this
11 photograph, State's exhibit number thirteen?

12 A Eric car.

13 Q That is Eric's car?

14 A Yes.

15 Q Is there anything unusual about Eric's car
16 as far as the exterior goes?

17 A The rims.

18 Q What are the rims like?

19 A He had some rims on there.

20 Q Okay. Do you know whether he had a decal
21 on his car?

22 A A what?

23 Q A decal or an emblem on his car?

24 A Not really.

25 Q Okay. Let me ask you if you can identify

1 this photograph here. Is that a photograph of Eric's
2 car?

3 A Looks like it.

4 Q Okay. Thank you. Again, if you'll answer
5 Mr. Beauford's questions, please.

6 THE COURT: Cross-examine.

7 MR. BEAUFORD: Yes, sir.

8

9 CROSS-EXAMINATION BY MR. BEAUFORD:

10 Q Quinton, have you ever ridden in Eric's
11 car?

12 A Yes.

13 Q Would you describe the interior of Eric's
14 car?

15 A It be so long I can't, really.

16 Q Is it a two-seater?

17 A Yes.

18 Q Does it have a back seat?

19 A Not really.

20 Q And you and Eric didn't get along too well,
21 did you?

22 A Yeah, we get along. We had nothing, no
23 beef or nothing.

24 Q You all had a run-in over a girlfriend,
25 Monique. Isn't that correct?

91

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1 A Yes.

2 Q But yet you say Eric divulged all this
3 information to you when you all didn't have a good
4 relationship?

5 A I mean we did have a good relationship but
6 everybody argue sometime.

7 Q You said Eric said that he was involved in
8 a shooting and you offered to buy his gun?

9 A Yes.

10 Q What were you going to do with the gun?

11 A I ain't know at the time but I want to
12 purchase the gun.

13 Q You purchase the gun for your protection,
14 too?

15 A You could say that.

16 Q You said you knew Von for about four
17 months?

18 A Yes. Something like that.

19 Q And how long have you known Trey?

20 A Just like for a week.

21 Q You knew Trey when you saw Trey?

22 A Yeah.

23 Q Had you ever had the -- had the occasion to
24 go to Orangeburg to see Trey?

25 A No.

197

1 Q Were you ever involved a situation where
2 you attempted to carjack a car?

3 A Yes. Yes.

4 MR. BEAUFORD: No further questions.

5 THE COURT: Redirect.

6 MR. GRAY: No, your Honor.

7 THE COURT: You may come down,
8 Mr. Hawkins. You're free to leave or you
9 may remain in the courtroom, whatever you
10 wish.

11 All right. At this point, ladies
12 and gentlemen, I'm going to let you go to
13 your jury room. Do not begin your
14 deliberations. Do not discuss this case
15 among yourselves. We'll be with you
16 probably in about fifteen minutes.

17 (Whereupon, the jury leaves the
18 courtroom at 11:14 A. M.)

19 THE COURT: All right. Mr. Beauford,
20 before we recess, want to revisit State's
21 exhibit seven and eight, the photographs to
22 which you had an objection? I'll be happy
23 to hear from you at this point.

24 MR. BEAUFORD: Yes, your Honor. My
25 objection is the relevance of those

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1 J U L I A N J A M E S, having been
2 called as a witness in the presence of the
3 jury, is duly sworn and testifies as
4 follows:

5 DIRECT EXAMINATION BY MR. GRAY:

6 Q Mr. James, how old are you?

7 A ~~Twenty-four.~~

8 Q Okay. And where did you grow up?

9 A In Brooklyn, New York.

10 Q Where do you go -- do you go to school?

11 A Yes, sir.

12 Q Where do you go to school?

13 A South Carolina State University.

14 Q And what are you studying at South Carolina
15 State?

16 A Industrial technology education.

17 Q And when do you plan to graduate from that
18 institution?

19 A December of '98.

20 Q Do you know Trey Killingbeck?

21 A I do.

22 Q How do you know him?

23 A He's a fraternity brother and my housemate,
24 ex-housemate.

25 Q How long have you known Mr. Killingbeck?

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1 A Since the spring of '97.

2 Q How long did you guys live together?

3 A Since February of '98.

4 Q At what address did you live with

5 Mr. Killingbeck?

6 A 558 Dantzler Street.

7 Q This is State's exhibit number sixteen. Do
8 you recognize that?

9 A Yes.

10 Q Okay. And is this a photograph of your
11 home?

12 A Yes, sir.

13 Q Is that the home Trey Killingbeck lived in?

14 A Yes, sir.

15 Q Who did you and Trey live with? You have
16 any other roommate?

17 A Joshua Salmon.

18 Q Mr. James, do you recognize the defendant,
19 Eric McCall?

20 A Yes.

21 Q Okay. Can you point him out to us, please.

22 A Gentleman right over there.

23 Q How long have you known him?

24 A Not too long.

25 Q How did you happen to meet him?

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107

1 A Through Trey's brother Von.

2 Q Trey's brother's name is what?

3 A Von.

4 Q Mr. James, do you remember the weekend of
5 Saturday, February twenty-first; Sunday, February
6 twenty-second; and Monday, February twenty-third?

7 A Yes, sir.

8 Q What were you doing on that Sunday,
9 February twenty-second, the evening?

10 A The Sunday we had some fraternity brothers
11 over, just chilling out.

12 Q And did those fraternity brothers leave?

13 A Yes, they did.

14 Q Did Trey remain at the house?

15 A Yes, sir.

16 Q Did Josh remain at the house?

17 A Yes, sir.

18 Q Did anything unusual occur that evening
19 after your fraternity brothers left the home?

20 A After they left that evening, at about --
21 you're talking when Von and them arrived?

22 Q If that was unusual.

23 A Oh, yes, sir.

24 Q Okay. What time did they arrive?

25 A Between one and two.

1 Q And what was unusual about their arrival at
2 your home at two o'clock in the morning?

3 A Well, after my guests left I went back to
4 my room and then I heard a loud knocking at the door.
5 So I ran to the door and went to the door, answered
6 the door, thought that it was my fraternity brothers,
7 thought they left something in the house.

8 Q Who was standing there where you opened the
9 door?

10 A Eric, Von. And the -- and his girlfriend.

11 Q Eric being the defendant?

12 A Yes, sir.

13 Q Did you let them in?

14 A Yes, sir.

15 Q Can you describe for the jury their
16 demeanor on that early morning?

17 A Well, they was knocking on the door like it
18 was real urgent, and when we opened the door they ran
19 by me and ran into Trey's room.

20 Q Do you know whether or not, Mr. James, if
21 they had weapons with them when they arrived at your
22 house at two o'clock in the morning?

23 A I didn't know at that exact time until
24 after I went in my room and then they went in the
25 living room, I heard them cocking, cleaning guns.

214

109

1 Q Were they talking with one another?

2 A Yes, sir.

3 Q Were they talking to Trey?

4 A Yes, sir.

5 Q Did you know what they were talking about?

6 MR. BEAUFORD: Objection.

7 THE COURT: Sustained. Calls for

8 hearsay.

9 Q Did they leave your apartment that night,
10 any of them?

11 A No. They spent the night there.

12 Q Okay. Did anyone ask to borrow your car
13 that night?

14 A Yes, sir.

15 Q Okay. Who asked to borrow your car?

16 A Trey Killingbeck.

17 Q And did you allow him to use your car?

18 A Yes, sir.

19 Q Do you know who left in your vehicle?

20 A No. Not exactly.

21 MR. BEAUFORD: Objection. He's leading
22 the witness.

23 THE COURT: Overruled. Proper
24 question.

25 Q Did anyone leave in your vehicle?

215

1 A Yes, sir.

2 Q Do you know who left in your vehicle?

3 A Well, I know Trey and either Eric or Von
4 left because when I went -- when I came back out of
5 Josh's to go to my room, there was only one male and
6 a female there. I really didn't take a look. I just
7 know it was somebody, and kept on walking.

8 Q Did Miss Williams stay at the house?

9 A Yes, sir.

10 Q When you got up -- well, then, the next
11 morning, did you get up?

12 A Yes, sir.

13 Q What'd you do the next morning?

14 A The next morning took my keys and took Josh
15 on campus.

16 Q Who was there when you left the next
17 morning, which is later Monday morning when you left?

18 A When I left to go to class?

19 Q Uh-huh.

20 A Eric, Von, and his girlfriend.

21 Q Were all the people who arrived at your
22 house there the next morning?

23 A Yes, sir.

24 Q When you left to go to school, did you
25 notice any vehicles at your house?

216

111

1 A Just the little blue Honda.

2 Q Okay. Had you seen that blue Honda before?

3 A No. I can't recall seeing it. I might
4 have seen it once before, but I can't remember
5 really, exactly remember.

6 Q Where was the blue Honda when you left to
7 go to school?

8 A Parked at the side of my house.

9 Q Were you -- did you do anything about these
10 people being in your home?

11 A Did I know?

12 Q Did you do anything about them being in
13 your home?

14 MR. BEAUFORD: Objection, your Honor.

15 He's leading this witness.

16 THE COURT: No, he's not. Overruled.

17 A Well, being that -- at like the situation
18 that -- how they was acting when they was there, I
19 asked Trey about -- I told Trey I didn't feel
20 comfortable and Josh didn't feel comfortable with
21 them staying there. We asked them to leave.

22 Q Okay. Did you ask them to leave?

23 A I didn't ask them personally to their face.
24 I told Trey to tell them they need to leave because
25 they was his guests.

217

112

1 Q Okay. When did you see them again?

2 A Excuse me?

3 Q When did you see them again?

4 MR. BEAUFORD: Objection, your Honor.

5 He's leading.

6 Q Did you see them again?

7 THE COURT: When you saw them again is

8 not leading. Overruled.

9 Q After you asked Trey to ask them to leave
10 did you see them again?

11 A Yes, sir.

12 Q Where did you see them again?

13 A At my house.

14 Q Okay. And what happened then?

15 A That night -- this is Monday night. Monday
16 night me and Josh and Trey went in Josh's room and we
17 discussed about them leaving again. And he said that
18 they had nowhere to go.

19 MR. BEAUFORD: Objection.

20 THE COURT: Sustained. Be hearsay.

21 Q Julian, don't tell us what anybody said,
22 just what happened.

23 A Okay. We asked Trey to leave -- have them
24 leave again and that night they went into a hotel for
25 the night.

218

113

1 Q Did you ever observe any property being
2 brought into your home?

3 A No. Not exactly. No.

4 Q Was there any personal belongings brought
5 into your home?

6 A The next -- the next morning there was --
7 they had brought some things home, after they had
8 came back from borrowing my car, they came back and
9 there's a lot of things in the back of my house, in
10 my room.

11 Q Okay. What kind of things?

12 A Well, clothes and like some stereo speakers
13 and maybe a box or two. I can't remember exactly
14 everything.

15 Q Okay. And where did they put those things?

16 A We have a spare back bedroom type closet
17 thing and they brought all the stuff back there.

18 Q Julian, I'm going to ask you if you can
19 identify what's in evidence as State's exhibit number
20 seventeen?

21 A Those are clothes that they had brought
22 back to the house.

23 Q Okay. Well, where is that?

24 A Oh. This is the back room that we have in
25 our house.

219

114

1 Q Okay. I'm going to ask you if this is the
2 picture that's on the screen?

3 A Yes.

4 Q Okay.

5 A That's the back room.

6 Q All right. And what is that a photograph
7 of? This is State's exhibit number eighteen.

8 A These are the -- that's just the clothes
9 that they got there, the stereo --

10 Q Okay.

11 A -- speakers and stuff.

12 Q That's -- is that the photograph?

13 A Yes, sir.

14 Q Okay. Who brought those things into your
15 home?

16 A Eric and Von and his girlfriend.

17 Q Okay. And this is State's exhibit number
18 nineteen. What's that a photograph of?

19 A The lock box that the F.B.I. agents opened
20 up.

21 Q Okay. Who brought that lock box into your
22 home?

23 A I guess it was brought there with the rest
24 of the things.

25 Q Is it you all's lock box?

115

220

1 A No.

2 Q Had you ever seen it before?

3 A No. They brought that into -- into the
4 home.

5 Q And is that in the photograph that you're
6 talking about?

7 A Yes, sir.

8 Q Okay. What was in lock box?

9 A Well, when we opened it up it was -- there
10 was a weapon in there. It was a drug scale, a phone,
11 and some other things, some papers and things.

12 Q Any of that your property?

13 A No.

14 Q Of the three of those, did any one of those
15 leave the Orangeburg area? I mean away from your
16 house?

17 A Well, yes. Eric left and came back and
18 left and came back again. Well, left again and never
19 came back.

20 Q Left again and never came back. Did Von
21 and LiTisha remain in that area?

22 A Yes.

23 Q Did you ever see an unfamiliar Maxima at
24 your home?

25 A No. Never seen it.

221

1 Q Let me ask you this, Mr. Julian. Can you
2 identify what's State's exhibit number thirteen?

3 A Yes. That's the car that was outside my
4 house.

5 Q Okay. And what color car is that?

6 A Like a dark blue.

7 Q Okay. And what type of car?

8 A A CRX Honda Civic.

9 Q Okay. Is this the photograph of that
10 vehicle?

11 A Yes, sir.

12 Q When you went out to school did you notice
13 anything unusual about that vehicle?

14 A No. Just the dark tint and the emblem on
15 the back where it -- I didn't really stare it down.

16 Q Say that again.

17 A I didn't really study it.

18 Q Okay. Does this, State's exhibit number
19 fourteen, look like that emblem?

20 A That resembles it, yes.

21 Q Okay. Is this a photograph of that emblem?

22 A Yes.

23 Q Mr. Julian -- I mean Mr. James -- I'm
24 sorry -- did you ever speak to either Miss Williams,
25 Mr. Killingbeck, or Mr. Mc Call about why they were

222

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1 at your house?

2 A Yes. Tuesday.

3 Q Okay. And who did you speak to?

4 A Well, we was all in the living room, all
5 together. I was just asking the whole group because
6 the way -- like it was like me and Josh was talking
7 to all of them and just asking them what they did or
8 whatever.

9 Q Okay. You can't tell us about anybody else
10 but Eric. What did Eric say happened?

11 A Well, he pretty much was quiet and just
12 agreed whatever Mr. Killingbeck said.

13 Q Okay. Did they indicate whether or not a
14 crime -- did Eric indicate whether or not a crime had
15 been committed?

16 A Well, he more -- he just agreed to like to
17 the crime that Mr. Killingbeck was talking about.

18 MR. GRAY: Okay. Thank you, Mr. James.

19 If you'll answer Mr. Beauford's questions,
20 please.

21 THE COURT: Cross-examine.

22

23 CROSS-EXAMINATION BY MR. BEAUFORD:

24 Q Good morning, Mr. James.

25 A Good morning.

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1 Q On Tuesday -- on Monday morning, early
2 Monday morning, you said that three individuals came
3 to your house?

4 A Yes, sir.

5 Q And you said one of them left. What was
6 the time which that individual left?

7 A That they left?

8 Q You said one individual left after coming
9 into your house and he left sometime during that
10 early morning.

11 A The two individuals left. Trey came and
12 borrowed the car and he left with one of them.

13 Q So Trey and one of the other individuals
14 left?

15 A Yes.

16 Q What type of car do you drive?

17 A Blue Nissan Sentra.

18 Q And do you remember what time Trey came
19 back?

20 A Sometime around -- after four in the
21 morning.

22 Q Do you know whether that other individual
23 came back also?

24 A Well, yes, that he had to come back because
25 when I woke in the morning they was there, all three

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1 of them were there.

2 Q And you're sure you -- it was all three
3 individuals there before you left early morning to go
4 to school?

5 A Yes, sir. It was one by himself on the
6 couch and two on the other couch.

7 ~~Q And where was Trey?~~

8 A He was in his room.

9 Q Did you see Trey in the room at the time?

10 A In his room?

11 Q Yes.

12 A With -- with --

13 Q Before you left to go to school?

14 A I think I went on -- excuse me. I can't --

15 Q If you don't --

16 A I can't really remember.

17 Q What time did you get back from school?

18 A I got back from school, maybe sometime
19 around eleven.

20 Q And did you ever leave the house after
21 that?

22 A Yes.

23 Q And what time -- what time did you return
24 after leaving this time?

25 A I returned later on that evening, like

225

120

1 around six maybe.

2 Q And who was at the house at that time?

3 A Von and his girlfriend and Trey.

4 Q Was Eric there?

5 A No. Eric had left.

6 Q And you mentioned that somehow during that
7 time they went to a motel?

8 A Later on that night, yes.

9 Q And you said later on that night.

10 Approximately what time would that have been?

11 A Between ten and eleven.

12 Q So ten, eleven o'clock on what day was
13 this?

14 A This was Monday.

15 Q Monday. You had seen Von and Tisha at
16 Orangeburg?

17 A Yes.

18 Q And you hadn't seen Eric at this time?

19 A No. He had left.

20 Q Did you ever see Eric again?

21 A Yes.

22 Q When was that?

23 A Tuesday.

24 MR. BEAUFORD: Tuesday. No further
25 questions.

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1 THE COURT: Redirect.

2 MR. GRAY: No, your Honor.

3 THE COURT: You may come down,
4 Mr. James. You may remain in the courtroom
5 or you're free to leave if you wish.

6 Call your next witness.

7 MR. GRAY: Thank you, your Honor. The
8 State call John Morton.

9

10

11

12

13 J O H N H. M O R T O N, having
14 been called as a witness in the presence of
15 the jury, is duly sworn and testifies as
16 follows:

17 DIRECT EXAMINATION BY MR. GRAY:

18 Q Mr. Morton, what do you do for a living?

19 A I'm a special agent with the F. B. I.

20 Q And how long have you been in law
21 enforcement?

22 A For approximately a decade.

23 Q Okay. And what are your duties as a
24 special agent for the F. B. I.?

25 A I run the Violent Crimes Task Force.

1 E D M O N D C E C I L

2 K I L L I N G B E C K, I I, having been
3 called as a witness in the presence of the
4 jury, is duly sworn and testifies as
5 follows:

6 D I R E C T E X A M I N A T I O N B Y M R. G R A Y:

7 Q Mr. Killingbeck, what name do you go by?

8 A At school everyone calls me Trey.

9 Q Who are the members of your family, Mr.
10 Killingbeck?

11 A My father Edmond Killingbeck, Senior. My
12 mother, Vashstay Killingbeck. My brother, Clifford
13 Vondesse Killingbeck. My sister, Rochelle
14 Killingbeck.

15 Q Your brother Clifford, what does he go by?

16 A Von.

17 Q Von. Is that V-O-N?

18 A V-O-N.

19 Q Mr. Killingbeck, do you go to school?

20 A Yes, I do.

21 Q Where do you go to school?

22 A I attend South Carolina State University.

23 Q What are you studying there?

24 A Civil engineering.

25 Q Do you plan to graduate?

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1 A Yes, I do.

2 Q When were you planning to graduate?

3 A This is my senior year and I'm completing
4 my last fifteen hours so I should be scheduled for
5 this fall graduation.

6 Q Mr. Killingbeck, where do you live now?

7 A My student's address is 442 Dantzler
8 Street, Orangeburg.

9 Q Did you previously live elsewhere on
10 Dantzler Street?

11 A Yes, I did.

12 Q What address?

13 A At 558 Dantzler Street.

14 Q Okay. State's exhibit number sixteen, do
15 you recognize that?

16 A Yes, I do.

17 Q Okay. Is this a photograph that you're
18 looking at?

19 A Yes, it is.

20 Q What's the photograph of?

21 A It's my previous address at 558 Dantzler
22 Street.

23 Q Who did you live at 558 Dantzler Street
24 with?

25 A Excuse me, sir?

237

1 Q Who did you live with at that residence?

2 A I lived with two housemates. One's name
3 was Julian James and the other's name was Joshua
4 Salmon.

5 Q Mr. Killingbeck, do you recognize the
6 defendant, Eric McCall?

7 A Yes, I do.

8 Q How do you know him?

9 A He was an acquaintance of my brother
10 Vondesse Killingbeck.

11 Q Do you know what other if they had any
12 other connection Eric and your brother?

13 A They were just old friends as far as I
14 knew.

15 Q How long have you known Mr. Mc Call the
16 defendant?

17 A I say I first met him about four years ago.

18 Q And how many -- how often have you found
19 yourself in the company of Mr. Mc Call?

20 A Approximately ten times or more.

21 Q In recent months or recent to this
22 incident, had you ever been in discussions with
23 Mr. Mc Call about stealing automobiles?

24 A Yes. I was present at a conversation at
25 such.

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1 Q Excuse me. Go ahead.

2 A Yes. I was present at a conversation.

3 Q Okay. Tell the jury about that
4 conversation and when it -- when did it occur, first
5 of all?

6 A The first conversation in question occurred
7 at one of my previous addresses, at 973 Siffly Street
8 in Orangeburg. An individual I knew from school came
9 over to my household. In attendance were also the
10 co-defendant and my brother. At that point in time
11 this other person began to --

12 Q Don't tell us what he said.

13 A Okay. Don't say what he did say?

14 Q Okay. What did Mr. Mc Call say during that
15 conversation?

16 A Mr. Mc Call was entertaining the idea of
17 possibly --

18 MR. BEAUFORD: Objection, your Honor.

19 THE COURT: Sustained. Won't allow
20 that.

21 Q Just tell us what Mr. Mc Call said as best
22 you can recall his actual statements.

23 A He was interested in stealing some
24 vehicles.

25 MR. BEAUFORD: Objection, your Honor.

1 THE COURT: Well, we will need to
2 rephrase it. Let me just instruct the
3 witness. You need to phrase your question
4 because if it's someone else's words and you
5 use them, it's hearsay. If it is what he
6 said you need to advise us what he said.

7 ~~Nothing more.~~

8 Q As best you can, what did he say?

9 A Mr. Mc Call, the co-defendant, said that he
10 had wished to possibly steal some vehicles and resell
11 them if he could.

12 Q And subsequent to that conversation, did
13 you have another conversation with Mr. Mc Call about
14 that?

15 A Yes, I did.

16 Q When was that conversation?

17 A That was the Monday before the actual
18 carjacking.

19 Q Okay. And where was that conversation?

20 A In Harbour Lake Apartments.

21 Q And what city is that in?

22 A That's in Goose Creek.

23 Q Who else was present for that conversation?

24 A My brother, Vondesse Killingbeck, LiTisha
25 Williams, a housemate named Quinton, and myself.

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1 Q On that occasion what did Mr. Mc Call say
2 about stealing cars, if anything?

3 A He stated that he had a connection at a
4 Honda dealership and that he was going to look into
5 taking some vehicles from that lot.

6 Q Were there any other conversations with
7 Mr. Mc Call about stealing cars?

8 A Yes.

9 Q When?

10 A He telephoned my house the Saturday night
11 before the incident.

12 Q And what did Mr. Mc Call say on the
13 Saturday before the incident?

14 A He stated that hisself and the
15 co-defendants --

16 Q By whom do you mean co-defendants?

17 A Co-defendants LiTisha Williams and Vondesse
18 Killingbeck. He had already planned a carjacking,
19 but it was a failed attempt.

20 Q Did you ever contribute to those
21 conversations?

22 A Yes.

23 Q How did you contribute to the conversations
24 with Mr. Mc Call about stealing cars?

25 A I -- talking about the first two

1 conversations or --

2 Q Any of those conversations. What did you
3 say in response to Mr. Mc Call wanting to steal a
4 car?

5 A -- telephone conversation? I suggested
6 that he talk back with an old acquaintance from
7 school.

8 Q Okay. And who was that old acquaintance
9 from school?

10 A Mr. Freeman.

11 Q And why did you suggest that Mr. Mc Call
12 talk to Mr. Freeman?

13 A In a conversation and a question at 973
14 Siffly Street, Mr. Freeman had --

15 MR. BEAUFORD: Objection, your Honor.

16 A Oh.

17 THE COURT: Sustained.

18 Q Don't tell us what Mr. Freeman said but why
19 did you suggest he talk to Mr. Freeman?

20 A I suggested he talk to Mr. Freeman because
21 that was the person in whom had the contact with the
22 Department of Motor Vehicles.

23 Q Did anyone else contribute to these
24 conversations besides you and Mr. Mc Call?

25 A My brother, Vondesse Killingbeck.

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1 Q Did you expect to share in any money if
2 they made that connection and flipped a car?

3 A It was discussed.

4 Q Was it discussed by the defendant?

5 A Yes, it was.

6 Q Mr. Killingbeck, did you ever become aware
7 that in fact a car had been stolen?

8 A Yes, I had.

9 Q When did that happen?

10 A Early Monday morning.

11 Q How did that happen?

12 A The co-defendant, Mr. Mc Call, my brother,
13 and LiTisha Williams showed up at my house at 558
14 Dantzler Street.

15 Q Who was at your house when they arrived?

16 A My two housemates, Mr. Salmon, Mr. James,
17 myself, and two male -- two female acquaintances.

18 Q What time of night or day did they arrive
19 at your home?

20 A It was early morning. Approximately two
21 A. M.

22 Q What did -- what did they do when they
23 arrived at your home?

24 A They came in a confusion, you know, of
25 noise entering the home. Soon after they entered the

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1 home they came to my room door. After that I was
2 ushered towards the living room where the
3 co-defendant produced a weapon.

4 Q Okay. Who is the co-defendant? Don't
5 use -- I mean if you say co-defendant, you have --

6 A Eric McCall. Eric McCall.

7 Q Okay.

8 A And my brother.

9 Q Who had weapons?

10 A My brother and Eric McCall.

11 Q Did you speak to them about what had
12 happened?

13 A I spoke with them.

14 Q Did you speak with Eric?

15 A Yes.

16 Q What did Eric tell you had happened?

17 A Eric told me that they had been involved in
18 a carjacking.

19 Q Who is they?

20 A They being my brother, and LiTisha
21 Williams.

22 Q Okay.

23 A He stated that the victim picked them up
24 from Harbour Lake Apartments. He was instructed to
25 leave -- he was instructed to take them down a long

244

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1 road that was supposedly desolate and after
2 approaching a stop sign he said that at that point in
3 time he motioned Vondesse Killingbeck that he wanted
4 to initiate the carjacking.

5 Q And what did Von do in response to that?

6 A At that particular point in time, nothing.

7 ~~Then after the vehicle took a right turn,~~ Mr. Mc Call
8 stated that he once again gestured Vondesse to
9 initiate the carjacking, and after that he stated
10 that my brother Vondesse fired first and then he
11 tried to unload the -- what I mean by unload is fired
12 multiple times with his weapon at the victim.

13 Q Who did?

14 A Eric McCall.

15 Q Did he tell you how many times he fired his
16 weapon?

17 A He told me approximately four or five
18 times.

19 Q Did he tell you what happened to the
20 driver?

21 A He said the driver was fleeing down the
22 road and appeared to be okay.

23 Q Did he tell you what Ms. Williams did?

24 A He stated that she drove the vehicle
25 approximately ninety miles an hour to get to my

245

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1 residence in Orangeburg.

2 Q Did you see the car that they had stolen?

3 A Yes.

4 Q Where?

5 A Parked in between my house and the -- a
6 neighbor's house.

7 Q Is that the car they arrived in?

8 A Yes.

9 Q Describe that car for us, Mr. Killingbeck.

10 A A bronze or champagne-colored Nissan
11 Maxima. A '90 model. Late '90 model.

12 Q This is State's exhibit number twenty-two.
13 Do you recognize that?

14 A Yes, I do.

15 Q What is that a photograph of?

16 A The vehicle that Mr. Mc Call arrived in.

17 Q Okay. Is that a photo of that on the
18 screen there for the jury?

19 A Yes.

20 Q Is that the vehicle that was at your house
21 on the twenty-third?

22 A Yes.

23 Q When they arrived at your house in that
24 Maxima did anyone have weapons?

25 A Yes.

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1 Q Who had weapons?

2 A Mr. Mc Call and my brother.

3 Q Can you describe what kind of weapons they
4 had?

5 A My brother had a larger caliber weapon,
6 approximately forty frame or larger. It had wooden
7 handles on it. Mr. Mc Call had a black newer nine
8 millimeter pistol with a Kevlar handle, Kevlar
9 meaning plastic grip.

10 Q I'm going to ask you, Mr. Killingbeck, if
11 you can identify what's in evidence or what's marked
12 for I D as State's exhibit number eleven?

13 A Yes. That's the weapon my brother had.

14 Q Okay. And State's number twelve?

15 A That's the weapon Mr. Mc Call had.

16 Q Did you leave the home that evening?

17 A Yes.

18 Q With who?

19 A Eric.

20 Q In whose vehicle?

21 A My housemate's.

22 Q Which housemate's?

23 A Mr. James.

24 Q Why did you leave?

25 A Mr. Mc Call and my brother didn't have a

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1 vehicle and my brother said that he needed to get
2 some of his belongs from his home and that they
3 didn't have any other way to travel. So I took
4 Mr. Mc Call back to Goose Creek, picked up some of my
5 brother's belongings, and picked up his vehicle.

6 Q Whose vehicle?

7 A Eric's.

8 Q When you left what was going on with the
9 Maxima?

10 A It was being cleaned.

11 Q By whom?

12 A Initially Eric. Von and LiTisha.

13 Q How were they cleaning it?

14 A With solvent and rags.

15 Q Did you inspect that vehicle?

16 A No, sir. I looked in the vehicle.

17 Q Did you get in?

18 A Not at that time.

19 Q Did you do anything to wipe that vehicle
20 down?

21 A Yes. I touched the top of the driver door
22 frame and I used the cloth that -- I had a jacket on
23 and I wiped the spot where I touched. They said they
24 were involved in -- Mr. Mc Call said that they were
25 involved in a shooting and, you know, from my

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1 knowledge of such things, you know, I thought that
2 the vehicle might show some evidence of that.

3 Q And you say Mr. Mc Call said this? You
4 can't tell us what Von said, but was Von talking
5 about this, too?

6 A Not initially.

7 Q Did he eventually talk to you about what
8 had happened?

9 A Yes.

10 Q You mentioned solvent. What do you mean by
11 solvent?

12 A Alcohol, Glass Plus.

13 Q Do you know where they got that cleaning
14 material?

15 A From the vehicle.

16 Q Where in the vehicle?

17 A The trunk.

18 Q Do you know whether or not anyone took
19 anything else out of the Maxima?

20 A A C. D. was removed. That was in my
21 possession. And some fruits.

22 Q What type of fruits?

23 A And chips. Apples. Oranges.

24 Q Okay. And what kind of chips?

25 A Dorito's.

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1 Q Where'd you see those?

2 A They were located on the living room table.

3 Q To your knowledge was anything done to the
4 Maxima to make it more difficult to identify?

5 A Sticker was removed. Someone had removed
6 the license plate.

7 Q By whom? Do you know?

8 A I don't know who removed the license plate.

9 Q How do you know it had been removed?

10 A I later saw it in my kitchen next to the
11 kitchen door, placed on a chair.

12 Q Let me ask you if you can identify what is
13 marked for State's I D number twenty?

14 A Yes. That's a "tag applied for" sign.

15 Q Okay.

16 A That was placed on the vehicle by myself.

17 Q You placed it on the vehicle?

18 A Yes.

19 Q Do you know who made it?

20 A No, sir.

21 MR. BEAUFORD: No objection.

22 MR. GRAY: Your Honor, the State would
23 offer this as number twenty.

24 THE COURT: Twenty?

25 MR. GRAY: Twenty.

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1 THE COURT: State exhibit twenty. What
2 is it? Cardboard?

3 MR. GRAY: Tag applied for.

4 THE COURT: Cardboard tag into evidence
5 without objection.

6 (At this time the cardboard tag
7 previously referred to is received and
8 marked as State's exhibit No. 20 in
9 evidence.)

10 Q Other than the C. D. and the groceries, do
11 you know if anything else was taken from the vehicle?

12 A No.

13 Q Okay. What did you do when you left with
14 Eric? Where did you all eventually go?

15 A We went back to Pine Harbour.

16 Q Pine Harbour, which is where?

17 A The apartments where my brother used to
18 live.

19 Q Okay. Did Eric live there as well?

20 A Off and on.

21 Q And what'd you do when you got there?

22 A Picked up assorted belongings and took
23 Mr. Mc Call to get his vehicle.

24 Q The car that you got that night with Eric,
25 what type of car is that?

1 A A CRX, Honda make.

2 Q Do you recognize State's exhibit number
3 thirteen?

4 A Yes.

5 Q Is that the vehicle you rode back in or you
6 picked up that night?

7 A Yes.

8 Q Okay. How did you all get back?

9 A We drove in two separate vehicles.

10 Q Who drove this car?

11 A Eric Mc Call.

12 Q And you drove whose car?

13 A Julian James.

14 Q Okay. Did you ever hear Mr. Mc Call
15 discuss any plans, future plans at this point?

16 A He discussed fleeing the State.

17 Q He did. What did he tell you about that?

18 A LiTisha's family had a residence in New
19 York and he was thinking about going there.

20 Q Did you have occasion, Mr. Killingbeck, to
21 speak to the police about what you knew about this
22 crime?

23 A After the fact.

24 Q When was that?

25 A Wednesday.

252

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1 Q What happened that put you in contact with
2 the -- put you in contact with the police?

3 A They were at my residence.

4 Q When you got there did you speak to them?

5 A Yes, I did.

6 Q What was going on at your house?

7 A My brother and LiTisha had already been
8 arrested. My housemates were questioned. And I was
9 questioned upon arrival.

10 Q Did you know where Eric was at that point?

11 A He stated that he wanted to come back down
12 to Goose Creek and just maintain a job and play
13 everything cool, so he was somewhere down there.

14 Q Was the property that was brought into your
15 home still in the home when the F.B.I. got there?

16 A Yes.

17 Q Were you charged with a crime?

18 A Yes.

19 Q What were you charged with?

20 A Accessory after the fact of carjacking.

21 Q Do you know why you were charged with that
22 crime?

23 A Yes.

24 Q What did you do as an accessory after the
25 fact?

253

1 A I helped to conceal the identity of the
2 vehicle.

3 Q How did you do that?

4 A My placing the "tag applied for" sign on it
5 and discarding the keys and moving it to the location
6 where it was found.

7 Q Did you show that location to the F.B.I.
8 agent?

9 A Yes, I did.

10 Q When you moved it were you concerned that
11 your fingerprints would be on the car?

12 A No, sir.

13 Q How come?

14 A At that time I had a black pair of leather
15 gloves on my hand.

16 Q Who charged you with accessory after the
17 fact of murder and carjacking?

18 A Orangeburg County.

19 Q What happened to your case in Orangeburg
20 County?

21 A It's still pending.

22 Q Is that being prosecuted in any way by me
23 or our office?

24 A No, sir.

25 Q Have you been given any consideration

149

254

1 whatsoever in your charge in Orangeburg County?

2 A None.

3 Q Any promises have been made to you?

4 A None.

5 MR. GRAY: Thank you, Mr. Killingbeck.

6 If you'll answer Mr. Beauford's questions,
7 please.

8 THE COURT: You may cross-examine.

9

10 CROSS-EXAMINATION BY MR. BEAUFORD:

11 Q Mr. Killingbeck, you hadn't been promised
12 anything. Is that correct?

13 A Yes, sir.

14 Q But in hope of your testimony, you're
15 hoping that you will get promised something for your
16 testimony. Isn't that correct?

17 A Possible.

18 Q And I noticed in your testimony you said
19 Eric called you from Goose Creek?

20 A Yes, sir.

21 Q How would Eric have gotten your number?

22 A My -- upon numerous visits to my brother's
23 home, my number was made available. It was placed at
24 one particular point on the refrigerator. My brother
25 also maintained an address book which all the

255

150

1 occupants of the residence, you know, had access to.

2 Q Where was Von at this time when you
3 supposedly got this call?

4 A At the residence.

5 Q But yet Von did not call you, your own
6 brother?

7 A No, sir.

8 Q You said that after they got to your house
9 that night you and Eric left, and while you left they
10 were cleaning up the vehicle, meaning -- meaning who?

11 A Actually, you know, at that time it was
12 being cleaned Eric took a part in cleaning it, my
13 brother, and LiTisha. I had already touched the
14 vehicle and wiped where I touched on the door.

15 Q Correct me if I'm wrong, you said you and
16 Eric left and they were cleaning the vehicle after
17 you all left. So Eric was not there during the
18 cleaning process?

19 A No, sir. No, sir. I didn't state that we
20 were riding off when it was cleaned. It was being
21 cleaned in the process of leaving.

22 Q LiTisha was Von's girlfriend. Am I
23 correct?

24 A Yes, sir.

25 Q But you indicated that Eric suggested you

151

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1 all go to New York because LiTisha had family members
2 in New York?

3 A Yes. That's correct.

4 Q Since your arrest you had the opportunity
5 to talk to your brother, haven't you?

6 A Only on occasion.

7 Q And you all talked about the case?

8 A No, sir. We discussed some religious
9 ethics and reconciliation and things of that nature.

10 Q How many times did you talk to your brother
11 since his arrest?

12 A Twice.

13 Q When was the last time you talked to him?

14 A It's better than a couple weeks ago.

15 Q And you came down here to Berkeley County
16 jail to see him?

17 A Yes, sir.

18 Q And you had an extensive stay with him,
19 time period that you talked with him?

20 A I can't -- could you please define
21 extensive.

22 Q One to two hours?

23 A No, sir.

24 Q How long did you talk with him?

25 A I think the visitation lasted approximately

1 ten minutes at the most.

2 Q Did you own a car?

3 A Yes.

4 Q What type of car did you own?

5 A I owned a '78, 1978 Chevrolet Camaro.

6 Q And was your car operating on February
7 twenty-second, at the time?

8 A February twenty-second, yes, it was.

9 Q You indicated that in your conversation
10 with Eric, Eric said he wanted to go back to Goose
11 Creek to maintain a job and wait until things
12 stayed -- stay low, wait until things cool off?

13 A He said he wanted to play it cool.

14 Q And maintain his job?

15 A And maintain his job.

16 Q And where was he working at the time?

17 A I have no knowledge of his work place.

18 Q But you knew he worked?

19 A From what I was told.

20 Q And you -- you were saying that during the
21 different conversations that you had with the three
22 parties, Eric was more vocal than any of the others?

23 A In my opinion, Eric was more flamboyant
24 than the others.

25 Q You own a gun, don't you?

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1 A Yes, sir, I do.

2 Q A nine millimeter?

3 A Yes, sir.

4 Q A black nine millimeter?

5 A Negative. My nine millimeter is chrome.

6 It's an Astra A one hundred.

7 Q And you keep your bullets or the bullets at
8 your house that you were living at that time?

9 A I had a couple of bullets. I didn't really
10 have a box.

11 Q Okay. Did you ever have the opportunity to
12 speak with Monique Varner?

13 A Negative.

14 Q You never saw Monique Varner?

15 A I saw her.

16 Q On February twenty-third, Monday morning,
17 Sunday night, Monday morning?

18 A I saw her maybe Monday afternoon.

19 Q Who was with you at the time?

20 A Eric Mc Call. Joyce, his girlfriend. I
21 don't know her last name.

22 Q Who's -- you say Joyce is whose girlfriend?

23 A Eric's girlfriend. My brother. And
24 myself.

25 Q Describe Joyce if that's her name. You

259

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1 said Joyce?

2 A She's brown-skinned. Five foot six. I
3 think her last name is Ancrum. She attends the
4 neighboring academic institution.

5 Q And you said that Von wanted you to pick up
6 some of his stuff so he sent you and Eric back other
7 than he going back with you on that night, early
8 morning?

9 A Eric also stated that he needed to get his
10 vehicle. They had no means of transportation.

11 MR. BEAUFORD: No further questions.

12 THE COURT: Redirect.

13 MR. GRAY: Yes. Briefly, your Honor.

14

15 REDIRECT EXAMINATION BY MR. GRAY:

16 Q Mr. Killingbeck, Mr. Beauford has asked you
17 about Mr. Mc Call being the most vocal. The law
18 won't let you tell us what Von said, but did he speak
19 to you about this crime?

20 A Yes, he did.

21 Q Okay. Did he tell you what he had done in
22 the crime, Von Killingbeck?

23 A He told me bits and pieces of it.

24 Q Okay. You can't tell us what he said. As
25 far as your family members' visit, or as far as you

155

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1 visiting your brother at the jail, do you know
2 whether or not other family members visited your
3 brother at the jail?

4 A My father. We have the same names and he's
5 visited numerous times.

6 Q Okay.

7 A ~~My mother and others.~~

8 Q Is your father's name and your name exactly
9 the same?

10 A Yes, sir.

11 Q And what is that full name?

12 A Edmond Cecil Killingbeck.

13 MR. GRAY: Thank you.

14 THE COURT: Re-cross.

15 MR. BEAUFORD: No further questions.

16 THE COURT: All right. You may come
17 down. You're free to leave or remain, what-
18 ever you wish.

19 All right. At this point, ladies
20 and gentlemen, we'll recess for lunch. I
21 have some matters scheduled, not in this but
22 scheduled for 1:30, quarter to two I think.
23 So I will ask you please be back in your
24 jury room at 2:15.

25 Do not begin your deliberations. Do

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1 not discuss this case. Don't allow anybody
2 to talk with you or talk about it any
3 further. Have a good lunch and I'll see you
4 at 2:15.

5 (The jury leaves the courtroom at
6 12:45 P. M.)

7 THE COURT: Everyone else remain seated
8 until the jury leaves, please.

9 All right. Anything from the State
10 before recessing?

11 MR. GRAY: No, your Honor.

12 THE COURT: Anything from the
13 defendant?

14 MR. BEAUFORD: No, your Honor.

15 THE COURT: Thank you. We'll be at
16 ease until 2:15 in this case.

17 (A luncheon recess is called at
18 12:45 P. M.)

19 A F T E R N O O N S E S S I O N

20 (The Judge enters the courtroom at
21 2:15 P. M.)

22 THE COURT: All right. Let the record
23 reflect that Mr. Mc Call is present. Is the
24 State ready to proceed?

25 MR. GRAY: Yes, your Honor.

1 State calls Amanda Carman.

2

3

4

5 A M A N D A C A R M A N, having
6 been called as a witness in the presence of
7 the jury, is duly sworn and testifies as
8 follows:

9 DIRECT EXAMINATION BY MR. GRAY:

10 Q Amanda, how old are you, please?

11 A Eighteen.

12 Q And where do you live now?

13 A Groton, Connecticut.

14 Q Who are the members of your family?

15 A Cindy Pensmith and my two sisters and
16 little brother.

17 Q If you will, Amanda, will you lean a little
18 bit closer to that mike? Maybe that will help
19 everybody. How is Cindy Pensmith related to you?

20 A My mother.

21 Q In February of 1998 where were you living?

22 A At 4471 Hardwood in Ladson.

23 Q And whose home was that?

24 A My mom's.

25 Q Amanda, do you recognize the defendant?

159

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1 A Yes.

2 Q How do you know him?

3 A We dated for a month before he was arrested
4 and we've known each other for five and a half years.

5 Q What do you know his name to be?

6 A Eric Mc Call.

7 Q Amanda, do you remember the events of the
8 weekend that included Sunday, February twenty-second
9 of this year?

10 A Yes.

11 Q Tell the jury what you were doing on
12 February twenty-second of this year?

13 A We -- Eric had come over to the house
14 about 4:30. We ate dinner, sat out in the car and
15 talked until Tisha paged him and said that he had,
16 said that he had to go pick her up from work and that
17 they were going back to Goose Creek and that was
18 about eleven, 11:30.

19 Q And who is Tisha?

20 A Von Killingbeck's girlfriend.

21 Q What was Eric's connection with Tisha?

22 A He lived in the apartment with Von and they
23 knew each other through that.

24 Q Do you know where Amanda -- I mean where
25 LiTisha worked?

265

- 1 A Burger King on College Park.
- 2 Q Did Eric tell where you he was going to
- 3 pick her up?
- 4 A From the Burger King.
- 5 Q Do you know LiTisha Williams?
- 6 A Just vaguely.
- 7 Q And how do you know her vaguely?
- 8 A Through going over to the apartment with
- 9 Eric when her and Von were together.
- 10 Q Von Killingbeck, do you know him?
- 11 A I know him through Eric.
- 12 Q What time do you guess he left your home on
- 13 Sunday night?
- 14 A About eleven, 11:15.
- 15 Q After he left you on Sunday night, what did
- 16 you do?
- 17 A Went back in the house and went to bed.
- 18 Q When did you see Eric Mc Call next?
- 19 A Late Monday night.
- 20 Q What time do you think?
- 21 A Between 9:30 and ten.
- 22 Q And where was that?
- 23 A At my mom's house.
- 24 Q And did you speak with him?
- 25 A Yes.

161

266

1 Q What did you talk to Eric about on Monday
2 night?

3 A What happened Sunday.

4 Q What did Eric tell you had happened Sunday?

5 A He had asked me if I had seen the news
6 earlier that day and I told him I had, and he asked
7 what I had seen on the news and I told him about that
8 they had said there was a shooting in Goose Creek and
9 there was cop cars in the woods and the police line.
10 And he said that him and Von had been involved in
11 that.

12 Q Did he tell you how he had been involved in
13 it, Eric?

14 A He said that he had shot the guy.

15 Q Did he tell you how Von had been involved
16 in it?

17 A He said Von shot him, too.

18 Q Did you -- did he leave your home Monday
19 night?

20 A No. He slept in his car in the front yard.

21 Q I'm sorry. Say that again.

22 A He slept in his car in the front yard.

23 Q How come he slept in his car in the front
24 yard?

25 A He said they'd be evicted from the

267

1 apartment and he had no other place to go.

2 Q Was that unusual for him to spend the night
3 at your home?

4 A Yes.

5 Q Had he ever done it before?

6 A No.

7 Q Did your mother know he was spending the
8 night in your front yard?

9 A She knew the next morning.

10 Q Did you ask her if he could do that?

11 A No.

12 Q Tell us what kind of car he slept in that
13 night Monday night.

14 A A '92 blue CRX.

15 Q This is State's exhibit number thirteen.
16 Do you recognize that?

17 A Yes.

18 Q What is that a photograph of?

19 A His car.

20 Q Is that the photograph there?

21 A Yes.

22 Q Is that the car that was at your house that
23 Monday night?

24 A Yes.

25 Q Is that the one he slept in?

163

268

1 A Yes.

2 Q Amanda, what is the decal on the back of
3 his vehicle?

4 A It's a Souls of Mischief sign. It's for a
5 car club in Goose Creek.

6 Q Was that on his car back in February of
7 1998?

8 A Yes.

9 Q This is State's exhibit number fourteen.
10 Do you recognize that?

11 A Yes.

12 Q Is that a photograph of that?

13 A Yes.

14 Q On Monday morning or Tuesday morning, did
15 you see him?

16 A I saw him right before I went for -- to
17 school.

18 Q Okay. And you went to school that day?

19 A Yes.

20 Q When did you see Eric the next time?

21 A He came and picked me up from school that
22 day.

23 Q And what day is that?

24 A Tuesday, the twenty-fourth.

25 Q What did he do after he picked you up from

1 school?

2 A We went back to my mom's house.

3 Q Did he have anything with him when he
4 picked you up at school that was unusual?

5 A Not that I know of.

6 Q Did he ever mention any news coverage of
7 the event?

8 A He asked me if we had a newspaper so he
9 could see if there was an article in it.

10 Q Who gave him the newspaper?

11 A My mom.

12 Q And what was he looking for in the
13 newspaper?

14 A Any articles about what happened Sunday
15 night.

16 Q On Tuesday night what did you and Eric do?

17 A We ate dinner at my mom's house and then
18 drove down to Orangeburg.

19 Q At what time did you go to Orangeburg?

20 A It was about 7:30, eight o'clock.

21 Q In what vehicle?

22 A Mine.

23 Q Why did you ride in your vehicle?

24 A Because he had a flat tire and he didn't
25 want to drive down there on a donut.

165

270

1 Q Did he tell you why you were going to
2 Orangeburg?

3 A He said he wanted to talk to Von and Tisha.

4 Q About what?

5 A About Sunday night and he wanted to show
6 them the article in the paper.

7 Q What did Eric do -- well, where'd you go in
8 Orangeburg?

9 A To Trey Killingbeck's house.

10 Q What did Eric do where he got to Trey
11 Killingbeck's house?

12 A He sat outside and talked to Trey for a
13 couple minutes and then him and Tisha and Von went
14 into a back room in the house.

15 Q Was there anyone else at the house?

16 A Von's or Trey's girlfriend Keta.

17 Q And what did you do while they were talking
18 in the back room?

19 A Keta and I sat in the living room and
20 watched T.V.

21 Q Who is Trey Killingbeck?

22 A Von Killingbeck's brother.

23 Q Had you met him before?

24 A I'd met him one other time.

25 Q Amanda, do you remember how long he stayed

271

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1 in Orangeburg on Tuesday night?

2 A Till about 9:30.

3 Q And who'd you leave with?

4 A Eric.

5 Q In whose car?

6 A Mine.

7 Q Why did you leave at 9:30?

8 A I had to be home.

9 Q When you got back to the house, what was
10 going on at your home?

11 A We went in the house and I asked mom if he
12 could stay in the house that night, and if he could
13 stay until he found someplace else to live.

14 Q Who had asked to stay in your home?

15 A I had asked him, Eric, to stay in there.

16 Q Did your mother agree to allow that?

17 A She said just for that one night.

18 Q And that was the second time he'd ever
19 stayed at your house overnight?

20 A Yes.

21 Q Amanda, do you know whether or not back in
22 February of 1998 Eric owned a weapon?

23 A Yes.

24 Q What type of gun was that?

25 A Nine millimeter.

167

272

1 Q Had you seen that gun before?

2 A Yes.

3 Q Where?

4 A With him and when we bought it.

5 Q Okay. How did he get that gun?

6 A A friend of mine was selling it because she
7 was afraid that her son was going to shoot himself.

8 Q You were with him when he purchased it?

9 A Yes.

10 Q Do you know whether or not he got a receipt
11 for that gun?

12 A He said he went back and got a bill of sale
13 for it, but I never saw it.

14 Q What did Mr. Mc Call or Eric's gun look
15 like?

16 A It was a black nine millimeter.

17 Q I'm going to ask you, Amanda, if you
18 recognize State's exhibit number twelve for I D?

19 A Yes.

20 Q What does that look like to you?

21 A Eric's gun.

22 Q The weekend of the of February
23 twenty-first, twenty-second, twenty-third did you see
24 that weapon?

25 A I saw it Saturday night.

273

1 Q How did you happen to see it?

2 A It was in the car.

3 Q Okay. Did you see it later?

4 A No.

5 Q Okay. Did Eric tell you -- did he ever
6 discuss that weapon with you later?

7 A He -- not really. It never came up.

8 Q Okay. Were you -- well, Tuesday --
9 Wednesday morning what happened? You spent -- he
10 spent the night Tuesday in your home. What happened
11 Wednesday morning?

12 A I went to school. He went to work. My mom
13 went to work.

14 Q And did anything else unusual occur that
15 day at the Pensmith residence?

16 A No.

17 Q Did you ever encounter the police that day
18 at your home?

19 A Not until he was arrested.

20 Q Okay. Tell us about that.

21 A It was about five o'clock and I pretty much
22 just gotten home from school.

23 Q And this is what day?

24 A On Wednesday.

25 Q Okay.

169

274

1 A My mom had asked him to change the tire on
2 her car, so we went out there to change the tire. I
3 went in the house to get on the phone, call -- I
4 called my aunt and when I walked outside the cops
5 were already surrounded him and he was already in
6 shackles and handcuffs.

7 Q When you were there did the police recover
8 a gun from inside your house?

9 A Yes.

10 Q How did they know where to look for a gun?

11 A I told him.

12 Q What did you tell him?

13 A That it was under -- it had been placed
14 under my bed.

15 Q How did you know that?

16 A He told me where he'd put it Tuesday.

17 Q Why did Eric put his gun under your bed?

18 A He said he felt that he didn't need to
19 carry it with him, that he didn't have to have it at
20 all times.

21 Q Had he ever hidden it under your bed
22 before?

23 A No.

24 Q Amanda, I'm going to ask you if you can
25 identify photographs for me. This is in evidence as

275

1 State's exhibit number twenty-five. What is that a
2 photograph of?

3 A The front of my house.

4 Q Okay. Is that the front of your home?

5 A Yes.

6 Q Okay. Is that the home that Eric was in?

7 A Yes.

8 Q This is State's exhibit number twenty-six.
9 What is that a photograph of?

10 A My bedroom.

11 Q Is that your bedroom?

12 A Yes.

13 Q Is that your bed?

14 A Yes.

15 Q This is State's exhibit number
16 twenty-seven. Do you recognize that?

17 A The gun.

18 Q Is that your mattress?

19 A Yes.

20 Q Is that where Eric had you or told you he
21 placed the gun?

22 A Yes.

23 Q I'm going to show you State's exhibit
24 number twenty-eight. Does that look like Eric's
25 weapon to you?

171

276

1 A Yes.

2 Q Amanda, when Eric told you that he had shot
3 somebody, did you call the police?

4 A No.

5 Q Why not?

6 A Because I didn't believe it.

7 Q Did you in any way -- were you in any way
8 charged in this crime at all?

9 A No.

10 Q Have you been given any promises or any
11 kind of benefit for having to testify today?

12 A No.

13 MR. GRAY: Thank you, Amanda. If
14 you'll answer Mr. Beauford's questions,
15 please.

16 THE COURT: You may cross-examine.

17 MR. BEAUFORD: I've no questions of
18 this witness, your Honor.

19 THE COURT: You may step down. You're
20 free to leave or you're free to stay in the
21 courtroom, Miss Carman, whichever you wish.

22 MR. GRAY: Your Honor, the State calls
23 Cindy Pensmith.

24

25

277

1

2

C I N D Y M A R I E

3

P E N S M I T H, having been called as a

4

witness in the presence of the jury, is duly

5

sworn and testifies as follows:

6

DIRECT EXAMINATION BY MR. GRAY:

7

Q Miss Pensmith, tell the jury what do you

8

for a living?

9

A Currently I'm working at K-Mart. I was --

10

I was a substitute teacher for about four years.

11

Q And do you go to school?

12

A Yes, I do.

13

Q Where do you go to school?

14

A Trident Tech.

15

Q Do you have a family?

16

A Yes, I do.

17

Q Tell us who all is your family.

18

A I have four children, ages nine, ten,

19

eighteen, and twenty-one.

20

Q Is one of those children Amanda Carman?

21

A Yes, it is.

22

Q Where do you live?

23

A At 4471 Hardwood Street. It's in Ladson.

24

Q Do you recognize the defendant?

25

A Yes, I do.

173

278

1 Q Who is the defendant?

2 A Eric Mc Call.

3 Q How do you know him?

4 A For a while he was my daughter's boyfriend.

5 Q How long have you known him?

6 A They were together about a month, so I've
7 known him and about him for almost a year now.

8 Q Had he been to your home -- has he been to
9 your home before?

10 A Yes, he has.

11 Q Do you remember the weekend of February
12 twenty-second and Sunday, February twenty-second, a
13 Monday, February twenty-third?

14 A Yes, I do.

15 Q Do you recall whether or not you saw Eric
16 that weekend or that Sunday and Monday?

17 A That Sunday night he was at our house.
18 Monday night he spent the night in the car outside my
19 home.

20 Q Let me ask you about Sunday night. What
21 was he doing at your home Sunday night?

22 A Visiting with my daughter.

23 Q And what time did he leave, do you
24 remember?

25 A It was around ten or eleven.

279

1 Q And on Monday night how did he come to
2 spend the night in your car -- in the car in front of
3 your house, do you know?

4 A He didn't have a place. I guess they had
5 been evicted from their apartment and he had no place
6 to go.

7 Q Did you know he was spending the night in
8 your yard?

9 A I didn't that night, no.

10 Q Had he ever spent the night in your home
11 before?

12 A No.

13 Q When did you see him again after Monday
14 night spending the night in your car -- in the car in
15 front of your house?

16 A I was leaving for work on Tuesday morning
17 and that's when I discovered that he was outside in
18 the car and -- and we exchanged a few words and then
19 I left. And I don't believe I saw him again until
20 Tuesday night. Well, later Tuesday.

21 Q Okay.

22 A And Tuesday night he spent the night.

23 Q At your house?

24 A Uh-huh.

25 Q Was that with your permission?

175

280

1 A Yes.

2 Q Is that the first time that he's ever spent
3 the night inside your house?

4 A Yes.

5 Q Did you see him Wednesday?

6 A Yes, I did.

7 Q How did you happen to see him Wednesday?

8 A I came home from work and he was in my den.

9 Q Was that a surprise to you?

10 A Yes, it was.

11 Q Who else was at home when you came home
12 from work?

13 A No one.

14 Q Had you invited him to be in your home that
15 day?

16 A No.

17 Q And did anything unusual other than that
18 happen on Wednesday afternoon at your home?

19 A Well, I was very shocked when I walked in
20 and found he was there and he had -- he kept watching
21 me and I felt real uncomfortable about the fact that
22 he was watching me. When I finally looked at him he
23 said don't you notice anything? And I said what do
24 you mean? And he said well, I vacuumed and I did
25 your dishes for you. And then he explained my birds

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1 had gotten out. My -- I have cockatiels. My birds
2 had gotten out and he put them back in. And we got
3 to talking about a tire that I had that was bad on my
4 car and he was going to change it for me.

5 And with my two small children, I keep
6 an eye on what they're doing, so I had gone out to
7 check on them to see where they were, and I came back
8 to the house and then I went back down the street
9 again. I was going to go have coffee with a
10 girlfriend and I came back to make sure -- to make
11 sure he had understood how to get the tire out from
12 under my car to change the spare on it and I went
13 back to my girlfriend's house to have coffee.

14 Q And then what happened?

15 A Then my ten year-old -- excuse me. Then my
16 ten year-old came in and my girlfriend hadn't even
17 gotten the coffee pot on the burner and she came in,
18 was visibly shaking and said momma, do you know
19 what's going on down the street? And I said no,
20 baby. What's the matter? And she said momma, I
21 think you need to go now.

22 Q And when you got to your house, what was
23 going on?

24 A There were police cars all over my yard,
25 quite a few detectives. Berkeley County, Charleston

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1 County. I noticed the news media was sitting in the
2 street.

3 Q Did you happen to meet Rick Ollic there,
4 Detective Rick Ollic?

5 A Yes, I did.

6 Q Did Mr. Ollic speak to you?

7 A Yes, he did.

8 Q And don't tell us what he said to you, but
9 as a result of what he said, what did you do?

10 A I was in a state of shock. I was very
11 shocked.

12 Q Did he ask you anything that you responded
13 to?

14 A He asked for permission to search our
15 house.

16 Q Did you give him permission?

17 A Yes, I did.

18 Q Miss Pensmith, I'm going to ask you if you
19 can identify State's exhibit number twenty-nine for
20 identification.

21 A Yes.

22 Q And what is that?

23 A This is permission giving -- I gave them
24 permission to search the house, and that's my
25 signature.

1 MR. GRAY: Okay. Your Honor, the State
2 would move to admit this as State's exhibit
3 number twenty-nine.

4 THE COURT: Any objection?

5 MR. BEAUFORD: No objection, your
6 Honor.

7 THE COURT: State's exhibit number
8 twenty-nine, a one-page document, in
9 evidence without objection.

10 (At this time the one-page
11 permission to search document, previously
12 referred to, is received and marked as
13 State's exhibit No. 29 in evidence.)

14 Q Where did they search in your house, Miss
15 Pensmith?

16 A They started in the living room, and the
17 kitchen. And I took one of the detectives into my
18 laundry room and then from there they went into my
19 daughter's room.

20 Q Do you keep a nine millimeter pistol in
21 your home?

22 A No, I don't.

23 Q Do you know if your daughter does, if --

24 A No.

25 Q I'm going to show you State's exhibit

179

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1 number twelve and ask you if that's your nine
2 millimeter pistol?

3 A No, it's not.

4 Q Let me ask you to describe if you can the
5 car that Mr. Mc Call slept in front of your house.

6 A It's a sports car. It's a CRX. It has a
7 hatch back. It's blue in color and it's got tinted
8 windows on it.

9 Q Okay. Let me ask you if you recognize
10 State's exhibit number thirteen?

11 A Yes.

12 Q Is that the photograph on the screen there?

13 A Yes.

14 Q Okay. Does that photograph depict the
15 donut that you were talking about on his car, about
16 the flat tire?

17 A That was the tire on my car.

18 Q I'm sorry. Excuse me. How about exhibit
19 number twenty-five. Do you recognize that?

20 A That's the front of my house.

21 Q Okay. And exhibit number twenty-six.
22 That's your house there?

23 A Yes.

24 Q Okay. Exhibit number twenty-six. Do you
25 recognize that?

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1 A That's my daughter's bedroom.

2 Q Okay. And exhibit number twenty-seven. Do
3 you recognize that?

4 A Yes.

5 Q What was that?

6 A That was underneath the mattress that my
7 daughter slept on.

8 Q Okay. And were you there when the police
9 recovered that?

10 A Yes, I was.

11 MR. GRAY: Thank you, Miss Pensmith.
12 If you'll answer Mr. Beauford's questions,
13 please.

14 THE COURT: Cross-examine.

15 MR. BEAUFORD: No questions of this
16 witness.

17 THE COURT: You may come down. You're
18 free to leave or you may remain in the
19 courtroom, whichever you wish. Thank you.

20 MR. GRAY: Your Honor, the State calls
21 Rick Ollic.

22

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R I C K O L L I C, having been

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called as a witness in the presence of the

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jury, is duly sworn and testifies as

5

follows:

6

DIRECT EXAMINATION BY MR. GRAY:

7

Q Mr. Ollic, will you tell us what do you for

8

a living, please.

9

A Yes. I'm employed by the Berkeley County

10

Sheriff's Office as criminal investigator.

11

Q How long have you been in law enforcement?

12

A Approximately twelve and a half years.

13

Q What are your duties as a criminal

14

investigator?

15

A I'm currently assigned to the Detective

16

Division. We investigate all persons and property

17

crimes and I supervise in that unit.

18

Q Were you on duty or on call on February

19

twenty-fifth of 1998?

20

A I was.

21

Q And on that date did you have occasion to

22

assist in the investigation of a murder and

23

carjacking case?

24

A I did.

25

Q How did you become involved?

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1 A My supervisor at that time, Sergeant
2 Plitsch, was conducting an investigation in
3 Orangeburg and he had obtained a warrant in a
4 carjacking/murder case for Eric Mc Call.

5 Q And you knew that that warrant had been
6 issued?

7 A I did.

8 Q Did you set out to find Mr. Mc Call?

9 A Yes. We had received information that he
10 was located at the Pensmith residence located in the
11 Ladson section of Berkeley County.

12 Q And did you respond to that location?

13 A I did.

14 Q And was he there?

15 A Yes, he was.

16 Q Was he arrested?

17 A Yes, he was.

18 Q By whom was he arrested?

19 A We were assisted that date by the
20 Charleston County Sheriff's Office, the F. B. I. and
21 the Federal Task Force, and he was arrested by Chief
22 Deputy Marvin Kirvey of the Charleston County
23 Sheriff's Office.

24 Q Is that residence in Charleston County?

25 A Yes, it is.

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1 Q When he was arrested what'd you do with
2 him?

3 A He was arrested and placed in a patrol
4 vehicle and shortly after that I advised him of his
5 Miranda rights.

6 Q And when you tells us you advised him of
7 his Miranda rights, what are the Miranda rights that
8 you advised him of?

9 A I advised him he had a right to remain
10 silent. Anything he say can be used against you in a
11 court of law. I advised him that he had a right to
12 have an attorney. If he cannot afford to hire an
13 attorney one will be appointed to represent him free
14 of charge. At any time during questions if did he
15 not wish to obtain an attorney he may remain silent
16 after answering any questions. I went through each
17 one of those, and he understood them and he said he
18 wanted to talk to me.

19 Q And you did that where?

20 A I did that at the scene, at the patrol car.

21 Q Was he -- after indicating he wanted to
22 speak with you, was he taken from the scene?

23 A Yes, he was.

24 Q By you?

25 A No. He was transported by one of our

289.

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1 officers to the Berkeley County Sheriff's Office.

2 Q And what did you do at the scene?

3 A I at that time conducted a search of the
4 Pensmith residence based on a consent search.

5 Q Did you notice whether or not there was a
6 vehicle there?_____

7 A Yes, I did.

8 Q Was there a Honda there?

9 A There was.

10 Q Can you describe that Honda for us?

11 A It was a -- it was a blue-colored Honda
12 CRX.

13 Q Okay.

14 Detective Ollic, is that the car that
15 was at the scene?

16 A Yes, it is.

17 Q What did you do with that vehicle?

18 A That vehicle was, subsequent to his arrest,
19 was towed to the Berkeley County impound lot and put
20 under lock and key in a fenced-in yard.

21 Q Okay. For what purpose?

22 A For the processing of evidence in our case.

23 Q Who specifically is in -- takes the custody
24 of that vehicle when it's turned into the impound
25 yard?

290

185

1 A It's basically turned into the impound yard
2 and Dean Kokinda, our evidence custodian, will
3 process that vehicle subsequent to it being placed
4 there.

5 Q You said you went into 4471 Hardwood?

6 A I did.

7 Q And that was with consent?

8 A That was with consent of the homeowner,
9 Mrs. Pensmith.

10 Q What areas of the home did you search?

11 A We searched the entire home.

12 Q And while you were in the home, what did
13 you find?

14 A In the first bedroom to the right, was a
15 bedroom and under that, there was a bed in there and
16 under the mattress we found a nine millimeter pistol
17 and some ammunition.

18 Q I'm going to ask you if you can identify
19 what's been marked as State's exhibit number twelve.

20 A Yes. This is the weapon that I located in
21 the Pensmith residence underneath the mattress.

22 MR. GRAY: Okay. Your Honor, the State
23 would move State's exhibit number twelve in
24 evidence.

25 THE COURT: Any objection?

1 MR. BEAUFORD: No objection, your
2 Honor.

3 THE COURT: State's exhibit twelve, a
4 firearm, into evidence without objection.

5 (At this time the weapon previously
6 referred to is received and marked as
7 State's exhibit No. 12 in evidence.)

8 Q Did you inspect that vehicle? I mean,
9 excuse me, that vehicle -- that weapon?

10 A No. I looked at the weapon and knowing
11 that's the weapon, based on the information that was
12 provided on my chain of custody form, but it was
13 secured and put in a proper safety and turned over to
14 Dean Kokinda for processing of latent prints.

15 Q Where did you go -- well, how long were you
16 at the Pensmith residence?

17 A We were there several hours. I'd say two
18 hours, maybe a little over two hours.

19 Q And where did you go when you left there?

20 A Shortly after we left there myself and
21 Agent Buchta with the F. B. I. who was with me that
22 day, we went back to Berkeley County headquarters.

23 Q And when you got to the headquarters did
24 you see Mr. Mc Call again?

25 A I did.

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1 Q And under what conditions was that?

2 A He was downstairs at the Sheriff's Office
3 in this building. He was located in the office. He
4 was under arrest for the charge of murder and he was
5 just waiting for us to speak to him.

6 Q When you got there, did you in fact speak
7 with him?

8 A I did in fact talk with him, yes.

9 Q And before interviewing him, did you do
10 anything again with regards to his Constitutional
11 rights?

12 A Yes. Prior to interviewing him there is a
13 defendant's statement form that we use to interview
14 people, persons that are under arrest, and I filled
15 out that form and I advised him of each of his
16 Miranda rights on that form.

17 Q At any point in time did you threaten him?

18 A I did not.

19 Q Did you promise him anything?

20 A I did not.

21 Q Any benefit spoken about to him?

22 A No, sir, I did not.

23 Q Any coercion?

24 A No, sir.

25 Q I'm going to ask you if you can identify,

1 please, what's in evidence as State's exhibit number
2 one.

3 A Yes. This is the defendant's statement
4 form that I used in order to -- before speaking to
5 Mr. Eric Mc Call that day.

6 Q Tell the jury what information is contained
7 on that form.

8 A Okay. On the top of this form there is --
9 the top of it asks for his name, my name is, who it
10 is taken before. The date it was taken. The time it
11 was taken. His date of birth, Social Security
12 number. His full name. His current address. How
13 old he is. How far he completed school. And then
14 after that again my name and I advised him again of
15 his Miranda rights.

16 Q Okay. Will you read the form as you read
17 it to Mr. Mc Call?

18 A That I have the absolute right to remain
19 silent. I do not have to answer any questions or
20 give a statement and this cannot be used against me.
21 I asked him that. He answered me that he understood
22 it and he acknowledged it by putting his signature,
23 initials beside number one.

24 I read number two, that if I do answer
25 questions, give a statement, anything I say can and

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1 will be used against me in a court of law. And I
2 also, beside that he understood it and he initialled
3 that he understand that one.

4 Number three, that I have the right to
5 consult with a lawyer of my choice before I answer
6 questions or give a statements and also to have him
7 present while I am being questioned. And beside
8 number three he initialled it again that he
9 understood it.

10 Again I said if I wish to talk to a
11 lawyer, have him present but I'm unable to afford to
12 hire a lawyer one will be appointed to represent me
13 free of charge. He again acknowledged that and he
14 acknowledged it by his initials beside number four.

15 Number five, that if I decide to
16 answer questions, give a statement without a lawyer
17 present representing me I have the absolute right,
18 during this interview to stop answering questions and
19 remain silent. He acknowledged that and he also put
20 his initials beside that.

21 After I went through those five and I
22 go through the waiver part, it says I fully
23 understand each of these rights which have been
24 explained to me. Having these in mind I wish to
25 waive these rights and answer questions concerning

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1 the charge of murder which I have been accused of
2 committing. No threats, force, or promises of any
3 kind has been made to me by anyone to induce me to
4 waive these rights and answer questions. And he
5 beside that, understood that block, and he initialled
6 beside that and he understood that.

7 And then below that, he signed it, his
8 name like it's attached to the top, Eric D. Mc Call,
9 and then myself and Agent Buchta of the Federal
10 Bureau of Investigation witnessed that.

11 Q His name -- signature appears on that? How
12 often do his -- is that correct?

13 A Yes.

14 Q How often do his initials appear on that
15 document?

16 A Six times. Five for the Miranda and his
17 waiver part.

18 Q Are those Miranda warnings the same as the
19 ones you gave him in the vehicle at the scene?

20 A Yes, they were.

21 Q Did he at any point during that interview
22 or during that time you were with him ask to stop and
23 speak to a lawyer?

24 A Not that I recall, ever.

25 Q Do you ever recall any distress on his part

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1 or difficulty in understanding what was going on?

2 A No. He was very cooperative.

3 Q You mentioned a Mr. Buchta. Did you ever
4 hear Mr. Buchta threaten him or promise him or coerce
5 him in any way?

6 MR. BEAUFORD: Objection. Calling for
7 hearsay.

8 THE COURT: Sustained.

9 Q Okay. For you, though, were there any
10 threats or coercion at that time?

11 A No, sir.

12 Q Did he agree to speak with you?

13 A Yes, he did.

14 Q And what did you speak to him about,
15 Mr. Ollic?

16 A We were interviewing him in reference to
17 the carjacking and murder of Kevin Keyes.

18 Q Did he indicate to you, Mr. Mc Call, did he
19 indicate whether or not he had any information about
20 that?

21 A Yes, he did.

22 Q What did he indicate to you?

23 A He indicated that himself, Mr. Killingbeck,
24 and Mrs. Williams were involved in a carjacking and
25 murder of Kevin Keyes.

1 Q Did he know whether or not any shots had
2 been fired?

3 A He did.

4 Q Did he know who had fired those shots?

5 A He had stated that he had fired shots along
6 with Mr. Killingbeck.

7 Q Was that interview with Mr. Mc Call
8 recorded?

9 A Yes it was.

10 Q I'm going to ask you if you can identify
11 what is in evidence as State's exhibit number two.

12 A This is the -- I listened. This is the
13 tape that has the confessional statement of Mr. Eric
14 Mc Call on it.

15 Q Is it an accurate recording?

16 A Yes, it is.

17 Q Whose voices are on that tape?

18 A My voice, Agent Buchta, and the defendant
19 Mr. Mc Call.

20 MR. GRAY: Thank you, Mr. Ollic. If
21 you'll answer Mr. Beauford's questions.

22 THE COURT: You may cross-examine.

23 MR. BEAUFORD: Yes, your Honor.

24

25 CROSS-EXAMINATION BY MR. BEAUFORD:

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1 Q Detective Ollic, prior to Eric giving you
2 the statement, was there any preliminary questions
3 asked of him?

4 A The only preliminary questions asked of me
5 was on the defendant's statement form being the
6 information provided at the top and going over his
7 Miranda rights and having him initial each one.

8 Q So is it fair to say that the recording
9 does not include the entire conversation you had with
10 Mr. Mc Call?

11 A The recording includes the total interview
12 of Mr. Mc Call after we filled out the form and the
13 same information is provided on the form as also
14 provided on the tape.

15 Q Did you -- you said you didn't threaten him
16 in any way?

17 A I did not threaten him.

18 Q During the time of the interview were you
19 the only one in the room?

20 A Myself, Agent Buchta, and Detective Jamison
21 of the Berkeley County Sheriff's Office, Agent Buchta
22 with the F. B. I. was present during that interview.

23 Q Prior to you getting there who was the
24 other deputy that was in the room with Mr. Mc Call?

25 A I do not recall who transported him to

1 headquarters. I was involved in the conducting the
2 consent to search as to where the incident was --
3 occurred. I'm not -- I'm not -- I did not recall who
4 transported him to our office.

5 Q So you are not aware of, to your knowledge,
6 ~~what may have been said between him and the other~~
7 officer?

8 A I have no knowledge. Only the knowledge is
9 between myself and the defendant, Mr. Mc Call.

10 MR. BEAUFORD: No other questions, your
11 Honor.

12 THE COURT: Redirect.

13 MR. GRAY: No, your Honor.

14 THE COURT: You may come down,
15 Mr. Ollic. You may remain in the courtroom
16 or you may leave, whichever you wish.

17 THE WITNESS: Thank you, your Honor.

18 THE COURT: Thank you.

19 MR. GRAY: Your Honor, the State calls
20 Dean Kokinda.

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D E A N R O B E R T

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R O N A L D R. B U C H T A,

having been called as a witness in the
presence of the jury, is duly sworn and
testifies as follows:

DIRECT EXAMINATION BY MR. GRAY:

Q Mr. Buchta, would you please tell the jury
what you do for a living?

A I'm a Special Agent with the Federal Bureau
of Investigation, currently assigned to the
Charleston, South Carolina office.

Q And, Mr. Buchta, how long have you been in
law enforcement?

A I've been with the F. B. I. for over
thirty-one years.

Q And what are your duties as Special Agent
with the F. B. I.?

A To investigate the various federal offenses
that are committed within the district I'm assigned
to.

Q Were you on duty on February twenty-fifth
of this year?

A I was.

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1 Q And on that date did you have occasion to
2 assist the Berkeley County Sheriff's Department?

3 A Yes, I did.

4 Q And how did you become involved in that
5 investigation?

6 A My sup -- information concerning a
7 potential federal violation had occurred and the
8 information was coming into the office rapidly. The
9 agents who had been assigned to the major case for
10 the body of the investigation were in another part of
11 the State following up leads. And my supervisor
12 asked me to come forward and to give them a hand with
13 the Berkeley County Sheriff's Office.

14 Q Okay. And did you respond to a scene at
15 4471 Hardwood?

16 A I did.

17 Q And when you arrived there did you see the
18 defendant, Eric Mc Call?

19 A I did.

20 Q Was Eric Mc Call arrested at that scene?

21 A Yes. He was already under arrest when I
22 arrived.

23 Q And was he transported from that scene?

24 A Yes, he was.

25 Q Let me ask you, Mr. Buchta, if you can

377

1 identify -- well, first let me ask you was there a
2 vehicle there?

3 A Yes.

4 Q Do you recognize State's exhibit number
5 thirteen?

6 A I do.

7 Q And what is that a photograph of?

8 A This is a photograph of the vehicle that
9 was parked I believe just to the right of the
10 driveway at that address.

11 Q Okay. And State's exhibit number fourteen.

12 A This is a photograph of the logo that was
13 on the back window of that vehicle.

14 Q And photo number twenty-five.

15 A This is a photograph of the front of the
16 residence.

17 Q Did you go into that residence?

18 A I did.

19 Q Did you participate in a search of that
20 residence?

21 A I did.

22 Q Was that search by consent of the home
23 owner?

24 A It was.

25 Q Let me ask you if you can identify exhibit

39

378

1 number twenty-six.

2 A This is a photograph of the bedroom that
3 was currently being used by the defendant and his
4 girlfriend Amanda.

5 Q Okay. Did you go into that bedroom?

6 A I did.

7 Q Ask you if you can identify exhibit number
8 twenty-seven.

9 A Yes. This is a photograph that was taken
10 in my presence as they lifted the mattress in the
11 previous exhibit. This is what was found under the
12 mattress.

13 Q And that was a photograph of what?

14 A A nine millimeter pistol and a box of
15 ammunition.

16 Q Okay. And number twenty-eight, is that the
17 same nine millimeter and box of ammunition?

18 A It is.

19 Q Mr. Buchta, after the home at 4471 Hardwood
20 was searched, what did you do?

21 A I proceeded with Detective Ollic back to
22 the Berkeley County Sheriff's Office.

23 Q And when you got to the Sheriff's Office
24 did you again encounter Mr. Mc Call?

25 A Yes, I did.

379

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1 Q In what situation did you encounter him?

2 A He was in the detective area, like the
3 squad room or the bull pen area and he was -- I
4 believe he was shackled and at that point I
5 identified myself to him as did the other detectives
6 who were there.

7 Q Were you present where Mr. Mc Call was
8 advised of his Constitutional rights?

9 A Yes.

10 Q And who advised him of those rights?

11 A Detective Ollic.

12 Q Mr. Buchta, I'm going to ask you if you can
13 identify what is in evidence as State's exhibit
14 number one.

15 A Yes. I can identify this.

16 Q And what is that please, sir?

17 A It is the form that is used by the Berkeley
18 County Sheriff's Office when a defendant or a
19 potential subject is identified of their rights.

20 Q Is your signature on that form?

21 A It is.

22 Q Did you witness the completion of that
23 form?

24 A I did.

25 Q Were you there when each of those rights

380

41

1 were read to Mr. Mc Call?

2 A Yes, I was.

3 Q Would you remind the jury which rights were
4 read to Mr. Mc Call in your presence?

5 A The first right as it states here on the
6 form, as it was read to the defendant are, number
7 one, that I have the absolute right to remain silent
8 and do not have to answer any questions or give a
9 statement and this cannot be used against me.

10 Number two, that if I do answer
11 questions or give a statement, anything I say can and
12 will be used against me in a court of law.

13 Number three, that I have the right to
14 remain silent or, correction, that I have the right
15 to consult with a lawyer of my choice before I answer
16 questions or give a statement and also to have him
17 present while I am being questioned.

18 Number four, that if I wish to talk to
19 a lawyer or have him present, but am unable to afford
20 to hire a lawyer, one will be appointed to represent
21 me free of charge.

22 Number five, that if I decide to
23 answer questions or give a statement without a lawyer
24 present pre-representing (sic) me I have the absolute
25 right during this interview to stop answering

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1 questions and to remain silent.

2 Q And were each of those rights read to
3 Mr. Mc Call?

4 A They were.

5 Q Did he do anything to indicate that he had
6 heard each of those rights and understood those
7 rights?

8 A Yes, he did. He initialled next to each of
9 the rights.

10 Q While you were in the room with them, did
11 you ever perceive anything on Mr. Mc Call's behalf
12 that led you to believe he was confused?

13 A No. Not at all.

14 Q Did he ever appear to be under the
15 influence of any alcohol or drugs?

16 A No, he did not.

17 Q Did anyone in the room coerce him in any
18 way during that statement?

19 A No, sir.

20 Q Did you hear anyone promise him anything or
21 did you promise him anything?

22 A I made no promises and I heard no promises
23 being made.

24 Q Mr. Buchta, did he in fact make a statement
25 that day?

382

43

1 A He did.

2 Q To who?

3 A To myself, Detective Ollic, and Detective
4 Jamison.

5 Q And during that interview process were you
6 all together?

7 A Yes, we were.

8 Q During that interview did Mr. Mc Call ever
9 ask to stop that interview?

10 A No, he did not.

11 Q Did Mr. Mc Call ever call upon the
12 assistance of an attorney during that interview?

13 A No, he did not.

14 Q I'm going to ask you, Mr. Buchta, if you
15 can identify what is in evidence as State's exhibit
16 number two.

17 A Yes. This appears to be a copy of the
18 taped statement that we took from him that evening.

19 Q Have you listened to that tape?

20 A Yes. This tape I have.

21 Q Does it sound like an accurate recording --

22 A Yes, it does.

23 Q -- of the interview as you witnessed it?

24 A Yes.

25 Q And whose voices are on that tape?

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1 A The defendant's voice, Mr. Mc Call,
2 Detective Ollic, and myself.

3 MR. GRAY: Thank you, Mr. Buchta. If
4 you'll answer Mr. Beauford's questions,
5 please.

6 THE COURT: Hold on a second. ~~Want to~~
7 ~~approach, please, just one second.~~

8 (There is an off-the-record bench
9 conference in the presence of, but out of
10 the hearing of the jury.)

11 MR. GRAY: Your Honor, the State would
12 move to introduce into the record State's
13 exhibit number one and number two.

14 THE COURT: Any objection?

15 MR. BEAUFORD: Yes, your Honor.

16 THE COURT: All right. The
17 objections -- are there any additional
18 objections other than those previously on
19 the record in this matter in a prior
20 hearing?

21 MR. BEAUFORD: None, your Honor.

22 THE COURT: Very well. Subject to the
23 objection of the defendant, State's exhibit
24 one and two are admitted into evidence.

25 (At this time the typewritten

45

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1 statement of the defendant dated February
2 25, 1998, previously referred to, is
3 received and marked as State's exhibit No. 1
4 in evidence.)

5 (At this time the cassette tape of
6 the defendant's statement, previously
7 referred to, is received and marked as
8 State's exhibit No. 2 in evidence.)

9

10 CROSS-EXAMINATION BY MR. BEAUFORD:

11 Q Officer Buchta, did you take part in the
12 questioning of Eric?

13 A I did.

14 Q Did Detective Ollic also take part in that
15 questioning?

16 A He was the primary interviewer, yes.

17 Q And in the course of those questions,
18 Detective Ollic would ask the question and then at
19 some time you would ask a question?

20 A Yes. That happened.

21 Q And it doesn't necessarily follow that your
22 question followed Detective Ollic's question, prior
23 question?

24 A Not necessarily all the time.

25 Q And after Eric gave the statement, did you

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1 give him opportunity to listen to the statement or
2 give him a copy of the transcribed statement to see
3 whether that was actually his statement, correct
4 statement?

5 A I did not do that, no.

6 Q Do you know if anyone actually gave him the
7 opportunity to review his statement?

8 A I do not know.

9 MR. BEAUFORD: No further questions.

10 THE COURT: Redirect.

11 MR. GRAY: No, your Honor.

12 THE COURT: All right. You may come
13 down.

14 You wish him to be excused?

15 MR. GRAY: Yes, sir. He may be.

16 THE COURT: You are free to leave or
17 you may remain in the courtroom, whatever
18 you wish.

19 MR. GRAY: Your Honor, at this time the
20 State would move to publish State's exhibit
21 number two.

22 THE COURT: Very well. You may publish
23 the statement, subject to the objections.

24 (At this time State's exhibit No. 2
25 in evidence, the cassette tape of the

386

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1 defendant's statement is played for the
2 jury.)

3 MR. GRAY: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 MR. GRAY: Your Honor, the State rests.

6 THE COURT: Very well. Ladies and
7 gentlemen, there are some matters that I
8 need to take up now out of your presence. I
9 need for you to go into your jury room. Do
10 not begin your deliberations, however.
11 Certainly do not begin to discuss the case
12 among yourselves. We'll be with you
13 momentarily. Thank you.

14 (The jury leaves the courtroom at
15 11:39 A. M.)

16 THE COURT: All right. Is there
17 anything from the State at this point?

18 MR. GRAY: No, your Honor.

19 THE COURT: Mr. Beauford.

20 MR. BEAUFORD: Nothing at this point,
21 your Honor.

22 THE COURT: All right. We're going
23 to -- are you ready to proceed?

24 MR. BEAUFORD: Yes, your Honor.

25 THE COURT: I need to know have you

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1 discussed with your client his right to
2 testify or not to testify in this matter?

3 MR. BEAUFORD: Yes, I have, your Honor.

4 THE COURT: What is his decision?

5 MR. BEAUFORD: He's going to testify.

6 THE COURT: He's going to testify?

7 MR. BEAUFORD: Yes, your Honor.

8 THE COURT: All right. Mr. Mc Call,
9 let me ask you some questions, please, sir.
10 Your attorney advises me that you intend to
11 exercise your right to testify in this
12 matter. Is that correct?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Has he discussed with you
15 your Constitutional rights regarding your
16 testimony?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: You understand fully then
19 it's your right of course to testify, but
20 it's also your right not to testify in this
21 matter?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You further understand if
24 you would exercise that right and not
25 testify in this matter, that I would

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1 instruct the jury that they could not use
2 that against you in any way whatsoever?

3 THE DEFENDANT: Yes.

4 THE COURT: You understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And in fact I will tell
7 them that if they talked about it, it would
8 be a violation of their oath. You
9 understand?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: You had full opportunity to
12 discuss this with Mr. Beauford?

13 THE DEFENDANT: Yes your Honor.

14 THE COURT: You had an opportunity to
15 reflect on this decision?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you know of anything
18 today that's affecting your ability to make
19 a decision in this regard?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: And it's your decision?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: One that you make freely
24 and voluntarily?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: You have any complaints
2 about the way Mr. Beauford has advised you
3 in this matter?

4 THE DEFENDANT: No, sir, your Honor.

5 THE COURT: All right. Let the record
6 reflect then that we have discussed -- you
7 may be seated. Thank you, Mr. Mc Call.
8 Discussed with Mr. Mc Call his right to
9 testify in this matter and not to testify.
10 He's had the benefit of competent counsel
11 and he's indicated that he's totally
12 satisfied with the advice in this connection
13 and I find that he does -- has made a free
14 and voluntary choice and that is to testify.

15 I find that there's nothing to
16 affect his ability to make a decision on
17 this matter. And I further find -- Mr. Mc
18 Call, let me also advise you, you lawyer
19 explained to you that if you do take the
20 stand of course you will be subject to
21 cross-examination just like any other
22 witness. Is that true?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: All right. And you
25 understand fully the fact that you will be

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1 cross-examined in this matter. Okay.

2 We'll be at ease now for about five
3 minutes and then we'll resume.

4 Yes, sir?

5 MR. BEAUFORD: As it relates to the
6 tape being into evidence, I can totally
7 cross-examine him on that tape since it's
8 part of the evidence?

9 THE COURT: Yes, sir.

10 MR. BEAUFORD: Thank you.

11 THE COURT: All right. We'll be at
12 ease for about five minutes.

13 (A recess is called at 11:42 A. M.)

14 (The Judge enters the courtroom at
15 11:52 A. M.)

16 THE COURT: State ready to proceed?

17 MR. GRAY: Yes, your Honor.

18 THE COURT: Defendant ready to proceed?

19 MR. BEAUFORD: Yes, your Honor.

20 THE COURT: You indicated you had a
21 matter.

22 MR. BEAUFORD: Yes, your Honor.

23 Prior to the start of Court I
24 subpoenaed two witness, one being Tisha
25 Williams and the other being Von

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1 Killingbeck, and I've been advised by their
2 respective attorneys that they intend to
3 claim the Fifth.

4 However, under the case law I'm not
5 allowed to call them knowing, knowing that
6 they will claim the Fifth. That's -- I just
7 want to place on the record that I had
8 subpoenaed them and both of their attorneys
9 indicated that they would be claiming the
10 Fifth throughout any questions.

11 THE COURT: You want the attorneys to
12 come make that statement on the record?

13 MR. BEAUFORD: Mr. Anderegg is here.

14 THE COURT: Mr. Anderegg, you
15 represent who? Whom? Please let the record
16 reflect that Mr. Reid Anderegg is in Court
17 and further that Mr. Anderegg has been in
18 Court for the entire trial.

19 MR. ANDEREGG: Yes, sir. I represent L
20 I Tisha Williams.

21 THE COURT: All right, sir. And you
22 have advised your client regarding testimony
23 here today?

24 MR. ANDEREGG: I have, your Honor.

25 THE COURT: What is your understanding

1 if she was called to trial?

2 MR. ANDEREGG: Your Honor?

3 THE COURT: Or called to testify?

4 MR. ANDEREGG: If she were called as a
5 witness I would advise her to take the Fifth
6 Amendment on all questions.

7 THE COURT: Very well. All right. I
8 will find that that has been established.

9 You want to get Judge Stokes over
10 here?

11 MR. BEAUFORD: Yes, your Honor. He's
12 awaiting a call.

13 THE COURT: All right. Let's see if we
14 can get him to come over here before we
15 start. Also, Mr. Beauford, we adjourned.
16 You have -- I assume you want to put on the
17 record your motion that you wish to make at
18 this point about the State's case?

19 MR. BEAUFORD: Yes, your Honor.

20 THE COURT: Okay.

21 MR. BEAUFORD: Your Honor, I move for a
22 directed verdict. Looking at the evidence
23 most favorable to the State, it does not fit
24 the elements on which carjacking and murder,
25 it has not shown the elements of the intent,

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1 the malice, the -- the thought process, the
2 intent element in any murder.

3 I believe the evidence at best
4 showing that Mr. Killingbeck -- excuse me,
5 Mr. Keyes was killed, it does not
6 sufficiently show that my client actually
7 murdered and carjacked Mr. Keyes. So
8 therefore I move for a directed verdict.

9 THE COURT: Thank you, Mr. Beauford. I
10 would find, just in response, I would find
11 that first of all certainly there's evidence
12 that suggests that he did fire a shot and
13 that shot could well have been the shot that
14 caused his death.

15 And secondly, under the hand of one,
16 the hand of all principle there's no
17 question that there was -- he was present,
18 no question he fired it, and I would --
19 either-or, or both, warrant my denying that
20 motion. Thank you, sir.

21 MR. BEAUFORD: Thank you.

22 THE COURT: Yes, sir. Judge Stokes.
23 Mr. Beauford has advised the Court -- let
24 the record reflect Mr. Morris Stokes is
25 present.

1 And, Mr. Stokes, you represent one
2 of the co-defendants in this matter?

3 MR. STOKES: I do, your Honor.

4 THE COURT: And which one is that?

5 MR. STOKES: Clifford Killingbeck.

6 THE COURT: All right. Mr. Beauford
7 has advised the Court that he intends to
8 call Mr. Killingbeck to the stand and he's
9 been advised that if so, that he would
10 invoke his Fifth Amendment privilege. Can
11 you enlighten us on that?

12 MR. STOKES: Yes, sir, your Honor.
13 That is correct. Mr. Killingbeck was served
14 with a subpoena. I've met with him. We've
15 discussed the matter. I have advised him
16 that if he were called as a witness his only
17 response would be that he can't answer the
18 question on the grounds it may incriminate
19 him.

20 THE COURT: All right. And you believe
21 that he will assert that throughout?

22 MR. STOKES: I do, your Honor.

23 THE COURT: Thank you very much. I do
24 finds then that both witnesses have been
25 subpoenaed and under advice of counsel both

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1 will assert their Fifth Amendment
2 privileges. Therefore there will be no
3 benefit to call them, and that it would
4 accomplish nothing. Would -- the prejudice
5 would outweigh any probative value so,
6 therefore, I would -- that is noted in the
7 record and it will not be necessary for you
8 to physically present them in court.

9 MR. BEAUFORD: Thank you.

10 THE COURT: Thank you, Mr. Stokes. I
11 Appreciate it, sir.

12 MR. STOKES: Yes, sir.

13 THE COURT: All right. We're ready to
14 proceed now.

15 MR. BEAUFORD: Yes, your Honor.

16 THE COURT: Please invite the jury to
17 return.

18 (The jury enters the courtroom at
19 12:14 P. M.)

20 THE COURT: Thank you, ladies and
21 gentlemen. We're ready to continue in this
22 matter.

23 Mr. Beauford, you may call your
24 first witness.

25 MR. BEAUFORD: Yes. I call Crystal

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1 Johnson.

2 THE COURT: Very well.

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C R Y S T A L G A R N E R

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J O H N S O N, having been called as a

8

witness in the presence of the jury, is duly

9

sworn and testifies as follows:

10

DIRECT EXAMINATION BY MR. BEAUFORD:

11

Q Miss Johnson, where do you live?

12

A In Darlington, South Carolina.

13

Q And who lives there with you in Darlington?

14

A Nobody now.

15

Q And do you have any children?

16

A Yes. I have two sons.

17

Q What are their names and ages?

18

A Eric Mc Call, age is twenty. Keith Alonzo,

19

age eighteen.

20

Q And Eric, the gentleman sitting by me

21

during the course of the trial, is your son?

22

A Yes, he is.

23

Q Would you tell me what Eric was like

24

growing up?

25

A Full of life.

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1 MR. GRAY: Your Honor, I would object
2 to that question as to relevance.

3 THE COURT: Sustained.

4 Q When was the last time saw Eric prior to
5 this incident?

6 A Right before Christmas.

7 Q And what did you all do?

8 A Talk went to some friends' house.

9 Q And what was Eric's -- did Eric ever give
10 you any problems when he was growing up?

11 MR. GRAY: Your Honor, I would object
12 to that as well.

13 THE COURT: Sustained. It's not
14 relevant.

15 Q Did you ever talk to Eric about this
16 incident?

17 A No, not really.

18 Q You weren't there when this incident
19 happened?

20 A No, I wasn't.

21 Q You don't know anything about it?

22 A No.

23 Q What was your -- did you have any kind of
24 emotional expression when you did hear about this?

25 MR. GRAY: Your Honor, I object to that

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1 question.

2 THE COURT: Sustained. Her emotional
3 expression is not relevant.

4 Q When was it that you heard about this
5 incident?

6 A I got a phone call the night he was
7 arrested.

8 Q And you got the phone call from who?

9 A An aunt of one of the ladies that I know.

10 Q And what did you do as a result of that
11 phone call?

12 A I tried to find out what was going on.

13 Q And did you find out?

14 A Not at the time, no.

15 Q And did you -- did you ever talk to Eric
16 after finding out?

17 A He was he was locked up at that time and I
18 didn't talk to him for awhile and when I came up here
19 they allowed me to see him, me and my father to see
20 him, but I didn't talk much about it.

21 Q What type of discussions would you have
22 with Eric?

23 A I asked him --

24 MR. GRAY: Objection, your Honor.

25 THE COURT: Sustained. It would call

1 for hearsay.

2 MR. BEAUFORD: Your Honor, Eric is the
3 defendant.

4 THE COURT: Well, just because he's a
5 defendant doesn't necessarily mean it's not
6 hearsay, Mr. Beauford. It's because of
7 certain things we know that I'll be happy if
8 you want to approach and discuss it with me,
9 I'll be happy to hear you on it if you want
10 to approach, please.

11 MR. BEAUFORD: Yes, sir.

12 (There is an off-the-record bench
13 conference, in the presence of but out of
14 the hearing of the jury.)

15 Q Miss Johnson, do you have an opinion as to
16 Eric, whether he's a peaceful or violent person?

17 A He's a playful person.

18 Q And you said playful? Playful?

19 A You know, he like, you know, he like
20 playing, you know. Like he'll walk with you, he'll
21 say something that's funny or we'll be walking or he
22 will pull up his pants leg and, you know, it's kind
23 of funny because he pull his shirt down over it and
24 it's kind of like playful but, you know, he just like
25 sweet.

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1 MR. BEAUFORD: No further questions.

2 THE COURT: Cross-examine.

3 MR. GRAY: No, your Honor.

4 THE COURT: You may come down, Miss
5 Johnson. Thank you.

6 You wish her to be excused, Mr.
7 Beauford?

8 MR. BEAUFORD: Yes, your Honor.

9 THE COURT: Any objection?

10 MR. GRAY: No, your Honor.

11 THE COURT: You are free to leave, Miss
12 Johnson, if you wish but you're also welcome
13 to stay.

14 THE WITNESS: All right.

15 THE COURT: Call your next witness.

16 MR. BEAUFORD: Yes, your Honor. We
17 call Eric Mc Call.

18 THE COURT: Okay.

19

20

21

22

23 E R I C D E R A N C E

24 M C C A L L, having been called as a witness
25 before the jury, is duly sworn and testifies

401

1 as follows:

2 DIRECT EXAMINATION BY MR. BEAUFORD:

3 Q Eric, how old are you?

4 A I'm twenty, sir.

5 Q Can you talk a little louder so I can hear
6 you down here and so the jurors can hear you.

7 A I'm twenty, sir.

8 Q And where did you go to high school?

9 A I went to Summerville, transferred to
10 Stahl, which is where I graduated from, sir.

11 Q What did you do upon graduation?

12 A Upon graduation I went into the military.

13 Q What branch of the military did you attend?

14 A The Army.

15 Q And how long did you serve in the military?

16 A About three years.

17 Q And when were you -- when you said three
18 years, when did you come out of the military?

19 A About the first week or so of January of
20 this year.

21 Q Were you discharged or --

22 A Yes.

23 Q How'd you come out?

24 A I was discharged.

25 Q Honorably discharged?

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1 A Yes, sir.

2 Q And when was that?

3 A The first week in January.

4 Q January of what year?

5 A In this year, '98.

6 Q And upon discharge where did you go?

7 A Upon discharge I went to my mother's house
8 in Darlington.

9 Q How long did you live at your mother's
10 house in Darlington?

11 A About -- about a month or so.

12 Q And you said you were discharged in January
13 and you lived in your mother's house about a month?

14 A Yes, sir.

15 Q And what did you do after that month?

16 A After that month I came down to Charleston.

17 Q And approximately what month would that
18 have been?

19 A About the last, the last week in January,
20 first weekend of February.

21 Q And who'd you stay with when you came to
22 Charleston?

23 A I stayed with Miss Dottie Jones, who's like
24 a second mother to me.

25 Q And how long did you stay with Miss Jones?

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1 A I stayed with her about two weeks, two and
2 a half weeks.

3 Q And where'd you stay after leaving Miss
4 Jones?

5 A After leaving Miss Jones I started staying
6 with Vondesse Killingbeck.

7 Q And who's Vondesse Killingbeck?

8 A Vondesse is a long term friend from high
9 school.

10 Q And were there any other individuals that
11 stayed with you all?

12 A Yes, sir. It was Vondesse Killingbeck,
13 Monique Varner, Dominique Varner, Quinton Hawkins and
14 myself.

15 Q Was there any particular reason that you
16 left Darlington to come to Charleston?

17 A Yes. Me and my wife was having some
18 problems and I came down to see if we could get them
19 worked out, but due to the fact that we got married
20 at a young age and we still had a lot of growing up
21 to do, it just wasn't going to work.

22 Q You said your wife. You married? You have
23 any children?

24 A Yes, sir. I have a little daughter that's
25 three.

1 Q So you stayed with Von and the other
2 roommates. Did you work?

3 A Yes, sir. I was working at a production
4 plant named Quoizel, off of Crowfield --

5 Q I didn't hear the name.

6 A Quoizel, off of Crowfield Boulevard.

7 Q And what did you do there?

8 A I was in shipping. I used to mark down all
9 of the shipments that were going out and prep them
10 for going on the truck.

11 Q Do you remember the incident in the early
12 morning of February twenty-second, late night
13 February twenty-second, early morning February
14 twenty-third?

15 A Yes, sir, I do.

16 Q And tell me something about that morning.

17 A I was at my girlfriend's house at the time.

18 Q Who's your girlfriend?

19 A Amanda Carman.

20 Q Go ahead.

21 A I got a page from Li Tisha.

22 Q And who's Tisha?

23 A My co-defendant, Von's girlfriend. She was
24 telling me that she needed somebody to come pick her
25 up to take her to the house due to the fact that I

1 was the only transportation and it was raining that
2 night.

3 Q You said you were the only transportation.
4 What type of car did you have?

5 A A 1990 Honda CRX.

6 Q I hand you what's been marked State exhibit
7 number thirteen. Is this your car?

8 A Yes, sir, it is.

9 Q Also hand you what's been marked State
10 exhibit number eight -- excuse me. Fourteen. What
11 is this?

12 A This is a Souls of Mischief decal
13 representing a car club that I was in. It was a car
14 club started in Summerville by a guy named Scott. It
15 was a name that we enter car shows under.

16 Q So you use that name when you enter car
17 shows in the club?

18 A Yes, sir.

19 Q Okay. You said you picked Tisha up, and
20 continue.

21 A We -- we went back to the apartment. Upon
22 getting to the apartment, everybody went back in the
23 back room.

24 Q How long have you known Tisha?

25 A I've known Tisha for about maybe a month,

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1 maybe a month.

2 Q Okay. And had you known Tisha prior to
3 living at this apartment?

4 A Yes, I have.

5 Q How did you know Tisha prior to living in
6 the apartment?

7 A I used to go to the club called the
8 Diplomat on Monday day nights is where I met her
9 through a friend of mine named Josh because he was
10 talking to her at the time.

11 Q So you took Tisha back to the apartment and
12 what happened?

13 A We got back to the apartment. Everybody
14 went into the back room which is Vondesse room and
15 she was like she had to page somebody. So she paged,
16 she began to page somebody. Around that time I
17 walked out the room and went downstairs.

18 Q Did you know who she was paging?

19 A No, I didn't. Upon getting to the bottom
20 of the stairs Vondesse came out the door. He asked
21 me did I want to go to some female's house with him.
22 I had nothing else to do that night so I said yeah,
23 I'll go.

24 Q Did you know what female's house you all
25 were planning to go to?

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1 A No, sir, I didn't.

2 Q Go ahead.

3 A I went back upstairs. We went in the
4 apartment for about a second. Came back downstairs.
5 And on my way back downstairs a guy walked up the
6 stairs past me.

7 Q Did you talk to this guy or --

8 A No, I didn't really pay him too much of
9 attention. I just went on by him.

10 Q Okay. And what happened after that?

11 A I got down to the bottom of the stairs and
12 Vondesse came out again. He asked me was I ready to
13 go. I said yeah, I'm ready. I was thinking that we
14 was going to get in my car, and he was like no, you
15 don't need to drive.

16 So I was like, okay. He told me that
17 the car that we was getting in was a champagne-
18 colored Maxima that was parked at the left of the
19 apartment complex.

20 Q Had you ever seen this car before?

21 A Not that I can recall. I never seen the
22 car before.

23 Q Okay. Go ahead.

24 A So we got in the car. I sat on the
25 passenger's rear side. Von was on the driver rear

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1 side. The guy was driving and Li Tisha was in the
2 front seat. Von directed him to leave Pine Harbour
3 Apartments.

4 Q Did Von at any time ever tell you where you
5 all were supposed to be going at this time?

6 A No. I just figured just to some girl's
7 house that he knew.

8 Q Did you talk to Mr. Keyes at any point when
9 you got in his car?

10 A No, I didn't.

11 Q Okay. Go ahead.

12 A We got -- we left Pine Harbour. About
13 maybe a half a mile down the road he told him to make
14 the turn into these housing development that was
15 about a half a mile down the road from the apartment
16 complex. Okay.

17 The dude that was driving, Mr. Keyes,
18 Kevin Keyes, he turned. Von was directing him to get
19 to the next stop sign, make a right, and he did that.

20 The second stop sign we came to he was
21 like make another right. At this time I was bobbing
22 my head, looking out the window because I had never
23 been in the neighborhood before.

24 Q Bobbing your head? Bobbing your head to
25 what?

409

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1 A A Masterpiece remix of "How You Do That?"

2 Q How do you know that was the song that was
3 playing?

4 A Because for some reason that song just
5 stuck in my mind. It was like the beginning of an
6 ending. It just stuck in my mind.

7 Q Okay. Go ahead.

8 A We got to the second stop sign. I was
9 looking out the window. I heard a loud pop. When I
10 heard the loud pop, instantaneously I reacted. It
11 was like everything happened within like a split
12 second. I reacted on the sound, which where I heard
13 the sound come from, where I pulled my weapon and
14 fired.

15 Q You said you reacted. Why would you react
16 to a pop to pull your gun?

17 A Because in the military we train, we was
18 trained to move on instinct, move on instinct and due
19 to the fact that I just get out the service I was
20 still fresh, everything was still fresh in my mind
21 and that's exactly what I did. I moved to instinct
22 and when I heard the pop I just reacted.

23 Q You said you reacted. What did do you?

24 A I reacted. When I reacted I was looking,
25 like this 'was the window right here. I heard the pop

410

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1 and as soon as I heard the pop I grabbed my -- my
2 fire -- my -- my -- my gun and I fired it.

3 Q You said your gun. What type of gun did
4 you have?

5 A I have a nine millimeter. Well, I misfired
6 it because I was not aiming. I had no knowledge of
7 what I was aiming at.

8 Q Is this your gun?

9 A Yes, sir, it is.

10 Q And your initials are on the back?

11 A Yes, sir, it is.

12 Q And this is exhibit, State exhibit number
13 twelve.

14 You said that you misfired?

15 A Yes, sir.

16 Q Why do you say you misfired?

17 A Because I didn't have a target. It was --
18 it was all instantaneous reaction. When I heard the
19 shot I just grabbed my -- my gun and slide my -- my
20 chamber. I just had my finger on the trigger and
21 then it fired off.

22 Q And what did you do after that or what
23 happened after that?

24 A After that, everything kind of, everything
25 kind of went blank for a minute. Everything kind of

411

1 went blank for a minute. I didn't --

2 Q You said blank. What do you mean, blank?

3 A I didn't hear anything. I didn't really
4 see anything. It was just blank. It was just blank.
5 Like I was in space somewhere.

6 After that I heard Von tell Li Tisha
7 to go, go, go. Like drive, drive, drive. And he
8 just -- he told me to get out the car and chase him.
9 I told him I was not getting out the car. I was not
10 getting -- I was not moving. I was not moving
11 because I was still in shock.

12 Then he was like drive, drive, drive
13 and upon that Tisha starting driving. She went
14 straight to Orangeburg. We got to Orangeburg.

15 Q Why did you all go to Orangeburg?

16 A I guess because that's where Von had told
17 her to drive because he did not tell her where to
18 drive. He just said drive, drive, drive, and we went
19 straight to Orangeburg and that's where Von brother
20 live at.

21 Q What did you do when you got to Orangeburg?

22 A When we got to Orangeburg we went in the
23 house. I put my gun on the table. Trey was like
24 what's wrong, what's wrong, and Von was like -- he
25 said something. I can't remember exactly what he

412

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1 said, but he said something, and upon that him and
2 Von went into the room and started talking. Came
3 back out. Went outside.

4 When they went outside they came back
5 in. About maybe a minute or so later they came back
6 in. Got some -- some Windex, went back outside.

7 Q Who got some Windex?

8 A Trey, which is Von brother. He got some
9 Windex. He went back outside and he came back out --
10 came back in the house. While he was in the house
11 Von was still outside.

12 I told Trey that I needed to come back
13 to Goose Creek. He looked at me. He was like all
14 right, I'll ask my roommate if we could borrow his
15 car. I don't -- I can't recall who his roommate was,
16 but --

17 Q Did you ever come back to Goose Creek?

18 A Yes, I did. I came back to Goose Creek
19 immediately after getting there.

20 Q And what'd you do when you got back to
21 Goose Creek?

22 A I got back to Goose Creek. I got my car
23 and got some -- some clothes from -- for Von because
24 he asked me to bring him back some clothes. We got
25 the clothes. I got my car and went back to

413

1 Orangeburg.

2 Q And you said you and Trey came back to
3 Goose Creek. Where was Von and Tisha at this time?

4 A Von and Tisha was still at Orangeburg.

5 Q Okay. And you came to Goose Creek and got
6 Von's clothes and brought it back?

~~7 A Yes, I did.~~

8 Q What did you do after that?

9 A After that I stayed there for about --
10 about a hour or so because I had been up all night.
11 We left. Well, I left.

12 Q You said we?

13 A I left. I came back down here. Von was
14 like well, are you going to stay with us? I said no,
15 I have no reason to stay with you all. He was like
16 all right.

17 I came back down here so I can go to
18 work. I came back down here. After getting back
19 down here, I got a page, he left a voice mail telling
20 me to bring him the rest of --

21 Q He who?

22 A Von left me a voice mail telling me to
23 bring him the rest of his stuff. So I did that for
24 him. I came right back. Me and Amanda went back up
25 there the next day.

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414

1 Q Why were you making these trips for Von?

2 A Because at that time I had -- I had gained
3 a real -- a real sense of fear for Von. I gained a
4 real sense of fear for Von because I saw he just --
5 he didn't care no more. It was like he had no care
6 in the world about nothing or nobody, and I fear for
7 my life because he said if -- if somebody ever do
8 something or tell on him or anything like that, that
9 his -- his family, his cousins, would -- would handle
10 that situation.

11 Q At this time you were in Goose Creek and
12 Von was in Orangeburg?

13 A Yes, sir.

14 Q Why didn't you go to the authorities?

15 A I didn't go to the authorities because I
16 feared for my life because if I go to the authorities
17 he knew I would be the only person that could tell on
18 him and his family knew my wife, they knew where I
19 live, they knew where she lived at, they knew where
20 I'd be at sometime and I didn't know all of his
21 family so I didn't. I had -- if I would have told
22 the cops I would have had to watch my back all the
23 time. I just left it like that.

24 Q Okay. So you said Von beeped you to get
25 his clothes and what did you do?

415

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1 A I went to the house and I got his clothes
2 for him.

3 Q Who was there when you got to the house?

4 A When I got to the house it was Monique,
5 Quinton, and Dominique.

6 Q And did you discuss what happened with any
7 of those?

8 A No, I didn't.

9 Q What did you do?

10 A I just went in the house. I started
11 packing clothes, and I came back outside. And when I
12 came back outside I saw Von and Trey outside.

13 Q And Von and Trey was outside after you
14 finished, after you were at the house?

15 A Yeah.

16 Q And what happened then?

17 A They started packing up some stuff, too,
18 and after that I took all the stuff back to
19 Orangeburg and came back here.

20 Q When you got back here, what did you do?

21 A I came back here. I went and talked to
22 Amanda. Sat around. Watched T.V. It was like I was
23 trying to find a newspaper to find out what had
24 happened, what -- what all that went down that night.
25 And upon finding the newspaper that's when me and

77

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1 Amanda went back down there.

2 Q What was the purpose of finding a newspaper
3 and going back to Orangeburg?

4 A Because I found -- I got the newspaper so I
5 could see what -- what all had happened. And Von
6 wanted to know what had happened. I got the
7 newspaper clippings, took them down to Orangeburg to
8 show Von how serious and what all had done happen.

9 He was like -- he just -- he was like
10 ah -- he had really no remorse for it. He had no
11 remorse for it.

12 It was like well, we going to New
13 York. You want to go? I told him I wasn't going to
14 New York because I had no reason to run. I felt I
15 didn't do anything that would cause me to run.

16 Q You gave a statement to the police?

17 A Yes, I did.

18 Q Was that statement true?

19 A Yes, it was.

20 Q And the statement that you're saying today,
21 is that also true?

22 A Yes, it is. I have never been involved in
23 a situation like this before. I wouldn't -- I would
24 never -- I would never cause harm to anybody.

25 MR. GRAY: Your Honor, objection. Not

417

1 responding.

2 THE COURT: Sustained. I'll not allow
3 you to make a statement, Mr. McCall. Just
4 listen to your attorney's questions and
5 answer those questions, please, sir.

6 You may continue, Mr. Beauford.

7 Q Have you ever been in any trouble before?

8 MR. GRAY: I would object to that.

9 THE COURT: Sustained. It's not
10 relevant.

11 Q Mr. McCall, were you -- did you take part
12 in any planning of carjacking and murdering Mr. Keyes?

13 A No, I didn't.

14 Q Did you know that this was going to happen
15 that night?

16 A No, sir, I didn't.

17 Q You do admit you fired your gun?

18 A Yes, I do.

19 Q Had you ever talked to Mr. Keyes before?

20 A No, I haven't.

21 Q Had Mr. Keyes ever done anything to you?

22 A No, he hasn't. Never. Never had any --

23 any -- I never even been within fifteen feet of

24 Mr. Keyes before.

25 Q Since this has happened have you talked to

79

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1 Von and Tisha?

2 A No, I haven't.

3 MR. BEAUFORD: No further questions,
4 your Honor.

5 THE COURT: You may cross-examine.

6 MR. GRAY: Thank you, your Honor.

7

8

9 CROSS-EXAMINATION BY MR. GRAY:

10 Q Mr. McCall, let's begin with what we can
11 agree on here. No question State's exhibit number
12 twelve is your weapon?

13 A Yes, sir, it is.

14 Q Any question this is the weapon you fired
15 in the Maxima on February twenty-third of this year?

16 A That is the weapon that I had that night
17 and that is the weapon that I fired.

18 Q Okay. Do you recognize what has been
19 marked as State's exhibit number eleven?

20 A Yes, sir, I do.

21 Q What is this?

22 A That's the forty-five that Von had.

23 Q Okay. So no question this is the
24 forty-five that was fired in the Maxima on February
25 twenty-third of this year?

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1 A Yes, sir, it is.

2 Q Show you State's exhibit number four, a
3 photograph of a Maxima. No question that's the
4 Maxima that was stolen from Kevin Keyes?

5 A I never see the Maxima from the front, sir,
6 so I could not tell you.

7 Q Okay. What angle did you see the Maxima
8 from?

9 A I only saw the Maxima from the side and the
10 back, sir.

11 Q I have a side view here of the Maxima,
12 State's exhibit number twenty-two. Is that the
13 Maxima that you got in that night with Kevin Keyes?

14 A That's what it looked like, sir.

15 Q Is that the vehicle that was taken from him
16 while he was driving the car?

17 A That's what it looks like.

18 Q Mr. McCall, you've just testified that
19 everything you told the police on the night of or on
20 the day of February twenty-fifth is the truth.
21 Correct?

22 A Yes, sir, I do.

23 Q Okay. And on that night there's no
24 question then that Li Tisha paged Kevin Keyes and
25 asked him to come over there. Correct?

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1 A On that night Li Tisha did page someone and
2 Kevin Keyes was the person that came over.

3 Q Okay. And no question that previous to
4 that night Li Tisha had talked about carjacking
5 someone. Isn't that correct?

6 A Yes, she did.

7 Q And that she had talked about him owning a
8 Maxima. Isn't that correct?

9 A She said that he had a nice car.

10 Q Okay. And no question that you were
11 present when Tisha came home from work one night and
12 said I know somebody to jack. I -- you just looked
13 at her and she kept saying it. Well, okay, I'm going
14 to call them up. I'm going to call him up and talk
15 to him and things like that and the night I saw him
16 was the night we all got into the car.

17 Correct? You made that statement to
18 the police?

19 A Yes. I made that statement, but at the
20 time she was saying that I didn't believe her and I
21 didn't believe her at the time that I got into the
22 car.

23 Q Is that your truthful statement, that the
24 night he came to the house was the night you saw him?

25 A That was the night I saw him.

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1 Q And that she had talked about carjacking
2 someone?

3 A She talked about carjacking someone.

4 Q Is it correct, Mr. McCall, that you told
5 the police when the police officer asked you: "But
6 you knew throughout the week prior to this night that
7 Tisha and Von had discussed with you about carjacking
8 a car. And she knew the guy, the right guy to jack.
9 Yes, sir?"

10 A Yes, sir. I did say that statement. But
11 at the time I was making that statement, I was
12 putting everything together, which at the time was
13 yes, sir, I did.

14 Q Your testimony is that what you told the
15 police officers on February twenty-fifth was the
16 truth?

17 A It is the truth, sir.

18 Q Okay.

19 A The truth which I put together at the time
20 they was asking the questions. They was asking
21 questions out of order and they was just asking
22 questions and I was only answering questions in the
23 order that they asked me, sir.

24 Q Do you have difficulty with the question:
25 "But you knew throughout the week prior to this night

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422

1 that Tisha and Von -- Tisha and Von had discussed
2 with you about jacking a car and she knew the guy,
3 the right guy to jack."

4 Is that a confusing question to you?

5 A No, sir.

6 Q The police officer then asked you: "Was
7 that the right guy, that night was that the guy she
8 had been talking about?"

9 Your answer is: "Yes, sir."

10 Did you understand that question?

11 A Yes, sir, I do understand that question,
12 but at the time like I said I was asking, I was
13 putting all this together. This was -- it was two
14 days later. I had time to think about what done
15 happen and me putting everything together when they
16 asked the questions yes, they had, I answered
17 questions.

18 Q Yes, sir. And now you've had nine months
19 to think about putting things together. Is it the
20 truth today?

21 A Yes, sir, it is.

22 Q So it was the truth then and it is the
23 truth today?

24 A Yes, sir, it is.

25 Q And the truth is: "Was that the right guy?"

423

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1 Was that the guy she was talking about? Yes, sir."

2 A From putting together the facts that was
3 told to me, on the night that I was arrested and the
4 facts of everything that came down that week, yes,
5 sir.

6 Q And the police officer follows that
7 question with another one. "And how did you know it
8 was the right guy?"

9 Your answer: "Because I went
10 downstairs. I saw the car, the Maxima, and I knew
11 that was the guy she was talking about."

12 A I knew that was the guy she was talking
13 about on the day that they was asking those
14 questions. The night that this happened I didn't
15 really pay attention to anything. The car was just
16 another car. It was just another night.

17 Q But you got into that vehicle with a loaded
18 nine millimeter pistol?

19 A Yes, sir, I did.

20 Q The police officer said you knew the
21 Maxima -- and you could tell me whether this is the
22 truth today -- the police officer asked you: "Did
23 you know the Maxima was the right car to be jacked
24 that night?"

25 Your answer again: "Yes, sir, because

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1 from what she was saying on how it looked and what
2 Von was saying I guess what he could do with it and
3 then, you know, I was like okay, then this Maxima got
4 to be tight or whatever and then she was like okay,
5 I'm going to page him."

6 A When I made that statement, I was saying it
7 was -- when I say okay, I was saying okay like if you
8 tell me that the sky is white at night, I'm saying
9 okay, like I don't believe you, but I'm saying okay,
10 like okay, whatever.

11 I put together the end of it when --
12 after all the evidence had done came up and due to
13 the fact that I was thinking about it because that
14 was on my mind, it was on my mind -- I was -- I was
15 replaying it over and over in my mind. I put
16 together that statement on the time that they was
17 asking the questions.

18 Q Mr. McCall, I don't have any problem with
19 you replaying it over and over in your mind, but you
20 put that statement together based on things you knew
21 previously. Correct?

22 A Things I knew from what the cops was saying
23 and overhearing them talking.

24 Q Okay. So is your testimony today that this
25 is the truth, your statement, or are you telling me

1 this is the -- what the police told you to say?

2 A No. This is the truth is my statement.

3 The police told me --

4 Q And your statement is when asked how you
5 knew it was the Maxima that was going to be jacked
6 that night, you said: "I was like okay, then this
7 Maxima's got to be tight or whatever."

8 So you did pay some attention to the
9 Maxima apparently or thought about the Maxima prior
10 to this carjacking. Correct?

11 A No, sir, I didn't.

12 Q Okay. So that's not true then because you
13 said --

14 A Yes.

15 Q You thought to yourself it's got to be
16 tight?

17 A Yes, sir, I did.

18 MR. BEAUFORD: Your Honor, it's
19 becoming argumentative.

20 THE COURT: Hold on one second. Allow
21 him please to answer one question before you
22 ask him another, Mr. Solicitor.

23 MR. GRAY: Thank you, your Honor.

24 THE COURT: Thank you.

25 A Yes, sir. I did say okay and I said the

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1 Maxima had to be tight or whatever in my mind at the
2 time they was asking me questions and from putting
3 everything together.

4 Q I believe you testified the very first
5 thing today that Mr. Killingbeck is your long time
6 friend?

7 A Yes, sir. From high school.

8 Q And you know him from high school?

9 A Yes, sir. I met him in the tenth grade of
10 high school, sir.

11 Q And then you went on a few minutes after
12 that to say that you have developed a great sense of
13 fear of Von?

14 A Yes, sir.

15 Q Did you know Von carried a forty-five
16 caliber pistol?

17 A Yes, sir.

18 Q Okay. And with that great sense of fear,
19 you got into a Maxima with him with a loaded
20 forty-five caliber pistol?

21 A I never had the fear of him before this
22 until after the incident happened because he never --
23 he never actually went through anything he said, but
24 after he showed that he had no concern for nobody but
25 his self and his coming up, then, yes, I did get

427

1 fear.

2 Q Okay. So on the night of the incident you
3 had no great fear of Von Killingbeck. Is that
4 correct?

5 A None until -- not until after the incident
6 happened.

7 Q Okay. After the incident?

8 A After the incident happened.

9 Q So when you got into the Maxima with your
10 nine millimeter pistol and when you fired your nine
11 millimeter pistol at Kevin Keyes you had no fear of
12 Von Killingbeck, your long time friend?

13 A Not until I heard shots. I didn't know --
14 I didn't know what the shots were. I just know the
15 area that they came from.

16 Q My question, Mr. McCall, is when did you
17 develop a great sense of fear of Von Killingbeck?

18 A After Von Killingbeck fired his weapon.

19 Q Okay. In the instant that that weapon was
20 fired, you developed that fear?

21 A Yes, sir, I did.

22 Q And that fear led to you pulling out your
23 pistol?

24 A Yes, sir.

25 Q Okay. So it was the fear that made you

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1 pull out a loaded nine millimeter pistol and fire it
2 or it was the military training you had?

3 A It was the fear and military training
4 together.

5 Q They came together at that instant?

6 A Yes, sir.

7 Q The police officer asked you about your
8 great -- or asked whether or not you were afraid of
9 Mr. Killingbeck, and I believe you testified now
10 several times, that your truth -- your statement to
11 the police officers was true. Correct?

12 A Yes, sir.

13 Q Okay. So the police asked you are you
14 scared of Von, present tense, present tense, so that
15 would be February twenty-fifth. Correct?

16 A Correct.

17 Q After this blast in the Maxima that
18 instilled this fear of Von in you. Correct?

19 A Correct.

20 Q And your answer was: "No, I am not."

21 A I'm not afraid of Von except for when he
22 has a weapon. If he has any kind of weapon which he
23 can cause physical harm, yes, I am afraid of him.
24 But if he has no weapon, I am not afraid of him.

25 Q Mr. Killingbeck -- I mean Mr. McCall, I

429

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1 believe your testimony was that you went to get his
2 clothes from Orange -- from Goose Creek while you
3 were in Orangeburg because you were so afraid of him?

4 A Yes, sir. He had a weapon at that time.

5 Q Okay. Well, when you were giving the
6 statement to the police, he wasn't near you, was he?

7 A No, he wasn't.

8 Q And when you got to Goose Creek, he wasn't
9 near you, was he?

10 A No, he wasn't.

11 Q And you elected on that day after also
12 telling the police you'd never had any run-ins with
13 Von to leave out the information of this great sense
14 of fear that led to your firing the pistol. Correct?

15 A Correct. But I answered the questions as
16 they were being asked to me.

17 Q Were you confused by the question of are
18 you scared of Von?

19 A No, I wasn't. But as soon as he asked the
20 question he started another question.

21 Q Your testimony on direct examination was
22 that you had no -- there was a sense of reaction that
23 brought this pistol out of your pocket. Correct?

24 A Yes, sir.

25 Q Okay. And in that instant you brought the

91

430

1 pistol out of the pocket you also have to rack that
2 pistol to put a bullet in the chamber, do you not?

3 A Yes, I do, sir, but --

4 Q But you wouldn't get into that Maxima with
5 the bullet already in the chamber, would you?

6 A No, sir, I wouldn't.

7 Q So in that instant you thought to yourself
8 I need my weapon. Correct?

9 A No, sir, I didn't. It was not -- it was --

10 Q You did not think about your weapon?

11 A It was not enough time to think about
12 anything. It was just a reaction. It was hear and
13 reactions.

14 Q Okay. Well, I'm confused because in
15 that -- after that blast is the time that you
16 developed the great sense of fear of Von Killingbeck.
17 Correct?

18 A Yes, it is.

19 Q Okay. That would take some amount of time.
20 Correct?

21 A No, sir, it wouldn't.

22 Q So that was instant?

23 A Yes, sir.

24 Q This great sense of fear?

25 A Yes, sir.

431

1 Q Okay. And in that instant you
2 involuntarily took your pistol from your pocket?

3 A Yes.

4 Q That wasn't anything your brain had to do?

5 A No, sir.

6 Q Okay. So you involuntarily took the pistol
7 from your pocket?

8 A I took my pistol out after I heard the
9 shot. I did not have time to think about anything
10 else but reacting.

11 Q Okay. And part of that reaction was to
12 rack your pistol and put a bullet into the chamber.
13 Correct?

14 A Correct, sir. But due to the fact that I
15 have a nine millimeter which is very light and
16 very -- it was a double action nine millimeter. It
17 is very easy to slide the shaft on.

18 Q Of course you didn't think about any of
19 that that night though, did you? You didn't think
20 about that that night, did you?

21 A No, sir.

22 Q That's something you thought about now that
23 you've had months to think about it?

24 A What do you mean?

25 Q Did you think about how easy your pistol

93

432

1 was going to be to fire on the night of February
2 twenty-third?

3 A No, I didn't. I had no intent of firing my
4 pistol on the night of February twenty-third.

5 Q So it was unintentional that you racked
6 your pistol and put a bullet into the chamber?

7 A What do you mean, unintentional?

8 Q It was your word, unintentional. You said
9 you had no intention?

10 A I had no intention of firing my weapon that
11 night.

12 Q So you had no intention to put the bullet
13 into the chamber. Is that correct?

14 A I had no intention of firing my weapon that
15 night.

16 Q In addition to putting -- racking the gun
17 and putting a bullet in the chamber, your gun does
18 not fire by itself. Correct?

19 A No, sir, it doesn't.

20 Q You have to pull the trigger. Correct?

21 A Yes, sir. It does.

22 Q And I believe you testified on direct
23 examination that you had no target?

24 A No, sir, I didn't.

25 Q The police officer asked you several

433

1 questions about that shooting specifically. The
2 first question was: "When you all got to the
3 neighborhood what happened?"

4 Do you remember that question?

5 A Yes, sir, I do.

6 Q Is it true that your response was: "Von
7 told him to stop at the first stop sign and make a
8 right. He did it. Von told him to go down to the
9 next stop sign and make another right. When we got
10 to the second stop sign I heard a blast and at first
11 it kind of shocked me and then I realized what was
12 going on and then I fired my gun twice."

13 Is that the truth?

14 A Yes, sir, it is.

15 Q Okay.

16 A I made that statement meaning we got to the
17 second stop sign. He was sitting right here beside
18 me. I was looking out the window, listening to the
19 music, bobbing my head. I heard the shot.

20 As soon as I heard the shot I reacted.
21 I reacted as soon as I heard the shot. It was -- it
22 was a misfire in the direction of the shot, of the
23 sounds I heard.

24 Q Well, was that reaction before or after the
25 "I realized what was going on"?

95"

434

1 A It doesn't take your mind long to think.

2 I'm not a very slow person, sir.

3 Q So my question is was that before or after
4 you realized what was going on?

5 A That was before I realized what was going
6 on.

7 Q Okay. So the correct answer would be: "It
8 kind of shocked me. I fired my gun twice and then I
9 realized what was going on."

10 A Yes, sir.

11 Q Okay. So what you told the police on
12 February twenty-third must not have been the truth,
13 the twenty-fifth?

14 A It was the truth. I was answering the
15 questions as they were asking them, sir.

16 Q Again on the subject of not having a
17 target, you remember Officer Buchta with the F.B.I.?

18 A Yes, sir, I do remember him.

19 Q Officer Buchta asked you: "And then what
20 happened?"

21 Your answer -- and I would like to
22 know if this is the truth -- "And then after I heard
23 the gun shot the dude turned around and he was like
24 ah, shit. And I just looked up and then by the time
25 he had opened the door and he was on his way out the

1 door and he did like this."

2 And I assume you were motioning some
3 way. Correct?

4 A Yes, sir. I was motioning.

5 Q "And he was falling out, kind of like this,
6 and I just pulled the trigger twice."

7 A I made that statement on the day of my
8 arrest which was a couple days after this incident
9 had happened. I had time to slow down everything in
10 my mind.

11 On the night that this happened it was
12 no slowing down. Everything happened like this.
13 Everything was boom, and it was over with.

14 Everything, everything happened like
15 this. It wasn't -- it wasn't -- I was saying that as
16 you read it. Yes, that is how it sounds, but I was
17 saying that and if you could see just -- just how
18 fast everything happened, then you would -- you would
19 understand.

20 But, yes, that's how it sounds because
21 that's how the question was asked and I was stating
22 how it happened.

23 Q My question is, is that the truth?

24 A Yes, sir. That is the truth.

25 Q So the truth is you pulled the trigger

436

1 twice after you saw he was falling down?

2 A I stated -- I was saying that statement two
3 days after I had time to replay all of this in my
4 mind. This never left my mind. I kept playing this
5 over and over and over again, and when he asked me
6 questions I had done slowed it down so I could tell
7 him.

8 Q The police officer also asked you,
9 Mr. McCall, about the position of the wounds, where
10 you might have hit him?

11 A Yes, sir.

12 Q And you gave this statement before you
13 heard the medical examiner testify. Correct?

14 A Yes, sir.

15 Q So in this instant that all this is
16 happening, Mr. Keyes exited the vehicle very quickly.
17 Correct?

18 A Yes, sir.

19 Q You told the police officer that: "The way
20 the position of my gun was and the way he was, you
21 had shot him in the arm, maybe in the shoulder, the
22 right one."

23 So in this instant that you had the
24 great fear of Von, correct, that happened right then?

25 A Yes, sir.

437

1 Q And you realized what was going on. That
2 happened right then. Correct?

3 A Everything happened right there, as soon as
4 everything happened right there together.

5 Q And you didn't have your gun in your hand
6 before this all happened, did you?

7 A No, sir, I didn't.

8 Q So in that instant you -- you undoubtedly
9 reached into your pocket and got the gun. Correct?

10 A I reached and got my -- grabbed my gun,
11 yes, sir.

12 Q And you racked that nine millimeter,
13 putting a bullet in the chamber. Correct?

14 A Correct.

15 Q Okay. You pulled the trigger. Correct?

16 A As you were asking me questions, yes, it --
17 and you were going very slow, but it did not happen
18 like that.

19 Q I understand. I'm asking you -- we can't
20 do it as fast as a gun is fired. I'm asking you is
21 that how it happened?

22 A Yes, sir. That's how it happened.

23 Q Okay. And then you observed the dude, as
24 you refer to Mr. Keyes. Correct?

25 A Correct.

1 Q Him exiting the vehicle. Correct?

2 A Correct.

3 Q And you even saw where your gun was pointed
4 apparently when you gave the police officer the
5 information of where you would have hit him.
6 Correct?

7 A You can see everything that's happening in
8 front of you and as it happens, it happens very fast.
9 But as you have time to -- to -- to think about it,
10 everything slows down. It happens to everybody. You
11 remember certain things that you didn't remember a
12 second before.

13 Q You also told the police officer you knew
14 that you shot him twice, but it could have been three
15 times. Correct?

16 A I didn't know if I hit him at all. And it
17 says that in my statement, sir.

18 Q Well, you predicted that you hit him in the
19 right shoulder. Correct?

20 A Correct, sir.

21 Q You suspected you may have hit him.
22 Correct?

23 A May have, sir.

24 Q And your answer to the police officer was I
25 fired the gun twice, maybe three times. Correct?

1 A Correct, sir.

2 Q And we're positive that Mr. Killingbeck
3 only fired his weapon once. Correct?

4 A No, sir, we're not.

5 Q Inside the Maxima did you not testify he
6 fired his gun once and it jammed?

7 A Yes, sir, I did. And in my statement I
8 also said he got his -- his gun unjammed and he -- he
9 opened the door, so I -- I went blank. I don't know
10 if he fired his gun a second time or not. I don't
11 know what happened.

12 Q Okay. So in the instant all this is
13 happening, and you realize -- first you hear the
14 blast. Correct?

15 A Yes, sir.

16 Q And then you develop a great sense of fear
17 of Von Killingbeck?

18 A Yes, sir.

19 Q And then you realize what's happening?

20 A Yes, sir.

21 Q And then you take your pistol out of your
22 pocket. Correct?

23 A It was not in my pocket. I took it out.

24 Q Where did you have your pistol?

25 A I had my pistol approximately right here.

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1 Q Okay. Well, out of your pants?

2 A Yes, sir.

3 Q Your pistol was stored on your body.

4 Correct?

5 A Yes, sir.

6 Q Okay. You took it out of storage, wherever

7 it was?

8 A Yes, sir.

9 Q You loaded it?

10 A Yes, sir.

11 Q You fired the gun?

12 A Yes, sir.

13 Q You observed the victim?

14 A Yes, sir.

15 Q And you also realized that Mr. Killingbeck

16 had a jammed gun. Correct?

17 A Correct. I noticed Mr. Killingbeck had a

18 jammed gun for a second, but he got it unjammed, so I

19 don't know what happened after he got his gun

20 unjammed.

21 Q But you observed that?

22 A Yes, sir.

23 Q The jammed gun?

24 A Yes, sir.

25 Q In this sense of fear?

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1 A Yes, sir.

2 Q Mr. McCall, why didn't you, when you
3 realized that Mr. Killingbeck was firing a gun and
4 realized that gun was jammed, and realized you were
5 at a stop sign, you didn't get out of the car, did
6 you?

7 A I did not get out of the car because the
8 car had never stopped moving. The car was in a
9 continuous motion.

10 Q Okay. So it was slowing to stop. Correct?

11 A It was -- it was going slow. It wasn't
12 slowing to stop. It done -- we had done almost
13 proceeded through the stop sign.

14 Q And that's why you didn't get out of the
15 car?

16 A I got out of the car because of I was -- I
17 was afraid and I wasn't getting out of the car
18 because I was in shock. I ain't know what to do. I
19 just knew I was not moving from my position. I just
20 knew I was not moving. I was in shock. I wasn't
21 moving. I wasn't going anywhere, and I wasn't saying
22 anything.

23 Q It's true that you did buy your gun from
24 the friend Amanda's. Correct?

25 A Yes, sir, it is.

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1 Q And it's true that the receipt in that car
2 is for that gun. Correct?

3 A Yes, sir, it is.

4 Q And it's true that you cleaned it up?

5 A Yes, sir. I did clean it up.

6 Q So it's possible that Monique would see you
7 cleaning the gun in your apartment?

8 A Not really because she was basically at
9 work when I was there.

10 Q So your testimony is it's impossible that
11 she saw you do that?

12 A No, it's not impossible that she saw me do
13 that.

14 Q The police officer asked you towards the
15 end of your statement all about the involuntary and
16 under no coercion and not threatened in any way.
17 That is all true?

18 A I gave my statement after a officer told me
19 that the best thing I could do was cooperate with
20 them.

21 Q My question is when you told the police
22 officer it was --

23 MR. BEAUFORD: Judge, I think the
24 question was asked and answered.

25 THE COURT: No, sir, I disagree with

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1 you. He didn't answer the question. He
2 answered it with another response.

3 First, Mr. McCall, first -- if
4 you'll help us, listen to his question,
5 answer it, and then if you need to explain
6 your answer you may do so.

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you..

9 Q My question is, is your response to the
10 police officers on February twenty-fifth, was that
11 response free and voluntary?

12 A Yes, sir, it was free and voluntarily,
13 but I gave my statement after being asked several
14 times and said no, and the officer came in after
15 Officer Ollic had done got kind of -- kind of high
16 tempered, the officer came in and told me the best
17 thing I could do was cooperate with the officers
18 because they wasn't playing with me.

19 Q Okay. And you elected to do that.
20 Correct?

21 A Yes.

22 Q And you stated that you gave it under your
23 free will and accord?

24 A Yes, sir.

25 Q And the police officer asked you after

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1 those questions, he asked you one more question.

2 "That the party that you told me was involved with in
3 this, is there anybody else involved or is this
4 everybody that was involved in this?"

5 And you understood him to mean murder
6 and carjacking of Kevin Keyes. Correct?

7 A Yes, sir.

8 Q Your answer is me, first. You said you
9 first?

10 A Yes, sir.

11 Q "Myself, Tisha, Vondesse, and Trey".

12 A Yes, sir.

13 Q Mr. McCall, just so I'm clear on the reason
14 to shoot, your statement is that that was, originally
15 was because of the Army training you had?

16 A Yes.

17 Q Okay. And I believe the exact quote, they
18 trained you in the United States Army to move on
19 instinct. Correct?

20 A Yes, sir.

21 Q So it is your testimony that the United
22 States Army trains you when you heard a gun shot to,
23 without thinking, without target, pull out a loaded
24 nine millimeter pistol and begin to fire it randomly?

25 A No, sir, they didn't. They trained me to

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1 react on instinct. My instinct was I heard the shot
2 and due to the fear, I heard the shot and the only
3 thing I did was fire mine.

4 Q Okay. So the United States Army did not
5 train you to react without a target with a gun in
6 your hand, did they?

7 A Could you restate your question, sir?

8 Q Did the United States Army train you to
9 react with a pistol with no target?

10 A No, sir. Your last -- that -- the
11 questions before those two, could you -- could you
12 repeat that question one more time for me, please?

13 Q No, sir.

14 A Okay.

15 MR. GRAY: Thank you.

16 THE COURT: Redirect.

17 MR. BEAUFORD: Yes.

18

19

20 REDIRECT EXAMINATION BY MR.

21 BEAUFORD:

22 Q Sir, the solicitor asked you the question
23 about, asked who the parties were involved and you
24 said the parties. What did you understand that
25 question to mean as to the charge of murder and

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1 carjacking?

2 A I understood the question as the parties
3 involved as who all knew about the situation after it
4 had happened.

5 MR. BEAUFORD: Okay. No further
6 questions.

7 THE COURT: Recross.

8 MR. GRAY: No, your Honor.

9 THE COURT: Mr. McCall, you may come
10 down, sir.

11 Call your next witness.

12 MR. BEAUFORD: No further witnesses,
13 your Honor.

14 THE COURT: No further witnesses. Any
15 reply witnesses, Solicitor?

16 MR. GRAY: No, sir.

17 THE COURT: All right. Ladies and
18 gentlemen, at this point that concludes the
19 evidentiary portion of the proceeding. We
20 have two remaining portions, the closing
21 arguments and of course the instruction on
22 the law. I'm going to let you go to lunch
23 at this point. Do not begin your
24 deliberations, however. Don't discuss the
25 case among yourselves. If you will be back

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1 But I would remind and I will
2 restate this during the charge, that their
3 remarks while important are not evidence.

4 Please now give your attention to
5 the attorneys as they give their closing
6 arguments on behalf of their parties.

7 ~~Mr. Gray.~~

8 MR. GRAY: Thank you, your Honor. May
9 it please the Court.

10 THE COURT: Yes, sir.

11 MR. GRAY: The law requires that I
12 speak to you twice, but I promise you the
13 first time is going to be very short. The
14 law requires that the State, as represented
15 by me, explain to you again the law of the
16 charges that are involved in this case, and
17 as I told you at the beginning of the trial
18 Judge Dennis is in charge of that and he's
19 going to tell it to you again.

20 But since the law requires it, let
21 me tell that carjacking or let me remind you
22 that carjacking is against the law in this
23 State, it was passed by the Legislature
24 which says that it's illegal to take
25 someone's vehicle from them while they're

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1 operating that car. If you do that, it's
2 illegal no matter how you do it, but if you
3 use force or threat of force or any kind of
4 intimidation to seize that vehicle and take
5 it from that person, then you have carjacked
6 them. So that's the law of carjacking.

7 The law of murder as I told you is a
8 simple law and something you are probably
9 more familiar with than a lot of crimes in
10 South Carolina, is simply the taking of
11 another person's life accompanied by malice
12 a forethought.

13 And the Judge is going to tell you a
14 little bit about malice and how you decide
15 whether or not malice is present.

16 The Judge will also tell you that
17 the law understands that juries are faced
18 with that question all the time and the law
19 gives you some guidance on malice. It can
20 be express malice. For instance, I'm going
21 to kill you. That's express malice. But
22 most of the time in murder cases we don't
23 have express malice and so you look and see
24 whether there's malice from the
25 circumstances. And Judge Dennis will tell

1 you that the law provides that implied
2 malice works just as well. And implied
3 malice can come from any number of factors
4 that the Judge will tell you about.

5 I'll tell you about two of them
6 right now. One is that if you use a deadly
7 ~~weapon~~ in the commission of that murder,
8 that alone is a circumstance that you can
9 consider and conclude that malice existed in
10 the heart of the wrong-doer.

11 Secondly, if you kill someone in the
12 commission of a felony, the Judge will tell
13 you that that is also something you can
14 consider in deciding whether or not malice
15 existed when that life was taken.

16 The Judge is also going to tell you
17 a couple of things about murder and
18 carjacking that relate to the interaction of
19 co-defendants. And the Judge is going to
20 tell you that in South Carolina the hand of
21 one is the hand of all. And that's true no
22 matter the crime that's being committed.
23 And certainly it's true in the case of
24 carjacking and murder, that if one
25 conspirator kills or commits the crime then

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1 all are just as if they were participating
2 in that crime at the time that it occurred.

3 And finally, ladies and gentlemen,
4 the Judge is going to tell you that duress,
5 being scared, being in a situation where you
6 feel threatened, is no defense to the murder
7 of an innocent third person.

8 Thank you very much, and I'll be
9 right back with you.

10 THE COURT: Mr. Beauford.

11 MR. BEAUFORD: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. BEAUFORD: Counsel. First of all,
14 I would like to commend you for your
15 attention that you've given this case. It's
16 a very, very important case to both the
17 State and to Eric Mc Call.

18 On February twenty-third, 1998
19 something senseless happened. Kevin Keyes
20 was killed. Eric Mc Call is charged with
21 carjacking and murder, and in the beginning
22 of this case the State told you that they're
23 going to prove beyond a reasonable doubt
24 that Eric Mc Call murdered and carjacked
25 Kevin Keyes.

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1 What have they not shown? Why, what
2 reason Eric Mc Call had to do this. He had
3 a car. He had a good job. Worked at
4 Quoizel. He was honorable discharged from
5 the military. Had a small little daughter.
6 What reason did he have?

7 And I tell you Eric Mc Call doesn't
8 come into this courtroom totally innocent.
9 He was carrying a weapon and that same
10 weapon is why he's here, being in the wrong
11 place at the wrong time. And that's why
12 he's here.

13 From the evidence and from the
14 testimony on the stand, you can figure out
15 who planned this, who was actually involved.
16 That person's not -- those persons are not
17 in this court.

18 Eric Mc Call got caught up in
19 something. He's here standing trial for
20 something he did not do. He did not intend
21 to carjack Kevin Keyes and he did not murder
22 Kevin Keyes.

23 Let's look at some of the testimony
24 that you heard and I'll tell you right away
25 if you heard something that's different that

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1 During this trial the State
2 presented numerous witnesses, a lot of
3 exhibits, and you're not to weigh how many
4 exhibits or how many witnesses the State
5 placed into evidence or had to testify.

6 But you're to look at what they had
7 to say, whether it was believable to all the
8 application of the other facts.

9 Let's look at Monique. She
10 testified that Eric always talked about
11 carjacking. She said a little bit about
12 Von, her blood relative, and I've got to say
13 blood is thicker than water. If you listen
14 to all the State's evidence, everyone wants
15 to put something on to Eric. Eric was the
16 aggressor. Eric did this. Eric did that.

17 Tisha wasn't Eric's girlfriend.
18 What did he have to gain with this? You
19 heard the testimony and you heard the tape
20 of Eric's confession. He didn't deny he
21 made -- made that confession. He didn't
22 deny that.

23 At the time of giving it he said it
24 was truthful. He came here today and said
25 it was truthful. He never denied that. But

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1 I may say at this time, go with your own
2 recollection, and use that. Sometimes I
3 make mistakes. I say you go with your own
4 recollection.

5 Trey Edmond Killingbeck got on the
6 stand and he said that he -- first Eric
7 called him. Think about it. Why would Eric
8 call him? Von is his brother. And gets on
9 the stand and said when he got there Eric
10 did all the talking. Eric did this and did
11 that.

12 Yet his roommate came and said while
13 they were there Eric pretty much just sat
14 there quiet. He nodded in agreement, but
15 Eric said a little.

16 And also Trey got on the stand and
17 he testified about the car. And you also
18 heard the officer testify that they looked
19 hard and couldn't find the car. Trey was in
20 the car. Why did he have difficulty taking
21 them back to the car?

22 You have to look at the
23 believability and the credibility of the
24 witnesses as they testified earlier. And
25 that's very important.

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1 If there's any doubt about where is
2 this evidence, where are these people, the
3 State hasn't met their burden.

4 If you go back in there in your jury
5 room and you deliberate, and you start
6 thinking about the evidence and you hesitate
7 to act because there's something incomplete
8 about this case, you must come back with a
9 verdict of not guilty.

10 You heard Eric on the stand. Was he
11 believable? Was his statement consistent?

12 You're going to have the opportunity
13 to take the tape back, to play it back, to
14 listen to it and see whether what he said
15 here today is consistent with what he said
16 back then, whether his actions were
17 consistent, using your every day experience.

18 Time has changed and I don't know if
19 it's changed for the worse, but it's changed
20 where individuals now feel they have to
21 carry guns. You've got a college individual
22 about to graduate in December, has a nine
23 millimeter. Got an individual who wants to
24 buy a gun, who is involved in an incident,
25 and then you got Eric who had a gun.

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1 he did say I didn't intend to kill him. It
2 was a reactionary thing, part of my
3 training.

4 It was unintentional and I think he
5 may have said it misfired, the gun. Look at
6 his action. Is it consistent with a murder?
7 Is it consistent with a carjacking?

8 He came back here. He said through
9 some of the witnesses he had to go to work.
10 He came back here. He went to Miss Amanda's
11 mom's house. He cleaned the house. He
12 washed the dishes. He wasn't running. He
13 told Von and Tisha I'm not going to New
14 York. What do I have to run for?

15 Is that consistent with someone who
16 senselessly killed and murdered, murdered
17 and carjacked someone? It's not consistent.

18 You've got a very important decision
19 to make and in the beginning you took an
20 oath. You said you would give both the
21 State and Eric Mc Call a fair trial. In
22 addition to that you said you will make the
23 State prove beyond a reasonable doubt, a
24 reasonable doubt that Eric Mc Call murdered
25 and carjacked Kevin Keyes.

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1 People have changed and it's changed
2 so much, a good Samaritan like Mr. Sewell,
3 someone's knocking at his door, afraid to
4 come out to render help.

5 But again, Eric's not guilty of
6 murder. Eric is guilty of a misjudgment,
7 which is carrying that firearm, a
8 misjudgment associating with Von and Tisha.
9 He's not guilty of murder.

10 And the State may come after, after
11 I'm finished here and show you some snippets
12 of little statements that Eric may have made
13 in the prior testimony, and in the recording
14 that you've heard earlier. Look at it in
15 totality. Just don't look at one little
16 segment. Listen to the entire tape. Listen
17 to -- remember what you heard from this
18 stand Eric testified to. Don't get swayed
19 from little snippets. Read the entire
20 picture.

21 It's very important. Was Eric's
22 actions reasonable? He should not have a
23 gun. I know that. But when he -- and he
24 testified he even knew the song and he said
25 that's the start and the beginning of a --

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1 of a situation.

2 He remembered that. Things in life
3 sometimes when they happen you remember
4 certain things about it, and he remembers
5 those things.

6 He tells you about how, when giving
7 the statement, how at that point he had time
8 to slow it down and you may see things in a
9 statement and you say well, he had one, two,
10 three, four seconds to think about it. But
11 he testified that it just happened like
12 that. But in order to tell you about it he
13 had to put one thing in front of the other.

14 And just like when you go back in
15 the jury room, you have several charges.
16 Your Honor will have to put one in front of
17 the other. No significance is given to
18 those charges. But you have to put one in
19 front of the other.

20 But I ask that when you go back and
21 deliberate, that you look at all the
22 evidence, and you will find that the person
23 who carjacked, the person who murdered Eric
24 Keyes -- excuse me, Kevin Keyes, is not in
25 this courtroom.

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1 And I ask that you return a verdict
2 accordingly of not guilty. Thank you.

3 THE COURT: Thank you, Mr. Beauford.

4 Mr. Gray.

5 MR. GRAY: Thank you, your Honor.

6 THE COURT: Yes, sir.

7 MR. GRAY: You guys been lucky in one
8 way. This has been a relatively short case,
9 especially given the serious nature of the
10 charges. It's much shorter than a lot of
11 cases would have been, and we appreciate
12 your attention because I know in a
13 relatively short case it's hard to pay
14 attention and I that you on behalf of the
15 State and I thank you on behalf of the Keyes
16 family. It certainly has been an important
17 time for them and we all appreciate your
18 attention.

19 You know, sometimes when I do this I
20 think jurors must believe or -- or think or
21 feel insulted to have lawyers stand up and
22 make closings arguments to you because as
23 the Judge told you this isn't evidence and
24 you've already heard the evidence. I know
25 you guys are as least as smart as I, so you

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1 can put two and two together yourselves.
2 But if you bear with me, I'd like to go
3 through a bit of the evidence and talk to
4 you about it and tell you how that works
5 with our law here in South Carolina. First
6 of all, I'll say you're lucky in another way
7 too in that so many things have been decided
8 for you and we don't have to worry about a
9 lot of things, and I made a list of the
10 witnesses who you really don't need to worry
11 at all about and those include Mark Sewell,
12 Roger Deide, John Damone, John Plitsch,
13 Julian James, John Morton, Trey Killingbeck,
14 Amanda Carman, Cindy Pensmith, Rick Ollic,
15 Ted Shealy, Robin Taylor, Karen Keyes, Clay
16 Nichols, and Ron Buchta. That's just about
17 everybody. And the reason you don't have to
18 worry about them is apparent. Many
19 according to the defendant at least, to a
20 large degree they're all telling the truth.

21 Because we know now because we heard
22 from the defendant that on February
23 twenty-third of this year Kevin Keyes was
24 driving his Maxima. We know that he went to
25 the apartment A-8 at Harbour Lake where all

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1 those people lived, that he was responding
2 to a page from LiTisha, that he went there,
3 that she asked him if he wouldn't give
4 Mr. Mc Call and Mr. Killingbeck a ride in
5 the car. They did that. He agreed. They
6 didn't get very far from the house. And he
7 was gunned down and murdered. And his car
8 was stolen from him and taken to Orangeburg.

9 And that in his car wouldn't you
10 know there's human blood. And a bullet
11 hole. Things that we called witnesses in
12 here to tell you because we didn't know we
13 weren't going to have to tell you that, but
14 now you know all that's true.

15 We know that it happened in Berkeley
16 County. That's something the Judge is going
17 to tell you you have to know. You have to
18 know that the defendant died in Charleston
19 County because that's in the indictment and
20 we know that's true.

21 We know that no question, these
22 people, this group ran back and forth to
23 Orangeburg and we called witnesses to prove
24 that. We didn't know we weren't going to
25 have to prove that they went back and forth

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1 to Orangeburg. And we know I guess we can
2 all realize it's no wonder that Mr. Keyes'
3 insurance card is in the trash can at 558
4 Dantzler. And it's no wonder that his
5 vehicle registration is in the trash can at
6 558 Dantzler. And no surprise that Kevin's
7 car keys and house keys or house keys, I
8 guess the car keys were with the car, house
9 keys in the trash can at 358 Dantzler. But
10 we had to call those witnesses because, see,
11 we didn't know the defendant would let you
12 know that all is absolutely true.

13 We know in spite of the fact that
14 this nine millimeter didn't have any
15 positive fingerprints on it, we know that
16 it's Mr. Mc Call's, and you know now that
17 the E M must really stand for Eric Mc Call.
18 And we know that the forty-five caliber is
19 Von Killingbeck's.

20 But part of the two days was to try
21 to prove this is Von's gun, that's Eric's
22 gun. But now we know all that's true. So
23 what now?

24 I didn't mention Quinton and
25 Monique's name in that list of people that

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1 we know they're telling the truth because I
2 agree with Mr. Beauford, we don't know
3 they're telling the truth. That hasn't been
4 verified independently, but they came in
5 here and said I lived with him, that's true.

6 LiTisha and Von lived there, too.
7 ~~That's true.~~ They didn't tell you anything
8 about who shot. They don't know. They
9 weren't there. But they told you that in
10 that apartment there's an awful lot of
11 talking about carjacking going on. And
12 that's between Von, LiTisha, and the
13 defendant.

14 And when you hear, as you already
15 have, and when you reconsider his confession
16 you will see that he agreed they were
17 talking about it. Now certainly when he
18 gave his confession he would have a reason
19 to diminish what he had to say. After all
20 we know that time makes some difference in
21 how Mr. Mc Call recollects things and when
22 he talked to the police, he said yeah, they
23 did talk about carjacking. That was them
24 mostly talking but I was there, which is
25 exactly what Monique and Quinton said, they

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1 were talking together. And you just ask
2 yourselves is it reasonable to believe,
3 sitting with two roommates and one of them
4 starts talking about carjacking and you have
5 no interaction whatsoever? That's not
6 believable.

7 The proper reaction would be what?
8 I'm moving. But no interaction whatsoever,
9 is not believable.

10 So you'll have to ask yourselves I
11 wonder if Quinton and Monique were telling
12 the truth about the defendant talking about
13 carjacking?

14 Mr. Beauford pointed out that
15 Monique is related to Clifford Von
16 Killingbeck, but she sure said Von was
17 talking about carjacking. And he didn't
18 point out any bias whatsoever in Quinton.
19 In fact all we know about Quinton is that he
20 is so honest that he said you know what? I
21 was in a failed carjacking attempt once
22 myself. And you know, when you think to
23 yourself Monique and Quinton, they may not
24 be the most upstanding people in the world,
25 and maybe Amanda Carman, but that's because

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1 that's who Mr. Mc Call chose. Those are his
2 roommates and his girlfriend. And like it
3 or not, those are the people he's running
4 with, at this time. Along with his good
5 friend Von Killingbeck. So those people
6 were chosen by Mr. Mc Call, not by us.

7 So that's the State's case, other
8 than the confession.

9 So let's look at the confession for
10 a moment and distance as he might try to do
11 from the confession, let's take a look at
12 it. The way I've looked at the confession
13 is in basically three or four different
14 sections of the confession. And we'll start
15 first with the voluntariness of that because
16 it's incumbent upon us, the State of South
17 Carolina to prove that Mr. Mc Call knew what
18 he was doing. Because you see, if we prove
19 that the Judge is going to tell you it's
20 evidence you should consider. You know
21 there's nowhere that you're going to hear
22 oh, confessions are only worth so much.
23 Don't worry about them. If we're apprised
24 of our Constitutional rights and we still
25 choose to speak to a police officer it's

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1 something you have to consider in a jury
2 trial.

3 And you, being the jury, will have
4 to decide whether he voluntarily waived his
5 rights. This is what Mr. Ollic asked him on
6 the tape. Do you fully understand each of
7 the rights which I've explained to you and
8 having those in mind do you wish to waive
9 your rights and answer questions concerning
10 the charge of murder that you've been
11 accused of committing? No threats, force,
12 or promise of any kind have been made to, me
13 by anyone to induce me to waive these rights
14 or answer these questions. Mr. Mc Call
15 responds yes, sir.

16 And it is still your desire to waive
17 your rights and make a statement concerning
18 charges entered against you? Yes, sir.

19 When you get to your jury room
20 remind yourselves that this is at least the
21 third time Mr. Mc Call heard these warnings.
22 We realize on the tape he's not initialing
23 it then. He says I've already initialed it
24 then. So he considered them when he
25 initialed them.

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1 The officer testified that I read
2 him his rights even at the scene when I put
3 him in the cruiser and he said yeah, I'd
4 like to talk to you.

5 So this is at least the third time
6 Mr. Mc Call has heard that he has the right
7 to remain silent and the right to speak to
8 the police officer if he wants to.

9 I think Mr. Ollic did a pretty good
10 job on the confession letting you know that,
11 you know, Mr. Mc Call worked into his answer
12 to one question that Mr. Ollic surely had a
13 hot temper. If so it was well masked on the
14 confession I think you'll agree, as was his
15 apprehension or whatever he was trying to
16 imply with Mr. Ollic's temper.

17 But Mr. Ollic at the end of the
18 confession asked him: "Your statement is
19 true and correct?" Yes, sir. Was it freely
20 and voluntarily given? Yes, sir. Nobody
21 promised you, threatened you in any way to
22 make you give this statement? No, sir."

23 Ollic also asked him: "Had anybody
24 threatened you, promised you, or caused you
25 to give your statement or you gave it under

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1 your own free will and accord?" Mr. Mc
2 Call: "I gave it under my own free will and
3 accord."

4 I believe this next statement is
5 very telling of the fact that it's voluntary
6 and the reason I'm showing you, obviously
7 you have to find that it's voluntary before
8 you can consider it.

9 "Anything you think you need to add
10 or anything you might want to add about this
11 that you've left out that might be
12 important? No, sir. At this time if you
13 have any questions that might ring a bell or
14 something, I'll be glad to answer them."

15 Okay. This would be the time when
16 perhaps he should have said well, I did
17 forget to tell you that Von Killingbeck was
18 scaring me to death and I felt like I had to
19 fire my gun. Or did I fail to mention that
20 I'm in the United States Army and they told
21 me if I hear a gun shot, to fire. But he
22 didn't. That would be the perfect time
23 there.

24 "Do you have anything else you'd
25 like to add?" And you know, as Mr. Mc Call

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1 told under us on the witness stand, he's not
2 a slow person. He is pretty quick, as he
3 indicated here. "I mean it's like I mean
4 nobody in this room is dumb."

5 So of course he's telling the police
6 what he thinks will help him in this
7 confession.---He admits he knows that they
8 have evidence against him. He believes that
9 they can prove he is a shooter in this case
10 and he tells them what he thinks is going to
11 help him. And I tell you that because of
12 course it is not in his interest. He's not
13 dumb. He's not going to say well, I had
14 been talking about carjacking a whole long
15 time. This was my idea. Of course he's not
16 going to say that. But he knew they had
17 evidence against him so he admitted yeah,
18 it's okay, I did fire my gun. I don't know,
19 even know if I hit him but, yes, okay I did
20 fire my gun.

21 So you get back there and decide, I
22 wonder if it's voluntary, and look at that
23 and decide for yourself whether it's
24 voluntary or not.

25 The next part of the confession that

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1 I want you to think about when you get back
2 there is this fear of Von Killingbeck.

3 Mr. Mc Call began his examination today as I
4 pointed out to him by saying Mr. Killingbeck
5 is my high school long time friend. He did
6 not begin his testimony today by saying whew
7 (sic), that is one mean guy that I am
8 deathly afraid of. No. He began by saying
9 that's my long time friend Von Killingbeck.

10 Once again someone the defendant has decided
11 to associate with. Also says this. "Are
12 you scared of Von? No, I'm not. You ever
13 had any run-ins with him, with Von? No."

14 Okay. Once again this would be the
15 time to tell the officer whew (sic), am I
16 glad I'm in custody because I'm frightened
17 of this guy. You see, that's the whole
18 reason I fired my gun. I didn't know what
19 else to do because as he told you at that
20 instant a great sense of fear came upon him
21 with regard to Von Killingbeck.

22 Of course that begs the question and
23 I failed to answer (sic) it because it didn't
24 hit me until later, why not shoot Von
25 Killingbeck? If you're in the car, and the

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1 whole reason -- I mean he's either telling
2 the truth or he's not. The reason he took
3 the gun out is because he's afraid of Von
4 Killingbeck.

5 Then why shoot Kevin Keyes? He's
6 military trained. Surely he knows how to
7 fire a pistol. Clearly he knows how to fire
8 a pistol.

9 But the fear of Von Killingbeck
10 somehow in this crazy scenario is
11 transferred to the Keyes' son and he kills
12 him.

13 Of course Mr. Mc Call realized about
14 mid-way through his examination that the
15 fear or perhaps it was the other way around,
16 the military training may not be quite
17 enough to explain why he would shoot and
18 kill Kevin Keyes. But it was the fear and
19 ultimately the combination of his military
20 training in the United States Army telling
21 him to fire at whatever, whenever you hear a
22 gun shot, and his fear of Von.

23 Certainly if the U. S. military
24 training is anything like that, they would
25 instruct him to fire at least in the

1 direction of the fire that you're receiving.
2 Which was right next to him, in a tiny
3 little Maxima. But instead he shot the
4 person in the front seat.

5 And you know what else hit me? When
6 I realized for sure that has to all be a
7 ~~lie, the fear of Von? Not only did he spend~~
8 the next few days with him running back and
9 forth to be in his company, but I realized
10 for sure that's a lie when he said he hid
11 his gun under Amanda's bed. And Amanda told
12 us her boyfriend said I don't need to carry
13 that gun any more. Okay. This is the guy
14 who's deathly afraid of Von Killingbeck.
15 This is the guy that can sink Von
16 Killingbeck. But that's the time in his
17 life he tells you he has to carry that gun
18 for protection but then he decides to store
19 it under a mattress at his girlfriend's
20 house, despite being deathly afraid of Von
21 Killingbeck.

22 You see, that's a lie that makes no
23 sense whatsoever. He puts his gun under the
24 bed at his girlfriend's house to hide it.
25 Of course. That's the only reasonable thing

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1 that you could possibly draw from it, that
2 it's a lie that he's afraid of Von
3 Killingbeck, or he would pack his gun like
4 he always did.

5 The next part of the confession that
6 I want you to look at is this knowledge of
7 the plan that we're going to carjack
8 somebody.

9 But let me first begin by saying
10 this. You don't need any knowledge of your
11 plan to carjack to be guilty of carjacking
12 and murder. If you get there, and you
13 realize what's happening at that moment, and
14 you participate, then you're guilty. And
15 that's what the Judge is going to tell you,
16 that the hand of one is the hand of all.
17 And that when Mr. Killingbeck initiated a
18 carjacking, that was not the correct
19 response, no matter if you're completely
20 clueless, you see it, you're sitting in the
21 back seat of a Maxima and the person next to
22 you whips out a pistol and shoots the
23 driver, guess what? It's illegal to pull
24 out a pistol and shoot the driver again.
25 Does it make any sense that that would be

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1 okay? No matter how scared you are, how
2 frightened you are, okay, I'll shoot the
3 driver, too. No. It's illegal. It's
4 carjacking. It's murder.

5 So it doesn't matter whether he knew
6 about it ahead of time. When he gave his
7 statement on cross -- on examination he said
8 that he pulled out the gun and somehow I
9 believe his word was that was unintentional.
10 Well, you being at least as smart as me,
11 know you cannot unintentionally pull out
12 your pistol. Okay. That's a lie, too.

13 It's not involuntary. Your body
14 cannot unintentionally pull out a pistol.
15 It cannot unintentionally rack that pistol,
16 load it, and pull the trigger. That is an
17 intentional act, no matter what the
18 defendant, Mr. Mc Call, wants you to
19 believe.

20 And then Mr. Mc Call said I
21 misfired. Well, by his own admission he
22 must have misfired it at least twice. You
23 can't do that. It's not involuntarily,
24 misfiring guns. And why is he misfiring it
25 at Kevin Keyes? Because he's lying. Even

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1 in his confession he is lying. Believe me,
2 I know it's a lie. He is lying. He is
3 diminishing his role even then.

4 But what does he say in his
5 confession about the plan? "Did you ever
6 talk about stealing cars before this
7 happened? Well, Tisha and Von was talking
8 about it and I was like okay, okay."

9 What does that mean? If Tisha and
10 Von are talking about carjacking cars and
11 you're not in on it, then you don't get in
12 to a Maxima with a stranger with a
13 forty-five on Von and a nine millimeter on
14 you. That doesn't make any sense
15 whatsoever.

16 You know, they're talking about
17 stealing some cars. And you're still going
18 to get in a car with them with a stranger
19 with a loaded pistol in your pocket?

20 He also said: "Tisha came home one
21 night from work and she was like I know
22 somebody to jack. I just looked at her and
23 she kept saying. At first nobody paid her
24 no attention. Then she just kept bringing
25 it up a couple of days and then she was like

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1 well, okay, I'm going to call him up. I'm
2 going to call him up and talk to him, and
3 things like that. And the night I saw him
4 was the night we all got into the car."

5 Okay. This is Mr. Mc Call who told
6 us he is not a slow person. There is not a
7 dumb person in the room while he's doing
8 this.

9 The question, I have not taken it
10 out of context, you will read the question
11 and it's: "Did you know about this ahead of
12 time?" And that is what he says.

13 Now what is confusing about that, he
14 clearly knew that Tisha and Von at least
15 were talking about carjacking apparently,
16 "and the night I saw him was the night we
17 all got into the car."

18 "So she laid out the plan for him to
19 go over and you all see some girl? Um, I
20 guess that's the way it happened 'cause when
21 I got to the house it was like everything
22 was already planned out."

23 "But you knew throughout the week
24 prior to this night that Tisha and Von
25 discussed with you about jacking a car and

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1 she knew the guy, the right guy to jack?

2 Yes, sir. Was the right guy that night --

3 was that the right guy that night, was that

4 the guy she was talking about? Yes, sir."

5 This is the man who's not slow.

6 He's not stupid, and that was his answer.

7 --Mr. Ollic goes on to ask him: How

8 did you know that was the right guy?

9 Because when I go downstairs and I saw the

10 car, the Maxima, then I know that was the

11 guy that she was talking about."

12 Ollic: "You knew that was the --

13 that the Maxima was the car to be jacked

14 that night? Yes, sir."

15 Now, keeping in mind you'll find

16 plenty of times in the confession where he

17 says hey, I didn't really know they were

18 going to be real serious about this. I

19 didn't know that it was going to happen for

20 sure that night. I didn't expect it to

21 really ever happen.

22 So? So maybe he didn't think it

23 would actually ultimately happen, but when

24 you find yourself in the car with them and

25 the carjacking begins, the correct response

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1 is not to join in with your pistol and shoot
2 the driver.

3 And there is no amount of protection
4 under the law that you'll hear from Judge
5 Dennis where that could possibly ever be
6 true.

7 "Did that you know the car was going
8 to be taken there and chopped for money.
9 Um, I kind of figured it when they said they
10 wasn't going to drive it and Trey had to do
11 something to it and take the tags off and
12 stuff like that." This was a plan that,
13 according to Quinton and Monique, Mr. Mc
14 Call knew all about. And according to the
15 evidence, he certainly acted like he knew
16 all about it.

17 Other than his statement which is
18 now I didn't really know that that was going
19 to happen, there is no other evidence in the
20 record, period, to support his ignorance of
21 that plan.

22 Because imagine this. Imagine that
23 these people were talking about carjacking
24 unbeknownst to him, and then imagine that
25 somehow you get yourself in that car and

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1 you're unlucky enough to have this military
2 training and these instincts and whatever
3 else was going on, that fear that came up in
4 him, and suddenly you find yourself
5 participating unwillingly in this carjacking
6 and firing your gun and killing the driver.

7 And then somehow you're also into it
8 so that you go to Orangeburg and help there
9 and you hide your gun. And somehow your
10 roommate Monique and your roommate Quinton
11 and Trey Killingbeck are going to say I
12 don't know who did it, but they were all
13 talking about it, including Eric. That is
14 one unlucky fellow, to be an innocent
15 by-stander in all this.

16 You see that is the part that is
17 unreasonable. That's ridiculous. Think of
18 all that had to collide against poor, poor
19 Eric, the innocent by-stander.

20 My least favorite part of the
21 confession and it must be the Keyes' least
22 favorite part, too, has to do with actually
23 shooting Kevin Keyes. And Eric Mc Call had
24 the nerve to say that the U. S. military
25 instilled in him his instinct that when he

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1 hears a gunshot, to react. Well, we know
2 that that is ludicrous and that the U. S.
3 military would never suggest that upon
4 hearing a gunshot you pick up your pistol
5 and fire randomly about the area, which is
6 what he has said that his instinct is.

7 Well, all that to say, I didn't have
8 a target. Okay. You got me. I did fire my
9 gun in the Maxima. It is most unfortunate
10 that Kevin Keyes is dead. I am innocent in
11 this. All of that is totally ridiculous.

12 But then he adds insult to injury by
13 saying I didn't really have a target that
14 evening. All that after he said this:

15 "I heard a blast and at first it
16 kind of shocked me and then I realized what
17 was going on and then I fired my gun twice."

18 Well, this is another one of those
19 very unlucky things for Mr. Mc Call if in
20 fact he is totally innocent, because he --
21 this instinct, this fear of Von Killingbeck,
22 has caused him to not only fire your gun
23 once, where I would think you would have a
24 better chance of convincing a jury man, I
25 don't know what happened. I just reacted.

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1 But he fired it twice. Twice. At
2 least. And what do you know? At the trial
3 we're going to have a medical examiner tell
4 you that yeah, he was shot one time, two
5 times, three times, four times. Okay. We
6 already know Von Killingbeck only shot him
7 once. We know that because Eric said that.

8 Dr. Nichols told you there are three
9 other gunshots. Well, we know that Mr. Mc
10 Call shot him at least twice. "After he
11 shot him once I looked." Of course he
12 looked. How would he know where he shot the
13 defendant -- the victim? How would he know
14 what's going on?

15 "I looked and shot him twice." You
16 know what? If he were telling you the truth
17 that it was this reaction, he's right
18 because he's not dumb. He told us. He's
19 not slow.

20 If it was a reaction, you wouldn't
21 have looked. You wouldn't have known what
22 the victim was doing. But he did know. He
23 said I looked and I shot him twice.

24 "And then after I heard the
25 gunshots, and I just looked up and then by

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1 that time he had opened the door and he was
2 on his way out of the door and he did like
3 this and was falling out, kind of like this,
4 and I just pulled the trigger twice."

5 Okay. Once again we know he's lying
6 about the reaction because if he were
7 telling the truth about the reaction, he
8 wouldn't know all that.

9 He opened the door and he was
10 falling and he was like this. He made some
11 motion to the police officer. He showed him
12 what the guy was doing. He was on his way
13 out the door. He might have been on his way
14 out the door to the hospital, back to
15 college. But that's when Mr. Mc Call
16 decided to shoot him twice.

17 "The first shot was like bam and
18 then I guess he reached for the door and he
19 did like this." Okay. Once again he is
20 gesturing to the police officers, showing
21 them what Kevin Keyes did. And I fired
22 twice, and then he hit the ground, boom."

23 Ladies and gentlemen, this is
24 ridiculous. There's no evidence whatsoever,
25 other than his statement today, that he

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1 didn't have a target. Because you see if he
2 didn't have a target once again we're back
3 to the ridiculousness of his story, if he is
4 unlucky to suffer from this syndrome that
5 makes you shoot randomly and if he is
6 unlucky enough to have been overwhelmed by
7 fear and unlucky enough to have everybody
8 come testify against him, he is also unlucky
9 enough that these random gunshots all hit
10 the victim. Good heavens.

11 You see, that's beyond reasonable.
12 And that's what the Judge is going to tell
13 you about. Because to acquit him, that's
14 what you'd have to believe, that this was
15 all just so incredibly, horribly unlucky.
16 It was. But it was for Kevin Keyes. Not
17 for him.

18 You know Mr. Beauford began this
19 trial by saying and -- let me say this
20 first. Mr. Beauford is a wonderful attorney
21 and a good friend of mine, and I don't mean
22 to insult him. But he began by saying this
23 is a trial about being at the wrong place at
24 the wrong time. And I think it takes a lot
25 of guts to say that, to make that statement

1 here on behalf of Mr. Mc Call in front of
2 Mr. and Mrs. Keyes and the sisters.

3 It was the wrong place at the wrong
4 time for Kevin. Clearly.

5 You've heard nothing disparaging
6 about him. He wasn't in on this. He wasn't
7 running with those thugs that included
8 Mr. Mc Call. He barely knew them.

9 This room is the right place and the
10 chair that Mr. Mc Call is sitting in is the
11 right place for him. Because I tell you now
12 it's the chair that every killer in Berkeley
13 County eventually sits in. It is the same
14 chair that Mr. Killingbeck and Ms. Williams
15 will sit in.

16 But today is the right time for him.
17 He is not a lone murderer. He will not be
18 treated like a lone murderer.

19 I disagree with almost everything
20 Mr. Beauford said except for the part about
21 this all being senseless. And I've been
22 prosecuting for eight years and when you get
23 a case like this the best thing to do, for
24 me anyway, is to not try to make sense out
25 of it because it doesn't make any sense.

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1 There's no way you can go back there with
2 the guns and with the bullets and listen to
3 the confession and reach this calm peace of
4 sense, where you go ah-ha. Now I get it.
5 You won't. I've never done that in eight
6 years, so I offer you that advice as you go
7 back there and consider this crime. Don't
8 worry about making sense out of it because
9 you won't.

10 And the only way now to make any
11 sense out of a completely senseless
12 situation is to convict that killer. I
13 thank you.

14 THE COURT: All right, ladies and
15 gentlemen. You've now completed the closing
16 arguments. Now it's my responsibility as
17 the trial judge to give you an instruction
18 on the law which you, of course, must take
19 as the triers of fact and apply to the those
20 facts that you determine when you begin your
21 deliberations in this trial.

22 Throughout this process you of
23 course have been and it's been your sole
24 responsibility to judge and determine the
25 facts of this dispute. It's your

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1 have indicated that they're able to
2 continue.

3 If there's additional instruction
4 we'll return you to the courtroom. If there
5 are no additional instructions I will
6 discuss with you how much longer you need to
7 remain with us. But you may not return to
8 the jury room.

9 Ladies and gentlemen, I'm going to
10 ask you now to retire to your jury room but
11 do not begin your deliberations until you
12 have received all of the exhibits in this
13 case. Thank you.

14 (The jury leaves the courtroom at
15 3:30 P. M.)

16 THE COURT: Exceptions or additions
17 from the State?

18 MR. GRAY: No, your Honor.

19 THE COURT: Exceptions or additions
20 from the defendant?

21 MR. BEAUFORD: No, your Honor.

22 THE COURT: Other than those previously
23 stated, I assume.

24 MR. BEAUFORD: Yes, your Honor.

25 THE COURT: Very well. Thank you very

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1 much. We will be at ease and thank you all
2 and you all make sure all the exhibits are
3 collected.

4 The jury is allowed to begin
5 deliberations.

6 (The jury begins its deliberations
7 at 3:40 P. M.)

8 (A recess is called at 3:41 P. M.)

9 (The Judge enters the courtroom at
10 4:29 P. M.)

11 THE COURT: Mr. Kennedy, the jury has
12 announced that they've reached a verdict.
13 I'm free now to excuse you or you're welcome
14 to stay in the courtroom, to remain with us.
15 You may take a seat over here if you like or
16 you may sit out in the audience if you want
17 to sit here. You're welcome to sit here and
18 receive the verdict with us. Thank you so
19 much for your involvement in this matter and
20 your participation in this matter, sir. I
21 appreciate it.

22 All right. Let the record reflect
23 that Mr. Mc Call is present. I have been
24 advised that the jury has reached a verdict.

25 Ladies and gentlemen, to say that

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1 this has been an emotional proceeding would
2 be an incredible understatement. To say
3 this has been an emotional experience would
4 be trite because it's been a horrible
5 experience on both sides.

6 I recognize that there are strong
7 ~~emotions in this room and I respect each one~~
8 of you and I want to say now that I commend
9 all the family members whatever, whichever
10 family is here represented for the dig in
11 which you've conducted yourselves throughout
12 this proceeding. I thank you for that. I
13 thank you for honoring this courtroom in
14 this fashion, this process in that fashion.

15 I certainly will understand there
16 will be emotions that will flow once the
17 jury announces its verdict, but I want to
18 continue that same decorum that we've
19 enjoyed throughout this process because
20 their work is a difficult task and they have
21 undertaken that task and they now have
22 completed it.

23 So I'm going to ask you if you feel
24 that you will not be able to control your
25 emotion when you hear the verdict, I'm going

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1 to ask if you just step outside until we
2 take the verdict.

3 And if you stay, you are certainly
4 welcome to stay but by your presence I will
5 assume that you will be honoring that
6 commitment that we've made and that is that
7 this will be a dignified process.

8 So I do not want any outburst at all
9 when the jury's verdict is announced.

10 Thank you very much. Does anyone
11 wish to leave? Thank you. Okay.

12 (The jury enters the courtroom at
13 4:31 P. M.)

14 THE COURT: Miss Ellis, as I
15 understand, the jury has reached a verdict?

16 THE FORELADY: Yes, we have.

17 THE COURT: If you would pass the
18 verdict forms, please, to the clerk.

19 The verdict forms have been properly
20 completed. You may publish the verdict.

21 Defendant will please rise.

22 THE COURT CLERK: Case 98-GS-08-668,
23 the State of South Carolina versus Eric D.
24 Mc Call. We, the jury, by unanimous consent
25 find the defendant, Eric Mc Call, on the

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1 charge of murder, guilty.

2 Case 98-GS-08-669, the State of
3 South Carolina versus Eric D. Mc Call. We,
4 the jury, by unanimous consent find the
5 defendant, Eric Mc Call, on the charge of
6 carjacking, guilty.

7 If that be your verdicts, please
8 signify by raising your right hands.

9 (The jurors all raise their right
10 hands.)

11 THE COURT CLERK: Thank you.

12 THE COURT: Thank you. Anything
13 further from the State?

14 MR. GRAY: No, your Honor.

15 THE COURT: Anything further from the
16 defendant?

17 MR. BEAUFORD: Other than some motions.

18 THE COURT: Some motions.

19 Ladies and gentlemen, thank you very
20 much. That concludes your services in this
21 case and Mr. Kennedy is present as well and
22 these remarks are directed to him also.

23 I want to assure you that what I am
24 thanking you for has nothing to do with what
25 you reported. You and I were assigned a

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1 task and we undertook a commitment, mine
2 through the oath that I took when I assumed
3 this office, yours through the oath that you
4 took when you started this case. And we've
5 tried to do the best we could and we've
6 performed our duties and I commend you and I
7 thank you really for the manner in which you
8 have approached your responsibilities as
9 jurors in this case. It's been an honor,
10 truly an honor, to work with you. This now
11 will conclude it. Of course, that means
12 that you are free to talk about this case if
13 you wish to talk about this case. But on
14 the other hand, if you wish not to talk
15 about this case, that's your right as well.
16 If you just simply tell the person or
17 persons that you're not interested in
18 discussing it, if they persist, if you will
19 simply let the clerk know, Miss Brown, she
20 can let me know and we'll take care of --
21 we'll try to assist you in stopping that
22 harassment.

23 I wish you well. I would love to
24 tell you that you're excused for the balance
25 of the week. You might be. We're

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1 considering what cases we have remaining. I
2 would suggest that you call the number,
3 please, after six o'clock tonight and follow
4 that instruction. And if we don't have any
5 additional cases, the instruction will say
6 that concludes your services.

7 Thank you so much again, ladies and
8 gentlemen. Good luck to each one of you.
9 You're free to leave.

10 Mr. Kennedy, thank you very much,
11 sir.

12 All the alternate it in yes, sir.

13 THE COURT: You're also free to leave
14 but you're also free to stay, whatever.
15 This is your courtroom.

16 All right, Mr. Beauford. Be happy
17 to hear from you.

18 MR. BEAUFORD: Yes, your Honor. I move
19 for a new trial. My motion is based upon
20 earlier in the jury selection several of the
21 jury had indicated that they read and heard
22 this account on the different -- either
23 newspaper or radio or television.

24 And because of them having prior
25 knowledge of this, my client was not

1 afforded a fair trial and we move for a new
2 trial.

3 THE COURT: Thank you, sir. As
4 indicated on the record, none of the jurors
5 except for one, and that juror was excused
6 by the Court. All the other jurors
7 indicated that they were not -- could not
8 recall, would not be influenced or affected
9 by that. But for those reasons and plus the
10 fact that every morning they honored, they
11 took another oath to say that they hadn't
12 read anything or considered anything
13 outside, so for all of those reasons I would
14 respectfully deny that motion.

15 Anything further from the defendant?

16 MR. BEAUFORD: Just like to renew my
17 earlier motions, your Honor.

18 THE COURT: All right. The new trial
19 is denied for the previous -- the previous
20 reasons stated on the record.

21 All right. State ready to proceed
22 for sentencing?

23 MR. GRAY: Your Honor, as you know
24 there are two other defendants in this case
25 who have not been tried. And if Mr. Mc Call

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1 is in agreement, I would request that this
2 Court retain jurisdiction over the
3 sentencing of Mr. Mc Call and that that
4 sentencing be delayed until a later date.

5 THE COURT: What's your client's
6 desire?

7 MR. BEAUFORD: Your Honor, we're in
8 agreement with the delaying of the
9 sentencing at this time.

10 THE COURT: Will you all approach,
11 please.

12 (There is an off-the-record bench
13 conference.)

14 THE COURT: All right. Based on my
15 conference I see no useful purpose in
16 delaying this matter. I understand that
17 Mr. Mc Call may be called upon to testify.
18 I trust that Mr. Mc Call -- I'll leave that
19 to Mr. Mc Call at the appropriate stage
20 insofar as his desire to tell the -- the
21 truth. He's already taken the stand and
22 testified in this matter twice, so I trust
23 he'll do the same thing. But I would
24 decline. I'd rather go ahead and have the
25 sentence imposed.

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1 All right. Anything further from
2 the State?

3 MR. GRAY: Your Honor, Mr. Mc Call has
4 no other criminal record.

5 THE COURT: Okay. Mr. Beauford.

6 MR. BEAUFORD: Your Honor, basically
7 you've heard about Mr. Mc Call, Mr. Mc
8 Call's life. He's twenty years of age,
9 honorably discharged from the Army, father
10 of a small child, married. And basically
11 through the trial you've gotten to know him
12 through the different testimonies and we
13 have nothing else to say.

14 THE COURT: Mr. Mc Call, is there
15 anything you wish to tell me?

16 THE DEFENDANT: Just that you have
17 mercy upon me, your Honor.

18 THE COURT: All right, sir. My prayer
19 this morning when I awakened, Mr. Mc Call,
20 was the Lord give me the strength to do what
21 I ask the jury to do, to not be motivated by
22 any emotion in this case and to not let that
23 fact be factored into my decision insofar as
24 the sentence to be imposed.

25 I've tried numerous times to step

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1 away from it because I'll tell you, the jury
2 has spoken, and in the five years almost
3 that I've been on the bench, I don't believe
4 I've ever seen a more cold-blooded act or
5 actions on the part of a group of people
6 than has been testified to in this case.

7 And it's further compounded by your
8 testimony and now reliance on the fact that
9 you served our country honorably. Quite
10 honestly, sir, I was offended by your
11 inference that your response was because of
12 some training that you received. That
13 disgraces all those persons who have served
14 this country and -- and been taught and who
15 have come back to this and come into this
16 society and live lawfully.

17 But I said you're reacting from
18 emotion. Step away. Look at it fairly and
19 objectively.

20 I have tried to do that, and
21 certainly believe that an offense of
22 murder -- you know and I know what that
23 carries. I have two options. One is a
24 thirty-year sentence. The other is life.

25 Quite honestly, given the fact as

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1 you stated that you're intelligent, that you
2 have had the benefit of a wonderful mother,
3 who testified here, that you have served
4 this country, I cannot understand how I
5 could ever impose a thirty-year sentence if
6 I gave a life sentence, if I gave you a
7 thirty-year sentence. I mean I just -- it
8 just simply -- that has to dictate and
9 command and warrant life. I really believe
10 that considering this offense and all
11 aspects of it and the attitudes of all, it
12 warrants it.

13 In fact, to be honest with you, the
14 punishment aspect of the sentence really
15 demands longer than that, but we know that
16 that's not practical. Life means life.

17 So the sentence of the Court in
18 98-668 is that you be committed to the
19 Department of Corrections for the balance of
20 your life.

21 Sentence in 98-669 and for some --
22 and I do find that the act provides for
23 carjacking fifteen years, unless there's
24 serious bodily injury and that would carry
25 twenty-five years. As a matter of law I

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1 don't think there's any question the
2 evidence supports serious bodily injury.

3 And therefore the sentence of the
4 Court is twenty-five years. That sentence,
5 although, it will be of no effect, is
6 consecutive to 98-668.

7 I pray that you will find some way
8 of talking with your Creator and that you
9 will seek His peace and I wish you well in
10 your endeavors in prison.

11 MR. GRAY: Thank you, your Honor.

12 THE COURT: That concludes this case.
13 we'll be at ease.

14 MR. GRAY: Thank you, your Honor.

15 (Whereupon, Court is adjourned at
16 4:44 P. M.)

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C E R T I F I C A T I O N

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Berkeley County, South Carolina, on the 18th day of November, 1998.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

DATED:

January 30, 1999

Heather Gayle Burns R.M.R.
HEATHER GAYLE BURNS, R.M.R.
Official Court Reporter, 9th Circuit

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
2 COUNTY OF BERKELEY) APPELLATE CASE NO.
3 2017-0008000

4 STATE OF SOUTH)
CAROLINA,)
5 Plaintiff,) Transcript of Record
6 vs.)
7 Date: March 24, 2017
8 ERIC MCCALL,)
Defendants.)

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10 * * * * *

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13 B E F O R E:

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The Honorable Kristi Harrington

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Denise J. Lauder, RPR

22

Ninth Judicial Circuit

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1 A P P E A R A N C E S

2

3 REPRESENTING THE STATE OF SOUTH CAROLINA:

4 ANNE WILLIAMS, ASSISTANT SOLICITOR

5 300B California Avenue

6 Moncks Corner, SC 29461

7

8 REPRESENTING THE DEFENDANT:

9 TRISTAN M. SHAFFER, ESQUIRE

10 225 Columbia Avenue

11 Chapin, SC 29036

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INDEX OF EXHIBITS

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11

(No exhibits were offered or

12

marked for identification.)

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1 (The following proceedings were had
2 3/24/2017, 2:10 p.m., Berkeley County.)

3 THE COURT: We're here on your motion
4 to dismiss; is that correct?

5 MS. WILLIAMS: Yes, Your Honor, and I
6 think we have a couple of stipulations. I handed
7 the Court up a copy of Mr. McCall's three-year
8 driving record that indicates his date of birth is
9 10/13/78. There is a stipulation that that is his
10 date of birth and that he was 19 at the time the
11 crimes were committed.

12 The other thing I handed up was just
13 part of the transcript from trial where he's asked
14 how old he is at that time, which was November 18,
15 1998. And he says he's 20. All of that just goes
16 to the fact that he was chronologically 19 at the
17 time of the crime, and I think we have stipulated
18 to that.

19 MR. SHAFFER: That's correct, Your
20 Honor. And I apologize, there was a warrant out
21 there with an incorrect date of birth.

22 MS. WILLIAMS: There was.

23 MR. SHAFFER: So I apologize; I didn't
24 mean to mislead the Court. I still think my
25 argument is probably just as applicable to a

1 19-year-old as an 18-year-old.

2 MS. WILLIAMS: Yeah, because the law
3 defines the juvenile as under 18. So the argument
4 didn't change, but I think we both had information
5 that his date of birth was actually 1979. And
6 that's why I had to amend my answer, because once
7 we got the driving record we realized.

8 THE COURT: So how old was he at the
9 time the crime was committed?

10 MS. WILLIAMS: Nineteen.

11 THE COURT: And how old was he at
12 sentencing?

13 MS. WILLIAMS: Twenty.

14 THE COURT: And so, again, why are we
15 here, Mr. Shaffer?

16 MR. SHAFFER: And, Your Honor, to back
17 up a little bit, I guess Miller v. Alabama is
18 obviously what Aiken v. Byars is based off. It's
19 not a bright line test. I don't believe it is. I
20 don't believe that he --

21 THE COURT: Well, I think it clearly
22 says under -- Aiken v. Byars expanded our State
23 definition of what a juvenile is, from 17 to 18.
24 For purposes of this hearing, I don't think there's
25 any notation that says this applies to anybody

1 over -- that Aiken v. Byars -- there may be other
2 forms of relief, but for the purposes of this
3 hearing, I don't believe that there's any -- and if
4 you can point me to the case and where in the case
5 that it says that it applies to somebody over the
6 age of 18, I'm happy to look at that, but I have
7 read extensively that case and I haven't seen it.
8 So I'm happy to read along with you.

9 MR. SHAFFER: And, Your Honor, if you
10 will, what I would like to do is, first, obviously,
11 I brought the Court's attention to People v. House,
12 which is an Illinois case, which --

13 THE COURT: Once again, I ask for you
14 to tell me in Aiken v. Byars what allows -- gives
15 me the jurisdiction to be here today on somebody
16 who was 19 when the crime was committed and 20 when
17 he was sentenced. This is not -- from my reading,
18 that's not the purpose of what we're doing here
19 today.

20 MR. SHAFFER: And, Your Honor, I think
21 that I would point your attention to the fact that
22 the -- the Court in Aiken v. Byars states, we
23 profoundly disagree with the position advanced by
24 respondent in the dissent that the import of Miller
25 decision has no applicability to South Carolina.

1 Miller is clear that the failure of
2 sentencing Court to consider the hallmark features
3 of youth to sentence an offender -- offends the
4 constitution, I apologize, Your Honor.

5 It says, the failure of the sentencing
6 court to consider the hallmark features of youth
7 offends the constitution.

8 Your Honor, those hallmark features
9 that they're talking about are not chronological
10 age. They're actually based off of the five
11 factors there --

12 THE COURT: Didn't the Court in Byars
13 specifically extend the age of the juvenile from
14 17, which was statutorily provided for in the state
15 of South Carolina, to include up to someone 18 at
16 sentencing?

17 MR. SHAFFER: And, Your Honor --

18 THE COURT: And there was no -- and so
19 I want you to show me in that case where it says
20 that I can consider for purposes of Aiken V Byars
21 someone over the age of 18.-----

22 MR. SHAFFER: Well, Your Honor, I think
23 that the -- in order -- if the Court was to
24 restrict it only to 18 -- to people under the age
25 of 18, then it would actually offend both the

1 Fourteenth Amendment and the South Carolina
2 Constitution.

3 THE COURT: Isn't that why Aiken V
4 Byars was addressed, anyway because of the Eighth
5 and the Fourteenth Amendment?

6 MR. SHAFFER: It was the Eighth
7 Amendment, Your Honor. They addressed the
8 sentencing based off of the Eighth Amendment. I
9 think that's why they were able to get past the
10 fact that South Carolina is not a mandatory
11 sentencing scheme state for life without parole.

12 You know, South Carolina basically is,
13 you know, obviously, a discretionary sentencing
14 scheme. So they're relying mainly on the Eighth
15 Amendment and saying it offends the Eighth
16 Amendment to not regard those hallmarks of youth.

17 And that's the reason that, you know,
18 they still had to apply it despite the fact that
19 South Carolina sentencing scheme isn't mandatory
20 life without parole for these types of offenders.

21 So, essentially, South Carolina Supreme
22 Court said that they were going to apply it to all
23 juveniles, life without parole people, that they'd
24 have to consider that. Not -- I think that it
25 would be arbitrary for this court, or any other

1 court, to say that there's -- that those factors
2 are not equally applicable to a 19-year-old as they
3 are to a 17-year-old, Your Honor.

4 THE COURT: But I must work within the
5 confines of what Aiken v. Byars is. And nowhere in
6 my reading does it say that it extends beyond the
7 -- Aiken v. Byars was very specific and said, we
8 extend from 17 to 18 inclusive. There is no other
9 place in that case -- and that is the purpose of
10 this hearing and what you filed it under, correct?

11 MR. SHAFFER: Yes, Your Honor. I think
12 that that gave us a -- based off the holding in
13 Aiken v. Byars, that it gave a -- it basically
14 announced a new ruling in South Carolina that for
15 juvenile youthful offenders they must consider
16 these factors. And I think that's why I sought
17 sentencing under it.

18 THE COURT: So once again, your client,
19 today or at the time of sentencing or the time the
20 crime was committed, was not considered a juvenile
21 under the laws of the State of South Carolina, even
22 now, even though Byars has extended that age by a
23 year, correct?

24 MR. SHAFFER: Your Honor, I think that
25 if you were to define it simply as juveniles, but,

1 I guess, the heart of my argument is that there is
2 no rational basis to not apply those hallmarks of
3 youth to someone over the age of 18.

4 THE COURT: But that's not the purpose
5 of this hearing. It's not the purpose of what the
6 intent of that case was. That may or may not be
7 the case, Mr. Shaffer, but this is not the
8 appropriate forum.

9 I must follow the law as I interpret
10 the law. You have given me no reason or nothing in
11 that case that says that I must hear anything above
12 the age of 18, correct?

13 MR. SHAFFER: Your Honor, I think that
14 the --

15 THE COURT: You want me to not follow
16 the law. You want me to give an expansive reading
17 of Aiken v. Byars, correct?

18 MR. SHAFFER: I'm asking the Court to
19 apply the South Carolina Constitution's equal
20 protection clause and the Fourteenth Amendment
21 equal protection clause.

22 THE COURT: Anything I need to know,
23 Ms. Williams?

24 MS. WILLIAMS: Just a couple of things.
25 First of all, just to be clear for the record, he's

1 withdrawing his motion to have you consider the car
2 jacking sentencing under the Aiken v. Byars law
3 because he only got 25 years for that. Just so
4 we're clear, because I think the motion covered
5 both.

6 And then two things, Your Honor. Even
7 if the Court was to have some kind of
8 interpretation of Aiken v. Byars that would extend
9 to a 19-year-old, which we strenuously argue
10 against --

11 THE COURT: And why do you argue
12 against it, Ms. Williams, so the record is
13 abundantly clear?

14 MS. WILLIAMS: Because Aiken v. Byars
15 considered all of the different factors that
16 opposing counsel went into. And after considering
17 that, they chose to expand the age of juvenile from
18 17 to 8, which was a huge step. And that's why
19 courts all over the state of South Carolina are
20 reconsidering juvenile sentences.

21 And they, obviously, took those factors
22 into consideration when they did that. This
23 Defendant does not fall within that because he was
24 19 at the time the crime was committed and he was
25 20 when he was sentenced.

1 Additionally, Your Honor, even if the
2 Court were to do that, and again, we strenuously
3 argue against that, the life sentence that he
4 received does not fall into the Aiken v. Byars case
5 because that only covers mandatory life sentences,
6 and he was not sentenced to a mandatory life
7 sentence.

8 Judge Dennis was able to consider a
9 range of 30 years to life, and Judge Dennis chose
10 to give him life.

11 The case specifically says, we decline
12 the dissent's invitation to set out a specific
13 process for trial court judges to follow --

14 THE COURT: Slow down just a little bit
15 for my court reporter.

16 MS. WILLIAMS: -- to follow when
17 considering whether to sentence the juvenile to
18 life without parole. The United States Supreme
19 Court did not establish a definite resentencing
20 procedure; likewise, I see no reason to do so.

21 We have the utmost confidence in our
22 trial judges to weigh the factors discussed herein
23 and to sentence juveniles in light of this new
24 constitutional jurisprudence.

25 The Court was speaking to the dissent

1 suggesting that in light of Aiken v. Byars we now
2 set out a very specific way judges have to
3 sentence. And what they were saying there is,
4 look, we've always allowed judges to have the
5 discretion to sentence.

6 And, clearly, in this case, Judge
7 Dennis considered the whole range of punishment and
8 he chose life, but Aiken v. Byars talks about a
9 mandatory life sentence and that is not what
10 occurred here. So it's not really just the age
11 that disqualifies this defendant from being
12 considered under Aiken v. Byars. It is also the
13 fact that he did not receive a mandatory life
14 sentence.

15 Additionally, Your Honor, I would just
16 point out for the record that I know that opposing
17 counsel is making the argument that although his
18 chronological age was 19, that we should then
19 consider how old he was in terms of a lots of other
20 factors.

21 This Defendant was not just an ordinary
22 19-year-old. He had been in the service for three
23 years. In that exhibit that I passed up, he's
24 asked how old he was, he's asked where he went to
25 school --

1 THE COURT: I'm only here -- and so I
2 don't -- if you go down that road --

3 MS. WILLIAMS: Well, I understand, Your
4 Honor.

5 THE COURT: Ms. Williams, I'm only here
6 because it is my clear reading and very strict
7 reading of Aiken v. Byars that says it only
8 expanded from 17 to 18 years old. So all I have to
9 review, once it is filed under that, is any
10 individual 18 and below.

11 Mr. McCall -- I have heard no
12 contradictory information that he was anything
13 other than over 18 at the time this sentence was
14 imposed, as well as the time the crime was
15 committed, obviously.

16 Additionally, I show that you have --
17 you filed this outside of the one year; is that
18 correct, Mr. Shaffer?

19 MR. SHAFFER: No, Your Honor. We filed
20 it within the one year time limit there. It would
21 actually be applicable -- the Aiken v. Byars
22 opinion came down and, essentially, was appealed to
23 the US Supreme Court, which would allow 30 days in
24 addition to it.

25 So the expiration of the denial cert

1 basically would have been -- it would have been
2 within the one year, Your Honor.

3 THE COURT: So when was that? When did
4 the time start?

5 MR. SHAFFER: The applicable statute
6 for Aiken v. Byars it's my understanding would be
7 July 1st of 2016. And I would have to go back and
8 look and make sure that that's correct. I filed it,
9 within the one year period after they denied cert.

10 THE COURT: Is that an issue that you
11 have raised, Ms. Williams?

12 MS. WILLIAMS: No, Your Honor.

13 THE COURT: Timeliness?

14 Anything else I need to know?

15 MS. WILLIAMS: Nothing else from the
16 State, Your Honor.

17 THE COURT: And, I'm sorry, who is
18 seated next to you?

19 MS. WILLIAMS: This is our law clerk,
20 Anthony Denmark.

21 THE COURT: All right. Mr. Shaffer, I
22 will allow you final word.

23 MR. SHAFFER: Your Honor, I would ask
24 that the Court consider the reasoning used by the
25 Illinois court in House. It's a very long case,

1 but if you read -- essentially, it starts -- the
2 application of this particular issue will be at 19.
3 Mr. McCall's case is very similar to it.

4 In that case, basically, the Illinois
5 court found that the failure to apply --

6 THE COURT: When was House decided?

7 MR. SHAFFER: This will be 2015.

8 THE COURT: So was it decided before or
9 after Aiken v. Byars?

10 MR. SHAFFER: Your Honor, I believe it
11 would probably be afterwards because it was
12 December of 2015.

13 THE COURT: Okay. And tell me why I
14 should consider that this is controlling.

15 MR. SHAFFER: It's not controlling,
16 Your Honor. I think that it's -- it is essentially
17 what my argument -- or a large part of my argument
18 is, is that it's arbitrary not to apply it to a
19 19-year-old because you're looking at the hallmarks
20 of youth, and it's not a bright line test that's
21 outlined in Miller.

22 It deals with the application of
23 Miller, and I will give the Court a little bit of a
24 warning if the Court's reading through it. They
25 talk about two different Miller cases in this

1 application, one under their State constitution --

2 THE COURT: I will mark this, my
3 reading, as Court's 1 for purposes of this hearing.

4 Thank you.

5 (COURT EXH. 1 in evidence.)

6 MR. SHAFFER: Thank you, Your Honor.

7 THE COURT: Anything else?

8 MR. SHAFFER: No, Your Honor. I would
9 ask that the Court, you know, at least allow me the
10 chance -- not summarily dismiss this and allow me
11 the chance to present evidence as to his age at the
12 actual hearing for resentencing.

13 THE COURT: I do not find -- and,
14 again, I made, I believe, abundantly clear
15 throughout the process of this hearing, that this
16 is the appropriate vehicle for which you may do
17 that.

18 Again, my very strict reading of Aiken
19 v. Byars was expansive only to the age of 18. The
20 Court articulated all of the rationale that you
21 want me to consider in People V House. It has been
22 marked as Court's Exhibit Number 1.

23 I'm granting the State's motion to
24 dismiss. I do not believe that Mr. McCall is the
25 defendant with which Aiken v. Byars was intended to

1 provide relief. Note your exception to my ruling.

2 Mr. McCall, you will have the right to
3 appeal my decision. You must do so within ten days
4 of today's hearing. Good luck to you, sir. Thank
5 you.

6 Thank you, Mr. Shaffer.

7 MR. SHAFFER: Thank you, Your Honor.

8 (These proceedings were concluded at
9 2:26 p.m.)

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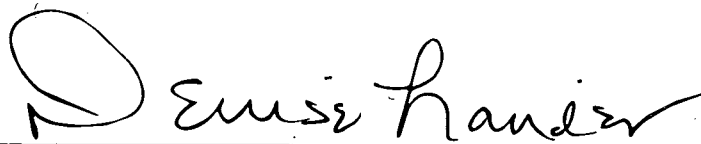
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1 CERTIFICATE OF REPORTER
2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 21st day of March, 2018 at
13 Charleston, Charleston County, South Carolina.
14

15
16 
17

18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 February 27, 2028
23
24
25

AMH
FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY

NINTH JUDICIAL CIRCUIT

17 JAN 27 PM 1:28
MARY P. BROWNCLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA

Motion and Brief to Dismiss

vs.

Arrest Warrant #F437446
Direct Indictment #98GS080669

ERIC MCCALL,

Indictment #98GS080668

DEFENDANT.

Indictment #98GS080669

On May 31, 2016, Petitioner filed a Motion for Resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014), cert. denied, 135 S. Ct. 2379, 192 L. Ed. 2d 179 (2015). The Byars case mandates resentencing for juveniles sentenced to mandatory life in prison. The petitioner was not a Juvenile at the time the crimes were committed; nor did he receive a mandatory life sentence on either charge. Therefore, this case does not fit the criteria of Aiken v Byars and as such the Motion should be dismissed.

Procedural History

On November 18, 1998, Petitioner received a life sentence by the Honorable Judge Markley Dennis after a jury trial on the charge of murder. He also received a twenty-five year sentence on the charge of carjacking. The sentencing sheets are attached hereto and incorporated herein by reference as Exhibits One and Two.

Definition of Juvenile

Petitioner alleges he is entitled to a resentencing pursuant to the provisions of Byars and the United States and South Carolina Constitutions. The Byars case mandates resentencing for juveniles sentenced to mandatory life in prison. Petitioner's date of birth is Oct 13, 1979 and he was not a juvenile on February 23, 1998 when the crimes were committed. Byers specifically addressed the definition of "juvenile" for purpose of the opinion. Referencing South Carolina Law, and Miller v. Alabama, 132 S. Ct.

455, 183 L. Ed. 2d. 407 (2012), the Court stated: "In South Carolina, pursuant to Section 63-19-20 of the South Carolina Code (2010), a juvenile is a person less than seventeen years of age. However, *Miller* extends to defendants under eighteen years of age and therefore for the purposes of this opinion we consider juveniles to be individuals under eighteen." Byars at 537. Because the Petitioner was nineteen at the time he committed the crimes, he does not fit the definition of juvenile under Byars.

Life Sentence

Petitioner was not sentenced to a mandatory life sentence on either carjacking or murder. The petitioner received a twenty-five year sentence on the carjacking conviction¹; and was sentenced to a non-mandatory life sentence on the murder. Both sentences were imposed during a sentencing hearing in which the Circuit Judge considered a range of punishment.² A non-mandatory life sentence is not prohibited by Byars. The Court specifically noted: "Without question, the judge may still determine that life without parole is the appropriate sentence in some of these cases in light of other aggravating circumstances. Our General Assembly has made the decision that juvenile offenders may be sentenced to life without parole, and we honor that decision." The Court further explained that although an "individualized hearing" must be conducted where the "mitigating hallmark features of youth are fully explored"; The Court declined to set out a "specific process" for such a hearing. Byars at 578³

¹ Consecutive to the murder sentence see State's Exhibit two for 1998-GS-08-0669

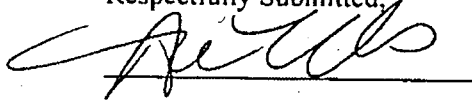
² §16-3-10; §16-3-20 :Homicide carries a range of punishment of imprisonment for thirty years to life if the State does not seek the death penalty.

³ We decline the dissent's invitation to set out a specific process for trial court judges to follow when considering whether to sentence a juvenile to life without parole. The United States Supreme Court did not establish a definite resentencing procedure and we likewise see no reason to do so. We have the utmost confidence in our trial judges to weigh the factors discussed herein and to sentence juveniles in light of this new constitutional jurisprudence. Byars at 578 *Footnote 10*

CONCLUSION

Petitioner was nineteen at the time the above mentioned crimes were committed and therefore does not fit the definition of "juvenile" as set out by Aiken v Byars . Additionally, petitioner was sentenced to twenty-five years on carjacking and a non-mandatory life in prison on murder so further does not fall under the auspices of Byars. Therefore, petitioner's motion should be dismissed and denied without prejudice.

Respectfully Submitted,



Anne Williams

Assistant Solicitor

Moncks Corner SC

January 27, 2017

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

SENTENCE

GENERAL SESSIONS COURT

PLED TO: MurderCASE NO. 98-GS-08-668TICKET/WARRANT NO. F 437446OFFENSE CODE NO. 116COURT REPORTER: Doyle Burns

The defendant, Eric D. McCall, is committed to the State Department of Corrections/Berkeley County Detention Center for a term of Life Imprisonment days / months / years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____

days / months / years and/or payment of \$ _____ plus assessment and collection fee, the balance suspended with probation for _____ months / years.

Special conditions: _____

Restitution (YES/NO) _____ Total \$ _____

to Clerk for _____

Date: November 18, 1998

M. Markley Dean
Presiding Judge, Ninth Judicial Circuit

Base Fine..... \$ _____
62% Assessment \$ _____
3% Collection Fee \$ _____
TOTAL FINE DUE \$ _____

White Copy to Clerk
Canary to Detention Center
Pink to Solicitor

INFORMATION ON DEFENDANT

Age: _____ S.S. No. _____

M _____ F _____ Married _____ Single _____

Date of Birth: _____

Attorney: _____

ALL PAYMENTS MUST BE MADE BY CASH, MONEY ORDER OR CASHIER CHECK. WE CANNOT ACCEPT PERSONAL CHECKS.

MARY P. BROWN, CLERK OF COURT
300B CALIFORNIA AVENUE - P.O. BOX 219
MONCK'S CORNER, SC 29461
761-6900 OR 723-3800 OR 567-3311
EXTENSION 5116

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

GENERAL SESSIONS COURT

SENTENCE

CASE NO. 98-GS-08-669TICKET/WARRANT NO. Direct IndictmentOFFENSE CODE NO. 405COURT REPORTER: Mary Brown

The defendant, Eric D. McCall, is committed to the State Department of Corrections/Berkeley County Detention Center for a term of 25 days / months / years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____

days / months / years and/or payment of \$ _____ plus assessment and collection fee, the balance suspended with probation for _____ months / years.

Special conditions: _____

Consecutive to 98-1068

Restitution (YES/NO) Total \$ _____

to Clerk for _____

Date: November 18, 1998

Mary P. Brown
Presiding Judge, Ninth Judicial Circuit

Base Fine..... \$ _____
62% Assessment \$ _____
3% Collection Fee \$ _____
TOTAL FINE DUE \$ _____

White Copy to Clerk
Canary to Detention Center
Pink to Solicitor

INFORMATION ON DEFENDANT

Age: _____ S.S. No. _____

M _____ F _____ Married _____ Single _____

Date of Birth: _____

Attorney: _____

ALL PAYMENTS MUST BE MADE BY CASH, MONEY ORDER OR CASHIER CHECK. WE CANNOT ACCEPT PERSONAL CHECKS.

MARY P. BROWN, CLERK OF COURT
300B CALIFORNIA AVENUE - P.O. BOX 219
MONCK'S CORNER, SC 29461
761-6900 OR 723-3800 OR 567-3311
EXTENSION 5116

FILED

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
 COUNTY OF BERKELEY 17 JAN 31 PM 12:04 NINTH JUDICIAL CIRCUIT

MARY P. BROWN
 CLERK OF COURT
 STATE OF SOUTH CAROLINA COUNTY, S.C. Amended Motion and Brief to Dismiss

vs.

ERIC MCCALL,

DEFENDANT.

Arrest Warrant #F437446
 Direct Indictment #98GS080669

Indictment #98GS080668
 Indictment #98GS080669

On May 31, 2016, Petitioner filed a Motion for Resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014), cert. denied, 135 S. Ct. 2379, 192 L. Ed. 2d 179 (2015). The Byars case mandates resentencing for juveniles sentenced to mandatory life in prison. The petitioner was not a Juvenile at the time the crimes were committed; nor did he receive a mandatory life sentence on either charge. Therefore, this case does not fit the criteria of Aiken v Byars and as such the Motion should be dismissed. Although the State's previous motion stated the Defendant's correct age at the time he committed the above mentioned crimes; the filing incorrectly stated Defendant's date of birth as October 13, 1979. It is actually October 13, 1978. This Amended Motion and Brief corrects that scrivener's error.

Procedural History

On November 18, 1998, Petitioner received a life sentence by the Honorable Judge Markley Dennis after a jury trial on the charge of murder. He also received a twenty-five year sentence on the charge of carjacking. The sentencing sheets are attached hereto and incorporated herein by reference as Exhibits One and Two.

Definition of Juvenile

Petitioner alleges he is entitled to a resentencing pursuant to the provisions of Byars and the United States and South Carolina Constitutions. The Byars case mandates resentencing for juveniles sentenced to mandatory life in prison. Petitioner's date of birth is Oct 13, 1978 and he was not a juvenile

on February 23, 1998 when the crimes were committed. Byers specifically addressed the definition of “juvenile” for purpose of the opinion. Referencing South Carolina Law, and Miller v. Alabama, 132 S. Ct. 455, 183 L. Ed. 2d. 407 (2012), the Court stated: “In South Carolina, pursuant to Section 63-19-20 of the South Carolina Code (2010), a juvenile is a person less than seventeen years of age. However, *Miller* extends to defendants under eighteen years of age and therefore for the purposes of this opinion we consider juveniles to be individuals under eighteen.” Byars at 537. Because the Petitioner was nineteen years old at the time he committed the crimes, he does not fit the definition of juvenile under Byars.

Life Sentence

Petitioner was not sentenced to a mandatory life sentence on either carjacking or murder. The petitioner received a twenty-five year sentence on the carjacking conviction¹; and was sentenced to a non-mandatory life sentence on the murder. Both sentences were imposed during a sentencing hearing in which the Circuit Judge considered a range of punishment.² A non-mandatory life sentence is not prohibited by Byars. The Court specifically noted: “Without question, the judge may still determine that life without parole is the appropriate sentence in some of these cases in light of other aggravating circumstances. Our General Assembly has made the decision that juvenile offenders may be sentenced to life without parole, and we honor that decision.” The Court further explained that although an “individualized hearing” must be conducted where the “mitigating hallmark features of youth are fully explored”; The Court declined to set out a “specific process” for such a hearing. Byars at 578.³

¹ Consecutive to the murder sentence see State’s Exhibit two for 1998-GS-08-0669

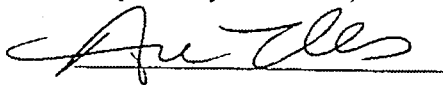
² §16-3-10; §16-3-20 :Homicide carries a range of punishment of imprisonment for thirty years to life if the State does not seek the death penalty.

³ We decline the dissent’s invitation to set out a specific process for trial court judges to follow when considering whether to sentence a juvenile to life without parole. The United States Supreme Court did not establish a definite resentencing procedure and we likewise see no reason to do so. We have the utmost confidence in our trial judges to weigh the factors discussed herein and to sentence juveniles in light of this new constitutional jurisprudence. Byars at 578 Footnote 10

CONCLUSION

Petitioner was nineteen years old at the time the above mentioned crimes were committed and therefore does not fit the definition of "juvenile" as set out by Aiken v Byars. Additionally, petitioner was sentenced to twenty-five years on carjacking and a non-mandatory life in prison on murder so further does not fall under the auspices of Byars. Therefore, petitioner's motion should be dismissed and denied without prejudice.

Respectfully Submitted,



Anne Williams

Assistant Solicitor

Moncks Corner SC

January 31, 2017

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

SENTENCE

GENERAL SESSIONS COURT

CASE NO. 98-GS-08-668TICKET/WARRANT NO. F 437446OFFENSE CODE NO. 116COURT REPORTER: Gayle Burns

PLED TO: Murder

The defendant, Eric D. McCall, is committed to the State Department of Corrections/Berkeley County Detention Center for a term of Life Imprisonment days / months / years and/or to pay a fine of \$ _____ ; provided the sentence be suspended upon the service of _____

days / months / years and/or payment of \$ _____ plus assessment and collection fee, the balance suspended with probation for _____ months / years.

Special conditions: _____

Restitution (YES/NO) Total \$ _____

to Clerk for _____

Date: November 18, 1998

R. Markley Denny
Presiding Judge, Ninth Judicial Circuit

Base Fine..... \$ _____

62% Assessment \$ _____

3% Collection Fee \$ _____

TOTAL FINE DUE \$ _____

White Copy to Clerk

Canary to Detention Center

Pink to Solicitor

INFORMATION ON DEFENDANT

Age: _____ S.S. No. _____

M _____ F _____ Married _____ Single _____

Date of Birth: _____

Attorney: _____

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761-6900 OR 723-3800 OR 567-3311
EXTENSION 5116

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

SENTENCE

GENERAL SESSIONS COURT

CASE NO. 98-GS-08-669TICKET/WARRANT NO. Direct IndictmentOFFENSE CODE NO. 425COURT REPORTER: Maile Burns

The defendant, Eric D. McCall, is committed to the State Department of Corrections/Berkeley County Detention Center for a term of 25 days / months / years and/or to pay a fine of \$ _____ : provided the sentence be suspended upon the service of _____

days / months / years and/or payment of \$ _____ plus assessment and collection fee, the balance suspended with probation for _____ months / years.

Special conditions: _____

Consecutive to 98-668

Restitution (YES/NO) _____ Total \$ _____

to Clerk for _____

Date: November 18, 1998R. Markley Denny
Presiding Judge, Ninth Judicial Circuit

Base Fine..... \$ _____
62% Assessment \$ _____
3% Collection Fee \$ _____
TOTAL FINE DUE \$ _____

INFORMATION ON DEFENDANT

Age: _____ S.S. No. _____

M _____ F _____ Married _____ Single _____

Date of Birth: _____

Attorney: _____

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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 23, 2019



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Attorney for Appellant

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APR 25 2019
SC Court of Appeals