

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marlboro County

Honorable Larry B. Hyman, Circuit Court Judge

DAVID ERIC DIXON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001855

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF MARLBORO) 2013-GS-34-00086
) 2013-GS-34-00087
) 2013-GS-34-00088

STATE OF SOUTH CAROLINA)
)
 PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
)
 DAVID ERIC DIXON)
)
 DEFENDANT)

August 13, 2013
Bennettsville, South Carolina

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE.

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

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Attorney for the State

BRANDON STEEN, PUBLIC DEFENDER
Attorney for the Defendant

JAMIE SEALES, Marlboro County Sheriff's Office

HATTIE O. GORDON
Circuit Court Reporter

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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

MS. DAVID: May it please the Court, Your Honor.

This is the State v. David Eric Dixon. Docket Number 2013-GS-34-0086 where Mr. Dixon was indicted for murder. Docket Number 2013-GS-34-0087 where Mr. Dixon was indicted for attempted murder. And Docket Number 2013-GS-34-2088 where Mr. Dixon has been indicted for possession of a weapon during the commission of a violent crime. We are here today for a bond reconsideration of Mr. Dixon, and it is the State's position that the bond be denied.

THE COURT: Give me the bear bones facts of the allegations, please.

MR. SEALES: December 20th, Your Honor, there is a local pool hall/night club up here in Marlboro County. There were several people gathered there playing pool socializing. The victim, Mr. Bristo, was there prior to Mr. Dixon's arrival. Mr. Dixon came to the establishment. There was a brief altercation inside, verbally. They went outside. There was another altercation. Mr. Dixon pulled a firearm on the victim, Mr. Bristo. Mr. Bristo turned to run. Mr. Dixon shot him in the back three times. Two dead center. One at an angle.

He died of those wounds, and Mr. Dixon fled the scene. He was later arrested a couple of hours later at his residence close to the crime scene. We recovered the

1 gun and other pieces of evidence along with a statement
2 from the defendant with the -- our position is the same as
3 the Solicitor's Office that he is -- he has a prior record
4 also, and he's a clear and present danger. A threat to
5 the community, and we would be -- I mean we stand by that.

6 THE COURT: Mr. Steen, why in the world do you think
7 I would give him a bond reduction based on this set of
8 facts?

9 MR. STEEN: Well, Your Honor, he's -- he has been in
10 the jail for a -- well, not a significant portion of time.

11 THE COURT: Sir?

12 MR. STEEN: He's been in jail for seven months, and
13 he wanted another chance to be heard on his bond.

14 THE COURT: I'll be glad to hear from him, but I
15 would conclude that based on the allegations here coupled
16 with, apparently, a confession. Did I hear that?

17 MR. SEALES: Yes, sir, Your Honor.

18 THE COURT: Individual shot in the back three times
19 and a prior record. There is no way in the world he's
20 going to get a bond. I'll be glad to hear from him. What
21 is it you want to tell me?

22 MR. DIXON: I was just hoping to get a bond, sir.

23 THE COURT: Sir?

24 MR. DIXON: I was just hoping to get a bond, sir, so
25 I could ---

1 THE COURT: No way in the world anybody gone give you
2 a bond under this set of facts. We're gone give you a
3 jury trial and let the jury determine whether you're
4 guilty or not. But from what I'm hearing the witnesses
5 said that you shot this unfortunate victim while he was
6 running in the back three times.

7 In addition to that you've given some statement
8 implicating you. No, sir.

9 MR. SEALES: Your Honor, one more thing I'd like to
10 put on the record. There was a second victim.

11 THE COURT: Sir?

12 MR. DIXON: There was a second victim also who was
13 shot in the head. He had a grazing wound across the top
14 of his head. He was actually the owner, the operator of
15 the establishment.

16 THE COURT: Well, now let me ask you this. He's been
17 in jail six or seven months with this set of facts why
18 don't you go ahead and try him?

19 MS. DAVID: Your Honor, if I may. We are prepared to
20 move forward with this case the week of September 30th.
21 We have made an offer to the Defendant for 25 years, and
22 it is the State's position that we're asking that he
23 accept that offer before August 26th. And if not we're
24 prepared to move to trial revoking the offer and that's
25 it.

1 Your Honor, I also have one other additional thing I
2 would like to address while we're before you. The
3 Defendant does have an active Facebook page going. We
4 have several incident reports regarding or surrounding
5 these circumstances that have happened over the past few
6 months. I would like to ask that the victim [sic] please
7 have no contact -- the Defendant please have no contact
8 with the victim's family.

9 THE COURT: I'm going to require that. You
10 understand me?

11 MR. DIXON: Yes, sir.

12 MR. STEEN: Your Honor, he's been in the jail so I
13 don't know how he had access of Facebook.

14 THE COURT: Who on his behalf has had some kind of
15 contact?

16 MR. STEEN: None. He's been in jail.

17 MS. DAVID: Your Honor, we have an active Facebook
18 page.

19 THE COURT: He's been in jail. He couldn't have done
20 it.

21 MS. DAVID: No, sir, Your Honor. We do believe that
22 it is his sister that is acting on his behalf, but it is
23 creating a problem within our community.

24 THE COURT: Well, if the sister is doing that and you
25 can prove it indict her.

1 MS. DAVID: Yes, sir.

2 THE COURT: Warn her first, and then if she persists
3 then indict her. See if she is or is not, but that sort
4 of conduct is not going to be permitted by this Court.

5 MS. DAVID: Yes, sir. Thank you.

6 THE COURT: She is doing that you can send word by me
7 that if it continues I'm going to have her indicted and
8 then we'll let a jury decide whether or not to convict
9 her. If convicted she's going to jail.

10 MS. DAVID: Thank you. That's exactly what I needed
11 you to do.

12 THE COURT: The victim, I'm not going to let a
13 defendant or a defendant's family harass a victim's family
14 in any regards. I don't know the victim's family or the
15 defendant's family, but I'm not going to be a party to
16 that. Now, do you understand that you are set for trial
17 in September? Do you, Defendant?

18 MR. DIXON: Yes, sir.

19 THE COURT: Does he hear me?

20 MR. STEEN: Yes, sir. I think he thought you were
21 talking to me, Your Honor.

22 THE COURT: No, I'm talking to him, now.

23 MR. DIXON: Yes, sir.

24 THE COURT: Do you understand that this case is going
25 to trial in September?

1 MR. DIXON: Yes, sir.

2 THE COURT: Who are these folks behind him?

3 MS. DAVID: Your Honor, we have the Sheriff's Office
4 here for security, and we have the victim's family. We
5 have the victim, Christopher Bristo; his mother, Miss
6 Melissa, and her stepfather present along with other ---

7 THE COURT: The victim's family heard what I said
8 that I specifically deny bond, period. Set him for trial
9 in September.

10 Now, Mr. Defendant, listen to me very carefully. How
11 old are you?

12 MR. DIXON: Twenty-two, sir.

13 THE COURT: Talk a little louder for me.

14 MR. DIXON: Twenty-two.

15 THE COURT: And how far did you go in school?

16 MR. DIXON: Ninth grade.

17 THE COURT: If convicted of murder you are facing 30
18 years or life in prison in the Judge's discretion in which
19 event you would serve every day of the 30 years if he gave
20 you that or life imprisonment without parole. Do you
21 understand that?

22 MR. DIXON: Yes, sir.

23 THE COURT: In addition to that you would be looking
24 at 20 years under the assault and battery with intent to
25 kill under the second case. Do you understand that, Mr.

1 Defendant?

2 MR. DIXON: Yes, sir.

3 THE COURT: They tell me, I'm not a party to it. I
4 have nothing to do with it. They tell me that they have
5 offered you a possible negotiated sentence. Is that
6 right, Mr. Steen?

7 MR. STEEN: Yes, Your Honor.

8 THE COURT: Have you conveyed that to him?

9 MR. STEEN: Yes, Your Honor.

10 THE COURT: It is to his interest to know what I'm
11 getting ready to say. That proposal will not be available
12 to you when this case is set for trial in September. At
13 that time all the witnesses would have been assembled.
14 All the victim's family would have been notified. Your
15 family would have been notified, and that offer will not
16 be on the table.

17 Mia, how long do you propose to leave that proposal
18 there?

19 MS. DAVID: Until our next term of court with you on
20 August 26th.

21 THE COURT: After August 26th it will not be
22 available.

23 MS. DAVID: Yes, sir.

24 THE COURT: Do you understand that?

25 MR. DIXON: Yes, sir.

1 THE COURT: I've been on the bench now 30 years, and
2 I have seen so many defendants think that at the last
3 minute they can get the same deal from three months ago.
4 I as trial judge have nothing to do with that. If she
5 says, "Week after next that offer is over," it's over.
6 And at that time you will be set for trial to face the
7 charges of murder and attempted murder. Do you understand
8 that?

9 MR. DIXON: Yes, sir.

10 THE COURT: All right, just so long as -- now, your
11 attorney has advised you of that, has he not?

12 MR. DIXON: Today, sir.

13 THE COURT: Sir?

14 MR. DIXON: Today.

15 THE COURT: Well, I've found from experience that
16 there are experiences where people decide not to take the
17 offer, get convicted and on appeal the first thing that
18 they say is that my lawyer didn't tell me. In fairness to
19 you I'm telling you, too.

20 I'm not suggesting to you that you do or do not.
21 That's not my call. I'm just saying to you that that
22 proposal will not be available after week after next. I
23 just want you to understand.

24 MR. DIXON: Yes, sir.

25 THE COURT: All right. Thank you so much. Bond is

1 denied.

2 END OF TRANSCRIPT OF RECORD

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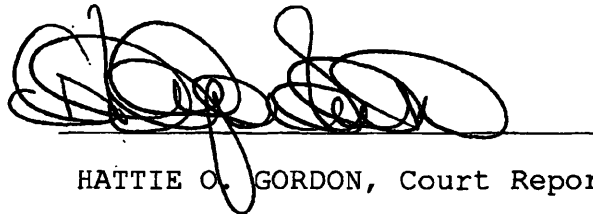
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Marlboro County, South Carolina, on the 13th day of
August, 2013.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

April 3, 2014

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

HATTIE O. GORDON, Court Reporter

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF MARLBORO) CASE NO: 2013-GS-34-0086,
3 0087 & 0088

4 **B E F O R E:** The Honorable J. Michael Baxley
5 October 28 - 31, 2013

6 STATE OF SOUTH CAROLINA,

7 Plaintiff,

8 vs.

9 DAVID ERIC DIXON,

10 Defendant.

11

12 **APPEARANCES:**

13 Mia David, Esq.,
14 Mary Johnson-Lee, Esq.
15 Shipp Daniel, Esq.

16 Attorneys for the State.

17 Brandon Steen, Esq.
18 Nick Lewis, Esq.

19 Attorneys for the Defendant.

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 **ORIGINAL**

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NO. DESCRIPTION

1 Waiver of Rights form

2 Waiver of Rights form

3 Colored photo

4 Colored photo

5 Colored photo

6 Colored photo

7 Waiver of Rights form

8 Autopsy report

9 Medical report - Garner

10 Medical report - Bristow

11 Serology analysis

12 Items of Evidence form

13 Items of Evidence form

14 Crime scene summary

15 Search warrant

16 Consent to search

17 Colored photo

18 Colored photo

19 Colored photo

20 Colored photo

21 Colored photo

22 Colored photo

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25 Colored photo

26 Colored photo

27 Colored photo

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1 E X H I B I T S

2	No.	Description
3	29	Colored photo
	30	Colored photo
4	31	Colored photo
	32	Colored photo
5	33	Colored photo
	34	Bullets from autopsy
6	35	Johnson gun
	36	Smith & Wesson gun
7	37	Fingerprint cards
	38	Cartridges and shells
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22 NO DEFENSE EXHIBITS WERE MARKED

23

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25

P R O C E E D I N G S

1
2 THE COURT: Ladies and gentlemen, welcome to the
3 courtroom. Madam Solicitor, call your first case to
4 trial.

5 MS. DAVID: May it please the Court. Your Honor,
6 we are here for the State versus David Eric Dixon,
7 Docket 2013-GS-34-0088 for possession of a weapon
8 during the commission of a violent crime. Docket No.
9 2013-GS-34-0087 for attempted murder, and Docket No.
10 2013-GS-34-0086 for murder.

11 THE COURT: Thank you. Mr. Steen or Mr. Stephens,
12 you represent Mr. Dixon with regard to these charges?

13 MR. STEEN: Yes, Your Honor.

14 THE COURT: How does he plead to all three?

15 MR. STEEN: Not guilty.

16 THE COURT: Ladies and gentlemen, you heard the
17 case called. You heard the entry of a plea of not
18 guilty, thus the issues are joined for trial, and
19 we'll proceed to pick a jury in the matter of State
20 versus Dixon.

21 Let me speak to our jury panel for a moment
22 about this process. I know that many times when you
23 are sitting as you are, you hear a question asked and
24 you think, Gosh, you know, maybe that doesn't apply
25 to me, or, I don't want to stand up and call

JURY SELECTION

1 attention to myself, I don't want to embarrass
2 myself. I'll ask you to do the opposite of remaining
3 seated. If you have some belief or some inkling, you
4 should stand and give us the benefit of whatever
5 information you have, please do so when a particular
6 question is asked. The purpose of this process is to
7 make sure that whatever jury we draw is disinterested
8 in this case. When I say "disinterested," I don't
9 mean that you don't care, I mean you don't have some
10 connection to a case that would make you an
11 inappropriate juror for this case. There are no
12 wrong answers in jury qualifications, so don't
13 hesitate to stand up and give us a response if you
14 believe you should do so.

15 We're going to start by having the lawyers
16 introduce themselves, give us the names of the
17 complaining witnesses or the deceased, as well as who
18 your chief prosecuting officer is, and then we'll
19 move to the defense. We'll start with introductions.

20 Go ahead, Counsel, introduce yourself.

21 MS. DAVID: May it please the Court. My name
22 is Mia David, and I am the lead counsel on this case.
23 Assisting me, I have Assistant Solicitor Ms. Mary
24 Thomas Johnson-Lee. We also will have Assistant
25 Solicitor Daniel from Dillon, South Carolina. Our

JURY SELECTION

1 lead investigator on this case is Mr. Jamie Seales
2 with the Marlboro County Sheriff's Office. In the
3 case before us this week, we will have two victims,
4 one which is deceased, his name is Christopher
5 Bristow, and one which is still alive and with us,
6 Woodrow Garner. We have a witness list that --

7 THE COURT: Let's go back. We'll come back to
8 witnesses in a moment. Thank you. Mr. Steen, if you
9 would introduce yourself and any co-counsel you have
10 as well as your client to the jury panel.

11 MR. STEEN: My name is Brandon Steen. I'm
12 representing Mr. David Dixon here along with Public
13 Defender Michael Stephens, also Nick Lewis, a public
14 defender from Dillon.

15 THE COURT: Mr. Dixon, if you could stand and face
16 the jury panel so they can see whether or not they
17 know you. Please be seated. I believe you told us
18 that Mr. Garner is in the courtroom; is that correct?

19 MS. DAVID: Yes, Your Honor.

20 THE COURT: Mr. Garner, will you stand and face
21 the jury panel as well? Thank you, sir. You may be
22 seated.

23 THE COURT: Ladies and gentlemen of the jury, let
24 me first ask about the lawyers. You were introduced
25 to counsel for the State and for the defense, and the

JURY SELECTION

1 lawyers for the prosecution are -- Ms. David
2 introduced herself, Ms. Johnson-Lee seated with her
3 and also Mr. Daniel who will come over from -- also
4 in the solicitor's office, but works in the Dillon
5 office primarily.

6 I'm asking about the lawyers now for the
7 State, is any member of the jury panel related to
8 them by blood or marriage, have some close business,
9 professional or social connection or believe somehow
10 that you have -- that they have represented you in
11 the past in some other matter, other than these
12 cases? Ma'am, please tell your name and juror
13 number.

14 JUROR: Robin Sally, Juror 181.

15 THE COURT: Thank you. I asked a multi-part
16 question. Why are you standing?

17 JUROR: I'm related to Mia David.

18 THE COURT: How are you related to Ms. David?

19 JUROR: Her father is my first cousin, so we're
20 second cousins.

21 THE COURT: Very good. Just one moment.

22 (A pause in the proceedings.)

23 THE COURT: Ms. Sally, let's do this, I'm certain
24 that you would be a proper and appropriate juror, but
25 because you are related by blood to one of the

JURY SELECTION

1 solicitors, I'm going to remove you from this case.
2 That is so there will not be an appearance of
3 impropriety for anyone who would review this record
4 to feel that someone who was on the jury had some
5 close connection to a solicitor.

6 Just one moment, please. Ms. David, I believe
7 you said that you -- this would be your one case you
8 are going to call?

9 MS. DAVID: Yes, Your Honor.

10 THE COURT: I'll let you remain with us until we
11 reach the end of the qualifications. I'm not certain
12 whether that would be revisited or what would occur,
13 so you don't need to answer any more questions about
14 this case, just remain seated. Thank you, ma'am.
15 Anyone else who would stand and say they are related
16 to or connected to the solicitors in this case?

17 I ask about the defense counsel. You heard
18 the name of Mr. Lewis who would be coming from
19 another office of the public defender's office for
20 the Fourth Judicial Circuit, and Mr. Steen and Mr.
21 Stephens are here. So I'll ask you if any member of
22 the jury panel is related by blood or marriage or
23 have a close business, professional or social
24 connection to them to your knowledge or think you
25 have been represented by them in some matter

JURY SELECTION

1 unrelated to this case previously, if any of that
2 applies to you, please stand. Let the record reflect
3 no one stood.

4 The solicitor's office has offices in all four
5 counties, as does the public defender's office. I'll
6 ask you whether there is any member of the jury panel
7 who somehow does business with either the solicitor's
8 office or the public defender's office, whether that
9 be as a vendor or an independent contractor, have you
10 been represented by these offices in some other
11 matter unrelated to this either as a victim of a
12 crime or perhaps someone charged with a crime or an
13 immediate family member charged with a crime, if any
14 of you have had previous connection to the Solicitor
15 or public defender's office in those fashions, please
16 stand. Let the record reflect no one stood in
17 response to the Court's additional questions.

18 Ladies and gentlemen, now let's talk about the
19 principals in the case. We talked about the lawyers,
20 so let's talk about the parties. First of all, I
21 want you to understand and make a comment about a
22 term you may have heard used a moment ago by
23 Ms. David, and that is the word "victim." When you
24 hear the word "victim" you assume or you presume
25 perhaps that a crime has occurred, that someone was

JURY SELECTION

1 injured or perhaps is deceased as a result of that
2 crime and, thus, we refer to that person as a
3 "victim." A term I generally use is "complaining
4 witness." The reason I use that term is whether or
5 not a crime occurred here, and whether or not the
6 defendant was involved in that crime is for the jury
7 to decide, and it is not one that we make
8 introductions for there to be any presumption about
9 whether any party is connected to that crime or
10 whether a victim of an incident that may or may not
11 have been a crime. Again, this is something for the
12 jury to decide, so the Court and the lawyers at this
13 point take no position in that. So if you hear that
14 term, just understand that that is a term of art,
15 it's not meant to convey some idea or concept.

16 You heard the names of, first of all,
17 Detective Seales, who will be the chief prosecuting
18 officer, the case officer in this case. You heard
19 the name Mr. Christopher Bristow, who is deceased --
20 is that a juror who left the room? We need to seal
21 the back door because we can't have the juror leave
22 during qualifications. Was that one of the jurors?

23 THE BAILIFF: Yes.

24 THE COURT: Please check on them and bring them
25 back in the room.

JURY SELECTION

1 Ladies and gentlemen, thank you for your
2 patience for the one juror who left the room. We'll
3 be back with you.

4 (A brief pause in the proceedings.)

5 THE COURT: Please seal the door. No one else
6 leaves the room while we're qualifying the jury.

7 Back to where I was. Officer Seales is going
8 to be the chief detective in the case, that is the
9 prosecuting officer. You heard the name of
10 Christopher Bristow, who is deceased. As well as you
11 met Mr. Woodrow Garner, who is present in the
12 courtroom. You also were introduced to Mr. Dixon in
13 this matter.

14 Now, first to the State's side of the case
15 with regard to Mr. Bristow and Mr. Garner, as well as
16 Mr. Seales. Is there any member of the jury panel
17 related by blood or marriage to any of those
18 individuals, have some close business or professional
19 or social relationship with them, or even think you
20 know those individuals? If that applies to you,
21 please stand. This will take us a moment or two, so
22 begin in the front. Tell me your name and jury
23 number.

24 JUROR: I'm not sure of the jury number.

25 THE COURT: Tell me your name.

JURY SELECTION

1 JUROR: Ashley.

2 THE CLERK: Clerk 214.

3 THE COURT: This is Juror 214. Tell me, ma'am,
4 why you are standing.

5 JUROR: I know Mr. Garner real close.

6 THE COURT: When is the last time you have seen,
7 him before today?

8 JUROR: About two weeks ago.

9 THE COURT: And would the fact that he is one of
10 the complaining witnesses in this case, would that
11 prevent you, in your opinion, from being fair and
12 impartial if you were a juror?

13 JUROR: No.

14 THE COURT: When you say you are real close, what
15 is the nature of your relationship? A friendship?

16 JUROR: Yeah.

17 THE COURT: Can you set that aside and serve as a
18 juror and be fair and impartial in this case?

19 JUROR: Yes, sir.

20 THE COURT: Are you certain of that?

21 JUROR: Yes, sir.

22 THE COURT: I find that you are qualified about
23 your response. Thank you, you may be seated. Ma'am,
24 tell me your name.

25 JUROR: Cindy Rogers, 175.

JURY SELECTION

1 THE COURT: Which one of the parties are you
2 standing for?

3 JUROR: Woodrow Garner.

4 THE COURT: You know Mr. Garner as well? Are you
5 related to him, or --

6 JUROR: I just know him.

7 THE COURT: When is the last time you saw him
8 before today?

9 JUROR: Saturday night at the restaurant I work.

10 THE COURT: What is name of your restaurant?

11 JUROR: Outlaws.

12 THE COURT: Would the fact that you know Mr.
13 Garner in that capacity, that you've seen him in your
14 business, would that prevent you from being fair and
15 impartial if you were a juror in this case?

16 JUROR: No, sir.

17 THE COURT: Are you certain of that?

18 JUROR: Yes, sir.

19 THE COURT: I find you are qualified by your
20 response. Thank you. Ma'am, tell me your name and
21 number.

22 JUROR: 81, Mildred Grooms.

23 THE COURT: Which one of the parties are you
24 standing for?

25 JUROR: Woodrow Garner.

JURY SELECTION

1 THE COURT: How is it you know him?

2 JUROR: My sister-in-law is married to his uncle.

3 THE COURT: Let me get that. His uncle is married
4 to your sister-in-law, so you are not related by
5 blood and, really, not by marriage to Mr. Garner?

6 JUROR: No, but I know him.

7 THE COURT: When is the last time you saw Mr.
8 Garner before today?

9 JUROR: I don't know.

10 THE COURT: Would the fact that you have that
11 connection to him somewhat distant through marriage
12 through different families, would that prevent you
13 from being fair and impartial in this case?

14 JUROR: No, sir it, would not.

15 THE COURT: Are you certain of that?

16 JUROR: Yes, sir.

17 THE COURT: I find you are qualified by your
18 response, thank you. Ma'am, tell me your name.

19 JUROR: Tonya Alford, Juror 4.

20 THE COURT: Which one of the witnesses are you
21 standing for?

22 JUROR: Woodrow Garner.

23 THE COURT: How do you know him?

24 JUROR: Just socially.

25 THE COURT: When is the last time you have seen

JURY SELECTION

1 him before today?

2 JUROR: It's been a few months.

3 THE COURT: Would the fact that you know him in
4 that capacity, would that prevent you from being fair
5 and impartial in this case?

6 JUROR: No, sir.

7 THE COURT: Are you certain of that?

8 JUROR: Yes, sir.

9 THE COURT: I find you are qualified, thank you.
10 Ma'am, tell me your name.

11 JUROR: Juror 216, Amanda Flowers Williams.

12 THE COURT: Which one of the witnesses or parties
13 are you standing for?

14 JUROR: I went to high school with Mr. Garner.

15 THE COURT: How long has it been since you seen
16 him?

17 JUROR: 15 years.

18 THE COURT: Would the fact that you know him
19 through that capacity from some years ago, would that
20 prevent you from being fair and impartial in this
21 case?

22 JUROR: No, Your Honor.

23 THE COURT: Are you certain of that?

24 JUROR: Yes, sir.

25 THE COURT: I find you are qualified, thank you.

JURY SELECTION

1 Let's go the back row. Give me your --

2 JUROR: Vickie Nolan, 147. I know both of them.
3 We were at my mom's store during the time this
4 happened.

5 THE COURT: When you say you know both of them,
6 you know Mr. Bristow as well as Mr. Garner?

7 JUROR: Yes, sir.

8 THE COURT: Would that prevent you from being fair
9 and impartial in this case?

10 JUROR: I just -- I don't know.

11 THE COURT: Well, let me ask it this way. First
12 of all, so everyone knows, it is not uncommon that
13 someone knows someone from the jury pool that would
14 be involved in the case. The question is can you put
15 that fact that you know them, can you -- would that
16 prevent you from being fair and impartial as a juror?
17 Another way is, could you follow the law I give you,
18 apply it to the facts as you find them and weigh
19 those facts fairly and impartially and make a
20 decision putting out of your mind the fact that you
21 may or may not know all or part of the parties? Can
22 you do that?

23 JUROR: (Nods head.)

24 THE COURT: That is a yes?

25 JUROR: Yes.

JURY SELECTION

1 THE COURT: Are you certain of that?

2 JUROR: Yes, sir.

3 THE COURT: Based on that response, I find you are
4 qualified, ma'am. You may be seated.

5 JUROR: 174.

6 THE COURT: Tell me, ma'am, which of the parties
7 or witnesses are you standing for?

8 JUROR: Both sides.

9 THE COURT: Of this case?

10 JUROR: Yes, sir.

11 THE COURT: That is Mr. Dixon, as well as Mr.
12 Garner and Mr. Bristow?

13 JUROR: Yes, sir.

14 THE COURT: Are you related to any of them by
15 blood or marriage?

16 JUROR: No, sir.

17 THE COURT: When is the last time you saw any of
18 them, ma'am?

19 JUROR: Mr. Bristow's family owns a store by my
20 home, so I see some of his family members. Mr.
21 Dixon, I attended school with his mother, but had not
22 talked to her or seen her since this incident.

23 THE COURT: Would the fact that you have those
24 connections to both sides of the case as you have
25 described, would that prevent you from being fair and

JURY SELECTION

1 impartial if you are called as a juror in this case?

2 JUROR: No, sir.

3 THE COURT: Are you certain of that?

4 JUROR: Yes, sir.

5 THE COURT: I find you are qualified, ma'am.

6 Thank you for your response. Sir, tell me your name
7 and --

8 JUROR: 202.

9 THE COURT: Which one of the parties are --

10 JUROR: Mr. Garner.

11 THE COURT: And how is it that you know Mr.
12 Garner?

13 JUROR: Friends and co-worker.

14 THE COURT: What was the last thing?

15 JUROR: We were once co-workers.

16 THE COURT: When is the last time since you've
17 seen Mr. Garner?

18 JUROR: Not since the incident. It's been a
19 while.

20 THE COURT: Tell me that one more time.

21 JUROR: Been a while.

22 THE COURT: Would the fact that you know him in
23 that capacity and worked with him in the past prevent
24 you from being fair and impartial in this case?

25 JUROR: No, sir.

JURY SELECTION

1 THE COURT: Are you certain of that?

2 JUROR: Yes, sir.

3 THE COURT: I find you are qualified by your
4 response, thank you. Anyone else who would stand to
5 say they are connected to or know some of the
6 principals? Again, we're asking about the principals
7 in this case for either side. If so, please stand.
8 Let the record reflect that no one has stood in
9 response to the Court's question.

10 Now, Madam Solicitor, I'm going to ask you
11 please to publish the names of potential witnesses
12 who may be called as witnesses. Ladies and
13 gentlemen, if you are in the courtroom and hear your
14 name, please stand so they can see you. Go ahead.

15 MS. DAVID: Potential witness list is as follows:
16 Hosea Lemon, James Campbell, Brittany English, Shawn
17 Feldner, Susan Alderman, James Seales, Larry Turner,
18 Michael Moskal, Michelle Eichenmiller, Jennifer
19 Clayton, Dawn Claycomb, Woodrow Garner, Christopher
20 Sanchez, Sonya Caulder, Kerry Lynn Clark, Trey Clark,
21 Travis Lee Pruitt, Dustin Locklear, Brandi Jones,
22 Brian Gratia, Hardik Parekh, Johnny Roscoe, John
23 Walters, Erin Presnell.

24 THE COURT: Ladies and gentlemen, when I ask you
25 about the principals in this case, the parties, I ask

JURY SELECTION

1 if you knew them. My questions about the witnesses
2 are not so close. What I'm looking for is whether
3 you are related by blood or marriage to any of the
4 witnesses that was called by the State or have some
5 close business, professional or social connections to
6 them. If that applies to you, please stand.

7 Ma'am, give us your name and number.

8 JUROR: Debora Byus, No. 27.

9 THE COURT: Ms. Byus, tell me which one of the
10 witnesses are you standing for.

11 JUROR: Kerry Clark.

12 THE COURT: What is your connection to that
13 witness?

14 JUROR: We are friends and co-workers.

15 THE COURT: All right. Would the fact that you
16 know an individual who may be a potential witness in
17 the case, would that prevent you from being fair and
18 impartial in this case, in your opinion?

19 JUROR: Probably.

20 THE COURT: In other words, you are telling me it
21 would be difficult for you to put out any connection
22 you have to that witness and you would be biased in
23 this matter; is that what you are saying?

24 JUROR: It would be difficult, yes.

25 THE COURT: Based on your response, I'll remove

JURY SELECTION

1 you as a juror in this case. What I'll do is I'll
2 let you be seated, as I did a moment ago, and you
3 don't need to respond to any further questions.
4 Thank you for your candor. At the end of this
5 process, we'll get back to you.

6 Ma'am?

7 JUROR: Cindy Rogers, 175.

8 THE COURT: Which one of the witnesses are you
9 standing for?

10 JUROR: Brandi Jones.

11 THE COURT: What is your connection to that
12 witness?

13 JUROR: She was one of my employees. She no
14 longer works for me. Also, she has stayed at my
15 residence.

16 THE COURT: How long ago has that been?

17 JUROR: About six months.

18 THE COURT: Would the fact that you know a
19 potential witness for the State, and this was a list
20 of potential witnesses, would that prevent you from
21 being fair and impartial in this case, in your
22 opinion?

23 JUROR: No, sir.

24 THE COURT: Based on your response, I find that
25 you are qualified. Thank you for your candor.

JURY SELECTION

1 Anyone else who would stand to say that they
2 are -- that they have some connection to the
3 witnesses' names who were just called?

4 Ladies and gentlemen, I'm going to turn to the
5 defendant, but before I do, I want to speak to the
6 jury panel so we have this full understanding without
7 question. Under South Carolina law and, really, any
8 court in our nation, the defendant never has a burden
9 of proof in a criminal court. The defendant does not
10 have to prove himself innocent of any charge. The
11 burden is on the State to prove the defendant guilty.
12 As a result of that, the defendant is not required to
13 put up a case, not required to respond to the charges
14 and not required to testify, not required to call
15 witnesses. They may wish to do so, and we'll ask
16 about it, but they have no burden of proof.

17 The burden of proof doesn't shift to the
18 defendant during the course of the trial. So I ask
19 you now, Mr. Steen, realizing that and that the
20 defendant doesn't need to call witnesses, are there
21 individuals that I should inquire of the jury panel
22 who may be additional witnesses other than the ones
23 called by the State?

24 MR. STEEN: None, Your Honor.

25 THE COURT: Very good, thank you. Ladies and

JURY SELECTION

1 gentlemen, in my hand I have three pieces of paper.
2 These are the indictments which have been filed in
3 this case. An indictment is just simply that. It is
4 a piece of paper by which the prosecution commences a
5 criminal charge against an individual. What's in an
6 indictment is simply a set of allegations. They are
7 not to be accepted as evidence because indictments
8 are not evidence and they are not accepted to be as
9 truth, because the truth is going to be determined by
10 the jury from the witnesses in the case who will
11 testify on the witness stand and the exhibits, not
12 because it says something on a piece of paper.

13 I'll tell you the allegations are contained in
14 these indictments, so I can then ask you whether you
15 know something about this case from any source,
16 whatever that source may be. The first indictment
17 has to do with the possession of a weapon during the
18 commission of a violent crime. This indictment
19 alleges that David Eric Dixon did, in Marlboro
20 County, on or about December 20, 2012 possessed a
21 firearm or visibly displayed what appeared to be a
22 firearm during the commission or attempted commission
23 of a violent crime against the laws of South
24 Carolina.

25 There is also an indictment for attempted

JURY SELECTION

1 murder, and that indictment alleges that on that same
2 date that David Eric Dixon did, with the specific
3 intent to kill, shoot and attempt to kill Woodrow
4 Garner with malice aforethought, either expressed or
5 implied, in violation of South Carolina law.

6 Then the indictment for murder alleges that on
7 the same date and time, that is in Marlboro County,
8 December 20, 2012, David Eric Dixon did willfully,
9 feloniously and intentionally killed the victim,
10 Christopher Bristow, with malice aforethought either,
11 expressed or implied, and that the victim did die as
12 a result of those wounds.

13 These are the allegations. I ask you, ladies
14 and gentlemen, is there any member of the jury panel
15 who knows something about this case from whatever
16 source it may be; if so, please stand. If you have
17 some knowledge about this case, from whatever source
18 it may be, please stand. Let the record reflect that
19 no one has stood in response to the Court's question.

20 All right. Now, ladies and gentlemen, I want
21 to ask a little bit more about your involvement in
22 the justice system, if at all, or in some other
23 organizations that may be connected in the justice
24 system. I want to ask whether there is any member of
25 the jury panel who is a member of an organization

JURY SELECTION

1 that has as its purpose the advocate for and the
2 protection of the rights of victims of crime or the
3 advocacy of protection for law enforcement officers,
4 such as with regard to law enforcement officers the
5 South Carolina Sheriff's Association, the South
6 Carolina Law Enforcement Officers Association or any
7 other organization of that nature or with regard to
8 victims in the protection of victims' rights
9 organizations such as Mothers Against Drunk Driving,
10 MADD; Citizens Against Spousal Abuse, CASA; Citizens
11 Against Violent Crimes, which we call CAV, and let me
12 say there is nothing wrong with being a member of any
13 of these organizations, I just simply ask to know if
14 you are. If that applies to you for any of those
15 organizations or any similar organizations whose name
16 was not called, please stand. Let the record reflect
17 that no one stood in response to the Court's
18 question.

19 Ladies and gentlemen, I want to ask now of
20 you, the jurors, if any of you have been employed
21 previously in law enforcement, whether you've worked
22 full time as a law enforcement officer, or perhaps
23 part time as a volunteer in law enforcement. If
24 you've worked in that capacity, either now or in the
25 past, please stand. We have one juror. Tell me your

JURY SELECTION

1 name and number.

2 JUROR: Anthony Ellison, Juror No. 55.

3 THE COURT: You work currently as a substance
4 abuse or drug counselor; am I correct?

5 JUROR: Yes.

6 THE COURT: What past employment have you had or
7 connection of law enforcement?

8 JUROR: North Carolina Department of Corrections.

9 THE COURT: How long ago has that been?

10 JUROR: 15 years ago.

11 THE COURT: Would the fact that you had that
12 position previously prevent you from being fair and
13 impartial in this case somehow?

14 JUROR: No, sir.

15 THE COURT: I find you are qualified by your
16 response. Thank you for your response.

17 Anyone else who would stand to say that you,
18 the juror, has previously been employed by or
19 connected to law enforcement? All right. Let the
20 record reflect no one stood.

21 The next question is immediate family, and
22 I'll ask you a series of questions of immediate
23 family. This is how we define immediate family for
24 purposes of these questions. Your immediate family
25 is your spouse and your children, regardless of where

JURY SELECTION

1 they live, spouse and children, plus anyone else
2 living in your household. So I want to ask now if
3 there is any member of the jury panel who has a
4 member of the jury panel currently working in law
5 enforcement, presently working in law enforcement; if
6 so, please stand. Let's -- ma'am, tell me your name
7 and juror number.

8 JUROR: Morgan Taylor, I don't remember.

9 THE COURT: Your name?

10 JUROR: Morgan Taylor.

11 THE COURT: Ms. Taylor, tell me which family do
12 you have?

13 JUROR: My sister-in-law is a correctional
14 officer.

15 THE COURT: Here in South Carolina?

16 JUROR: Uh-huh.

17 THE COURT: She would not be involved in this
18 case, but would the fact that she works in that
19 capacity prevent you from being fair and impartial in
20 this case?

21 JUROR: No.

22 THE COURT: I find you are qualified by your
23 response.

24 I want to ask now if there is any member of
25 the jury panel who ever has been a victim of a

JURY SELECTION

1 violent crime? Now, I'm going to define "violent
2 crime" as any incident that involves interpersonal
3 violence, such as an attack, a fight, a shooting,
4 whatever it may be, if you've ever been a victim of a
5 violent crime, please stand. Let the record reflect
6 no one stood in response to the Court's question.

7 Now, ladies and gentlemen, I want to ask you
8 about members of your immediate family as I just
9 defined them. If any of you have a member of your
10 immediate family that's ever been a victim of a
11 violent crime, please stand. Let the record reflect
12 no one stood.

13 I ask you now, ladies and gentlemen, because
14 there is two sides to every question we ask in this
15 court, if there is any member of the jury panel, you,
16 the juror, or a member of your immediate family who
17 have ever been accused of perpetrating, that is
18 committing a violent crime? If that applies to you,
19 please stand. Let the record reflect no one stood in
20 response to the Court's question -- tell me your --

21 JUROR: Sandra Williams. Can I talk to someone
22 personally?

23 THE COURT: I'll let you be seated for now, and at
24 the end I'll give you an opportunity to come up.
25 Very good.

JURY SELECTION

1 Anyone else who wishes to respond to the
2 question that I just asked? All right. Just a
3 moment, please.

4 (A brief pause in the proceedings.)

5 THE COURT: My last question for the jury panel,
6 and I'll let them come up and answer privately, is
7 whether for some reason you cannot serve as a
8 juror -- we'll come back to that in a moment. Before
9 I ask that final question, are there further
10 questions from the State with regard to jury draw?

11 MS. DAVID: Nothing further.

12 THE COURT: Defense?

13 MR. STEEN: Yes, Your Honor. We would like to ask
14 if any member of the jury panel has spoken to any of
15 the witnesses today, this morning.

16 THE COURT: Very good. Thank you. Ladies and
17 gentlemen, we have -- in Marlboro County we're
18 fortunate to have a nice courthouse and we have one
19 circuit courtroom, so we're here in the same
20 courtroom including individuals that you saw stand a
21 moment ago who may be witnesses in the case who are
22 aligned with the prosecution of the case. I want to
23 ask now among the jury panel, because you are
24 actually sitting on the same half of the room, if
25 there is any member of the jury panel who has spoken

JURY SELECTION

1 to any of the individuals who are here who may be
2 witnesses or members of the family of individuals who
3 are connected to the prosecution; if that has
4 happened to you, if you are a member of the jury who
5 has spoken to one of these individuals, please stand,
6 if you will. All right. Let the record reflect that
7 no one has stood.

8 Let me say to you, ladies and gentlemen, that
9 it is probably best, in fact not probably, but it is
10 the best procedure for us to follow, and I'm not
11 asking you to be rude because we live in the same
12 county, but it is best during the course of this jury
13 draw and once our jury is drawn not to speak to
14 individuals in the courthouse, or outside for that
15 matter, who are on one side or another because it
16 creates an appearance of impropriety and raises
17 concerns for others who may see that conversation
18 even if it is a polite hello, so please be aware of
19 that. Anything further from defense?

20 MR. STEEN: Nothing.

21 THE COURT: Very good. Let me come down where I
22 can speak closely to the jury panel. I realize that
23 you are summoned here, and no one volunteered for
24 jury service, nor did you have anything to do with
25 the case that would be called here, but you heard the

JURY SELECTION

1 allegations, heard what the indictment is, and now I
2 ask you, ladies and gentlemen, please be honest with
3 us if there is any member of the jury panel who
4 believes that because of some personal belief, some,
5 perhaps, religious or moral belief or principle that
6 you would not be an appropriate juror in this case,
7 for whatever reason, for one side or another, please
8 stand and I'll give you an opportunity to discuss
9 that privately at the court reporter's stand if that
10 applies. We have one young lady who wishes to speak.
11 Anyone else who wishes to say whether they're
12 concerned that they may not be an appropriate juror
13 for this case; if so, please stand. We have a second
14 juror. You may stand and we'll be back with you.
15 Anyone else?

16 Again, the Court is not going to challenge you
17 or argue with you, we simply ask whether or not you
18 have some belief that you may not be an appropriate
19 juror for this case. Ma'am, I'll let you be seated
20 and we'll get back with you. Anyone else? So we've
21 had three individuals, and if you would, come right
22 here and we'll talk with you one at a time at the
23 court reporter's stand. For the rest of you, if you
24 will give us a moment, we'll be back.

25 THE BAILIFF: 220.

JURY SELECTION

1 (The following was had at a sidebar out of the
2 hearing of the potential jury panel.)

3 THE COURT: Ms. Williams, how are you? Tell me
4 why you wish to come forward.

5 JUROR: I just want to make sure. You asked if
6 somebody had a family member that had been a victim
7 of a crime, I just -- this wouldn't bother me to be
8 on the jury because it was my oldest daughter was a
9 victim of something.

10 THE COURT: And how long ago has it been?

11 JUROR: About 15 years.

12 THE COURT: Was it a murder?

13 JUROR: No. No. Nothing like that. I just
14 didn't know what you were referring to as a violent
15 crime.

16 THE COURT: All right. Was it a sexual assault?

17 JUROR: Uh-huh.

18 THE COURT: And would the fact that -- which is
19 not involved in this, but would that prevent you from
20 being fair and impartial just based upon --

21 JUROR: No, sir, Your Honor.

22 THE COURT: I find you are qualified. Thank you
23 for your candor in coming forward.

24 JUROR: I'll tell you, I know that he used to live
25 down the street from my dad, but I don't know him.

JURY SELECTION

1 It won't bother me.

2 THE COURT: Thank you for that.

3 THE BAILIFF: 199.

4 THE COURT: How are you, Ms. Taylor. Tell me why
5 you are coming forward.

6 JUROR: I know Mr. Dixon.

7 THE COURT: How is it that you know him?

8 JUROR: We went through high school together and
9 friends.

10 THE COURT: And what?

11 JUROR: And we were friends. We had classes
12 together.

13 THE COURT: How long has it been since you saw
14 him?

15 JUROR: Maybe a year or two.

16 THE COURT: And would the fact that you know him
17 in that capacity prevent you from being fair and
18 impartial in this case?

19 JUROR: Probably.

20 THE COURT: Well, I don't want to put you in a
21 situation where you would feel compromised, because
22 you have to make difficult decisions, so I'll remove
23 your name from this case. You don't have any further
24 responsibilities. If you will return to your seat
25 momentarily.

JURY SELECTION

1 THE BAILIFF: 130.

2 THE COURT: How are you?

3 JUROR: Fine. How are you?

4 THE COURT: Fine, thank you. Why are you coming
5 forward?

6 JUROR: I work all night long and I don't know
7 whether I would stay awake.

8 THE COURT: Where do you work?

9 JUROR: Inaberry.

10 THE COURT: I'll release you from jury duty in
11 this case, and I'll let you go back to your seat and
12 we'll release you from the room in a moment. Good
13 luck to you.

14 (The following was a sidebar between the judge
15 and attorneys.)

16 THE COURT: It is my intention to release four
17 jurors, two of which were during qualifications that
18 came it and discussed with us, and two of which you
19 just heard, Ms. Taylor and the last juror who says
20 she works all night and doesn't think she can stay
21 away. Given the gravity of what we have, I believe
22 the best thing is to release them. Is there any
23 objection to releasing the four jurors now?

24 MS. DAVID: No objection.

25 MR. STEEN: No objection.

JURY SELECTION

1 THE COURT: Do we have their numbers? I think it
2 is 9, 95, and 199 and 130. We'll confirm it with
3 Ashley. I'll be right back. You can go to your
4 chairs.

5 (The following was had in the presence of the
6 jury.)

7 THE COURT: Ladies and gentlemen, we just want to
8 confirm that we've released the following jurors, and
9 so stand when your number is called. Juror 109, 27,
10 Juror No. 95, Juror 130, Juror 199. Hold on just one
11 moment. Anyone else who believes they have been
12 released by the Court in this case? We'll release
13 you at this time, and you are free to leave. At this
14 time you don't have any further responsibilities as a
15 juror this week.

16 Now, ma'am, you are related to Ms. David as
17 well as I understand, please remind me again what was
18 your juror number?

19 JUROR: 181.

20 THE COURT: We'll release you.

21 All right. Now, ladies and gentlemen, let me
22 tell you what is going to happen now so you'll have
23 an understanding of this process, and, Counsel, if
24 you want to turn your back to the Court and face the
25 jury, you are welcome to. We have used a computer

JURY SELECTION

1 system to randomly select the names of the following
2 jurors, so all of the jurors who remain. So in no
3 particular order your name will be called, and when
4 your name is called, I'll ask you to stand, please,
5 and then both sides will have an opportunity to
6 either seat you or excuse you. If you are accepted,
7 that is if you are seated, I'll ask you to get out of
8 your chair and bring whatever you have with you, not
9 because you are going to be sequestered, you are just
10 going to be seated in the jury box. If you are
11 excused, then I'll ask you to be seated where you
12 are. I cannot release you immediately because we may
13 have to revisit the issue, but that is the way the
14 process is going to go.

15 That was an explanation, but I'll tell you
16 what is really going to happen. You are going to
17 stand, and when your name is called, and you are
18 going so see folks talking at the table, you know
19 they are talking about you, and we know, and it is a
20 little psychological, and we'll either excuse you or
21 seat you. In some courts you stand up in front of
22 everybody and that is a little evasive, so we'll let
23 you stand where you are. If you are struck, which is
24 the word we use, or excused, don't be offended by
25 that. That may be what you want, I don't know, that

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1 is your choice. But if you are not chosen, it may be
2 because of some answer or issue we discussed in the
3 courtroom today, it may be because of something
4 written on a jury form. It may be some other
5 strategy or tactic that only the lawyer knows, but
6 I'll tell you this, it is not -- it is not because of
7 your sex or your race, it is against the law to
8 strike for those reasons. Both sides have an
9 opportunity to challenge the other side's strikes,
10 which is why I can't let you go immediately if you
11 are excused. So understanding that, it will not be
12 for those reasons. Is the State ready to strike?

13 MS. DAVID: Yes, Your Honor.

14 THE COURT: Defense ready to strike?

15 MR. STEEN: Yes, Your Honor.

16 THE COURT: Clerk, are you ready to go? We're
17 waiting on the computer to generate the list. We'll
18 be at ease, and then ready to proceed.

19 How many strikes claimed by the State?

20 MS. DAVID: Five, Your Honor.

21 THE COURT: Defense.

22 MR. STEEN: Ten.

23 THE COURT: Statute gives five to the State, ten
24 to the defendant. Mr. Clerk, please proceed.

25 THE CLERK: First thing I need to tell you is when

JURY SELECTION

1 I call your name, I know you will panic, but watch
2 your step on the sides, and whenever you do, if you
3 are elected to go into the jury box, when I call your
4 name if you'll stand like the judge told you.

5 No. 1 (sic), Vickie Nolan. What says the
6 State?

7 MS. DAVID: Please present the juror.

8 THE CLERK: What says the defendant?

9 MR. STEEN: Please excuse the juror.

10 THE CLERK: 148, Whitney Odom. What says the
11 State?

12 MS. DAVID: Please present the juror.

13 THE CLERK: What says the defendant?

14 MR. STEEN: Please seat the juror.

15 THE CLERK: Watch your step, and please come on
16 down, ma'am.

17 No. 214, Ashley Wiggins. What says the State?

18 MS. DAVID: Please present the juror.

19 THE CLERK: What says the defendant?

20 MR. STEEN: Please excuse the juror.

21 THE CLERK: Have a seat, ma'am. 123, Jamarcus
22 Martin. What says the State?

23 MS. DAVID: Please strike the juror.

24 THE CLERK: Have a seat, please. 178, Olivia
25 Rowe. What says the State?

JURY SELECTION

1 MS. DAVID: Please present the juror.

2 THE CLERK: What says the defendant?

3 MR. STEEN: Please seat the juror.

4 THE CLERK: Come on down, please, ma'am. No. 174,
5 Virginia S. Robinson. What says the State?

6 MS. DAVID: Please present the juror.

7 THE CLERK: What says the defendant?

8 MR. STEEN: Please excuse the juror.

9 THE CLERK: No. 53, Wayne Easterling. What says
10 the State?

11 MS. DAVID: Please present the juror.

12 THE CLERK: What says the defendant?

13 MR. STEEN: Please seat the juror.

14 THE CLERK: Come on down, sir. 141, Marc A.
15 Moore. What says the State?

16 MS. DAVID: Please present the juror.

17 THE CLERK: What says the defendant?

18 MR. STEEN: Please seat the juror.

19 THE CLERK: Come on down. 122, Kathy Manning.
20 What says the State?

21 MS. DAVID: Please present the juror.

22 THE CLERK: What says the defendant?

23 MR. STEEN: Please seat the juror.

24 THE CLERK: Come on down. 16, Edmond K. Blue.
25 What says the State?

JURY SELECTION

1 MS. DAVID: Please present the juror.

2 THE CLERK: What says the defendant?

3 MR. STEEN: Please strike the defendant.

4 THE CLERK: 156, Ashley Perhealth. What says the
5 State?

6 MS. DAVID: Present the juror.

7 THE CLERK: What says the defendant?

8 MR. STEEN: Please seat the juror.

9 THE CLERK: Come on down, please, ma'am. No. 81,
10 Mildred S. Grooms. What says the State?

11 MS. DAVID: Please present the juror.

12 THE CLERK: What says the defendant?

13 MR. STEEN: Please excuse the juror.

14 THE CLERK: Have a seat. 220, Sandra C. Williams.
15 What says the State?

16 MS. DAVID: Please present the juror.

17 THE CLERK: What says the defendant?

18 MR. STEEN: Please excuse the juror.

19 THE CLERK: 121, Randall S. Malichi. What says
20 the State?

21 MS. DAVID: Please present the juror.

22 THE CLERK: What says the defendant?

23 MR. STEEN: Please seat the juror.

24 THE CLERK: Come on down, please, sir. 138,
25 Stacey Mcneil. What says the State?

JURY SELECTION

1 MS. DAVID: Please present the juror.

2 THE CLERK: What says the defendant?

3 MR. STEEN: Please seat the juror.

4 THE CLERK: Come on down. 134, Hazel R. McLain.

5 What says the State?

6 MS. DAVID: Please present the juror.

7 THE CLERK: What says the defendant?

8 MR. STEEN: Please seat the juror.

9 THE CLERK: Come on down. 191, Drayton A.

10 Strickland. What says the State?

11 MS. DAVID: Please strike the juror.

12 THE CLERK: You can have a seat. No. 4, Tonya R.

13 Alford. What says the State?

14 MS. DAVID: Please present the juror.

15 THE CLERK: What says the defendant?

16 MR. STEEN: Please excuse the juror.

17 THE CLERK: 119, Luther J. Lynch. What says the

18 State?

19 MS. DAVID: Please present the juror.

20 THE CLERK: What says the defendant?

21 MR. STEEN: Please seat the juror.

22 THE CLERK: Come on down, sir. No. 40, Patricia

23 B. Collins. What says the State?

24 MS. DAVID: Please present the juror.

25 THE CLERK: What says the defendant?

JURY SELECTION

1 MR. STEEN: Please excuse the juror.

2 THE CLERK: 140, Richard M. Miller. What says the
3 State?

4 MS. DAVID: Please strike the juror.

5 THE CLERK: Have a seat. 212, Dennis Watson.
6 What says the State?

7 MS. DAVID: Please present the juror.

8 THE CLERK: What says the defendant?

9 MR. STEEN: Please seat the juror.

10 THE CLERK: Come on down. 201 Charles T.
11 Tevepaugh. What says the State?

12 MS. DAVID: Please present the juror.

13 THE CLERK: What says the defendant?

14 MR. STEEN: Please seat the juror.

15 THE CLERK: Come on down, please, sir. That is
16 our 12, Your Honor.

17 THE COURT: Mr. Clerk, choose two alternates, two
18 for the defense and one for the State as to each
19 alternate.

20 THE CLERK: 56, Carolyn P. English. What says the
21 State?

22 MS. DAVID: Please present the juror.

23 THE CLERK: What says the defendant?

24 MR. STEEN: Please seat the juror.

25 THE CLERK: Come on down. 48, Robert Douglas.

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1 What says the State?

2 MS. DAVID: Please present the juror.

3 THE CLERK: What says the defendant?

4 MR. STEEN: Please seat the juror.

5 THE CLERK: That completes it.

6 THE COURT: Thank you, Clerk.

7 I know you started this morning with safety in
8 numbers in a large group out there and we've had the
9 first jury drawn. How many of you have served on a
10 jury whether it is civil or criminal? Raise your
11 hand if have you been on a jury before. Okay. So we
12 have some experience there in the jury box. So I'll
13 say to you, those who find yourself there for the
14 first time, don't be uncomfortable about where you
15 are because jurors need two tools to serve well, and
16 you have them both. The first is your ability to
17 listen, and the second is your collective
18 commonsense. Armed with those two things, you'll
19 find yourself in good shape.

20 Just one moment, ladies and gentlemen. Back
21 to counsel, are there objections to the procedure
22 used by this Court to draw this jury or the strikes
23 employed by the other side? What says the State?

24 MS. DAVID: None from the State.

25 THE COURT: What says the defense?

JURY SELECTION

1 MR. STEEN: None from the defense.

2 THE COURT: Step up and let's talk about
3 scheduling a moment, please.

4 (Whereupon, a bench conference was had.)

5 THE COURT: Let me speak to the two different
6 groups of jurors separately. I'll speak to the
7 jurors in the jury box. We are not going to start
8 this trial immediately. What we're going to do is
9 we're going to begin the trial tomorrow at 2 o'clock.
10 The reason for that is that there are some other
11 commitments that are not related to this case made
12 months ago for the Court that are related to the
13 Darlington County Courthouse, as well as some time
14 needed to prepare the exhibits, make sure everything
15 is ready to go to make sure the trial is much more
16 efficient once the testimony and part of the trial
17 begins.

18 So I'll release you for the day and for the
19 morning tomorrow and ask you to be back in the jury
20 room at 2 o'clock tomorrow afternoon. Make sure
21 you've had lunch and are ready to go. A couple of
22 things I want to say to you. First of all, don't
23 feel like you need to undertake some sort of
24 investigation in this matter now that you've been
25 picked, whether that is the Internet or on the

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1 street, or however it may be. Just go get a good
2 night's rest and come back tomorrow.

3 Secondly, please don't speak to anyone about
4 the facts of this case. We don't even know what the
5 facts of this case are and don't have enough to have
6 a discussion. Specifically what is going to happen
7 is your loved ones is going to want to know what is
8 this case about. If you tell them and begin to try
9 to discuss it, I don't want them to say something
10 that may influence you outside of the bounds of this
11 courtroom that none of us know anything about. So
12 tell your loved ones at home that the Court
13 instructed you not to talk about the case until it is
14 over with, and then you can discuss it fully, or if
15 you don't want to, you can say the judge said don't
16 talk about it. While the trial is in process, please
17 don't discuss it with your loved ones at home.

18 Are there any questions from the jury about
19 scheduling or about that request? All right. Seeing
20 none, we'll let you go at this time for the remainder
21 of the day, and tomorrow morning and be back at
22 2 o'clock tomorrow afternoon in the jury room and
23 Mr. Brown will walk out with you and show you where
24 the jury room is. While you do that, we'll remain
25 where we are out of respect for you. Have a nice

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1 day, ladies and gentlemen, and you are free to go for
2 the day. We'll see you tomorrow at 2:00.

3 (The sitting jury exits at 12:36 p.m., and the
4 following is heard out of the presence of the jury.)

5 THE COURT: To the remainder, I know you are
6 disappointed that you were not chosen in this case,
7 but I'll simply say this, thank you for participating
8 in the process. There will be no further jury draws
9 for this week. You are finished with jury service
10 for the week, and you are certainly finished for the
11 day and free to go, have a good day.

12 (The potential jury panel exits at 12:36 p.m.)

13 THE COURT: As our jury leaves, is there anything
14 further today on this record we need to take up with
15 respect to this case from the State?

16 MS. DAVID: Nothing from the State.

17 MR. STEEN: Nothing from the defense, Your Honor.

18 THE COURT: Jackson V. Denno, you suspect will
19 take an hour-and-a-half?

20 MS. DAVID: Yes, Your Honor, about an
21 hour-and-a-half.

22 THE COURT: Are there other issues other than
23 that?

24 MR. STEEN: No, Your Honor.

25 THE COURT: Then we will be in recess until

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1 9:30 tomorrow morning. This case will not have any
2 further business in this case today. We'll take this
3 matter up for pretrial issues at 9:30 tomorrow
4 morning. We have other administrative business to
5 take up at this time, but that concludes this issue
6 for this case for today until 9:30 in the morning.

7 (Whereupon, the proceedings concluded for
8 October 28, 2013, and resumed at 9:36 a.m., October
9 29, 2013 where the following took place.)

10 THE COURT: Back on the record in the matter of
11 State versus Dixon. I understand, before we begin
12 our hearings, there is issues that defense wishes to
13 discuss with the Court or place on the record that
14 may have to do with the offer or status, if any, that
15 is still outstanding, the status of this case, and I
16 would be glad to hear from you, Mr. Steen.

17 MR. STEEN: Thank you, Your Honor. I just wanted
18 to put on the record that the defense did file a
19 motion to keep the State's offer opened, which at the
20 time was 25 years of voluntary manslaughter, and that
21 was filed on September the 9th. I just want to put
22 on the record that this Court has declined to hear
23 that motion.

24 THE COURT: Let's talk about that a little
25 further. First of all, what is the basis of that

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1 motion that you make?

2 MR. STEEN: Your Honor, we were waiting for
3 evidence to come in that could be friendly to my
4 client in regards to the possibility of the murder
5 trial, and mainly the attempted murder trial, because
6 there were multiple gunshots fired. So we were
7 waiting for the ballistic report. At soon as we got
8 it in, we contacted the Solicitor to accept the
9 offer, and at that time the offerSolicitor was
10 withdrawn by the Solicitor. At that time, I E-mailed
11 Mr. Scruggs, and Your Honor declined to hear the
12 motion.

13 THE COURT: Is it your position that you believe
14 that to have been an unfair sequence of events to
15 your client?

16 MR. STEEN: Yes, Your Honor. I don't think it was
17 an unreasonable request. My client wanted to see the
18 evidence against him before he accepted the State's
19 offer on such a serious offense, and I agreed. So we
20 waited for the evidence to come in, and as soon as I
21 took the evidence to Mr. Dixon, he looked at it,
22 said, Okay, I'll plead, and I called the Solicitor
23 immediately, but I think it is unreasonable against
24 our client.

25 THE COURT: You say by that time the deadline had

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1 passed?

2 MR. STEEN: Yes, sir. Per the Solicitor
3 yesterday, I think she said that the deadline passed
4 on August 26th. We did have a conference with Your
5 Honor for the continuance on September 12th. At
6 that time, based on that, I thought the offer was
7 still opened. I'm not sure exactly at what point it
8 was withdrawn or if the deadline was put on the
9 record, but I thought that it remained opened.

10 THE COURT: All right. Thank you. So that those
11 who are reviewing this record will have a full
12 understanding of both sides of this coin, let me hear
13 from the State, Ms. David, if you wish to respond to
14 what the defense is saying.

15 MS. DAVID: It is my understanding that the first
16 week in August the State did -- along with Judge
17 Cottingham -- make an offer to the defendant for 25
18 years for voluntary manslaughter. That was to expire
19 if it was not accepted by the August 26th term, and
20 along with that offer, the case was to be tried the
21 week of September 30th. A week after the
22 August 26th term of court, that was like a non-jury
23 term that we turned into a general sessions term, a
24 week after that the defendant made a motion for a
25 continuance of the trial based on the fact that the

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1 SLED report for the firearms was not available, it
2 was not ready yet. It is my understanding that you,
3 Your Honor, granted the continuance until
4 October 28th, but the State was to proceed in the
5 exact form as scheduled for the September 30th term
6 of court.

7 Your Honor, also, at that time, the State was
8 ready to proceed for the September 30th term of
9 court because we had enough evidence against the
10 defendant to prove murder. We had a statement with
11 the confession that you will hear within a few
12 minutes and several eyewitnesses that were present
13 there. We had the weapon in our possession at SLED,
14 the bullets from the body of the murder victim in
15 evidence. So there was enough evidence for us to
16 move forward, and that was our position during our
17 phone conference, and that is still our position
18 today.

19 THE COURT: This conversation that you said
20 occurred with Judge Cottingham, was this on the
21 record?

22 MS. DAVID: Yes. This was in court during the
23 term of -- August term of court, I believe. That was
24 August 6th, but I may be wrong.

25 THE COURT: And the deadline for acceptance was

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1 given in court?

2 MS. DAVID: Yes, Your Honor, on the record. We
3 stood right here.

4 THE COURT: All right. Now, Ms. David, what is
5 your position on the defendant's argument that the
6 ballistics may have exonerated him on the issue of
7 murder, or perhaps on the issue of attempted murder?

8 MS. DAVID: Your Honor, it is my position that at
9 no point would the ballistics have changed anything
10 for us. As I mentioned already, we have a confession
11 statement from David Dixon saying he shot this
12 weapon. We had the bullets from the body. We had
13 the autopsy. We have witnesses that saw this happen.

14 As far as it goes with the attempted murder --
15 so let me make myself clear. As far as murder goes,
16 that was solid. There may have been an issue with
17 the attempted murder, but the firearm evidence from
18 SLED does not help it, nor does it hurt it. That
19 entire case is going to be based on eyewitness
20 testimony, and we have a victim here that says that
21 he saw the defendant shoot him with that weapon. We
22 have other eyewitness testimony, and they are going
23 to say they saw it as well.

24 So I don't think it was that significant to
25 fully stop the case from going forward. The State

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1 was ready to proceed, and still ready to proceed.

2 THE COURT: When the ballistics came back, is it
3 the State's position that the ballistic report
4 confirmed that the defendant's bullet killed the
5 victim in this case? Is that supported by
6 ballistics? In other words, did the bullet fired
7 from the defendant's gun kill the victim?

8 MS. DAVID: It is supported by it, but we were --
9 the State was ready to prove the case with or without
10 it, but it does support it.

11 THE COURT: The bullet that grazed the attempted
12 murder victim, Mr. Garner, is that bullet found or
13 preserved, or is it lost?

14 MS. DAVID: That bullet is lost.

15 THE COURT: All right.

16 MS. DAVID: But the State never claimed to have
17 that bullet to start.

18 THE COURT: Thank you. Now that both sides have
19 been placed on the record and their positions, Mr.
20 Steen, let me respond why the Court declined to hear
21 your report. First of all, as you are aware, the
22 Court is not aligned with the State, nor aligned with
23 the defense. It is the hallmark of our justice
24 system, that the Court is an unaffiliated arbiter of
25 what occurs in front of it. So for you -- well, for

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1 the State to say to you and your client on the
2 record, This is the evidence we have, this is the
3 deadline we require that you enter a plea, and if you
4 do this by such-and-such a date, we'll reduce the
5 charge to X, while that occurred with Judge
6 Cottingham, I doubt that Judge Cottingham was the one
7 who put that agreement on the record or the one who
8 came up with it, whether he did or not, I'm not
9 actually certain, but I know this, I had no -- as a
10 trial judge, I had no involvement in that. The Court
11 sees that an offer made by the state, which the Court
12 doesn't have authority to change.

13 So even if I heard your motion and said, Well,
14 I agree with you, it looks like the State should not
15 have done it in the way they did, or the timing is
16 not appropriate for the defendant, the Court, in my
17 opinion, has no authority to reinstate the State's
18 offer, because it is not the Court's offer. It was
19 the State's offer.

20 So what I have in front of me today is a
21 situation where, apparently, the time has lapsed for
22 receiving an offer. A murder trial is what was set,
23 and this is what I'm here to preside over. The Court
24 would decline to grant your relief, but respectfully
25 would also say that the Court really doesn't have the

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1 authority to force the State to take the position
2 that you requested.

3 Is there anything further you wish to put on
4 the record with regard to the other issues that may
5 have arisen between the parties?

6 MR. STEEN: That is all, Your Honor, thank you.

7 THE COURT: Very good. Now, we're here in the
8 matter of Jackson V. Denno, so before we begin, I
9 heard the State use the term "confession." They have
10 a statement from the defendant, so let me first hear
11 from you, Mr. Steen, why you believe the statement is
12 either inadmissible or violative of the defendant's
13 constitutional rights or should be redacted in a way
14 that the State must object to. Tell me why you
15 believe Jackson V. Denno is necessary to these
16 proceedings?

17 MR. STEEN: Thank you, Your Honor. With regard to
18 Mr. Dixon's statement, it was given right after --
19 and all of the State's evidence will support this --
20 that he had been drinking pretty much all day leading
21 up to that point. In this statement, he makes the
22 comment that he was intoxicated, combined with that,
23 Your Honor, it was about 2 o'clock in the morning
24 when the statement occurred. We think that the --
25 the defense thinks that the statement was not

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1 voluntary based on being intoxicated.

2 THE COURT: And going back to the event itself,
3 which would have happened an hour or hours earlier
4 than the statement, have you taken the position that
5 he did not have the legal capacity to commit this
6 crime or that he was insane or otherwise?

7 MR. STEEN: Yes, Your Honor, but the defense did
8 not intend to raise a defense of involuntary
9 intoxication, but he was drinking and it did have an
10 effect on him that night, which I think Your Honor
11 will see in his statement as he describes the events.

12 THE COURT: So going into this hearing, is it your
13 position that the entire tape is inadmissible?

14 MR. STEEN: Yes, sir, Your Honor. In the
15 alternative, I have supplied the Solicitor and the
16 Court with a short list of redactions, and those
17 mainly go to defendant's prior probation, parole or
18 prison. There is one point where Lieutenant Seales
19 states there is no GSR found on the victim, I would
20 like that redacted because that goes -- GSR was found
21 on the victim's hand. There's two parts where
22 Lieutenant Seales discusses how the jury should
23 handle these facts, and I think it interferes with
24 the jury as the only trier of facts. In that part of
25 the statement, he says these are the facts and this

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1 is what the jury will see as the facts. But those
2 are the only redactions in the alternative of the
3 entire statement being suppressed.

4 THE COURT: Thank you. Have you reviewed the
5 redactions requested by the defendant, Ms. David?

6 MS. DAVID: Yes, sir. I have reviewed the
7 redactions. The State does not oppose any redactions
8 based on the defendant's prior conviction, which I
9 believe would be four of them, however, the other two
10 redactions that involve Investigator Jamie Seales, I
11 feel like they should be admitted. As an
12 investigator for our community, he has the right to
13 be dishonest, lie, say whatever he wants, but he has
14 the right to talk about the defendant to get a
15 confession to find out what is going on with the case
16 to solve the crime.

17 THE COURT: Thank you. Just one moment.

18 (A brief pause in the proceedings.)

19 THE COURT: What we'll do is let me watch the
20 first four to five minutes just to gauge the
21 lucidity, if you will, of the defendant and then
22 we'll proceed to the first disputed issue. Do you
23 have the ability to move the tape forward and back,
24 Ms. David?

25 MS. DAVID: Yes, sir. We are going to try, yes,

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1 sir.

2 THE COURT: Okay.

3 MS. JOHNSON-LEE: Can I address the voluntary
4 intoxication issue? Unless there has been a change
5 in the case law, that is not a defense to murder
6 except in a capital murder case and it can be used as
7 a mitigating factor for the jury to consider, but I
8 would object to them using voluntary intoxication as
9 a defense to murder to move the case from murder to
10 manslaughter.

11 THE COURT: I'm sure Mr. Steen agrees that
12 voluntary intoxication is not a defense. My question
13 to him was whether it arose to the level of insanity,
14 and if it did, you know, that would -- if he was
15 raising that issue, that may have some impact on
16 whether this -- how the Court views this video we're
17 getting ready to watch. But I believe Mr. Steen is
18 well aware that voluntary intoxication is not a
19 defense. Thank you. Mr. Clerk, if you could move
20 the microphone, I'll see a little better. We're
21 ready for you to play.

22 Ms. David, is the time stamp correct? Is that
23 accurate as to what date and time this was taken, the
24 time stamp at the bottom of the tape? The picture is
25 blank now, but.

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1 MS. DAVID: Yes, Your Honor. It says 12/21, 1:52
2 a.m.

3 THE COURT: What time is it alleged that the
4 shooting occurred?

5 MS. DAVID: The 911 goes in at 9:47 p.m. He is
6 arrested around 12:29 a.m., about two-and-a-half
7 hours later, and this statement is given right
8 around, we'll say, 10 minutes to 2:00, so about four
9 hours later.

10 THE COURT: All right. Thank you.

11 (Whereupon, a video was published to the
12 Court.)

13 THE COURT: Is that marked, Natalie?

14 COURT REPORTER: It is not marked.

15 THE COURT: Okay. Well, we'll figure it out
16 after. Can you stop the tape?

17 THE COURT: Mr. Steen, what is it that makes you
18 think the defendant is intoxicated in this tape?

19 MR. STEEN: My client told me he was intoxicated,
20 and he tells them later in the video.

21 THE COURT: So, in other words, you base that upon
22 what he says he had to drink earlier in the day and
23 the evening, not upon his actions in this tape?

24 MR. STEEN: Well, yes, Your Honor, based on the
25 fact that it was the second 12-pack he bought for the

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1 day, and my client told me he was intoxicated and he
2 told the investigators he was intoxicated, and we
3 would ask the Court to issue that it was an
4 involuntary statement.

5 THE COURT: What the Court views is he's oriented,
6 responsive. He appears to be cogent in his
7 responses, and it does not appear to the Court that
8 he's intoxicated in any way. So is there some point
9 on this tape that in your opinion it changes?

10 MR. STEEN: No, Your Honor, besides the point
11 where he tells the investigators that he was
12 intoxicated.

13 THE COURT: Thank you. I'll let you stop the
14 tape. The issues that are disputed from the tape --
15 so while we have the benefit, let's take up the
16 issues of the redactions that you don't agree to.
17 Ms. David, the proposed redactions was because they
18 deal with prior convictions. On that point -- and of
19 course this is a minor point with you, but so the
20 Court will know, has there been a probation violation
21 hearing against the defendant?

22 MS. DAVID: Yes, Your Honor. Let me grab his rap
23 sheet really quick. Let me double check on that
24 before I answer.

25 MS. DAVID: Yes, Your Honor, we have one on the

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1 rap sheet from March 15, 2011, a parole revocation to
2 a YOA sentence.

3 THE COURT: All right. But if I understood what I
4 saw on the tape, he is on probation now for some
5 other matter, perhaps on parole; has that been
6 revoked? Is he back in corrections as a result of
7 that, or what is the status of that proceeding
8 against the defendant? Do you know?

9 MS. DAVID: I do not know. But I don't have
10 anything showing him on probation by the rap sheet.

11 THE COURT: I see. So it is a parole matter
12 handled by the parole board?

13 MS. DAVID: Beg the Court's indulgence.

14 (A brief pause in the proceedings.)

15 MS. DAVID: May I approach, Your Honor?

16 THE COURT: You may.

17 (Whereupon, a bench conference was had with
18 Ms. David and the Court.)

19 THE COURT: All right. What we're doing -- just
20 to confirm of status, Ms. Dixon, I'll talk with
21 probation at a later point and see if he has a
22 revocation pending out there somewhere, obviously not
23 before this Court. I was just curious as to if he
24 had already had that proceeding.

25 Now, what is your position specifically on

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1 these three redaction points, which there are two
2 time stamps of 2:21:05, 2:21:05 and 2:24:50, all of
3 which -- the first one deals with gunshot residue,
4 and the other is how a jury would perceive certain
5 facts in the record. Let's take gunshot residue
6 first. I ask you, is it correct that there was or
7 was not gunshot residue found on the victim?

8 MS. DAVID: Yes, there is gunshot residue to the
9 left palm of the victim's hand, but at the time -- I
10 mean, there was no way for anybody to know whether or
11 not -- there was no way to have gunshot residue
12 results that quickly when the incident just occurred
13 at 9:00 and for it to be at 2:00 a.m. The same
14 position I'll take on all three is that Investigator
15 Jamie Seales knew what the -- knew the statement that
16 the defendant was making was untrue because the
17 defendant was saying they were facing each other when
18 the altercation occurred. Jamie Seales knew he had
19 three shots to the back, so he's thinking, You're not
20 telling me the truth, I need to keep talking and see
21 what I need to say to convince you to tell the truth
22 and be honest.

23 THE COURT: Very good. So in other words, this is
24 an interrogation tactic. What do you say to that,
25 Mr. Steen?

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1 MR. STEEN: First of all, in the video from the
2 beginning he says the victim was turning when he shot
3 him. Second of all, Mr. Dixon didn't elicit any
4 additional testimony from Mr. Dixon. The only thing
5 it will do is put false evidence in front of the
6 jury, Your Honor. He didn't respond to Mr. --
7 Lieutenant Seales' question about the GSR found on
8 the victim's hands.

9 THE COURT: You'll have cross-examination that can
10 confront Lieutenant Seales about that if you believe
11 it is appropriate, can you not?

12 MR. STEEN: Yes, Your Honor.

13 THE COURT: I respectfully decline to redact the
14 tape at that point. If you believe that overreaches
15 or is an unfair position to take with the defendant,
16 then you may bring that up with the officer on cross
17 and you may argue to the jury in your argument to the
18 jury, but the Court does not find that it is a
19 Constitutional violation, nor do I find it is
20 misleading because, ultimately, the jury is going to
21 have the entire corpus of the evidence before it when
22 they make a decision and, thus, I'm going to
23 respectfully decline to remove from that tape the
24 gunshot residue comment that begins at 2:17:05 and
25 ends 10 seconds later.

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1 Now, let's take up the other two matters that
2 have to deal with how the jury may perceive certain
3 comments made by the defendant, or certain claims he
4 made about how the matter occurred. Do you have
5 anything further you want to say on that, Ms. David?

6 MS. DAVID: No, Your Honor. I do not have
7 anything further -- not anything further on behalf of
8 Mr. Jamie Seales' interrogation tactics, but I do
9 have something further for Mr. Brandon Steen. All
10 three of these are interrogation techniques and it
11 does change what the defendant says, because at this
12 point we watched the story and he said one story
13 being self-defense and Bristow has a gun. If we
14 continue to watch the story, and we continue to allow
15 Jamie Seales to talk, the defendant is going to tell
16 you the real reason he does this -- or alleged
17 reason, I don't know -- but he's going to tell you
18 that it is because the defendant pulls a flag out of
19 his pocket. So the tactics do actually change the
20 story.

21 THE COURT: Mr. Steen, do you want to be heard on
22 those two points?

23 MR. STEEN: Yes, Your Honor. I'll point to the
24 Court that at the point the statement was made, my
25 client's story had not changed. The Solicitor is

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1 right, the next 18 minutes there is some additional
2 information that comes out. With regard to the jury
3 handling certain facts, Lieutenant Seales is an
4 authority figure, respected figure, and I don't want
5 the jury to think that is what he thinks about the
6 facts, so that is what I need to think also. I mean,
7 Your Honor, I was very exclusive in picking out what
8 I was picking -- I mean down to as little as I could
9 do. I don't want the jury to have anything
10 interfering with their deliberations.

11 THE COURT: Specifically on the point of Mr. Steen
12 says it inserts the jury's role or plants a seed in
13 the jury's mind as to how to respond to certain
14 evidence, what do you say?

15 MS. DAVID: The State will agree to ask Jamie if
16 he's being honest or dishonest and whether or not he
17 is using investigation techniques or investigation
18 tactics to elicit a true statement for the defendant.
19 I will do that on the record in front of the jury if
20 that will make the defense counsel happy.

21 THE COURT: All right. I'm not sure it will, but
22 do you have anything further you would argue?

23 MR. STEEN: No, Your Honor.

24 THE COURT: Respectfully, I'll deny your motion
25 with regard to these jury comments for the following

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1 reasons. First of all, while the Court makes the
2 initial decision of admissibility, which I'll do in a
3 few moments, the jury ultimately makes the decision
4 of voluntariness, I find this evidence is relevant
5 and probative on the issue of whether or not the
6 defendant was overreached, whether the statement was
7 voluntary, whether this is a valid interrogation
8 technique. This is not for the judge to decide, this
9 is for the jury to determine.

10 The Court feels this is all pivotal core
11 evidence on this point and, thus, both sides may
12 argue. You may ask the questions, Ms. David, as to
13 how you wish to present the matter, and you may argue
14 it on the reverse side of the coin, if you wish.
15 Again, these are your strategies and tactics for you
16 to decide, but the Court declines to require
17 redaction of that portion of the tape and, thus, all
18 of the motions -- and I realize, and I thank you,
19 because you have gone into a lengthy tape and asked
20 for only seven points to redact, four which was
21 consented, but the other three I respectfully
22 decline.

23 MR. STEEN: Thank you, Your Honor.

24 THE COURT: Let's talk about the overall tape,
25 because I think I've seen sufficient amount of the

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1 tape to make a determination of the overall
2 admissibility. Do you want to be heard, Ms. David,
3 further?

4 MS. DAVID: Your Honor, as far as the overall
5 admissibility, which goes to the voluntariness of
6 this statement, it has already been established that
7 voluntary intoxication is not a defense, but it also
8 appears from the appearance and demeanor of the
9 defendant that he seems to be talking well. There is
10 no slurring, there is no -- there really isn't too
11 much, you know, bad language. If you look at the
12 video closely, he's not hungry, not sick, not
13 throwing up. He has a bag of chips. He's actually
14 drinking, it looks to be, a soda. From my
15 understanding, if we need, we'll call Larry Turner to
16 the stand where he'll testify that the defendant was
17 actually asking to talk to him. So this whole
18 statement is voluntary, and the defendant is not
19 intoxicated.

20 THE COURT: Mr. Steen, you have an argument on
21 this point?

22 MR. STEEN: No argument, just to point out for the
23 record that the defense does not intend to use
24 voluntary intoxication as a defense.

25 THE COURT: Understood. Just one moment.

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1 (A brief pause in the proceedings.)

2 THE COURT: Ladies and gentlemen, those who are
3 present in the courtroom, so we all understand how
4 this process works, whenever the defendant is alleged
5 to have made a statement which may be used for him or
6 against him, the Court is required -- if one of the
7 parties raises the issue -- to look into the matter
8 and make sure that any statement given by the
9 defendant is taken in a fashion that is acceptable
10 and consistent with the United States Constitutional
11 standards.

12 One of those -- and we all hear the term --
13 has to do with the Miranda rights, and one of the
14 issues that the Court looks at is whether or not the
15 defendant was advised of his rights under the
16 Fifth and Sixth Amendments to the Constitution, and
17 that he also was advised of his Constitutional
18 safeguards required by Miranda. After reviewing this
19 tape, the Court finds, and it is clear on the tape,
20 that the defendant was advised prior to the
21 interrogation that he has a right to remain silent.
22 He was also advised by the interrogation that if he
23 waived that right and made a statement, it could be
24 used against him. He was further advised prior to
25 his interrogation that he had a right to an attorney.

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1 If he could not afford an attorney, then one would be
2 appointed at either no cost or low cost to him. He
3 was also advised prior to interrogation he could
4 consult with that attorney, and he could interrupt
5 and stop the interrogation at any time he wished to
6 do so.

7 I find that he was fully advised of his rights
8 under Miranda, and the evidence shows that on the
9 tape as well. I assume there is a signed Miranda
10 document as well, because you see in the Court -- in
11 the video that it is signed between the parties, and
12 specifically signed and initialed by the defendant.
13 I find that he knowingly and intelligently -- because
14 I do not find he was intoxicated from anything that
15 is on this tape, there is really no evidence of that
16 on the tape that he made a knowing and intelligent
17 waiver of his rights under the Fifth Amendment not to
18 incriminate himself, and under the Sixth Amendment to
19 have the right to counsel and, thus, I find this is a
20 free and voluntary statement given without duress, of
21 course, and without undo influence and is admissible
22 at trial. Anything further on this issue from the
23 State?

24 MS. DAVID: Nothing, Your Honor.

25 MR. STEEN: Nothing, Your Honor. Thank you.

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1 THE COURT: Counsel, I'll leave it between the two
2 of you to redact the four portions that are by
3 agreement where there is a reference to the
4 defendant's prior record as well as his current
5 custody status, either a parole or probation
6 violation, which is also discussed at the beginning
7 of the tape, that will be redacted, and all the rest
8 of the tape comes in.

9 MS. DAVID: Yes, Your Honor.

10 THE COURT: Anything further we need to take up to
11 prepare this matter for trial? Are there other
12 pretrial or preliminary issues that need to be
13 resolved now?

14 MS. DAVID: I'm not sure if -- we have four photos
15 here. The remaining four photos -- Your Honor, that
16 matter has been resolved. We're okay.

17 THE COURT: Are there any other issues?

18 MS. DAVID: The other motion the State would make
19 is to have all witnesses sequestered with the
20 exception of the victim and lead investigator.

21 THE COURT: Okay. Any other issues?

22 MR. STEEN: That was my issue I was going to
23 bring.

24 THE COURT: Before we take the sequester, let's
25 just take a moment and mark the exhibits if you're

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1 going to have these, do that right now so we can
2 decide what is going to be in evidence and what is
3 not, save us time once the jury is in.

4 MS. DAVID: Do you want us to mark all exhibits
5 from the back, or just ones for pretrial motions?

6 THE COURT: Okay. How many do you have? Dozens?

7 MS. DAVID: Oh, yes, boxes.

8 THE COURT: Have you marked them at all?

9 MS. DAVID: They haven't been marked.

10 THE COURT: I'll stand down and let you get out of
11 the way and mark that. If we can avoid the delay
12 once the jury is sitting in the box, it's much more
13 efficient. Agree on what you can to be in; what you
14 can't, I'll decide contemporaneously during the
15 course of the trial.

16 MS. DAVID: Okay.

17 MR. STEEN: Your Honor, on that point, the
18 Solicitor has been provided photos, such as crime
19 scene photos, and the defense will not object to any
20 of those. We haven't gotten to the State's proposed
21 victim photos, that is what we need to discuss.

22 THE COURT: All right. Again, what I'm saying now
23 is I don't know that once we have the jury in here at
24 2 o'clock for us to have to stand down and resolve
25 issues, we need to do that before they arrive, so

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1 we'll take issue of the sequester.

2 MS. JOHNSON-LEE: Can we --

3 THE COURT: Off the record.

4 (A discussion was had off the record.)

5 THE COURT: We stood at the bench and we've
6 discussed certain photographs of the deceased. The
7 State agreed to put -- and defense agreed -- that
8 just one of those photographs, which depicts the
9 wounds, will come in, and then there are also two
10 photographs of the victim who survived that will also
11 be by agreement in evidence.

12 Now, let's talk about the sequestration of
13 witnesses and tell us, first of all, why you -- is
14 this your motion, Mr. Steen, or joint?

15 MR. STEEN: Joint.

16 THE COURT: Tell us why you believe it is
17 appropriate and who you wish to be exempted,
18 Ms. David.

19 MS. DAVID: Your Honor, I will begin with the
20 exemptions. It is the State's position that
21 Mr. Woodrow Garner should be exempted from
22 sequestration as the victim of the case. It is also
23 the State's position that Investigator Jamie Seales
24 should be exempted from the sequestration as the lead
25 investigator on the case.

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1 It is the State's position that it would be
2 best to sequester the witnesses so that -- so that we
3 don't confuse the jury and to be sure that each
4 witness is coming out and telling us what they saw
5 and what they heard for their own -- for their own
6 self and not based on something they've heard prior
7 to their testimony. As you can see, we have a lot of
8 witnesses sitting here and I don't want it to change,
9 you know, any thoughts or beliefs.

10 THE COURT: Anything further?

11 MR. STEEN: Your Honor, I would agree with the
12 Solicitor, but I would ask for the same reason that
13 Mr. Woodrow Garner be sequestered also, but, of
14 course, I consent to Mr. Seales being in the
15 courtroom.

16 THE COURT: And tell me, do you anticipate anyone
17 from Mr. Bristow's immediate family to testify?

18 MS. DAVID: No, Your Honor.

19 THE COURT: All right. Then the Court is prepared
20 to rule as follows. Ladies and gentlemen, the
21 parties have both asked, really, that those
22 individuals who are going to be witnesses, that is
23 those who will testify be sequestered, meaning they
24 are outside of the courtroom until they testify, and
25 then after they testify, they may remain in the

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1 courtroom, or they may leave if they wish. The Court
2 is going to grant the motion based upon the reasons
3 given by the State in Ms. David's argument she gave
4 to the Court.

5 Any time you remove the witnesses, there are
6 certain exceptions to the sequestration rule. One is
7 that the victim's bill of rights, which is a
8 Constitutional provision and a statute under which we
9 operate this court says that the victim has a right
10 to be present for all proceedings, including the
11 trial, and, thus, Mr. Garner, who is a victim of this
12 crime allegedly, will be allowed to remain throughout
13 the trial even if he is going to testify as a
14 witness.

15 Also, the case officer, that the chief
16 prosecuting officer, which in this case is
17 Investigator Seales, will be permitted to remain in
18 the courtroom throughout the trial, and the defendant
19 is given the same right if he should decide to
20 testify to remain in the courtroom throughout the
21 trial. All other witnesses, though, at the
22 appropriate time, and this will be before opening
23 statements, we will sequester them and call them to
24 the courtroom at the time they are needed to testify,
25 all right.

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1 Now, is there anything further we need to do
2 before we stand this matter down and pick it back up
3 at 2 o'clock?

4 MS. DAVID: Nothing from the State.

5 THE COURT: And from the defense?

6 MR. STEEN: Nothing.

7 THE COURT: I'll leave it to you all, please, to
8 meet about the exhibits, agree on what you can. I'll
9 give -- make sure there is enough time for the court
10 reporter to meet with you as well to go over the
11 evidence with you and mark what she can, and we'll
12 stand down and take a break for about five minutes.
13 I think there are some probation matters that were
14 not heard yesterday that probation wanted me to take
15 up. When we finish with that, we'll stand down and
16 let you all finish marking evidence for this trial,
17 but this matter here will be in recess until
18 2 o'clock.

19 (State's Exhibits 1 through 51 marked.)

20 (Whereupon, a recess was taken and resumed
21 at 2:00 p.m., October 29, 2013, where the following
22 took place.)

23 THE COURT: I came out a moment early. Let's see
24 if there is anything we need to place on the record
25 before we pick up the trial of the case. Is there

STATE'S EXHIBITS 1 THROUGH 51 IN EVIDENCE
1 anything from the defense?

2 MR. STEEN: Nothing from the defense, Your Honor.

3 THE COURT: Very good. From the State?

4 MS. JOHNSON-LEE: I want to state that there are
5 51 marked exhibits for the State, and after
6 discussions with Mr. Steen and Ms. David, I believe
7 he is in consent for all of those items; is that
8 correct?

9 MR. STEEN: That is correct, Your Honor.

10 THE COURT: Then we'll treat 1 through 51 as being
11 in evidence for the State.

12 (State's Exhibits 1 through 51 admitted.)

13 MS. JOHNSON-LEE: Thank you, Your Honor.

14 THE COURT: Which means you don't need to lay a
15 foundation. You certainly may for jury impact, but
16 the Court doesn't require it. It is treated as being
17 in evidence at this point.

18 MS. DAVID: Some of our witnesses are here in the
19 courtroom. I need them to be escorted to the back.

20 THE COURT: Ladies and gentlemen, we earlier in
21 the day agreed to sequester the witnesses until they
22 testify. If you are a witness, we ask that you not
23 be in the courtroom and we have a witness room in the
24 back that we ask you to report to at this time.
25 Thank you.

BY THE COURT

1 Before we bring in the jury, let me say to
2 those who are assembled here in the courtroom, thank
3 you for your presence and your interest in this case.
4 I would ask as a courtesy to the jury, and as a
5 courtesy to counsel, that during the comments by the
6 attorneys, the questioning of the witnesses, that you
7 not make some visible response to what you hear,
8 whether it is by agreement or disagreement or
9 whatever it may be, just out of the respect for the
10 jury and their role. If you would, please sit and
11 listen passively to the testimony that will be given
12 in the case, and I thank you for that courtesy.
13 Would you please bring in the jury?

14 (The jury enters at 2:00, and the following is
15 heard in the presence of the jury.)

16 THE COURT: Welcome back, ladies and gentlemen,
17 and good afternoon to you. We'll begin the trial of
18 this case with you accepting the oath as jurors in
19 this specific case. Please follow our clerk's
20 instructions.

21 THE CLERK: If you would, please stand and raise
22 your right hand.

23 (Whereupon, the jury was duly sworn.)

24 THE COURT: Let me ask, is there any member of the
25 jury panel that did not take the oath for any reason?

JURY SWORN - THE COURT ADDRESSES JURY

1 If you did not take the oath, please raise your hand.
2 Let the record reflect that the jurors raised their
3 hand and all are appropriately sworn.

4 Let me ask -- since we were last together --
5 is there any member of the jury panel who had a
6 discussion about the facts of this case with any
7 individual; if so, please raise your hand. Let the
8 record reflect that no one raised their hand, and
9 thank you for complying with the Court's request in
10 that regard, also in returning to the courthouse this
11 afternoon by 2 o'clock so we can begin the trial of
12 the State versus Dixon.

13 Now, what I would like to do here at the
14 beginning of this trial is just tell you a few things
15 that I call the introduction to a criminal trial.
16 These are things I think you need to know at the
17 beginning of the case. Let me ask, ladies and
18 gentlemen, are you able to hear me on the back row?
19 Very good. If at some point during the proceedings
20 you cannot hear, if you'll let us know with your hand
21 behind your ear, we'll respond because it is
22 important throughout the proceedings that the jury at
23 all times be able to hear.

24 Now, what I'm getting ready to say to you is
25 not intended to be a substitute or take the place of

THE COURT ADDRESS JURY

1 a much more detail charge of the law that I'll give
2 you at the end of the trial. These, again, as I
3 said, are things that I think you need to know at the
4 beginning of the trial.

5 As you know, this is a criminal case. This
6 case is commenced by the State, which we will also
7 refer to as "the prosecution," and it's against the
8 defendant. The case is based on -- based on
9 indictments, and there are three separate charges in
10 this trial. I'm sure the lawyers will talk with you
11 further about the indictments in their opening
12 statements.

13 I will simply say to you to please remember,
14 as we said yesterday, the indictments are simply a
15 set of allegations. They are a set of charges. They
16 are the piece of paper by which the prosecution
17 commences a criminal charge against an individual.
18 They are not to be accepted as evidence, because they
19 are not evidence. They are not to be accepted as the
20 truth, because ultimately the truth will be
21 determined by you from the testimony in the case, not
22 because it says something on a piece of paper.

23 Now, yesterday you heard the defendant enter a
24 plea of not guilty to these charges, which means that
25 the defendant denies these allegations, but moreover,

THE COURT ADDRESS JURY

1 even if the defendant did not enter a plea, the
2 defendant is presumed innocent of these charges. I
3 will tell you that it is a foundational principle of
4 our justice system that the State bears the proof,
5 and it is a high proof, which is beyond a reasonable
6 doubt. It is the State's burden to prove the
7 defendant guilty as opposed to the reverse, which
8 would be the defendant to prove himself innocent,
9 that is not the case, nor is it the situation here.

10 The purpose of this trial is to determine
11 whether or not the State can meet this high burden of
12 proving the defendant guilty beyond a reasonable
13 doubt. The defendant is presumed innocent of these
14 charges unless and until the State produces evidence
15 that satisfies you, ladies and gentlemen of the jury,
16 beyond a reasonable doubt, and that the defendant is
17 guilty of the charges against him, and that the State
18 proved each and every element of these charges beyond
19 a reasonable doubt.

20 I will tell you that one of the traditions in
21 our courtroom is that the party with the burden of
22 proof sits closest to the jury, and if you look out
23 in the courtroom arena you will see that the State is
24 seated at the table closest to you. You will notice
25 throughout the proceeding they will not be switching

THE COURT ADDRESS JURY

1 chairs and tables in the courtroom. The State
2 remains closest to you and will continue to have the
3 burden of proof throughout this trial.

4 Let's talk about what our roles are in this
5 trial. I'll talk about mine briefly, if I may.
6 First of all, as the presiding officer, I'm the judge
7 of the law, which means that at the end of the case
8 I'll give you the law in this matter and what we call
9 a charge to the jury. During the course of the trial
10 if some legal issue comes up or evidentiary issue,
11 I'll resolve that as we go forward in the trial of
12 the case. That is my role.

13 Your role is more important than that, in my
14 opinion. While I'm the judge of the law, you're the
15 judge of the facts. What that means is that you will
16 listen to the testimony here in the courtroom. You
17 will decide what the facts are, and from that, you'll
18 reach a verdict in this case. Now, you will apply
19 those facts to the law that I give, and then you'll
20 reach a verdict.

21 I'll wait just one moment.

22 (A brief pause in the proceedings.)

23 THE COURT: Thank you. Now, as the judge of
24 the facts, I will tell you that -- just like you,
25 I've not heard the testimony in this case, but I

THE COURT ADDRESS JURY

1 think that we all know from human experience that
2 sometimes an event will occur and then you will hear
3 descriptions of that event from different people who
4 may have witnessed it, and those descriptions will be
5 so varied that you wonder this is the same event that
6 everyone is talking about, because people's
7 perceptions are different.

8 If you have testimony in this case before you
9 now that either seems inconsistent or mutually
10 exclusive, that is cannot be reconciled one with the
11 other, then you must decide which of those witnesses
12 is more credible and believable in order to decide
13 the facts. If you think about it, this is something
14 we do every day, all the time. When we talk to a
15 child or talk to an adult, friend or a stranger, we
16 gauge what they telling us for creditability, we do
17 that in every day life.

18 Other things you may want to look for -- and
19 I'll tell you in advance so you can consider it while
20 the witnesses are testifying, and this is why you sit
21 where they do, they'll sit where they do so you can
22 closely see the testimony, but is it straightforward?
23 What is the ability of that witness to know what they
24 are talking about? Is the witness' testimony
25 consistent with itself? Is it weakened or

THE COURT ADDRESS JURY

1 strengthened by other evidence in the case? And
2 further, in light of the global evidence in the case,
3 how reasonable is what the witness is saying?
4 Finally, might there be a reason a witness would want
5 to help or hurt one side or the other, might that
6 witness have a bias or prejudice? So these are some
7 things that you are to consider, and should consider,
8 while the witnesses are testifying to you throughout
9 the course of this trial.

10 Let's talk about our procedure we're doing
11 here. When I conclude these comments, lawyers from
12 both sides will come before you and do an opening
13 statement. It is not some big persuasive event you
14 may think of on television. It is the opportunity
15 for the lawyers to tell you at the beginning what
16 they believe the law is, what they believe the
17 evidence will or will not show and discuss things
18 that you should know from their perspective going
19 into the trial of the case. That is an opening
20 statement.

21 Both sides give an opening statement. The
22 State has the burden of proof. The State calls their
23 witnesses one after another, and every time the State
24 calls a witness, that witness is subject to direct
25 and cross-examination by the defense counsel. I tell

THE COURT ADDRESS JURY

1 you that because the rules are different for direct
2 and cross-examination, and you may see that during
3 the course of the trial.

4 After the State concludes all of their
5 witnesses, the State rests. After the State has
6 rested, we move to the defense. Again, please
7 remember from yesterday the defense is not required
8 to put up a case. Defense is not required to contest
9 these charges. The defendant is not required to
10 speak or testify in this courtroom because the
11 defendant has no burden of proof, only the State has
12 a burden of proof. But if the defense wishes to call
13 witnesses, and they are given the opportunity, in the
14 same fashion, they will call their witnesses one
15 after the other. Every time they do, they have
16 direct by defense counsel and cross-examination by
17 the State.

18 Then, all of the testimony closes. The
19 lawyers come before you in closing argument, which is
20 an opportunity where they can persuasively argue as
21 to what they believe the evidence showed. I will
22 then give you the charge of the law, and you retire
23 to deliberate. In a nutshell, that is how this goes
24 forward.

25 I normally go about an hour-and-a-half before

THE COURT ADDRESS JURY

1 we take a break. That is not set in stone, because
2 it depends where we are in the witness' testimony,
3 and I don't want you watching the clock and being
4 worried, but it is hard for you to do that because
5 the clock is behind you in this courtroom, not in
6 front of you. But if you need to take a break before
7 a breaking point, please, ladies and gentlemen, raise
8 your hand and we'll stop immediately and take a
9 break.

10 I do that for two reasons. Number one, you
11 are giving your time, or just about giving it, for a
12 very important public purpose and a high civic duty,
13 and I want you to be comfortable. Secondly, I don't
14 want you to be worried about something else. I want
15 you to listen to the testimony and decide the facts
16 of the case. If you need a break at any time, raise
17 your hand and we'll do that.

18 Secondly, when we do take a break, please
19 don't go back in the jury room and discuss the case
20 among yourselves, and this is the reason for that.
21 If we took one witness or just the direct examination
22 of a witness and took a break and the jury made
23 preliminary decisions based on that that drove the
24 rest of the case, that is very unfair because there
25 is other witnesses and testimony to be put forth.

THE COURT ADDRESS JURY

1 So don't discuss the case until it is given to
2 you for deliberations, and then, and only then, is it
3 appropriate to discuss it. For the rest of the time,
4 keep an open mind until you've heard all of the
5 testimony in the case.

6 Now, a couple other things I wish to tell you.
7 We operate this courtroom on a system of rules. We
8 call these the rules of evidence and the rules of
9 criminal procedure. When one side or the other
10 believes that the other side is either breaking those
11 rules, or about to, they call that to my attention by
12 an objection. Well, just like you are over there
13 minding your own business, I'm doing the same. I
14 don't know what the objections are or when they will
15 come, but when they do occur, I'll respond to them
16 immediately and I'll answer that objection.

17 When I do that, I respond to an objection
18 based on my training as a judge in both the
19 procedural and substantive law of South Carolina, my
20 experience for many years as a judge, as well as when
21 I was a lawyer before becoming a judge, but never do
22 I rule on some issue to send you a message about how
23 I feel about an issue, because I'll tell you, I don't
24 have a position of the facts. You are the judge of
25 the facts, not me. If I had a position, I would be

THE COURT ADDRESS JURY

1 invading your thoughts. So take no inference from
2 any rulings you may see occurring in the courtroom
3 other than there was an issue that needed to be ruled
4 upon.

5 The last thing I'll say to you is please be
6 aware -- and in just a moment the lawyers will come
7 before you in opening, and at the end they come for
8 closing -- that what the lawyers says, who are
9 advocates in this case, is not evidence. I'm not
10 saying the lawyer is going to be dishonest, I'm
11 saying appreciate the distinction between a lawyer's
12 argument, which is not under oath and not under
13 direct or cross-examination, and the testimony in the
14 case and the exhibits in the case; that is the
15 evidence. The witnesses are under oath and under
16 direct and cross-examination. So, please, going into
17 this case appreciate the distinction between
18 statements and arguments by counsel and the evidence
19 in the case.

20 Ladies and gentlemen, I look forward to
21 working with you, and at this time the Court
22 recognizes the State's counsel for opening statement.

23 MS. DAVID: May it please the Court.

24 THE COURT: Yes, ma'am. Go ahead.

25 MS. DAVID: It was too damn cold. I'm not sure if

OPENING STATEMENT - MS. DAVID

1 you heard me just now, but I'll say it again. It was
2 too damn cold. Now, that's what the defendant tells
3 Investigator Larry Turner when asked why did you come
4 out of the woods, he says, It was too damn cold.

5 On Thursday, December 20th of 2012, Woodrow
6 Garner opened his bar known as Woody's located on
7 Stoneaway Road in Bennettsville, South Carolina.
8 About 8:30 p.m. that evening, his guests began to
9 arrive, and by 9:40 that evening -- about 9:30 that
10 evening, he had his usual crowd of about 20 to 30
11 people. Now, what wasn't typical and usual about
12 this particular night is that the defendant, David
13 Dixon, and his friend, Brian Gratia, decided to show
14 up. However, they enter, they shook some hands,
15 spoke to some people, they got themselves a beer and
16 they shot some pool. Little did we know pool wasn't
17 the only thing that Dixon was going to shoot that
18 night.

19 About 9:40 p.m. that evening, David Dixon
20 walked outside to get more beer, and he was followed
21 out by Mr. Christopher Bristow. The two of them
22 began to have a discussion, and they were using arm
23 gestures, but it didn't escalate to yelling and
24 screaming. By this time, Christopher Bristow's
25 friends, Christopher Sanchez, a/k/a Chalupa, comes

OPENING STATEMENT - MS. DAVID

1 outside and joins in the conversation. Chalupa
2 watches Bristow pat down the defendant to check to
3 see if he has a weapon. He hears Chris Bristow
4 asking him to leave by saying, Hey, man, you need to
5 get out of here, we don't do this down here. He even
6 sees Bristow pull a flag from Dixon's pocket and
7 throw it to the ground.

8 Now, by this time, Woody, the owner of the
9 bar, is coming to the door checking to see what is
10 going on. He says, Hey, is everything okay out here?
11 Christopher Bristow has turned around and he tells
12 him, Yeah, man, we're good, we're coming back in.
13 But little did he know those were the last words he
14 would ever speak, because at that moment David Dixon
15 pulls out a 38 revolver and unloads five shots
16 sending three to the back of Christopher Bristow and
17 one across the head of Woodrow Garner.

18 Now, at this time everybody at the bar begins
19 yelling and screaming and calling 911, and Dixon
20 decides to run and hide in the woods for the next two
21 hours. He comes out about 12:00 where he knocks on
22 the door of Mr. Johnny Roscoe and asks if it is okay
23 to use the phone. Shortly thereafter, Dixon is
24 arrested. He has given a statement, and he has taken
25 officers to the location of the gun and the location

OPENING STATEMENT - MS. DAVID

1 of the gloves that he was wearing when he shot those
2 shots. But also shortly after this time, Christopher
3 Bristow is dead, and Woodrow Garner is at the
4 hospital bleeding uncontrollably from his head.

5 Ladies and gentlemen of the jury, I am Mia
6 David. This is Mary Thomas Johnson-Lee, and that is
7 Shipp Daniel. We are all assist solicitors for the
8 State of South Carolina where we represent the
9 people. This week we will prove to you beyond a
10 reasonable doubt that Dixon is guilty of the charges
11 he's been indicted for.

12 You are the jury, you are going to be
13 presented with a lot of evidence. You will hear
14 eyewitness testimony from individuals that were at
15 the bar that night. Some inside, some outside. And,
16 yes, I'll go ahead and tell you they were drinking,
17 because they were at a bar, that is what people do at
18 bars.

19 You will also hear a statement or a question
20 from the defendant himself. He tells two different
21 stories. The first story you will hear is something
22 about Bristow had a gun and he got scared, and that
23 is why he shot him. Then he'll tell you something
24 else about Bristow pulling a flag from the pocket and
25 he felt it was disrespect. You will also hear

OPENING STATEMENT - MS. DAVID

1 forensic evidence from the South Carolina Law
2 Enforcement Division where they will prove to you
3 that Dixon was the man that held that gun and pulled
4 that trigger shooting and killing Bristow and
5 seriously injuring Woody Garner across his head.

6 Today, and this week, as members of this jury,
7 I simply ask that you pay close attention to the
8 facts and the evidence that will be presented in this
9 case to find David Dixon guilty of the murder of
10 Christopher Bristow, the attempted murder of Woodrow
11 Garner and possession of a weapon during the
12 commission of this crime.

13 Now, in this case, I'm going to ask that you
14 remember one thing, because you might hear -- you
15 might, not quite sure -- but you might hear that this
16 case is about voluntary manslaughter. I want you to
17 remember that not only was it too damn cold for him
18 to be running around in the middle of the December in
19 the woods without a coat, it was also too damn cold
20 to shoot somebody three times in the back. Again,
21 I'll say it was too damn cold to shoot somebody three
22 times in the back. That is cold blooded murder, and
23 I ask that you pay attention and find the defendant
24 guilty. Thank you.

25 THE COURT: Defense.

OPENING STATEMENT - MR. STEEN

1 MR. STEEN: Good afternoon. My name is Brandon
2 Steen, and along with me is Nick Lewis. We're here
3 today to represent David Dixon. We haven't been
4 doing this long, so bear with us.

5 Mr. Dixon is 20 years old, but he's innocent
6 of the charges that the State brought against him
7 today. He did not, as the Solicitor stated, cold
8 blooded murder Mr. Bristow. He did not attempt to
9 murder Mr. Garner. Because the State and I disagree
10 on the facts, you are brought in to determine the
11 true facts.

12 The solicitors know how much I like the word
13 "allegedly." Whenever we have discussions, I throw
14 it out there. Remember, stuff you hear today are
15 allegations until you decide if they are true. You
16 all are the deciders of facts today.

17 There are two primary charges in front of you,
18 like the Solicitor said. She's going to present
19 evidence that Mr. Dixon murdered Mr. Bristow. I'm
20 here today to tell you that he did not murder
21 Mr. Bristow. I'm not going to say he didn't shoot
22 him or argue that it was his gun and the bullet ended
23 up in Mr. Bristow, he pulled the trigger, but it is
24 not cold blooded murder, as the State said.

25 You heard evidence, as the State said, that

OPENING STATEMENT - MR. STEEN

1 people were drinking on a Saturday night at a local
2 beer joint. You will hear evidence that Mr. Bristow
3 and Mr. Dixon had no prior difficulties leading into
4 this night. You will hear evidence that Mr. Dixon
5 bought the victim, Mr. Bristow, a beer that night at
6 the bar. You will hear evidence that Mr. Bristow
7 followed Mr. Dixon outside the bar. You will hear
8 evidence that Mr. Bristow laid his hands on Mr. Dixon
9 first -- actually, he's the only person that laid
10 hands between the two. He touched Mr. Dixon.

11 You will hear evidence that Mr. Bristow had
12 gunshot residue on his hands, GSR. And you will hear
13 evidence that Mr. Bristow could have had a gun on him
14 that night. He only shot after being provoked by
15 Mr. Bristow to protect himself in what was a very
16 volatile situation at a local beer joint on Thursday
17 night.

18 Additionally, like I said before, he did not
19 murder Mr. Garner. Again, they had no prior
20 difficulties with each other. Mr. Dixon, until
21 Investigator Seales told him that Mr. Garner had been
22 shot, he had no idea Woodrow Garner had been shot
23 that night. You will hear he was released for the
24 attempted murder injury the night that he was taken
25 to the hospital. You will also hear that David Dixon

OPENING STATEMENT - MR. STEEN

1 was not the only person firing shots that night at
2 Woody's bar. David Dixon did not attempt to murder
3 Mr. Garner. He had no idea how Mr. Garner sustained
4 his injuries.

5 In wrapping this up I want you to remember
6 three important things that the judge has already
7 commented on, three protections that every American
8 citizen has. David is an innocent man as he sits at
9 that table. The State of South Carolina has the
10 burden to prove that he murdered Mr. Bristow with
11 malice of aforethought and that Mr. Dixon did attempt
12 to murder Mr. Garner. They must prove both of these
13 charges, every element of both of these charges
14 before you can find him guilty beyond a reasonable
15 doubt -- before you can find him guilty.

16 Please, I implore you to listen to the facts
17 and not jump to any conclusions until all is said and
18 done here this week. We believe that after the
19 conclusion of the evidence, you'll find that Mr.
20 Dixon is not guilty of the charges against him.
21 Thank you for being with us.

22 THE COURT: Prosecution, call your first witness.

23 MS. DAVID: Woodrow Garner.

24 (WOODROW GARNER, having been duly sworn,
25 testified as follows:)

WOODROW GARNER - DIRECT

1 THE CLERK: State your name for the record.

2 WITNESS: Woodrow Franklin Garner.

3 MS. DAVID: Beg the Court's indulgence.

4 THE COURT: Let me tell you that the witnesses
5 have been sequestered, meaning the witnesses are in
6 another room and are not hearing other testimony or
7 present until after they have testified. Mr. Garner
8 did not come from another room because he's the first
9 witness to be called and also because of what is
10 termed as the "victim" or the "complaining witness,"
11 he has a right to be in the courtroom throughout
12 these proceedings, as does the defendant and the case
13 officer, who is Officer Seales. Those individuals
14 will be allowed to remain throughout the trial. All
15 the other witnesses are sequestered. It may take us
16 a moment for the bailiff to go and retrieve the
17 witness and bring them in the room.

18 DIRECT-EXAMINATION

19 BY MS. DAVID:

20 Q State your full name.

21 A Woodrow Franklin Garner.

22 Q How old are you?

23 A 43.

24 Q Where do you live, Mr. Garner?

25 A McColl, South Carolina.

WOODROW GARNER - DIRECT

1 Q Are you married?

2 A No, ma'am.

3 Q Do you have any children?

4 A Yes, ma'am.

5 Q How many?

6 A I have three children.

7 Q Do you remember the evening of December 20,
8 2012?

9 A Yes, ma'am.

10 Q Why do you remember this day?

11 A Because on that day, this fellow here, David
12 Dixon, tried to shoot me and kill me, and he did kill
13 a friend of mine.

14 Q Where were you all located when this happened?

15 A On Stoneaway Road at a bar called Woody's.

16 Q I'll show you what has been marked as State's
17 Exhibit No. 17. Do you recognize it?

18 A Yes, ma'am. That is my bar.

19 Q This is your bar. Has this photo been changed
20 or altered in any significant way?

21 A No, ma'am.

22 MS. DAVID: At this, time the State would like to
23 offer this to be published to the jury.

24 THE COURT: You may offer it to the jury for
25 review, and you may pass it around. I'll tell you

WOODROW GARNER - DIRECT

1 that prior to your arriving in the courtroom, in
2 order to speed the trial, the State and defense
3 agreed that Exhibits 1 through 51 for the State are
4 in evidence, uncontested. You may proceed.

5 Q (MS. DAVID) Let's get back to the evening of
6 December 20, 2012. About how many people do you
7 think were there that night?

8 A Between 20 and 30.

9 Q Were they people that you knew?

10 A Most of them are regulars. Everybody always
11 came Thursday, Friday and Saturday, were the same
12 ones.

13 Q Was Mr. Dixon there that night?

14 A He popped up a little later after the crowd.

15 Q Had you ever seen him there before?

16 A He had never been in before.

17 Q Never before. Now, if you would, I have a
18 diagram here of your bar, and if it helps you, then
19 you can use the exhibit; if not, please don't. I'll
20 show you what is marked as State's Exhibit No. 49.
21 Do you recognize it?

22 A Yes, ma'am.

23 Q Will you tell the Court what it is?

24 A That's the outlay of the inside of the bar and
25 parking lot.

WOODROW GARNER - DIRECT

1 Q If you don't mind, would you please slowly
2 walk through what occurred on this evening. You can
3 use the diagram if you want to, if you don't, you can
4 just talk.

5 MR. STEEN: Objection, asks for a narrative
6 response.

7 THE COURT: Overruled.

8 A This evening, before the crowd came in, on
9 Pool Table No. 1, my girlfriend, Donna, was shooting
10 pool. Bristow was the first customer to come in. He
11 came in, and him and Travis came to Pool Table No. 2.
12 They were shooting pool. Couple more came in, there
13 was a couple outside. David came in with what he
14 called Snapper, Ryan. They came in, and David came
15 over to the pool table and shook my hand. Never
16 spoke a word, just shook my hand. Me and my
17 girlfriend were leaving a table so David and Brian --
18 so they could shoot, because we were going behind the
19 bar because there was customers.

20 As soon as I got behind the bar, Bristow and
21 David walked to the bar together, and David told me,
22 Give Bristow a beer. So he paid for Bristow for a
23 beer. Then they turned and David set his jacket on
24 the first chair, corner of the -- this chair right
25 here is where he set his jacket down. Snapper went

WOODROW GARNER - DIRECT

1 down to the opposite side, second to the last stool,
2 and sat down there.

3 Bristow and David talked a little while, then
4 if I remember right, Bristow went out the door first,
5 not David. Bristow went out first to accompany Trey
6 and Brandon in the parking lot. About this time, a
7 black guy came in. I was stocking the bar. The
8 black guy -- I tried to remember who he was and if I
9 seen him before, and I never seen him before.

10 At this time, Travis and Little Man came to
11 the window. I was down stocking the bar because the
12 guy walked up, stocking the bar, and I heard Travis
13 say --

14 MR. STEEN: Objection, hearsay.

15 THE COURT: I'll sustain.

16 MR. STEEN: Yes, sir.

17 THE COURT: Ladies and gentlemen, the objection is
18 hearsay. Typically what that means is when someone
19 comes in and testifies about what someone else said,
20 then that generally is inadmissible, and there are
21 exceptions to that rule. I think if you remember
22 back when we were children, you would sit in a circle
23 and someone whispers and it goes around in a circle
24 and when it came back, it would be changed. The best
25 evidence to what somebody else said is to bring that

WOODROW GARNER - DIRECT

1 person in. That is the basis of the hearsay rule,
2 and that was the objection, and I'll sustain the
3 objection. Please proceed.

4 A Anyways, they notified me something was going
5 on in the parking lot, otherwise, I would not have
6 had any idea. So I walked around the bar, walked
7 out, walked to the door, opened to assess the
8 situation to see what was going on. They were just
9 talking, so I didn't see any danger. So I walked up
10 and I said, What the hell is going on out here?
11 David looked up at me, he turned as if he was leaving
12 Bristow, turned around and said, It is all good,
13 let's have another beer. I was like, Good.

14 As I turned around, couple shots was fired. I
15 thought he shot up in the air, so I turned around to
16 show I wasn't intimidated. When I looked, he waited
17 until I made eye contact. He smirked a smile at me
18 and pulled the trigger. Had I not ducked my head, he
19 would have hit me in the face.

20 I jumped back through the door, two more
21 shots. My door was hit and beside the door was hit.
22 They slammed the door, and that is the last I seen
23 him.

24 Q Is the man that shot you in this courtroom
25 today?

WOODROW GARNER - DIRECT

1 A Sitting right over there with white turtleneck
2 sweater.

3 Q Is it okay if you point at him?

4 A David Dixon (indicates).

5 MS. DAVID: May the record reflect that Woody
6 Garner identified David Dixon as the individual that
7 shot him across the head on December 20.

8 Q (MS. DAVID) Let's get back to a few things. On
9 that evening, did you see anyone with a weapon?

10 A No, ma'am.

11 Q Bristow?

12 A No, ma'am.

13 Q Dixon himself?

14 A No, ma'am.

15 Q Chalupa?

16 A Now.

17 Q Anybody in the bar?

18 A Nobody in my bar had a weapon.

19 Q No one in your bar. Where there a lot of
20 people going inside and outside?

21 A They were in one time, and then out at one
22 time. It happened -- it was not even time enough to
23 have a lot of in or out between the time we got there
24 to open and the time it happened. It was so quick.

25 MS. DAVID: Beg the Court's indulgence.

WOODROW GARNER - DIRECT

1 THE COURT: Yes, ma'am.

2 (A brief pause in the proceedings.)

3 Q (MS. DAVID) Two more questions for
4 clarification. Is your bar inside Marlboro County?

5 A Yes, ma'am.

6 Q How certain are you that you saw David Dixon
7 shoot you?

8 A If there is any more than 100 percent, it is
9 more than a hundred percent. I know he shot me. I
10 was looking dead at him when the fire came at the end
11 of the gun.

12 Q How certain are you that David Dixon shot
13 Chris Bristow?

14 A A hundred percent. There was no one else, and
15 I had no idea of a gun until I heard it, and that is
16 once I was inside, the door was shut and the other
17 shots stopped.

18 Q I was just going on say that. Would you
19 clarify, when do you hear a second gun?

20 A The first gun stopped firing, I would say
21 about a minute, and then, pow, pow, pow, pow, and
22 that was the shots.

23 Q Where were you when the second gun is fired?

24 A Inside trying to get the address for my
25 girlfriend, because she was hysterical. I was

WOODROW GARNER - DIRECT

1 holding a towel to keep from bleeding to death and
2 trying to figure it out. I got my license off of the
3 wall for the address and told 911.

4 Q I have a few photos that we'll review at this
5 time. I'll show you what is marked for purposes of
6 identification as State's Exhibit No. 18. Do you
7 recognize this?

8 A Yes, ma'am, that is left side of my bar.

9 Q Has it been changed or altered in any way?

10 A No, ma'am.

11 Q I'll show you State's Exhibit No. 26. Do you
12 recognize this?

13 A That is inside of my bar and Mr. Dixon's
14 jacket on the stool.

15 Q Exhibit 22?

16 A That is inside of my bar and Mr. Gratia's
17 jacket on the stool.

18 Q How many jackets are on stools here?

19 A One on the far right, and one on the far
20 left --

21 Q Just for clarification purposes, what is 24?

22 A Pool tables at my bar.

23 MS. DAVID: State would move to have these photos
24 published to the jury.

25 MR. STEEN: What was the last number?

WOODROW GARNER - CROSS-EXAMINATION

1 MS. DAVID: 24.

2 Q (MS. DAVID) Is there anything else you think
3 the Court needs to know at this time?

4 A Not that I can think of.

5 MS. DAVID: Answer any questions the defense may
6 have.

7 THE COURT: Cross-examination?

8 CROSS-EXAMINATION

9 BY MR. STEEN:

10 Q Was the shots fired before or after?

11 A He shot two shots and then a hesitation, and
12 when I turned around to look, he was looking dead in
13 my face when he pulled the trigger.

14 Q You said earlier that two more -- he fired two
15 more shots at you that --

16 A As I jumped in the door, yes, sir.

17 Q You heard two shots, you got shot once and
18 then two more shots came at you?

19 A As I hit the door. There was another shot,
20 and I didn't see where it hit.

21 Q You mentioned a black guy coming in; had he
22 ever been to the bar before?

23 A No, sir, not that I can think of.

24 Q Do you know why he was there that night?

25 A No, sir, I sure don't.

WOODROW GARNER - CROSS-EXAMINATION

1 MR. STEEN: One moment, Your Honor.

2 THE COURT: Yes, sir.

3 (A brief pause in the proceedings.)

4 MR. STEEN: No further questions.

5 THE COURT: You have direct, and then you have
6 cross, and if a new issue is brought up in cross, you
7 can redirect the witness. Is there redirect for the
8 witness?

9 MS. DAVID: Nothing further.

10 THE COURT: You are free to step down. Call your
11 next witness.

12 MS. DAVID: Hosea Lemon.

13 (HOSEA LEMON, having been duly sworn,
14 testified as follows:)

15 THE CLERK: State your name for the record.

16 WITNESS: My name is Sergeant Hosea Lemon.

17 DIRECT-EXAMINATION

18 BY MS. DAVID:

19 Q What is your occupation, Mr. Lemon?

20 A I'm a deputy sheriff, night shift supervisor
21 with Marlboro County Sheriff's Office.

22 Q How long have you been employed with the
23 sheriff's office?

24 A About 14 years or so. About 33 years total in
25 law enforcement.

HOSEA LEMON - DIRECT EXAMINATION

1 Q Where was your previous law enforcement
2 experience?

3 A In Latta.

4 Q What are your current duties with the
5 sheriff's office?

6 A I'm a sergeant with the sheriff's office, now
7 night shift supervisor.

8 Q Is it one of your duties to assist in
9 investigations?

10 A To assist in investigations if needed. If
11 needed, we assist the lead investigator, Mr. Seales.

12 Q Were you employed or did you assist at all in
13 the investigation on December 20, 2012?

14 A To a certain extent like that, because we had
15 to maintain a crime scene as we responded.

16 Q What were you responding to?

17 A 12/20/2012 we received a call in reference to
18 a shooting, myself and Deputy Johnson. The time was
19 probably around 21:47 when the call came in. I think
20 it was a caller by the name of Sonya Caulder, or
21 something like that?

22 Q What did she call and say?

23 A That they were -- there had been a shooting at
24 1216 Stoneaway Road, which is right at the end of the
25 intersection of Stoneaway and Red Hill Road, night

HOSEA LEMON - DIRECT EXAMINATION

1 spot right there.

2 Q What did you do once you heard this call?

3 A I responded, and when I got there, there were
4 a lot of people outside. They were waving me down.
5 And as I pulled up, I kind of backed my car over to
6 the side, because I didn't know what was going on at
7 the time other than that -- we were responding to a
8 shooting.

9 Q Did you ever find out what was going on?

10 A When we came up, it was really raining really
11 hard. Got out of my car, and a gentleman came to me.
12 I don't know his name, but he was in hysteria. He
13 said his son was shot. I could see the person laying
14 on the ground on the dirt road. I tried to calm him
15 down, along with a lot of other people, trying to
16 talk, and they were kind of in a rage as far as
17 attitude. I had to try to calm them down. I had
18 other officers responding, which was Robert Johnson,
19 and Deputy Locklear.

20 THE COURT: Sir, would you move forward so we can
21 all hear you better? Thank you.

22 Q (MS. DAVID) About how long were you there
23 before the other officers arrived?

24 A A couple of minutes. A couple of minutes.

25 Q Once you received help to contain the scene,

HOSEA LEMON - DIRECT EXAMINATION

1 did you do anything else?

2 A No -- well, primarily the father was -- he was
3 all out of it. I held him in my arms. He was
4 crying, and I held him in my arms a few minutes
5 trying to get him calmed down and everything.

6 Q I just have one other question at this moment.
7 You mentioned that you saw one person laying on the
8 ground, did you ever see anyone else injured?

9 A I did not. I did not.

10 MS. DAVID: Beg the Court's indulgence.

11 (A brief pause in the proceedings.)

12 MS. DAVID: No further questions at this time.

13 MR. STEEN: No questions from the defense.

14 THE COURT: Call your next witness.

15 MS. DAVID: Christopher Sanchez.

16 (CHRISTOPHER SANCHEZ, having been duly sworn,
17 testified as follows:)

18 THE CLERK: State your name for the record.

19 WITNESS: My name is Christopher Sanchez.

20 DIRECT-EXAMINATION

21 BY MS. DAVID:

22 Q Ms. Sanchez, do you have a nickname?

23 A Yes, ma'am.

24 Q What is it?

25 A Chalupa.

CHRISTOPHER SANCHEZ - DIRECT EXAMINATION

1 Q How old are you?

2 A 21.

3 Q Where do you live?

4 A In Bennettsville, South Carolina.

5 Q Are you married?

6 A No, ma'am.

7 Q Do you have any children?

8 A No, ma'am.

9 Q Do you have a girlfriend?

10 A No, ma'am.

11 Q On the night of December 20, 2012, what were
12 you doing?

13 A I was at Woody's on Stoneaway.

14 Q Who did you go there with?

15 A I got dropped off. I walked in and met up
16 with the fellows. I pretty much went by myself.

17 Q Who all was there?

18 A Me, Bristow, Little Man, Travis, David, Brian,
19 Woody, his old lady, Doug and Trey and Kerry and
20 Brandi.

21 Q Did you all hang out there often?

22 A Pretty much.

23 Q Is this the usual crowd?

24 A Yes, ma'am.

25 Q Was anyone else there?

CHRISTOPHER SANCHEZ - DIRECT EXAMINATION

1 A That is about all the people there -- well,
2 Billy Jackson and Bernie.

3 Q Did you see Dixon?

4 A When I first walked in, I did. But most of
5 the time, I never seen him.

6 Q How often did you all go to Woody's?

7 A About every weekend, Thursday, Friday,
8 Saturday, most all the time.

9 MS. DAVID: If I may approach?

10 THE COURT: You may.

11 MS. DAVID: If it is okay with Your Honor and the
12 defense counsel, I'm just going to hold it for the
13 witness.

14 If you would, would you please slowly walk
15 through what occurred that evening.

16 A All right. When I walked in, there was a few
17 people on the first pool table shooting, but there
18 was a few people by the pool table, but weren't too
19 many people there by number two. Trey and Kerry,
20 they was at the bar, and Brian and David, they were
21 sitting at the bar, too.

22 When I come through, Bristow came over and
23 talked to me for a minute. He walked over and got
24 him a beer. They went to the second pool table and
25 shot a game of pool. Everybody was sitting around

CHRISTOPHER SANCHEZ - DIRECT EXAMINATION

1 and having a good time, or whatever. I got in my own
2 little world, or whatever. Bristow, every time I
3 looked for him, he was gone. I looked out the window
4 and I seen Bristow standing outside. When he was
5 standing outside, him and David, they were not really
6 close or nothing, but they were regular talking, or
7 whatever, it looked.

8 So I walked outside to see what was going on.
9 When I walked outside, Bristow looked at me and told
10 me, Hey, I'm just telling him how it is, I'm trying
11 to tell him. So I was like, Look, man, best thing,
12 man, you know, if you just leave, we don't get along.
13 I just want the best thing, whatever is best, just
14 for you to leave, or whatever.

15 After I said what I said, he says -- kept
16 saying something smart, and by that time, he kept on
17 going with it, Bristow went up and told him and
18 started having words with each other. I was standing
19 right there behind him listening as they were going
20 at it. They went -- they stopped for just a minute,
21 and for some odd reason, when Bristow seen this flag,
22 he just grabbed it, you know what I mean. He grabbed
23 and pulled it up, moved it around and said, We don't
24 need to worry about this, this is what we do. He
25 threw it, and Woody came to the door and was like,

CHRISTOPHER SANCHEZ - DIRECT EXAMINATION

1 What was going on. By the time Bristow turned around
2 to look at Woody, Everything is good, I'm coming in
3 to get a beer, and so when we turned around, Bristow
4 flew his arm around me and we was walking in. I
5 heard gunshots. I fell, laid on the ground.
6 Bristow, he already turned and he was gone.

7 I forgot about everything that was going on.
8 I jumped up, and David, he was running down the road,
9 so I went down running town the road, took after him.
10 I got to him. When I got to him -- when I almost
11 went to grab him, he turned around and threw the
12 pistol in my face, so I stopped, turned around and
13 started going back the other way.

14 By the time I looked around to see if he was
15 still there, he was gone. I ran back to Woody's, and
16 I had seen Woody, he was holding his head. I noticed
17 something was wrong with him. By the time I got
18 outside of the road, on the dirt road, Bristow was
19 laying there on the side. I went over there and
20 tried to do the best I could, but just pretty much
21 passed away.

22 Q Now, prior to you walking outside, did you see
23 anyone at the bar with the weapon?

24 A No, ma'am.

25 Q Bristow?

CHRISTOPHER SANCHEZ - DIRECT EXAMINATION

1 A No, ma'am.

2 Q Dixon?

3 A No, ma'am. When I went in, as far as I know,
4 nobody didn't have no weapons, at least I didn't see
5 none.

6 Q When you go outside, can you tell me about the
7 discussion a little bit more? Was it loud?

8 A No, he was like -- you know what I mean, it
9 was regular talking, nothing real loud or getting out
10 of the way. When I walked out, I told him what I
11 said, Best thing is just to leave, man, because me
12 and him didn't get along. Me and David really never
13 got along. We didn't want that going on there,
14 because we're better than that, you know what I mean.

15 After I said what I said, David was pretty
16 much cussing, or whatever, speaking his mind.
17 Bristow, you know, he ran over there to him, going
18 back and forth. When he patted him down, or
19 whatever, he just left -- I guess forget it, you
20 know, but when he looked down, he like saw the flag
21 and he said, We're not worried about this around
22 here, we don't roll like that, and threw it. By the
23 time Woody said, What's going on, Bristow said,
24 Everything is good, I coming in to get a beer. He
25 threw his arm around me, and we walked. I heard

CHRISTOPHER SANCHEZ - DIRECT EXAMINATION

1 gunshots right there, as soon as we turned around and
2 walking, just a couple of steps and just started
3 letting off.

4 Q Did you know Bristow had been hit?

5 A Well, I ain't going to say -- well, pretty
6 much I didn't -- I ain't never think about it like he
7 was -- like he got shot or nothing. I know I heard
8 it. I was just laying on the ground, and I finally
9 got up and just went after him. The only thing on my
10 mind was to go get him.

11 Q How did you know to run after Dixon?

12 A Because it was right behind me. I knew he did
13 it. He was right there dead behind me. When we
14 turned around and had our back facing him, he was
15 right there behind us. Woody was at the door and
16 Brian was standing at the end of the car, them two
17 and us and Woody.

18 MS. DAVID: Beg the Court's indulgence.

19 (A brief pause in the proceedings.)

20 Q (MS. DAVID) You mentioned that Bristow told
21 Dixon, We don't roll like that; what did that mean?

22 A We didn't care for it. Ain't nobody in a
23 gang. We didn't care for none of that.

24 Q Care for what?

25 A For, like, gang-banger, Crips, Bloods, we

CHRISTOPHER SANCHEZ - DIRECT EXAMINATION
1 didn't do none of that.

2 Q What do you think that flag represented?

3 A I guess it represented that he was in a gang,
4 Crip thing, whatever the little gang was.

5 Q Did you know that?

6 A Well, I'm pretty much knew it might be a gang,
7 but I ain't never seen him that often. When I first
8 seen him, he had a flag, so he probably do, but none
9 of us cared about it.

10 Q But did you know?

11 A That David?

12 Q Did you know whether or not David was in a
13 gang?

14 A I didn't know for sure he was in a gang.

15 Q At this time, I show you for purposes of
16 identification what is marked as State's Exhibit 20.
17 Do you recognize it?

18 A Yes, ma'am.

19 Q What is this?

20 A Billy Jackson's car parked at Woody's, and a
21 case of beer or 18.

22 Q Maybe I need to get closer. Do you recognize
23 anything else in this photo?

24 A Looks like a flag. I ain't sure. There is
25 something laying there.

CHRISTOPHER SANCHEZ - DIRECT EXAMINATION

1 Q I'll show you State's Exhibit No. 21 where it
2 is a little bit larger for you.

3 A Yeah, that's the flag.

4 Q Do you recognize this?

5 A Yes, ma'am.

6 Q Is this the flag you saw on that evening?

7 A Yes, ma'am.

8 MS. DAVID: The State would move to have these two
9 items published to the jury.

10 THE COURT: You may.

11 MS. DAVID: No further questions at this time.
12 Answer any questions the defense may have for you.

13 CROSS-EXAMINATION

14 BY MR. STEEN:

15 Q You have charges pending in Marlboro County,
16 Fourth Circuit?

17 A I had got in trouble, but I ain't got nothing
18 at this time. Nothing against me, no. I just got in
19 trouble. As far as I know, I've been going to court
20 just two times, and that's it, nothing else.

21 MR. STEEN: One moment, Your Honor.

22 (A brief pause in the proceedings.)

23 Q (MR. STEEN) Were you not arrested for carrying
24 a concealed weapon in 2013?

25 A Yes, sir.

CHRISTOPHER SANCHEZ - CROSS-EXAMINATION

1 Q And those charges are no longer pending?

2 A I'm going to court for it. I'll be but twice.
3 I don't know what's going on.

4 Q Okay. And you would agree that Chris Bristow
5 followed David Dixon out the bar that night?

6 A Yeah. They walked out, and then Bristow went
7 outside. He didn't follow like right behind him. He
8 might be standing probably a minute or two, and then
9 Bristow went out. By the time I realized, he was
10 already outside, pretty much.

11 Q So you said Mr. Dixon was out there minutes?

12 A Yeah, about a minute or so, smoking a
13 cigarette or something.

14 Q And did you ever see David Dixon lay a hand on
15 Mr. Bristow?

16 A Put his hands on him?

17 Q Did you see Mr. Dixon lay his hands on Chris
18 Bristow?

19 A No, I never seen him touch or nothing like
20 that, just talking. Nobody touching each other at
21 that time.

22 Q But Mr. Bristow was --

23 A He patted his pockets, yeah.

24 Q You said you don't get along with Mr. Dixon?

25 A No, I don't get along with him.

CHRISTOPHER SANCHEZ - CROSS-EXAMINATION

1 Q That night you didn't --

2 A We didn't want no trouble.

3 Q You didn't want him there?

4 A We didn't want no trouble.

5 Q Prior to anything happening, had you -- did
6 you and your friends discuss that you didn't want Mr.
7 Dixon there that night?

8 A We discussed that he was there?

9 Q Yeah.

10 A Well, he called and told me he was at Woody's,
11 so I went on down there when he said he was going
12 down there, but I had to run and do something. He
13 called and said, I'm at Woody's, come and check me
14 out.

15 Q Who called you and said he was at Woody's?

16 A Bristow. He said, I'm Woody's, come and check
17 me out, I said alright.

18 Q Did Mr. Bristow mention Mr. Dixon in that
19 phone call?

20 A Yes, sir. He said, David is here, come on and
21 check him out.

22 Q At that point, after receiving the phone call
23 from Bristow that David was there, you left to go to
24 Woody's?

25 A About five, ten minutes I went on down there.

CHRISTOPHER SANCHEZ - CROSS-EXAMINATION

1 Q And David was there when you arrived at
2 Woody's?

3 A He was right there at the bar.

4 Q About how long after you arrived was it before
5 the situation happened outside?

6 A I wasn't there long. Not very long.

7 Q When you arrived, did it look like there was a
8 situation about to happen?

9 A No.

10 Q You did not see with your own eyes David shoot
11 Chris Bristow, did you?

12 A We was walking in. I didn't see him shoot
13 with my own eyes, but I know he did it.

14 Q And did you have anything on you that night?

15 A No, I didn't have nothing.

16 MR. STEEN: One second, Your Honor.

17 (A brief pause in the proceedings.)

18 MR. STEEN: No further questions.

19 THE COURT: Is there redirect?

20 MS. DAVID: Yes, Your Honor.

21 REDIRECT-EXAMINATION

22 BY MS. DAVID:

23 Q Did you ever touch David Dixon on that
24 evening?

25 A No, ma'am.

CHRISTOPHER SANCHEZ - REDIRECT EXAMINATION

1 Q Did you ever see Chris Bristow touch David
2 Dixon on that evening?

3 A Only time is when he patted him.

4 Q Why was he patting him down?

5 A Checking --

6 MR. STEEN: Calls for speculation.

7 THE COURT: Just a moment. Lay a foundation. If
8 so, how does he know, so I'll have you rephrase the
9 question.

10 Q (MS. DAVID) Mr. Chalupa, when you walk outside,
11 what do you see taking place between Bristow and
12 Dixon?

13 A When I first walked outside they were both
14 there talking calm as they could be, just talking.
15 Bristow realized when I came outside, and he told me,
16 Tell him how it is, what I'm talking about. I told
17 him, Look, the best thing for you to do is just
18 leave. I don't get along with you. We're just
19 trying to have a good time. Pretty much, he went
20 into cussing, and that is when Bristow jumped back
21 into him again. They argued back and forth.

22 When they were arguing, for some reason,
23 Bristow just patted him, checked his pocket and back
24 pocket, and left him alone. David got real mad about
25 it, or whatever, and kept going on with it. That is

CHRISTOPHER SANCHEZ - REDIRECT EXAMINATION

1 when Bristow backed off. He looked at him again, and
2 for some reason, just caught his mind, he looked down
3 and grabbed the flag and pulled it out and said, We
4 don't do this around here, we ain't worried about
5 this. He flew his arm around me, Woody opened up the
6 door, What is the problem, and Bristow said, Ain't no
7 problem, I'm coming in to get a beer.

8 We turned around, and David was standing
9 behind us. We was walking in, and next thing I hear
10 is gunshots. I was laying on the ground, and Bristow
11 was -- Bristow got shot, or whatever, and Woody in
12 the head.

13 Q So, again, did you ever hit Dixon?

14 A I never touched David.

15 Q Did you ever see Bristow hit Dixon?

16 A No, he never hit him.

17 Q Thank you.

18 MS. DAVID: No further questions.

19 THE COURT: Follow-up on anything in recross?

20 MR. STEEN: No.

21 THE COURT: You may step down. You are free to
22 remain or free to go. Call your next witness.

23 MS. DAVID: May I approach for a moment?

24 THE COURT: You may.

25 (Whereupon, a bench conference was had.)

RECESS - BY THE COURT

1 THE COURT: Ladies and gentlemen, State tells me
2 that for the next witnesses they need to bring a
3 piece of either video or audio equipment out, and it
4 takes a moment to set it up, so we'll take
5 approximately a 15-minute break. If you wish to go
6 outside to take a break, we'll give you that
7 opportunity. Don't discuss the case, and we'll
8 remain where you are while you depart the courtroom.
9 You may proceed.

10 (The jury exits at 3:06 pm., and the following
11 is heard out of the presence of the jury.)

12 THE COURT: Court is in recess for 15 minutes.

13 (A recess was taken.)

14 THE COURT: Please bring the jury. Are you ready
15 to publish -- you are ready?

16 MS. DAVID: Yes, we have the witness coming.

17 THE COURT: I'm going to talk to the jury about
18 taking notes and then you can call the witness.

19 (The jury enters at 3:26 p.m., and the
20 following is heard in the presence of the jury.)

21 THE COURT: Welcome back, ladies and gentlemen. I
22 trust you had a nice break. Let me make a comment
23 and give each of you the opportunity to take notes,
24 if you wish. We will be glad to provide pads for you
25 and pens or pencils if you need that. We don't

RECESS - BY THE COURT

1 insist that you take notes, but if you wish to have
2 that opportunity, we'll be glad to let you do that.
3 Just a comment, though, about notes if you choose to
4 take notes. We'll ask you to leave your notes here
5 in the jury room. We will close them up, lock them
6 up securely every night for us to review. We do not
7 review those notes, but we'll keep them here in the
8 courtroom -- or in the jury room so that they somehow
9 won't be out in the community and seen by others,
10 lost or whatever may happen to them.

11 At the end of the case, we will destroy the
12 notes, and we do that so the confidentiality of the
13 jury deliberations is always protected. So is there
14 anyone among the jury panel who would like to be
15 given the notepad and pen or pencil at this point?
16 All right, very good.

17 We have some who already have taken notes.
18 Would you like a notepad? All right. As you go, if
19 you decide to get into this at the next break, ask
20 the bailiff and they'll provide it to you. We will
21 provide you one right now, ma'am.

22 One other comment about notes while we're
23 doing that, if I may. My suggestion to you is that
24 notes should be to refresh your own recollection
25 during deliberations as opposed to proving a point to

RECESS - BY THE COURT

1 someone else, This is how it had to be because here
2 it is in my notes. It is best to refresh your own
3 recollection, keep you from having different
4 recollections of the testimony of various witnesses
5 throughout the trial. Thank you. Mr. Clerk, one of
6 the jurors wishes to have a pad, and the others, if
7 they wish to have them during the course of their
8 coming and going, please. Mr. Brown, there is a
9 juror on the back who is next to last from you.
10 Thank you.

11 Call your next witness.

12 MS. DAVID: Ms. Sonya Caulder.

13 (SONYA CAULDER, having been duly sworn,
14 testified as follows:)

15 THE CLERK: State your full name for the record.

16 THE WITNESS: Sonya Caulder.

17 DIRECT-EXAMINATION

18 BY MS. DAVID:

19 Q How old are you?

20 A 23.

21 Q Where do you live.

22 A I live with my parents.

23 Q Are you married?

24 A No, ma'am.

25 Q Do you have any children?

SONYA CAULDER - DIRECT EXAMINATION

1 A No, ma'am.

2 Q Do you remember the night of December 20th of
3 2012?

4 A Yes, ma'am.

5 Q And where were you on this night?

6 A I was at Woody's.

7 Q And who did you go to Woody's with?

8 A Me and my boyfriend, Dustin, and Travis.

9 Q And around what time did you all get there
10 that evening?

11 A I would say maybe 10 minutes to 9:00, 9
12 o'clock, somewhere in there.

13 Q Did you all go in the inside?

14 A Yes, ma'am, we did. We went in the inside. I
15 stayed there probably 15 or 20 minutes, and then I
16 went down the road and used the bathroom and then I
17 came back.

18 Q Who all did you see while you were on the
19 inside?

20 A Me and my boyfriend, Dustin, Woody, Donna,
21 Bristow, Travis, because he rode with us, Little Man
22 was there, Billy Jackson was there. I think there
23 were a couple more. I know Kerry, Trey, Brandi, and
24 that was it then.

25 Q Around what time do you think you went outside

SONYA CAULDER - DIRECT EXAMINATION

1 to your car?

2 A I would say about 9:15, 9:20. I was kind of
3 in and out.

4 Q And just slowly walk through the events from
5 that point forward.

6 A Well, I left Woody's to use the bathroom down
7 the road. I come back, and I didn't even get out of
8 my car. I was still sitting in my car. My car was
9 still running. We had the locks off, because when I
10 leave and come back, I don't ever go right back in.
11 My boyfriend always comes outside. I was sitting in
12 the car, and David walks outside and then Bristow
13 walks behind him. David goes and stands behind
14 Kerry's car. He was standing there, and him and
15 Bristow were talking. To me, they weren't fussing or
16 fighting, they was just -- from what I heard there
17 was no heavy words exchanged.

18 Bristow asked David what was he doing down
19 here, they didn't want no trouble, this was our spot
20 to hang out, you know, asking him what he was doing
21 down there. So then my boyfriend comes outside, and
22 he is sitting in the car. Then Chris, he comes
23 outside about the same time. Bristow leans up
24 against the car while David and Chalupa are talking,
25 and my boyfriend tells Bristow he believes --

SONYA CAULDER - DIRECT EXAMINATION

1 MR. STEEN: Objection, hearsay.

2 THE COURT: Sustain that, Counsel.

3 A My boyfriend let Bristow know -- because he
4 was leaning up against the car -- that he thought
5 that David had a gun and to watch, you know. We
6 don't play with guns, you know. So he told him, and
7 then Bristow was like, Oh, I don't think he's got a
8 gun, so he pats him down, pats his front pockets and
9 back pockets and comes back and stands at the car.

10 At this time, Chalupa -- I guess him and David
11 are finished talking, but Bristow said, Forget it,
12 let's go, let's go in and drink a beer. He turns
13 around to go back in, and all I hear is shots being
14 fired. I turned to look, and I see David on about
15 four, five shots, just shoot.

16 And then I -- because I have a concealed
17 weapons permit, so I had a pistol in my car. It was
18 in the glove box. I reached in the glove box to get
19 my pistol out. I grab it, and by this time, I seen
20 Bristow hit his knees, come back up and finish going
21 around the building. I see him when he falls on the
22 dirt road.

23 I hop out of my car and grab my pistol in the
24 back. I run to where Bristow was at, and in this
25 time I'm calling 911 trying to get someone on the

SONYA CAULDER - DIRECT EXAMINATION

1 phone, because I seen when he was hit he kind of
2 straightened up. I knew something was wrong.

3 So I was calling 911 because he was face down
4 in the dirt, so I knew something was wrong. So when
5 I got to him I, couldn't turn him over, I couldn't do
6 it by myself. So I hollered, and my boyfriend come
7 and help me turn him over. You know, I felt the
8 bullet wounds before we turned him over, and I
9 knew -- you know, I mean, I didn't know that he was
10 dead, but I knew that he was hurt (witness crying.)
11 I tried to do everything I could to help him, and I
12 just couldn't, you know. I just called 911, that is
13 all I could do. We stayed there until the ambulance
14 came and got him, and then we went to the police
15 department that night.

16 Q (MS. DAVID) Let's back up for a moment. Did
17 you actually see Dixon shoot the weapon?

18 A Yes, ma'am.

19 Q Is that person in the courtroom today?

20 A Yes, ma'am.

21 Q What is he wearing?

22 A His white button-up white turtleneck.

23 Q Do you mind pointing at him for me?

24 A (Indicates.)

25 MS. DAVID: May the record reflect that Sonya

SONYA CAULDER - DIRECT EXAMINATION

1 Caulder identified David Dixon as the shooter.

2 Q (MS. DAVID) Now, I also have -- I have a
3 diagram over here -- excuse me for a moment -- that
4 has been marked as State's Exhibit 49. I'll hold it
5 right here for you. Will you show me what happened
6 with the defendant and the victim during this
7 incident, where do they go?

8 A They are standing right here, because there is
9 a window here in the middle. So my car was right
10 here in front of the window, and everything happened
11 right here in the middle where nobody parks in front
12 of the door. They were right here, between here and
13 the road. He was standing -- this car was a little
14 further over closer to the door, but he was standing
15 right behind Kerry in the first car when it started.
16 When he was shooting the gun, he was right at the
17 end. He was right at the end of the back of her car
18 whenever he was shooting and Bristow was walking in
19 towards the door.

20 Q Where is Bristow?

21 A Standing behind the car. It was closer to the
22 door, so it was about right here. He was standing
23 here, and Bristow was in the middle, because my car
24 was here. He was standing in the middle, and Chalupa
25 was standing there with him. My door was closed, but

SONYA CAULDER - DIRECT EXAMINATION

1 I could hear them, because when the window was down.
2 When Bristow said, Forget it, let's drink a beer, by
3 this time they are turning and going back in and
4 Bristow has his arm around Chalupa, he is right in
5 front of the door, because my boyfriend just stepped
6 in the door whenever I started hearing the gunshots,
7 and I looked and seen Bristow down on one knee before
8 he went around the building.

9 Q You said Bristow goes around the building;
10 what do you mean?

11 A After the gunshots are fired, I guess -- I
12 don' know. I guess he was trying to get away because
13 he fell to the ground, but whenever Bristow -- after
14 I guess he was hit and went down to one knee, he got
15 up and continued to go around the building, and this
16 is where I found him, behind the building laying
17 right here. So they were walking back inside the
18 building whenever they started shooting.

19 Q Now, did you ever hear any more gunshots?

20 A I did. My boyfriend got my .22 out of my seat
21 and he said he fired it in the air. I did hear them,
22 and when he came over there where I was at, I asked
23 what happened and he told me that he shot it up in
24 the air because Chalupa was running away, and then he
25 came back. They were afraid that he would have more

SONYA CAULDER - DIRECT EXAMINATION

1 bullets in his gun or coming back, so he told me he
2 fired a warning shot just to let him know that
3 somebody else had a gun so he didn't come back, you
4 know.

5 I mean, he told me and I told him -- you know,
6 I carry it with me everywhere I go. Nobody knows
7 that I have it. There were a lot of break-ins and
8 things by my home, so nobody knew that I had that.
9 But he did fire my gun that night.

10 Q For clarification purposes, when does he fire
11 that gun?

12 A After David has run -- started running away
13 and Chalupa was chasing him and Chalupa comes back
14 and says I think he's coming back, that is when he
15 fired. That is when he said he fired, after Chalupa
16 came back. I was not in the front, I was in the back
17 with Bristow, so I'm just going by what he told me.

18 Q So when he fires the gun, has Chris Bristow
19 already been shot?

20 A Yes, ma'am.

21 Q Has Woodward Garner already been shot?

22 A Yes, ma'am.

23 Q So what do you do next? After this incident
24 occurs, and I think you stopped when you ran over to
25 the body --

SONYA CAULDER - DIRECT EXAMINATION

1 A When I run over to where Bristow was at, I
2 could not turn him over, because he was face down in
3 the dirt. I mean, he was face down. Bristow is a
4 big boy, I couldn't turn him over. When I did turn
5 him over, I mean, you know, I could hear -- he wasn't
6 choking. It sounded like he was breathing hard, but
7 I turned him over and checked to see if he was still
8 breathing. He sounded like he was choking on
9 something, so I stuck my fingers in the mouth to stop
10 him swallowing the tongue. Bernie ran over and
11 started doing CPR, and I already called 911 by that
12 time.

13 When I got there, I was on the phone with 911,
14 as I was running to him, I was calling 911, because I
15 knew when he was laying in the dirt that something
16 was wrong. Something was wrong. (Witness crying)
17 Dustin had to help me turn him over, because I
18 couldn't turn him over. Whenever I turned him over,
19 there was no blood, nothing. I mean, we just had to
20 wait. So he started CPR, and we just stayed there.
21 I mean, there was nothing we could do.

22 Q Do you recall calling 911 that evening?

23 A Yes, ma'am, somewhat.

24 Q Okay.

25 MS. DAVID: At this time, Your Honor, the State

SONYA CAULDER - DIRECT EXAMINATION

1 would move to publish the 911 tape, and it's already
2 been stipulated to by defense counsel.

3 THE COURT: Okay. What is the exhibit? You may
4 publish it.

5 (Whereupon, Exhibit 51 was published to the
6 jury.)

7 THE COURT: Anything further?

8 MS. DAVID: Yes, Your Honor.

9 Q (MS. DAVID) Just one last set of questions for
10 you and, ma'am, I'll be very brief. I just want to
11 show this to you. Is this your weapon?

12 A Yes, ma'am.

13 Q Is this the weapon that Dustin Locklear --

14 A Yes, ma'am.

15 Q Did you see anyone else with the weapon that
16 night?

17 A No, ma'am.

18 Q Did you ever see Bristow with the weapon?

19 A No, ma'am.

20 Q Prior to the shooting, did you ever see Dixon
21 with the weapon?

22 A No, ma'am. I've never seen him but one time
23 before then.

24 Q One last question. Did you ever see Bristow
25 hit David Dixon?

SONYA CAULDER - DIRECT EXAMINATION

1 A Hit him? No, I did not.

2 MS. DAVID: Answer any questions defense would
3 have.

4 THE COURT: For everyone concerned, it was checked
5 that the weapon is unloaded. Let's confirm it.

6 MS. JOHNSON-LEE: Your Honor, I had an officer
7 bring a couple of gun locks up here, so he just
8 unsealed it right before the testimony.

9 THE COURT: Thank you.

10 (A brief pause in the proceedings.)

11 THE COURT: It is unloaded?

12 MR. SEALS: It is unloaded.

13 THE COURT: Okay. You may proceed to
14 cross-examination.

15 CROSS-EXAMINATION

16 BY MR. STEEN:

17 Q Solicitor David just asked you did you see
18 Bristow hit Mr. Dixon, and you replied no. Did you
19 see any physical interaction?

20 A He patted his pockets. I seen him pat the
21 front of the pockets and the back of the pockets.

22 Q And during this whole situation, you were
23 inside your car?

24 A Yes, sir, with the windows rolled down.

25 Q Windows rolled down?

1 A The passenger and my window was rolled down.

2 Q Did you have your radio on or off?

3 A I don't remember -- it was off. I have a
4 switch and it was off, and I turned the switch off
5 when I cut the car off.

6 Q You state that you normally carry a gun?

7 A I do. It is always in my glove box.

8 Q Have you ever -- back outside to the incident.
9 You are in the car, they are close enough for you to
10 be able to hear their conversation?

11 A Yes, sir.

12 Q Was Dustin outside during this conversation?

13 A He was outside for a moment, but he went back
14 in.

15 Q So Dustin was inside when the --

16 A He walked -- whenever I came back and I parked
17 my car, David and Bristow were already outside for a
18 few minutes before Dustin or Chalupa came outside.

19 Q Okay. Did you see David shoot Woody Garner?

20 A I seen him shooting his gun. I did not see
21 exactly who he hit besides Bristow, and the only
22 reason I see him hit Bristow is because he stiffened
23 up when the bullets hit him in the back. I did not
24 see the bullet hit Woody's, but Woody was steps out
25 the door and as Bristow and Chalupa were walking back

SONYA CAULDER - CROSS-EXAMINATION

1 in. I mean, he was there around where Bristow was
2 standing. I did not see the bullet hit him, no, I
3 did not, but I seen him shooting the gun.

4 Q Okay. And how many shots did you hear come
5 out of Mr. Dixon's gun?

6 A Five or six, maybe. Five, at least.

7 Q How many shots did you hear come out of your
8 weapon?

9 A I have no idea. I mean, honestly, I don't
10 know how many bullets were in it. It holds 11, so I
11 don't know if it was a whole clip, but I don't think
12 there was anything in it after he got done -- I don't
13 think there was anything in it after.

14 Q You stated that Chris Bristow told David
15 Dixon, This is our spot?

16 A No. He said, This is where we come and hang
17 out.

18 Q One moment.

19 MR. STEEN: One moment, Your Honor.

20 (A brief pause in the proceedings.)

21 Q (MR. STEEN) What was the problem with Mr. Dixon
22 being there?

23 A I don't know. I mean, I don't know of a
24 problem with him being there.

25 Q Did you know Mr. Dixon prior to this --

SONYA CAULDER - CROSS-EXAMINATION

1 A I only seen him one, maybe two times before
2 that night. I didn't know him.

3 Q Out of the group of people that were there,
4 who would you say were your friends?

5 A I hung out with everybody, me and my
6 boyfriend. I mean, we always -- we just all hang out
7 together. I mean me, my boyfriend, Chalupa, Bristow,
8 Travis, Kerry and Trey, sometimes Brandi would come
9 with Kerry. I mean, we just all hung out together.
10 Woody, Donna. Amber wasn't there, but they are -- I
11 mean, we just all hung out together.

12 Q So everybody that was there?

13 A Pretty much, yeah, except him and the other
14 guy with him.

15 Q While you were inside, did you see any
16 situations happen between Mr. Dixon and Bristow?

17 A He bought Bristow a beer, but that was it.

18 Q You said the gun was in the glove box?

19 A Until he started shooting -- in the process of
20 him shooting, I reached over and I opened my glove
21 box and I grabbed it and put it in my lap.

22 Q How does Dustin get the gun?

23 A He finishes shooting -- I hop out of my car.
24 I see Bristow go down, I jump out of my car, throw my
25 pistol in the seat and I run to Bristow. I didn't

SONYA CAULDER - CROSS-EXAMINATION

1 take it with me, I threw it back in the car. I
2 didn't need it.

3 Q At that point --

4 A Yeah, I kind of wasn't worried when I seen him
5 hit the ground.

6 Q Thank you.

7 A You're welcome.

8 THE COURT: Redirect?

9 REDIRECT-EXAMINATION

10 BY MS. DAVID:

11 Q When you saw David Dixon fire a gun that
12 night, did anyone else have a gun at that time?

13 A No, ma'am.

14 MS. DAVID: Nothing further.

15 THE COURT: You may --

16 MR. STEEN: May I do recross?

17 THE COURT: What is the new issue raised by that
18 question?

19 MR. STEEN: The issue with no other guns.

20 THE COURT: You may.

21 RECROSS-EXAMINATION

22 BY MR. STEEN:

23 Q Did Mr. Garner have a gun there at Woody's?

24 A Not that I saw, no, sir. I do not remember
25 him having a gun that night.

SONYA CAULDER - REDIRECT & RECROSS-EXAMINATION

1 Q Had you ever seen a gun at Woody's?

2 A Owned by Woody, no. Other than this night, I
3 never seen anybody at Woody's with a gun. I always
4 have my gun with me, but I haven't seen Woody's with
5 one.

6 Q Have you seen others with guns besides Woody
7 at Woody's?

8 A No.

9 THE COURT: Do you want to follow?

10 MS. DAVID: Nothing further, Your Honor.

11 THE COURT: Ma'am, you may step down.

12 Call your next witness.

13 MS. DANIEL: I call Kerry -- may I call Dustin
14 Locklear instead of Kerry --

15 THE COURT: You may.

16 (DUSTIN LOCKLEAR, having been duly sworn,
17 testified as follows:)

18 DIRECT-EXAMINATION

19 BY MS. DAVID:

20 Q What is your current age, Mr. Locklear?

21 A 20.

22 Q And where do you live?

23 A Wallace, South Carolina.

24 Q Are you married?

25 A No, ma'am.

DUSTIN LOCKLEAR - DIRECT EXAMINATION

1 Q Do you have any children?

2 A No, ma'am.

3 Q Do you have a girlfriend?

4 A Yes, ma'am.

5 Q Do you recall the night of December 20, 2012?

6 A Yes, ma'am.

7 Q And why is this night important to you?

8 A That was the night that one of my best friends
9 got killed.

10 Q Where were you on this night?

11 A At Woody's.

12 Q Around what time do you think you got there?

13 A Around 9 o'clock.

14 Q Who were you with?

15 A My girlfriend and Travis Pruitt.

16 Q Did you all go in the inside?

17 A Yes, ma'am.

18 Q And what were you doing?

19 A Shooting pool.

20 Q Did you go outside?

21 A Yes, ma'am.

22 Q What I want you to do at this time is slowly
23 walk me through the events as it occurred on this
24 evening.

25 A We pulled up about 9:00 and Bristow was

DUSTIN LOCKLEAR - DIRECT EXAMINATION

1 sitting inside with Chris. We was sitting inside.
2 We shot pool. We sat there, and that is when
3 Mr. David walked in. He walked up to Woody's, shook
4 Woody's hand. Him and Bristow met as he was walking
5 away from Woody, and then they walked up to the bar
6 and David bought Bristow a beer. We went back and
7 shot pool. David walked out, and then Bristow, I
8 didn't know where he went. When I looked out the
9 window, my girlfriend just pulled back up, she had
10 left, and she was coming back up. I walked out, and
11 Bristow and David was out talking. I sat in the car
12 with my girlfriend and talking with her. Bristow was
13 talking to David telling him that he needed to leave
14 because nobody didn't mess with him and they didn't
15 want no trouble.

16 About that time, that is when Chris came out,
17 Chalupa. He walked out, and Bristow is laying up
18 against my girlfriend's car so Chalupa could talk to
19 David. I told Bristow, Watch it, man, he might have
20 a gun in his pocket.

21 So as Bristow and Chalupa and them were
22 talking, Bristow walked up to David, patted him down
23 to see if he could feel a weapon and this flag fell
24 out of the pocket. Bristow said, No, we're good, and
25 that is when I got ready to walk back in the

DUSTIN LOCKLEAR - DIRECT EXAMINATION

1 building. Woody Garner was coming outside, and I
2 walked in behind him. I heard gun shots. Mr. Garner
3 came back in holding his head. I seen the blood, so
4 I run back out the door. Chalupa was running back
5 towards me screaming, He got a gun. So I pulled my
6 girlfriend's gun out the window and fired up in the
7 air to let him know there was another gun.

8 Q Let's back up. Were you outside when Dixon
9 fired the shots?

10 A I was -- about all the way in the door. I
11 probably had my other foot in when Woody stepped
12 behind me.

13 Q I'm going to show you what is marked as
14 State's Exhibit No. 49. Can you show me where you
15 were located when this incident was occurring?

16 A I was standing there by the door, just about
17 in the door and Mr. Garner stepped out behind, and I
18 heard the gunshots.

19 Q During the discussion, where are you located?

20 A Well, my girlfriend's car was here, and I was
21 sitting here by the door sitting in the car talking
22 to my girlfriend.

23 Q Okay. What happens after the shots are fired?

24 A I seen Woody come back in holding his head and
25 I seen blood, so I run back out. I didn't see nobody

DUSTIN LOCKLEAR - DIRECT EXAMINATION

1 but my girlfriend and Chris Sanchez screaming, He got
2 a gun. So I opened my girlfriend's car and grabbed
3 the gun in the seat, which she laid there after the
4 gun was fired. I fired up in the air to let him know
5 there was a gun besides his so he wouldn't come back
6 and try to do what he had to do.

7 Q How many shots did you fire?

8 A I don't know. It was heat in the moment.

9 Q Were you scared?

10 A Yes, ma'am.

11 Q Now, prior to the shooting occurring, did you
12 see anyone with the weapon?

13 A No, ma'am.

14 Q Did you see Bristow with the weapon?

15 A No, ma'am. Bristow never carried a gun.

16 Q Did you see Dixon with a weapon?

17 A No, ma'am.

18 Q Did you see anyone else holding or displaying
19 a weapon?

20 A No, ma'am.

21 Q You were outside while this incident occurs.
22 Do you ever see Bristow hit or offensively touch
23 Mr. Dixon?

24 A No, ma'am. He patted him down, but it wasn't
25 no rough pat, just patting to see if he had any hard

DUSTIN LOCKLEAR - DIRECT EXAMINATION

1 objects in his pocket that felt like a weapon. It
2 wasn't no hard pat-down, but when Bristow was in the
3 process, that is when the bandanna fell out of the
4 pocket.

5 Q Tell me a little bit about the, I guess,
6 conversation or the words spoken to each other.

7 A They weren't really loud. Bristow was telling
8 him to leave, because that was the first time we seen
9 David in that neighborhood. We was down there
10 basically the whole time Woody's had been opened. We
11 ain't never seen David down there, and we knew there
12 was a couple of boys that didn't get along with
13 David. They were telling him to leave because he
14 walked in with one glove, and the vibe that everybody
15 was getting of why this man has one glove, what is he
16 going to do.

17 Q One glove? What do you mean?

18 A He had one glove on his right hand.

19 Q What did it look like?

20 A Just a black glove on the right hand.

21 Q Did you say anything to him about this glove?

22 A No, ma'am.

23 Q Were you friends with him?

24 A I wouldn't say friends. I really never hung
25 out with him.

DUSTIN LOCKLEAR - DIRECT EXAMINATION

1 Q Did you know him?

2 A From the streets, how the streets talk. I
3 didn't -- not personally, no, ma'am.

4 Q Did you have a problem with him?

5 A No, ma'am.

6 Q Did you know anyone personally that had a
7 problem with him?

8 A Not hardly. Just how everybody say other
9 people have problems with him.

10 Q This bandanna you talk about, what did it look
11 like?

12 A It was just a blue bandanna, blue bandanna
13 with white spots on it.

14 Q I'll show what is marked as State's Exhibit
15 (No. 21. Is this the bandanna?

16 A Yes, ma'am.

17 Q Do you have any idea what this represents or
18 what this means?

19 A No, ma'am.

20 Q What did you think when you saw David Dixon
21 carrying it?

22 A I thought for fashion or something, I didn't
23 know why he would have it.

24 MS. DAVID: Beg the Court's indulgence. If it's
25 okay by Your Honor for me to open this?

DUSTIN LOCKLEAR - DIRECT EXAMINATION

1 THE COURT: You may. Is that the same weapon?

2 MS. DAVID: It is.

3 THE COURT: It is in evidence. You may proceed.

4 Go ahead.

5 Q I'm not going to take it out, just asking you
6 if this is the weapon that you fired on that evening?

7 A Yes, ma'am.

8 Q What did you all do with this weapon after you
9 fired it?

10 A After I fired it, I put it in my old lady's
11 glove box. When I seen the law and everything, I put
12 it back in my girlfriend's glove box.

13 Q Did you ever turn this over?

14 A Yes, ma'am. I turned it over to Mr. Shawn
15 Felton on the sheriff's department.

16 MS. DAVID: No further questions by the State at
17 this time. Please answer any questions the defense
18 may have for you.

19 CROSS-EXAMINATION

20 BY MR. STEEN:

21 Q You were convicted off burglary third last
22 year; is that correct?

23 A Yes, sir, six months probation.

24 Q Did you see Mr. Dixon shoot?

25 A No. My back was turned walking in the

DUSTIN LOCKLEAR - CROSS-EXAMINATION

1 building.

2 Q Did you see Mr. Dixon shoot Woody Garner?

3 A No, sir.

4 Q Why did Bristow and Chris Sanchez tell David
5 to leave?

6 A Nobody never seen David in the area before,
7 and a man walking in an area no one saw him before
8 with one glove, that is a threat to our group. It
9 was our people hanging there, nobody else. The
10 neighborhood really come to the bar, and he just
11 shows up with one glove on. It was just basically
12 telling us that there was something there, that it
13 was just a vibe, so they were telling him to leave so
14 there wouldn't be nothing like this.

15 Q So everyone wanted Mr. Dixon to leave because
16 he was not from around there? He was surrounded by
17 people he didn't know --

18 A No, he knew us. He knew us, but we didn't
19 mess with him outside of the neighborhood, because
20 they say he had problems with boys in the
21 neighborhood. We didn't want this to go on like the
22 way it did.

23 Q Did you see Mr. Dixon wearing his glove while
24 playing pool?

25 A I really can't remember, but when he came in,

DUSTIN LOCKLEAR - CROSS-EXAMINATION

1 he did have his glove on. I can't remember if he was
2 playing pool and had it on. I didn't pay no
3 attention.

4 Q Have you ever seen someone wear a glove while
5 playing pool?

6 A No, sir.

7 Q So everyone wanted Mr. Dixon to leave prior to
8 anything happening that night, as soon as he got
9 there?

10 A No, sir. It was just a vibe. Him and Bristow
11 shook hands. He bought Bristow a beer, and when we
12 walked outside, Mr. Bristow walked behind him and
13 they were talking. There was no fussing or
14 arguments, just telling him to leave. It was just a
15 vibe he was giving everybody.

16 Q So David buys Chris a beer, David goes
17 outside, Chris followed him outside and tells him to
18 leave?

19 A Yes, sir.

20 Q When you told Bristow to watch him, he might
21 have a gun, you had not seen a gun at that point?

22 A No, sir.

23 Q Why did you tell Bristow that?

24 A I just had that bad feeling.

25 Q Had anything happened that gave you that bad

DUSTIN LOCKLEAR - CROSS-EXAMINATION

1 feeling?

2 A I had a couple of people pull guns out, just
3 by the way they was dressed. I had a feeling by the
4 way he walked in that there was a possibility he had
5 a firearm in his possession.

6 Q You hang out at Woody's regularly?

7 A Yes, sir. I was there basically every night
8 shooting pool.

9 Q Do you know why David and Brian went out?

10 A No, sir.

11 Q Was it so that Brian could get a beer since he
12 can't drink?

13 A I don't know how hold they were at that time.

14 Q Do you know why David and Brian went outside?

15 A No, sir.

16 MR. STEEN: One moment.

17 (A brief pause in the proceedings.)

18 MR. STEEN: Nothing else.

19 MS. DAVID: Nothing further from the State.

20 THE COURT: Sir, you may step down. You can
21 remain in the courtroom, or you are free to leave.

22 Call your next witness.

23 MS. DAVID: Kerry Clark.

24 (KERRY CLARK, having been duly sworn,
25 testified as follows:)

KERRY CLARK - DIRECT EXAMINATION

1 THE CLERK: State your name for the record.

2 WITNESS: Kerry Lynn Clark.

3 DIRECT-EXAMINATION

4 BY MS. DAVID:

5 Q How old are you, Ms. Clark?

6 A 21.

7 Q Where do you live?

8 A With my grandma.

9 Q Are you married?

10 A Yes.

11 Q Do you have any children?

12 A Yes.

13 Q Do you remember the night of December 20,

14 2012?

15 A Yes, unfortunately.

16 Q Why is this night important to you?

17 A That was the night Bristow got killed.

18 Q And where were you all that night?

19 A I was in my car trying to leave.

20 Q When this happened?

21 A Yes, ma'am.

22 Q Okay. I promise I'll be quick. I'll show you

23 what is marked as State's Exhibit No. 49. Can you

24 show me where you were located?

25 A Right there.

KERRY CLARK - DIRECT EXAMINATION

1 Q Would you please walk me through what happened
2 on that evening?

3 A We were all in there playing pool and
4 everything and Brandi needed to take some of my
5 nausea pills to her mom, because I was pregnant at
6 the time and her mom was sick. We were getting ready
7 to leave. We got in the car and next thing I know, I
8 have two people standing behind my car. Bristow
9 comes out and I think Chalupa came out, and I don't
10 know who else all came out. I'm sitting there trying
11 to figure out what is going on. We hear them having
12 an argument, disagreement, whatever you want to call
13 it. Next thing I know, I hear gunshots, so I just
14 drop to the floorboard.

15 Q Did you do anything else after you drop into
16 the floorboard?

17 A Yeah. I sat there for a minute to make sure
18 that everything was all right.

19 Q Were you scared?

20 A Yeah, I was pregnant.

21 Q Are you scared now?

22 A Yeah.

23 Q You mentioned --

24 A I don't do good.

25 Q You mentioned the argument and they are all

KERRY CLARK - DIRECT EXAMINATION

1 outside. Do you hear anything?

2 A I hear them arguing, but it wasn't like
3 screaming and hollering at each other.

4 Q What did it sound like?

5 A Sounded like they were having a disagreement.

6 Q Could you make out anything they were saying?

7 A Not exactly. I mean, I could hear they were
8 having a disagreement. I could understand Bristow
9 wanted David to leave, but I didn't know exactly what
10 all was going on. I don't know exactly what all
11 started it.

12 Q Did you ever see Bristow pass looks to Dixon,
13 or Dixon pass looks to Bristow?

14 A No, ma'am.

15 MS. DAVID: No further questions. Answer any
16 questions the defense may have.

17 CROSS-EXAMINATION

18 BY MR. STEEN:

19 Q Do you know why Mr. Bristow wanted David Dixon
20 to leave?

21 A I have no idea.

22 Q And did you see David Dixon shoot Chris
23 Bristow?

24 A I didn't.

25 Q Did you see Dixon shoot Woody Garner?

KERRY CLARK - CROSS-EXAMINATION

1 A I didn't. I wasn't facing that way.

2 MR. STEEN: Nothing further.

3 THE COURT: Redirect?

4 MS. DAVID: Nothing further.

5 THE COURT: You are free to go.

6 MS. DAVID: Mr. Travis Lee Pruitt.

7 (TRAVIS PRUITT, having been duly sworn,
8 testified as follows:)

9 THE CLERK: State your name for the record.

10 WITNESS: Travis Lee Pruitt.

11 DIRECT-EXAMINATION

12 BY MS. DAVID:

13 Q How old are you?

14 A 24.

15 Q Where do you live?

16 A Bennettsville, South Carolina.

17 Q Are you married?

18 A No, ma'am.

19 Q Do you have any children?

20 A Yes, ma'am, two.

21 Q Do you remember the night of December 20,
22 2012?

23 A Yes, ma'am.

24 Q Why was this night important to you?

25 A That is the night that my brother got killed.

TRAVIS PRUITT - DIRECT EXAMINATION

1 Q Where were you all located?

2 A At Woody's.

3 Q Is this a blood brother?

4 A No blood brother, just real close friends.

5 Q Who all was at Woody's that night?

6 A Bristow, Chalupa, of course Woody, Donna,
7 Doug, Sonya, Kerry, Trey, Brandi, Billy Jackson, that
8 is about all I can remember.

9 Q And can you just slowly walk me through the
10 events and tell me what occurred?

11 A When I walked in, you know, David and Brian
12 was already there. Bristow and Chalupa was already
13 there. When I walked in, we came in and, you know,
14 got a beer, walked over there and started shooting a
15 game of pool. Next thing I know, everybody started
16 moving around and I seen him outside. I don't know
17 when they went outside, but I looked out the window
18 and saw them. They had an argument going on, and I
19 told Woody, You may need to walk out, it might be
20 getting ready for, you know, a fight or something.
21 So he goes out there. I turned around to go back to
22 shoot my game of pool, and next thing I know
23 bullets -- I mean gunshots going off.

24 Q What do you see when you look outside? How do
25 you know they are having an argument?

TRAVIS PRUITT - DIRECT EXAMINATION

1 A Because, you know, David was talking with his
2 hands, you know. I could just tell, you know, they
3 weren't talking like me and you talking, it was more
4 aggressive.

5 Q What do you mean talking with hands?

6 A You know how some people talk with their
7 hands, they might point over here or something like
8 that, it wasn't pointing at a person.

9 Q Do you stay inside the whole time?

10 A Yes, ma'am.

11 Q Did you ever go outside?

12 A Yes, ma'am.

13 Q At what point?

14 A After all the gunshots was over with, because
15 the door got locked in case -- we didn't know that he
16 was going to come in and shoot anything or -- we
17 didn't know if he was going coming in for the people
18 inside, didn't know what was going on. When
19 everything was over, I went outside and they told me
20 that Bristow had been shot, and I ran over to where
21 he was at.

22 Q Did you have a weapon that night?

23 A Did I have a weapon? No. No, ma'am.

24 Q Did you know anybody else in the bar with a
25 weapon --

TRAVIS PRUITT - DIRECT EXAMINATION

1 A No, ma'am.

2 Q -- that night? Had you ever seen Dixon down
3 there before?

4 A First time ever.

5 Q Did you know him?

6 A I know of him I don't know him as far as
7 friends, but I know of him.

8 Q Did you have a problem with him?

9 A Not that I know of.

10 Q Do you know of any specific person that was
11 there that had a specific issue?

12 A Not that I know of. I mean, I don't really
13 recall hearing anything about anybody having any
14 problems. I know -- I think they might have had
15 words back in the past, but nothing serious, though.

16 MS. DAVID: Beg the Court's indulgence.

17 (A brief pause in the proceedings.)

18 MS. DAVID: Nothing further at this point.

19 CROSS-EXAMINATION

20 BY MR. STEEN:

21 Q Did you see the shooting outside?

22 A I didn't actually see the shooting. I was
23 shooting pool. It was my shot. By the time I turned
24 around to shoot my shot, that is when the gunshots
25 went off. Bristow and Chalupa was coming back

TRAVIS PRUITT - CROSS-EXAMINATION

1 inside. They was walking towards -- coming inside,
2 so I figured everything was all right, so I turned
3 around and shot my game of pool, and gunshots went
4 off.

5 Q Do you know why Chris Bristow wanted David
6 Dixon do leave?

7 A Why would he want him to leave? We don't have
8 no problems down there. We all go down there and
9 we're all friends, and we didn't want nothing to
10 happen that night, but it wound up happening anyway.
11 We wanted him to leave because we didn't want
12 trouble.

13 Q Prior to the outside incident, had there been
14 any problems outside?

15 A Not that I know of.

16 Q Thank you.

17 MR. STEEN: No further questions.

18 THE COURT: Redirect?

19 MS. DAVID: Nothing further, Your Honor.

20 THE COURT: Sir, you are free to remain in the
21 courtroom or leave. Watch your step. Call your next
22 witness.

23 MS. DAVID: Brandi Marie Jones.

24 (BRANDI JONES, having been duly sworn,
25 testified as follows:)

TRAVIS PRUITT - CROSS-EXAMINATION

1 THE CLERK: State your name for the Court.

2 WITNESS: Brandi Marie Jones.

3 DIRECT-EXAMINATION

4 BY MS. DAVID:

5 Q How old are you, Brandi?

6 A 20 years old.

7 Q Where do you currently live?

8 A In Bennettsville.

9 Q Are you married?

10 A No, I'm not.

11 Q Do you have any children?

12 A I have one son.

13 Q Do you remember the night of December 20,

14 2012?

15 A Yes, I do.

16 Q And why do you remember this night?

17 A That was the night my friend was murdered.

18 Q Where did this occur?

19 A At Woody's on Stoneaway in Bennettsville.

20 Q Who all was there?

21 A Kerry, me, Trey, Bristow, Chris, Dustin,
22 Sonya, Woody, Donna, couple other people, but those
23 are the main people I do remember.

24 Q Who did you go out there with?

25 A Kerry and Trey Clark.

BRANDI JONES - DIRECT EXAMINATION

1 Q So safe to say you were riding with them?

2 A Yes, ma'am.

3 Q Now, did you all go in the inside?

4 A We were in and out. We would come sit in the
5 car and listen to music, and then go in and play
6 pool. We were in and out of the building.

7 Q I'll show you State's Exhibit No. 49. Do you
8 recognize it?

9 A Yes, ma'am.

10 Q Would you slowly walk me through, for the
11 jury, and tell what occurred on this evening?

12 A We had pulled back up to Woody's that night,
13 and we pulled right here by the entrance. We sat in
14 the car for, oh, probably 10, 15 minutes. David and
15 Brian came around the side of the building, and they
16 came to the car and talked for a second. They went
17 inside, and probably five minutes after that, we
18 followed them in and sat at the bar, me and Kerry sat
19 at the bar.

20 We sat there for probably 20 minutes, came out
21 and watched everybody play pool. Then we walked
22 outside, we had to go back to my house. We got in
23 her car. She started her car up, and I told her not
24 to leave because I noticed that Bristow and Chris and
25 David were arguing. I told them -- I felt that

BRANDI JONES - DIRECT EXAMINATION

1 something bad was going to happen, so I told her not
2 to leave. So we cut the car off and we sat there.
3 They kept arguing, and then Bristow turned around to
4 leave. David turned around like he was going to
5 leave, and he turned back around and he shot him.
6 Whenever the shots were fired, I turned around in my
7 seat with my arm like this (indicates), and Kerry she
8 was down in the floorboard. So, of course, she
9 didn't see. Bristow, he ran around the side of the
10 building to the back.

11 Q Where did he run?

12 A Around this side of the building. I didn't
13 think he was shot because he didn't have blood or
14 anything on his back.

15 Q Did you see Dixon fire these shots?

16 A Yes, ma'am.

17 Q And how were you able to see him?

18 A I was in the passenger's seat of the car. He
19 was at the back of the car, and whenever I heard the
20 first shot, I turned around and seen him fire several
21 other shots.

22 Q So you looked at it with your eyes?

23 A Yes, ma'am.

24 Q Is that man in the courtroom today?

25 A Yes, ma'am.

BRANDI JONES - DIRECT EXAMINATION

1 Q What is he wearing?

2 A White shirt.

3 Q Can you point at him for me?

4 A (Indicates.)

5 MS. DAVID: May the record reflect that Ms. Brandi
6 Jones has identified Mr. David Dixon as the shooter
7 that she saw with her own eyes.

8 Q (MS. DAVID) Did you know Mr. Dixon?

9 A Yes, ma'am.

10 Q How did you know him?

11 A He was the father of the child of my best
12 friend.

13 Q Had you talked to him on this evening?

14 A Yes, ma'am.

15 Q What did you guys talk about?

16 A He called me.. Me and Kerry went to town to
17 get something and he called me on my cell phone and
18 asked me was I around him, and I told him no, but I
19 lied, I was. He said he needed a ride to the pool
20 tournament at Lucy's, it is another place. I told
21 him I didn't hear about no pool tournament, I didn't
22 know about there being one tonight. He said, If you
23 just talk to Kerry or Trey, call me because I need a
24 ride, and I said okay. I hung the phone up. By the
25 time I got to Woody's, how he got there that fast, I

BRANDI JONES - DIRECT EXAMINATION

1 don't know.

2 Q Did you all talk to each other while you were
3 in the inside?

4 A Yeah, we did.

5 Q What did you talk about?

6 A He showed me his tattoo on his stomach, how he
7 got it finished. Just small talk.

8 Q Did you ever see him with the weapon?

9 A No, ma'am.

10 Q You didn't? But he showed you his tattoos on
11 his stomach, but you never saw a weapon?

12 A No.

13 Q Did you know if he had a problem or did you
14 know about any problems between anyone and Woody's
15 that night?

16 A I didn't know there was any problems until
17 they started arguing about them.

18 Q Tell me a little bit about this argument.
19 What do you mean by the word "argument?" Were they
20 talking?

21 A They were talking at first, and then they
22 started getting angry with it. They weren't really
23 loud at first, and then they started getting loud.
24 Bristow told him if he was going to start problems,
25 he needed to leave, that we didn't have problems, we

BRANDI JONES - DIRECT EXAMINATION

1 were all friends and we never had problems down
2 there.

3 Q Did you see anything occur between those two?
4 Were you looking at that time?

5 A I was in and out looking. They were just like
6 moving their hands and stuff like that. Personally,
7 I thought it was about to be a fight or something
8 like that. I didn't think anybody would shoot
9 anybody.

10 Q What occurred -- did anything occur for Dixon
11 to shoot?

12 A Bristow grabbed his bandanna out of his
13 pocket.

14 Q What type of bandanna is this?

15 A It's a blue bandanna.

16 Q Does that mean anything?

17 A It means something to David. It doesn't mean
18 anything to me, but, yeah, I guess you could say gang
19 violence.

20 Q Do you know what gang that is for?

21 A Yep.

22 Q Let's go back inside the bar for a moment or
23 while we're outside. Do you recognize this?

24 A Yes, ma'am.

25 Q What is it?

BRANDI JONES - DIRECT EXAMINATION

1 A David's bandanna.

2 MS. DAVID: May the record reflect that Ms. Brandi
3 Jones identified that.

4 Q (MS. DAVID) Do you recognize what is marked as
5 State's Exhibit No. 22?

6 A Yes, ma'am.

7 Q What is it?

8 A It is the bar stools inside Woody's.

9 Q Maybe I need to get closer to you because
10 these photos are kind of dark. Can you tell me where
11 you were sitting that night?

12 A I was sitting right here, and Ms. Kerry was
13 here.

14 Q Do you recognize any of the coats in the
15 photo?

16 A I don't remember whose coat it was. Like I
17 said, we were all friends and stuff, and everybody
18 just kind of threw their coats wherever, so it didn't
19 matter. I didn't know whose coat I was sitting on.

20 MS. DAVID: Beg the Court's indulgence.

21 (A brief pause in proceedings.)

22 MS. DAVID: Nothing further at this time. Answer
23 any questions defense may have.

24 CROSS-EXAMINATION

25

BRANDI JONES - DIRECT EXAMINATION

1 BY MR. STEEN:

2 Q How well do you know Mr. Dixon?

3 A I would say pretty well. He stayed at our
4 house, me and the father of my child. He stayed with
5 us for probably five to six months. I know him
6 pretty well.

7 Q Who is the father of your child?

8 A James Herden. He's in the courtroom today.

9 Q You said David is friends with James Herden?

10 A Was, yes.

11 Q They were when Mr. Dixon called you earlier
12 that day? Was that the first time you heard from him
13 in awhile?

14 A Yes, it was.

15 Q And he told you he was going to a store called
16 Lucy's for a pool tournament?

17 A He was asking if I had heard about a pool
18 tournament at Lucy's, and I told him I hadn't heard
19 about a pool tournament going on that evening, and he
20 asked if I had talked to Kerry or Trey to give them a
21 call that he needed a ride.

22 Q Did you tell him at that time that you were
23 going to Woody's that night?

24 A No, he did not. Where I was at I told him I
25 wasn't with Kerry when I was, but he didn't ask where

BRANDI JONES - CROSS-EXAMINATION

1 my location was.

2 Q Was Trey with you at the time, Trey in the
3 car?

4 A Trey Clark? No, he was at Woody's.

5 Q Do you know how Mr. Dixon knew you were at
6 Woody's?

7 A He didn't know.

8 MR. STEEN: One moment, Your Honor.

9 (A brief pause in the proceedings.)

10 Q (MR. STEEN) Did you see Mr. Dixon shoot
11 Bristow?

12 A Yes, I did.

13 Q Did you see him shoot Woody Garner?

14 A No, I did not.

15 MR. STEEN: No more questions. Thank you.

16 THE COURT: Redirect for this witness?

17 MS. DAVID: Beg the Court's indulgence.

REDIRECT EXAMINATION

18 BY MS. DAVID:

19 Q What direction were you facing when you saw
20 Dixon with the pistol?

21 A Whenever I seen him with the pistol? I was
22 like this (indicates). My legs were this way, but my
23 head was this way with my arm over the back of the
24 car seat.
25

BRANDI JONES - REDIRECT EXAMINATION

1 Q So you were turned around facing the back of
2 the parking lot?

3 A Yes, ma'am.

4 Q How many shots did you see Dixon fire?

5 A Five.

6 Q Did anyone else have a gun firing shots at the
7 same time as Dixon?

8 A No, ma'am.

9 Q Did you ever turn back around to the front of
10 the bar?

11 A Yes, ma'am, when I realized what was going on.
12 Because I seen the shots and I realized what was
13 going on, and I turned back around and I got down.

14 Q Did you see Woody at that time?

15 A No, I didn't.

16 MS. DAVID: No further questions.

17 THE COURT: You may step down. You are free to
18 remain or you can leave. Watch your step as you exit
19 the witness box. Call your next witness.

20 MS. DAVID: May we approach about scheduling?

21 THE COURT: You may.

22 (Whereupon, a bench conference was had.)

23 THE COURT: Our jurors that are taking notes, if
24 you will secure those notes and give them back in the
25 morning please and make sure no one sees them

BRANDI JONES - REDIRECT EXAMINATION

1 overnight.

2 MR. BROWN: Yes, sir.

3 THE COURT: The State tells me they have finished
4 with their witnesses that were here and prepared to
5 go forward. They have concluded the witnesses who
6 are present. The next witness is not present and
7 possibly the next witness would be beyond the 5
8 o'clock hour, so it is time to conclude these
9 proceedings for the day.

10 When you go home this evening, tell your loved
11 ones that the Court asked you not to discuss the
12 facts of the case, whatever facts we may know, with
13 anyone, and let's be back tomorrow morning at 9:00.
14 We'll begin at 9:00 in the morning, and I'll ask you
15 to be here on time to start promptly at 9:00. Any
16 questions about scheduling from the jury? We'll see
17 you at 9:00 in the morning. We'll remain where we
18 are out of respect for you as you leave for the day.
19 Have a nice evening. We'll see you at
20 9 o'clock in the morning.

21 (The jury exits at 4:32 p.m., and the
22 following is heard out of the presence of the jury.)

23 THE COURT: The jury is clear. For the record, is
24 there anything that either side wishes to place on
25 the record before we adjourn for the day from the

BY THE COURT TO THE JURY

1 State?

2 MS. DAVID: Nothing further.

3 THE COURT: From the defense?

4 MR. STEEN: Yes, Your Honor. This is in regards
5 to the conversation we had regarding the bench
6 warrant that is --

7 THE COURT: We can take that up at this time.
8 First of all, I'm told that there was a no-show among
9 the witnesses who were subpoenaed from the State.
10 One of the witnesses did not appear, did not respond
11 to the subpoena. What is that witness' name,
12 Ms. David?

13 MS. DAVID: His name -- I have it as Brian Gratia,
14 on some paperwork he goes by Brian Wilson.

15 THE COURT: I'll leave it to the State. First of
16 all, do you have the witness under subpoena?

17 MR. STEEN: I do not. Me and the solicitor
18 discussed it, and I didn't do one because she filed
19 it, but I was going to ask for the bench warrants
20 since we haven't been able to locate him, and I've
21 been trying.

22 THE COURT: I'll have the State's position on the
23 bench warrant on that individual for failing to
24 respond.

25 MS. DAVID: The State did do a subpoena for

BY THE COURT

1 Mr. Brian Gratia for the week of October 28th and I
2 think through November 1st. It was served and
3 confirmed on -- last week by Ms. Wilks.

4 THE COURT: And the sheriff's department serves
5 your -- is the agency that serves your subpoenas?

6 MS. DAVID: Yes, Your Honor.

7 THE COURT: The Court is going to issue a bench
8 warrant for that gentleman, so have any law
9 enforcement pick him up and bring him to this court.
10 If you would present the paperwork, we'll sign it
11 before we leave today. Pick him up over the evening
12 hour if you are able to reach him; if not, any time
13 you can reach him whether the trial is in process or
14 over, we'll pick him up and hold him so he can
15 explain why he did not appear. Anything further?

16 MR. STEEN: No, sir.

17 THE COURT: This court is in recess until
18 9 o'clock in the morning.

19 (Whereupon, the proceedings for October 29, 2013
20 concluded, but resumed on October 30, 2013 at 9:04
21 a.m., and the following took place out of the presence
22 of the jury.)

23 THE COURT: Welcome everyone to the courtroom.
24 I'm advised that the jury is in and we're ready to
25 go, so please bring in the jury.

THE COURT ADDRESS JURY

1 (The jury enters at 9:04 a.m., and the
2 following is heard in the presence of the jury.)

3 THE COURT: Good morning. I trust you had a nice
4 evening and welcome back to the courthouse. Has any
5 member of the jury panel had a discussion concerning
6 the facts of this case or any aspect with this case
7 with anyone; if you have, please raise your hand. No
8 one has raised their hand.

9 Thank you for the compliance with the Court's
10 request. You may recall when we began this case and
11 were qualifying you as jurors, we asked about a
12 series of witnesses who may appear in the case, and
13 the State tells me that they omitted a name of an
14 individual that they intend to call, so I want to ask
15 you if there is any member of the jury panel related
16 by blood or marriage to a gentleman named Johnny
17 Roscoe. Mr. Roscoe lives in this area where this
18 event occurred. He is a Caucasian male,
19 approximately 60 years old, just for description
20 information. Is there any member of the jury panel
21 who believes you are related to him by blood or
22 marriage or has a close business, professional or
23 social relationship; if so, raise your hand. Let the
24 record reflect no one raised their hand so,
25 therefore, Ma'am Solicitor, you may call him if he

JOHNNY ROSCOE - DIRECT EXAMINATION

1 you wish. Call your next witness.

2 MS. DAVID: Johnny Roscoe.

3 (JOHNNY ROSCOE, having been duly sworn,
4 testified as follows:)

5 THE CLERK: State your name.

6 WITNESS: Johnny Roscoe.

7 DIRECT-EXAMINATION

8 BY MS. DAVID:

9 Q Good morning.

10 A Good morning.

11 Q How old are you?

12 A I'm 48 years old.

13 Q And where do you live?

14 A Stoneaway Road.

15 Q Are you married?

16 A Yes, ma'am.

17 Q Do you have any children?

18 A Two kids.

19 Q Okay. Do you remember the night of
20 December 20, early morning of December 21, 2012?

21 A Well, I was in the bed asleep and my daughter
22 woke me up and said someone was knocking on the door.
23 I went to see who it was. The fellow asked could he
24 use the phone. He told me he was walking from Drakes
25 up Salem Highway going to Brusher Bay and it started

JOHNNY ROSCOE - DIRECT EXAMINATION

1 raining on him and he got wet. He said he wanted to
2 use the phone to get someone to pick him up.

3 Q Did you know this fellow?

4 A No, I did not.

5 Q Did you allow him to come inside your house?

6 A Yes, ma'am. He walked out on the front porch,
7 made his phone call, came back in, handed me the
8 phone, I hung it back up and I asked him to sit down
9 on the couch to wait on his ride. The phone rang
10 again. My wife answered it and they asked for him.
11 So she handed him the phone and they just said David,
12 I think, is David there. She handed him the phone,
13 and he walked back out on the porch to talk to
14 whoever he was and came back in and sat down. Next
15 thing I know, Johnny Walters came through the door
16 and arrested him.

17 Q Who is Johnny Walters?

18 A John?

19 Q Who is John Walters?

20 A Deputy sheriff.

21 Q Do you know who Mr. Dixon was talking to on
22 the phone?

23 A No, ma'am, I do not.

24 Q Do you see Mr. Dixon in this courtroom?

25 A It's been awhile, but I assume it is the

JOHNNY ROSCOE - DIRECT EXAMINATION

1 fellow in the white shirt, not sure.

2 Q Thank you. About how far do you live from
3 Woody's?

4 A I would say close to a half a mile.

5 Q Okay. I show you what is marked as State's
6 Exhibit No. 48. Can you show me the approximate
7 location of your house?

8 A Right here.

9 Q And can you show me the approximate location
10 of Woody's?

11 A (Indicates).

12 Q Is this an accurate reflection of the area?

13 A It looks like our neighborhood.

14 Q Okay.

15 MS. DAVID: Beg the Court's indulgence.

16 (A brief pause in the proceedings.)

17 MS. DAVID: Thank you. Please answer any
18 questions the defense may have for you.

19 THE COURT: Cross-examination, if any.

20 CROSS-EXAMINATION

21 BY MR. STEEN:

22 Q Did Mr. Dixon make you or your daughter or
23 anyone in your family feel threatened that night?

24 A No, sir, he did not.

25 THE COURT: Any redirect?

JOHNNY ROSCOE - CROSS-EXAMINATION

1 MS. DAVID: Nothing further, Your Honor.

2 THE COURT: Sir, if you would, watch your step.

3 Also, you are free to remain here or free to go, your
4 choice.

5 MR. ROSCOE: All right, sir. If it is okay with
6 the Court, I'll go back to work.

7 THE COURT: All right, sir. Have a good day.

8 MR. STEEN: May we approach?

9 THE COURT: Is there some issue --

10 MR. STEEN: Mr. Walters is not on the witness
11 list.

12 THE COURT: Madam Solicitor, did you query the
13 jury panel with Mr. Walters when you called out your
14 potential witnesses?

15 MS. DAVID: I would need to double check for a
16 moment.

17 THE COURT: Let's do that. Sir, just one moment.
18 You can stay there, you are fine where you are.

19 Out of an abundance of caution. You see the
20 next witness who has been called, which is Officer
21 Walters, and I ask you, ladies and gentlemen, any
22 member of the jury panel related by blood or marriage
23 or have a close business, professional or social
24 connection, raise your hand. Once again, the jury
25 has not raised their hand, so please come around and

JOHN WALTERS - DIRECT EXAMINATION

1 be sworn by the clerk.

2 (JOHN WALTERS, having been duly sworn,
3 testified as follows:)

4 THE CLERK: state your name for the record.

5 WITNESS: John Wilson Walters.

6 DIRECT-EXAMINATION

7 BY MS. DAVID:

8 Q Good morning. And what is your current
9 occupation?

10 A Marlboro County deputy for the sheriff's
11 office.

12 Q How long have you been employed with the
13 Marlboro County Sheriff's Office?

14 A 15 years.

15 Q Do you have any previous law enforcement
16 experience?

17 A No.

18 Q What are your present duties with the
19 sheriff's office?

20 A I'm shift supervisor.

21 Q What shift do you typically --

22 A Day shift.

23 Q On the night of December 20th, 2012, were
24 you working that night?

25 A No.

JOHN WALTERS - DIRECT EXAMINATION

1 Q No. Can you explain to the Court how did you
2 become involved with the case?

3 A We got called out to assist with the case to
4 set up a perimeter.

5 Q Where did you get called out to?

6 A I got called out to Stoneaway, at the crime
7 scene at Stoneaway, a small club.

8 Q Do you know the name of the club?

9 A Woody's, I think.

10 Q Now, did you go to Woody's that night?

11 A We went to the crime scene, from that point we
12 were asked to set up a perimeter.

13 Q Why did you set up a perimeter?

14 A Around Stoneaway -- Salem Road and Stoneaway
15 -- Salem...

16 Q Did you do anything else with this
17 investigation or crime scene on that night?

18 A No.

19 Q Did you ever participate in an arrest on that
20 night?

21 A Yes.

22 Q How did you become involved with that?

23 A That night I was informed by my wife -- my
24 wife's cousin, they were on the Facebook and they
25 received some information through Facebook pertaining

JOHN WALTERS - DIRECT EXAMINATION

1 to they had a shooting down there somewhere in the
2 neighborhood. At that point, my wife didn't know
3 exactly what was going on, but my wife's cousin told
4 her that, look, it's on the Facebook, somebody got
5 shot down at the little club below our house.

6 At that time, they told -- my wife's cousin's
7 daughter told my wife, said, look, you need to come
8 down here, I think this gentleman is in my house.

9 Q At that time my wife informed me, and at that
10 time I informed everybody on the radio that I know
11 where the suspect is. The suspect that they informed
12 was on Facebook was Mr. Dixon. At that time,
13 Lieutenant Akers (phonetic) responded by radio, and I
14 advised him I know where the suspect is at. I didn't
15 know the address at the moment, but I knew what was
16 in the driveway.

17 According to the address, that is the Roscoe's
18 residence. There is a pontoon boat sitting in the
19 driveway, that is all I could remember, pontoon boat.
20 The suspect is supposed to be at that address. At
21 that time I responded to the residence, Lieutenant
22 Akers assisted me. As we were walking in, my wife's
23 cousin and her two daughters were walking out back.
24 She was on the phone, but she was on Facebook with my
25 wife. She was on the phone with Facebook with my

JOHN WALTERS - DIRECT EXAMINATION

1 wife that he's in the house with my daddy, sitting
2 there in the living room.

3 At that time we walked up to the front porch,
4 went into the screen door part, entered the door and
5 she told me to go ahead on in the house. As I walked
6 in, I noticed Mr. Dixon and Mr. Roscoe sitting right
7 there. The reason he went to that residence, he
8 knocked on the door and wanted to use the phone, so
9 Mr. Johnny let him use the phone to call someone. I
10 don't know who he called or from what point on, but,
11 anyway, we went in the residence, and he was sitting
12 there.

13 I can't remember what he had on at that
14 moment, but I know he was soaking wet. At that time,
15 myself and Lieutenant Akers advised him to get on the
16 floor, he was being under arrest. We handcuffed him,
17 picked him up, patted him down and he didn't have
18 anything on him at that moment. We walked him
19 outside. I think I put him in my car for just a few
20 minutes, and then Investigator English drove up and
21 at that point he said bring him to him. We brought
22 him to him, and he was turned over to the
23 investigator from that point.

24 Q Now, did you do anything further with this
25 investigation?

JOHN WALTERS - CROSS-EXAMINATION

1 A No.

2 MS. DAVID: Beg the Court's indulgence.

3 (A brief pause in the proceedings.)

4 MS. DAVID: Thank you. Answer any questions the
5 defense may have.

6 THE COURT: Cross-examination?

7 CROSS-EXAMINATION

8 BY MR. STEEN:

9 Q Did Mr. Dixon put up a fight or resisted at
10 all that evening?

11 A No. He seemed cold and startled.

12 MR. STEEN: Nothing else.

13 THE COURT: Redirect?

14 MS. DAVID: Nothing further, Your Honor.

15 THE COURT: Sir, you may step down. You are free
16 to remain in the courtroom or you can leave if you
17 wish.

18 Yesterday I discussed with you the hearsay
19 rules that are inappropriate under many circumstances
20 to testify about what someone said, what someone told
21 you. You can testify about what you did or what you
22 observed yourself and, again, what you did as a
23 result of what someone said, but typically you cannot
24 testify about what someone else said because that is
25 hearsay. Now, that testimony was replete with

BY THE COURT TO THE JURY

1 hearsay and those of you who heard me describe the
2 rule, I'm sure you are aware, but for your
3 information, the way the Court runs the process here
4 is that generally the Court does not self-start and
5 correct what it perceives to be a violation of the
6 rules. We let the lawyers try the cases. If there
7 is an objection, they can raise it. It's not like a
8 police officer who sees a traffic violation and thus
9 responds and stops whatever is happening, the Court
10 doesn't act in that fashion. We simply respond to
11 whatever objections are made, so I'll tell you as to
12 why you may be wondering why did I hear testimony
13 that is hearsay, that is how it occurred.

14 Again, the lawyers may have strategies and
15 tactics they want to permit testimony or not, and if
16 they don't object, the Court doesn't respond.

17 With that understanding, you may call your
18 next witness.

19 MS. DAVID: Investigator Brittany English.

20 (Whereupon, Brittany English was duly sworn
21 and testified as follows:)

22 DIRECT-EXAMINATION

23 BY MS. DAVID:

24 Q And what is your current occupation,
25 Mr. English?

BRITTANY ENGLISH - DIRECT EXAMINATION

1 A Investigator at the sheriff's office, Marlboro
2 County.

3 Q How long have you been employed there?

4 A Since October of 2002.

5 Q What are your current duties with the
6 sheriff's office?

7 A Investigator, on-call investigate anything
8 that may need investigating.

9 Q Now, were you employed in your present
10 capacity on December 20, 2012?

11 A Yes, ma'am, I was.

12 Q And how did you become involved in the
13 investigation against Mr. Dixon?

14 A Yes, ma'am, I did.

15 Q Now, would you briefly tell the Court what was
16 your involvement, how did you become involved?

17 A On that night I received a call from
18 Lieutenant Jamie Seales. He advised me that we had
19 an incident take place at a place called Woody's,
20 place out on Stoneaway, and that some people had been
21 shot and I needed to come out and work.

22 Q Where did you go?

23 A Well, when I got dressed and signed on, it
24 came over central dispatch they needed the
25 investigator to come to the hospital, and when I left

BRITTANY ENGLISH - DIRECT EXAMINATION

1 my home and responded, I went to Marlboro Park.

2 Q What was happening at Marlboro Park Hospital
3 when you arrived there?

4 A There was a large crowd there. I went inside
5 and one of the persons -- one of the victims was
6 already there. I proceeded to take my camera out. I
7 talked to him and started talking with some of the
8 people that was outside standing around to determine
9 who was there, who was a witness and who needed to be
10 interviewed.

11 Q Which victim was there when you arrived?

12 A Mr. Garner, Woody Garner.

13 Q I'll show what you is marked as State's
14 Exhibit No. 5; do you recognize it?

15 A Yes, ma'am.

16 Q Who is that?

17 A Mr. Garner.

18 Q Did you take this photo?

19 A I did.

20 Q Is it in the same condition?

21 A Yes, ma'am, it is.

22 Q This is State's Exhibit No. 6; do you
23 recognize it?

24 A Yes, ma'am.

25 Q What is this?

BRITTANY ENGLISH - DIRECT EXAMINATION

1 A A wound that Mr. Garner had to his head area
2 and I photographed it.

3 Q Thank you. Did you do anything else while at
4 the hospital?

5 A Took photographs, spoke with the people that
6 was hanging out outside, the family members, just
7 tried to determine what was there and who was a
8 witness and who we needed to interview. During the
9 time, I was communicating with Lieutenant Jamie
10 Seales and Investigator Shawn Feldner trying to
11 organize who we were going to interview and who
12 needed to be interviewed first.

13 Q So what did you do when you left the hospital?

14 A When I left the hospital, I went -- went back
15 up to the sheriff's office to see what needed to be
16 done. A manhunt was taking place for the defendant,
17 and I went down to that area and we began to try to
18 locate the defendant.

19 Q Can you explain to us, what is a manhunt?

20 A The information we had at the time is that the
21 defendant ran on foot. We had -- having lack of
22 manpower at the time, we called Chesterfield
23 Sheriff's Office to bring the bloodhounds and extra
24 personnel, a lot of auxiliary people to set up a
25 perimeter around the block that he ran into.

BRITTANY ENGLISH - DIRECT EXAMINATION

1 Q And about how long did you participate with
2 the manhunt?

3 A Well, I didn't actually get involved in the
4 manhunt. I was out -- through the sheriff's office
5 through the manhunt, I was also looking for a person
6 that we wanted to interview that was supposed to have
7 been with the defendant.

8 Q Okay. Did you ever find him?

9 A I did not, not that night.

10 Q And then what happens next?

11 A Sergeant Walters came over the radio that he
12 had gotten a phone call and a location on the
13 defendant. At that point in time, I left if I
14 recall, I instructed Sergeant Walters to take
15 somebody with him and try to arrest the defendant.
16 Before I could get to where they were at, they had
17 the defendant in custody.

18 Q And what happens when you arrive there?

19 A When I arrived, he is handcuffed in their
20 vehicle. I immediately take him out of their vehicle
21 and put him in the front passenger's seat of my
22 truck, and I backed out into the road from the
23 residence where he was arrested.

24 Q And why did you take him into your custody?

25 A Because naturally he was going to be

BRITTANY ENGLISH - DIRECT EXAMINATION

1 interviewed, and we had some evidence that needed to
2 be collected.

3 Q When you have him in your custody, do you ever
4 have the opportunity to read him Miranda rights?

5 A I did.

6 Q I'll show what you is marked as State's
7 Exhibit No. 2; do you recognize that?

8 A I do.

9 Q Will you explain what it is?

10 A It is a Miranda form that was read to the
11 defendant by me and has a place for the date and a
12 time and has two signatures on it as witnesses, and
13 it has the defendant's signature along with the
14 defendant's initials by the five Miranda we read.
15 The place is listed as [REDACTED] Stoneaway Road, date is
16 12/21/2012 and the time is 12:38 a.m.

17 Q And will you tell us whose signatures are on
18 there?

19 A David Dixon's signature is on there, DD is
20 initialed by the first five witness signatures as
21 mine and Lieutenant Larry Turner with the
22 Bennettsville Police Department.

23 Q What does that form say? Will you read it to
24 us?

25 A I will. It is a common form. It says, Your

BRITTANY ENGLISH - DIRECT EXAMINATION

1 rights, and it says, Before we ask you any questions,
2 you must understand your rights. Number one, You
3 have the right to remain silent. Number two,
4 Anything you say can and will be used against you in
5 court. Number three, You have the right to talk to a
6 lawyer for advice before we ask you any questions and
7 have him with you during questioning. Four says, If
8 you cannot afford a lawyer, the court will appoint
9 one for you before any question if you wish. And
10 five says, If you decide to answer questions now
11 without a lawyer present, you will still have the
12 right to stop answering at any time until you talk to
13 a lawyer.

14 Also below that is a Waiver of Rights, and I
15 read that also, and I'll read it now, I have read
16 this statement of my rights and I understand what my
17 rights are and willing to make a statement, answer
18 questions. I do not want a lawyer at this time. I
19 understand and know what I'm doing. No promises or
20 threats have been made to me, and no pressure or
21 coercion of any kind has been used against me by
22 anyone.

23 Q Will you tell the Court what time is it that
24 this Miranda form --

25 A 12:38 a.m.

BRITTANY ENGLISH - DIRECT EXAMINATION

1 Q A.m. At the time this form signed, what was
2 the defendant's demeanor like?

3 A Defendant was wet, cold. He was requesting to
4 talk to Lieutenant Larry Turner with the
5 Bennettsville Police Department.

6 Q Did he appear to understand you?

7 A He did, yes.

8 Q Was Larry Turner with you?

9 A When I backed out into the road, I may have
10 went up a couple hundred yards and I stopped. Larry
11 Turner pulled up behind me and actually walked up to
12 the passenger's side and opened the door and
13 witnessed me reading this and signing it.

14 Q Now, please explain to the Court what happens
15 after this? What is your further involvement?

16 A At that point in time, I make contact with the
17 investigator at the crime scene and request that a
18 SLED crime scene unit come to where I was at to
19 collect -- to do a gunshot residue collection kit on
20 the defendant.

21 Q Where are you located when you make that
22 request?

23 A In the roadway up from [REDACTED] Stoneaway Road.

24 Q Do they come?

25 A They do, yes.

BRITTANY ENGLISH - DIRECT EXAMINATION

1 Q And what happens after the kit is done?

2 A After the collection was made, I had spoken
3 with Lieutenant Seales and Lieutenant Larry Turner,
4 placed the defendant in his vehicle and transported
5 him directly to the sheriff's office.

6 Q Do you have any further involvement with this
7 case?

8 A I do not.

9 MS. DAVID: I beg the Court's indulgence.

10 (A brief pause in proceedings.)

11 MS. DAVID: Thank you. Answer any questions the
12 defense may have for you.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION

15 BY MS. LEWIS:

16 Q Have you ever been called out to Woody's at
17 any point?

18 A Sir?

19 Q Have you ever been called out to Woody's
20 before, prior to this?

21 A No, sir, I had not.

22 Q Have you ever had any violent incidents
23 happening there prior to this?

24 A No, sir.

25 Q And just to repeat for the record, when you

BRITTANY ENGLISH - CROSS-EXAMINATION

1 came into contact with Mr. Dixon, was he violent or
2 aggressive at all?

3 A He was not at the time, no, sir.

4 MS. LEWIS: No further questions.

5 THE COURT: Is there any redirect?

6 MS. DAVID: No further questions at this time.

7 THE COURT: Sir, you may step down. You are free
8 to remain or free to leave.

9 MS. DAVID. May we approach briefly, Judge, about
10 witnesses.

11 (Whereupon, a bench conference was had.)

12 MS. DAVID: Mr. Larry Turner.

13 (LARRY TURNER, having been duly sworn,
14 testified as follows:)

15 THE CLERK: State your name.

16 WITNESS: Larry Turner, T-U-R-N-E-R.

17 DIRECT EXAMINATION

18 BY MS. DAVID:

19 Q What is your current occupation?

20 A Lieutenant with the Bennettsville Police
21 Department over investigations.

22 Q And what are some of your job duties?

23 A I work criminal cases as far as burglaries,
24 murder and also work drug cases.

25 Q How long have you been with the

LARRY TURNER - DIRECT EXAMINATION

1 Bennettsville --

2 A October will be 17 years.

3 Q 17 years. Did you become involved in the
4 investigation against Mr. David Dixon?

5 A Yes, ma'am, I did.

6 Q And how did you become involved?

7 A I actually went to the location on Stoneaway
8 where the incident happened and assisted the
9 sheriff's office. I heard about the incident
10 happening. It is close where I live, so I called
11 Lieutenant Seales to ask if he needed assistance.

12 Q And which location on Stoneaway did you go to?

13 A Woody's, a club on Stoneaway.

14 Q Once at that location, what did you do?

15 A Once I got there, I was briefed on actually
16 what had happened. They had me go to a residence to
17 sit there, because they thought that is where the
18 defendant may go.

19 Q And how long did you sit there?

20 A For about 45 minutes, and then he was --
21 sometime after that he was located, and I went back
22 to the incident location.

23 Q You went back to Woody's?

24 A Yes, ma'am.

25 Q And from Woody's, what did you do?

LARRY TURNER - DIRECT EXAMINATION

1 A I was told that the defendant wanted to talk
2 to me. I met with the defendant and Investigator
3 English at his vehicle that was located in the
4 roadway outside -- out front of Woody's.

5 Q Okay. Did you go to talk to the defendant?

6 A I did. I walked up to Investigator English's
7 truck where the defendant was.

8 Q What was taking place at that point?

9 A He kept saying that he wanted to talk to me.
10 Investigator English advised me he needed to
11 Mirandize him because he wanted to talk, and he was
12 read his Miranda warnings.

13 Q I'll show you first what is marked as State's
14 Exhibit No. 2; do you recognize it?

15 A Yes, ma'am, I do.

16 Q What is it?

17 A It was the Miranda warning that was given by
18 Investigator Brittany English. It was witnessed and
19 signed by myself, and also the defendant, David
20 Dixon.

21 Q Okay. And what time is this Miranda warning?

22 A 12:38 on 12/21/2012.

23 Q Okay. What does it say about the defendant at
24 the bottom?

25 A You want me to read the Miranda today?

LARRY TURNER - DIRECT EXAMINATION

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

3 (A brief pause in the proceedings.)

4 Q (MS. DAVID) Mr. Turner, would you repeat what
5 it says about the description of the defendant?

6 A It has his name, date of birth, if that's what
7 you are asking.

8 Q Yes, sir.

9 A Name David Dixon, date of birth, [REDACTED] of '90.

10 Q Does it have height or weight?

11 A No, ma'am.

12 Q What was the defendant's demeanor like at that
13 time?

14 A He appeared to be a little cold and very
15 talkative.

16 Q Was he trying to talk to you?

17 A Yes, ma'am, he was.

18 Q So you Mirandized him, or you watched the
19 Miranda along with Brittany English, and what do you
20 all do next?

21 A Once he is Mirandized and David wants to talk,
22 he tells me that he wants to talk to me and does not
23 wish to talk to anybody else. We tell him we'll take
24 him up to the sheriff's department to be interviewed.

25 During the ride to the sheriff's office, I

LARRY TURNER - DIRECT EXAMINATION

1 explained that this incident happened in the county
2 and that I would prefer someone from the sheriff's
3 office to sit in on the interview while I'm talking
4 to him.

5 Q Do you talk to him before you get to the
6 county at all?

7 A No, ma'am, just general conversation. I told
8 him that once we got there, we would try to find
9 clothes to put on since his were wet, and he was
10 cold.

11 Q Did you find him clothes?

12 A Yes, ma'am, we did.

13 Q Once you are at the county, what happens from
14 there? And what do you mean by "at the county"?

15 A Once we get to the sheriff's office, we take
16 him to the interview room. I meet with Investigator
17 Seales, and I explained to him that he wants to
18 talk -- that he wants to talk to me, but I got him to
19 agree to let an investigator from the sheriff's
20 office to come in and sit in during an interview,
21 which is Investigator Seales. I also told him he
22 needed clothes because he was wet. The clothes he
23 had on -- he was cold. Investigator Seales made
24 arrangements and got clothes from the jail for him to
25 put on to get his wet clothes off.

LARRY TURNER - DIRECT EXAMINATION

1 Q I'll show you State's Exhibit No. 1, do you
2 recognize this?

3 A Yes, ma'am. This is the Miranda read to him
4 by Investigator Jamie Seales at 1:53 a.m. on 12/21,
5 witnessed and signed by myself and also signed by the
6 defendant, David Dixon.

7 Q Will you share with us the basic information
8 on that Miranda form?

9 A Has his name, date of birth, height, weight
10 and basically advising him of his rights, that he can
11 have a lawyer present to talk to if he wishes, if he
12 desires not to talk, he has a right not to talk.

13 Q Will you share his date of birth?

14 A Height is the 6'3", [REDACTED]/1990, 150 pounds
15 brown hair, brown eyes, Social of [REDACTED].

16 Q How did he appear at the time this was given?

17 A Normal, just as we are today.

18 Q Did he understand everything that you were
19 saying to him? Did he appear to understand it?

20 A Yes, ma'am.

21 Q And at this time that he talks to you, is that
22 a voluntary statement given?

23 A Yes, ma'am, it is.

24 Q Will you briefly describe to the Court what
25 you guys discussed?

LARRY TURNER - DIRECT EXAMINATION

1 A Investigator Seales did the majority of the
2 talking, and I basically sat in. Dixon described to
3 us what had happened at Woody's on Stoneaway. He
4 said that he went there, he was shooting pool. Him
5 and the deceased victim, Mr. Bristow, got into a
6 verbal altercation. He initially said that Bristow
7 pulled a gun on him and he shot basically in
8 self-defense. Once he went through his story of the
9 self-defense, Investigator Seales explained the
10 evidence that was collected by SLED and the sheriff's
11 office didn't not match his story and he needed to be
12 truthful, at which time he changed and said he pulled
13 on the defendant, on the victim, after he pulled a
14 flag out of his pocket in which he said disrespected
15 him. He shot a number of times hitting the deceased
16 victim, along with another victim at the incident
17 location.

18 Q About how long was this statement?

19 A 45 minutes to an hour.

20 Q Okay. Now, you mentioned earlier that Mr.
21 Dixon himself was requesting to speak with you. Did
22 you know him?

23 A Yes, ma'am. I've known David since he was a
24 child. His grandmother worked for us at the police
25 department. She was a records specialist with the

LARRY TURNER - DIRECT EXAMINATION

1 police department.

2 MS. DAVID: Beg the Court's indulgence.

3 (A brief pause in the proceedings.)

4 Q (MS. DAVID) Let's discuss the statement once
5 more. Can you go back through it with more detail
6 for the jury?

7 MR. STEEN: Objection, calls for a narrative
8 response.

9 THE COURT: I'll sustain that, Counsel. I'll let
10 you ask if you have specific areas of the statement.
11 Please rephrase your question.

12 Q (MS. DAVID) Will you specifically explain to me
13 what was the first story that Mr. Dixon told you?

14 A He basically said that Mr. Bristow followed
15 him outside in the parking lot of the incident
16 location. They had a verbal altercation, that
17 Mr. Bristow started patting him down, I guess to see
18 if he had a weapon. He said he felt threatened
19 because Bristow reached around as if he was
20 attempting to get a weapon, I guess from his back.
21 He said in return that scared him, so he pulled his
22 gun and started firing at Mr. Bristow.

23 Q What was the second story he told you?

24 A Second story was that Mr. Bristow, when he was
25 patting him down, pulled a blue bandanna out of his

LARRY TURNER - DIRECT EXAMINATION

1 pocket, which he took it as disrespect towards him,
2 that he disrespected him by doing that, I guess
3 because he was in a gang.

4 MR. STEEN: Objection, calls for speculation.

5 THE COURT: Sustain that as to speculation, and I
6 ask the jury to disregard that comment. You may
7 proceed.

8 A Once he felt he disrespected him, he said that
9 is when he pulled his weapon up and started firing at
10 him.

11 MS. DAVID: Beg the Court's indulgence, one
12 moment.

13 (A brief pause in the proceedings.)

14 Q (MS. DAVID) In relation to the flag and the
15 disrespect, please tell the Court what was
16 specifically said to you.

17 A He told us during his interview that he
18 disrespected him by pulling his flag, because he was
19 a gang member, he was a Crip, that was disrespectful,
20 he shouldn't have disrespected him, during his
21 interview with myself and Lieutenants Seales.

22 Q Did he go into any further detail with you?

23 A He said that members of that gang took care of
24 him. He showed love for them, and they showed love
25 for him. He said that was disrespectful, what he did

LARRY TURNER - DIRECT EXAMINATION

1 by pulling that flag out of his pocket and throwing
2 it on the ground.

3 Q Did you have any further involvement with this
4 investigation?

5 A The only other time I had any involvement, I
6 went to Investigator Alderman to obtain two DNA swabs
7 like a week later at the detention center.

8 Q But this particular night, December 20, early
9 morning of December 21, did you have any more
10 involvement?

11 A Yes, ma'am, along with Lieutenant Seales. We
12 took Mr. Dixon back to the incident location after we
13 finished at the sheriff's office to get a better
14 understanding where the weapon that he used was
15 placed -- inside a wooded area across from the
16 location -- to assist SLED, and we were able to find
17 the weapon.

18 Q Did the defendant take you?

19 A Yes, ma'am. He took us and gave us the
20 general area. He couldn't remember the exact area,
21 but he put us in close proximity.

22 Q About how long were you looking for this
23 weapon?

24 A Several hours.

25 Q Once the weapon, and anything else involved in

LARRY TURNER - DIRECT EXAMINATION

1 the case, once those items were found, what did you
2 do next?

3 A Basically SLED collected items, we took Mr.
4 Dixon back to the sheriff's office where he was
5 processed by Marlboro County Sheriff's Office and
6 taken to jail.

7 Q And did you have any further involvement?

8 A Other than the collection of the two DNA swabs
9 about a week later.

10 Q Okay. I'll show you what is marked as State's
11 Exhibit No. 7. What is this?

12 A It was the Miranda that was read to him by
13 Investigator Susan Alderman, Marlboro County
14 Sheriff's Office, 12/27/2012, 11:22, witnessed and
15 signed by myself along with David Dixon, date of
16 birth was [REDACTED]/1990; Social, [REDACTED]; height,
17 6'3"; weight, 150; brown eyes, brown hair.

18 Q And at that time, why did you Mirandize the
19 defendant?

20 A Investigator Alderman felt that because she
21 was collecting a swab, she needed to Mirandize him.

22 Q Did he say anything at that time?

23 A Not that I recall, no, ma'am.

24 MS. DAVID: Beg the Court's indulgence.

25 (A brief pause in the proceedings.)

LARRY TURNER - CROSS-EXAMINATION

1 MS. DAVID: Thank you.

2
3
4 CROSS-EXAMINATION

5 BY MR. STEEN:

6 Q Would you say Mr. Dixon was cooperative from
7 the time you came into contact with him that night?

8 A Pretty much, yes, sir.

9 Q He said that he took you to the general area
10 where the gun was located?

11 A Yes, sir.

12 Q You stated that Mr. Dixon's story changed
13 after he was told about the SLED did not match; at
14 that time, had that SLED evidence been in and
15 processed?

16 A I'm sorry?

17 Q You said Mr. Dixon changed his story when
18 Lieutenant Seales said that the SLED evidence did not
19 match his story?

20 A Yes. When Investigator Seales told him what
21 he was saying did not match to the crime scene, he
22 changed the story, yes, sir.

23 Q At that time, did you have any SLED evidence
24 in your possession?

25 A Not that I'm aware of.

LARRY TURNER - CROSS-EXAMINATION

1 Q So that was an investigative technique?

2 A Yes, sir.

3 MR. STEEN: No further questions.

4 THE COURT: Redirect? Any redirect?

5 MS. DAVID: Beg the Court's indulgence.

6 (A brief pause in the proceedings.)

7 MS. DAVID: No further questions.

8 THE COURT: Sir, you may step down. You are free
9 to leave or remain with us.

10 Call your next witness.

11 MS. DAVID: Dr. Hardik Parekh.

12 MS. DAVID: Dr. Hardik Parekh.

13 (HARDIK PAREKH, having been duly sworn,
14 testified as follows:)

15 DIRECT EXAMINATION:

16 BY MS. DAVID:

17 Q Can you spell your name for the Court?

18 A H-A-R-D-I-K, P-A-R-E-K-H.

19 Q What is your current occupation, Mr. Parekh?

20 A I'm the emergency room doctor at Marlboro Park
21 Hospital.

22 Q And are you licensed to practice law (sic) in
23 this state?

24 A To practice medicine.

25 Q Are you licensed in the State of South

HARDIK PAREKH - DIRECT EXAMINATION

1 Carolina?

2 A Yes.

3 Q What medical college did you attend?

4 A East Tennessee State University.

5 Q Where did you intern?

6 A Same place.

7 Q Since that time, where all have you practiced?

8 A Marlboro Park Hospital.

9 Q For how long have you been at Marlboro Park?

10 A Two years and three months.

11 Q Is the nature of your practice general, or
12 specialized?

13 A Emergency room.

14 Q Emergency room. Do you remember the night of
15 December 20th, 2012?

16 A Uh-huh, yes.

17 Q And do you recall seeing any gunshot victim on
18 that night?

19 A Yes.

20 Q Do you recall seeing -- can you tell me what
21 was going on? Who did you see?

22 A As far as I remember, two patients. One with
23 gunshot wound to the back, and one with gunshot wound
24 to the head.

25 Q Do you recall the name of the individual with

HARDIK PAREKH - DIRECT EXAMINATION

1 the gunshot wound to the back?

2 A I would have to look. I think the one to the
3 back was Mr. Christopher Bristow.

4 MS. DAVID: Beg the Court's indulgence, one
5 moment.

6 THE COURT: Sir, you may refer to your records if
7 it assists you, you may do so.

8 MS. DAVID: I apologize for that.

9 Q (MS. DAVID) How long have you been in the
10 practice of medicine?

11 A I finished my residency in 2011, so since then
12 I've been licensed independently. Before that, I was
13 in residency training, which is part of the education
14 also.

15 Q Have you ever testified in court before?

16 A No.

17 MS. DAVID: Your Honor, we would like to have
18 Dr. Parekh qualified as an expert in medicine.

19 THE COURT: All right. Ladies and gentlemen, this
20 witness is offered as an expert witness. The
21 previous witnesses have been lay witnesses. Lay
22 witnesses come in to testify about what they saw or
23 heard or did, as you've already observed in the
24 courtroom, but an expert witness, because of some
25 training or knowledge, experience in a particular

HARDIK PAREKH - DIRECT EXAMINATION

1 area is allowed -- if qualified as an expert -- to
2 come in and testify about not only what they saw or
3 heard or did, but also what opinion they derived from
4 that, and that is the difference from a lay and
5 expert witness. We stop right there, go to the other
6 side to see if there are questions concerning the
7 expertise of the witness.

8 Is there voir dire on the issue of expertise?

9 MR. STEEN: No voir dire.

10 THE COURT: Is there objection to qualifications?

11 MR. STEEN: No, sir.

12 THE COURT: The witness is qualified as an expert
13 in the area of emergency medicine and may testify as
14 so. Please understand that an expert witness'
15 testimony is not given to you for the purpose of
16 controlling your judgment, it is given for the
17 purpose of assisting you in finding matters of fact
18 that are before you that are within the purview of
19 that expert, if you deem it to be helpful. It is up
20 to you to give any weight to any witness, including
21 the expert witness.

22 You may proceed.

23 Q (MS. DAVID) Thank you. I apologize for
24 skipping that step before questioning you.

25 Now, let's go back to where we were. You said

HARDIK PAREKH - DIRECT EXAMINATION

1 you saw a victim with gunshot wounds to the back?

2 A Yes.

3 Q And do you recall the name of that victim?

4 A That was Christopher Bristow.

5 Q I'll show you now what has been marked as
6 State's Exhibit No. 3. Do you recognize this photo?
7 I'll get closer so you can see it.

8 A It does look like that. I mean, I'm not
9 certain of the person, but it looks similar, yes.

10 Q Is this photo consistent with the gunshot
11 wounds you saw on that night?

12 A It does appear to.

13 Q And I'll show you what is marked as State's
14 Exhibit No. 4; do you recognize this?

15 A It does appear -- I mean, I don't recall among
16 all of the activity, but, I mean, the location does
17 seem consistent to the injuries that I seen on the
18 patient.

19 Q Thank you. Did you see anyone else on that
20 night besides Mr. Christopher Bristow?

21 A Yes.

22 Q Who else did you see?

23 A That was Mr. Woodrow Garner.

24 Q What were his injuries?

25 A His injuries were claimed to be gunshot, one

HARDIK PAREKH - DIRECT EXAMINATION

1 to the head on the right side.

2 Q I'll show you what is marked as State's
3 Exhibit No. 6; do you recognize this?

4 A That seems to be right for what I marked on
5 the chart.

6 Q Is this the injury you saw that night?

7 A I think so, yes.

8 Q My next question for you is, is this type of
9 injury consistent with a gunshot? Is this what a
10 gunshot wound would typically look like?

11 A Gunshot wound can also look like this. I
12 mean, of course, other sharp instruments can inflict
13 injuries like this, but it does look like a gunshot,
14 and based on the history I got from the patient at
15 that time.

16 Q And what injuries -- what was his condition at
17 the time you saw him?

18 A Are you asking for the diagnosis?

19 Q Yes.

20 A Well, his diagnosis was he had subarachnoid
21 hemorrhage. He had a little bleeding inside the
22 brain at the site of the injury. His condition, as
23 the patient goes, he was walking. He came into the
24 emergency room on his own, as far as I recall. He
25 wasn't brought in by the EMS or the ambulance, and he

HARDIK PAREKH - DIRECT EXAMINATION

1 gave his own history, he was talking to me.

2 Q And did you treat him?

3 A Yes, I did.

4 Q Did you -- what did you do further with Mr. --

5 A Based on the type of injury, he was
6 transferred to another hospital, Carolina Hospital in
7 Florence, which is a higher level hospital where they
8 have more experts in managing injuries like that.
9 Marlboro Park Hospital does not have expert for that,
10 so.

11 Q So why did you transfer him?

12 A There was -- because there were other doctors.
13 He needed other specialists to manage his injuries.

14 Q Okay. And one more question. If we go back
15 to Christopher Bristow, was he alive when you saw
16 him?

17 A When I saw him, the paramedics were working on
18 him. He did not have a pulse. He was not breathing.
19 His pupils were fixed and dilated. So, basically,
20 no.

21 Q About what time was it?

22 A The time he arrived to the emergency room was
23 10:22 at night on December 20th. The time he was
24 pronounced dead was 10:32 at night on December 20,
25 2012.

HARDIK PAREKH - CROSS-EXAMINATION

1 MS. DAVID: At this time, the State moves to
2 publish the photos to the jury.

3 THE COURT: You may provide those to the jury.

4 MS. DAVID: Thank you. Would you answer any
5 questions the defense has.

6 CROSS-EXAMINATION

7 BY MR. STEEN:

8 Q I think I may have missed it. What time was
9 he pronounced dead?

10 A 10:32 at night.

11 Q Would you consider Mr. Garner's injuries
12 life-threatening?

13 A Yes.

14 Q You said he was transferred to Carolina
15 Medical Center because they had the specialists that
16 could deal with his situation?

17 A I'm sorry, I missed that part.

18 Q Mr. Garner, the one with the head jury --

19 A What was the question?

20 Q Would you consider his injury
21 life-threatening?

22 A It can be if the hemorrhage is bigger. At
23 that time, it was a serious jury.

24 MR. STEEN: One second; Your Honor.

25 (A brief pause in the proceedings.)

HARDIK PAREKH - CROSS-EXAMINATION

1 Q (MR. STEEN) Did any kind of delay in
2 Mr. Bristow, the deceased, have any effect on him
3 dying -- the time lapse between the incident and him
4 getting to the hospital, in your opinion, did that
5 have anything to do with his injuries getting any
6 worse?

7 A As far as I recall, the time lapse, or
8 whatever time lapse there was, was the time it took
9 the paramedics to do all of the treatment that they
10 needed to do, so, I mean, I don't think so.

11 Q And what time did Mr. Garner arrive at the
12 hospital?

13 A He arrived at 22:11.

14 Q What time did Mr. Bristow arrive at the
15 hospital?

16 A Mr. Bristow came by ambulance at 22:22.

17 Q So Mr. Garner arrived at the hospital before
18 Mr. Bristow arrived?

19 A Yes. As far as I recall, Mr. Garner came on
20 his own, not by ambulance.

21 MR. STEEN: No further questions.

22 THE COURT: Is there redirect for the witness?

23 REDIRECT EXAMINATION

24 BY MS. DAVID:

25 Q Is it true that Mr. Garner's injuries were

HARDIK PAREKH - REDIRECT EXAMINATION

1 significant to you to send him to another hospital?

2 A Yes.

3 MS. DAVID: That's all.

4 THE COURT: You are free to go, sir.

5 Counselor, how long do you believe the next
6 witness will be?

7 MR. DANIEL: Our next two will be fairly
8 significant, and we have things we need to set up.

9 THE COURT: So we'll take a morning break. You
10 can go outside if you wish, and we'll be in recess
11 for 15, 20 minutes. Let's remain where we are until
12 the jury departs. Court stay in order.

13 (The jury exits at 10:06 a.m., and the
14 following is heard out of the presence of the jury.)

15 THE COURT: Court is in recess now.

16 (A recess was taken.)

17 THE COURT: Please bring in the jury.

18 (The jury enters at 10:31 a.m., and the
19 following is heard in the presence of the jury.)

20 THE COURT: Welcome back, ladies and gentlemen.
21 Please call your next witness.

22 MR. DANIEL: If it pleases the Court, State calls
23 Dawn Claycomb.

24 (DAWN CLAYCOMB, having been duly sworn,
25 testified as follows:)

HARDIK PAREKH - REDIRECT EXAMINATION

1 THE CLERK: State your name for the record.

2 WITNESS: Dawn Claycomb.

3 DIRECT EXAMINATION

4 BY MR. DANIEL:

5 Q Good morning.

6 A Good morning.

7 Q Can you please tell the jury where you work?

8 A SLED.

9 Q What are your responsibilities at SLED?

10 A I work specifically with crime scene. We
11 respond to crime scenes and we document, preserve and
12 we collect evidence at crime scenes.

13 Q What is your experience in law enforcement?

14 A I have approximately a total of four years in
15 law enforcement. One year at SLED, and prior to that
16 I worked with the Richland County Sheriff's
17 Department.

18 Q So you've been at SLED one year?

19 A Yes.

20 Q And in that year, have you been solely in the
21 unit of crime scene investigations?

22 A Yes, sir.

23 Q And have you ever testified in court?

24 A I have.

25 Q What sort of training and experience --

DAWN CLAYCOMB - DIRECT EXAMINATION

1 training have you had with regard to crime scene
2 investigation?

3 A In reference to SLED, they have what we call
4 "in-house training." It is approximately eight
5 months. It consists of anything from oral to written
6 tests that are given throughout the eight months
7 responding to crime scenes, on-the-job training and
8 several written tests we have to complete before we
9 are accepted to be a --

10 Q And you passed those tests?

11 A Yes, sir. Yes, sir.

12 MR. DANIEL: I ask that Ms. Claycomb be offered as
13 an expert in crime scene investigation.

14 THE COURT: Are there questions for the witness on
15 area of expertise?

16 MR. LEWIS: No questions.

17 THE COURT: Any objection?

18 MR. LEWIS: No objections.

19 THE COURT: Without objection, the witness is an
20 expert in crime scene investigation. You may
21 proceed.

22 MR. DANIEL: Thank you, Your Honor.

23 Q (MR. DANIEL) What is your title?

24 A Crime scene investigator.

25 Q Investigator. I keep calling you "Ms." Did

DAWN CLAYCOMB - DIRECT EXAMINATION

1 you have an occasion to respond to Marlboro County on
2 or about December 20, 2012?

3 A Yes, I did.

4 Q And how does that work? Why do you or why
5 does SLED get involved in a crime scene like this?

6 A Typically the local law enforcement agency
7 contacts our operations and requests crime scene. At
8 that point operations contacts us, "us" as in myself
9 and my partner, we usually work as two, a team, and
10 our operations desk contacts us to respond to that
11 location.

12 Q Do you respond to every kind of crime in the
13 county, or just certain crimes you respond to?

14 A It depends. Anywhere from officers involved
15 in shootings, homicides, even things like burglaries,
16 any kind of requests, usually.

17 Q You mentioned something about a partner, who
18 is that?

19 A Al Brown.

20 Q And how long has he been with SLED, do you
21 know?

22 A Approximately two years, I believe.

23 Q Now, where is Al right now?

24 A He's currently out on medical leave due to a
25 knee surgery.

DAWN CLAYCOMB - DIRECT EXAMINATION

1 Q And in this particular case, you both
2 responded to Marlboro County?

3 A Yes, sir.

4 Q All right. Now, the first thing you do when
5 you and your partner get on the scene is what?

6 A We make contact with the local law enforcement
7 agency securing the scene.

8 Q Did that happen in this case?

9 A Yes, sir.

10 Q And what do you talk about?

11 A They basically brief us on the scene what we
12 have, what happened, when they responded and
13 basically what the scene consists of and how it was
14 secured.

15 Q When you arrived in Marlboro County on the
16 20th of December 2012, did you have that
17 conversation with local law enforcement?

18 A Yes, we did.

19 Q And did you go straight to the crime scene; is
20 that where you went?

21 A Yes.

22 Q And when you got there, had the scene been
23 secured?

24 A Yes, with crime scene tape and several
25 vehicles.

DAWN CLAYCOMB - DIRECT EXAMINATION

1 Q What does it mean for a scene to be secured?

2 A Basically blocked off to the public and no
3 citizens can enter the crime scene, or anyone in
4 general.

5 Q So after you had the conversations with local
6 law enforcement and briefed on what is going on, what
7 is the first thing you do?

8 A First thing we do is we usually do a
9 walk-through with the local investigator, whoever is
10 taking the case. We'll do a quick walk-through to
11 give us heads up what was at the scene, what to look
12 for, what they had already seen and where the scene
13 in general happened.

14 Q What's next?

15 A Next, we usually photograph and we document
16 the scene, and once that is done, we'll collect the
17 evidence.

18 Q All right. Let's look at some photographs
19 that you and your partner took that night.

20 MR. DANIEL: Assuming that Investigator Claycomb
21 can be loud enough, is it okay if she steps down?

22 THE COURT: I only ask that she faces our court
23 reporter so she can hear.

24 Q (MR. DANIEL) State's 17, can you identify this?

25 A Yes, sir. That is a photo of the front of the

DAWN CLAYCOMB - DIRECT EXAMINATION

1 bar.

2 Q This is where you responded?

3 A Yes, sir.

4 Q Now, I'm showing you State's 18.

5 A That is the other side of the bar.

6 Q State's 19?

7 A That is just a closer photo of the bar.

8 Q 20?

9 A That is a closer photo of the vehicle and the
10 evidence around it.

11 Q 21?

12 A That is a photo of a bandanna that was located
13 outside in the parking lot in front of the bar.

14 Q 22?

15 A That is an interior photo of the bar, and that
16 is the bar inside.

17 Q 23?

18 A That is just another photo of the bar inside.

19 Q 24?

20 A That is a photo of pool tables of the interior
21 of the bar.

22 Q What is that down there?

23 A That is the blood trail we located inside the
24 bar.

25 Q 25?

DAWN CLAYCOMB - DIRECT EXAMINATION

1 A That is a photo from the left side of the bar
2 showing the entryway.

3 Q 26?

4 A Another close-up photo of the bar inside.

5 Q What is that?

6 A That is a camouflage jacket we located on one
7 of the barstools.

8 Q 29?

9 A Close-up photo of that prior camouflage jacket
10 you showed us, a tag showing the size and the brand.

11 Q 27?

12 A That was a bag located inside the pocket of
13 the camouflage jacket that you had just shown, and it
14 had several cartridges inside the bag.

15 Q And then, finally, 28?

16 A Yes, sir. Close-up photo of the stamp of one
17 of the cartridges that we found inside the bag.

18 Q Can you identified also State's 49?

19 A Enlarged photo of the diagram that was done
20 for the scene.

21 Q And you and your partner would have taken
22 these photos and completed this diagram?

23 A Yes, sir. Yes, sir.

24 Q You can return to your seat. Thank you,
25 ma'am.

DAWN CLAYCOMB - DIRECT EXAMINATION

1 So, Investigator Claycomb, you get to the
2 scene, you find out from local law enforcement what
3 is going on, take photos -- by the way, are those all
4 the photos you took?

5 A No, that's just a few of the many we took.

6 Q And you sketched the scene. So what happens
7 next?

8 A After we -- right after we sketch the scene --
9 on scene, is that what you're talking about?

10 Q Yes, ma'am.

11 A After we sketch, we document, we photograph,
12 we even place markers down at the scene to document
13 that as well, and in this particular instance, it was
14 very windy that night. There was rain and our
15 markers would not stay in place, so once the
16 photographs are taken and that is documented, that is
17 when we start collecting the evidence.

18 Q When you say "markers," you are talking about
19 the yellow markers?

20 A Placards, they have a letter or number on
21 them, yes.

22 Q So in this case did you begin your
23 investigation after the photos and after the diagram?
24 Did you begin your evidence collection in the parking
25 lot?

DAWN CLAYCOMB - DIRECT EXAMINATION

1 A Yes, that was the first -- yes, outside.

2 Q Tell the jury what you found in the parking
3 lot.

4 A In the parking lot we found two cartridge
5 cases outside in front of the bar in the parking lot
6 in the dirt. There was another shotgun shell that
7 was outside in the parking lot, a bandanna was
8 located in the parking lot and also a partial case of
9 beer.

10 Q I'll show you what is marked as State's 38.
11 I'll take out a couple of boxes. Can you identify
12 that?

13 A Yes, sir. That's one of the shell casings
14 that we located outside of the bar in the parking
15 lot.

16 Q Outside of the bar?

17 A Yes.

18 Q This is also a part of State's 38?

19 A That is another cartridge case located outside
20 of the bar, outside in the parking lot.

21 Q And another part?

22 A That is the shotgun shell located outside in
23 front of the boor.

24 Q And --

25 A I believe that is the same (indicates).

DAWN CLAYCOMB - DIRECT EXAMINATION

1 Q And, finally (indicates)?

2 A That is the Crown Royal bag with cartridges we
3 located inside the camouflage jacket.

4 Q So would it be fair to say that this bag
5 comprising all of State's 38, these are all of the
6 shell casings and bullets you found with regard to
7 this case?

8 A Yes. Yes.

9 Q And this tape with all of that stuff on it, do
10 you put it on there (indicates)?

11 A Yes. When we package evidence, it needs to be
12 sealed, initialed and dated. Yes, sir, we seal it.

13 Q Now, you said something about a bandanna?

14 A Yes, sir.

15 Q You found -- I think we saw a picture of it --
16 a blue bandanna?

17 A Yes, sir.

18 Q This was in the parking lot?

19 A Yes.

20 Q I'll show you State's 42. I won't ask you to
21 take it out, but is that it?

22 A Yes, it is.

23 Q That is how you marked it there?

24 A Yes.

25 Q We opened it earlier with defense counsel.

DAWN CLAYCOMB - DIRECT EXAMINATION

1 (Whereupon, the bandanna was published to the
2 jury.)

3 Q You all found a case of Bud Light?

4 A Yes, sir.

5 Q I'll show you State's 45. Is that a case of
6 Bud Light?

7 A Yes, sir.

8 Q And, finally, you found a camouflage jacket,
9 which we saw photos of, and this is State's 44; is
10 that what it is?

11 A Yes, sir.

12 Q So that concludes all of the evidence you
13 collected outside; is that right?

14 A Yes, sir.

15 Q All right. After you collected this evidence
16 outside, what happened?

17 A That is when we -- I believe Investigator
18 Seales arrived on scene and we were notified that a
19 possible suspect was located, and that he requested
20 that a GSR is collected from him.

21 Q And please tell the jury what a GSR is?

22 A Gunshot residue kit. It is used to collect
23 microscopic particles from clothing, human hair,
24 anything that needs to be collected, but they are
25 small little vials that has an adhesive tab that

DAWN CLAYCOMB - DIRECT EXAMINATION

1 collect those particles that may possibly arise from
2 when a gun is fired.

3 Q So just to be clear, if I fire a gun right
4 now --

5 A Yes, sir.

6 Q -- with nothing on my hand, after I fire that
7 hand, you would put a piece of tape on my hand, and
8 what comes off I might be able to see with the naked
9 eye, but there is particles that indicate that I just
10 fired a gun?

11 A Correct.

12 Q I'll show what you is marked as State's 41.
13 Do you recognize that?

14 A Yes, sir. Those are two GSR kits, yes, sir.

15 Q Are these the kits that you and your partner
16 collected?

17 A Yes, sir.

18 Q And you went and collected that from whom?

19 A At this point it was collected from Mr. Dixon.

20 Q After you collected the GSR from Mr. Dixon,
21 what did you do?

22 A At that point we had keys to the club, because
23 it was originally locked with a padlock, and they
24 arrived on scene with keys to get into the interior
25 of the bar, and that is when we entered inside.

DAWN CLAYCOMB - DIRECT EXAMINATION

1 Q And what did you find upon your entry in the
2 bar?

3 A Initially, right on the doorstep, before we
4 entered, there was suspected blood observed on the
5 steps, and once the door was opened, there was an
6 obvious blood trail leading inside the bar.

7 Q And you said one of your jobs is to collect
8 evidence. How do you collect evidence that is blood
9 on the floor?

10 A Particularly, that, we usually take a swab of
11 the blood, and that is sent to our lab and processed.

12 Q Did you do that in this case?

13 A Yes, sir. We did.

14 Q Also inside, I believe your testimony is, is
15 where you found the jacket and the other things on
16 the barstool?

17 A Yes, sir.

18 Q Now, did that complete your evidence
19 collection from the scene, both inside and out?

20 A Yes, sir.

21 Q What did you do next?

22 A Next, we went to the Marlboro Park Hospital,
23 and that is where the victim, Mr. Bristow, was
24 located. We collected a GSR kit from him and also
25 prints, major case prints.

DAWN CLAYCOMB - DIRECT EXAMINATION

1 Q That GSR kit from him, that is in the same
2 package?

3 A Yes, sir.

4 Q You say "major case prints," what are those?

5 A Fingerprints and palm prints we collect from
6 them at the time in case there is any latent evidence
7 located or collected, and we can compare those
8 fingerprints to the latent evidence if we need to.

9 Q And just to be clear, what is latent evidence?

10 A Latent is fingerprints that may be invisible
11 to the eye or anything located on a piece of
12 evidence.

13 Q So when you arrived at the hospital, had
14 Mr. Bristow already expired?

15 A Yes. Yes.

16 Q And then you took prints?

17 A Yes.

18 Q I'll show you what is marked as State's 37.
19 Do you recognize that?

20 A Yes those are the major case prints we
21 collected.

22 Q When you collect these prints, do you
23 actually -- later or that night or the next week or
24 month -- are you the ones that are looking at the
25 prints and trying to compare?

DAWN CLAYCOMB - DIRECT EXAMINATION

1 A No, sir, that is a latent examiner. We just
2 collect them.

3 Q Are you the one who tests any of this? Do
4 you -- back at the lab -- test the GSR, blood, any of
5 that?

6 A No, sir.

7 Q So your job is collection at the scene?

8 A Correct, strictly at the crime scene.

9 Q All right. So when you complete your duties
10 at the hospital, which include GSR and fingerprints,
11 you go where?

12 A We went back to the club. At that time, our
13 knowledge was investigators were still looking for a
14 weapon across the street off of Stoneaway Road in a
15 wooded area.

16 Q Okay. And so you are going back to look for a
17 weapon?

18 A Yes, sir.

19 Q Who was assisting in looking for this weapon?

20 A It was myself, Agent Brown and several other
21 deputies from Marlboro County Sheriff's Office.

22 Q Are you aware if the defendant was actually
23 part of the search for the weapon?

24 A He was at the scene. I'm not sure if he -- he
25 was in a vehicle. Whether he got out at any point, I

DAWN CLAYCOMB - DIRECT EXAMINATION

1 don't know, but I believe he was directing a location
2 of where the gun might be located.

3 Q Okay. And pursuant to the search, did you
4 actually find a gun?

5 A Yes, sir. We did.

6 Q I'll show you what has been marked, and has a
7 lock, as State's 35; do you recognize that?

8 A Yes, sir. That is the gun located in the
9 woods.

10 Q This is the gun located in the woods that you
11 just testified was being -- you all were directed by
12 the defendant, to your knowledge?

13 A Yes, sir. Yes, sir.

14 THE COURT: Ladies and gentlemen, it's obvious,
15 but those who are not familiar with firearms, when it
16 has a lock on it, it means that it is locked in such
17 a way that the fire could not be fired even if you
18 tried to fire the weapon and, of course, it is not
19 loaded. I tell you that for your own information.
20 You may proceed.

21 MR. DANIEL: Thank you, Judge.

22 Q (MR. DANIEL) Investigator, if you would, step
23 down one more time please, very briefly.

24 A (Witness complied.)

25 Q Where you found the gun, did you take photos?

DAWN CLAYCOMB - DIRECT EXAMINATION

1 A Yes, sir.

2 Q I'll show you what is State's 30; can you
3 identify this for the jury?

4 A That is the gun located at the base of a tree.

5 Q Would you point out the gun to me?

6 A Right here (indicates).

7 Q Of course, State's 31 --

8 A Yes, sir, that is the gun that I just pointed
9 to.

10 Q At this point in the investigation you were
11 under the impression, and still are, that this was
12 the murder weapon?

13 A Yes, sir.

14 Q What else did you find in the woods?

15 A We found one pair of two gloves, black in
16 color.

17 Q This is difficult to see, but State's 32?

18 A Yes, sir. That is one of the gloves laying in
19 pine straw.

20 Q And State's 33?

21 A That is another photo -- it's hard to see, but
22 on one of the limbs in that tree.

23 Q Did you review all of these photos before
24 court today?

25 A Yes, sir, I did.

DAWN CLAYCOMB - DIRECT EXAMINATION

1 Q Okay. State's 46 is what I'll show you next.
2 Can you identify that, please?

3 A Yes, that is one black glove that we located
4 in the woods. And there is a second one, yes.

5 Q And I won't ask you to take those out.

6 So the defendant takes you to the gun and
7 gloves, you photograph it, collect it and what
8 happens next?

9 A At that point we went to the Marlboro County
10 Sheriff's Office and we collected another gun that
11 was collected by them prior to our arrival.

12 Q I'll show you then what is marked as State's
13 36. Of course this has the same precautions that the
14 other gun has.

15 A Yes, sir. That is the gun from the sheriff's
16 office.

17 Q Do you know where this gun came from?

18 A It was brought to the sheriff's office by a
19 witness that was at the bar during the incident, to
20 our knowledge.

21 Q Okay. Does that conclude the evidence that
22 you collected in this case?

23 A Yes, it does.

24 Q Now, the way you packaged and sealed and
25 everything else, all of this evidence, is that what

DAWN CLAYCOMB - DIRECT EXAMINATION

1 you normally do? Is that what you are taught to do?

2 A Yes, sir.

3 Q When you finish with all of the evidence, you
4 go back to Columbia?

5 A Yes, to the lab.

6 Q And what do you do with all of this?

7 A It is all stored. We log it in, package, seal
8 and send it off to the respective departments.

9 Q At that point, at some point, do you or your
10 partner or both compile a report about all of your
11 findings?

12 A Yes, sir.

13 Q I'll show you what is marked as State's 14.
14 These are in evidence.

15 A Yes, sir. This is our total report with the
16 scene summary, the few pages of the actual report.

17 MR. DANIEL: I have no further questions. If
18 you would, answer any questions the defense may have.

19 THE COURT: Cross-examination?

20 CROSS-EXAMINATION

21 BY MR. LEWIS:

22 Q Good morning. What time did you arrive at the
23 scene?

24 A It was approximately -- Your Honor, is it okay
25 if I refer to my notes?

DAWN CLAYCOMB - DIRECT EXAMINATION

1 THE COURT: Yeah, sure.

2 A Approximately 12:18 a.m.

3 Q (MR. LEWIS) And you got to Woody's. Could you
4 describe the area? How dark was it?

5 A It was very dark. I believe there might have
6 been only one streetlight outside the bar.

7 Q One streetlight. So there was no lamp posts
8 or nothing out there?

9 A No, I'm sorry.

10 Q No lamp posts or any type of lights, just the
11 one?

12 A If I remember correctly, just the streetlight.

13 Q And you said it was raining and windy outside?

14 A It had rained prior to. I think on our way
15 there it was raining. We got there I believe it had
16 stopped, but it was very windy and raining, yes.

17 Q Is it possible that the rain and the wind
18 could have messed with some of the evidence or
19 contaminated it?

20 A It is possible. Weather can affect evidence,
21 yes..

22 Q And you said that you found numerous gun shell
23 casings?

24 A Yes, sir.

25 Q All from the same gun?

DAWN CLAYCOMB - CROSS-EXAMINATION

1 A That would be a question for firearms.
2 Q I apologize.
3 A It's okay.
4 Q Let's talk about when you collected the GSR.
5 You mentioned that you collected it from two people?
6 A Yes.
7 Q From Mr. Dixon and Mr. Bristow?
8 A Yes.
9 Q Do you normally collect GSRs from the victim,
10 from a dead person?
11 A We do. We do. If it's a shooting incident,
12 yes, we do.
13 Q Did you know the results of the GSR for the
14 two individuals?
15 A Did I know the results? No.
16 MR. DANIEL: I would object right now. Obviously,
17 this witness is qualified as an expert in crime scene
18 investigation, and we'll cover the results later.
19 THE COURT: The answer was, no, she does not, so
20 move to the next question.
21 MR. LEWIS: No further questions.
22 THE COURT: Redirect?
23 MR. DANIEL: There is not.
24 THE COURT: Ma'am, you are free to remain or free
25 to leave.

DAWN CLAYCOMB - CROSS-EXAMINATION

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

2 THE COURT: You may.

3 (Whereupon, a bench conference was had.)

4 THE COURT: Ladies and gentlemen, of course we
5 just had a break a few moments ago, but we're told
6 the next witness may be as long as an hour in direct.
7 Is there any juror that needs a break? Seeing none,
8 call your next witness.

9 MS. DAVID: Investigator Jamie Seales.

10 (JAMIE SEALES, having been duly sworn,
11 testified as follows:)

12 THE CLERK: State your name for the record.

13 WITNESS: Jamie Seales.

14 DIRECT-EXAMINATION

15 BY MS. DAVID:

16 Q Jamie, what is your current occupation?

17 A Currently the lieutenant of investigations for
18 Marlboro County Sheriff's Office.

19 Q How long have you been employed there?

20 A At the sheriff's office, since 2007. I have
21 approximately 16 years in law enforcement. I've
22 worked for SLED crime scene unit, state law
23 enforcement division, for a few years. I came back
24 to the sheriff's office in October of 2007, so I've
25 been in my current position since 2007.

JAMIE SEALES - DIRECT EXAMINATION

1 Q As an investigator, did you have an
2 opportunity to participate in the investigation
3 against Mr. David Dixon?

4 A Yes, I did.

5 Q And what was your involvement?

6 A In my role at the sheriff's office, any time a
7 call comes in or any kind of -- anything we respond
8 to that requires an investigation, I'm called to
9 determine if we need an investigator, how many we
10 need. On this night I was called. With something as
11 serious as this, all investigators come out. I
12 called them, the sheriff and began trying to organize
13 the roles for the investigation.

14 Q And how did you become involved? What was the
15 first thing you did with this case?

16 A After the 911 call and calling the
17 investigators, at some point shortly thereafter I
18 called the state law enforcement division for the
19 crime scene division. I went to the sheriff's office
20 to begin to try to organize the investigation as far
21 as which investigators play which roles. As I began
22 to get information from them about what happened and
23 the number of witnesses, I began to direct them to
24 bring witnesses to the office. At that point, at the
25 office, we began to help separate witnesses, set up

JAMIE SEALES - DIRECT EXAMINATION

1 interviews, and then I began working on search
2 warrants. Search warrants are needed for SLED crime
3 scene to do their investigation at the club, Woody's,
4 and that search warrant included vehicles that were
5 in the parking lot.

6 Q Okay. Good. I'll show you what is marked as
7 State's Exhibit No. 15; do you recognize this?

8 A Yes, ma'am, I do recognize it.

9 Q And can you tell me, what is it?

10 A A search warrant prepared by myself on
11 12/20/2012.

12 Q What is that for?

13 A For the business located -- you want me to
14 read it?

15 Q Yeah.

16 A The business located at 1216 Stoneaway Road,
17 Bennettsville, South Carolina. It further describes
18 a one-story block building, white in color and has
19 "Woody's" written on the right side of the door,
20 brown shingled roof, has bars over the windows in the
21 front and the front door also. Included in the
22 search warrant was a black Mercedes E320 bearing
23 South Carolina license plate number, and that is on
24 here, the actual number, and a white Chevrolet
25 Colorado, and that number.

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1 Q Okay. Now, did you find anything as a result
2 of that search warrant?

3 A I prepared the search warrant, and generally
4 when you prepare the search warrant, another officer
5 serves it. It was searched by -- it appears the
6 signature is James Campbell, which is an investigator
7 at our sheriff's office, but I did not perform the
8 search.

9 Now, there are things on this return that were
10 found, and it appears that maybe crime scene agents
11 from SLED found them. Would you like me to read it?

12 Q Yes.

13 A The first item is camouflage jacket with Crown
14 Royal bag containing 38 caliber ammo, Carolina
15 Gamecock hat, two swabs from red stains on the floor.

16 Q Did you do anything further with this
17 investigation after you had done the search warrants?

18 A Yes, several things. While there at the
19 office, had interviews set up, and while I was
20 preparing search warrants and meeting with the
21 magistrate that came up to the office that night, the
22 sheriff's office, I prepared an affidavit for the
23 arrests warrant based on the information we gained
24 from witnesses during the interviews prior to
25 Mr. Dixon's capture. That was a murder affidavit for

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1 a murder warrant for Mr. Dixon.

2 After getting that, we shortly, thereafter,
3 got information that we may have somebody who knows
4 where he was located at, which was not far from the
5 crime scene. At that time, I was notified that he
6 was taken into custody and that he was in route to
7 the sheriff's office, and that he wanted to speak
8 with Lieutenant Larry Turner. I knew from a previous
9 time that he knew Larry because Larry -- his
10 grandmother -- defendant's grandmother worked with
11 Larry for several years, and I guess he felt
12 comfortable talking with Larry.

13 He then at some point, I don't remember the
14 exact time, he came to the office and Larry told me
15 that he was very cold and very wet, and he appeared
16 to be. Normally in that circumstance we try to make
17 the defendant as comfortable as possible. I got him
18 clothes from the jail, clean, dry socks, a jail
19 outfit, a coat and I think we even got him chips and
20 a drink, he was hungry. Shortly thereafter, we began
21 an interview.

22 Q What was his misdemeanor like at this time?

23 A He was very aware, articulate, lucid. He did
24 not appear intoxicated. He seemed to be very
25 knowledgeable about what was going on. He knew

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1 myself, he knew Larry. He seemed calm and he seemed
2 a lot more comfortable once he got dry clothes on.

3 Q I'll show you what is marked as State's
4 Exhibit No. 1; do you recognize it?

5 A Yes, I do.

6 Q Can you tell the Court what it is?

7 A This is a Miranda form. It just says at the
8 top your rights, and it is filled out in my
9 handwritten script. On the first block, upper
10 right-hand corner, is a place and it has MCSO,
11 Marlboro County Sheriff's Office, 12/21/12 and the
12 time is 1:53 a.m. The next part is -- would you like
13 me to read it?

14 Q Yeah.

15 A Your rights, and it says, Before we ask any
16 questions, you must understand your rights. Number
17 one, you have a right to remain silent. Two,
18 anything you say will and can you be used against you
19 in court. Three, you have the right to talk to a
20 lawyer for advice before we ask you any questions and
21 to have him with you during questioning. If you
22 cannot afford a lawyer, the court will appoint one
23 for you before any questions, if you wish. Number
24 five, if you decide to answer questions without a
25 lawyer present, you still have the right to stop

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1 answering at any time until you talk to a lawyer.

2 Beside each one of those, as I explained them
3 to him, I asked him if he would initial each one
4 saying he understood them. Below that, and he did,
5 in his handwritten script there is a D-D beside each
6 one.

7 Below that is Waiver of Rights. It says, I
8 have read the Statement of My Rights. I understand
9 what my rights are. I'm willing to make the
10 statement and answer questions. I do not want a
11 lawyer at this time. I understand and know what I'm
12 doing. No promises or threats have been made to me,
13 and no pressure or coercion of any kind has been used
14 against me by anyone.

15 There is a place where it says "sign," and
16 that is for the defender, the person given the rights
17 to sign, and in his signature is "David Dixon."
18 Below that are three witness blocks, two are filled
19 out, one is my signature, James Seales, and the next
20 signature is Lieutenant Larry Turner.

21 Below that is a small section, Officer must
22 read the entire contents of the document and ask the
23 subject if he understands what is read to him, and
24 the officer must allow suspect to read this document.
25 Then below that is David Eric Dixon's name in my

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1 handwritten script, his cell phone, address, date of
2 birth, height, weight, years of school completed and
3 hair color and eye color.

4 Q Now, you've already told us that this is about
5 1:52, 1:53, roughly 10 minutes to 2:00 that morning.
6 About how long do you talk with Mr. Dixon?

7 A Somewhere between 45 minutes and an hour.

8 Q Will you briefly tell us about this
9 discussion?

10 A Yeah. We read him his Miranda rights. He
11 agreed, he understood them. He agreed to talk with
12 us. I just kind of let him tell his story, and
13 you'll see the video. As he was talking, I was
14 taking notes. I would stop him at times so I could
15 catch up with him, because I usually take notes
16 during the interview. He told us that -- this is
17 just a summary of what I'm telling you, I don't have
18 it in front of me, but that he works at the Huddle
19 House. He worked third shift. He got up about
20 7 o'clock that night, from what I remember. He was
21 at a friend's, Brian Wilson's house, in an apartment
22 complex across from our detention center. Brian and
23 his mother live there together.

24 David, I think, indicated that he spent the
25 night there a few times, and they were good friends.

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1 David said that he got up, decided he wanted to hang
2 out that night and that him and Brian left and I
3 think went to Food Lion and got beer. It was raining
4 and raining and it was cold, and someone came up that
5 would give them a ride. They went out to Woody's
6 nightclub.

7 I then asked him did he usually go to
8 nightclubs, and he said he only had been to one
9 recently. He said that he had never been out there
10 before, and he said when he got out there, he named a
11 few other people that were there. He said he shot
12 some pool. He left his beer outside, and he would go
13 -- I think he took a beer in, but he said when he was
14 inside, he had seen the deceased, the victim,
15 Mr. Bristow. When I'm watching the video, I don't
16 remember what he said, but they said something or did
17 something inside. They walked outside, and while
18 they were outside, a friend of Mr. Bristow's, I think
19 Chris Sanchez, came outside, and he said that they
20 began talking.

21 Mr. Dixon, the defendant, and the victim,
22 Mr. Bristow, began talking. There was a -- in his
23 words -- disagreement of some kind. The victim,
24 Mr. Bristow, at some point -- the disagreement
25 escalated, and he felt like he was reaching behind

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1 him for a weapon, and he pulled his gun out and was
2 turning. You'll see him describe it on the first
3 part of his story on the interview. He was turning,
4 and he'll hold his hand up, shooting. This was -- I
5 took it as a self-defense mode that he was
6 describing. He shot several rounds, that he had no
7 idea that Mr. Garner had been hit and that he ran
8 away from the business to a wooded area.

9 He then goes into -- about when he was in the
10 woods. He came out after awhile. He was really cold
11 and he was captured, and then I went into his story
12 about -- I was trying to get the bottom of was there
13 previous tension between him and Mr. Bristow, and he
14 said no. I think there was some witness testimony in
15 front of him, and he realized then that the story he
16 was telling wasn't believable by me or --

17 Q What exactly do you say to him?

18 A Word for word, without watching the video, I'm
19 not sure.

20 Q You can kind of --

21 A I told him, listen, I said, David, basically
22 the self-defense isn't going to fly, he was shot in
23 the back three times. Forensically, there was no
24 possible way he could have been facing you,
25 face-to-face, man-to-man and he gets shot in the back

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1 three times. Bullets don't travel that way. I told
2 him there were several witnesses who saw it. I told
3 him that there was no gunshot residue on the victim.
4 I told him that there were other witnesses that he
5 did not see that saw it happen, and other witnesses
6 that were there saw what happened.

7 I said, David, that story you told us -- and
8 everything he told us in the first statement was true
9 except for one part, and when I confronted him with
10 all of the evidence, he basically -- I could see it,
11 and through classes I've had, trained and interviews
12 and taking statements, one of the things we've
13 learned is to read body language. When I confronted
14 him to the point where he feels like I may be right
15 about some of the evidence and may know what I'm
16 talking about, you see him lean back and cross his
17 arms. I've been trained that when someone crosses
18 their arms like that, it can be an indication that
19 they are getting very defensive and that they are --
20 could be hiding something as covering their body up.

21 At that point -- it's not long after that, as
22 you'll see on the video, he puts his hands on the
23 table and drops his head. When he comes back up, he
24 says you're right, basically. I mean, I don't have
25 the script in front of me, but he says everything I

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1 told you is right up to this point.

2 Q I have a question, and we'll continue on. I
3 wanted to ask you why did you tell him those things?
4 Why did you talk about the eyewitness testimony, the
5 GSR or anything else you would have said, what was
6 the purpose?

7 A It is an investigative technique to gain
8 truth. Through my training and experience, and being
9 a very seasoned investigator, when someone is shot in
10 the back three times, a story of him facing him
11 straight on, but to be shot in the back, that he was
12 not truthful with us. Does that answer the question?

13 Q Yes. So what type of investigative techniques
14 do you normally use, or in situations like that what
15 would you do?

16 A I would attribute it to anyone on the jury
17 that may have kids, it is something like if you have
18 a child playing in another room and you are in
19 another room, you can't see them. You come in and
20 glass is broke and they are playing with a ball. You
21 come in and you say, What happened, and they say, I
22 don't know. You say, I was standing at the corner of
23 the door and I saw you broke the glass. I'm sorry, I
24 did. You didn't see them do that, but you have all
25 intentions and you understand what happened.

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1 We do that. I didn't have GSR results, and I
2 knew that. I was a former SLED agent, I knew we
3 didn't have results at that time. I felt that -- I
4 told him that along with the gunshot wounds to the
5 back, which was a fact, and eyewitness testimony,
6 which was a fact, that that combined would help
7 convince him that he needed to tell us the truth.

8 Q Thank you. Please continue telling about the
9 statement.

10 A So he drops his head in the interview.
11 Through my training and experience, again, that
12 begins to indicate to me that at this point he's kind
13 of giving up on the first story. He sits up and
14 says, What I just told you earlier is everything I
15 did tell you, Mr. Seales, and was the truth up to one
16 point. He said that when they were outside, they
17 were having this argument, that Mr. Bristow patted
18 him down, and at that point Mr. Bristow grabbed his
19 flag out of his pocket and threw it on the ground.
20 When he did, he turned -- Mr. Bristow turned to walk
21 off, and he pulled his gun out and shot him. And I
22 said, So he was turned away from you when you shot
23 him? He said, Yes. How many times did you shoot?
24 He says it on the video. I would have to watch the
25 video. And that he -- he went through the whole

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1 story about going to the house.

2 After that, me and Lieutenant Turner talked to
3 him a little more about why was it disrespectful and
4 what the flag represented. He indicated to us that
5 he was affiliated with the Crips, a criminal gang
6 organization, and how he became affiliated with it
7 and where he became affiliated with it and the things
8 that this organization had done for him at different
9 times of his life when he had nobody else to do
10 things for him, and that he even recognized it in his
11 heart as a religion. He felt that strongly about it.
12 He even tried, I guess, to sympathize with me and
13 Larry that if someone would talk about our religion,
14 that we felt that strongly, we would do the same
15 thing in a type of situation like that.

16 I then asked him if he was remorseful in any
17 way, and he -- I don't remember the exact words, but
18 somewhere along the lines that he knew he had done
19 wrong, but, again, this was his religion, he
20 disrespected the bandanna, which gang members call a
21 flag or which is commonly referred to by some gang
22 members as a flag. The blue represents Crip, as he
23 confirmed in his own words in his explanation.

24 Q Based on your work with the Marlboro County
25 Sheriff's Office as an investigator, do you know a

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1 lot about this gang?

2 A I know about -- I'm not an expert in it. 2008
3 I worked a federal drug conspiracy investigation in
4 Marlboro County. We arrested eight members of the
5 Down West Boys, which affiliated themselves with the
6 Crips organization. I learned a lot about it through
7 that investigation. I had a couple of gang
8 investigator classes. I can tell you that when it is
9 a deep-rooted gang connection, that they do take it
10 very seriously, that it entails --

11 MR. STEEN: Objection. The witness stated he was
12 not an expert in gangs.

13 THE COURT: Your objection is to what, Counsel,
14 what about the testimony?

15 MR. STEEN: He's testifying to his opinion on
16 gangs, Your Honor.

17 THE COURT: I'll overrule your objection, because
18 there was testimony from the witness as to what level
19 of experience he has, the jury has heard that and
20 they'll make a determination of credibility. You
21 have cross-examination on these issues if you wish.
22 Objection overruled.

23 Q (MS. DAVID) You may continue.

24 A Let me rephrase that by saying that the Down
25 West Boys case that I worked, those defendants -- we

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1 worked with FBI -- and they have a high level -- and
2 this is factual basis -- high level of violence,
3 numerous assaults, drug dealings, shootings. That
4 whole investigation was -- started because of a
5 homicide. Ironically enough, it was started because
6 the victim in that case took one of the leaders of
7 the Down West Boys gang to a Blood neighborhood in
8 Bennettsville and made him take a Blood member home.
9 That is how serious --

10 MR. STEEN: Objection, it's prejudicial.

11 THE COURT: Sustain. Ladies and gentlemen, these
12 other criminal incidents that you are hearing about,
13 of course the defendant is not involved in these
14 matters, not charged with these matters, this is just
15 from the investigator's general experience, but at
16 this time I'll sustain. Please move on.

17 Q (MS. DAVID) Okay. Mr. Seales, are you familiar
18 with a blue bandanna?

19 A Yes.

20 Q What does -- basically, in your experience,
21 what does that mean to this particular Crip gang?

22 A That is the common color affiliated with the
23 Crips, blue.

24 Q At this point, let's move forward for a
25 moment. After you had this statement with the

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1 defendant, what do you do next?

2 A I indicated that he would still need to help
3 us find the firearm. Lieutenant Larry Turner told
4 him in the interview that if it was in that wooded
5 area, we just didn't want a child to find it and
6 shooting themselves or shooting someone else. Mr.
7 Dixon agreed to go with us. Him and Lieutenant
8 Turner went back out to that area with more officers
9 and began to look for it.

10 Q Were you there when the firearm was found?

11 A Yes. We had looked for it for awhile, and it
12 was extremely cold. Me and Mr. Dixon and Mr. Turner
13 walked around in that wooded area on that map for a
14 good while. I had a flashlight and trying to help
15 David not trip over limbs and things. He had leg
16 irons on. We were struggling, and he was very
17 articulate in helping find it. He had it in his mind
18 a certain kind of tree that he laid the gun beside,
19 and that is what he was looking for. He was telling
20 me about the house and a fence. He said, I'm almost
21 sure it is in front of this. We kept looking in the
22 area and looking for this tree, and I honestly felt
23 that he was really trying to help us find it.

24 After a good while, me and him were really
25 cold, wet and we got in our van and cut the heat on.

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1 SLED crime scene came back out, and one of the
2 officers -- I told him to go back down in that area
3 one more time. He kept describing a house with a
4 fence. We were sitting in the car, and shortly
5 thereafter they went back down and started looking in
6 the same area again. We had looked in the general
7 area and didn't see it, and they came upon it. Sure
8 enough, it was just as he said he placed it and I
9 guess the type of tree he laid it beside. We were
10 notified it was found, and I looked back and told him
11 they found it and I thanked him for the cooperation.

12 Q After the weapon is found, do you do anything
13 further with the investigation?

14 A We took him back to the sheriff's office and
15 processed him at the jail. Nothing very significant
16 after that point. I don't think I've done anything
17 else.

18 Q Okay. Really quick. Back all the way up to
19 the very beginning when the defendant arrives at the
20 sheriff's office, how does he appear? How is he
21 dressed at that time?

22 A I don't remember. I don't remember what he
23 had on when he first came in. I assume -- I think
24 his clothes were wet and cold, so he changed his
25 clothes, but I don't remember what clothes he had on,

JAMIE SEALES - DIRECT EXAMINATION

1 what color or nothing like that.

2 Q Is it normal to collect the clothes of a
3 suspect in a murder case?

4 A Yes, to contain evidence.

5 Q Did your agency collect these clothes?

6 A I think our agency did. Without looking at
7 the evidence sheet, I don't know if they did or SLED
8 did.

9 MS. DAVID: Beg the Court's indulgence.

10 (A brief pause in the proceedings.)

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

12 Q (MS. DAVID) I'll show you what is marked as
13 State's Exhibit No. 16 -- I apologize for that.
14 Would you tell the Court what that is?

15 A Marlboro County Sheriff's Office Consent to
16 Search form.

17 Q Will you tell the Court a description of that
18 property on that form?

19 A Description of the property is clothing during
20 commission of a crime. Description of property
21 seized, Timberland boots, 9 wide. South Pole blue
22 jeans, light blue belt. United USA 4XL -- something
23 XL black long sleeve. White front -- Fruit of the
24 Loom T-shirt, extra large. Light blue and dark
25 shorts. Royal blue KC hat, seven-and-a-quarter, and

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1 a pair of black socks. It appears to be the
2 handwritten script of Shawn Feldner.

3 Q So from this description of the property, the
4 defendant had on a lot of blue and/or black; is that
5 correct?

6 A Yes, a light blue belt, black long sleeve
7 shirt, light blue and dark blue shorts, probably his
8 undershorts, Royal blue hat.

9 Q And these clothes, you guys changed them off
10 of him before he went into interrogation?

11 A That's correct.

12 MS. DAVID: Beg the Court's indulgence.

13 Q (MS. DAVID) Have you had the opportunity to
14 review the statement that you and Investigator Larry
15 Turner took of the defendant?

16 A The video statement? Yes.

17 Q Is it in the same condition as it was when you
18 first --

19 A Yes.

20 Q -- took it? Okay.

21 MS. DAVID: At this point the State is going
22 to move to publish that statement to the jury, and it
23 about approximately 53 minutes long.

24 THE COURT: You may. Are you going to do it from
25 that point?

JAMIE SEALES - DIRECT EXAMINATION

1 MS. DAVID: Yes. I need to slide it around, and I
2 would like the record to reflect -- based on pretrial
3 motions we had yesterday -- Investigator Jamie Seales
4 will be pausing -- or muting the video for maybe 10
5 to 15 seconds at certain points in time.

6 THE COURT: Let me explain this before we bring it
7 back around. In a discussion between two
8 individuals, or an interview such as you are getting
9 ready to see, there are certain matters that are not
10 relevant and not probative to this case. By
11 agreement of counsel, those areas that are not
12 relevant have been determined, and what is going to
13 happen here is I believe Investigator Seales is
14 simply going to turn down the volume at the premarked
15 points in the tape so that the tape will continue to
16 run, but the volume will go off and it will be a
17 brief period at, I think, four points in the tape, if
18 I remember correctly, that is why there are certain
19 matters that are muted, simply because they are not
20 relevant to this case and to this trial specifically.
21 Go ahead, Counsel. Anything further?

22 MR. STEEN: I would like to renew my objection of
23 pretrial motions with regard to the statement as a
24 whole and with regard to the three individual
25 redactions.

JAMIE SEALES - DIRECT EXAMINATION

1 THE COURT: Very good. Your motion is noted and,
2 again, denied for the reasons previously given.

3 (Whereupon, a video was published to the
4 jury.)

5 THE COURT: Is there further direct examination?

6 MS. DAVID: No further questions, Your Honor.

7 THE COURT: Cross-examination?

8 MR. STEEN: Thank you, Your Honor.

9 THE COURT: How long are you going to be, Counsel?

10 MR. STEEN: One-and-a-half pages. I don't know --

11 THE COURT: Counsel, let's step up and let's talk
12 about scheduling.

13 (Whereupon, a bench conference was had.)

14 THE COURT: Rather than what may be a lengthy
15 cross-examination, I don't want to confine Counsel,
16 but I don't want you to be in the room longer than
17 necessary. You may need to take a break, and we're
18 approaching lunch, so we'll stop now and we'll take
19 an hour and five minutes. On the clock there it is
20 12:25, so we'll be back at 1:30, that is an hour and
21 five minutes. Is that sufficient time? All right.

22 Now, Officer Seales, I'll ask you not to talk
23 with either side of the case since you are a witness
24 under direct testimony. Have a good lunch, and
25 without speaking to anyone, we'll take up

BY THE COURT

1 cross-examination.

2 MR. SEALS: Yes, sir.

3 THE COURT: Everyone else, let's remain until the
4 jury departs. We'll see you at 1:30.

5 (The jury exits at 12:25 p.m., and the
6 following is heard out of the presence of the jury.)

7 THE COURT: Is there anything further you would
8 like to take put on the record about the objection
9 concerning gang activity? If so, we'll let you put
10 those on the record now.

11 MR. STEEN: Yes, Your Honor. I would say it was
12 fairly prejudicial to Mr. Dixon to have the jury hear
13 gang activity that's not related at all to him, and I
14 believe it is not related to the issue at trial.

15 THE COURT: First of all, does the State want to
16 respond about the testimony and for what reason it
17 was elicited?

18 MS. DAVID: Your Honor, at the time when Mr. Jamie
19 Seales was speaking, I was simply asking him about
20 his experience with gang involvement to know if he
21 was properly handling the issue, properly handling
22 the questions, did he know what he needed to do to
23 proceed in the investigation. This is gang related
24 because the defendant just tells -- told us in the
25 video that the whole thing was over a bandanna for

BY THE COURT

1 the Crips.

2 THE COURT: I'll put the Court's reasoning on the
3 record so it is clear in an event that there is a
4 review.

5 First of all, the gang affiliation -- this is
6 an otherwise unexplained shooting, and perhaps there
7 is a connection between the Crips and the shooting,
8 and that is for the jury to determine. For the
9 casual observer, it is unexplained. The defendant in
10 his own interview brought up the fact and discussed
11 the fact that he is affiliated with a gang, and the
12 bandanna is a symbol of gang affiliation. The Court
13 has no anticipation that the jury would be familiar
14 with gangs, other than having heard about gangs, in
15 any respect. So for the officer to be allowed to
16 testify to some of his understanding how a gang
17 affiliation could lead to something like this, the
18 Court felt it was relevant and appropriate. The
19 Court stopped it when it went into other areas with
20 other criminal activity, gave a brief charge that the
21 defendant is not involved in these other matters
22 being discussed, and not charged with any of these
23 other matters being discussed.

24 If you wish for me to give a further charge at
25 the end of the case or when we return before you pick

BY THE COURT

1 up on cross-examination, I'll hear from you when we
2 return to the courtroom, but the Court would decline
3 to do anything further unless the defense feels that
4 it is appropriate and necessary for the defense.
5 Anything further before we close it for lunch?

6 MS. DAVID: No, sir.

7 THE COURT: Then we are in recess until 1:30.

8 (Whereupon, a lunch recess was taken from
9 12:31 p.m. to 1:29 p.m.)

10 THE COURT: Anything for the record before we
11 bring in the jury? I'm told the jury just arrived,
12 so please bring in the jury.

13 (The jury enters at 1:32 p.m., and the
14 following is heard in the presence of the jury.)

15 THE COURT: Ladies and gentlemen, welcome back to
16 the courtroom. I trust you had a nice lunch and,
17 Investigator Seales, since we were last together,
18 have you spoken with either side of the case or
19 either attorneys in the case?

20 MR. SEALS: I have not.

21 THE COURT: Are you ready for cross-examination,
22 then?

23 MR. SEALS: Yes.

24 CROSS-EXAMINATION

25

BY THE COURT

1 BY MR. STEEN:

2 Q How many investigations have you been involved
3 in in your years as an investigator?

4 A I know when I was with SLED probably -- I
5 think I responded to a couple hundred crime scenes at
6 SLED just alone. I would say somewhere between 3-
7 and 500. Hard to say.

8 Q On the same line, how many interrogations do
9 you think you've done?

10 A 75 to a hundred maybe.

11 Q And you stated earlier you are trained in
12 investigative techniques?

13 A Yes, sir. I take classes in interviewing and
14 interrogation.

15 Q You would say that these techniques are
16 routine in most suspect interrogations?

17 A The ones I use are.

18 Q And these techniques have proved to be
19 successful in the past?

20 A They have.

21 Q Can you tell us the specific techniques used
22 in Mr. Dixon's statement today?

23 A Specifically?

24 Q As much as possible.

25 A There was a mixture of -- I told him some

JAMIE SEALES - CROSS-EXAMINATION

1 facts and some assumptions that I would assume were
2 true. I didn't know if they were true or not, but it
3 would be believable to him, enough to elicit the
4 truth.

5 Q Do you agree that the techniques used on Mr.
6 Dixon proved to be successful?

7 A They appeared so.

8 Q In your years as an investigator conducting
9 suspect interviews, have you ever had a suspect
10 confess to a crime in which he or she did not commit?

11 A I have.

12 Q Taking into account your years of experience
13 as an investigator, what would you say are the
14 reasons that that would happen?

15 A It could happen because the mental capacity of
16 the defendant. If the defendant was extremely
17 intoxicated or extremely inebriated in some form, it
18 could happen, I guess. It's been my experience, I
19 guess -- defendants could be coerced, threatened, and
20 we certainly try to at all costs avoid any of that.

21 Q Thank you. Is it possible that certain
22 investigative techniques could lead to a false
23 confession?

24 A If they are handled improperly, they could.

25 Q Going back to Mr. Dixon's statement that we

JAMIE SEALES - CROSS-EXAMINATION

1 watched earlier, what do you mean when you said in
2 the statement, I'm not sure about Woody, I honestly
3 believe you had no intention -- an assault charge of
4 some kind, not attempted murder, no reason to do
5 that?

6 A Part of that, I was being honest with him. At
7 that point I had no idea what transpired as far as
8 Mr. Garner getting hit and I didn't know what his
9 statement was. I was assuming that he got hit by a
10 random shot. I found later through the investigation
11 that investigators interviewed him and his story was
12 that the defendant apparently looked at him in the
13 eye and shot at him. What was the first part of the
14 question, I'm sorry, or does that answer it?

15 Q I was asking you what you meant by it, so
16 thank you.

17 A Yeah.

18 Q Were you -- would you agree with your
19 statement when you said to Mr. Dixon that this is not
20 attempted murder?

21 A Would I agree with what I said -- do I agree
22 with it now, what I said then?

23 Q I'll reword. What did you mean when you said
24 that this is not an attempted murder?

25 A At the time, I didn't -- partially, I didn't

JAMIE SEALES - CROSS-EXAMINATION

1 believe it was, because I didn't know the facts about
2 what Mr. Garner was going to say. I was trying to
3 keep the rapport, and to be brutally honestly, in the
4 back of my mind, from the time we started the
5 investigation, I'm thinking about the court
6 proceedings and the things that need to be done and
7 done correctly. I have a rapport, and he already
8 confessed, so I certainly didn't want to hammer too
9 hard about attempted murder whether I knew it was
10 true or not, because I was trying to get him to help
11 us find the murder weapon. But I didn't know what
12 Mr. Garner said and I just assumed that through
13 random shoots he just...

14 Q Thank you, Jamie. You also stated to Mr.
15 Dixon that, no, you are not a cold-blooded murderer;
16 would you agree with your statement? Sorry. What
17 did you mean when you said that?

18 A Again, to be frankly honest, I was trying to
19 build a rapport with him.

20 Q Going back to several investigative techniques
21 and Mr. Dixon's statement, you stated in there that
22 there was no gunshot residue found on the victim's
23 hand. As the lead investigator, do you still hold
24 that to be true? Is that a true part of the
25 investigation outside of the interrogation?

JAMIE SEALES - CROSS-EXAMINATION

1 A To be honest with you, I'll have to look at
2 the trace report just to be sure. I think there was
3 GSR found, but I don't know if it was found on the
4 palm or back of the hand. I could look at the
5 report.

6 Q I apologize.

7 A That's okay.

8 Q You stated that SLED would use a tripod to
9 determine the trajectory of the bullet. As lead
10 investigator, do you know if that analysis was done?

11 A I don't know if it was done or not. I haven't
12 seen it, but I know they have capability, and that
13 was a factual statement. They did have the
14 capability.

15 Q Again, at one point during the discussions of
16 the back, you stated there would be gunshot residue
17 found on the victim's back. Do you know if gunshot
18 residue was actually found on Mr. Bristow's back?

19 A I think it would be a good possibility if it
20 was fired that closely, but I don't know without
21 looking at the trace report.

22 Q Would you agree that Mr. Dixon was cooperative
23 with you at the interrogation?

24 A Yes.

25 Q You say he did help -- to the best of his

JAMIE SEALES - CROSS-EXAMINATION

1 ability he did help find the gun?

2 A I think he went beyond trying to help us find
3 the gun.

4 MR. STEEN: One moment, Your Honor.

5 (A brief pause in the proceedings.)

6 Q (MR. STEEN) Would you agree that after the
7 investigation that Chris Bristow followed David Dixon
8 out the door?

9 A That Chris Bristow followed David out the
10 door? Yes, I would agree with that. I would have to
11 look back at the witness statements. I was involved
12 more with what David said, and that is what David
13 told us.

14 Q Have you heard from -- during this
15 investigation, was any information ever presented to
16 you that said Mr. Dixon laid his hands on Mr. Bristow
17 first, to your knowledge?

18 A No.

19 Q Do you believe that Mr. Dixon did lose his
20 temper based on the interrogation?

21 A Yes, based on the reason he gave us.

22 MR. STEEN: No more questions, thank you.

23 THE COURT: Any redirect?

24 REDIRECT-EXAMINATION

25

JAMIE SEALES - CROSS-EXAMINATION

1 BY MS. DAVID:

2 Q Investigator Seales, how long have you been
3 with law enforcement?

4 A A little over 16 years.

5 Q And is it safe to say that most of the stuff
6 or most of what you are saying in that video is to
7 elicit the truth from the defendant, David Dixon?

8 A That is safe to say, yes, ma'am.

9 Q I would like to know from you, just so that we
10 all heard it correctly, when you asked the defendant
11 why did he do it, what did he tell you?

12 A He was disrespected by pulling the flag out of
13 the pocket, which he later identified later as the
14 gang flag.

15 MS. DAVID: Thank you. Nothing further.

16 THE COURT: You may step down or return to the
17 State's desk.

18 MR. SEALS: Thank you.

19 MS. JOHNSON-LEE: Susan Erin Presnell.

20 (SUSAN ERIN PRESNELL, having been duly sworn,
21 testified as follows:)

22 THE CLERK: State your name.

23 WITNESS: Susan Erin Presnell.

24 DIRECT EXAMINATION

25

JAMIE SEALES - REDIRECT EXAMINATION

1 BY MS. JOHNSON-LEE:

2 Q Where are you employed, Dr. Presnell?

3 A I work at Medical University of South Carolina
4 down the road in Charleston.

5 Q What is your occupation there?

6 A Forensic pathologist.

7 Q Are you also a duly licensed surgeon and
8 physician?

9 A I'm licensed to practice medicine in the State
10 of South Carolina.

11 Q How long have you been licensed to practice?

12 A Oh, let's see, since 1995.

13 Q And that is what you do at the Medical
14 University; is that correct?

15 A Yeah. I do forensic pathology at the Medical
16 University.

17 Q What are the duties of a forensic pathologist
18 in South Carolina?

19 A Well, if I could have a chance to back up a
20 moment and I'll explain what a pathologist is, and
21 then a forensic pathology is a subspecialty of that.
22 So most pathologists -- or pathology is the study of
23 disease. A pathologist diagnoses diseases. So, say,
24 you going to your family doctor and have a skin
25 biopsy or a surgeon does a breast biopsy or does a

ERIN PRESNELL - DIRECT EXAMINATION

1 surgery and tissue is taken out, that goes to the
2 pathologist. They look at it, look at it under the
3 microscope, and they diagnose you with cancer or no,
4 infection, and that diagnosis is given back to your
5 doctor.

6 So forensic pathologists are trained in
7 pathology, but they have additional training in
8 forensics where we're not just looking at a piece of
9 tissue or a biopsy, we're looking at a whole,
10 complete individual that has passed, and the process
11 is, of course, called the autopsy. We are looking
12 for diseases, but we also are trained to interpret
13 trauma. Ultimately, our whole autopsy is generated
14 into an autopsy report concluding with a determining
15 cause and manner of death.

16 Q About how many autopsies have you performed?

17 A Oh, approximation of over 2,000.

18 Q And so is autopsy a specialized field of
19 medicine?

20 A Well, there is medical autopsy, meaning a case
21 that is not a potential court case or unexpected or
22 unexplained death that a general pathologist can
23 perform, but forensic pathology is a subspecialty of
24 that.

25 Q Now, are you a member of any specialized

ERIN PRESNELL - DIRECT EXAMINATION

1 medical or scientific groups?

2 A Yes. I belong to several of the forensic --
3 national forensic groups, National Association of
4 Medical Examiners, American Academy of Forensic
5 Sciences, College of American Pathologists.

6 Q What is the American Board of Pathology?

7 A The American Board of Pathology is the
8 certification group, the national group, that exists
9 to certify pathologists. So when you say I'm board
10 certified, this is the group that does that board
11 certification.

12 Q Are you certified?

13 A Yes. I'm board certified in anatomic and
14 clinical pathology, and, again, pathology which is
15 the general, and also forensic.

16 Q Are there any special requirements for you to
17 obtain that certification?

18 A Well, the requirements are to pass the
19 examination, but that is after you've completed your
20 training. Your training is college, medical school,
21 the pathology residency, which at the time I did it,
22 it was five years, and an additional year of forensic
23 pathology.

24 Q That certification, is that a national level?

25 A Yes, it is national.

ERIN PRESNELL - DIRECT EXAMINATION

1 Q Now, again, about how many autopsies have you
2 performed overall? Did you say about 2,000?

3 A Approximately 2,000.

4 Q And percentage wise, approximately how many of
5 those have been deemed homicides?

6 A I think our overall, just for our whole
7 office, it is about 10 percent that are homicides.

8 Q Thank you, Doctor.

9 MS. JOHNSON-LEE: Your Honor, at this time we move
10 that Dr. Presnell be declared an expert in the field
11 of forensic pathology.

12 THE COURT: Questions on expertise?

13 MR. STEEN: No questions, Your Honor.

14 THE COURT: Any objections?

15 MR. STEEN: No objections.

16 THE COURT: Having there been none, the witness is
17 so qualified in the area of forensic pathology. You
18 may proceed.

19 Q (MS. JOHNSON-LEE) Did you perform an autopsy on
20 Christopher Bristow?

21 A Yes. Last year, December 22nd.

22 Q Was that the first time you had ever seen Mr.
23 Christopher Bristow, the time of the autopsy?

24 A Yes. He was referred to us by the coroner of
25 Marlboro County.

ERIN PRESNELL - DIRECT EXAMINATION

1 Q How long did the autopsy last?

2 A That's kind of an awkward question in that we
3 do -- the whole autopsy spans to actual days to
4 weeks. There is the actual initial part where we're
5 doing the external exam, internal exam, documenting,
6 photographs, diagrams, x-rays and we sample tissues
7 when needed. And then after that, the results --
8 additional results come in, like if we sampled
9 tissues or sent off something to toxicology, when
10 that comes back we put the whole autopsy report
11 together.

12 The initial part, I don't know -- I don't have
13 a record when we started the initial part and when it
14 was ended, but I could estimate probably around three
15 hours or so.

16 Q Where did that autopsy take place at?

17 A In our autopsy room at MUSC.

18 Q In Charleston?

19 A Yes.

20 Q Now, can you describe what specifically took
21 place during the autopsy of Mr. Bristow?

22 A I referred to it earlier where we do -- we
23 document everything photographically, so when he
24 arrives, we take photographs, make documentation of
25 what he's wearing, we undress him, clean him, do more

ERIN PRESNELL - DIRECT EXAMINATION

1 photographs, document findings and then do an
2 internal exam, correlate the internal findings with
3 the external findings, and then that would be it.

4 Q Now, when you conclude an autopsy, you prepare
5 a report; is that correct?

6 A Correct.

7 Q In your report, do you give what is called a
8 "diagnosis"?

9 A Yes.

10 Q Explain what that means in relation to an
11 autopsy.

12 A Just our findings.

13 Q What are your findings with respect to
14 Mr. Bristow?

15 A Well, the major findings are that he had three
16 gunshot wounds. They are all to the left back.
17 There is one gunshot wound to the left, upper back by
18 the armpit area. The bullet goes into the body and
19 into the soft tissues of the armpit where we
20 recovered the bullet. The other two entrance gunshot
21 wounds are on the mid, left back. These two bullets
22 enter, and the gunshots are pretty close to each
23 other, so I kind of described the path as a joint
24 path. But the bullets go in the left lung, spleen,
25 the stomach. The other bullet hits the left lung,

ERIN PRESNELL - DIRECT EXAMINATION

1 the heart, and both come to rest right underneath the
2 skin on the left, lower chest, which is where we
3 recovered the bullets.

4 (State's Exhibit 52 & 53 marked.)

5 MS. JOHNSON-LEE: Your Honor, I have what is
6 marked for identification as State's Exhibit 53 that
7 was marked today. It is marked and not in evidence
8 yet. I would like to show this to defense to see if
9 they have any objection, and we'll make a foundation
10 to put this in. While we're looking at that, we also
11 marked today State's Exhibit 52, the evidence
12 transfer sheet, which I'll also show to the defense.

13 MR. STEEN: Without objection, Your Honor.

14 Q (MS. JOHNSON-LEE) I'm showing you State's
15 Exhibit 52 and 53. First, I would have you look at
16 Exhibit 53. What is that document?

17 A The one document is the diagram that I -- copy
18 of the diagram I prepared during -- at the time of
19 the autopsy, and the other is the evidence transfer
20 sheet where we listed all of the things we were going
21 to give to the law enforcement that was attending the
22 autopsy.

23 MS. JOHNSON-LEE: The State would move to have
24 those put into evidence. I think the defense
25 stipulated they had no objection.

ERIN PRESNELL - DIRECT EXAMINATION

1 THE COURT: All right. Without objection. Madam
2 Court Reporter, 52 and 53 are in evidence without
3 objection for the State.

4 (State's Exhibits 52 and 53 were admitted.)

5 MS. JOHNSON-LEE: I would like the Doctor to
6 step down so she could show the jury on the diagram
7 where the bullet holes are in Mr. Bristow.

8 THE COURT: Very good. And she'll use the exhibit
9 you just entered in evidence?

10 MS. JOHNSON-LEE: Yes, Your Honor.

11 THE COURT: Doctor, if you would, face back this
12 way so our court reporter can hear you, because
13 you'll be off mic.

14 A I had a quick question. Can I put three marks
15 so it can show up better, because it is kind of a
16 faded copy?

17 MR. STEEN: I don't have any objection to
18 that.

19 THE COURT: Yes, ma'am, you may do that.

20 A To show this side of the jury, I'll come back
21 and do it again on that side. This is just the
22 overall diagram. We have everything marked,
23 including his tattoos and scars, et cetera.

24 His three entrance wounds that I was
25 describing earlier, that's one -- we label them A, B,

ERIN PRESNELL - DIRECT EXAMINATION

1 C, by letters. So "A" is the one near the armpit,
2 and then "B" and "C" are the two in the left to
3 mid-back area. He does have a purple bruise right on
4 the chest area, left chest area, right under there is
5 where the two bullets are.

6 As I was saying earlier, the "A" is right
7 there to the left of the armpit area, and "B" and "C"
8 are to the left mid-back, and this is the left chest.
9 Right here with that pink area is the bruise under
10 which the two bullets from "B" and "C" are recovered?

11 Q (MS. JOHNSON-LEE) Were you able to make any
12 determination as to trajectory of those bullets as
13 they entered the body?

14 A Yes. Like I said -- let me back up. "A"
15 went -- in general, all three pretty much went
16 straight forward. In "A" there was a slight, slight
17 upward angle, just a smidgen, and in "B" and "C"
18 there was a slight downward angle; however, I hedge
19 on that because after death and after we take organs
20 out, the body isn't the same, so it might move the
21 trajectory rod we put in up or down a little bit, but
22 basically the general answer is straight forward.

23 Q So if a person is facing totally away
24 (indicates), would that mean that the bullets pretty
25 much went in straight in from the back as opposed to

ERIN PRESNELL - DIRECT EXAMINATION

1 a side angle?

2 A Right. They didn't enter from the side.

3 Q Thank you, Doctor. Now, was there any soot or
4 stippling around any of the three bullet wounds?

5 A No. One of the things we look for are -- to
6 help us determine the range of fire, meaning how far
7 back the gun might have been -- are things that come
8 at the end of the bullet -- excuse me, from the end
9 of the muzzle, besides the bullet, which is certain
10 gun particles, but we didn't see any evidence, which
11 indicates that this is consistent with a distant
12 range gunshot wound, meaning that -- in general, all
13 guns, once they get back to about 36 inches, 1 yard,
14 36 to 42 inches, they are considered distant gunshot
15 wounds.

16 Q Now, based on your autopsy of Christopher
17 Bristow, within the scope of medical certainty, have
18 you formed an expert opinion as to the cause of death
19 of Mr. Bristow?

20 A Yes. He died from the gunshot that went
21 through his heart and lung, so cardiac and pulmonary
22 disruption due to the gunshot wounds to his back.

23 Q Have you formed an opinion as to the manner of
24 death?

25 A The manner of death is homicide, meaning death

ERIN PRESNELL - DIRECT EXAMINATION

1 at the hands of another.

2 Q You did prepare a report; is that correct?

3 A Yes.

4 Q I'll show you what is already in evidence as
5 State's Exhibit No. 8; is that your report,
6 Dr. Presnell?

7 A Yes, this is my report.

8 Q Does that report reflect the findings
9 concerning cause and manner of death, et cetera, as
10 you have already testified to?

11 A Yes, it does.

12 Q And that report contains an electronic
13 signature; is that your electronic signature?

14 A Yes, it is my electronic signature.

15 Q How are you able to determine that that was
16 your electronic signature as opposed to someone else
17 going in the computer and entering that?

18 A Well, you have -- when you sign or verify a
19 case, you have to enter a password, and your password
20 is linked to your name, so once your password is
21 entered, your name appears.

22 Q With respect to the chain of custody form or
23 the transfer of evidence form, what is the purpose of
24 that document?

25 A I took the items we got at autopsy to transfer

ERIN PRESNELL - DIRECT EXAMINATION

1 over to law enforcement.

2 Q And among other items, were the three bullets
3 you recovered from the body listed on that transfer
4 sheet?

5 A Yes, they were.

6 Q Do they show they were transferred to someone
7 with the Marlboro County Sheriff's Office?

8 A Yes.

9 Q What day were those turned over to the
10 sheriff's office?

11 A The same day.

12 MS. JOHNSON-LEE: Answer any questions the
13 defense has, and I'll hand the documents over to the
14 jury for publishing, Your Honor.

15 THE COURT: You may.

16 CROSS-EXAMINATION

17 BY MR. STEEN:

18 Q Do you still have the report that you could
19 look on?

20 A Yeah, I have a copy.

21 Q I know you answered it earlier for the
22 Solicitor, but I think I missed it. What does
23 "diagnosis" mean in this context?

24 A The findings at autopsy.

25 Q Okay. Does it take -- do all findings get

SUSAN PRESNELL - CROSS-EXAMINATION

1 placed in "diagnosis"?

2 A No. Usually the ones that pertain most to the
3 case.

4 Q One diagnosis refers to a blood THC 11.8,
5 could you explain that diagnosis in layman's terms?

6 A As I mentioned earlier, we do toxicology on
7 forensic autopsies, and we send the blood,
8 hopefully -- we prefer blood--- off to get analyzed.
9 We did that in this case, and the toxicology came
10 back as THC, which is marijuana, as well as an
11 alcohol level of .104.

12 Q Could you explain how those findings would
13 have affected the cause of death or the manner of
14 death?

15 A They don't.

16 Q Why would the trajectory of bullets "B" and
17 "C" be slightly down, again?

18 A So during the autopsy, once the organs come
19 out, we take a pole and we'll put it into the gunshot
20 entrance wound and also through the exit wound, where
21 it went through the ribcage, not necessarily through
22 the skin, and we'll put the pole through and see what
23 direction that is aiming.

24 In this case, it was forward and actually
25 slightly downward the chest, and maybe I should let

SUSAN PRESNELL - CROSS-EXAMINATION

1 you ask that, but I was going to explain the ribs go
2 like this (indicates), so even though it is going in
3 the back, it can still end up in the lower chest the
4 way that it did.

5 Q Okay. So you can say with a medical certainty
6 that the bullets came in as a straight shot?

7 A It came in, in general, as a straight shot.
8 Like I said, there is some variability with the
9 organs out. There is not blood pumping through the
10 body, so there is some slight distortion, but
11 certainly not 45 degrees, but maybe slightly up or
12 down or to either side.

13 Q So by the time you get the body, things can
14 move around a little bit?

15 A But the body structure anatomy collapses when
16 we go in. Think of it this way, we know where the
17 holes are on the body, they don't move. We know
18 where that bruise is on the diagram, that doesn't
19 move. So that is where it went in and where the
20 bullets rested.

21 MR. STEEN: One moment, Your Honor.

22 Q (MR. STEEN) Dr. Presnell, in doing your
23 autopsy, did you come across any, I guess, not bodily
24 -- not injuries, but something that could have
25 resulted from medical treatment at the scene? Did

SUSAN PRESNELL - CROSS-EXAMINATION

1 you see any evidence --

2 A Just the medical gear. He had an endotracheal
3 tube, they tubed him. What else? They did a deep
4 compression catheter trying to decompress the chest,
5 so there was a decompression catheter, as well as
6 there was a puncture where they tried to do it twice.
7 They had an IV in his arm, and two defibrillation
8 pads and EKG pads.

9 Q Thank you, Doctor. We discussed this earlier,
10 do you have the evidence transfer sheet?

11 A Yes, I do.

12 Q Could you please read for the Court the
13 evidence found on Mr. Bristow?

14 A Well -- you mean go through the list?

15 Q Yes, ma'am.

16 A What we transferred to Officer Locklear were
17 his blue jeans with brown belt, he had some blue and
18 white plaid underwear, two black slippers, two black
19 socks, from his pockets, his pants pockets, were a
20 dollar bill, a quarter and two dimes. We also
21 documented his white tank top, black T-shirt and
22 black and gray jacket. From the jacket pocket there
23 was a Good Times Cigarillos box that had a Cigarillos
24 on the wrapper, also some green leafy material that
25 was in a bag. Also that accompanied him from the

SUSAN PRESNELL - CROSS-EXAMINATION

1 hospital was some of his personal effects in the
2 sealed hospital bag, which we did not open, we just
3 transferred that directly to law enforcement.

4 We did fingernail clippings, pulled head hair,
5 a blood spot for DNA comparison, should it be
6 necessary, and three bullets.

7 Q Thank you, Doctor. What would be the
8 significance of the fingernail clippings?

9 A It is a standard that we do in all homicide
10 cases, especially since we don't know the
11 circumstances and scenario around it. The idea being
12 that there was some altercation and the decedent, the
13 deceased person, scratched the assailant or the
14 person they were in an altercation with, there might
15 be DNA recovery under the fingernails.

16 MR. STEEN: No more questions. Thank you.

17 THE COURT: Redirect?

18 REDIRECT-EXAMINATION

19 BY MS. JOHNSON-LEE:

20 Q Was everything that you did standard for every
21 autopsy for a homicide case?

22 A For a gunshot wound case.

23 Q You referenced bullets. The only bullets
24 found on or about his body, were those recovered from
25 the interior of his body?

SUSAN PRESNELL - REDIRECT EXAMINATION

1 A Correct.

2 Q And in the personal items in his clothing or
3 in the bag, did you see a weapon of any kind?

4 A Again, I didn't open his personal items, so I
5 would leave that to the law enforcement who did.

6 Q And the other items you recovered from the
7 pocket, there was no weapon or bullet in there?

8 A No, not from his pockets.

9 THE COURT: You are free to leave. Watch your
10 step as you exit. Call your next witness.

11 MS. DAVID: May we approach, Your Honor?

12 THE COURT: You may.

13 (Whereupon, a bench conference was had.)

14 THE COURT: Call your next witness.

15 MR. DANIEL: The State calls Michelle
16 Eichenmiller.

17 (MICHELLE EICHENMILLER, having been duly
18 sworn, testified as follows:)

19 THE CLERK: State your name for the record.

20 WITNESS: Michelle Eichenmiller.

21 THE COURT: Would you spell your name for the court
22 reporter?

23 WITNESS: E-I-C-H-E-N-M-I-L-L-E-R.

24 DIRECT-EXAMINATION

25

MICHELLE EICHENMILLER - DIRECT EXAMINATION

1 BY MR. DANIEL:

2 Q Good afternoon. Thank you for being here.

3 Would you tell the ladies and gentlemen where you are
4 employed?

5 A I'm employed at the South Carolina Law
6 Enforcement Division at the forensic laboratory.

7 Q And is that in Columbia?

8 A Yes.

9 Q What is your role there?

10 A I'm a firearms examiner.

11 Q Have you had many years of experience in
12 examining firearms?

13 A We have to go through a three- to five-year
14 training program. I completed that, and I've been
15 officially a firearms examiner since 2010, so I've
16 been there seven years.

17 Q Have you been qualified in criminal courts in
18 South Carolina before in the field of firearm
19 examination?

20 A I have.

21 MR. DANIEL: Your honor, at this time I ask
22 that Ms. Eichenmiller be qualified as an expert in
23 the field of firearms examination.

24 THE COURT: Is there questions about expertise?

25 MR. STEEN: Just one.

MICHELLE EICHENMILLER - DIRECT EXAMINATION

VOIR DIRE

1
2 BY MR. STEEN:

3 Q How many criminal trials have you testified
4 in, would you say?

5 A I believe this will be 18 or 19.

6 MR. STEEN: Nothing further, and no objection.

7 THE COURT: The witness is so qualified. You may
8 proceed.

9 Q (MR. DANIEL) Thank you. If it pleases the
10 Court, Ms. Eichenmiller, were you involved in lab
11 number -- I know how you identify cases -- Lab No.
12 L12, dash, 15909, that being the case here in
13 Marlboro County involving a suspect of David Dixon?

14 A I was.

15 Q Now, when you get involved in a case, are you
16 part of the team that goes to the scene and collects
17 guns and bullets?

18 A No. In general, the evidence is brought to us
19 by the crime scene team or local agency.

20 Q In this case were items brought to you?

21 A Yes, they were.

22 Q What items were brought to you to analyze in
23 this case?

24 A Can I refer?

25 Q Certainly.

MICHELLE EICHENMILLER - DIRECT EXAMINATION

1 A I received two firearms, two fire cartridge
2 cases, one fired shot shell, eight unfired cartridges
3 and three bullets.

4 Q Okay. I'll show what is marked as State's 38
5 and already in evidence. There are a couple of
6 different boxes. This is one of the boxes from
7 State's 38. Do you recognize that as something you
8 analyze in this case?

9 A Yes.

10 Q What is that? You can open it if you need to.

11 A It contained one of the fired cartridge cases.

12 Q And this one?

13 A This one was the other fired cartridge case.
14 Whenever I get evidence or containers, I put my
15 initials, item number and case number so everything
16 is there that this is what I examined.

17 Q That is what you are looking for?

18 A Yes.

19 Q Okay. And one other box, do you recognize
20 that box?

21 A Yes. This box contained the shot shell that I
22 examined in this case.

23 Q And, finally, do you recognize this?

24 A I do. This is the bag that contained the
25 unfired cartridges that I received in this case.

MICHELLE EICHENMILLER - DIRECT EXAMINATION

1 Q Okay. So let's separate -- so this and this
2 is all part of State's 38. This was one of the fired
3 -- the only fired shotgun shell that was found, and
4 then those are fired and those -- so those are the
5 three things that came from State's 38, right?

6 A Yes.

7 Q I'll leave those right there.

8 Now, you said you were also provided two guns.
9 I'll show you State's 35. Is this one of the guns?

10 A Yes. This is the gun I examined.

11 Q And you said you examined one other gun,
12 right?

13 A Yes.

14 Q State's 36?

15 A Whenever we get evidence, I mark the evidence
16 with my initials, item number and case number, and
17 they are here, so this is the gun I examined as well.

18 Q We'll talk about these again in a minute.
19 Now, you said you were given one other thing, what
20 was that?

21 A Fired bullets.

22 Q Fired bullets. Where did you get the fired
23 bullets?

24 A From the packaging. It said they were from
25 autopsy.

MICHELLE EICHENMILLER - DIRECT EXAMINATION

1 Q So to your knowledge, that would have come
2 from, in this case, the victim, Christopher Bristow?

3 A Correct. It had his name on the packaging.

4 Q Great. When you get all of these items, what
5 is it that you are trying to answer? What sorts of
6 questions are you trying to answer?

7 A Firearms identification is primarily concerned
8 with did that bullet or cartridge come from that
9 firearm. So whenever we get evidence that has fired
10 ammunition components and a firearm, I try to
11 determine if those components came from that firearm.

12 Q So did these bullets come from this gun?

13 A That's the question.

14 Q Now, can you answer that if -- say you have a
15 gun and you have the casing of a bullet that's been
16 fired. So if I fire a gun, and obviously the bullet
17 leaves the gun and goes somewhere, can you tell from
18 whatever leaves the gun and goes somewhere, if that
19 came from the gun that just fired it?

20 A Yes. That is what we're trained to do.

21 Q Now, if a -- if I fire a gun and the casing
22 pops out and lands on the ground, can you tell from
23 the casing if this gun fired that casing?

24 A Yes.

25 Q So in this case, that is what you did?

MICHELLE EICHENMILLER - DIRECT EXAMINATION

1 A Correct.

2 Q Okay. How is it that you were able to make
3 that determination when you are analyzing a bullet
4 and a gun?

5 A Whenever we get evidence in the lab, we take a
6 bunch of documentation, pictures, and we write it up.
7 We test fire it in a water tank. The water slows the
8 bullet down so it doesn't get damage on it. I'll
9 take that bullet and put it on my microscope. I have
10 a comparison microscope, which is basically two
11 stages. I can look through it like a pair of
12 binoculars and see both sides at once. I'll put the
13 test fire on one side and the evidence on the other.
14 I look at the scratches on the bullet and attempt to
15 see if they match.

16 Q So when you said you fired a gun into water,
17 that is what we sometimes see on CSI and on the
18 shows, and that is to preserve the bullet?

19 A Correct.

20 Q And then you look at your microscope?

21 A Right.

22 Q Now, in this particular case, were you able to
23 match any of the casings or bullets you found to
24 either of the guns?

25 A Yes, I was.

MICHELLE EICHENMILLER - DIRECT EXAMINATION

1 Q Let's talk about that. Let's first go with
2 this gun, it is State's 36. Now, what were you able
3 to match to State's 36?

4 A I was able to match the two fired cartridges
5 that came from the scene to that firearm.

6 Q So this would have been what the gun ejected
7 whenever it was fired?

8 A Correct.

9 Q And these were on the ground. So this goes
10 with this gun. Now, State's 35, what were you able
11 to match to State's 35?

12 A The fired bullet I received from autopsy.

13 Q Okay. So what you are telling the jury then
14 is that this gun fired the bullets --

15 MR. STEEN: Objection, leading.

16 THE COURT: Overruled.

17 Q (MR. DANIEL) What you are telling the jury is
18 this gun fired the bullets that ended up in
19 Christopher Bristow's body?

20 A Correct. The bullets I received that said
21 they were from Christopher Bristow were fired from
22 that firearm.

23 Q Did you prepare a report when you do a case
24 like this?

25 A Yes. Once we're done with our examinations,

MICHELLE EICHENMILLER - DIRECT EXAMINATION

1 we have a hundred percent micro verification, so
2 someone came behind me to do their conclusion, agreed
3 with me and we write a formal report.

4 Q I'll show you what is marked and introduced as
5 State's 13. Do you recognize that?

6 A It is the report I prepared.

7 Q This report says bullets coming from the
8 victim came from this gun?

9 A Correct.

10 MR. DANIEL: Nothing further.

11 CROSS-EXAMINATION

12 BY MR. STEEN:

13 Q Do you have your report in front of you?

14 A Yes.

15 Q Item 6, unfired .38 Smith and Weston cartridge
16 came from the camo jacket --

17 A Yes.

18 Q Can you say with certainty that that -- those
19 bullets matched the gun on Item 1, the Johnson model?

20 A I can't say that the eight unfired matched
21 that gun. There is no way to tell that. There is no
22 marks because they weren't fired. They are the
23 correct caliber to use in that firearm.

24 Q What does this mean when the cylinder of Item
25 1 was loose as received?

MICHELLE EICHENMILLER - CROSS-EXAMINATION

1 A It just means that it wasn't as tight as it
2 should have been, or as I was comfortable shooting
3 it, so I had to tighten before I fired it.

4 Q Can you tell the Court what a cylinder is?

5 A The cylinder is like the old west. If you
6 think of those old west days, they have many chambers
7 that rotate around and the bullet comes out a
8 different chamber every time you pull the trigger.

9 Q Would that being loose cause any issues with
10 the gun?

11 A No, it wouldn't.

12 MR. STEEN: One moment.

13 Q (MR. STEEN) Did you tighten the cylinders
14 before you test fired it?

15 A Can I refer to my notes?

16 Q Yes.

17 A I don't believe I tightened it. It was able
18 to be test fired without being tightened.

19 MR. STEEN: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. DANIEL:

22 Q There is a whole lot of questions about
23 tightening and cylinders. This gun you analyzed with
24 the bullets that came from the victim Chris Bristow's
25 body, correct?

MICHELLE EICHENMILLER - REDIRECT EXAMINATION

1 A Correct.

2 THE COURT: Don't lead, Counsel.

3 Q (MR. DANIEL) And did those bullets come from
4 this gun?

5 A They did.

6 MR. DANIEL: Nothing further.

7 THE COURT: Ma'am, you are free to leave. Please
8 watch your step as you exit. Call your next witness.

9 MS. DAVID: I said the wrong name, but the right
10 person, Mr. Michael Moskal.

11 (MICHAEL MOSKAL, having been duly sworn,
12 testified as follows:)

13 THE CLERK: State your name for the record.

14 WITNESS: Michael Moskal, M-O-S-K-A-L.

15 DIRECT EXAMINATION

16 BY MS. DAVID

17 Q Mr. Moskal, what is your current occupation?

18 A I'm with the South Carolina Law Enforcement
19 Division, which is commonly known as SLED, and
20 assigned to the trace evidence department.

21 Q How long have you been there with SLED?

22 A For seven-and-a-half years.

23 Q What do you do there?

24 A I work in the trace evidence where we analyze
25 evidence that is too small or too sensitive to be

MICHAEL MOSKAL - DIRECT EXAMINATION

1 seen with the naked eyes, and I currently analyze
2 gunshot residue, fiber, glass, explosives, paint and
3 generally unknown and chemical analysis.

4 Q Does that include the examination of gunshot
5 residue?

6 A Yes, ma'am.

7 Q Will you please describe gunshot residue for
8 us?

9 A Yes, ma'am. Gunshot residue is everything
10 that comes out of the opening of a weapon when it is
11 fired. It can include things like burnt gun powder,
12 unburnt gun powder, grease and oils that may be left
13 from prior firings, but what we're specifically
14 looking for are components out of the primer of the
15 cartridge case when it's fired, and those components
16 contain lead, barium, antimony.

17 Q What education and training have you had in
18 this area?

19 A I have a BS in chemistry from the College of
20 Charleston, and then when I was hired by SLED, I
21 underwent about a six- to seven-month training
22 program specifically for gunshot residue where I
23 worked side-by-side with a court-qualified gunshot
24 residue analyst. I worked cases with her, alongside
25 of her, running things on the instrumentation, making

MICHAEL MOSKAL - DIRECT EXAMINATION

1 interpretations from the data.

2 At the end of the six-, seven-month period, I
3 was given a mock case where it was assigned to me
4 just like any other case would be. I received the
5 evidence, analyzed the evidence and made a -- wrote a
6 report and went through a mock trial. After
7 successfully completing that, SLED deemed me
8 qualified to analyze gunshot residue.

9 Q Are you now certified by SLED for trace and
10 GSR residue?

11 A Yes, ma'am, to analyze gunshot residue.

12 Q How many GSR kits have you examined?

13 A The actual number I have analyzed, I don't
14 have a record, but I would say in the thousands.

15 Q Have you ever been qualified in court as a GSR
16 expert?

17 A Yes, ma'am.

18 Q How many times?

19 A 18 times for gunshot residue in both state and
20 federal courts.

21 MS. DAVID: At this time the State would like to
22 offer Mr. Michael Moskal as an expert in GSR.

23 THE COURT: Are there questions on the expertise?

24 MR. STEEN: No questions.

25 THE COURT: No objection?

MICHAEL MOSKAL - DIRECT EXAMINATION

1 MR. STEEN: No.

2 THE COURT: The witness is so qualified. You may
3 proceed.

4 Q (MS. DAVID) Mr. Moskal, I know we talked about
5 this because I just asked you, would you please
6 explain to the Court again, what is GSR?

7 A Yes, ma'am. It is everything that comes out
8 of a weapon when it is fired. It includes things
9 that may be metal shavings from prior firings, dirt
10 or grease left in the barrel, it can be particles of
11 burnt and unburnt gun powder, but specifically what
12 we're looking for to call technically GSR, or gunshot
13 residue or particles that are composed of lead,
14 barium and antimony, and those elements come out of
15 the primer. When we get those three elements in a
16 round shape, it is not known to come from any other
17 sources other than a weapon being fired.

18 Q How long does GSR live on a human body?

19 A On a human body, a person who is alive,
20 gunshot residue can last up to, but not more than, a
21 six-hour period. It is a very fragile type of
22 evidence. It is kind of similar if you are in the
23 kitchen and you are baking and get flour on your
24 hands. The more you move, the more your hands move,
25 you're touching your clothes, hair. As time goes,

MICHAEL MOSKAL - DIRECT EXAMINATION

1 that material just gradually disappears. Gunshot
2 residue is a lot like that, and it is known not to
3 last longer than six hours.

4 Q And what about a person that has passed away?

5 A It is going to last indefinitely until it is
6 removed by an outside force, like autopsy or
7 something similar to that.

8 Q And how do you typically test for it?

9 A Gunshot residue? We provide kits to all of
10 the agencies, or they can purchase them themselves
11 from different scientific providers, but it is going
12 to have four areas they test. We're looking to have
13 the right palm, right back, left palm and the left
14 back tested. The way we do that is there is an
15 aluminum disk that has double-sided sticky tape.
16 They dab that on each area until the stickiness of
17 the double-sided sticky tape has worn off. Once
18 they've dabbed that across the entire right palm,
19 they seal it, put it in a bag and take another sticky
20 tab, dab the back, and they do that for each of the
21 four areas and submit it to us for analysis.

22 Q Relative to the case L12-15909, what was your
23 involvement in this case?

24 A L12-15909, I performed a peer review of the
25 report that was issued for this case.

MICHAEL MOSKAL - DIRECT EXAMINATION

1 Q And was the proper protocol followed here?

2 A Yes, ma'am.

3 Q I'll show you what has been marked for
4 purposes of identification as State's Exhibit No. 12;
5 do you recognize it?

6 A (Witness examines document.) This appears to
7 be a copy of the report that was issued for L12,
8 dash, 15909.

9 Q Okay. And let's go over the results on this
10 examination. Who all tested here -- who and what was
11 tested?

12 A The items that I received was a GSR kit from
13 David E. Dixon, a GSR kit from Chris Bristow and two
14 black gloves.

15 Q Let's talk about Mr. David Dixon. What parts
16 of the body were tested?

17 A David Dixon, it would be the four areas of the
18 hand, right palm, right back, left palm, left back.

19 Q So right palm, right back, left palm, left
20 back. And what are the results on these for these
21 tests for GSR?

22 A On David Dixon, each of those four areas, no
23 gunshot residue was found.

24 Q Now, let's talk about Mr. Chris Bristow. What
25 parts of his body were tested?

MICHAEL MOSKAL - DIRECT EXAMINATION

1 A Again, with Mr. Bristow the areas that were
2 tested was right palm, right back, left palm, left
3 back.

4 Q Okay. Right palm, right back, left palm, left
5 back. What are the results for his test?

6 A For Chris Bristow, the right palm, right back
7 and left back, no gunshot residue was found. On the
8 left palm, round lead particles were found.

9 Q Please explain what are "round lead
10 particles"?

11 A Round lead particles -- we mentioned earlier
12 that when a weapon is fired, we're looking for a
13 round particle that contains lead, barium and
14 antimony, that is ideal gunshot residue particle.
15 When a weapon is fired, we get some ideal particles,
16 and we get some particles that aren't necessarily,
17 quote, end quote, ideal. They may be exposed to one
18 or two of those elements, meaning they may have lead
19 barium or lead antimony, or one of those three. In
20 this case, we found particles on the left palm that
21 simply had round lead on them.

22 Q Now, about how close in proximity would you
23 need to be to a gun in order to get round lead
24 particles on your hand?

25 A In order to get particles from a weapon on

MICHAEL MOSKAL - DIRECT EXAMINATION

1 your hand, to get a good distance, we actually need
2 to have the weapon that was fired and the ammunition
3 that was used in the shooting, because each weapon is
4 going to have different characteristics, but the
5 general consensus is it is about 5 to 10 feet away
6 in order to get that on your hands.

7 Q I have another question. Is it possible to
8 get round lead particles on the left hand if you
9 touch the wound?

10 A Yes, ma'am. Gunshot residue and the
11 components of gunshot residue are known to follow in
12 the trail of a bullet when it is fired, and so
13 oftentimes -- quite often around a bullet hole you'll
14 find gunshot residue. So if someone were to touch
15 that wound, there is a possibility that they could
16 get gunshot residue or its component on their hands
17 at that point.

18 Q Thank you. Let's move to the next set of
19 results. You also tested two black gloves. What are
20 the results of those gloves?

21 A Each one of the gloves had gunshot residue on
22 them.

23 MS. DAVID: Beg the Court's indulgence for one
24 moment.

25 (A brief pause in the proceedings.)

MICHAEL MOSKAL - CROSS-EXAMINATION

1 MS. DAVID: Thank you. No more questions.

2 CROSS-EXAMINATION

3 BY MR. STEEN:

4 Q Can you state with any certainty how round
5 lead particles were found on Mr. Bristow's hand or
6 left palm?

7 A Do you mind elaborating on that a little bit?

8 Q Do you know how the particles ended up on his
9 hand?

10 A No, sir. What I can tell you about round lead
11 particles is they are a component of gunshot residue
12 and they can travel with the bullet. They can land
13 on you directly from the bullet being fired. You
14 could get it on you from secondary transfer in terms
15 of touching something that has gunshot residue on it,
16 and they also can be found in some other sources not
17 associated with a gunshot at all.

18 Q Can you get gunshot residue on your hands from
19 handling a weapon?

20 A Yes, sir. There are basically three ways of
21 getting gunshot residue on your hands, and that is to
22 fire a weapon directly to handle a weapon or to
23 handle something that already has gunshot residue on
24 it.

25 Q When you say GSR can stay on the body

MICHAEL MOSKAL - CROSS-EXAMINATION

1 indefinitely for a deceased person, does it matter
2 when the GSR gets on the body either before or after
3 death?

4 A No, sir.

5 Q If no GSR was found on the back and it was
6 found on the hands, is that possible that you could
7 have -- is it possible that GSR could have
8 transferred from the back to the hands and be on the
9 hands and not on the back?

10 A It is possible to have gunshot residue on one
11 location, one of the four areas, up to all four
12 areas.

13 MR. STEEN: No further questions.

14 THE COURT: Redirect?

15 MS. DAVID: Nothing further.

16 THE COURT: You may step down, and you are free to
17 leave or free to remain if you wish.

18 (JENNIFER CLAYTON, having been duly sworn,
19 testified as follows:)

20 THE CLERK: State your name for the record.

21 WITNESS: Jennifer Clayton, currently employed by the
22 South Carolina Law Enforcement Division also known as
23 SLED.

24 DIRECT-EXAMINATION

25

JENNIFER CLAYTON - DIRECT EXAMINATION

1 BY MS. DAVID:

2 Q How long have you been employed with SLED?

3 A Approximately 11 years.

4 Q And what do you do with SLED?

5 A I'm currently employed as a DNA analyst with
6 the forensics department.

7 Q How long have you been employed by the DNA
8 department?

9 A I've been employed by the DNA department for
10 the entire time I've been at SLED. I was originally
11 hired as a forensic technician and worked as a
12 technician for two years before I became a DNA
13 analyst.

14 Q What is a DNA analysis?

15 A A DNA analyst looks at evidence and attempts
16 to develop profiles for evidence and known standards
17 and then does a comparison to determine if there is a
18 match between evidence and a known standard. A known
19 standard is a sample taken directly from a particular
20 individual, so the source of that sample is known.

21 Q What education and training have you had in
22 the area of DNA and serology?

23 A I earned a bachelor's of science in biology
24 from University of North Carolina, Chapel Hill, and
25 I've taken classes and NC State and USC. My

JENNIFER CLAYTON - DIRECT EXAMINATION

1 coursework includes genetic molecular biology,
2 biochemistry and statistics. I completed an
3 internship with the North Carolina State Bureau of
4 Investigations, molecular genetics department, that
5 is equivalent of the SLED's DNA department. As I
6 said, I originally hired as a forensic technician in
7 the DNA department. I worked as a forensic
8 department. I worked as a forensic technician for
9 two years before being hired as a DNA analyst. Once
10 I was hired, I completed a one-year training program
11 under another qualified analyst and did casework
12 under his supervision before I did casework on my
13 own.

14 Q Are you certified by SLED now?

15 A Yes.

16 Q About how many DNA examinations or analyses
17 have you done?

18 A On samples, or cases?

19 Q On cases.

20 A On cases? I'm not certain. I know it's been
21 hundreds of cases at this point, but I don't know a
22 number.

23 Q Have you been qualified as an expert in DNA in
24 court before?

25 A Yes, I have.

JENNIFER CLAYTON - DIRECT EXAMINATION

1 Q How many times?

2 A Approximately 30 times.

3 MS. DAVID: At this time the State would like to
4 offer Ms. Jennifer Clayton as a DNA expert.

5 THE COURT: Witness offered. What says the
6 defense?

7 MR. STEEN: No questions, Your Honor.

8 THE COURT: Objection?

9 MR. STEEN: No objection.

10 THE COURT: Without objection, so awarded. You
11 may proceed.

12 Q (MS. DAVID) Ms. Clayton, let's talk. What is
13 DNA?

14 A DNA is essentially a long chain of chemicals
15 found in every cell in the body with the exception of
16 red blood cells. With the exception of identical
17 siblings and rare cases involving bone marrow
18 transplants, no two individuals have the same DNA
19 profile, and this is what makes it useful in
20 forensics. A known standard can be collected from an
21 individual and a DNA profiled from that standard, and
22 then if profiles are developed from evidence, a
23 comparison can be made between the profile from the
24 evidence and the profile from the standard to
25 determine if there is a match or not.

JENNIFER CLAYTON - DIRECT EXAMINATION

1 Q Where is DNA typically found in humans?

2 A It is found in any cells, so skin cells that
3 are on the body, from blood. They can be found in
4 cells that sluff off, the saliva of an individual.
5 They are in all of the organs and the brain, so
6 essentially anywhere in the body DNA can be found.

7 Q Now, did you have the opportunity to work with
8 this case, which would be Lab L12-15909, which is the
9 case against David Dixon?

10 A Yes, I did.

11 Q I'm going to show you what is marked as
12 State's Exhibit No. 11; do you recognize it?

13 A Yes. This is a copy of the DNA report that I
14 issued in this case.

15 Q Now, will you please tell us which items were
16 received for testing in this case?

17 A I received and tested a swab from a black knit
18 glove, second swab from a black knit glove, swabs
19 from a red trail, red stains on the interior bar
20 floor, and swabs from a grip area of a revolver, as
21 well as standards from a Woodrow Garner, David Dixon
22 and a Chris Bristow.

23 Q So what do you mean by these standards?

24 A Standards are the known samples that are taken
25 from an individual so that I can develop a profile

JENNIFER CLAYTON - DIRECT EXAMINATION

1 that is known to have originated with that
2 individual, and I can compare it to profiles that are
3 developed from evidence.

4 Q Let's walk through this evidence, and we're
5 going to go in the opposite order from which you read
6 it. So what were the results from the grip area of
7 the revolver?

8 A The DNA profile from the grip of the revolver
9 is a mixture of at least three individuals. No
10 conclusive statement can be made regarding the
11 inclusion or exclusion of David Dixon as possible
12 contributor to this mixture. Chris Bristow and Woody
13 Garner are excluded as possible contributors for this
14 mixture. When a mixture is developed, that means
15 that more than one individual contributed DNA to the
16 item. When that -- in this particular case,
17 unfortunately, it was not a very good quality sample.
18 It is common for DNA samples not to yield a good
19 profile. In this case, it was a mixture as well as
20 showing some other issues, one of them being
21 degradation, which is when the DNA starts to break
22 apart, and that happens because DNA gets old and is
23 typically sluffed off your hand is already old and
24 exposed to sunlight and other chemicals and the
25 environment that starts breaking down the DNA. As a

JENNIFER CLAYTON - DIRECT EXAMINATION

1 result, there was enough information that I was able
2 to exclude Chris Bristow and Woodrow Garner, however,
3 in the case of David Dixon, I was unable to determine
4 if he contributed to the sample or not.

5 So based on the DNA results from Item 12, he
6 either handled the gun or he did not handle the gun,
7 there is no way to determine which is the case based
8 on my results.

9 Q Okay. So for a little clarification, you have
10 excluded Chris Bristow, excluded Woodrow Garner, and
11 when it comes to David Dixon, you can't give us an
12 exclusive statement, so it is inconclusive.

13 Would weathering have affected you being able
14 to make a determination? If it was raining --

15 MR. STEEN: Objection, leading.

16 THE COURT: Sustained. Can't lead your witness.
17 A leading question is one that has an answer
18 contained, so rephrase.

19 Q (MS. DAVID) I'll simply ask, would weathering
20 have affected the examination?

21 A Yes. Environmental conditions can definitely
22 have an effect on DNA if it's humid. If the samples
23 are exposed to sunlight, that can begin to break down
24 the DNA. If it's a humid area, bacteria can begin to
25 grow on the item and bacteria will break down DNA.

JENNIFER CLAYTON - DIRECT EXAMINATION

1 Rain can wash away the DNA on an item, so definitely
2 the environment and the weather conditions can affect
3 the results on a DNA item.

4 Q Okay. Thank you. For our next piece of
5 evidence, that would be the drip trail. What were
6 the results for that?

7 A The DNA profile developed from the swab from
8 the drip trail of red stains on the interior bar
9 floor matches the DNA profile of Woodrow Garner. The
10 probability of randomly selecting an unrelated
11 individual having DNA profile matching this item is 1
12 in 19 quadrillion. What that means is if I went out
13 into the population and chose one person at random
14 that was unrelated to the one that left the stain,
15 the probability that they would, just by chance,
16 happen to have a DNA profile matching the profile
17 developed from the evidence is approximately 1 in 19
18 quadrillion.

19 Q Thank you. Our next two pieces of evidence
20 are swabs from black knit gloves. Would you please
21 explain those results to us?

22 A Okay. The DNA profile developed from one of
23 the black knit gloves is a mixture of at least two
24 individuals. The DNA profile developed from the
25 major contributor matches the profile of David Dixon.

JENNIFER CLAYTON - DIRECT EXAMINATION

1 The probability of randomly selecting a non-related
2 individual from the population having a DNA profile
3 matching the major contributor is probably 1 in 3.4
4 quadrillion.

5 Chris Bristow and Woodrow Garner are excluded
6 as possible contributors for this mixture. A mixture
7 means more than one individual contributed DNA to the
8 item. In some cases I can determine a major
9 contributor, and that means that the contributor
10 contributed more DNA than the other individuals. So
11 in this case, the DNA profile of the major
12 contributor matches the DNA profile of David Dixon.

13 Q If I understand you correctly, Chris Bristow,
14 Woodrow Garner have been excluded, but David Dixon is
15 a major contributor, what do you mean?

16 A It would be the individual that donated the
17 most amount of DNA to the sample, mixture.

18 Q I have one last question for you when we are
19 talking about black knit gloves; approximately how
20 long would DNA stay on these items?

21 A There is no test to determine how long DNA has
22 been on an item. Certain things can affect how long
23 it lasts. If it is in a cool, dry environment,
24 protected from ultraviolet light, such as the sun, it
25 can last almost indefinitely. If it is outside and

JENNIFER CLAYTON - DIRECT EXAMINATION

1 exposed where it can be rained on or exposed to the
2 sun, it's very damp where bacteria can grow, that is
3 going to significantly shorten the amount of time
4 that DNA can last on the item.

5 MS. DAVID: Beg the Court's indulgence. No more
6 questions.

7 MR. STEEN: No questions from the defense.

8 MS. DAVID: May we approach, Your Honor?

9 THE COURT: You may.

10 (Whereupon, a bench conference was had.)

11 THE COURT: This is a good time to take a break.
12 We'll take our afternoon break. If you wish to go
13 outside to enjoy your break, we'll give you that
14 opportunity. It is a nice day, so we'll be in recess
15 15, 20 minutes and remain where we are while you exit
16 the courtroom. Have a nice break, ladies and
17 gentlemen.

18 (The jury exits at 2:50 p.m., and the
19 following is heard out of the presence of the jury.)

20 THE COURT: Mr. Steen, before I have colloquy with
21 your defendant, I would like you to speak with him
22 first. We'll come back after the break and have that
23 discussion. This court will be in recess
24 approximately 15 minutes.

25 (Whereupon, a recess was taken.)

DAVID DIXON - BY THE COURT

1 THE COURT: Before we bring the jury back in, I'm
2 advised -- Mr. Steen and Mr. Lewis, you are here with
3 us -- that the State has advised they may be getting
4 ready to rest, and if that is the case, I would like
5 to have a discussion with Mr. Dixon about his rights.
6 Mr. Steen, have you had ample time with Mr. Dixon to
7 discuss his rights with respect to whether he wishes
8 to remain silent or whether he wishes to testify?

9 MR. STEEN: Yes, Your Honor.

10 THE COURT: And do you believe he understood the
11 things you explained?

12 MR. STEEN: Yes, Your Honor.

13 THE COURT: Mr. Dixon, if you would please stand
14 and accept the oath of a witness from the clerk.

15 (DAVID DIXON, having been duly sworn,
16 testified as follows:)

17 EXAMINATION

18 BY THE COURT

19 Q Mr. Dixon, you have heard just a moment ago as
20 I was talking to Mr. Steen that the State is most
21 likely getting ready to rest their case against you;
22 do you understand that?

23 A Yes, sir.

24 Q So at this point, then, it is up to the
25 defense of whether or not you wish to put up a case

DAVID DIXON - BY THE COURT

1 or put up a defense, and as part of that, whether you
2 wish to testify; do you understand that?

3 A Yes, sir.

4 Q Now, have you had time to discuss with Mr.
5 Steen and Mr. Lewis your right to remain silent as
6 well as your right to testify in this case?

7 A Yes, sir.

8 Q And with respect to your right to remain
9 silent, are you aware that you are not required to
10 testify, you have no burden of proof in this case and
11 if you decide to remain silent and not testify, the
12 Court will tell the jury and the charge of the law
13 that they may not hold that against you in any way
14 because you have a Constitutional right to remain
15 silent and they may not even mention it in the jury
16 room; do you understand that?

17 A Yes, sir.

18 Q Is that the same thing that your lawyer told
19 you about your right to remain silent?

20 A Yes, sir.

21 Q By the same token, you have the right to
22 testify, which is you would be placed under oath in
23 the presence of the jury, subject to direct
24 examination by your own attorney, but also subject to
25 cross-examination by the State's attorney. If you

DAVID DIXON - BY THE COURT

1 have a prior record, the prior convictions you have
2 may come into the record on the question of
3 credibility or believability, not on the issue of
4 guilt in this particular case. Do you understand
5 that you have the right to testify?

6 A Yes, sir.

7 Q And is what I told you regarding your right to
8 testify the same thing that your lawyer told you
9 about your right to testify?

10 A Yes, sir.

11 Q Of course the jury is our finder of facts in
12 the case, judges of the facts, and they may use your
13 testimony for you or against you as they determined
14 it to be; do you understand that, sir?

15 A Yes, sir.

16 Q Now, do you have any question about your right
17 to remain silent as I've explained it to you as well
18 as your right to testify?

19 A No, sir.

20 Q Have you understood the things that I have
21 told you about those two rights?

22 A Yes, sir.

23 Q And, again, I ask you, are the things I told
24 you the same thing that your lawyer told you about
25 those two rights?

DAVID DIXON - BY THE COURT

1 A Yes, sir.

2 Q All right. Now, have you made the decision of
3 whether you intend to testify in this case?

4 A Yes, sir.

5 Q And what is that decision?

6 A I'll have my right to remain silent.

7 Q Is this your decision or someone else's?

8 A Mine.

9 Q Has anyone tried to force you one way or the
10 other on this issue?

11 A No, sir.

12 Q So you are telling me that your decision not
13 to testify is a decision that you have made yourself,
14 and you have done that voluntarily; is that correct?

15 A Yes, sir.

16 Q Very good. I'll allow you to be seated at
17 this point.

18 THE COURT: Mr. Steen, will there be other
19 witnesses for the defense?

20 MR. STEEN: No, Your Honor.

21 THE COURT: Then what I would propose we do is
22 call the jury back in, let the State rest, let the
23 defense rest and we'll release the jury to come back
24 for arguing and charge. We will -- of course after
25 the jury departs -- have a charge conference in the

DAVID DIXON - BY THE COURT

1 back. We've given you a copy of what we believe the
2 format charge will be, and we will proceed in that
3 fashion. Is there an objection from the State?

4 MS. DAVID: No objection.

5 THE COURT: Defense?

6 MR. STEEN: No objection.

7 THE COURT: Please bring in the jury.

8 (The jury enters at 3:12 p.m., and the
9 following is heard in the presence of the jury.)

10 THE COURT: All right. Ladies and gentlemen,
11 welcome back to the courtroom. You recall when we
12 ended the first session of the afternoon we were in
13 the State's case, and we remain there.

14 Madam Solicitor, call your next witness.

15 MS. DAVID: At this time, the State would like to
16 rest its case.

17 THE COURT: The State rests, which means they have
18 completed the presentation of their case, and we'll
19 move to the defense's case.

20 Mr. Steen, are you prepared to go forward?

21 MR. STEEN: The defense also rests at this time,
22 Your Honor.

23 THE COURT: Good. The defense rests as well. So,
24 ladies and gentlemen, what that means is that we've
25 reached the conclusion of the testimonial phase of

BY THE COURT TO THE JURY

1 this case. Given the hour of the afternoon, there
2 really is no reason for us to go forward and have
3 arguments and charging and then give the matter to
4 you probably sometime after 5 o'clock, so we'll stop
5 for the day. This is a good point, and we'll come
6 back tomorrow morning for arguments and the charge on
7 the law, and then allow you to begin your
8 deliberations.

9 What I ask you to do is be back in the jury
10 room tomorrow morning at 9:30. We'll begin at 9:30
11 tomorrow morning. Also, again, overnight, please --
12 and this is particularly important now -- do not
13 discuss the facts or the allegations in the case with
14 loved ones. I would say to you also keep an open
15 mind, because not only have you not heard the
16 arguments of counsel as to what the evidence in the
17 case have shown, but you haven't heard the charge of
18 the law. So come back tomorrow well rested, and
19 we'll be ready to proceed to the final stage, which
20 is your deliberations.

21 Now, tomorrow, Mr. Malachi, I'll ask you to
22 serve as jury foreperson, so we'll seat you in the
23 front seat tomorrow. I don't want to make you
24 nervous, but I wanted to give that information, and
25 I'll simply say to you that the best foreperson is

BY THE COURT TO THE JURY

1 one that is a moderator of discussion, a facilitator
2 of discussions, because ultimately the verdict in
3 this case must be an unanimous verdict, and I thank
4 you for your willingness to serve, assuming you are
5 willing, I thank you for serving in that role,
6 Mr. Malachi.

7 Ladies and gentlemen, you're out a little
8 earlier. It is a beautiful afternoon. You have a
9 nice afternoon, and we'll remain where we were out of
10 respect for you and we'll see you at 9:30 in the
11 morning.

12 (The jury exits at 3:16 p.m., and the
13 following is heard out of the presence of the jury.)

14 THE COURT: The jury is clear of the courtroom.
15 Before we close this record for the day, is there
16 anything further from the State or defense we need to
17 place on the record before we stand down for a charge
18 conference? State?

19 MS. DAVID: Nothing from the State.

20 THE COURT: Defense?

21 MR. STEEN: Nothing for the defense.

22 THE COURT: This case is in recess until 9:30
23 tomorrow morning.

24 Defense tells me that they have certain
25 motions at the close of the State's case, so I'll

MOTIONS

1 hear from you, Mr. Steen.

2 MR. STEEN: Thank you, Your Honor. Your Honor, we
3 would like to move for a directed verdict as to all
4 three charges against Mr. Dixon. With regards to the
5 charge of murder, we believe the State has not put
6 forth any evidence of malice aforethought, expressed
7 or implied, with regard to this case.

8 With respect to the charge of attempted
9 murder, we would argue that the State has produced no
10 evidence as to Mr. Dixon's intent with regard to
11 shooting or attempting to kill Mr. Garner.

12 With regards to possession of a gun during the
13 commission of a violent offense, Your Honor, since
14 that is a secondary offense to the others, I direct a
15 motion be directed on that one also.

16 THE COURT: All right. Without taking argument
17 from the other side, I'm prepared to rule on your
18 motions.

19 First of all, it is not for the Court at this
20 point to weigh evidence. The question is whether
21 there is sufficient evidence in this record that
22 tends to prove the guilt of the accused. I find that
23 there is sufficient evidence in this record,
24 respectfully. Specifically with regard to Mr.
25 Garner, he raised the issue there was no intent to

MOTIONS

1 kill, of course Mr. Garner testified that the
2 defendant looked him in the face and then shot him in
3 the head. That would be using a deadly weapon, and
4 that would be sufficient circumstantial evidence, if
5 not direct evidence, of intent, and that would
6 require that case to be submitted to the jury.

7 The Court also makes the same findings with
8 regard to the possession of a weapon, as well as the
9 murder charge, that there is ample evidence properly
10 admitted that these matters should go to the jury.
11 So I, again, deny all motions at the close.

12 Anything further from the defense?

13 MR. STEEN: Nothing further.

14 THE COURT: Now, ladies and gentlemen, we're
15 adjourned until 9:30 in the morning.

16 (Whereupon, the proceedings concluded for
17 October 30, 2013, and resumed at 9:31 a.m., October
18 31, 2013 where the following took place out of the
19 presence of the jury.)

20 THE COURT: I have been informed that there is a
21 question about the use of a deadly weapon and
22 inferred malice in the charge. Mr. Steen, do you
23 want to be heard?

24 MR. STEEN: Yes, sir. Relying on the language of
25 State v. Belcher, Your Honor, the court ordered that

1 where evidence is presented that will reduce,
2 mitigate, excuse or justify a homicide or an assault
3 and battery with intent to kill caused by the use of
4 a deadly weapon, jury shall not be charged that
5 malice may be inferred from the use of a deadly
6 weapon.

7 THE COURT: Let me hear from the State, if you
8 have a position on this.

9 MS. JOHNSON-LEE: Your Honor, the Court clearly
10 stated that the instruction is a correct statement of
11 law where the only issue presented to the Court is
12 whether the defendant committed murder or what today
13 is attempted murder. The Court also emphasized --

14 THE COURT: I think out of an abundance of
15 caution, the best route for the Court to take is to
16 defer to defense's motion. I am going to remove on
17 Page 15 -- you'll note I'm giving the charge --
18 beginning with the words "inferred malice may also
19 arise," and then on Page 16 the very first paragraph
20 which has to do with the use of a deadly weapon.

21 So I'm going to grant your request and remove
22 that language. Anything further?

23 MR. STEEN: Nothing further, Your Honor.

24 THE COURT: Anything from the State?

25 MS. DAVID: Nothing, Your Honor.

MOTIONS

1 THE COURT: Again, I would also agree that there
2 is nothing in this that prevents the State from
3 arguing these issues. It is just that it doesn't
4 rise to the level of the charge.

5 MR. STEEN: Yes.

6 THE COURT: Okay. So I'm told the jury is all
7 present, so please bring in the jury.

8 (The jury enters at 9:38 a.m., and the
9 following is heard in the presence of the jury.)

10 THE COURT: Good morning, Mr. Foreman, ladies and
11 gentlemen of the jury. Welcome back to the
12 courtroom. I trust you had a nice evening. Let me
13 ask if since we were last together has any member of
14 the jury panel had a discussion with any other person
15 concerning the facts or the allegations in this case;
16 if you have, please raise your hand. Let the record
17 reflect no one raised their hand. Thank you for
18 complying with the Court's request in that regard.

19 You may recall that at the beginning of the
20 case I told you that we would discuss the procedures
21 and how we would go forward. At the end of the case
22 the lawyers would come before you in closing
23 arguments, and then I would give you the charge on
24 the law. After talking with counsel, we have decided
25 to reverse that order a little bit. I'm going to

BY THE COURT - JURY CHARGE

1 give you the charge on the law first so that you'll
2 have the benefit of that, and then the lawyers will
3 argue.

4 Now, the way the final argument will be
5 presented is the State will go first and then the
6 defendant will go last. So the process is I'll give
7 you the charge on the law, State will have closing
8 argument and then defense will have closing argument.
9 You may recall that what the lawyers tell you in
10 closing arguments, they are allowed to. It is called
11 an argument because it is a persuasive event where
12 the lawyers tell you what they believe the evidence
13 has or hasn't shown or what the law does or does not
14 require. Please understand the lawyers' arguments
15 are not evidence in and of itself, it is the comments
16 on that.

17 Now, as you are aware, ladies and gentlemen,
18 the State of South Carolina has charged the
19 defendant, David Dixon, with one count of murder, one
20 count of attempted murder and one count of the
21 possession of a weapon during the commission of a
22 violent crime.

23 Now, you remember the defendant entered a plea
24 of not guilty to these allegations and denied the
25 charges that were alleged against him. These charges

BY THE COURT - JURY CHARGE

1 were based on indictments, you will recall that,
2 which is, as I explained at the very beginning, and I
3 don't want to sound like a broken record, but it is
4 important, that the indictments are just allegations,
5 they are not evidence. The evidence that you should
6 consider is the testimony of the various witnesses
7 who have appeared before the Court during the process
8 of this trial, as well as the exhibits which have
9 been introduced at trial during the course of this
10 proceeding. You will have the exhibits with you when
11 you retire back to the jury room to begin your
12 deliberations of this case.

13 Now, you may recall that when we first
14 gathered up on Monday morning, I mentioned to you
15 that I was well aware that all of you had a busy life
16 before you got your jury summons and ended up at the
17 courthouse, and further ended up on this jury. I
18 want to tell you that when you retire to deliberate
19 in a few minutes, that I know you are in a good
20 position to make the decision in this case, because
21 every time I've looked up, just as I'm looking at you
22 now, I've found you sitting there with close focus,
23 what I call rapt attention, and paying attention to
24 these proceedings. In other words, you set aside
25 your busy life and the other demands of that busy

BY THE COURT - JURY CHARGE

1 life to give your full focus to this case. I'm
2 grateful for that, ladies and gentlemen, because I
3 know when you retire, you are in a position to decide
4 the case and do justice in the case, and I thank you
5 for that level of commitment you have given to this
6 important proceeding.

7 Now, as you know, the defendant comes in this
8 courtroom clothed with the presumption of innocence,
9 so even if the defendant hadn't entered a plea of not
10 guilty, the defendant has no burden. The defendant
11 is clothed with a presumption of innocence, and this
12 presumption of innocence continues with the defendant
13 throughout the case. It entitles the defendant to a
14 verdict of not guilty on all counts unless that
15 presumption is dispelled by evidence that satisfies
16 you, the jury, beyond a reasonable doubt that the
17 defendant is guilty of one or all of the offenses,
18 which are alleged against him. In doing so, you must
19 find that the State -- if you find the defendant
20 guilty, you must find that the State proved each and
21 every element of each of the alleged crimes beyond a
22 reasonable doubt.

23 Now, as I told you at the beginning of this
24 trial, under the Constitution and the laws of this
25 state, you are the judges of the facts which, as we

BY THE COURT - JURY CHARGE

1 discussed, means that you will listen to the
2 testimony in the case, you will decide what the facts
3 are, apply it to the law that I give you, and from
4 that and working together, you will reach a verdict
5 in this case.

6 You may also recall that I mentioned to you if
7 you hear testimony that seems either maybe a little
8 bit inconsistent or sometimes mutually exclusive,
9 you'll have to decide which of the witnesses are more
10 credible and believable in order to decide the facts.
11 We talked about this in the opening of trial, and
12 there is no need to be duplicative, but I would
13 simply say to remember that this is something we do
14 every day when we talk with individuals. You apply
15 your commonsense here in the courtroom just like you
16 do in the real world and make your determination
17 based on every day factors that you use as to which
18 of the witnesses are more credible and believable so
19 you can determine the facts.

20 When you go to decide the facts of the case,
21 you can believe as much or as little of any witness'
22 testimony that you think is proper. You can believe
23 one witness against a whole group of witnesses, or
24 you can do just the opposite. You can believe part
25 of what a witness says, and completely disbelieve the

BY THE COURT - JURY CHARGE

1 rest. The fact that certain testimony is not
2 directly controverted doesn't mean you have to accept
3 it as true, because you have to gauge the credibility
4 and believability from which that testimony is
5 offered.

6 Keep in mind, ladies and gentlemen, throughout
7 this process of determining the facts of the case
8 that you have one objective, and that is to seek the
9 truth regardless from what source or which witness
10 that truth may come.

11 There are two types of evidence in cases such
12 as these. There is direct evidence, and there is
13 circumstantial evidence. I will tell you that direct
14 evidence is testimony of a person who asserts or
15 claims to have actual knowledge of the facts, such as
16 an eyewitness who will testify what they saw or
17 heard, that is direct evidence. Circumstantial
18 evidence is indirect evidence. Circumstantial
19 evidence is proof of a set or chain of facts that
20 then indicate the existence of, yet, another fact. I
21 will tell you that the law makes no distinction
22 between the weight or value to be given either direct
23 or circumstantial evidence, nor is there a greater
24 degree of one required over the other. You should
25 consider all of the evidence in the case, and after

BY THE COURT - JURY CHARGE

1 you consider all of the evidence in the case, if you
2 are not convinced of the guilt of the defendant
3 beyond a reasonable doubt, you must find the
4 defendant not guilty on the particular charge you are
5 considering.

6 Now, of course, this requires you to weigh the
7 evidence. I know you probably noticed that there is
8 not a set of scales to weigh your evidence. That is
9 an obvious fact, and that is because that weighing
10 evidence is entirely a mental process. On that
11 point, I would say to you that evidence that weighs
12 with you is evidence that convinces you of truth
13 regardless from which witness or from which side of
14 the case that evidence may come.

15 Now, let's talk a moment again about expert
16 witnesses, because we had individuals who came in and
17 testified who were determined to be and performed to
18 testify as an expert witness. The rules of evidence
19 normally don't let someone -- or permit a witness to
20 come in and testify about an opinion; however,
21 because there is an exception to the rule, the expert
22 witness rule, which allows the witness who by
23 education or training or knowledge or experience has
24 become expert in some art or science or profession,
25 and that witness is allowed to come in and state an

BY THE COURT - JURY CHARGE

1 opinion on relevant and material matters in which the
2 witness claims to be an expert and may also state the
3 reasons or basis given for those opinions.

4 You should consider any expert opinion as
5 received in evidence in this case, and like any other
6 evidence, give it the weight you think it is entitled
7 to. If you decide that the opinion of the expert is
8 not based on sufficient education or experience, or
9 you don't conclude with the reasons given or the
10 basis to support the opinion are not sound, or the
11 opinions are outweighed by other evidence, you may
12 disregard that opinion entirely. It is not given for
13 the purpose of controlling your judgment, but
14 assisting you in matters of fact that are within that
15 expert's purview before you in this case. You are
16 not bound by that evidence that is given to you by an
17 expert testimony, and you are not required to accept
18 the opinion. It is your decision to weigh and
19 consider that evidence.

20 Now, also in the trial of this case an alleged
21 statement -- well, a statement alleged to have been
22 made by the defendant was admitted into evidence, and
23 you saw it here by videotape. So while the Court
24 made the determination that the statement was
25 admissible, I instruct you that you make the ultimate

BY THE COURT - JURY CHARGE

1 decision of whether or not the defendant, in fact,
2 made that statement. If you find the defendant made
3 the statement, then you must determine whether the
4 statement was made by the defendant voluntarily and
5 of his own free will. This means the statement was
6 not caused by pressure or force or fear or threat or
7 coercion, intimidation or by hope or promise of some
8 leniency or reward of any kind. In determining
9 whether or not a statement is voluntary, you should
10 consider both the characteristics of the defendant
11 and the details of the question.

12 Some of the factors you must consider are the
13 age of the defendant, the defendant's education, or
14 lack of it, the defendant's mental capacity,
15 defendant's IQ or intelligence, defendant's
16 background and environment, the place and length of
17 the detention, the nature of the questioning, the
18 advice or lack thereof to the defendant of his
19 Constitutional rights including, but not limited to,
20 the right to remain silent, that any statement could
21 be used against him in a court of law, the right to
22 have a lawyer present at questioning, and that if he
23 could not afford a lawyer, a lawyer would be
24 appointed to represent him without any cost, and that
25 he could stop making a statement at any time. You

BY THE COURT - JURY CHARGE

1 should carefully consider all of those circumstances
2 before you give any weight to an alleged statement.

3 The State has the burden of proving beyond a
4 reasonable doubt that the alleged statement was
5 voluntary. If you determine that it was, then you
6 may give the statement any further consideration you
7 deem it proper, and you must decide what weight, if
8 any, it should be given. If you determine the
9 alleged statement was not the free and voluntary
10 statement of the defendant, you should not consider
11 that statement at all.

12 Now, the same Constitution that makes you the
13 judge of the facts, makes the presiding officer, me,
14 the judge of the law in this courtroom, as we
15 discussed at the beginning. I will tell you that
16 living in a small town, just like you do, we all do,
17 that I know there is a lot of bad information out on
18 the street about what the law is on any particular
19 given topic, whatever that topic may be, so I'll ask
20 you to disregard any preconceived notions or
21 information that you may have on what the law is.
22 Accept the law as I give it to you. We have
23 researched this law carefully, and you may have
24 noticed us working on the computer some while this
25 case was in process, and one of the things we were

BY THE COURT - JURY CHARGE

1 doing was working on this charge. We reviewed it
2 with counsel, and we are giving you the correct
3 statement of the law of South Carolina with regard to
4 these criminal charges, so accept it as I've given it
5 to you.

6 Put aside any notions of what you think it
7 would be or a better idea or what I think might be a
8 better idea, just accept the law as I give it to you
9 and apply it to the facts as you find them, and if
10 you do that, then you will reach a verdict that is
11 just and fair in this case.

12 In a criminal prosecution of this type, as
13 I've already stated to you, the prosecution is seated
14 at the table closest to you and has the burden of
15 proof. The defense has no burden of proof. The
16 defendant is presumed innocent, and in this state,
17 according to our Constitution, the prosecution must
18 prove its case to the standard or proof we call
19 beyond a reasonable doubt, that is the term, beyond a
20 reasonable doubt, before a finding of guilt may
21 occur.

22 If the State fails to meet this high burden,
23 and it is a high burden, then the defendant is
24 entitled to an acquittal. I'll start by telling you
25 what it is not. It is not an imaginary or fanciful

BY THE COURT - JURY CHARGE

1 doubt. It's a substantial doubt, a doubt for which
2 you can give or assign a reason based on the
3 testimony and evidence in this case. A reasonable
4 doubt is not any sort of a doubt. I think you and I
5 know from every day life experience that we may have
6 some sort of a doubt about any kind of thing no
7 matter how trivial it is, such as what pair of shoes
8 to wear or tie to wear to some event, but that is not
9 a reasonable doubt.

10 A reasonable doubt is a doubt that makes an
11 honest, sincere, conscientious juror in search of the
12 truth hesitate to ask is that proof beyond a
13 reasonable doubt, and it is proof that leaves you
14 firmly convinced of the defendant's guilt. If you
15 have a doubt for which you can give or assign a
16 reason as to the guilt of the defendant on a
17 particular charge, then he's entitled to a verdict of
18 not guilty on that charge.

19 Reasonable doubt may arise from the evidence
20 in the case, or the lack or absence of evidence in
21 the case. You, the jury, must make the determination
22 whether or not reasonable doubt exists as to the
23 guilt of the defendant with respect to these three
24 charges. I will tell you that the very fact that the
25 jury goes back and engages in a full and free

BY THE COURT - JURY CHARGE

1 discussion on the issue of guilt or not guilt in
2 these cases, the conversation of ebb and flow on
3 those issues does not automatically mean that
4 reasonable doubt exists in this case, or in any other
5 case for that matter.

6 Now, I will tell you and charge you under
7 South Carolina law that criminal intent is a
8 necessary element of each crime that must be proved
9 by the State beyond a reasonable doubt. Criminal
10 intent is always a matter that must be determined by
11 the jury from the circumstances that surrounds a
12 situation. There is no way to prove intent with some
13 mathematical certainty, and you know that obviously
14 there is no way we can open up someone's brain and
15 look in and determine what they had in mind at a
16 particular time. So the law says that criminal
17 intent may be inferred from the circumstances shown
18 to have existed both before and after the fact, and
19 this is how you, the jury, make a determination of
20 whether or not the element requiring criminal intent
21 is present.

22 Criminal intent is a state of mind that
23 operates jointly with an act or omission in the
24 commission of a crime. Criminal intent is a mental
25 state of conscious wrongdoing, so it is up to you,

BY THE COURT - JURY CHARGE

1 the jury, to determine whether the State has proved
2 the element of criminal intent based on the
3 circumstances shown to have existed. The state must
4 prove criminal intent beyond a reasonable doubt, just
5 as the State must prove every element beyond a
6 reasonable doubt.

7 Now, on the issue of intent, if the defendant
8 with malice aforethought kills or attempts to kill
9 another person and by mistake injures or kills a
10 different person, then the defendant still has the
11 intent to kill. The intent to kill is merely
12 transferred from the original person the defendant
13 attempted to kill to the actual person who was killed
14 or injured. Put another way, on the issue of
15 transfer intent, because there can be transferred
16 intent and just stating it differently, let's use a
17 charge of robbery, for example. If an individual
18 intends to rob a particular person, but somehow by
19 mistake actually robs a different person, the
20 defendant still has the intent to commit robbery.

21 The criminal intent is merely transferred from
22 the original person the defendant desired to rob in
23 the first place, to the individual that the
24 individual actually robbed. In other words, it is
25 not a defense to a crime that the wrong person was

BY THE COURT - JURY CHARGE

1 robbed.

2 All right. Now, in this case you noted, I
3 suspect, that the defendant did not testify, but I'll
4 tell you this is not a factor to be considered by you
5 in any way in your deliberations or in your
6 consideration of the question of guilt or innocence
7 of the defendant with regard to each of these
8 charges. It shouldn't be considered by you in any
9 manner, whatsoever. The defendant has the
10 Constitutional right to remain silent, and the
11 assertion of this right must not be considered by you
12 in your deliberations.

13 I repeat that under your oath you are to draw
14 no conclusion, whatsoever, from the fact that the
15 defendant did not testify in this case, and the fact
16 that the defendant didn't testify shouldn't even be
17 discussed in the jury room, because the burden of
18 proof, as I stated from the very beginning, is always
19 on the State and remains with the State. The
20 defendant has no burden of proof, not required to
21 prove his innocence, not required to put up a case,
22 and certainly not required to testify. The burden of
23 proof remains on the State at all times to prove the
24 defendant guilty beyond a reasonable doubt.

25 Let's talk about the three charges which are

BY THE COURT - JURY CHARGE

1 alleged here in these cases. First I want to define
2 for you the charge of murder. The defendant is
3 charged with the murder of Christopher Bristow. In
4 order to prove this charge, the State must prove
5 beyond a reasonable doubt that the defendant killed
6 Mr. Bristow with malice aforethought. Malice is
7 hatred, ill-will or hostility towards another person.
8 It is the intentional doing of a wrongful act without
9 just cause or excuse and with the intent to inflict
10 an injury or on circumstances that the law will infer
11 an evil intent.

12 Now, malice aforethought does not require that
13 the malice exist for any particular time before the
14 act is committed, but the malice must exist in the
15 mind of the defendant just before and at the time the
16 act is committed and, therefore, there must be a
17 combination of evil intent and the act that occurred.
18 Malice aforethought may be expressed or it may be
19 inferred. Now, these terms, "expressed" and
20 "inferred," don't mean different kinds of malice, but
21 merely the manner in which malice may be shown to
22 exist either by direct evidence or by inference from
23 the facts that have been proved in the case.

24 Expressed malice is shown when a person speaks
25 words which express hatred or ill-will to another

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1 person, or when a person prepares beforehand to do
2 some act which is later accomplished, for example,
3 lying in wait for a person or any other act of
4 preparation going to show that the deed was within
5 the defendant's mind, that is expressed malice.

6 Malice may be inferred from conduct that shows
7 a total disregard for human life. If facts are
8 proved beyond a reasonable doubt sufficient to raise
9 an inference of malice to your satisfaction, the
10 inference would be simply an evidentiary fact to be
11 considered by you, the jury, along with other
12 evidence in the case, and you may give it the weight
13 you decide it should receive. That is the charge of
14 murder.

15 Ladies and gentlemen, many greater offenses,
16 which murder is the greater offense here, we also
17 have what we call "lesser included offenses." This
18 means that a defendant who is indicted on a greater
19 charge can be convicted by the jury on a lesser
20 charge if the jury finds the facts proven fits that
21 lesser charge, and the elements of the lesser charge
22 have each been proven beyond a reasonable doubt.
23 That sounds like it's a little bit complicated, but
24 really it is not. What it means is that the greater
25 charge includes an additional element that is not

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1 required in the lesser charge. So in this case, if
2 you find the State has not proven the defendant
3 guilty of murder, then you must determine whether the
4 State has proven the defendant is guilty of the
5 lesser charge of voluntary manslaughter.

6 In order to prove voluntary manslaughter, the
7 State must prove beyond a reasonable doubt that the
8 defendant took the life of another in the sudden heat
9 of passion based on sufficient legal provocation.
10 Both heat of passion and sufficient legal provocation
11 must be present at the time of the killing to
12 constitute voluntary manslaughter. The sudden heat
13 of passion may for a time affect a person's
14 self-control and temporarily disturb a person's
15 reason. The sudden heat of passion must be the type
16 that would make an ordinary person unable to coolly
17 reflect on his action and then produce an
18 uncontrollable impulse to do violence.

19 Sufficient legal provocation must be the type
20 that would make a person of ordinary reason and
21 caution to become enraged and lose control, that is
22 to lose control temporarily. The provocation needed
23 for voluntary manslaughter must come from some act of
24 or related to the victim. Words alone, however
25 vulgar they may be or insulting, are not enough to be

BY THE COURT - JURY CHARGE

1 legal provocation.

2 Where death is caused by the use of a weapon,
3 the words must be accompanied by some overt
4 threatening act which would have produced the heat of
5 passion. The exercise of a legal right, no matter
6 how offensive it is to another, is never sufficient
7 legal provocation for voluntary manslaughter. If the
8 heat of passion had cooled, or if there was enough
9 time between the provocation, if any, and the killing
10 for the passion of a reasonable person to cool, the
11 killing would not be voluntary manslaughter.

12 In deciding whether a reasonable person would
13 have had enough time to cool off, you should consider
14 all the circumstances surrounding the killing. You
15 may consider the nature of the provocation, if any,
16 the defendant's mental and physical state, and the
17 circumstances and relationship between the parties.

18 If in your deliberations you find the
19 defendant is guilty of homicide, that is the taking
20 of a life of another human, but you have a reasonable
21 doubt as to whether the State has proven all the
22 elements of the greater charge of murder, then you
23 must -- or the lesser charge of voluntary
24 manslaughter, you must resolve that doubt in favor of
25 the defendant and find him guilty only of the lesser

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1 offense of voluntary manslaughter. Of course, you
2 may not find the defendant guilty of any charge
3 unless you find the State has proven all of the
4 elements of that particular offense beyond a
5 reasonable doubt.

6 The next charge is attempted murder. As you
7 are aware, the defendant is charged with the
8 attempted murder of Woodrow Garner. In order to
9 prove this crime, the State must prove the defendant
10 attempted to kill Mr. Garner with malice
11 aforethought, either expressed or implied. The same
12 information I previously provided with respect to
13 malice required for murder, also applies to the
14 malice required for attempted murder. Again, malice
15 is hatred or ill-will or hostility towards another
16 person, it's the intentional doing of a wrongful act
17 without just cause or excuse with the intent to
18 inflict an injury or under circumstances where the
19 law will refer to an evil intent.

20 Remember that malice aforethought doesn't
21 require the malice to exist for any particular time
22 before an act is committed, but the malice must exist
23 in the mind of the defendant just before and at the
24 same time the act is committed, therefore, there must
25 be a combination of that evil intent and the act

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1 itself.

2 As in the murder charge, malice aforethought
3 may be expressed or inferred as I have already just
4 explained to you. I will tell you that if facts are
5 proved beyond a reasonable doubt to raise an
6 inference of malice to your satisfaction, it would
7 simply be an evidentiary fact to be considered by you
8 along with such other evidence in the case, and you
9 may give it the weight it should receive.

10 I'll tell you that a specific intent to kill
11 is not an element of attempted murder, but there must
12 be a general intent to commit serious bodily injury.
13 "Intent" means intending the result that actually
14 occurred, not accidentally or involuntary. Intent
15 may be shown by acts or conduct of the defendant and
16 other circumstances for which you may naturally and
17 reasonably infer intent.

18 Evidence of the character of the act, the
19 character of the instrument used, the manner in which
20 it was used, the purpose to be accomplished and the
21 resulting injury may be considered in determining the
22 intent with which the act was committed. Intent may
23 also be inferred when it is demonstrated that the
24 defendant voluntarily and willfully committed the
25 act, the natural tendency of which is to destroy

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1 another's life.

2 Now, just as the murder charge had a lesser
3 included offense, the attempted murder has a lesser
4 included offense as well, and that lesser included
5 offense of attempted murder is assault and battery of
6 a high and aggravated nature. So as I explained to
7 you earlier, many greater offenses have included
8 lesser offenses, and included within the greater
9 offense of attempted murder is assault and battery of
10 a high and aggravated nature.

11 If you find the State has not proven the
12 defendant guilty of attempted murder, then you must
13 determine then whether the State has proven the
14 defendant guilty of a lesser charge of assault and
15 battery of a high and aggravated nature. In order to
16 prove assault and battery of a high and aggravated
17 nature, the State must prove beyond a reasonable
18 doubt the defendant willfully and unlawfully injured
19 another person, and that great bodily injury to
20 another person resulted or the act was accomplished
21 by means likely to produce death or great bodily
22 injury.

23 Great bodily injury means bodily injury which
24 causes substantial risk of death, or which causes
25 serious permanent disfigurement or protracted loss or

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1 impairment of the functions of a body member or
2 organ.

3 If in your deliberations you find that the
4 defendant is guilty of one of these charges, but you
5 have a reasonable doubt as to whether or not the
6 State has proven all of the elements of the greater
7 charge of attempted murder, you must resolve that
8 uncertainty in favor of the defendant, and you must
9 find him guilty only of the lesser included offense.
10 Of course, you may not find him guilty of any charge
11 unless the State has proven all of the elements of
12 the particular charge beyond a reasonable doubt.

13 Ladies and gentlemen, the last charge that we
14 have here that I want to give you the law on is on
15 possession of a weapon during the commission of a
16 violent crime. As you are aware, the defendant is
17 charged with possession of a weapon during the
18 commission of or attempt to commit a violent crime.
19 To prove this charge, the State must prove beyond a
20 reasonable doubt that the defendant was in the
21 possession of a firearm or visibly displayed what
22 appeared to be a firearm during the commission of a
23 violent crime. A firearm means any device or weapon
24 which is designed to or may be readily converted to
25 expel a projectile.

BY THE COURT - JURY CHARGE

1 In order to find the defendant guilty of
2 possession of a weapon during the commission of a
3 violent crime, you must first find the defendant
4 guilty of either committing a violent crime or
5 attempting to commit a violent crime. I charge you
6 that under South Carolina law the offenses of murder
7 and attempted murder are violent crimes. In
8 addition, the State must prove beyond a reasonable
9 doubt that the weapon further advanced or helped in
10 the commission of the crime.

11 Mere presence at the scene of some incident is
12 insufficient to prove somebody guilty of a crime.
13 The burden is upon the State to prove every element
14 of a crime as charged. If you find after you review
15 all of the evidence that the State only proved the
16 defendant was present at the scene of the crime or at
17 the scene of some incident and has not proved beyond
18 a reasonable doubt any other participation in the
19 crime, you must find the defendant not guilty. The
20 law is that proof of mere presence at the scene is
21 not sufficient to find someone guilty of a crime.

22 I further charge you that these charges,
23 criminal charges, the three criminal charges, are
24 separate and distinct. These indictments are
25 separate and distinct, and they should be considered

BY THE COURT - JURY CHARGE

1 and must be considered individually by you in your
2 verdict. One does not necessarily control your
3 verdict on the other.

4 Mr. Foreman and ladies and gentlemen, in a few
5 minutes you are going to retire to begin your
6 deliberations after you heard from counsel with their
7 closing arguments. I'll say to you, I want to
8 express to you that the hope, and I know that you
9 are, that you're mindful of the importance of your
10 responsibility. You may recall that we discussed on
11 Monday that you cannot be required to serve as a
12 juror more than one time in three calendar years in
13 the same court, and there is a reason, because it is
14 a difficult task and it requires you and I to reach
15 the height of freeing our minds of all outside and
16 improper influences because you and I are acting for
17 the community here to see to it that every verdict is
18 fair and every verdict is just.

19 Now, you've probably noticed that throughout
20 the trial the presiding officer, me, is referred to
21 as "Your Honor," and I know that you know that is a
22 title that is assigned to the position that I'm
23 privileged to hold, and that is because this Court is
24 entrusted with the honor of this community, this
25 county and this state and, indeed, this nation to see

BY THE COURT - JURY CHARGE

1 that every trial here results in a fair and just
2 verdict.

3 In a few minutes you'll take with you the
4 protection of and possession of the honor of this
5 community, state and nation. In the jury room when
6 you decide these cases -- and, ladies and gentlemen,
7 please understand, I'm not telling you how you should
8 decide this case, that is not my point and that would
9 not be appropriate even if I was attempting to do
10 that, which I'm not, I'm simply saying as a presiding
11 officer it is of vital importance to me and to this
12 process that whatever verdict you reach will be the
13 result of your going back in the jury room, confining
14 your consideration in the evidence put forth in this
15 courtroom, weighing that evidence fairly and
16 impartially and applying it to the law that I have
17 given you here in this charge and reaching a verdict
18 which is just and fair. If you do that, you will
19 reach a verdict just and fair.

20 I'll tell you that everyone in this case is
21 entitled to justice on both sides. I have no support
22 or sympathy to any part. I am of the firm opinion
23 the verdict that you reach, if you follow the
24 instructions, will represent truth and justice for
25 all of the parties.

BY THE COURT - JURY CHARGE

1 In a few moments, after counsel has argued,
2 I'll come back and discuss with you the verdict form,
3 because the verdict form is set up in such a way that
4 guides you through the decisions of whether there is
5 a greater charge and then the lesser charge, so we'll
6 talk about that a little bit further at that point,
7 but not at this point.

8 That concludes the Court's charge, and at this
9 time, the Court recognizes the prosecution for
10 closing.

11 MS. DAVID: May I approach?

12 THE COURT: You may.

13 (Whereupon, a bench conference was had.)

14 THE COURT: We've been here almost 40 minutes. Is
15 there anyone that needs a break? We anticipate that
16 arguments of counsel will be roughly 30 minutes or
17 so, and we'll see at the next one if we need a break.
18 All right.

19 MS. DAVID: May it please the court?

20 THE COURT: Yes, ma'am.

21 MS. DAVID: Good morning. Ladies and gentlemen of
22 the jury, I want to thank each of you for your
23 patience this week. This is our third day here, and
24 it's been a long week for all of us. If you're not
25 tired right now, I know I am, but we've come to the

BY THE COURT - JURY CHARGE

1 most important part of the trial, and here is where I
2 need you to pay the most attention.

3 At this point the State spent the past two
4 days presenting facts and evidence of eyewitness
5 testimony, photos, items collected and videos to show
6 the defendant's guilt. The judge now instructed you
7 that the defendant is innocent until proven guilty,
8 and it is the State's job to prove this guilt beyond
9 a reasonable doubt.

10 Now, let's talk about beyond a reasonable
11 doubt for a moment. Reasonable is simply what the
12 average person would think. We're not talking about
13 a genius professor at Harvard, and we're not talking
14 about a man that sits on the corner with a box TV on
15 his head. We're talking about average, reasonable
16 people. He tells you beyond a reasonable doubt, not
17 beyond all doubt and not with absolute certainty, but
18 a reasonable doubt.

19 Now, doubt is just a feeling that something
20 may not have happened a particular way, and when I
21 say "beyond," it means we're going to go past that.
22 So today we're going to go beyond a doubt that an
23 average person might have that the defendant did not
24 commit these crimes, and I'm going to assure you so
25 that you feel firmly convinced when you go into that

CLOSING ARGUMENTS - BY THE STATE

1 jury room that the defendant is guilty of the crimes
2 charged. We have murder, attempted murder and
3 possession of a weapon during the commission of this
4 violent crime. Let's get started for today.

5 First charge -- we're going to do it in the
6 opposite order. The first charge, possession of a
7 weapon during the commission of a violent crime. We
8 have two elements here. Defendant must be guilty of
9 a violent crime, and the weapon must have been used
10 in furtherance of that crime.

11 Now, to do my job, I'm going to prove this to
12 you, each and every element, and we're going to take
13 that beyond a reasonable doubt. As for Element No.
14 1, the defendant has been indicted for murder and
15 attempted murder, both which are listed by the South
16 Carolina Statutory Code 16.160 as a violent crime.
17 Even the lesser included of voluntary manslaughter
18 and ABHAN, those two are still lesser included
19 offenses, so it is a violent offense.

20 As to Element 2, the weapon must have been
21 used in furtherance of that crime, that has been
22 proven to you this week. We are going to do this in
23 the form of five, four, three, two and one. Five of
24 the seven witnesses to the crime told you that they
25 saw the defendant with the weapon, that would be

CLOSING ARGUMENTS - BY THE STATE

1 Woodrow Garner, Chalupa, Dustin, Sonya and Brandi.

2 Four of the witnesses told you that they
3 witnessed the defendant do the shooting, Woody,
4 Sonya, Dustin and Brandi.

5 Three of the SLED agents tied together the
6 fact that the defendant himself was the shooter,
7 Michelle Eichenmiller with firearms testified that
8 the bullets removed from the victim's body were, in
9 fact, the bullets shot by this gun here (indicates).
10 Michelle -- Michael Moskal with gunshot residue
11 testified that the gloves recovered from the scene,
12 which were found by the defendant himself, did, in
13 fact, have gunshot residue on both of them. And
14 although Jennifer Clayton with DNA wasn't able to
15 give you conclusive evidence about the revolver, and
16 let's keep in mind she said it could be based on the
17 weathering, the rain could have washed it away or
18 that the defendant had on gloves which prevented his
19 DNA to get to the gun. She did tell you that Dixon
20 was the major contributor to the gloves that were
21 worn.

22 Two of the investigators, Larry Turner and
23 Jamie Seales, both testified that the defendant took
24 them to the gun. And, finally, which takes us beyond
25 a reasonable doubt in this case, the defendant

CLOSING ARGUMENTS - BY THE STATE

1 himself tells you in the video as you watched it in
2 both of his statements -- that we don't know if it is
3 true or not -- he tells us both times that he pulled
4 out the gun himself and shot him.

5 So we have possession of a weapon during the
6 commission of a violent crime, as you have the
7 bullets from the body that was shot by the gun, you
8 have the gloves that were worn during the shooting
9 with the GSR on them with the DNA of Mr. Dixon.
10 Checkmark, we have that.

11 Next, we have attempted murder. Before we go
12 into attempted murder, we need to address the lesser
13 included offense of assault and battery of a high and
14 aggravated nature. Now, I will agree all of the
15 elements of this are met. It is unlawfully injuring
16 another person causing great bodily injury or the act
17 is accompanied by means likely to produce great
18 bodily injury. I'm not sure if you can see this on
19 the screen behind me. All of these elements are met,
20 because as the judge described to you, it is a lesser
21 included offense.

22 The greater offense is attempted murder, which
23 has an additional element that applies to intent to
24 kill. Now, let me kind of tell you the difference
25 between ABHAN and an attempted murder is. An ABHAN,

CLOSING ARGUMENTS - BY THE STATE

1 you are just trying to hurt somebody, but you are not
2 actually trying to kill them. A good example would
3 be if I were to take a shovel and hit somebody with
4 it, maybe I intend to injure them, maybe I intend to
5 knock them down, but I don't exactly intend to kill
6 that person to take their lives at my hand.

7 If I take a gun and I go across the top of
8 someone's head, maybe I intend to hurt them, knock
9 them out, but I didn't shoot them. I never intended
10 to kill them, I just wanted them down. Now, in this
11 case it an attempted murder because there is an
12 intent to kill, but it becomes an attempt because it
13 is an incomplete act. So let's walk through these
14 elements.

15 You have murder, which is killing of another
16 with malice aforethought. You have an intent to
17 kill. What's my job? I'm going to prove to you each
18 and every element, each and every element beyond a
19 reasonable doubt so that you don't have any questions
20 when you get to the back.

21 Let's go. Malice aforethought. For malice
22 aforethought, we have three of the four elements
23 required. We have intent to kill, intent to inflict
24 grievously bodily injury and extreme reckless
25 indifference to human life.

CLOSING ARGUMENTS - BY THE STATE

1 Now, felony murder is also a part of this, but
2 it doesn't apply to this case. However, three of
3 those four things that define malice do apply, and
4 they apply all at the same time. We have the intent
5 to kill, intent to cause grievous bodily injury and
6 extreme reckless indifference for life at one time.
7 As I just told you, when the defendant stands there
8 and takes out a loaded revolver and points it at
9 arm's length while other people are standing, that is
10 an intent to kill. That is extreme indifference for
11 the life of others, because he pulls this out and he
12 doesn't care who is there.

13 The two main organs of the body are the heart
14 and the brain. He's standing at 6'3" with a gun at
15 arm's length. Now, if he doesn't intend to kill, I'm
16 not sure what he's trying to do. If the defendant
17 had taken this gun and pointed it down at the ground
18 and shot, I might say, Oh, he intended to scare them.
19 If he shot at their foot, I would have said, Oh, he
20 intended to hurt them. If he had even shot in the
21 air I might have said, He intended to scare them,
22 maybe a bullet ricocheted or hit somebody, but that
23 is not what the defendant does.

24 The defendant himself, along with several
25 witnesses that were present, they tell you he pulls

CLOSING ARGUMENTS - BY THE STATE

1 out a weapon, a deadly weapon, arm's length level
2 where other people are standing and just starts
3 dumping. We call that shooting.

4 Now, he didn't intend to kill? He definitely
5 wasn't trying to say happy birthday to anybody any
6 time soon. Element No. 2, for the intent to kill, it
7 is an incomplete act. In this case we have Woody
8 Garner sitting right here with us, and he's alive.
9 That is what makes the act incomplete. But don't
10 take him sitting here to look at this as a lesser
11 included offense. Don't look at the injury as being
12 minor and so, oh, because, you know, he's not walking
13 around with his head to the side that it should be a
14 ABHAN. You look at the intent. Look at the intent
15 on the crime, not the injury that results.

16 As Dr. Parekh tells you, it was serious
17 because he had a hemorrhage to the brain that
18 couldn't be treated. They had to immediately
19 transfer him to Marlboro Park Hospital. The
20 difference between Bristow and Woody, Bristow was
21 shot in the back. He never stood a chance. Woody is
22 looking at the defendant holding the gun. He tells
23 you himself he sees the fire come from the gun, and
24 at a moment, he's able to duck and save his life.

25 Now, while the defendant's religion is killing

CLOSING ARGUMENTS - BY THE STATE

1 people, maybe Woody has some religion we don't know
2 about that's saving people's lives. Maybe I do know
3 about that, I should not have said that.

4 Now, what simply took us beyond a reasonable
5 doubt in that case was the fact that you have
6 eyewitness testimony. He's alive, he survives it.
7 You see the wound for yourself. What also takes you
8 beyond a reasonable doubt is you know that there was
9 an intent to kill, because if you think about the
10 fact -- the defendant had pretty good aim. He tells
11 you he shot five times. Three of the five shots goes
12 to the middle back of Chris Bristow. He knew what he
13 was aiming for, and he hit it. He was aiming for
14 Woody's head, and had he not ducked, he would have
15 hit that too. Only one bullet out of five goes
16 astray.

17 Even if you still don't feel comfortable, the
18 doctrine of transferred intent will take you a step
19 further to find the defendant guilty of attempted
20 murder. Let's talk about transferred intent. It is
21 simply what is said. It is the -- it transfers the
22 intent to kill or the attempt to kill to a third
23 party. So let's say hypothetically speaking you have
24 two people standing side-by-side to each other
25 adjacent, or you have two people standing one in

CLOSING ARGUMENTS - BY THE STATE

1 front and one behind. If someone intends to shoot
2 me, but I duck down, and instead there is a third
3 person behind me, that intent to kill me or attempt
4 to kill me transfers directly to the person behind
5 me.

6 In this case, even if you don't think -- I
7 don't see how you don't think when you unload the
8 weapon and see people standing there, but if you
9 don't think it, the doctrine of transferred intent
10 applies because at this time he hit Woody (sic) in
11 the back, so Woody (sic) drops to his knees. Coming
12 out the door behind him -- he hits Bristow in the
13 back, and coming out the door behind him is Woody,
14 right across the head.

15 Now, before I get to what we came here for
16 today, the attempted murder was important, but we
17 have a serious issue with our voluntary manslaughter.
18 I want to talk to you personally. When I opened this
19 case, I started with, It's too cold. The State took
20 the position that what I told you was true. You
21 heard the testimony of Mr. Johnnie Roscoe when he
22 said the defendant came to his house, he was cold and
23 he was wet. He just wanted to come in out of the
24 rain and sit and talk for awhile.

25 You heard both the investigators tell you that

CLOSING ARGUMENTS - BY THE STATE

1 he was cold, he was wet and that is why they changed
2 his clothes at the sheriff's office. However, the
3 State made a decision -- maybe based on some other
4 influences -- to refrain from using that language in
5 the courtroom. We did not want to lower or degrade
6 ourselves, so I apologize, and that is why I did not
7 go back to that theme in this case.

8 However I also need you to know that whether
9 or not it was cold outside, that's not an element,
10 even though we know it was. Murder, and that is what
11 we came here for today, murder is as we've discussed,
12 the killing of another with malice aforethought.
13 Malice aforethought can be found at four possible
14 mental states, intent to kill, intent to inflict
15 grievous bodily injury, extreme reckless indifference
16 and intent to commit felony murder. Malice does not
17 require ill-will, meaning hate or anger, but it can,
18 that is a part of it.

19 Aforethought does not have a set amount of
20 time. It simply is a voluntary act, even if it
21 happens a split second before something occurs where
22 you make a decision to do it, not something you had
23 to think about last week or last month, it's at that
24 moment, if you make a decision to do something.

25 Now, the first element of murder. Let's get

CLOSING ARGUMENTS - BY THE STATE

1 this covered. Let's get it straight and out of the
2 way. Killing of another. Bristow, Chris Bristow, is
3 dead. He was killed. Dr. Presnell testified that
4 the cause of death is homicide due to three gunshot
5 wounds to the back. Dr. Parekh testified that when
6 he arrived at the hospital, there was not a pulse at
7 10:22 that night. When I asked the witnesses why do
8 they remember December 20, 2012, they all tell me
9 they remember that day because that was the day that
10 Christopher Bristow was killed.

11 We all heard Sonya Caulder scream and yell for
12 her friend on that 911 call, as she says, Wake up,
13 Bristow. Get up, Bristow. We know while we're
14 listening to that call that either Bristow is dead or
15 he's on his way there.

16 Let's move into malice aforethought. We're
17 going to do this jointly with voluntary manslaughter.
18 Malice aforethought can be defined as ill-will or
19 hostility towards another person. It doesn't have to
20 be, but it can be. It is the intentional doing of a
21 wrongful act without just cause. It is the intent to
22 cause grievous bodily injury, and it's acting with
23 recklessness, which is nothing more than having a
24 substantial disregard for life. We're going to do
25 voluntary manslaughter. I just need you to stay with

CLOSING ARGUMENTS - BY THE STATE

1 me, we're going to get to it.

2 Voluntary manslaughter is the unlawful killing
3 of another and the sudden heat of passion soon after
4 legal provocation without malice aforethought. So
5 murder, unlawful killing with malice aforethought;
6 voluntary manslaughter, unlawful killing with sudden
7 heat of passion and sufficient provocation, no malice
8 aforethought required. Keep in mind on voluntary
9 manslaughter you need sudden heat of passion and
10 sufficient legal provocation.

11 In South Carolina the way our laws are set up,
12 we have state legislators that we elect every year
13 and they go down to Columbia and make statutory law.
14 They create the elements for murder, elements for
15 attempted murder, elements for ABHAN. Then we have
16 case law, and how that comes about is you have
17 certain cases that happen in different areas, and the
18 judges rule on those cases based on the facts as they
19 are applied to that law.

20 So our case law tells us that heat of passion
21 renders the mind of an ordinary person incapable of
22 cool reflection. The provocation must be that which
23 naturally and instantly produces in the mind of a
24 reasonable person. So you have a sudden heat of
25 passion, meaning the person -- an ordinary person --

CLOSING ARGUMENTS - BY THE STATE

1 does not have time to cool off, and sufficient legal
2 provocation means a problem or an issue that an
3 ordinary person would recognize. Something that is
4 reasonable.

5 So now let me give you a few examples. As you
6 heard the judge tell you, words alone are not enough
7 to amount to sufficient legal provocation of
8 voluntary manslaughter. Sticks and stones may break
9 my bones, but words will never hurt me. We know the
10 two are having an argument or heated discussion. How
11 do we know this? Everyone tells you that. The
12 witnesses tell you that, and the defendant himself
13 tells you that. He has told you that Bristow did not
14 like him waving his arms around. All of the
15 witnesses, I asked them on the stand, Did you hear
16 any yelling? Did you hear any screaming? Was it
17 loud? They all tell me, no. But they all do say,
18 yeah, they are having an argument or discussion or
19 talking about something, but the words alone are not
20 enough.

21 Now, voluntary manslaughter with this heat of
22 passion and sufficient legal provocation usually
23 applies, not always, but usually applies to
24 situations of adultery. What I mean by this is a man
25 comes home and finds his wife in the bed with another

CLOSING ARGUMENTS - BY THE STATE

1 woman. We've all heard about situations like that.
2 We hear the gossip. What is typically said? When
3 that man find out, he's going to kill him. Because
4 they are thinking when he walks in there, he's not
5 going to have time to think, he'll act. But that is
6 something that reasonable, ordinary, common people
7 hear and see every day.

8 This applies to situations where there is
9 fighting, where it starts out with the punch to a
10 face and you are fighting back and forth, and before
11 you know it, you grab something off the table and
12 gone across somebody's head. That's sudden heat of
13 passion and sufficient legal provocation where you've
14 killed and then you didn't have time to cool off, and
15 before you know it, it is done and too late to do
16 anything about it.

17 It applies to situations where there is fear,
18 but the fear has to be legally provoked to cause the
19 defendant to lose control. In this case, I'm going
20 to tell you, this defendant over here never had any
21 fear that night. He was creating the fear. He comes
22 into the bar dressed in dark colors, black shirt,
23 dark jeans, blue bandanna hanging out of his pocket,
24 gloves. He tells you himself he had two when he
25 first got there, one by the time he gets to the

CLOSING ARGUMENTS - BY THE STATE

1 sheriff's office.

2 We know there is no fear. He goes in, talks
3 to people, he shakes hands, shoots pool and he even
4 buys Bristow, the one he kills later, a beer. How do
5 we know this? Woody, the owner of the bar, served
6 him, he told us, and Brandi Jones, who invited him
7 there, she told us. We even know he has friends
8 there. He talked to Brandi on the phone before he
9 went there. He has his friend Brian there with him.
10 He tells you this. Brandi told you this. He's not
11 in fear of his life.

12 We further know he's the creator of the fear
13 because we have eyewitness testimony telling us over
14 and over again Bristow, the guy that gets killed,
15 asked him to leave. We know that Bristow was
16 uncomfortable with him waving his hands because he
17 tells us in the video. Bristow is uncomfortable with
18 him. Further, we know Bristow is patting him down
19 for a weapon, here and here. He's not up here. He's
20 here. He's looking for a weapon. He's nervous about
21 this guy being in this spot.

22 Now, if the defendant did feel fear, this guy,
23 Mr. Dixon, if he felt fear and he felt it was eminent
24 danger of his life, if he felt bad in any way, guess
25 what, he always had the decision to leave. He always

CLOSING ARGUMENTS - BY THE STATE

1 had the choice, because we always have a choice of
2 life to walk away. Nobody had put their hands on
3 him.

4 Instead, what he tells you in this video is
5 that he felt the tension in the air, and what did he
6 do, he puts on a second glove. Why is he putting on
7 the second glove? He knows what he's about to do.
8 At that moment, when you stop to think there is
9 tension in the air, you could have stopped to think,
10 I need to walk away and go home before something
11 happens. No. He stopped to think, Let me go ahead
12 and get ready for this, I'm about ready to show them.

13 We also know he didn't have fear because he is
14 one of the only people out there with a loaded
15 weapon. How do we know? He tells you. Investigator
16 Seales asked him in the video, Do you normally carry
17 a gun? No, he just had a funny feeling about that
18 night.

19 So now here is where -- let me clarify that.
20 Those two examples were examples showing the lack of
21 sudden heat of passion. He had a choice to walk
22 away. There was time for an ordinary person to cool
23 off and walk away, because nobody was hitting him.
24 There was not a threat for his life. He was not
25 under fear. He put on a glove. When you stop then

CLOSING ARGUMENTS - BY THE STATE

1 and thought about it, you could have stopped and
2 walked.

3 Here is where the other part of that voluntary
4 manslaughter falls apart. You need sufficient legal
5 provocation. It must be such that an ordinary,
6 reasonable person would lose control. That is where
7 our problem comes in. Problem comes in here
8 (indicates), but I won't use that today. Let's walk
9 through the night, through the events that took
10 place.

11 Brian and his friend, David, show up at
12 Woody's. They go in, and as I told you ten times
13 already, they shake hands, talk to some people, drink
14 beer, shoot pool. Dixon walks outside to get more
15 beer. Shortly thereafter, Bristow goes outside.
16 They are having a conversation. They are using hand
17 gestures. How do you know? Travis Pruitt is looking
18 out the window and he sees the gestures. The
19 defendant himself tells you he's using hand gestures.

20 Defendant asked him to leave, he then pats him
21 down, and then what does he do next? He has a
22 bandanna hanging from his pocket. He takes it out of
23 the pocket of the defendant and he waves it and he
24 throws it to the ground based on the testimony from
25 Chris Sanchez, a/k/a Chalupa.

CLOSING ARGUMENTS - BY THE STATE

1 Now, for the defendant, I want you to please
2 know that as I took this bandanna out, it is not a
3 bandanna, it is a white handkerchief, but I didn't
4 mean any disrespect to you or your organization,
5 because I love my life, let that be known. However,
6 on the night that this occurred, Christopher Bristow
7 didn't get that opportunity, because as he turned
8 around after taking the bandanna from the pocket, he
9 was shot three times in the back. Sonya Caulder
10 testified he stiffened, and as testified to, that is
11 probably how he got the GSR on his hands, as he
12 grabbed his wound.

13 Ladies and gentlemen of the jury, because I
14 refuse to touch this after knowing what it has done,
15 this is not sufficient legal provocation (indicates).
16 Ordinary people don't know that this (indicates)
17 means death. You think to yourself, you think about
18 life, think about common experience. Your Honor, the
19 defendant even tells him himself at the end of the
20 video -- and I would love it if you would watch the
21 video so you can see that this stuff I'm telling you
22 is true -- when asked by one of the investigators did
23 he know you were in a gang, and he says (indicates).

24 So if he doesn't even know you are in a gang,
25 how does he know this is going to take his life? He

CLOSING ARGUMENTS - BY THE STATE

1 doesn't. Ordinary reasonable people don't know. I'm
2 not adding any disrespect. I don't mean any
3 disrespect, but, to me, this is the same as that
4 (indicates). To most people, this is the same as
5 that (indicates). You don't know this means death.

6 Let's take it a step further. Once this act
7 is done -- done -- once this is done, the defendant,
8 he immediately runs, but then he begins to cover up,
9 as most do. He's already had that GSR on the glove,
10 he throws that in the woods, throws the gun in the
11 woods. He eventually comes out. He asked to speak
12 to Larry Turner. He wants to speak to Larry Turner
13 because Larry Turner knew his grandmother. So he
14 goes to the officer that might help him out.

15 You watch the video and he tells you a story.
16 The first time, the victim, Christopher, has a gun.
17 We know that is not true, but then he tells you this
18 second story where he says I pulled a gun like this,
19 say when he pulled the flag out of my pocket, that he
20 pushed me. Say? What is that? Either he did it, or
21 he didn't do it. They are not about to help you
22 concoct something to present to the jury.

23 You hear him say, What is the least I can get
24 charged with this? Voluntary manslaughter dropped
25 down to murder? On this particular night that was

CLOSING ARGUMENTS - BY THE STATE

1 murder and not manslaughter, because the defendant
2 intended to kill. There was malice aforethought as
3 he became angry, created ill-will, hatred. The State
4 doesn't have to prove motive, but that is his motive
5 for killing. He created these things and decided to
6 open fire with three people standing and unload a
7 loaded weapon and referred to it as "dumping."

8 At this time, ladies and gentlemen of the
9 jury, we have proved murder to you, the unlawful
10 killing of another with malice aforethought. He even
11 says to you when asked on that interview why he did
12 it, he says he felt -- he said the victim
13 disrespected his religion. Insufficient grounds to
14 kill somebody, because they disrespected your
15 religion.

16 What the defendant did that night is he
17 enforced his law, his religion on somebody who didn't
18 know anything about it. What I'm asking you all to
19 do is to enforce our law, the law written by the
20 State of South Carolina where we put in the elements
21 for murder against him, for which he knows about.
22 Bristow didn't know about his law, but he was well
23 aware of our law, and that is one of the things you
24 learned as a child, do not kill, do not steal.

25 At this time -- at this time -- the defendant

CLOSING ARGUMENTS - BY THE STATE

1 on that night planned out how he was going to get his
2 job accomplished. He put that glove on to keep that
3 DNA and print off the gun. He turned around, he
4 opened fired with a loaded .38 revolver with three
5 people, at least three people, standing there,
6 shooting and aiming to the heart and the brain. He
7 intended to kill. He left, and then he began working
8 to get lower charges from that point forward. That
9 is why he walked them through the woods to find the
10 gun and find the gloves. He's working and asking
11 about lower charges. He's trying to get lower
12 charges.

13 Today it is my turn to do my job. I ask that
14 you enforce the State of South Carolina, but I want
15 to get my job done the way I want to get it done. I
16 told you about this case. I've proven to you each
17 and every element of the crimes charged beyond a
18 reasonable doubt, and when you go in that jury room,
19 I ask that you find the defendant guilty of murder,
20 attempted murder and possession of a weapon during
21 the commission of a violent crime.

22 Before I sit down, I want you to listen to the
23 chaos, listen to who had the fear that night when
24 this murder occurred. We're going to hear the 911
25 tape again. At that point, at that moment, Chris

CLOSING ARGUMENTS - BY THE STATE

1 Bristow is laying on the ground dead. His friend,
2 Sonya, is calling to him, Wake up. Wake up. Her
3 boyfriend is going crazy. He doesn't know what to
4 do. He's shooting shots because his girlfriend is
5 screaming that his best friend is dead. His other
6 friend ran after the murderer, and then turned around
7 and ran back. There is complete chaos. All of these
8 people are in fear because of him -- him. If they
9 wanted to hurt him -- they told you several times,
10 we're all friends. We hang out there every weakened,
11 Thursday, Friday, Saturday, Sunday. If they wanted
12 to hurt him, they could have punched him in the face,
13 jumped on him, but they chose not to. They did not
14 want to. They wanted him to leave, but he made a
15 choice to take their life.

16 Listen to this video.

17 (Whereupon, the 911 take is played.)

18 MS. DAVID: Please remember as you deliberate,
19 voluntary intoxication is not a defense.
20 Self-defense does not apply in this case. As you
21 talk about it, we have three shots to the back. What
22 is worse than getting stabbed in the back, getting
23 shot in the back. Please find this defendant guilty
24 of murder.

25 THE COURT: Ladies and gentlemen, let's take a

CLOSING ARGUMENTS - BY THE STATE

1 morning break before we go to our final argument, and
2 we'll be in recess approximately 10, 15 minutes, so
3 please don't discuss the case. If you want to go
4 outside we'll give you that opportunity.

5 (The jury exits at 10:48 a.m., the following
6 is heard out of the presence of the jury.)

7 THE COURT: Court is in recess for approximately
8 10, 15 minutes.

9 (Whereupon, a recess was taken.)

10 THE COURT: The verdict is satisfactory to the
11 defense and the State, I just wanted to confirm?

12 MR. STEEN: Satisfactory to the defense.

13 MS. DAVID: Yes, Your Honor.

14 THE COURT: Thank you. Please bring in the jury.

15 (The jury enters at 11:04 a.m., and the
16 following is heard in the presence of the jury.)

17 THE COURT: Welcome back. You all recall that we
18 concluded the closing argument of the State, and we
19 now move to the defense. Court recognizes the
20 closing for the defense.

21 MR. STEEN: Thank you, Your Honor. I'm going to
22 jump right in. I'll start with the attempted murder
23 charge. The State told you the law, I'm going to
24 tell you the law also. The State must firmly
25 convince all of you that Mr. Dixon did attempt to

CLOSING ARGUMENTS - DEFENSE

1 kill Mr. Garner and that he did attempt to seriously
2 injury Woody Garner, and that he did also have hatred
3 or hostility towards Mr. Garner. The State failed to
4 do all of these things. Mr. Dixon, he doesn't know
5 Mr. Garner. You heard that through the evidence this
6 week. He had no evidence (sic) to hurt him. You
7 heard Mr. Garner's testimony, a little bit different
8 than everyone else's. He's the only one that saw
9 Mr. Bristow go out the door first with Mr. Dixon
10 following him. He's the only one who saw Mr. Bristow
11 only get shot two times.

12 He stated there was upwards of 30 people there
13 that night. You all heard from 90 percent of the
14 people that were there, 15 people total. The facts
15 are a little off. He is the only one who tells this
16 court that David Dixon looked him in the eye and shot
17 him. No one else sees David Dixon point or even
18 shoot at Woody Garner. As you heard earlier, Woody
19 Garner was able to take himself to the hospital. He
20 took himself. He left Christopher Bristow laying on
21 the ground in the parking lot. He got to the
22 hospital 10 full minutes before Chris Bristow. The
23 State says he had no pulse when he arrived, and
24 sometimes 10 minutes makes a big difference.

25 You heard Investigator Seales talk about Mr.

CLOSING ARGUMENTS - DEFENSE

1 Garner's injuries, as he said the bullet grazed the
2 top of his head, wasn't life-threatening. I don't
3 think it is serious. I honestly believe you had no
4 intention -- an assault charge of some kind no
5 attempted murder, no reason to do that, this is not
6 attempted murder. All comments made by the lead
7 investigator in this case, but no one seen the shot,
8 no proof, whatsoever, of any malice aforethought from
9 Mr. Dixon towards Mr. Garner. The State failed to
10 show that David Dixon attempted to murder Woody
11 Garner.

12 The State spent a lot of time this week trying
13 to convince you all that David Dixon shot Chris
14 Bristow. I told you that in my opening that we
15 weren't going to contest that -- not going to. He
16 shot him. The reason we're here is because me and
17 the State disagree on whether malice aforethought and
18 whether David attempted to kill Mr. Bristow. That
19 day, you heard it, David Dixon called Ms. Brandi
20 Jones saying, hey, there is a pool tournament at this
21 bar called Lucy's that night. Woody's wasn't even on
22 his mind. She told him, no, she didn't know.
23 Coincidence, I guess later they showed up at the same
24 bar. You know Dixon arrived at Woody's. You heard
25 the testimony, no one wanted him there. I don't want

CLOSING ARGUMENTS - DEFENSE

1 him here. This is our spot. You need to leave. He
2 had done nothing, you heard no testimony of him
3 insulting anyone, looking at anyone the wrong way,
4 anything. There was no evidence, whatsoever, of any
5 ill-will, hatred, anything between Mr. Dixon and
6 anyone else in that bar.

7 He bought the victim a beer. The State made
8 that seem like a bad thing. I thought it was
9 friendly. He shook everyone's hands, bought a beer.
10 David was in a place by himself with people that
11 didn't like him. He was trying to make it better.
12 He was doing nothing to bring on the situation that
13 happened later. You heard it, as soon as he got
14 there, the victim called Chris Sanchez and said, hey,
15 come up here, David's up here. Nothing had happened
16 at that point. David had just walked in. Victim
17 calls one of his best friends to come up there
18 because David got there. I'll let you figure out
19 what that entails. Ten minutes later, there was
20 Christopher Sanchez. Not long after that, according
21 to everyone, is when this incident went down.

22 David was there, he was playing pool. He was
23 there talking to Ms. Jones. He showed her his
24 tattoos. He was not thinking that he was going to
25 kill anyone. First time he had been to Woody's, just

CLOSING ARGUMENTS - DEFENSE

1 there to have a good time. Next thing you know,
2 David went outside, he left. He went outside. As
3 you heard, Brian was 17, he couldn't drink in
4 Woody's. Beer was outside, they went outside so
5 Brian could get a beer. The testimony is about two
6 minutes later is when Mr. Bristow came outside. Not
7 long after that, Ms. Sanchez came outside. David
8 didn't say, hey, you all come outside, didn't make
9 threatening motions to come outside. He went outside
10 with his friend so his friend could get a beer, 17
11 years old, he couldn't drink inside.

12 For some reason, Chris Bristow and Christopher
13 Sanchez went outside to tell him to leave. Again, he
14 had done nothing up to this point. He went outside
15 to tell him to leave. David was outside. It would
16 have been better if they would have separated the
17 same way. Still, no problems between the two and no
18 evidence of problems between the two. You heard it,
19 no one here disagrees with the fact that Bristow
20 started touching, feeling on David Dixon first. I
21 think someone this week made a comment that patting
22 someone down is not offensive. I beg to differ. If
23 someone touches you all over at a bar without you
24 asking them to, you're going to get offended. He's
25 not a cop. He's not security at the bar. He is not

CLOSING ARGUMENTS - DEFENSE

1 a friend of his. Why was he touching him? The State
2 made it sound like it was okay to touch people. It
3 is not okay. He is patting you all the way, and that
4 is offensive no matter what state said. Pulling on
5 David's pocket, threw his bandanna on the ground.
6 Bristow pushed him. At that point, you heard Sanchez
7 say this is what we do, they said that to David.

8 A few things that David was without fault. He
9 was out there having a good time, got followed
10 outside, got offensively touched, got offensively
11 touched again. Surrounded by people you don't know,
12 he snapped. He told you what happened on the video,
13 he snapped. Again, something else, there is another
14 gun on the scene. Someone fired at David with the
15 sole purpose of saying I got a gun, come back. I
16 want you to know in case you want to come back, I
17 have a gun waiting for you. This is the type of
18 place we're at. Apparently guns are just there.

19 Mr. Locklear stated he fired -- it was a .22,
20 fired in the air. Cartridges were found right there
21 (indicates), straight up in the air, fell right down
22 where he was standing. He said the only shell
23 casings found on this scene was Dustin Locklear's.
24 Again, Mr. David Dixon's gun was a five-shot
25 revolver, it held five bullets. That is the most

CLOSING ARGUMENTS - DEFENSE

1 bullets that could have come out of his gun that
2 night. When it was found. It was empty, and no one
3 disputes the fact no bullets are found anywhere else
4 -- no bullet casings were found, actually. There was
5 several testimony -- one person said seven, eight
6 shots, one person said six shots, one person said
7 seven to ten shots. That is a lot of additional
8 shots after five. No one seems to know exactly what
9 happens with the rest of the shooting that night.

10 Another thing, there was gunshot residue on
11 the victim's palm. The State tells you that he could
12 have touched his wound. That's odd, because the
13 forensic pathologist told you there was no gunshot
14 residue due on his back. Could it have gotten on his
15 hands from the outburst from David's gun? Again,
16 Mr. Bristow was shot in the back. Did the gunshot
17 residue go around the body and get on one hand?

18 The State has reasons why three gunshot wounds
19 to the back. Jamie Seales said if he shot him in the
20 back there probably will believe gunshot residue. No
21 gunshot residue was found, and no one mentioned it --
22 actually, the forensic pathologist was asked and she
23 said there was no GSR found. On the same note, you
24 also heard that GSR can stay on the body indefinitely
25 leading up to autopsy, and at autopsy it wasn't

CLOSING ARGUMENTS - DEFENSE

1 there.

2 You met a lot of law enforcement this week and
3 worked really hard on this case, you can tell. They
4 did a good job. Every one of them said only good
5 things about David. There was no evidence of
6 problems with anyone. Seales said I know you are not
7 a cold blooded murderer. You felt the heat of a
8 moment, sounds kind of familiar, doesn't it? Again,
9 he was cooperative. He talked with law enforcement
10 to give them the gun, and he went beyond and above
11 helping them, just in case a kid found it, and he
12 agreed with it. He doesn't want anyone to end up in
13 the life he's had. They got the gun.

14 Based on all of that, the State is telling you
15 there is no heat of passion, no provocation. David
16 Dixon did it all on his own. He instigated it from
17 the beginning, and we all know that is not true.
18 There is no evidence to the contrary that he did
19 nothing to until the point where he felt threatened.
20 No evidence, whatsoever.

21 The State tells you that there is no way he
22 was scared, that he had no fear. I beg to differ.
23 Again, he was out of place. Obviously people do not
24 want him there. They let him know they don't want
25 him there. He goes outside in a dark parking lot and

CLOSING ARGUMENTS - DEFENSE

1 people, two big guys, follow him out there. They
2 discuss, have conversations. It was described
3 different ways, verbal disagreements, heated
4 discussion, arguments. They were talking about
5 nothing was happening until Chris Bristow decided to
6 get physically involved with David Dixon. The
7 Solicitor tells you that David Dixon should have
8 walked away. He did walk away. He went outside.
9 There was a wall, door, between them.

10 I don't even know if David was planning on
11 going back inside the way things were going in there.
12 He said people just did not want him there. The
13 Solicitor states that he put on his second glove as,
14 I guess, cause of tension, but at that point he went
15 outside. You heard a lot of testimony. It was cold
16 and rainy that night. He put on the glove because he
17 went outside in the cold and in the rain. I don't
18 see how that is him premeditating anything with the
19 situation. Solicitor states that Mr. Bristow --
20 Mr. David Dixon was one of the only people out there
21 with a gun. There is plenty of evidence with guns.
22 Dustin Locklear was shooting it back saying if you
23 come back, I'll shoot you. Victim with gunshot
24 residue on the hand, the victim's best friend with a
25 pending gun charge. Guns are a way of life around

CLOSING ARGUMENTS - DEFENSE

1 there, unfortunately.

2 The Solicitor tells you that pulling the
3 bandanna out of his pocket was not respectful, was
4 not -- pretty much everything David Dixon said it
5 was. Madam Solicitor had a different lifestyle than
6 David Dixon. Comparing her life situation with his
7 is not fair. They do not have the same families or
8 same upbringing. David wishes he had the upbringing
9 Mia had, but that's why we are here today.

10 It's been a hard case, I know this. Me and
11 the Solicitor have been working for a long time.
12 It's been very hard on this family and very hard on
13 Mr. Dixon's family. But today is your time. I want
14 you all to think about everything seriously. This is
15 a very, very serious offense. David Dixon did not
16 attempt to murder Woody Garner, did not know him.
17 David Dixon did not murder Mr. Bristow. There was
18 reasons behind that. He did not just say, Um, I
19 don't like you, bang. Not the case. He did nothing
20 to bring it on himself. Based on that, I implore you
21 to go through the evidence, deliberate amongst
22 yourself, and after you do, I know that you'll find
23 that David Dixon did not intend -- he did not go to
24 Woody's that night expecting anyone's lives would
25 change. Thank you.

JURY CHARGE

1 THE COURT: All right. Ladies and gentlemen, you
2 heard the arguments of counsel. Let me explain to
3 you -- let's talk briefly, Mr. Foreman and ladies and
4 gentlemen, about the verdict form so we'll have an
5 understanding. You cannot see it because it is a
6 little distant, but you'll have it with you in the
7 jury room. What we have done is we've designed the
8 verdict form to ask you to first consider the greater
9 offense, and if there is a lesser included offense,
10 then the lesser offense. The way we do this is there
11 are three questions on this verdict form because
12 there are three charges here.

13 Questions 1 and 2 involve murder and attempted
14 murder. Question 3 involves the possession of a
15 weapon during the commission of a violent crime.
16 Let's talk about Question 1, because Question 1 is
17 about the murder charge. It says, As to the charge
18 of murder of Christopher Bristow, we, the jury,
19 unanimously find the defendant, David E. Dixon,
20 beyond a reasonable doubt -- and let me say to you,
21 ladies and gentlemen, I have two choices to give you.
22 I can't give them to you at the same place, one has
23 to come in front of the other, but there is not a
24 priority, just that one is written before the other
25 one. The first choice is not guilty. If you find

JURY CHARGE

1 the defendant not guilty of murder, then it tells you
2 to consider Question 1A. If you choose not guilty,
3 you go to the lesser included offense. However, if
4 you choose next option, which is guilty, it says do
5 not consider the lesser included offense because you
6 found the defendant guilty of the greater offense.

7 So every time you make a choice, it will
8 direct you as to how to proceed to the next question
9 and which to go to. It has the same questions to the
10 charge of attempted murder. The first question,
11 which is possession of a weapon during a violent
12 crime, does not have a lesser included offense, so
13 it's a straight-up question with regard to guilt or
14 innocence with regard to that question.

15 Mr. Malichi, at the bottom of the form, Page
16 2, is a signature block for you to write under the
17 words, I certify this verdict is the unanimous
18 decision of the jury.

19 So in the jury room you might have some
20 standing by the wall, some seated at the table, but
21 if someone wants to be heard, make sure they have
22 that opportunity so that not only is your verdict a
23 consensus, but indeed it will be a unanimous verdict,
24 because when you sign, you confirm that it is,
25 indeed, a unanimous verdict.

JURY CHARGE

1 Let me speak to our two alternates. I want to
2 say, Ms. English, as well as to Mr. Douglas, thank
3 you for your service as alternates. Many times when
4 we are at this point in this case and the alternates
5 do not retire to deliberate they say, My goodness, I
6 wasted my time. But you have not, because under our
7 system we must have 12 jurors in a criminal case in
8 South Carolina in the circuit court, and if we didn't
9 have an alternate, and even if one of the jurors got
10 sick or had an emergency and had to leave, we would
11 be down to 11 and I would have to declare a mistrial
12 and it would have to be tried at some point in the
13 future. Your presence has prevented that, and I'm
14 grateful for the your presence and I want to thank
15 you for your service in front of your colleagues. So
16 we'll let you all go back to the jury room together,
17 including the alternates, and say goodbyes or speak
18 to them for a moment while we go over the evidence,
19 won't take us long because we've done this, in part,
20 to make sure we have all of the exhibits in evidence
21 and bring them back to you along with a verdict form.
22 When we do that, then you may begin your
23 deliberations. Just like you have been here and
24 waiting on our schedule the last three days, it
25 reverses and we wait on your schedule. There is no

JURY CHARGE

1 hurry, no demand for a certain amount of time. You
2 proceed at what speed you need to.

3 If you need a break during the course of the
4 proceedings, knock on the door, someone will be there
5 listening and we'll respond, and if you need a break,
6 we'll let you, or if you need to go outside and get
7 fresh air. Please, if we do that, when you separate
8 into groups, stop deliberating so you don't reach
9 inconsistent decisions among different groups, that
10 would make it almost impossible or difficult to reach
11 a unanimous verdict. So when you get back together,
12 you may resume your deliberations. If you have a
13 question, please write that question down and present
14 it to the bailiff by knocking on the door and we'll
15 respond to it in writing as well so that
16 communication will be preserved for the record.

17 When you reach a verdict, if you'll knock on
18 the door, we'll be prepared to respond to that.
19 Please go back, take a break, speak to your
20 colleagues, alternates, for a moment or two and when
21 we see the evidence, we'll send in the verdict forms
22 and bring the alternates out. We'll remain as you
23 depart the courtroom. Thank you.

24 (The jury exits at 11:30 a.m., and the
25 following is heard out of the presence of the jury.)

BY THE COURT

1 THE COURT: Counsel, we are correcting a typo that
2 was discovered on the verdict form. We'll let you
3 look at it, so if you will step forward we'll print
4 it and let you review it. Meet with our court
5 reporter to make sure everything is in order. We'll
6 call the alternates back in the courtroom in just a
7 moment. While we're printing it, will you talk to
8 the court reporter and make sure we have all of the
9 evidence in order?

10 (Whereupon a recess was taken.)

11 THE COURT: The evidence appears to be in order.
12 Is there objection to the evidence from the State?

13 MS. JOHNSON-LEE: None, Your Honor.

14 MR. STEEN: Without objection.

15 THE COURT: The new verdict form where we
16 corrected the typo on No. 2, is there any amendments
17 or --

18 MS. JOHNSON-LEE: No, Your Honor.

19 MR. STEEN: No, Your Honor.

20 THE COURT: Mr. Brown, we are ready for the
21 evidence to go into the jury, and if you would,
22 please, take that in along with the jury form and
23 bring back our two alternate jurors. Thank you.

24 (Whereupon, the jury begins deliberations at
25 11:39 a.m., and the following is had out of the

BY THE COURT

1 presence of the jury with the two alternates.)

2 THE COURT: Ms. English and Mr. Douglas, I want to
3 thank you again for your service. I'm pleased to
4 tell you that in a few days around the middle of next
5 week you'll receive a check from the county, which is
6 not enough to retire on, but it is the county's
7 expression of gratitude, but I'm going to shake your
8 hand as a job well done. We don't know how long the
9 jury will be out, so you are welcome to remain with
10 us or you are welcome to go. We are done for the
11 week and you have no further responsibilities as a
12 juror, so we'll give you a choice if you want to stay
13 or remain, but I thank you for your service.

14 (A brief pause in the proceedings.)

15 THE COURT: We have administrative business, but
16 we'll stand down for a moment and take matters not
17 related to this case. We are in recess on this case
18 until we have further call from the jury. Court is
19 now in recess.

20 (Whereupon, Court was in recess at 11:40 a.m.
21 until 2:15 p.m. where the following took place out of
22 the presence of the jury.)

23 THE COURT: Counsel, we have some questions from
24 the jury, if you will approach.

25 (Whereupon, a bench conference was had, and

BY THE COURT

1 Court's Exhibits 1, 2 and 3, notes from the jury, are
2 marked.)

3 (A recess was taken.)

4 THE COURT: We been advised that the jury reached
5 a verdict, and so we'll be at ease for a moment or
6 two before we bring in the jury and receive the
7 verdict.

8 (A brief pause in the proceedings.)

9 THE COURT: Obviously, ladies and gentlemen, this
10 case has some very difficult issues for everyone
11 involved here. We have people on both sides of the
12 case that are present in the courtroom. I would
13 simply say to you out of the respect for the jury, if
14 you think about it, they are summons here and they
15 have no involvement in this case other than being
16 randomly summoned as jurors and picked to serve. Out
17 of respect, let's have no reaction to whatever the
18 jury verdict may be, and I would ask you to maintain
19 the decorum of this courtroom, again, out of the
20 respect for them. So, Mr. Clerk, please bring in the
21 jury.

22 (The jury enters at 2:19 p.m., and the
23 following is heard in the presence of the jury.)

24 THE CLERK: Mr. Foreman, have you reached a
25 verdict?

VERDICT

1 FOREPERSON: Yes, we have.

2 THE COURT: Thank you. Let the record reflect
3 that the verdict form is appropriately filled out as
4 to all charges and signed by the foreperson. Will
5 the defendant please rise. Clerk, please.

6 THE CLERK: State of South Carolina versus David
7 E. Dixon, defendant. As to the charge of murder of
8 Christopher Bristow, we the jury unanimously find the
9 defendant, David E. Dixon, beyond a reasonable doubt
10 guilty.

11 As to the charge of attempted murder of
12 Woodrow Garner, we the jury unanimously find the
13 defendant, David E. Dixon, beyond a reasonable doubt
14 guilty.

15 As to the charge of possession of a weapon
16 during a commission of a violent crime, we the jury
17 unanimously find the defendant, David E. Dixon,
18 beyond a reasonable doubt guilty.

19 I certify that this verdict is the unanimous
20 decision of the jury. Foreman, Randall S. Malichi,
21 October 31, 2013.

22 Is this your all's verdict, say it all by
23 raising your right hand.

24 THE COURT: Thank you. Let the record reflect
25 that the jury has each responded -- each and every

VERDICT

1 one raised their right hand.

2 While we are in the presence of the jury, are
3 their motions for which a jury response would be
4 necessary from the defense?

5 MR. STEEN: Yes, Your Honor. I would like to move
6 for the jury to be polled as to all charges.

7 THE COURT: We are going to let you be seated, and
8 let me explain this procedure to the jury. Each
9 party after the receipt of a verdict as a right for
10 the jury to be polled, and the way we poll the jury
11 is as follows. Our clerk will call your name, and
12 when your name is called, stand individually and
13 you'll be asked two questions. The questions will be
14 something like this, Was this your verdict, and
15 you'll answer yes or no, and then, Is it still your
16 verdict, and you'll answer yes or no. We'll go
17 through the jury and poll each of you individually as
18 to this verdict. Mr. Clerk, you may proceed.

19 THE CLERK: Thank you, Your Honor. Randall
20 Malichi, was this your verdict?

21 MR. MALICHI: Yes.

22 THE CLERK: Is it your verdict now?

23 MR. MALICHI: Yes.

24 THE CLERK: Whitney Odom, was this your
25 verdict?

VERDICT - POLLING

1 MS. ODOM: Yes.

2 THE CLERK: Is it your verdict now?

3 MS. ODOM: Yes.

4 THE CLERK: Olivia Rowe, was this your
5 verdict?

6 MS. ROWE: Yes.

7 THE CLERK: Is it your verdict now?

8 MS. ROWE: Yes.

9 THE CLERK: Wayne Easterling, was this your
10 verdict?

11 MR. EASTERLING: Yes.

12 THE CLERK: Is it your verdict now?

13 MR. EASTERLING: Yes.

14 THE CLERK: Marc A. Moore, was this your
15 verdict?

16 MR. MOORE: Yes.

17 THE CLERK: Is this your verdict now?

18 MR. MOORE: Yes.

19 THE CLERK: Kathy Manning, was this your
20 verdict?

21 MS. MANNING: Yes.

22 THE CLERK: Is it your verdict now?

23 MS. MANNING: Yes, sir.

24 THE CLERK: Ashley R. Perhealth, was this your
25 verdict?

VERDICT - POLLING

1 MS. PERHEALTH: Yes.
2 THE CLERK: Is it your verdict now?
3 MS. PERHEALTH: Yes.
4 THE CLERK: Stacey Mcneil, was this your
5 verdict?
6 MS. MCNEIL: Yes.
7 THE CLERK: Is it your verdict now?
8 MS. MCNEIL: Yes.
9 THE CLERK: Hazel Mclain, was this your
10 verdict?
11 MS. MCLAIN: Yes.
12 THE CLERK: Is it your verdict now?
13 MS. MCLAIN: Yes.
14 THE CLERK: Luther Lynch, was this your
15 verdict?
16 MR. LYNCH: yes.
17 THE CLERK: Is it your verdict now?
18 MR. LYNCH: Yes.
19 THE CLERK: Dennis Watson, was this your
20 verdict?
21 MR. WATSON: Yes.
22 THE CLERK: Is it your verdict now?
23 MR. WATSON: Yes.
24 THE CLERK: Charles Tevepaugh, was this your
25 verdict?

VERDICT - POLLING

1 MR. TEVEPAUGH: Yes.

2 THE CLERK: Is it your verdict now?

3 MR. TEVEPAUGH: Yes.

4 THE COURT: That completes it. Was there any
5 juror whose name was not called? If your name was
6 not called, please raise your hand.

7 All of the jurors have been polled and the
8 response is affirmative as to all questions,
9 therefore -- now, are there any motions for which an
10 jury response would be necessary from the defense?

11 MR. STEEN: Nothing further.

12 THE COURT: Anything from the State?

13 MS. DAVID: Nothing further, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, what
15 we're going to do now, and we'll move immediately
16 into it, is a sentencing proceeding. In the
17 proceeding, the State, as well as representatives of
18 the victim's family, as well as the victim who is
19 present, the defense will be given an opportunity to
20 speak to the Court on the issue of sentencing. What
21 I would like to do is invite you, if you wish, to
22 remain with us, but we certainly do not demand it,
23 nor do we require it, because your role as judge of
24 facts has concluded. If you would like to join us, I
25 would like to come down and thank you as you leave

BY THE COURT

1 the jury box, and we'll wait and give you an
2 opportunity to go back and collect anything you have
3 from the jury room and be seated out in the audience,
4 that way you are able to leave at any time, and that
5 way, also, if you wish to just leave immediately,
6 then you are given the opportunity to do that.

7 Let me say to you that in our system we divide
8 the responsibilities, and it is only in the case of a
9 death penalty, which this, of course, is not, that
10 the jury makes the decision on guilt as well as the
11 sentence. In all other cases, the Court is charged
12 with the responsibility for the sentence. I say that
13 to you to say that you should feel no responsibility
14 for the sentence whether you believe it to be light
15 or heavy or somewhere in between, because of that
16 division of our responsibilities, the Court is more
17 familiar than the jurors who, of course, their
18 business and their daily lives are outside of the
19 courthouse. The Court is more familiar with
20 statutory minimums and maximums as well as service
21 requirements and other things of that nature. So I
22 don't want you to leave here feeling any
23 responsibility for whatever sentence may occur,
24 because, again, that is solely the Court's
25 responsibility.

BY THE COURT

1 I want to thank you for a job this Court
2 perceived to be well done, consistent with the facts
3 in the case and for a verdict which is just and true
4 and represents justice for all of these parties. So
5 let me come down and thank you personally. In a few
6 days, and it probably will be sometime mid-week,
7 you'll receive a check from the county, not enough to
8 retire on or even take a vacation, but it simply is
9 the county's expression of gratitude for your service
10 for your per diem, mileage. I'll come down and
11 extend my hand shake to you out of gratitude for a
12 job well done, and I'm pleased to tell you you are
13 through for the week, free to go if you wish.

14 Mr. Foreman, I'm going to step back so I can
15 call your attention. We'll wait a moment for any
16 jurors that would like to return as well as any
17 response for sentencing, so we'll be at ease
18 momentarily.

19 (A brief pause in the proceedings.)

20 THE COURT: Now, at the close of all the evidence
21 and receipt of the jury verdict, are there motions
22 from the defense with regards that requires a Court
23 response, not a jury response?

24 MR. STEEN: Yes, Your Honor. We would like to
25 move for a new trial as to all charges with regards

BY THE COURT

1 to the charge of murder. The defense does not
2 believe the State presented sufficient evidence to
3 warrant a unanimous verdict regarding malice
4 aforethought. With the charge for attempted murder,
5 we do not believe that the State presented sufficient
6 evidence regarding malice aforethought to warrant a
7 unanimous verdict. And with regard to possession of
8 a firearm during the commission of a violent crime,
9 we do not believe the State provided sufficient
10 evidence, Your Honor.

11 THE COURT: Any further motions?

12 MR. STEEN: No further motions, Your Honor.

13 THE COURT: Does the State wish to reply?

14 MS. JOHNSON-LEE: There is more sufficient
15 evidence presented and the jury has spoken to get
16 past the directed verdict stage. We feel based on
17 everything that the Court heard this far, it does not
18 need to be repeated and that the verdict stands, and
19 we ask the jury verdict stand, Your Honor.

20 THE COURT: All right. Mr. Steen, as you know,
21 the Court gives great deference to the jury who, of
22 course, are members and citizens of Marlboro County
23 just randomly selected to be pooled into this and
24 serve as finders of fact. The question is whether or
25 not this would be inconsistent with the evidence, but

MOTION - DIRECTED VERDICT

1 I find the verdict rendered by the jury was perfectly
2 consistent with the evidence, and that there is ample
3 appropriately admitted evidence in this record that
4 supports the verdict of the jury, and for these
5 reasons I'll respectively deny all of the post-trial
6 motions and will confirm the verdicts which were
7 returned.

8 Now, the questioning is sentencing. What I
9 would like to do is give you an opportunity to speak
10 on behalf of your client as well as give your client
11 an opportunity to speak, if he wishes. I don't
12 require it, but if he wishes, he can be given that
13 opportunity. I also would like to give that same
14 opportunity to the State as well as to Mr. Garner as
15 well as to a representative of the victim,
16 Mr. Bristow's family.

17 Now, Mr. Steen, do you wish to be heard first?

18 MR. STEEN: Yes, Your Honor, thank you.

19 THE COURT: Speak up so we can all hear you.

20 MR. STEEN: Thank you, Your Honor. We ask this
21 Court for leniency here today. We would ask the
22 Court for a 30-year sentence. Mr. Dixon is 22 years
23 old. He does have a long -- hopefully a long -- life
24 ahead of him. No excuse for what happened last
25 December in Marlboro County. Mr. Dixon's family is

SENTENCING

1 here. Your Honor, he had prior instances with the
2 law before. Nothing further, Your Honor.

3 THE COURT: Mr. Dixon, do you wish to say
4 something? Remember, you remain under oath from your
5 discussion with the Court yesterday. If you have
6 something you wish to say, we'll hear from you.

7 MR. DIXON: I would like to apologize to the
8 family.

9 THE COURT: I'll let you turn and don't address
10 that to me.

11 MR. DIXON: I'm sorry for everything.

12 THE COURT: Do you have anything further you wish
13 to say?

14 MR. DIXON: I ask for leniency.

15 THE COURT: All right. Thank you, you may be
16 seated.

17 Let's hear from the State. I would like to
18 hear what record Mr. Dixon has as well as what the
19 position of the State is with regard to sentencing.
20 Before you tell me any prior record, let me speak to
21 the members of the jury who are present in the
22 courtroom.

23 The defendant does have some prior record.
24 That was not admitted into the evidence of this case,
25 and I will tell you that that is one of our rules,

SENTENCING

1 that the prior record of the defendant only comes
2 into evidence on limited circumstances. One of which
3 is if the defendant takes the stand to testify, then
4 the prior record of the defendant is admitted into
5 evidence on the issue of whether the defendant is a
6 credible or believable witness, not on whether or not
7 he did the crime for which he is presently being
8 prosecuted.

9 The general belief from our appellant courts
10 and general assembly is that to automatically put
11 into evidence any prior record that the defendant has
12 would be so prejudicial that it would overwhelm the
13 question of whether or not the defendant did the --
14 committed the crime which he is presently being
15 prosecuted, because the jury might have the belief
16 that because he's committed other crimes in the past,
17 he would certainly have committed these for which he
18 is under prosecution, that is the rationale for the
19 reason.

20 So tell us what is the prior record of Mr.
21 Dixon, and what was the age of Mr. Dixon at the time
22 this occurred Dixon?

23 MS. DAVID: At the time this occurred, the
24 defendant was 22. He is 23 as of today, he's having
25 a birthday.

SENTENCING

1 THE COURT: Very good. What was his prior record
2 at the age of 22?

3 MS. DAVID: At the age of 22, from October 31st of
4 2008, he has a burglary second conviction, a drug
5 manufacturing distribution of cocaine, financial
6 transaction card theft and financial transaction card
7 fraud. From January 31st of 2011 he has a DUI
8 offense. From March 15 of 2011 he has a parole
9 revocation to a YOA sentence. January 13th of 2012,
10 it shows that he is on -- his custody status is
11 probation. On July 24th of 2012, he has a child
12 passenger restraint violation and a driving under
13 suspension and operating a vehicle which is not
14 registered to him.

15 THE COURT: And when this event occurred, was his
16 status either on parole or probation; is that the
17 State's position?

18 MS. DAVID: It is my belief that he was on
19 probation.

20 THE COURT: Very good. Do you have a
21 recommendation or comment you wish to make as to
22 sentencing?

23 MS. DAVID: Your Honor, I think the State takes
24 the position that we would just like to see the
25 defendant receive as much time as possible. I think

SENTENCING

1 Officer Jamie Seales has comments he would like to
2 make, and we have a spokesperson from the family.

3 THE COURT: Is Mr. Garner also present in the
4 courtroom?

5 MS. DAVID: He is present, but I don't know if he
6 wants to speak. We did not previously discuss it.

7 THE COURT: Very good. Let's hear first from
8 Investigator Seales, and then we'll proceed to the
9 family.

10 MR. SEALS: If it pleases the Court, just to be
11 brief, on the part of the sheriff's office, we don't
12 have a whole lot of gang violence here in the county,
13 and there is no doubt this was the underlining cause
14 of this, probably not at the beginning of the
15 situation, but at the end there was no doubt it was
16 gang violence. We just want to be sure that the
17 sentence deters this in the future, you know. Mr.
18 Dixon was cooperative, he was cooperative after it
19 happened on several different ways, his interview to
20 some extent, looking for the weapon, but he has a
21 prior record, as you just heard, and there is no
22 excuse for what happened. There is no excuse. It
23 took a lot of manpower and work, and there is no
24 excuse for that. That is what we do, but we just
25 want to make sure on behalf of the sheriff's office

SENTENCING

1 that this sentence is a strong deterrent to a
2 homicide in particular, but more so specifically gang
3 violence. That is all we have.

4 THE COURT: All right. Thank you, Officer Seales.
5 Thank you for what you do and being called out at all
6 hours of the night any given day of the week. The
7 security you proved to the community and what you
8 attempt to do is to avoid situations like this as
9 well as to respond when they do occur. Thank you for
10 your public service, sir, and those of the men that
11 work with you.

12 This was a well carried out and executed
13 investigation that took place immediately and it was
14 able to be resolved immediately, and in great part
15 that is due to your professionalism, so thank you for
16 what you do.

17 Mr. Garner, do you wish to speak, sir? I
18 don't demand it, but if you wish -- all right, sir.
19 We respect the fact you do not.

20 Is there someone that wishes to speak on
21 behalf of the Bristow family? We'll hear from you.
22 Please come forward, if you would. As all other
23 witnesses, will you accept the oath of a witness from
24 our clerk?

25 (BECKY TALBERT, having been duly sworn,

SENTENCING

1 testified as follows:)

2 MS. TALBERT: My name is Becky Talbert. Chris
3 Bristow was my nephew, my sister's only son. He
4 worked with me for the last ten years. I run a
5 scrapyard that he worked with me. Very loyal
6 employee, hard worker. He had his home paid for at
7 27 years old when his life was taken away. He owned
8 his own home. He owned his own car. He worked hard.
9 He provided for his family. He was married, just got
10 married in February of 2012, and his life was taken
11 in December of 2012. I would like to show you, he
12 has two remaining children that are still living, of
13 course. This is one, she is seven years old now and
14 this picture was taken on his wedding day, as you can
15 see how he is dressed. This is his youngest child,
16 she is three right now. They were both Daddy's
17 girls. He was in their life every day. They lived
18 in the same home. That home now does not exist the
19 same because he's not there.

20 Christmastime is supposed to be a joyous time
21 when you gather with your family and friends, and we
22 gathered with our family and friends, but it was at
23 the funeral home and the graveyard, that is how we
24 spent our Christmas this past year. Everyone thinks
25 of Christmas as a joyous time of the year, and this,

SENTENCING

1 I mean, this has obviously changed that for our
2 family. We will find joy again one day, but my
3 sister will never hear her son say, I love you, Mom.
4 His children will never hear his voice again, never.
5 Never is a long time. We will never be able to touch
6 him or hug him ever again (crying). He will forever
7 be in our hearts, but never, never again will we see
8 him.

9 We have so many memories because he was a
10 wonderful person. He was a wonderful person. He was
11 more like my brother than my nephew. Because of
12 absolute and blatant disregard for human life, he is
13 not here with us anymore, and that is not a choice
14 that any of us made. That is not a choice that
15 Bristow made. That choice was made for all of us.

16 He was a daddy to two girls. He was the only
17 son. He was a brother, a nephew, a grandson and a
18 cousin and a friend to a lot of people. We all have
19 big holes left in our hearts because he meant so much
20 to so many people. We have inscribed on his
21 tombstone -- this is where we spent our Christmas and
22 this is where we'll see him for his birthdays and
23 holidays (indicates). What we inscribed was, If love
24 could have saved you, you never would have died, and
25 that was the truth. If our love could have saved

SENTENCING

1 him, nothing could have mattered. Of course, that
2 doesn't matter. I just ask you to consider the void
3 left in our lives from a choice that none of us made,
4 and Bristow didn't choose to leave us. Thank you.

5 THE COURT: Thank you. One moment, please.

6 (A brief pause in the proceedings.)

7 THE COURT: Mr. Dixon, please rise. Mr. Dixon,
8 after a full trial before a jury of your peers, which
9 you have been afforded every Constitutional right
10 which you are entitled, sir, you have been convicted.
11 You've been convicted on evidence that was
12 overwhelming, it is unfortunate that this crime
13 appears to this Court just to be a senseless, foolish
14 and inexplicable act of a young and immature person
15 who not only now has ruined your life, but even more
16 importantly, the lives of many others not related to
17 this incident in any way other than to be related to
18 the deceased, and certainly ended the life of the
19 deceased who you heard has a family, who has others
20 who love him, all of whose lives had been changed
21 dramatically because of your actions, sir.

22 I'm concerned that at your young age you have
23 already had several convictions on your record.
24 Rather than sentence you to life in prison, which is
25 what this could carry for murder, the Court is going

SENTENCING

1 to give you an opportunity to see that at some point
2 in your life if you may turn it around and come back
3 to be a good citizen, if you survive a sufficient
4 number of years and are able to be released to the
5 community, but that will be many years away, sir.

6 Murder requires a day-for-day service. There
7 is no parole, there is no reduction in sentence. On
8 the charge of murder, I sentence you to 35 years in
9 the department of corrections. On the charge of
10 attempted murder, I sentence you to 30 years, and
11 that will be a concurrent sentence, and then
12 consecutive, that is in addition, I sentence you to
13 five years for the possession of a weapon during a
14 commission of a violent crime, which is a total of 40
15 years. That is the sentence of the Court.

16 Good luck to you, sir, and we will remand you
17 now to the Department of Connections.

18 Ladies and gentlemen of the jury, let me say
19 particularly to the members of the Bristow family who
20 are present that it is an easy thing to do to
21 sentence someone to life in prison, just send them
22 out that door forever. The Court has a belief -- and
23 this in no way is to disrespect the deceased -- that
24 given the young age of the defendant, he should have
25 an opportunity to prove himself. If after 35 --

SENTENCING

1 actually 40 years, if he's able to come back and be a
2 productive citizen, that would be not only to his
3 benefit, but to yours as well in a way that would be
4 difficult to anticipate something this many years in
5 advance, but that is why the Court did not sentence
6 him to life imprisonment.

7 I want to commend you for the way you
8 conducted yourselves throughout the trial. There is
9 nothing greater, nor more pivotal and core than the
10 loss of a life of a loved one in a way like this.
11 You have come in here and in great part showed that
12 Mr. Bristow was a good person just by the way his
13 family conducted themselves here. I wish you well
14 as you leave this courtroom and perhaps turn a page
15 and move forward, and maybe not to forget, but
16 perhaps to move to a time when this is less wounding
17 for you. I wish you well to that end. Mr. Garner,
18 you as well, sir.

19 That concludes this case, and this court is
20 now adjourned.

21 (Whereupon, the trial of David E. Dixon
22 concluded at 2:53 p.m., on October 31, 2013.)

23 (Court's Exhibit 4, jury charge, is marked.)
24
25

CERTIFICATE OF REPORTER

State of South Carolina)

County of Marlboro)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Marlboro County, South Carolina, on the 28th through the 31st days of October, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 30, 2013.



Natalie Dahl, RPR

Court Reporter

ORIGINAL

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JUL 07 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DAVID ERIC DIXON,

APPELLANT

APPELLATE CASE NO. 2013-002386

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to redact portions of Appellant's videotaped interview with law enforcement where Lieutenant Seales commented on how the jury would handle certain facts about the case since his comments were improper and likely interfered with the jury's role as sole trier of the facts?

STATEMENT OF THE CASE

A Marlboro County Grand Jury indicted Appellant at the February 26, 2013 term of General Sessions for murder, attempted murder, and possession of a weapon during the commission of a violent crime. R. 425-430. His case was called to trial on October 28, 2013 before the Honorable J. Michael Baxley, and a jury. R. 19. Brandon Steen represented Appellant and Mia David was the assistant solicitor. R. 19.

At the conclusion of the trial on October 31, 2013, the jury found Appellant guilty. R. 405, ll. 6-18. Judge Baxley sentenced Appellant to thirty-five years for murder, five years consecutive for the weapons offense, and thirty years concurrent for attempted murder. R. 422, ll. 6-15.

This appeal follows.

ARGUMENT

The court erred by refusing to redact portions of Appellant's videotaped interview with law enforcement where Lieutenant Seales commented on how the jury would handle certain facts about the case since his comments were improper and likely interfered with the jury's role as sole trier of the facts.

Relevant Facts

Defense counsel moved pretrial to suppress the oral statement Appellant gave to law enforcement shortly after his arrest or, in the alternative, to redact specific portions of the statement. Specifically, defense counsel explained, "There's two parts where Lieutenant Seales discusses how the jury should handle these facts, and I think it interferes with the jury as the only trier of facts. In that part of the statement, [Seales] says these are the facts and this is what the jury will see as the facts. But those are the only redactions¹ in the alternative of the entire statement being suppressed." R. 75, l. 12 – 76, l. 3.

The first requested redaction, which occurs between 28:35 and 28:45 of the video, states, "This is what the jury is going to hear and if you come in there with a story like that, you know, I mean, it's not going to take them fifteen minutes to convict you." See State's Exhibit No. 50 (CD Statement of David Dixon). The second requested redaction, which occurs between 32:20 and 32:45, states, "The jury is going to be sitting there deliberating and saying well they had to bring him back in there and he didn't even tell the truth or they

¹ Defense counsel also moved to redact the parts of Appellant's recorded interview that referenced his prior convictions and sentence, which the solicitor agreed to do. Additionally, defense counsel moved to redact Lieutenant Seales' assertion to Appellant during the interview that there was no gunshot residue found on the decedent's hands because this turned out to be false. R. 75, ll. 14-21. Appellant does not challenge on appeal the trial court's refusal to redact this portion of the interview.

can say, well look man, he ain't, he did shoot him, he shot him straight up, he shot him in the back when he was running from him, but he might have thought he was running to get a gun because two witnesses said he pulled a gun on him [inaudible], I mean we don't know that. It's just a theory." See State's Exhibit No. 50 (CD Statement of David Dixon).

The solicitor opposed redacting the portions of the interview where Lieutenant Seales mentions the jury and how the jury would handle certain facts arguing that it was merely an interrogation tactic. She said, "[T]he other two redactions that involve Investigator Jamie Seales. I feel like they should be admitted. As an investigator for our community, he has the right to be dishonest, lie, say whatever he wants, but he had the right to talk about the defendant to get a confession to find out what is going on with the case to solve the crime." R. 76, ll. 9-16. She later argued, "Investigator Jamie Seales . . . knew the statement that the defendant was making was untrue because the defendant was saying they were facing each other when the altercation occurred. Jamie Seales knew he [the decedent] had three shots to the back, so he's thinking, You're not telling me the truth, I need to keep talking and see what I need to say to convince you to tell the truth and be honest." R. 81, ll. 13-22.

Defense counsel responded, "With regard to the jury handling certain facts, Lieutenant Seales is an authority figure, respected figure, and I don't want the jury to think that is what he thinks about the facts, so that is what I need to think also. I mean, Your Honor, I was very exclusive in picking out what I was picking [to redact] -- I mean down to as little as I could do. *I don't want the jury to have anything interfering with their deliberations.*" R. 84, ll. 2-10 (emphasis added).

However, the court ultimately ruled, "Respectfully, I'll deny your motion with regard to these jury comments for the following reasons. First of all, while the Court makes the initial decision of admissibility [of Appellant's statement], which I'll do in a few moments,² the jury ultimately makes the decision of voluntariness, I find this evidence is relevant and probative on the issue of whether or not the defendant was overreached, whether the statement was voluntary, whether this is a valid interrogation technique. This is not for the judge to decide, this is for the jury to decide." R. 84, l. 24 – 85, l. 9.

Discussion

The right to a fair trial by an impartial jury in a criminal prosecution is guaranteed by the Sixth Amendment to the United States Constitution and by Article I, § 14, of the South Carolina Constitution. State v. Stewart, 278 S.C. 296, 303, 295 S.E.2d 627, 630-631 (1982). "Under our Constitution, the jury are the exclusive judges of the facts." State v. Pruitt, 187 S.C. 58, 196 S.E. 371, 374 (1938).

Our supreme court has long held that a trial judge may not comment on the facts of a case because such comments may improperly influence the jury, which is the sole trier of the facts. See State v. White, 15 S.C. 381, 392 (1881) ("[T]he real object of this clause of the Constitution is to leave the decision of all questions of fact to the jury exclusively, uninfluenced by any expression of the opinion by the judge, whose position would very naturally add great weight to any opinion he might express upon any question of fact arising in a case."); see also State v. Howell, 28 S.C. 250, 255, 5 S.E. 617, 620 (1888) ("[T]he jury

² The trial court later ruled that Appellant's recorded interview with law enforcement was admissible after finding Appellant had been properly advised of his constitutional rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), and subsequently waived those rights, and that it was "a free and voluntary statement given without duress . . . and without undo influence." R. 87, l. 18 – 88, l. 22.

must be left perfectly free in reaching a conclusion upon the testimony introduced, untrammelled by any intimation from the judge as to whether a certain fact at issue has been proved or not.”).

A law enforcement officer's comments on the facts of a case or how the jury should interpret the facts may likewise improperly influence the jury and interfere with the jury's role as the exclusive trier of the facts. A law enforcement officer, just like a judge, is in a position of authority and, as a result, the jury may be more inclined to adopt his interpretation of the facts. However, jurors must form their own judgment unbiased by any improper influence.

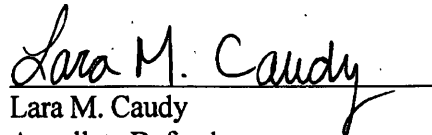
Lieutenant Seals' statement during the interview that “it's not going to take them [the jury] fifteen minutes to convict you” may have been interpreted by the jury that they should convict Appellant without hesitation because that is what Seals, a law enforcement officer, believed. Furthermore, Seals' second statement could have been interpreted by the jury that it should convict Appellant because he could not come up with a plausible reason for shooting the decedent in the back.

It is therefore likely that Lieutenant Seals' comments improperly interfered with the jury's deliberations and affected the outcome of Appellant's trial. These improper comments should have been redacted before the recorded interview was played for the jury. The trial court's failure to do so warrants a new trial.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court reverse his convictions and sentence and remand this case to the Marlboro County Court of General Sessions for a new trial.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID ERIC DIXON,

APPELLANT

APPELLATE CASE NO. 2013-002386

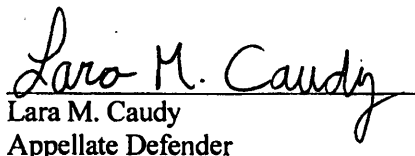
PETITION TO BE RELIEVED AS COUNSEL

Counsel for David Eric Dixon states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial before the Honorable J. Michael Baxley, which was held on October 28-31, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for David Eric Dixon.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County

J. Michael Baxley, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAVID ERIC DIXON,

APPELLANT

APPELLATE CASE NO. 2013-002386

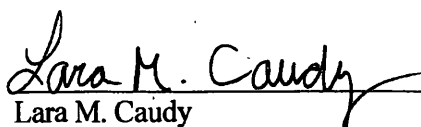
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Entire bond hearing transcript dated August 13, 2013;
- (3) Motion for Production of Evidence, Continuance, Scheduling Order, and to Keep the State's Offer Open filed on September 9, 2013;
- (4) Motion to Suppress Defendant's Statement Pursuant to *Jackson v. Denno* dated October 28, 2013;
- (5) Entire trial transcript dated October 28-31, 2013;
- (6) State's Exhibit No. 50 (CD Statement of David Dixon).

I certify that this designation contains no matter which is irrelevant to this appeal.

July 7th, 2014



Lara M. Caudy
Appellate Defender

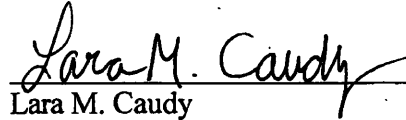
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 7, 2014



Lara M. Caudy
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Marlboro County
J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

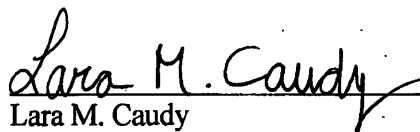
V.

DAVID ERIC DIXON,

APPELLANT

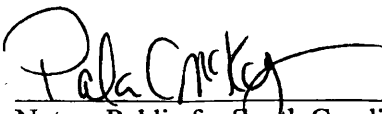
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on David Eric Dixon, #331496 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 7th day of July, 2014.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of July, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID ERIC DIXON,

APPELLANT,

APPELLATE CASE NO. 2013-002386

PRO'SE BRIEF OF APPELLANT

David Eric Dixon SCDC#331496
Pro'se Defender
BRCI Monticello 197
4460 Broad River Road
Columbia, S.C. 29210

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SEP 18 2014

SC Court of Appeals

STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to grant Appellant's Motion to keep the State's offer open until Discoverable Evidence is turned over.

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SEP 18 2014

SC Court of Appeals

STATEMENT OF THE CASE

A Marlboro County Grand Jury indicted Appellant at the February 26, 2013 term of General Sessions for murder, attempted murder, possession of a weapon during the commission of a violent crime. R. 425-430. His case was called to trial on October 28, 2013 before the Honorable J. Michael Baxley, and a jury. R. 19. Brandon Steen represented Appellant and Mia David was the assistant solicitor. R. 19.

At the conclusion of the trial on October 31, 2013, the jury found Appellant guilty. R. 405, 11 6-15.

This appeal follows.

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SEP 18 2014

SC Court of Appeals

ARGUMENT

The Court erred by refusing to grant Appellant's Motion to keep the State's offer open until Discoverable Evidence is turned over.

Relevant Facts:

Defense Counsel on September 9, 2013 submitted a Motion in the Court of General Sessions. R. 14-17. For production of Evidence, Continuance Scheduling Order, and to keep the State's offer open. At Appellant's August 13, 2013 Bond Hearing R. 1-12 The State informed the Honorable Edward B. Cottingham that a offer of 25 years was made and to expire on August 26, 2013. However the State failed to produce certain Evidence prior to this Plea expiration date which was the motivation for Counsel's said Motion. This Motion was heard for the First time on October 28, 2013 Appellate's trial date. by the Honorable J. Michael Baxley during this hearing Defense Counsel stated that the State had not produced evidence nor gave Defense Counsel time to do a independent investigation of said evidence. Defense Counsel also stated that when himself and Appellant did receive and review said evidence that Appellant agreed to plea to State's offer of 25 years.

Discussion:

Pursuant to Chief Justice Toal's March 1, 2004 Order on Plea Agreements and Discovery Appellant's plea offer should not have been allowed to expire until Appellant and Counsel had a chance to review Appellants Discovery. In said Order, C. J. Toal stated that it is unethical to promise a plea agreement on the defendant relinquishing the right to Discovery in Criminal Cases. This practice is going to have adverse consequences in the future....

CONCLUSION

For the foregoing reasons, Appellant respectfully request this Court to Vacate his sentence and remand this case to the Marlboro County Court of General Sessions for resentencing consistent with the original Plea Agreement.

Respectfully Submitted

David Eric Dixon
Pro'se Brief

Date: 9-12-14

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marlboro County

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DAVID ERIC DIXON,

APPELLANT,

CERTIFICATE OF SERVICE

I David Eric Dixon hereby certify that a true copy of this Pro'se Brief in the above reference Case has been served upon Donald J. Zelenka, Esp, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, S.C. 29201 on this 12 day of September 2014.

Subscribed and Sworn to

before me this 12th day of September, 2014

Susan H. Frye
Notary Public for South Carolina

My commission expires

David Eric Dixon
David Eric Dixon
Pro'se Brief

Commission Expires
March 5, 2018



DAVID ERIC DIXON, SCD#331496
Pro'se Defender
BRCI Monticello 197
4460 Broad River Road
Columbia, S.C. 29210

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SEP 18 2014

SC Court of Appeals

RECEIVED

SEP 12 2014

BRCI
MAILROOM

South Carolina Court
of Appeals
Jenny Abbott Kitchings
Post Office Box 11629
Columbia, South Carolina
29211

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

David Eric Dixon, Appellant.

Appellate Case No. 2013-002386

Appeal From Marlboro County
J. Michael Baxley, Circuit Court Judge

Unpublished Opinion No. 2015-UP-385
Submitted June 1, 2015 – Filed July 29, 2015

APPEAL DISMISSED

Appellate Defender Lara Mary Caudy, of Columbia; and
David Eric Dixon, pro se, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Donald J. Zelenka,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, LOCKEMY, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 14, 2015

The Honorable William B. Funderburk
PO Drawer 996
Bennettsville SC 29512-0996

REMITTITUR

Re: The State v. David E. Dixon
Lower Court Case No. 2013GS3400086, 2013GS3400087, 2013GS3400088
Appellate Case No. 2013-002386

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

Enclosure

cc: David Eric Dixon, 331496
Alan McCrory Wilson, Esquire
Lara Mary Caudy, Esquire
Donald J. Zelenka, Esquire
The Honorable J. Michael Baxley

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF MarlboroDavid Eric Dixon #331496

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

15-CP-34-00228

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Inst., 990 Wiscacky Hwy., Bishop, SC
2. Name and location of Court which imposed sentence Marlboro County Court
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-34-0086, murder, 35 years mandatory
 - (b) 2013-GS-34-0087, Attempted Murder, 30 years concurrent
 - (c) 2013-GS-34-0088, poss. of a weapon during the commission of a violent crime, 5 year consecutive
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 31-2013, Mandatory 35 years, murder
 - (b) October 31-2013, 30 years concurrent, Attempted murder

Revised 3/2003

(#2 Continues)
Reversed Side

- (c) October 31-2013, 5 years consecutive, pass of a weapon during the commission of a violent crime
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 29-2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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 WILLIAM B. FUNDERSBURK
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

- (a) Ineffective assistance of Counsel
- (b) Ineffective assistance of Appellate Counsel
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Failed to have a mental health exam done before trial.
- (b) Failed to file a motion to keep state's offer of 25 years open in a timely manner.
- (c) Failed to object to the jury instruction that attempted murder is a general intent crime.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____

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 WILLIAM B. FUNDERBURK
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

(11. Continues)
 (Reversed side)

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____

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 WILLIAM B. FENDERBURK
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Can not raise ineffective assistance of counsel in the Court of Appeals
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes _____
- (c) your sentencing? Yes _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. T. Brandon Steen, 4th Circuit Public Def., 312 West Main St., Dillon SC 29536
- ii. Nick Lewis, 4th Circuit Public Def., 312 West Main St., Dillon SC 29536
- iii. Lora M. Caudy, Division of Appellate Defense, 1330 Lady St, Suite 401, Columbia, SC 29201
- (b) the proceedings at which each such attorney represented you:
- i. Trial and sentencing
- ii. Direct appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

for this court to vacate my sentence and remand this case to Marlboro County

20. Are you now under sentence from any other court that you have not challenged?

no

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 2015 AUG 19 5PM 10 01
 WILLIAM B. FENDERBURK
 CLERK OF COURT
 MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA)

County of Marlboro)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David Dixon

SWORN to and subscribed before me this 13th
day of August, 2015

Paul J. Diggers (L.S.)
Notary Public

My Commission Expires: 11-05-2019

FILED
2015 AUG 19 AM 10 01
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Daniel Dixon

Applicant

SWORN or affirmed to and subscribed before me this
13th day of August, 2015.

Sam E. Diggers
Notary Public

My Commission Expires:

11-05-2019

FILED
2015 AUG 19 AM 10 01
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

State of South Carolina,
Plaintiff,

-vs-

David Dixon

☒ Defendant ☐ Juvenile.

) IN THE COURT OF (Select one.)
) ☐ GENERAL SESSIONS ☐ FAMILY COURT
) FOURTH JUDICIAL CIRCUIT
) CASE NO.: 15-CP-34-00228
) APPOINTMENT OF COUNSEL
) (Select one.)

) ☒ ORDER
) ☐ AMENDED ORDER

Offense(s): _____

It appears that the above named person is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☐ the public defender now represents another person involved herein and that a conflict would arise if that office represents the above-named individual.
- ☐ the public defender has indicated a possible conflict of interest or other good cause warranting the appointment of counsel based on:
- ☐ the public defender or court-appointed counsel has indicated that the named individual has now retained private counsel and is no longer entitled to appointed counsel.
- ☐ court-appointed counsel has claimed an exemption or has demonstrated good cause pursuant to Rule 608 warranting the appointment of new counsel based on:
- ☐ court-appointed counsel has obtained substitute counsel named below pursuant to Rule 608(h)(2); only the member who originally received the appointment and who sought substitute counsel shall receive credit for the appointment.

Therefore, it is ordered that Lance Boozer, Esquire hereby is appointed as
(Select only one.) ☒ counsel ☐ lead counsel (if capital PCR case)

for the above-named person. Counsel previously appointed is/are hereby relieved as counsel.

☐ (If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 19 DAY OF August, 2015.

William B. Funderburk
☐ Circuit Judge ☒ Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

SCCA/268 (03/07)

Lance Boozer
807 Gervais St, Suite 203
Columbia, SC 29201

FILED
2015 AUG 20 AM 9:08
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF MARLBORO

David Eric Dixon, #331496

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

2015-CP-34-0228

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on August 19, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Marlboro County. Applicant was indicted during the February 2013 term of the Grand Jury for Marlboro County for one of murder (2013-GS-34-0086), one of attempted murder (2013-GS-34-0087), and one of possession of a weapon during the commission of a violent crime (2013-GS-34-0088). At trial, Applicant was represented by Timothy Brandon Steen, Esq. and Nick Lewis, Esquire. On October 31, 2013, Applicant was convicted as indicted for all three charges and sentenced by the Honorable J. Michael Baxley to imprisonment of thirty-five (35) years for murder and thirty (30) years for attempted murder, to be served concurrently. Applicant was sentenced to imprisonment of five (5) years for possession of a weapon during the commission of a violent crime, to be served consecutively to the other two sentences, for a total of forty years' imprisonment.

Applicant filed a timely notice of appeal. An appeal was perfected by Lara Caudy, Esquire, who submitted an Anders brief. The South Carolina Court of Appeals dismissed

Applicant's appeal and granted counsel's motion to be relieved in an unpublished opinion filed on July 29, 2015. State v. Dixon, Op. No. 2015-UP-385 (S.C. Ct. App. 2015). The Remittitur was returned on August 14, 2015.

Attached herewith and incorporated herein by reference are the records of the Marlboro County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of [Trial] Counsel
 - a. "Failed to have a mental health exam done before trial."
 - b. "Failed to file a motion to keep state's offer of 25 years open in a timely manner."
 - c. "Failed to object to the jury instruction that Attempted Murder is a general intent crime."
2. Ineffective Assistance of Appellate Counsel

III.

Applicant claims ineffective assistance of trial counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having

produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). “However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397

S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel while Applicant has failed to meet his present evidence to the contrary. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent therefore requests an evidentiary hearing on this allegation.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the

inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of trial and appellate counsel.

Respectfully submitted,

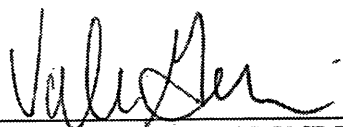
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

January 25 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2015-CP-34-0228
DAVID DIXON, 331496,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Lance S. Boozer Esquire
Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201

DATED this 25th day of January, 2017.

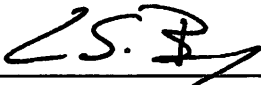


 Mallory Morris, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	)	C/A NO: 2015-CP-34-228
	)	
David Dixon, #331496,	)	
	)	
Applicant,	)	
	)	FIRST AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed August 19, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (i) Counsel failed to properly calendar and/or record the deadline with which to accept the State's plea offer and offered erroneous information to Applicant regarding the deadline to accept the plea. See trial transcript pg. 50-53. See also bond hearing transcript, pg. 6 and pg. 10.
 - (ii) Counsel failed to argue prior to trial that the State's plea offer should have been allowed to remain open after counsel was provided with ballistics information that was subject to Rule 5 disclosure and bring to the Court's attention Chief Justice Toal's March 1, 2004, memorandum regarding plea agreements and discovery to Solicitors.



 Lance S. Boozer
 Attorney for Applicant
 THE BOOZER LAW FIRM, LLC
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

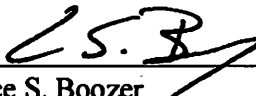
Columbia, South Carolina
June 1, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	)	C/A NO: 2015-CP-34-228
	)	
David Dixon, #331496,	)	
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Johnny E. James, Jr.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


Lance S. Boozer
Attorney for Applicant
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
June 1, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	)	
David Eric Dixon,	)	Case No.: 2015-CP-34-00228
S.C.D.C. No. 331496,	)	
	)	
Applicant,	)	
	)	AMENDED RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by David Eric Dixon (Applicant) on August 19, 2015, and amended by filing on June 5, 2017, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Marlboro County. Applicant was indicted during the February 2013 term of the Grand Jury for Marlboro County for murder (2013-GS-34-0086), attempted murder (2013-GS-34-0087), and possession of a weapon during the commission of a violent crime (2013-GS-34-0088). At trial, Applicant was represented by Timothy Brandon Steen, Esq. and Nick Lewis, Esquire. Mia David, Mary Thomas Johnson-Lee, and William Shipp Daniel, III, each of the Fourth Circuit Solicitor's Office, prosecuted the case.

On October 31, 2013, Applicant was convicted as indicted for all three charges and sentenced by the Honorable J. Michael Baxley to concurrent terms of imprisonment of 35 years for murder and 30 years for attempted murder. Applicant was sentenced to imprisonment for a

consecutive term of 5 years for possession of a weapon during the commission of a violent crime, for a total of forty years' imprisonment.

Applicant filed a timely notice of appeal. An appeal was perfected by Lara Caudy, Esquire, who submitted an Anders brief. The South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's motion to be relieved in an unpublished opinion filed on July 29, 2015. State v. Dixon, Op. No. 2015-UP-385 (S.C. Ct. App. 2015). The Remittitur was returned on August 14, 2015.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Failed to have a mental health exam done before trial."
 - b. "Failed to file a motion to keep state's offer of 25 years open in a timely manner."
 - c. "Failed to object to the jury instruction that Attempted Murder is a general intent crime."
2. "Ineffective Assistance of Appellate Counsel"

In his first amendment to his application, Applicant alleges the following additional claims for relief:

3. Ineffective Assistance of Counsel, in that:
 - a. "Counsel failed to properly calendar and/or record the deadline with which to accept the State's plea offer and offered erroneous information to Applicant regarding the deadline to accept the plea. See trial transcript pg. 50-53. See also bond hearing transcript, pg. 6 and pg. 10."
 - b. "Counsel failed to argue prior to trial that the State's plea offer should have been allowed to remain open after counsel was provided with ballistics information that was subject to Rule 5 disclosure and bring to the Court's attention Chief Justice Toal's March 1, 2004, memorandum regarding plea agreements and discovery to Solicitors."

Incorporated herein by reference¹ are the records of the Marlboro County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient

¹ The materials referenced have already been provided to the Court and all parties in the original return.

performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of

effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel while Applicant has failed to meet his present evidence to the contrary. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent therefore requests an evidentiary hearing on this allegation.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

VI.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of trial and appellate counsel.

Respectfully submitted,

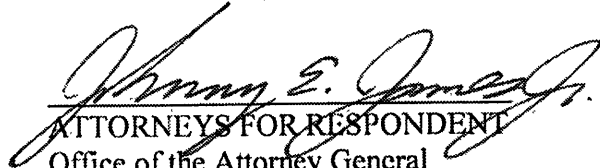
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

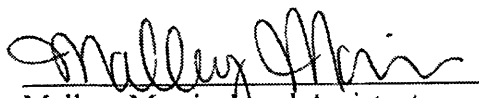
June 12, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARLBORO	)	
	)	
	)	2015-CP-34-0228
DAVID E. DIXON, #331496,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer Esquire
Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201

DATED this 12th day of June, 2017.


Mallory Morris, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF MARLBORO) 2016-CP-34-00228

DAVID ERIC DIXON)
APPLICANT)
vs.) TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)
RESPONDENT)

July 24, 2018
Darlington, South Carolina

B E F O R E:

THE HONORABLE LARRY B. HYMAN, JR., JUDGE.

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

LANCE S. BOOZER, ESQUIRE
Attorney for the Applicant

JOHNNY E. JAMES, JR., ASSISTANT ATTORNEY GENERAL
Attorney for the State

T. BRANDON STEEN, Esquire

HATTIE O. GORDON
Circuit Court Reporter

I N D E X

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APPELLATE'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Letter Dated 03/01/04	23	23

COLLOQUY

1
2 THE COURT: All right. Mr. Boozer, this is Mr.
3 Dixon?

4 MR. BOOZER: It is, Your Honor.

5 THE COURT: Okay. Mr. James.

6 MR. JAMES: Just one moment longer, Your Honor. May
7 it please the Court, Your Honor. This is the matter of
8 David Eric Dixon v. State of South Carolina. Docket
9 Number 2015-CP-34-00228. Mr. Dixon is present here in the
10 courtroom today and represented by Mr. Lance Boozer,
11 Esquire.

12 Your Honor, my understanding as to the allegations
13 that we will be going forward on today are limited to
14 those set forth in the first amendment to the application
15 prepared by Counsel Boozer.

16 THE COURT: But he's dismissing the ineffective
17 assistance of appellate counsel; is that right? It's my
18 understanding?

19 MR. BOOZER: I'm sorry, Judge.

20 MR. JAMES: You're not pursuing ineffective
21 assistance of appellate counsel?

22 MR. BOOZER: No, Your Honor.

23 THE COURT: Okay. All right.

24 MR. JAMES: Otherwise, my understand is that the
25 Court is already familiar with the procedural history of

1 this case, and I will seat the floor over to Mr. Booze.

2 MR. BOOZER: Thank you, Your Honor. May it please
3 the Court. We will go ahead and call Mr. Dixon to the
4 stand.

5 THE COURT: Very well. Come around, Mr. Dixon.

6 DAVID DIXON, after being duly sworn, testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. BOOZER:

10 Q. Mr. Dixon, how are you doing today?

11 A. I'm doing already.

12 Q. Good. You have been waiting a long time for this,
13 have you not?

14 A. Yes.

15 Q. Okay. Now, Mr. Dixon, do you understand what we're
16 here today in Court for post conviction relief
17 application?

18 A. Yes, sir.

19 Q. Okay. Where are you currently incarcerated?

20 A. Murder and attempted murder and possession of weapon
21 during a violent crime.

22 Q. Now, did you go to trial on those charges?

23 A. Yes, sir.

24 Q. All right. And who was your lawyer?

25 A. Brandon Steen.

1 Q. What type of sentence did you receive?

2 A. I received 40 years.

3 Q. Okay. Now, you filed additionally a P.C.R.
4 application, and I became involve in your case and we
5 filed some amendments, do you recall that?

6 A. Yes, sir.

7 Q. All right. And one of those amendments is that your
8 lawyer fail to properly calendar in or record the deadline
9 for a date for you to accept the plea offer?

10 A. Right.

11 Q. And another one is that your lawyer failed to argue
12 that the plea offer remain open after you were provided
13 with some ballistic information?

14 A. That is correct.

15 Q. All right. Now, Mr. Dixon, you got a very unique
16 case as I have told you. Do you understand that?

17 A. Yes, sir.

18 Q. And you understand that in your case you're not
19 specifically asking for a new trial. You're asking for
20 the original plea offer?

21 A. That's right.

22 Q. Okay. Mr. Dixon, let's talk about -- was there a
23 plea offer in this case?

24 A. Yes, sir, a plea enter 25 years.

25 Q. A plea offer for 25 years. Okay. When was that

1 made?

2 A. August the 26th, if I'm not mistaken.

3 Q. All right.

4 THE COURT: Of what year?

5 THE WITNESS: 2013. That was it. No. Excuse me.

6 That was the deadline for was August 26th 2013.

7 BY MR. BOOZER:

8 Q. But prior to your trial on August 13th 2013 was there
9 a hearing held or was there a plea offer that was
10 discussed in front of the Court?

11 A. August the 13th to my knowledge. That's when the
12 Court, the Judge and my attorney had a meeting, if I'm not
13 mistaken, about the 25 years.

14 Q. Okay, let me refresh your memory.

15 MR. BOOZER: Your Honor, if I may, we're going to be
16 referencing the transcript that's in Your Honor's packet
17 dated August 13th 2013.

18 THE COURT: I got it right here.

19 MR. BOOZER: And simply, Judge, I'm going to start on
20 Page 6.

21 MR. JAMES: As a matter of clarity, Your Honor, it's
22 going to be a small, short one that sitting in there. Not
23 the full sized transcript.

24 THE COURT: I mean -- what -- okay.

25 MR. BOOZER: There are two transcripts. The full

1 trial and this little pre-trial one.

2 THE COURT: All right. I got you now. I mean it's
3 pretty much undisputed. Can't we just -- and we can
4 through the transcripts. Can we just state for me when
5 the offer was made and when it was expired? Is there any
6 disagreement as to when those two events occurred, Mr.
7 James?

8 MR. JAMES: At the risk of pretrying the case, Your
9 Honor, the State's position is going to be that Mr. Dixon
10 repeatedly denied the offer.

11 THE COURT: I understand, but as to when the State
12 came forward with an offer and when it was to expire. Is
13 there agreement as to those two dates? I mean, typically,
14 that is what I see. The Solicitor says, "I made an offer
15 on such and such a date. Here is my letter, and here is
16 when it was to end." Is there some disagreement as to
17 those two?

18 MR. JAMES: To the extent that it's provided in the
19 transcript and by counsel's recollection I'm not going to
20 dispute that claim.

21 THE COURT: Okay. All right. Can you tell me so
22 I'll know what I'm looking for?

23 MR. BOOZER: Sure, Judge. Page 6 beginning at Line
24 19, the State indicates, "We're prepared to move forward
25 with this case the week of September 30th. We made an

1 offer for the Defendant for 25 years. The State's
2 position is we're asking him to accept the offer before
3 August 26th."

4 THE COURT: Okay. All right.

5 MR. BOOZER: And, Judge ---

6 THE COURT: And this was at the hearing before Judge
7 Cottingham; is that right?

8 MR. BOOZER: That is correct, Your Honor.

9 THE COURT: Go ahead.

10 MR. BOOZER: And then I think this will clear up some
11 things, too, if I can leap forward for Your Honor ---

12 THE COURT: All right.

13 MR. BOOZER: --- on the record on appeal. This is
14 the larger transcript.

15 THE COURT: Okay.

16 MR. BOOZER: Go to Page 68, and I'm using appellate
17 record numbers.

18 THE COURT: All right. Yes, sir.

19 MR. BOOZER: At Page -- excuse me. This is Appellate
20 Record 68, Page 68, Line 16. And this is his former
21 counsel addressing the Court: "Yes, Your Honor, I don't
22 think it was an unreasonable request, and I'm talking
23 about some discovery. And I'm talking about having the
24 plea deadline extended. My client wanted to see the
25 evidence against him before he accepted the State's offer

1 on such a serious offense, and I agreed. So we waited for
2 the evidence to come in, and as soon as I took the
3 evidence to Mr. Dixon he looked at it and said, "Okay,
4 I'll plead."

5 And I called the Solicitor immediately, but I think
6 it is unreasonable against our client." And Mr. Steen
7 continues on Page 69, "Yes, sir. Per the Solicitor
8 yesterday I think he said that the deadline passed on
9 August 26th. We did have a conference with Your Honor on
10 September 12. At that time, based on that I thought that
11 the offer was still open.

12 I'm not exactly sure at what point it was withdrawn
13 or the deadline was put on the record, but I thought it
14 remained open."

15 So I think it's undisputed that -- well, I think his
16 lawyer at the time of the dispute it was a deadline of
17 August 26th. But the State's position, obviously, is
18 there was a plea offer. It expired on August 26th. There
19 was some evidence, some ballistic evidence, that we still
20 out there that had not yet come in that my client will
21 testify and is seen in this record that he wanted to see
22 it before he made up his mind about whether to plead or
23 not.

24 As soon as he saw it he tells his lawyer, "I want to
25 plead." Lawyer goes to the State, and they say, "Too

1 late," and Mr. Steen is trying to get the Court to keep
2 that offer open. So I think the dates in the transcript
3 were for the Court, if that makes sense, Judge.

4 THE COURT: All right.

5 MR. BOOZER: And I'm happy to continue with the
6 testimony.

7 THE COURT: Yeah, please do. I was just trying to
8 get.

9 MR. BOOZER: Sure.

10 BY MR. BOOZER:

11 Q. Mr. Dixon, do you understand the colloquy I just had
12 with the Court about the events as the transpired?

13 A. Yes, sir.

14 Q. Okay. And those dates we were talking about the
15 August 13th hearing and then the deadline of August 26th.
16 And eventually you appeared in Court beginning on October
17 28th 2013?

18 A. Right.

19 Q. All right. When the plea offer was made to you were
20 there still some items you wanted to see in discovery?

21 A. There was.

22 Q. What was that?

23 A. Ballistics, the G.S.R. kit that had been done and a
24 couple off -- excuse me. Statements from the victims.
25 Not the victims, but the eye witnesses statement was left

1 out. I was still waiting on that.

2 Q. Did you want to view all of that in order to make
3 your decision about whether you wanted to go to trial or
4 whether you wanted to go and plea?

5 A. Yes, sir.

6 Q. Eventually were y'all provided with those items?

7 A. Yes, sir. Most of it we got the date of the trial.

8 Q. Okay. After you saw those items when did you tell
9 Mr. Steen that you wanted to plead guilty?

10 A. He had done a visit with me in Dillon County. I'm
11 not sure exactly what day it was, but it was probably two
12 weeks before the trial.

13 Q. Okay. And you told him, "I want to accept this
14 offer?"

15 A. Yes, sir.

16 Q. And what did he tell you?

17 A. He told me that he would call the Solicitor and put
18 it in.

19 Q. What happened after that?

20 A. After that, a week before the trial, that's when I
21 find out I was going to trial. The plea was not open.

22 Q. What did your lawyer tell you?

23 A. He told me that we were going to trial. The plea is
24 not open. The State didn't want me to accept the plea;
25 that it was off the table.

1 Q. Did your lawyer ever talk to you or tell you that
2 there was any sort of expiration date on August 26th on
3 the plea offer?

4 A. I found out about the expiration date the day we had
5 the bond hearing. That's the day I had known of it, but
6 to my knowledge that he told me it wasn't an expiration
7 date.

8 Q. Okay. And you were ready, willing and able to accept
9 that plea? That's what you wanted that day?

10 A. Yes, sir.

11 Q. Not a trial?

12 A. Yes, sir. The date of the deadline the County
13 transport was taking me to the courthouse to accept the
14 plea and turned around. They got a call from the warden
15 that I didn't have Court. So they took me back to the
16 County Jail.

17 Q. All right. So you were going to accept the plea
18 earlier?

19 A. Yes, sir.

20 Q. All right. And that was after you had seen some of
21 that evidence?

22 A. No, sir. That was before. That was the day of the
23 deadline.

24 Q. So even before this you were trying to accept the
25 plea?

1 A. Yes, sir.

2 Q. Did you tell your lawyer that you wanted to accept
3 the plea?

4 A. He came and seen me that day after court and said
5 that he was trying to get the plea for 20 years, and that
6 was it. That's why I didn't go to court that day.

7 Q. Tell me that one more time. I'm sorry?

8 A. That he was trying to get me a plea for 20 years.

9 Q. Okay.

10 A. And that's why I didn't go to court that day.

11 Q. But the reason you didn't go by the deadline is
12 because he was still trying to get a 20-year deal?

13 A. No, sir. The day of the deadline. That's why I
14 didn't go cause he was trying to get me a plea for 20
15 years.

16 Q. Okay. And at the time of the deadline had you known
17 that he had not gotten the 20-year deal would you have
18 taken 25?

19 A. Yes, sir, I would have accepted it.

20 Q. And you also ready to accept that right at the start
21 of trial?

22 A. Yes, sir.

23 Q. All right. Thank you, Mr. Dixon. That's all the
24 questions that I have.

25 THE COURT: All right. Mr. James.

CROSS-EXAMINATION

BY MR. JAMES:

Q. Hang on one second, Mr. Dixon. Mr. Dixon?

A. Yes, sir.

Q. Was the plea offer communicated to you?

A. It was communicated to me one time, sir.

Q. All right. When?

A. The day of the bond hearing. That's the first time I had heard about it.

Q. Okay. But you did understand that there was a plea offer on the table for 25 years?

A. Yes, sir.

Q. What did you tell your attorney?

A. Waiting to get the evidence based on the -- by the Supreme Court Chief Justice C.J. Toal. The order on plea agreements and discovery. I wanted to see my discovery before I accepted a plea.

Q. Did you know about that Justice Toal's advisory order

A. No, sir.

Q. --- that day or did you learn about it later on?

A. I learned about it when he put the order in to keep the plea on the table.

Q. Okay. And that occurred at trial?

A. No, that was discussed before trial. No.

1 Q. Did he explain that to you later on?

2 A. Yes, sir.

3 Q. And your attorney explained that order to try to keep
4 the plea offer on the table?

5 A. Yes.

6 Q. All right. So you did know about the deadline, and
7 you were being transported to try to accept the plea?

8 A. Yes, sir.

9 Q. At the time of that deadline?

10 A. Yes, sir.

11 Q. Did your attorney tell you about the deadline?

12 A. No. I found out about that at the bond hearing. The
13 deadline.

14 Q. But you knew about the deadline before the plea?

15 A. To his knowledge he said he didn't know of one.

16 Q. But you knew of it?

17 A. And I was willing to accept the plea the day of the
18 deadline, but they never took me to court which I have
19 right here the paper from Earl Hood at the County Jail
20 where I had wrote and asked for all records of when I was
21 transported to the court and he said that there was
22 nothing kept on document.

23 I was transported every time. If that was the case
24 that day I would have been documented that I was
25 transported to the courthouse and there is none.

1 Q. Did you continue to want the plea offer after the
2 deadline?

3 A. Yes, sir.

4 Q. Did you ever tell your attorney that you did not want
5 the 25 year offer once that deadline had passed?

6 A. No, sir.

7 MR. JAMES: No further questions for the witness,
8 Your Honor.

9 MR. BOOZER: Nothing further, Your Honor.

10 THE COURT: You may step down, Mr. Dixon.

11 MR. BOOZER: Call Brandon Steen to the stand, Judge.

12 THE COURT: All right.

13 BRANDON STEEN, after being duly sworn, testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. BOOZER:

17 Q. Mr. Steen, how are you doing?

18 A. Good. Thank you.

19 Q. Good. We're just going to cut straight to it. Did
20 you represent Mr. Dixon in this case?

21 A. I did.

22 Q. And do you recall there being a plea offer?

23 A. Yes, sir.

24 Q. In this case?

25 A. Sorry. Yes, sir.

1 Q. Was the plea offer?

2 A. Twenty-five years to voluntary manslaughter.

3 Q. Okay. And at the time of the plea offer you recall
4 when that was made?

5 A. It was made on the day of the bond hearing that we
6 had been discussing on August the 13th. I received it
7 immediately before the bond hearing. We went there for
8 the bond hearing, and I didn't have a chance to convey
9 that to the client before the bond hearing. That's when
10 it was first delivered to him.

11 Q. Okay. And just reading from the transcript I just
12 read on Page Six of that bond hearing the State indicated
13 that it was the State's position that were asking he
14 accept that offer before August 26th and if not we will
15 prepare to go to trial. Move to trial and revoke the
16 offer and that's it. Do you recall that?

17 A. Yes, sir.

18 Q. All right. Did you take note of that or write it
19 down on a calendar or anything like that?

20 A. Yes, sir.

21 Q. All right. And do you recall -- I think you do on
22 Page Ten of that same transcript the Court had indicated
23 after August 26th it would not be available. So you were
24 aware that there was an expiration date?

25 A. Yes, sir.

1 Q. Did you have a discussion after that hearing about
2 the plea offer with Mr. Dixon since y'all had just been
3 presented with it?

4 A. Yes, I met with Mr. Dixon on August the 15th.
5 Discuss the 25 year offer to voluntary. Mr. Dixon stated
6 that he would only plead to 20 years. On August the 20th
7 I spoke with Mr. Dixon again. Again, he would not take
8 the offer. I met with him again on August 23th. On the
9 August 20th -- well, I presented it to the Solicitor. Try
10 to get the 20 years.

11 August 23rd I went back to Mr. Dixon. He would not
12 agree. I told him that the Solicitor would not agree to
13 20 years, and again, he would not accept the 25.

14 On August 26th, here in court, I went to the jail to
15 discuss. I told him that I could not guarantee the 25
16 voluntary offer would remain on the table after that date.
17 At that point he still would not accept the 25 year offer.

18 I met with him one, two, three, four times between
19 him getting the offer and it expiring.

20 Q. Okay. Are you reading from notes that you took
21 during the case?

22 A. Yes.

23 Q. All right. Are these items -- are those notes things
24 you took contemporaneously during your visits or is that
25 something you have since compiled?

1 A. This is -- well, honestly, he, Mr. Dixon, ODC'd me.
2 ODC with the same exact complaint last year.

3 Q. Okay.

4 A. And these are my notes from after reviewing my file
5 from when I complied -- replied to that investigation.

6 Q. Okay. Let's fast forward to the trial. Have you
7 reviewed the trial transcript or the appellate record
8 prior to today?

9 A. Yes, sir.

10 Q. Okay. So are you somewhat familiar it?

11 A. Yes, sir.

12 Q. Looking at Page 68 of the appellate record you
13 indicate that y'all were waiting on some evidence to come
14 in while you're addressing the Court, and you say, "As
15 soon as we got it in we contacted the Solicitor to accept
16 the offer, and at that time the offer -- at that time the
17 offer Solicitor was withdrawn by the Solicitor." Some
18 grammatical errors in there in the transcription.

19 "At that time I e-mailed Mr. Scruggs and Your Honor
20 declined to hear the motion." What motion are you talking
21 about there?

22 A. I, on September 9th, I filed a motion. Well,
23 originally I filed a motion on May the 24th trying to get
24 the ballistic evidence. The stuff off file lab was not
25 available. It was not the State not turning it over. It

1 was just not available. It had not been processed yet.

2 But, going back to September 9th, I filed a motion to
3 produce that evidence, to continue the trial past the
4 September court date, considering we still did not have
5 that evidence, set a scheduling order so that we will know
6 when the State has to have this evidence by, and to force
7 the State to keep the State's offer open until all
8 evidence had been turned over.

9 On September the 12th we set up a conference call
10 with Judge Baxley concerning my motion. He would only
11 hear the continuance part without it being -- without the
12 client being present in the courtroom for it to be on the
13 record. At that point we had still not received the
14 evidence.

15 I received the evidence on October the 8th of that --
16 of 2013, and that's -- on October the 13th me and Mr.
17 Dixon discussed it as he testified to it. It was not in
18 our interested that, you know. He wanted to take the 25
19 years. I stepped out in the hallway and called the
20 Solicitor. She said, 'no'. I went back in there and told
21 him that, but that I would try to fight it in the
22 courtroom.

23 I sent the e-mail to Judge Baxley's law clerk asking
24 him for a hearing date to have the remaining parts of my
25 motion heard. On October the 18th Judge Baxley's law

1 clerk e-mailed me saying he declined to hear rest of my
2 motion and that he would see us at trial. And that was --
3 I asked -- I told the law clerk that I wanted to put all
4 this on the record cause I agreed the 25 year offer should
5 have been available until we received that evidence. It
6 was the evidence of the case.

7 Q. Let me go back to the dates that you've indicated. I
8 think August 15th, August 20th, August 23rd and August
9 26th when you were discussing the plea offer he was
10 declining or asking for 20 years? Was he still -- were
11 y'all still wanting to see the evidence at that point?

12 A. Yes, sir.

13 Q. Okay. Was part of his reason for not accepting the
14 offer was that he still did want to see that evidence?

15 A. Yes, sir.

16 Q. Okay.

17 MR. BOOZER: If I may approach the witness, Your
18 Honor?

19 THE COURT: Yes.

20 BY MR. BOOZER:

21 Q. I'm going to hand you a document. If you would just
22 take a moment and review and tell me if you're familiar
23 with that and what it is?

24 A. Yes. I filed this with my motion.

25 Q. Okay.

1 A. Judge Baxley refused to hear me on this.

2 Q. Okay. This is a memorandum dated March 1st 2004 from
3 then Chief Justice Toal regarding plea agreements and
4 withholding discovery?

5 A. Yes, sir.

6 Q. Okay.

7 MR. BOOZER: Mark this as Exhibit One, Your Honor.

8 THE COURT: Yes.

9 MR. JAMES: Without objection.

10 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
11 identification and received into evidence.)

12 BY MR. BOOZER:

13 Q. Mr. Steen, your motion that you indicated you
14 attached that to, is that something that you filed with
15 the Court or did you hand it to the Clerk or hand it up to
16 the Court?

17 A. I filed it with the Clerk of Court and sent a copy to
18 the Judge when I requested the hearing. And I documented
19 it word for word into my motion also.

20 Q. Okay. Do you believe that what the State was doing
21 at that point was in violation of this order?

22 A. I believe that -- I didn't know what the Court would
23 take of that memorandum. It's a memorandum from the Chief
24 Justice. Me and our discussions we discussed what's going
25 on. I told him that the State controls, you know, the

1 offer. How much I would try my best legally to keep it
2 open. I did my research. You know, this says that you
3 should not make an offer contingent upon not receiving all
4 of the evidence.

5 And I believe that's what the State was doing. I
6 presented this to the Judge, and he declined to hear me on
7 it.

8 Q. Did you argue this specific memo in your oral
9 argument that's in the pretrial motion into the Court?

10 A. No.

11 Q. Okay.

12 A. I was putting in the fact that the Court refused to
13 hear my argument, really, on the record because the trial
14 started to make sure the record -- to make sure it was
15 clear we had -- there were some issues with the offer.

16 Q. All right. But you didn't specifically reference ---

17 A. No, I did not.

18 Q. --- to the Court? Okay. All right. So that was not
19 before the Court at that point in the oral argument?

20 A. Not on record date of trial.

21 Q. Okay. And was at this point after y'all had seen the
22 evidence was Mr. Dixon adamant that he wanted to accept
23 the plea?

24 A. He wanted the plea. As soon as he looked at the
25 evidence. We went through everything in Dillon County.

1 He wanted to take it. I stepped in the hallway and tried
2 to -- I agree with him that he should take it. The
3 evidence was not in his favor.

4 Q. I think you indicated earlier that you told Mr. Dixon
5 that you couldn't guarantee the offer would remain open
6 after August 26th. Did you think it would remain open?

7 A. I didn't know. I mean we were playing with fire, but
8 he was very aware of what was going on. He knew -- I knew
9 the expiration date. He knew the expiration date.

10 Again, we do have, you know, a memorandum from the
11 Chief Justice saying that you shouldn't base an offer on
12 this. I tried to go in front of the Court to get some
13 relief there.

14 Q. Okay?

15 MR. BOOZER: Beg the Court's indulgence, Your Honor?

16 BY MR. BOOZER:

17 Q. On Page 69 of the transcript of the record on appeal
18 you indicated to the Court, "Per the Solicitor yesterday I
19 think she said that the deadline passed on August 26th.
20 We did have counsel with Your Honor September 12th. At
21 that time based on that I thought the offer was still
22 open. I'm not sure exactly what point it was withdrawn or
23 deadline put on the record. I thought that it would
24 remain open.

25 Were you still under the impression that the offer

1 would still remain open?

2 A. I was referring to motion; the fact that we had not
3 heard from whether -- the Court's relief on the offer yet.
4 I was explaining from a procedure that as of that day I
5 did not -- we had not gone before the Judge. I did not
6 know whether the Judge was going to make the State keep
7 the offer open.

8 THE COURT: When was the discovery provided, the
9 ballistics information and the other outstanding discovery
10 matter?

11 THE WITNESS: Your Honor, the majority of October
12 8th I -- October 8th 2013.

13 THE COURT: But August the 26th is when it ended,
14 right?

15 THE WITNESS: Yes, sir.

16 THE COURT: Or the deadline ended? Okay. Go ahead.

17 BY MR. BOOZER:

18 Q. Thank you.

19 MR. BOOZER: That's all the questions I have.

20 THE COURT: Mr. James.

21 CROSS-EXAMINATION

22 BY MR. JAMES:

23 Q. Mr. Steen, do you have copy of the transcript up
24 there with you?

25 A. Yes, sir.

1 Q. Flip over to, we'll say of the appellate record, Page
2 73.

3 A. Yes, sir.

4 Q. And down in Lines 13 to 19 isn't it true that the
5 Court was understanding of your frustration about your
6 motion, but under the Court didn't have power to reimpose
7 the plea?

8 A. Yes, sir.

9 Q. Is that consistent with some of your research in the
10 case law of the State's power to negotiate guilty pleas?

11 A. Yes, sir.

12 Q. And it is true that you communicated this offer to
13 your client?

14 A. Yes, sir.

15 Q. All right. And it is true that your client declined
16 to accept that offer?

17 A. Yes, sir.

18 Q. And it is true that he refused to accept that offer
19 repeatedly?

20 A. Yes, sir.

21 Q. Was it four or five times?

22 A. Yes, sir. Four times by August 26th.

23 Q. Did he ever express to you any desire or inclination
24 to accept the plea offer prior the August 26th deadline?

25 A. No, sir.

1 Q. And you indicated that you did include Justice Toal's
2 memorandum attached to your motion in an attempt to force
3 the plea offer to be kept open?

4 A. Yes, sir.

5 Q. All right?

6 MR. JAMES: I have no further questions.

7 MR. BOOZER: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. BOOZER:

10 Q. On August 26th when you told him I think you
11 indicated that you couldn't guarantee that it would remain
12 open? Did you give him any stronger language to say -- to
13 explicitly state, 'August 26th, this is the deadline.
14 Don't accept it today regardless of whether we're still
15 getting discovery or not it is revoked'?

16 A. Yes. Unless the Court gives us the offer which we
17 were still working on that.

18 Q. But that would hinge on the Court stating, 'okay. He
19 can still accept this offer?

20 A. Yes, sir.

21 Q. Okay.

22 THE COURT: Mr. James.

23 RECROSS-EXAMINATION

24 BY MR. JAMES:

25 Q. This actually goes back to an earlier remark in

1 testimony on the deadline in question. Did you have any
2 knowledge or understanding that your client was being
3 transported to or from court?

4 A. No. I went to the jail to speak with him on the day
5 that the deadline -- of the deadline to see whether it was
6 a yes or a no. And he was transported because it was a
7 no?

8 MR. JAMES: Thank you, Your Honor.

9 THE COURT: You may step down. Thank you.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Mr. Boozer.

12 MR. BOOZER: Your Honor, no further witnesses on
13 behalf of the Applicant.

14 COLLOQUY

15 THE COURT: All right, Mr. James.

16 MR. JAMES: If I may have just one moment. Your
17 Honor, State has no witnesses. It is prepared for closing
18 arguments, Your Honor.

19 THE COURT: Yes, I would like to hear that.

20 MR. JAMES: Would you like to hear from Mr. Boozer or
21 myself?

22 THE COURT: Yes, I would. Mr. Boozer first.

23 CLOSING STATEMENT BY MR. BOOZER

24 MR. BOOZER: Thank you, Your Honor. If it pleases
25 the Court. Judge, before I get into my closing I'd like

1 to hand up to couple of cases. One of which is Davie v.
2 State. Supreme Court Case, South Carolina, 2009. As well
3 as case summary for Lafler v. Cooper. U.S. Supreme Court
4 case. And, Your Honor, Your Honor already has a copy of
5 the 2004 memorandum.

6 Judge, I think in this case there was apparently a
7 hard and fast deadline of August 26th 2013 in which to
8 accept this offer. My client indicates, and so does
9 counsel, that they were still wanting to see discovery to
10 determine whether or not to accept that offer.

11 Ultimately, when -- exactly what they wanted to do
12 when that discovery came in and my client was able to view
13 it he immediately accepted the offer. I do understand and
14 hear the testimony that I've heard today with regards to
15 counsel's reasons for doing what he did, but I think the
16 transcript is clear that there was some confusion at that
17 time as to if the offer was still open, if it was off the
18 table or if there was a deadline on the offer.

19 And I think that that was likely being communicated
20 to my client. So he believed that that offer was still
21 open for review of some of that evidence.

22 THE COURT: Didn't Mr. Dixon testify that he was
23 aware that it was the 26th initially?

24 MR. BOOZER: He indicated he was aware that it was
25 26th initially. He indicated in his testimony that he has

1 actually tried to go and accept the offer but there was no
2 court that day or he was transported back.

3 THE COURT: But he never saw the discovery materials
4 that are in question here until the next month, October.

5 MR. BOOZER: That is correct. Based on his testimony
6 that would be correct.

7 THE COURT: So you're telling me that he was
8 accepting it, even though he had rejected it because he
9 hadn't seen the discovery, he was later accepting it even
10 while he still hadn't seen it?

11 MR. BOOZER: According to his testimony and his
12 recollection, that is correct.

13 THE COURT: Okay.

14 MR. BOOZER: Judge, I think in the transcript as some
15 point I think that Mr. Steen was certainly fighting to
16 keep that offer open. I think that at some point he
17 should have introduced the memorandum to the Judge from
18 Chief Justice Toal about, you know, specifically
19 prohibiting what I would argue is this practice of
20 withholding evidence and not giving it over until before a
21 plea. He certainly has to look at that.

22 THE COURT: Well, what the memo says is "making a
23 condition of a plea that the Defendant forego discovery,
24 period." I don't think that was really the case here. I
25 mean it was made an offer or an offer was being made, but

1 was there anything in the offer that addressed discovery?
2 And wasn't discovery still kind of ongoing?

3 MR. BOOZER: I don't believe so. I believe discovery
4 was still ongoing, but I think the premise the same
5 premise, still applies. In order to know what you're --
6 what the State has against you in order to know if you
7 should continue to exercise your trial right you've got to
8 know what's going to be coming at trial.

9 And I think that in this case he needs to know what
10 the G.S.R. shows. He needs to know what the ballistic
11 evidence they are going to use to prove him guilty at
12 trial. Without that it makes, I think, it difficult to
13 evaluate, well, do I take a plea or do I not go to trial
14 because if they don't have that stuff that may pile on his
15 decision to say, 'well, I don't have XYZ. They can't
16 prove XYZ. I will go to trial then'.

17 So I think that would be the argument for that, Your
18 Honor.

19 THE COURT: Okay. All right.

20 MR. BOOZER: But for all these reasons, Judge, I do
21 think he should be granted -- and we're not asking for a
22 new trial.

23 THE COURT: Well, tell me about your relief. You're
24 asking for, essentially, a resentencing?

25 MR. BOOZER: Exactly. And the cases they I hand you,

1 Your Honor, specifically with Davie, in that instance the
2 attorney failed to timely convey a plea offer. He got 20
3 years off of his ten.

4 In that instance the Court said, "Well, I'll send it
5 back to the sentencing Court as though he had accepted
6 that ten year offer. And that's what we're essentially
7 asking this Court to do; is to send it back to the trial
8 court with instructions ---

9 THE COURT: And even at best wasn't it the Court
10 would recommend a -- or the Solicitor would recommend a --
11 what was it? A 25 year sentence? Was there anything that
12 indicates that it was a negotiated plea?

13 MR. BOOZER: I mean, Judge ---

14 THE COURT: You know, recommended the Judge may have
15 taken it, may not. I mean he may have decided, no, I
16 don't think that's enough or he may decide that's too
17 much.

18 MR. BOOZER: And I think, Judge, that would be
19 addressed in the Lafler case that I've handed up. I think
20 at that point the Court, the trial court, would have all
21 of that. Those are the questions that the trial court
22 would have about misrepresenting, was it negotiated. The
23 Court doesn't have to accept it. That would all be in all
24 trial courts at that point.

25 THE COURT: Okay. Mr. James.

CLOSING STATEMENT BY MR. JAMES

MR. JAMES: Your Honor, before I get started I'm going to hand up a copy of a single case. That's Reed v. Becka, 333 SC 676. And, Your Honor, Reed stands for proposition that negotiation of plea terms and a plea bargaining is solely the province of the prosecution. The prosecution can offer what it wants, when it wants. It can withdraw its offer almost right on up to the moment that he is standing in Court and actually enters a plea of guilty.

Respectfully, to Counsel Boozer, his interpretation of Former Chief Justice Toal's memorandum is inaccurate. The only thing that that would accomplish would be to foreclose any kind of plea bargain before the entire close of discovery. In many cases it is not fully completed until the eve of trial.

COLLOQUY

THE COURT: To mid-trial.

MR. BOOZER: Or even mid trial. There are things that come out in the middle of trial, you know, that is a total surprise to any of the parties because what a witness says isn't said on the record until they're sitting up on the stand.

Testimony indicates here, shows very clearly, that Applicant knew of the offer. It was clearly communicated