

VOLUME TWO OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County

Honorable Roger L. Couch, Circuit Court Judge

LUCIUS SIMUEL,

PETITIONER,

V.

THE STATE,

RESPONDENT

APPELLATE CASE NO 2016-001607

APPENDIX

JOHN H. STROM
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

RUSTON W. NEALY
Assistant Attorney General
Columbia, SC

ATTORNEYS FOR RESPONDENT

RECEIVED

APR 10 2017

S.C. SUPREME COURT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
APPLICATION FOR POST-CONVICTION RELIEF	986
RETURN	992
POST-CONVICTION RELIEF HEARING TRANSCRIPT.....	997
ORDER OF DISMISSAL.....	1075
MOTION TO ALTER OR AMEND JUDGEMENT	1084
ORDER DENYING MOTION TO ALTER OR AMEND JUDGEMENT.....	1088
INDICTMENTS.....	1090

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

501

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

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

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

7 MR. DEYSACH: Yes, your Honor.

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

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

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

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

502

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

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

7 (OFF THE RECORD.)

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

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

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

13 BY MR. DEYSACH:

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

17 A. Yes, sir.

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

19 A. That's correct.

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

23 A. That's correct.

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

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

503

1 of the other people are going to tell you, correct?

2 A. Yeah, we don't want them to see what the other person
3 has picked out.

4 Q. Because that might influence what the second person
5 tells you?

6 A. Yes, sir.

7 Q. Right? And so that is why you keep those subjects
8 separated when you do this procedure, correct?

9 A. That's correct.

10 Q. And with the interviews, you interviewed most of the
11 witnesses separately, without other witnesses around each
12 other, correct?

13 A. Yeah, that's correct.

14 Q. But on September 3rd of 2008, you interviewed Deon and
15 Deverol together in the same room.

16 A. That's correct.

17 Q. Even though you know that having two witnesses
18 together can influence what the other says.

19 A. At that point in time, September 3rd, we were not
20 showing them photo lineups.

21 Q. So, what you're saying is that that stuff that we
22 talked about before only applies to the photo lineups, not
23 to people actually telling you information about what
24 happened on the day of the offense? That's what you're
25 telling the jury?

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

504

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

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

9 A. Okay.

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

13 A. Yes, sir.

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

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

19 Q. Did anybody else dust for fingerprints?

20 A. I do not recall.

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

23 A. I did not.

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

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

505

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

3 Q. Okay.

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

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

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

11 Okay.

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

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

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

18 A. That's correct.

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

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

T. CALHOUN - CROSS-EXAMINATION BY MR. DEYSACH

506

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

3 A. I did not ask her to.

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

5 A. I did not.

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

8 A. I do not know.

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

11 A. I do not recall.

12 Q. Did you review the pictures for footprints?

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

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

17 THE COURT: Thank you.

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

19 MR. DEYSACH: I left the report up there?

20 WITNESS: Yeah.

21 MR. DEYSACH: Thank you.

22 WITNESS: You're welcome.

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

25 (OFF-THE-RECORD BENCH CONFERENCE.)

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

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

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

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

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

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

6 WITNESS: Yes, sir.

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

11 WITNESS: Thank you, sir.

12 (THE WITNESS EXITS THE STAND.)

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

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

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

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

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

3 I think that the only inference that the jury could
4 draw from that is that the Violent Crimes Unit of the
5 police in Savannah knows where Mr. Simuel lives or have
6 tabs on Mr. Simuel. It's improper character evidence is
7 the way I see it, and it's prejudicial, although you ruled
8 403 and 404. On that basis, I had asked for a mistrial at
9 the time at the sidebar, and I do that now on the record.

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

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

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

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

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

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

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

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

11 MR. DEYSACH: Thank you.

12 THE COURT: All right. Thank you.

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

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

16 THE COURT: Mr. Deysach?

17 Mr. Deier?

18 MR. DEYSACH: No, sir, your Honor.

19 MR. DEIER: No, sir.

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

21 (OFF THE RECORD.)

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

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

1 MR. GEIER: Yes, Your Honor.

2 THE COURT: Gentlemen, is everybody else ready?

3 MR. DEYSACH: I am, Your Honor.

4 THE COURT: Good.

5 MR. ROBINSON: State's ready.

6 THE COURT: Thank you.

7 Good. If you can bring us a jury.

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

10 WITNESS: Thank you.

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

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

15 Mr. Deier.

16 MR. DEIER: Thank you, Your Honor.

17 CROSS-EXAMINATION BY MR. DEIER:

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

19 A. Fine. Thank you.

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

23 A. Sure.

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

T. CALHOUN - CROSS-EXAMINATION BY MR. GEIER

513

1 bedroom. Did you do a search of that area?

2 A. After obtaining a search warrant, yeah.

3 Q. All right.

4 A. I joined other investigators that were already there
5 as I was collecting blood DNA evidence from the stairwell
6 on first arrival.

7 Q. Did you have occasion to go to the master bathroom?

8 A. I don't recall going into the master bathroom. I was
9 at one point in time in the closet just outside of the
10 master bathroom.

11 Q. As you made your way through the apartment, did you
12 see -- I should say you went to the common area. Is that
13 correct?

14 A. Yes.

15 Q. Okay, and did you just do a sweep as you were going
16 through there? Not necessarily a search, but a look
17 around?

18 A. I don't remember looking -- the only thing I remember
19 about the common area, the living room, I guess you're
20 getting to that being in disarray to my living standards.

21 Q. So, to get to the master bedroom and bathroom, you
22 have to go through the common area and also the kitchen, I
23 believe, is on the right?

24 A. Yes. As you're making a straight line from the top of
25 the stairs to the master bedroom door, the kitchen would be

T. CALHOUN - CROSS-EXAMINATION BY MR. GEIER

514

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

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

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

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

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

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

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

15 Q. Right at the entryway to the master bathroom?

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

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

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

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

T. CALHOUN - CROSS-EXAMINATION BY MR. GEIER

515

1 A. I don't recall seeing the shirt on the day of the
2 shooting.

3 Q. You seen Deverol's shirt, though. Is that correct?

4 A. Yes, sir.

5 Q. Have you ever seen Deon's shirt?

6 A. I don't recall seeing his shirt.

7 Q. So, as far as you're aware ---

8 A. As far as I'm aware, I have not seen it.

9 Q. Also, you came in. You said you hang around the
10 entryway looking at evidence that was there. Is that
11 correct?

12 A. Yes, sir.

13 Q. Did you see any evidence of forced entry?

14 A. No, I didn't see any. If you're referring to the door
15 jamb being destroyed or the door dent, broken from forced
16 entry, no, I did not.

17 Q. And again I'm going to turn to your interviews with
18 several of the folks who testified previously, and again I
19 will assume that your testimony would be identical. I
20 heard Mr. Deysach talking about how important it was to get
21 these facts right.

22 A. Yes, sir.

23 Q. All right. You had occasion to speak with Ms. Sharita
24 Willingham on July 28th, I believe, at the scene?

25 A. I didn't speak with her at the scene.

T. CALHOUN - CROSS-EXAMINATION BY MR. GEIER

516

1 Q. Where did you speak with her?

2 A. I spoke with her at the hospital.

3 Q. Okay, and when you spoke to her, she stated to you
4 that one of them had a silver gun, but was unsure who had
5 it and if it was a revolver or a pistol. Is that correct?

6 A. I would have to refer to my report to be certain of
7 that.

8 MR. DEIER: May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. DEIER:

11 Q. I'm going to hand you copies that I have marked up a
12 little bit but ---

13 A. Okay. That is correct.

14 Q. Thank you. Investigator Calhoun, moving on to Deon,
15 okay? My suspicion is again you're going to need a copy of
16 your report.

17 MR. DEIER: Your Honor, may I approach?

18 THE COURT: Yes, sir.

19 BY MR. DEIER:

20 Q. Sergeant Calhoun, I'm going to hand you page 13 of
21 your police report.

22 A. Thank you.

23 Q. Beginning at the second large paragraph there.

24 A. Yes, sir.

25 Q. It's titled: Interview of Deon Cannick, Savannah

T. CALHOUN - CROSS-EXAMINATION BY MR. GEIER

517

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

4 A. Yes.

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

7 A. Yes, sir.

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

11 A. Yes, sir.

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

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

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

19 A. Yes, sir.

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

23 A. Yes, sir.

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

T. CALHOUN - REDIRECT EXAMINATION BY MR. ROBINSON

518

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

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

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

5 A. Okay. I'm sorry. Yes.

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

9 A. Yes.

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

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

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

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

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

20 THE COURT: Mr. Robinson, redirect?

21 MR. ROBINSON: Briefly.

22 REDIRECT EXAMINATION BY MR. ROBINSON:

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

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

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

T. CALHOUN - REDIRECT EXAMINATION BY MR. ROBINSON

519

1 since 1996. Can you get footprints off a sidewalk?

2 A. No, sir.

3 Q. Can you get footprints off a lawn?

4 A. No, sir.

5 Q. That several days after the incident that you got some
6 warrants for these two defendants, did your investigation
7 of this case end when you got those warrants?

8 A. Oh, no, sir.

9 Q. How long did it last? How long were you working on
10 this case even after the warrants were served?

11 A. I would say a couple of months.

12 Q. And so during that investigation, you're gathering new
13 facts. Is that right?

14 A. Yes, new information and facts.

15 Q. And you also testified on direct that you processed
16 the stairwell. Is that right?

17 A. That's correct.

18 Q. So, while there may have been other investigators
19 upstairs in the rooms or outside, you processed that
20 stairwell. Is that right?

21 A. That's correct.

22 Q. Were there any drugs found in the stairwell?

23 A. No, sir, there were not.

24 Q. Were there any guns found in the stairwell?

25 A. No, sir, there were not.

T. CALHOUN - REDIRECT EXAMINATION BY MR. ROBINSON

520

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

3 A. No, sir.

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

6 A. No, sir.

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

9 A. Yes, sir.

10 MR. ROBINSON: Beg the court's indulgence.

11 THE COURT: All right.

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

13 THE COURT: Thank you.

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

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

16 THE COURT: All right. Mr. Deier?

17 MR. DEIER: No, Your Honor.

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

19 (THE WITNESS EXITS THE STAND.)

20 THE COURT: Mr. Robinson.

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

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

24 CLERK OF COURT: State your full name for us.

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

G. OCHSNER - VOIR DIRE EXAMINATION BY MR. ROBINSON

521

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

2 VOIR DIRE EXAMINATION BY MR. ROBINSON:

3 Q. Dr. Ochsner, where do you work?

4 A. Memorial University Medical Center in Savannah.

5 Q. And what is your position there?

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

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

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

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

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

24 A. Yes, I have.

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

1 on trauma surgery have you published?

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

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

14 A. Yes, I am.

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

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

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

20 A. Yeah, sure do.

21 Q. Have you ever treated gunshot victims?

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

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

G. OCHSNER - VOIR DIRE EXAMINATION BY MR. ROBINSON

523

1 number of gunshot victims in the past?

2 A. Yes.

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

6 THE COURT: Thank you. Mr. Deier?

7 MR. DEIER: No objection, your Honor.

8 THE COURT: Mr. Deysach?

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

12 WITNESS: Twenty-five, thirty times maybe.

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

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

17 You may examine the witness. Thank you.

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

20 THE COURT: Okay.

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

G. OCHSNER - DIRECT EXAMINATION BY MR. ROBINSON

524

1 THE COURT: Do you want to have that marked?

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

4 DIRECT EXAMINATION BY MR. ROBINSON:

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

7 A. That is correct.

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

10 A. Yes, they are.

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

13 A. Yes.

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

16 THE COURT: Gentlemen, any objection?

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

20 THE COURT: Thank you.

21 MR. DEYSACH: No objection.

22 THE COURT: What's the number, please?

23 COURT REPORTER: 24.

24 THE COURT: State's 24 without objection.

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

G. OCHSNER - DIRECT EXAMINATION BY MR. ROBINSON

525

1 NUMBER 24.)

2 BY MR. ROBINSON:

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

5 A. Yes.

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

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

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

14 Q. Beg the court's indulgence.

15 (A PAUSE.)

16 Q. All right, Dr. Ochsner.

17 A. Yes.

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

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

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

2 A. Yes, just like that.

3 Q. Okay.

4 A. And it's taking cuts like this.

5 Q. By cuts, you mean images?

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

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

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

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

15 A. Yes.

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

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

21 Q. Just -- this one?

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

23 Q. It's the -- this one?

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

25 Q. Oh, I'm sorry.

G. OCHSNER - DIRECT EXAMINATION BY MR. ROBINSON

527

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

4 BY MR. ROBINSON:

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

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

9 WITNESS: Okay. Technical glitch.

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

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

14 MR. ROBINSON: Thank you.

15 BY MR. ROBINSON:

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

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

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

23 THE COURT: Thank you.

24 BY MR. ROBINSON:

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

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

5 Q. What are these?

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

14 If you can stop just a second.

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

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

G. OCHSNER - DIRECT EXAMINATION BY MR. ROBINSON

529

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

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

10 Q. There's no more injury here?

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

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

14 A. Okay.

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

17 Q. Dr. Ochsner, do you recognize these?

18 A. Yes. Yes, I do.

19 Q. And what are these?

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

25 Q. Is this a fair and accurate representation of the

G. OCHSNER - DIRECT EXAMINATION BY MR. ROBINSON

530

1 x-rays of Deon?

2 A. Yes.

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

5 THE COURT: Gentlemen?

6 MR. DEIER: No objection.

7 MR. DEYSACH: No objection.

8 THE COURT: 25 without objection.

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

11 BY MR. ROBINSON:

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

14 MR. ROBINSON: Can everyone see that?

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

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

25 Q. And what are these views?

G. OCHSNER - DIRECT EXAMINATION BY MR. ROBINSON

531

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

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

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

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

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

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

1 MR. ROBINSON: Beg the court's indulgence.

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

5 A. Yeah. I can give a general direction.

6 Q. Sure.

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

9 Q. Which direction?

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

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

16 A. Yes.

17 Q. Please just have a seat. Thank you.

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

20 A. Yes.

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

23 A. That's correct.

24 Q. Would you characterize this as a violent injury?

25 A. I would characterize it as a violent, devastating

G. OCHSNER - DIRECT EXAMINATION BY MR. ROBINSON

533

1 injury.

2 Q. You've also been qualified by this court as an expert.

3 Isn't that correct?

4 A. Yes.

5 Q. Could this violent, devastating injury have killed

6 Deon?

7 A. Absolutely.

8 Q. And why is that?

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

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

22 Q. What is neurogenic shock?

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

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

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

5 THE COURT: What's the objection?

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

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

12 Go ahead.

13 MR. ROBINSON: Thank you, Your Honor.

14 BY MR. ROBINSON:

15 Q. Okay. Please continue.

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

24 Q. Briefly, what treatments was he given?

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

G. OCHSNER - DIRECT EXAMINATION BY MR. ROBINSON

535

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

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

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

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

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

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

18 A. Yes.

19 Q. And were there any bronchoscopies performed?

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

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

G. OCHSNER - CROSS-EXAMINATION BY MR. GEIER

536

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

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

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

10 MR. DEIER: Thank you, Your Honor.

11 CROSS-EXAMINATION BY MR. DEIER:

12 Q. Good afternoon, Doctor.

13 A. Good afternoon.

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

16 Doctor, if you would, put this back.

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

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

20 A. That is what would be the basic trajection.

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

24 A. Yes.

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

G. OCHSNER - CROSS-EXAMINATION BY MR. GEIER

537

1 A. Yes.

2 Q. --- the right?

3 A. Right, yeah.

4 Q. Okay. You can go ahead, have a seat back.

5 Now, Doctor, when Mr. Robinson first had you do this,
6 he asked you if this was consistent with the victim being
7 bent over, and you said yes. Is that correct?

8 A. Yes.

9 Q. So, I guess it's also fair to say that it would not be
10 consistent if the victim would be standing erect. Is that
11 fair to say?

12 A. I -- it could be consistent with the victim standing
13 erect if it was being -- if someone was above him.

14 THE COURT: The question that he answered previously
15 had a premise that the bullet was traveling horizontally,
16 and in that particular case, he would have been leaning
17 over. I think that was a qualifying element of the
18 question that Mr. Robinson had asked. Thank you.

19 MR. GEIER: Yes, Your Honor.

20 BY MR. GEIER:

21 Q. Doctor, is it your feeling to a reasonable degree of
22 certainty that Deon Cannick's paralysis was instant?

23 A. Yes.

24 Q. So as soon as the bullet hit, he's paraplegic?

25 A. Should have been, yes.

G. OCHSNER - CROSS-EXAMINATION BY MR. GEIER

538

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

3 A. You should fall.

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

8 A. Yes, we do.

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

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

13 MR. DEIER: May I approach, Your Honor?

14 THE COURT: Yes, sir.

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

17 BY MR. GEIER:

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

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

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

23 A. I reviewed it.

24 Q. You reviewed it?

25 A. Correct.

G. OCHSNER - CROSS-EXAMINATION BY MR. GEIER

539

1 Q. Based on your review of the document, does that appear
2 to be the document that your resident created?

3 A. That would appear to be the initial evaluation of the
4 patient in the emergency department.

5 Q. After looking at that, are the findings in there
6 consistent with your recollection?

7 A. Yes.

8 Q. Did they do a secondary check of the exterior of Deon
9 Cannick?

10 A. I don't understand what you mean by secondary.

11 Q. Any secondary injuries, any significant injuries found
12 to the exterior?

13 A. Well, the comments -- on the exterior? May not have
14 seen anything.

15 Q. So, there's no notation of any bruising?

16 A. Not on that, and I don't remember if there was any
17 other bruising.

18 Q. No broken legs, broken bones?

19 A. There is comment about some rib fractures.

20 Q. Those were secondary to the gunshot wound?

21 A. Most likely posteriorly where the rib articulates with
22 the thoracic bone structure.

23 Q. So, you believe that the gunshot created that? Or was
24 that something else?

25 A. No, I believe the gunshot created that.

W. BROMBERG - VOIR DIRE EXAMINATION BY MR. ROBINSON

540

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

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

6 MR. DEIER: One moment.

7 THE COURT: All right, sir.

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

10 THE COURT: Thank you. Mr. Robinson?

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

12 THE COURT: Thank you.

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

15 WITNESS: Thank you, sir.

16 (THE WITNESS EXITS THE STAND.)

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

18 THE COURT: Dr. Bromberg, please.

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

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

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

23 VOIR DIRE EXAMINATION BY MR. ROBINSON:

24 Q. Dr. Bromberg, where do you practice?

25 A. Memorial Hospital in Savannah, Georgia.

W. BROMBERG - VOIR DIRE EXAMINATION BY MR. ROBINSON

541

1 Q. How long have you been in practice there?

2 A. Seven years.

3 Q. Do you have a specific field you practice?

4 A. I practice trauma surgery and surgical critical care.

5 Q. And how long have you been practicing trauma surgery,
6 surgical critical care?

7 A. Since the end of my fellowship in 2002.

8 Q. And will you describe your education and training in
9 that field?

10 A. Certainly. I graduated the University of Virginia
11 with a B.A. in Biology in 1992. I graduated the University
12 of Virginia School of Medicine with an M.D. degree in 1996.
13 I underwent post-graduate training at Lehi Valley Hospital
14 in Allentown, Pennsylvania, for five years and ended in
15 2001, where I completed my residency in general surgery .
16 I then completed a one-year fellowship in surgical critical
17 care at Lehi Hospital in Allentown, Pennsylvania. Since
18 then, I've been practicing in Savannah.

19 Q. Have you done any academic work in the field of trauma
20 surgery?

21 A. Yes, sir. Savannah Memorial Hospital is a level-one
22 trauma center that requires us to be academically
23 productive. I've published a number of papers in general
24 surgery and in trauma. I'm active in trauma societies and
25 general surgical societies.

W. BROMBERG - VOIR DIRE EXAMINATION BY MR. ROBINSON

542

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

3 A. Yes.

4 Q. Are you a member of any professional societies?

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

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

11 A. They have.

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

14 A. Yes.

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

17 A. Yes.

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

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

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

23 THE COURT: Mr. Deysach?

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

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

W. BROMBERG - DIRECT EXAMINATION BY MR. ROBINSON

543

1 so qualified.

2 DIRECT EXAMINATION BY MR. ROBINSON:

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

5 A. I did.

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

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

9 Q. All right.

10 MR. ROBINSON: May I approach the witness?

11 THE COURT: Yes, sir.

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

14 BY MR. ROBINSON:

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

18 A. I do.

19 Q. What is that?

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

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

25 A. Yes.

1 MR. ROBINSON: Your Honor, I move that State's Exhibit
2 26 be admitted into evidence.

3 MR. DEIER: No objection.

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

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

8 BY MR. ROBINSON:

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

13 A. Yes.

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

17 MR. DEYSACH: Without objection.

18 MR. DEIER: Without objection.

19 THE COURT: 24 in evidence.

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

21 THE COURT: Yes.

22 BY MR. ROBINSON:

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

25 A. CT chest.

W. BROMBERG - DIRECT EXAMINATION BY MR. ROBINSON

545

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

4 WITNESS: Yes, sir.

5 BY MR. ROBINSON:

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

8 MR. ROBINSON: Can everybody see this?

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

19 Q. Okay.

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

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

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

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

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

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

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

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

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

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

25 Q. And what are we looking at here?

W. BROMBERG - DIRECT EXAMINATION BY MR. ROBINSON

547

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

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

12 Q. You can do it.

13 A. Is that okay?

14 Q. That's fine. Please do.

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

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

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

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

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

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

W. BROMBERG - DIRECT EXAMINATION BY MR. ROBINSON

549

1 stomach, this air. These little dots should not be here.

2 Q. Can I interrupt you?

3 A. Yes, sir.

4 Q. Now you're looking at this slice. Before, we were up
5 here. Where on our patient would that be?

6 A. It would be -- his ribs would have ended on this side,
7 but we're below the breast bone. So, it would be on a
8 person -- these ribs go down a little lower than your
9 breast bone. So, here is the breastbone ending. Your ribs
10 end here. So, it's sort of like this slice is about here.

11 Q. And so the internal bleeding was about where?

12 A. It was -- his active bleeding was all within his
13 abdominal cavity, below the level of the diaphragm. We did
14 not see any active bleeding in the chest, but we have
15 evidence of bleeding in the chest from the blood there, but
16 we didn't have that bright flush in the chest. So, all
17 this active bleeding at the time of this film was in his
18 abdomen.

19 Q. Okay. In the cuts that, that continue down, are there
20 further injuries?

21 A. No. There's more evidence of blood. There's blood
22 pooling down lower, and that's just gray stuff over here.
23 That is blood and fluid outside of where it should be. But
24 there's no other visible injury.

25 Q. All right. Just -- do you need to see any more images

1 to describe the injuries?

2 A. No.

3 Q. Have a seat back on the witness stand.

4 MR. ROBINSON: Beg the court's indulgence.

5 (A PAUSE.)

6 BY MR. ROBINSON:

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

8 A. There was one wound.

9 Q. You want to point to our mannequin again?

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

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

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

W. BROMBERG - DIRECT EXAMINATION BY MR. ROBINSON

551

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

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

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

11 Q. What is that?

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

23 Q. Did you participate in those surgeries?

24 A. I did.

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

1 A. We left it there.

2 Q. Was it left there permanently?

3 A. No. He returned to my office complaining of pain at
4 that site, and so we took it out at a later date. We
5 expected to leave it permanently if it wasn't causing him
6 any problems.

7 Q. Do you recall when you removed the bullet?

8 A. I don't remember the exact date. It was some weeks
9 after his admission.

10 MR. ROBINSON: Beg the court's indulgence?

11 THE COURT: Okay.

12 BY MR. ROBINSON:

13 Q. Would it refresh your recollection to look at your
14 office notes?

15 A. I would appreciate that. Yes.

16 MR. ROBINSON: May I approach the witness?

17 THE COURT: Yes.

18 BY MR. ROBINSON:

19 Q. When did you take the bullet out?

20 A. On the 8th of September, 2008.

21 Q. And that was done by you. Is that correct?

22 A. Yes.

23 Q. And when you took the bullet out, who did you give it
24 to?

25 A. I gave it to my office nurse.

W. BROMBERG - DIRECT EXAMINATION BY MR. ROBINSON

553

1 Q. And what is her name?

2 A. We go through a lot of office nurses. I'm sorry, I
3 have that documented but not in this document. I'm sorry.

4 Q. Do you know what she did with it?

5 A. Yes. She gave it directly to security because I knew
6 we had to maintain the chain of custody.

7 Q. Quickly, using this photograph here, can you just
8 point out, come down off the witness stand, point out the
9 path of the bullet through Deverol Cannick based on the
10 injuries that you observed?

11 MR. ROBINSON: Let the record reflect the witness is
12 demonstrating the path from the lower left side to upper
13 right side.

14 Q. Is that correct?

15 A. Yes.

16 Q. Just have a seat. As a trauma surgeon, you've treated
17 gunshot wounds in the past, have you not?

18 A. Yes.

19 Q. In your opinion, could an injury like this have killed
20 Deverol Cannick?

21 A. Not only could it have killed him, I have never seen
22 such active bleeding in an abdominal CT scan for such a
23 long length of time without the patient being either
24 extremely ill or dying. Yes.

25 Q. So, is it fair to say this is a violent injury?

W. BROMBERG - CROSS-EXAMINATION BY MR. DEYSACH

554

1 A. Yes.

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

3 Your Honor, the state would pass the witness.

4 Doctor, please answer any questions these lawyers
5 would have.

6 THE COURT: Mr. Deysach?

7 MR. DEYSACH: Thank you very much.

8 CROSS-EXAMINATION BY MR. DEYSACH:

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

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

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

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

15 A. Yes. Right here.

16 Q. All right.

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

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

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

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

W. BROMBERG - REDIRECT EXAMINATION BY MR. ROBINSON

555

1 A. A hand's breath.

2 Q. So, somewhere within that area?

3 A. Yes.

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

5 THE COURT: Mr. Deier?

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

7 THE COURT: Thank you. Redirect?

8 REDIRECT EXAMINATION BY MR. ROBINSON:

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

11 A. This is ---

12 MR. DEYSACH: Beyond the scope of cross.

13 THE COURT: I sustain the objection.

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

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

17 WITNESS: Thank you, sir.

18 (THE WITNESS EXITS THE STAND.)

19 MR. ROBINSON: The state calls Charlie Carlson.

20 THE COURT: Charlie Carlson, please.

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

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

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

1 DIRECT EXAMINATION BY MR. ROBINSON:

2 Q. Mr. Carlson, where do you work?

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

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

7 A. Yes, I was.

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

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

12 Q. Do you maintain an evidence locker?

13 A. Yes, we do.

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

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

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

20 A. Now or then?

21 Q. In 2008.

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

24 Q. And did you have access to that safe?

25 A. At that time I did.

C. CARLSON - DIRECT EXAMINATION BY MR. ROBINSON

557

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

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

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

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

8 Q. Are you one of those?

9 A. At that time I was.

10 Q. And who is Jovan Murphy?

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

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

14 1: Yes, sir.

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

17 BY MR. ROBINSON:

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

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

C. CARLSON - DIRECT EXAMINATION BY MR. ROBINSON

558

1 Q. Was that -- but it's -- what's on the form?

2 A. On the form is the victim's name, race, age, date of
3 birth, social, address. And under that is the description
4 of the evidence, which in this situation is a bullet. Then
5 after that is chain of custody, where it shows that it's
6 received from Cheryl Martin, LPN, licensed practical nurse,
7 by Javon Murphy, who was the interim lieutenant at the
8 time.

9 Q. What date was it received by Javon Murphy from Cheryl
10 Martin, from the nurse?

11 A. August 8, 2008, at 4:49.

12 Q. Okay. Is there another signature? Is there another
13 name underneath Javon Murphy's name?

14 A. Yes. My name.

15 Q. And what does that indicate?

16 A. That means I received it from him, which was after the
17 evidence locker. And after me it's turned over to Sergeant
18 Calhoun.

19 Q. And it was received on what date?

20 A. By Sergeant Calhoun was 16th of February 2009 at 12:30
21 p.m.

22 Q. So, when was the bullet deposited in the security
23 vault?

24 A. August 8th of 2008.

25 Q. Are you sure it's August?

C. CARLSON - CROSS-EXAMINATION BY MR. DEYSACH

559

1 A. Oh, September, excuse me.

2 Q. So, between September 8 and February 16, where is that
3 bullet?

4 A. That bullet was in the department safe and after I
5 became manager of the security department, I took all the
6 evidence and put it in an evidence locker to keep it
7 separate from the patient valuables.

8 Q. So, between September 8th and February 16th was it
9 tampered with in any way?

10 A. No.

11 Q. Now, the three people listed, are you the only people
12 that touched that bullet to your knowledge?

13 A. To my knowledge, that's the only three people.

14 MR. ROBINSON: Your Honor, I have no further
15 questions. Please answer any of the court's questions.

16 WITNESS: Thank you.

17 CROSS-EXAMINATION BY MR. DEYSACH:

18 Q. Good afternoon, Mr. Carlson.

19 A. Good afternoon.

20 Q. I'm Ian Deysach. I represent Lucius Simuel in this
21 case. On September 8th, you were one of the shift managers
22 in security at Savannah Memorial?

23 A. Yes.

24 Q. And the other one was Jovan?

25 A. Yes.

1 Q. And what was his last name?

2 A. Murphy.

3 Q. Javon Murphy. It was Javon Murphy who received the
4 piece of evidence that we're talking about?

5 A. Yes.

6 Q. You put it into the safe, correct?

7 A. Yes.

8 Q. The safe that only you and Mr. Murphy have access to?

9 A. Not just me and him but also the night shift
10 lieutenants as well.

11 Q. How many of those are there?

12 A. There's only two.

13 Q. Two. There's a total of four people who have access
14 to that?

15 A. Yes.

16 Q. And it's in there also, you said, with patient
17 valuables?

18 A. At that time.

19 Q. At that time, and then there was a change sometime
20 before February 16th where the evidence and valuables were
21 separated, correct?

22 A. Yes.

23 Q. And at that time, you personally moved this piece of
24 evidence from the safe to what you called an evidence
25 locker?

C. CARLSON - CROSS-EXAMINATION BY MR. DEYSACH

561

1 A. Yes.

2 Q. And who had access to that evidence locker?

3 A. Access to the evidence locker is the same people, four
4 lieutenants.

5 Q. And have there been some turnover in that period of
6 time?

7 A. As far as lieutenants, no.

8 Q. Just the same four people?

9 A. During that period of time, same four people.

10 Q. And we're talking about the time from September 8th to
11 February 16th?

12 A. Yes.

13 Q. And then, on February 16th, you guys relinquished
14 custody of the piece of evidence, correct?

15 A. Let me go back. We did hire two new lieutenants for
16 day shift.

17 Q. And they had access to the lock and safe?

18 A. They had access.

19 Q. And you relinquished custody of this piece of evidence
20 on February 16th?

21 A. Yes.

22 Q. And you're the person who personally relinquished the
23 custody?

24 A. Yes.

25 Q. And you said you gave it to Sergeant Calhoun?

1 A. Yes.

2 MR. DEYSACH: Nothing further, Your Honor.

3 THE COURT: Mr. Deier?

4 MR. DEIER: Nothing of this witness.

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

6 (THE WITNESS EXITS THE STAND.)

7 MR. ROBINSON: The state calls Deverol Cannick.

8 Deverol Cannick.

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

11 MR. ROBINSON: Very well.

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

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

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

19 (OFF THE RECORD.)

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

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

23 Mr. Robinson.

24 THE COURT: Mr. Robinson?

25 MR. ROBINSON: The state calls Deverol Cannick.

DEVEROL CANNICK - DIRECT EXAMINATION BY MR. ROBINSON 563

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

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

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

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

8 DIRECT EXAMINATION BY MR. ROBINSON:

9 Q. Deverol, do you go by Devin Cannick?

10 A. Yes, sir.

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

13 A. I was living in [REDACTED]

14 Q. And what was the apartment number?

15 A. It was [REDACTED] sir.

16 Q. And how long had you been living there?

17 A. A few months.

18 Q. Who was living with you?

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

21 Q. And what happened on July 28th?

22 A. On July 28th?

23 Q. What were you doing on July 28th?

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

1 Q. And what happened after you were playing video games?

2 A. There was a knock on the door.

3 Q. And what happened after you heard a knock at the door?

4 A. My brother came up and told me this girl named Tiah's
5 uncle was at the door.

6 Q. And what happened after that?

7 A. He asked me what he wanted, and I said I didn't know.
8 Do you know what he wanted, and I said I didn't know. So,
9 I went down there to see what was going on. I went down to
10 the door.

11 Q. What happened after you went down to the front door?

12 A. When I went down to the door, I opened the door and I
13 shut it behind me. And once I got out there, I saw these
14 two guys out there.

15 Q. Did you recognize either of them?

16 A. I recognized the guy on the left once I got out. He
17 was Lucius Simuel.

18 Q. Did you know his name?

19 A. At that time I did not know his name. I only knew him
20 as Tiah's uncle.

21 Q. Who was Tiah's uncle to you?

22 A. He was nothing to me.

23 Q. Was he something to one of your brothers?

24 A. No, sir.

25 Q. And who was Tiah to one of your brothers?

DEVEROL CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

565

1 A. Tiah was Deon's girlfriend.

2 Q. Was Tiah Deon's girlfriend when he went to the door?

3 A. No.

4 Q. When you went outside, was there anyone there besides
5 the two of them?

6 A. No.

7 Q. And what happened when you were speaking to them?

8 A. When I was speaking to them, the first -- the
9 conversation first started and Lucius told me there was
10 this guy I was telling you about, and I didn't know what
11 was going on because he never told me about a guy. I never
12 spoke to him. He pointed to that guy over there.

13 Q. All right, and then what happened after the
14 conversation?

15 A. After that, he asked me if I wanted any pills.

16 Q. Which person asked you if you wanted any pills?

17 A. That guy right there in the white shirt.

18 Q. Meaning the uncle or the person ---

19 A. The other guy.

20 Q. And what did you say?

21 A. I said no. I don't want any.

22 Q. What happened after that?

23 A. He pulled out a small bag of a white substance, what
24 appeared to be cocaine.

25 Q. When he pulled that out, what did you say? What

1 happened next?

2 A. He asked me if I wanted some of that as well.

3 Q. And what did you say?

4 A. I said no.

5 Q. And what happened after that?

6 A. Before I knew anything, I just saw two bags being
7 pulled out. And I was being pushed back towards the door
8 inside my apartment.

9 Q. Who had the guns?

10 A. I saw a gun on the right and a gun on the left. Both
11 guys had guns.

12 Q. Did you have a gun?

13 A. No, sir, I didn't.

14 Q. Were you expecting them to come that day?

15 A. No, sir.

16 Q. Did you call either of them to come that day?

17 A. No, sir.

18 Q. And what happened next?

19 A. They pushed me back into the house and the front, said
20 where is the iron at, meaning, where are the guns.

21 Q. Did they say -- meaning, where are the guns?

22 A. No.

23 Q. Is that --

24 A. That, that's the slang when they came and they said,
25 where is the iron at. That's what that means, where are

DEVEROL CANNICK - DIRECT EXAMINATION BY MR. ROBINSON 567

1 the guns.

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

3 A. I said please don't do this.

4 Q. Did you say anything else to them?

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

6 Q. And what happened next?

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

9 Q. Where was Deon?

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

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

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

22 Q. And where were you?

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

1 Deon.

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

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

6 Q. How did you resist?

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

10 Q. Did you throw any punches?

11 A. No, sir.

12 Q. What did you do with the door?

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

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

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

17 Q. That's right. What happened next?

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

21 Q. Then what happened?

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

23 Q. And what did he do with the gun?

24 A. He shot my brother.

25 Q. And what happened after he shot your brother?

DEVEROL CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

569

1 A. He fell.

2 Q. Where did he fall?

3 A. He fell down the stairs.

4 Q. And what did the guy with the gun do?

5 A. I don't know. I think they just ran off.

6 Q. And what did you do?

7 A. I was running all around. I didn't know what to do.

8 I just didn't -- I couldn't believe they shot Deon.

9 Q. When you say you were running all around, where did
10 you go?

11 A. I was running up the stairs and around.

12 Q. Did you ever make it up the stairs, back in the living
13 room?

14 A. Sort of but not really. I was just, like, running
15 around.

16 Q. Did you stay in the apartment?

17 A. No, sir.

18 Q. Why not?

19 A. After I realized I didn't know who they were or
20 anything, so I just went outside to try to see if I could
21 see their car or something.

22 Q. And what happened when you went outside?

23 A. When I went outside, I saw them standing there
24 arguing.

25 Q. What, if anything, did you hear them say?

1 A. I don't know what they were arguing about.

2 Q. Did you hear them say anything?

3 A. No, sir. Once I realized they was there, I just
4 dropped on the ground and just laid there.

5 Q. When you came out, did they see you?

6 A. Yes.

7 Q. What did they do?

8 A. At first they was kind of looking at me, and I laid
9 down because I didn't want them to think I was trying to
10 see what they was doing.

11 Q. When you came outside, could you see guns?

12 A. Yes.

13 Q. Do you remember what the guns looked like?

14 A. One was a revolver, handgun, and one was a black
15 automatic handgun.

16 Q. Which person had the gun?

17 A. The uncle had the black automatic handgun, and the
18 other guy had the revolver.

19 Q. And of those two, which gun was used to shoot Deon?

20 A. The revolver.

21 MR. ROBINSON: Beg the court's indulgence.

22 Q. Did you ever try to grab their hands when they were
23 inside?

24 A. No, sir.

25 Q. How did you realize you had been shot?

DEVEROL CANNICK - DIRECT EXAMINATION BY MR. ROBINSON 571

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

2 MR. ROBINSON: May I approach the witness?

3 THE COURT: Yes, sir.

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

6 BY MR. ROBINSON:

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

9 A. That's the view of my apartment.

10 Q. Is that the front door?

11 A. Yes, sir, it is.

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

14 A. Yes.

15 THE COURT: Any objection, gentlemen?

16 MR. DEIER: No objection, your Honor.

17 MR. DEYSACH: No objection.

18 THE COURT: 28 admitted without objection.

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

20 THE COURT: Yes, sir.

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

23 BY MR. ROBINSON:

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

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

1 mind, please, sir.

2 BY MR. ROBINSON:

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

6 A. No, sir.

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

9 A. They were over here.

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

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

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

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

17 Q. And which way did you lay down?

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

20 Q. And what did you do with your hands?

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

22 Q. And where were you shot?

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

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

DEVEROL CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

573

1 A. No, sir.

2 Q. All right, you can go back to the witness stand.

3 After you were shot, while you were laying down flat,
4 what did you do?

5 A. After I was shot, I jumped up and the ran back in the
6 house. And I said they shot me. They shot me, too. They
7 shot me.

8 Q. Is it fair to say you were panicking at that time?

9 A. Yes. I was panicking.

10 Q. While you were panicking, what did you do?

11 A. I was running around in the apartment looking for the
12 keys, trying to take Deon to the hospital.

13 Q. When you came back inside, where was Deon?

14 A. Deon was still laying on the stairs.

15 Q. Were you able to move him?

16 A. No, sir.

17 Q. Where did you look for the keys?

18 A. I was just running around everywhere looking for them.

19 Q. Did you do anything other than look for the keys?

20 A. No, sir.

21 Q. Did you try to call 9-1-1?

22 A. Yes, I did. I'm sorry, I did call 9-1-1. I was
23 running around and I had dialed 9-1-1. I was running
24 around with the phone to my ear, but I forget I called
25 them.

1 Q. What happened after that?

2 A. After that, we found the keys and we all got -- we
3 found the keys, and I personally ran downstairs and cranked
4 the car up and came back inside. And we were all getting
5 ready to leave to go to try to make it to the hospital.

6 Q. When you say we, who do you mean?

7 A. Me, my girlfriend, my brother, and Deon.

8 Q. And how did you all get -- did you all move Deon to
9 the car?

10 A. Yes, my brother did. I wasn't able to.

11 Q. What happened after that?

12 A. Once we got in the car, we started leaving the
13 neighborhood. We got as far as the front gate and the
14 ambulance and everything was there.

15 Q. What happened after you got to the front gate?

16 A. After we got to the front gate, I was in the car, I
17 saw the ambulance. I jumped out and I ran toward the
18 ambulance, told them I was shot, could they please help me.
19 They put me in it.

20 Q. You described doing a lot of things after having been
21 shot. Were you in pain at this time?

22 A. No, sir, I wasn't in pain.

23 Q. Were you never in pain?

24 A. I was in pain when I got hit in my hand and never
25 really kind of felt the wound in my side until I laid down,

DEVEROL CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

575

1 and my adrenaline started rushing a little bit.

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

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

9 Q. Why did you say that?

10 A. Because I thought I was going to die.

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

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

14 Q. Do you remember going to the hospital?

15 A. Yes, sir, I do.

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

18 A. Yes, sir, I do.

19 Q. How did you get to the second hospital?

20 A. I got to the second hospital by helicopter.

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

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

1 Memorial.

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

4 A. Yes, sir, I do.

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

7 A. I was in the hospital.

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

10 A. Yes, sir, I do.

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

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

14 Q. Were the investigators with you?

15 A. Yes, sir.

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

18 A. Yes, sir. I chose photographs.

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

21 A. Yes, sir, I do.

22 Q. And where is he?

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

24 Q. Is he wearing a coat and tie?

25 A. No, sir. He isn't.

DEVEROL CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

577

1 Q. Is that the person that shot your brother?

2 A. Yes, sir. That is.

3 Q. Did you know who he was on that day?

4 A. No, I didn't.

5 Q. Had you ever seen him before?

6 A. I've never seen him in my life before that day.

7 Q. Were you able to pick out the other person?

8 A. Yes, sir. I was.

9 Q. Do you see that person in the courtroom today?

10 A. Yes, sir, I do.

11 Q. And where is he?

12 A. He's right there in the blue shirt with the tie.

13 Q. Is he wearing a coat?

14 A. No, sir. He isn't.

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

19 BY MR. ROBINSON:

20 Q. Let's back up, Devin. When this occurred, were you
21 working?

22 A. No, sir, I wasn't.

23 Q. Where was the last place that you worked?

24 A. I worked at Target and right before I had that job, I
25 was working at Kroger's as well.

- 1 Q. And when did you move into the apartment?
- 2 A. I was staying there about five or six months.
- 3 Q. And what were you doing for money while you were
- 4 living in these apartments?
- 5 A. Okay, occasionally I sold dogs, drugs.
- 6 Q. And what kind of drugs did you sell?
- 7 A. I sold weed, a little bit of cocaine.
- 8 Q. Other things besides cocaine?
- 9 A. Some pills.
- 10 Q. And by weed, you mean marijuana?
- 11 A. Yes, sir, I'm sorry. Marijuana.
- 12 Q. And what kind of pills did you sell?
- 13 A. Prescription pills sometimes or X pills.
- 14 Q. Did you have any of those things in the apartment when
- 15 this happened?
- 16 A. Yes. It was -- came to the apartment.
- 17 Q. What kind of things did you have in the apartment?
- 18 A. I had drugs in my apartment.
- 19 Q. What kind of drugs did you have in your apartment?
- 20 A. I've had cocaine, weed, pills.
- 21 Q. Did you have any -- did you have any guns?
- 22 A. Yes, sir. I own guns.
- 23 Q. What kind of guns did you have?
- 24 A. I had a .45. I had a .32.
- 25 Q. Had you ever shot those guns?

DEVEROL CANNICK - DIRECT EXAMINATION BY MR. ROBINSON

579

1 A. Yes, I have.

2 Q. How long did you have them?

3 A. I had them maybe about a year.

4 Q. Prior to the incident?

5 A. Well, I had the .32 longer, but I may have had the
6 .45 about five or six months.

7 Q. Did you have any of those guns on your person when you
8 went -- did you have them on you when you went to answer
9 the door?

10 A. No, sir. When I answered the door, I had on a tank
11 top and basketball shorts.

12 Q. Before you went outside, after Deon got shot, did you
13 go get your guns?

14 A. No, sir, I didn't.

15 Q. Do you remember where they were in the apartment when
16 Deon got shot?

17 A. They were probably put up somewhere because we didn't
18 keep them around, like -- they were probably put up in the
19 closet or something where no one could find it or something
20 like that.

21 Q. Did you ever tell your girlfriend about the drugs?

22 A. No. I tried to hide it from her. I was ashamed.

23 Q. How did you hide it from her?

24 A. I basically just lied to her about it. I didn't tell
25 her everything that she needed to know. She knew I smoked,

1 but she didn't know.

2 Q.. She knew you smoked what?

3 A. I smoked marijuana.

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

6 A. Yes, I could.

7 MR. ROBINSON: Beg the court's indulgence.

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

9 A. No, sir, I wasn't.

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

12 THE COURT: Mr. Deysach.

13 MR. DEYSACH: Thank you, Your Honor.

14 CROSS-EXAMINATION BY MR. DEYSACH:

15 Q. Good afternoon, Mr. Cannick.

16 A. Hello. How are you?

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

18 A. Yes, sir.

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

20 A. Yes, sir.

21 Q. Brother of Malik, correct?

22 A. Yes, sir, I am.

23 Q. Malik Campbell and Marcus Campbell, correct?

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

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

581

1 Q. And you're the boyfriend of Sharita Willingham,
2 correct?

3 A. Yes, sir, I am.

4 Q. Mr. Robinson just asked you, as far as you know, you
5 can still be charged with the drugs that were found in your
6 house. Do you remember that?

7 A. Yes, sir, I do.

8 Q. At this point have you been charged with any of the
9 drugs in your house?

10 A. No, I haven't.

11 Q. Have you been charged with any of the guns in your
12 house?

13 A. No, I haven't.

14 Q. And at the time, you had cocaine in the house,
15 correct.

16 A. Yes, sir.

17 Q. You had marijuana in the house, correct?

18 A. Yes, sir.

19 Q. And you had hydrocodone pills in the house?

20 A. Yes, sir.

21 Q. Is there another name for those kind of pills?

22 A. My family calls them Lortab.

23 Q. Lortab.

24 A. Yes, sir.

25 Q. And you kept all that in the master bedroom, correct?

1 A. Yes, most of the time.

2 Q. And your girlfriend and you, Sharita, shared that
3 room, correct?

4 A. Yes, sir.

5 Q. And so what you're telling us is that even though she
6 shared the room where you stored your drugs, that she had
7 no idea that you were selling drugs, correct?

8 A. No, sir. She had no idea.

9 Q. She had no idea that Deon was selling drugs, did she?

10 A. No, sir.

11 Q. Before this day, you already knew Lucius Simuel,
12 didn't you?

13 A. Before this day, I met Lucius on one occasion, but I
14 can't say that I know him.

15 Q. So, you're saying -- but you have met him?

16 A. I met him on one occasion.

17 Q. And that occasion was at the apartment, wasn't it?

18 A. He came to my apartment on one occasion to drop off
19 Tiah to see Deon.

20 Q. And he came into your apartment, didn't he?

21 A. Yes, sir, he did.

22 Q. And he smoked weed with your brother in the apartment,
23 correct?

24 A. Yes, sir, he did.

25 Q. And he talked to you while he was in the apartment,

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

583

1 didn't he?

2 A. No, sir, he didn't.

3 Q. Did he -- he gave you his phone number while he was at
4 the apartment?

5 A. No, sir, he didn't.

6 Q. You talked to him on the phone before, correct?

7 A. I hadn't talked to him on the phone.

8 Q. But you knew his phone number, correct?

9 A. No, I didn't.

10 Q. You knew his phone number to get in touch with him?

11 A. No, I never had his. No, sir.

12 Q. So, you never told an EMS driver on the way to the
13 hospital -- you never tried to tell them Lucius Simuel's
14 phone number?

15 A. No, sir. I only tried to remember the number that my
16 brother gave me before I left from him. He told me to tell
17 anybody I could tell that Tiah's uncle was the one who shot
18 us and tried to give me a 706 number.

19 Q. That's the area code you're talking about, or just the
20 prefix?

21 A. That's just the first three digits of the number.
22 It's not the area code.

23 Q. All right. So, you're saying that Deon tried to give
24 you this information after the shooting?

25 A. As I was jumping out of the vehicle to get into the

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

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

5 A. Yes, sir.

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

8 A. Yes, sir.

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

10 A. Yes, sir, he was.

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

13 A. Yes, sir.

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

16 A. No, sir, I didn't.

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

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

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

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

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

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

585

1 A. No, sir.

2 Q. Did she know that Deon was a member of the same gang?

3 A. No, sir.

4 Q. You stated that -- you kind of told everybody the guns
5 that you owned, and I didn't write it down, but what were
6 those guns that you owned?

7 A. I owned a .45 and .32.

8 Q. Those are the only two guns you owned at the time?

9 A. Yes, sir.

10 Q. Did you own other guns at other times before that?

11 A. No, sir.

12 Q. So, those are the only two guns that you ever -- have
13 ever owned?

14 A. Yes, sir, they were.

15 MR. DEYSACH: Mark this, I guess Defense 3, Simuel.

16 (PHOTOGRAPH MARKED AS DEFENDANT SIMUEL'S EXHIBIT
17 NUMBER 3 FOR IDENTIFICATION.)

18 BY MR. DEYSACH:

19 Q. I'm going to ask you if you recognize what's in that
20 picture.

21 MR. DEYSACH: I'm approaching the witness Your Honor.
22 I didn't ask for permission.

23 A. Yes, I recognize what's in this picture.

24 Q. Can you tell the jury what's in this picture?

25 A. It's a picture of ---

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

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

3 (COUNSELORS CONFER.)

4 BY MR. DEYSACH:

5 Q. Can you tell us what it is?

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

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

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

9 Q. Who is your uncle?

10 A. My uncle is Kelly Garner.

11 Q. I got you.

12 A. My mother's brother.

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

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

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

18 A. No.

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

21 A. Yes, I did.

22 Q. Oh, you did? Where were they?

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

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

25 A. Yes, probably.

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

587

1 Q. Did you tell Deon that you wanted to buy some ecstasy
2 pills in order to make some extra money?

3 A. No, sir, I didn't.

4 Q. I'm going to ask you -- I hand you Defendant's Exhibit
5 Number 1. I'll ask you if you recognize that.

6 A. No, sir, I don't.

7 Q. Did you have a mask in your home at the time of July
8 28th?

9 A. No, sir.

10 Q. All right. So, now I'm going to move to actually July
11 28th. You said that when you woke up, you and your
12 brothers started playing video games?

13 A. Yes, sir.

14 Q. And you heard, you heard Deon's phone ring, correct?

15 A. Yes, sir.

16 Q. And Deon's phone is a blue flip phone, cell phone,
17 right?

18 A. Yes.

19 Q. It was at the time. That's really what I'm asking.

20 A. Yes. He did have that type of phone at the time, sir.

21 Q. And you saw Deon answer that phone, didn't you?

22 A. No, sir. I didn't see him answer his phone.

23 Q. So -- all right. You never saw him answer his phone?

24 Okay. When you heard a knock on the door, you went to the
25 balcony of your home to look down and see who it was,

1 didn't you?

2 A. No, sir, I didn't.

3 Q. And after you heard the knock on the door and looked
4 down from the balcony, didn't you see Martin and Jesse?

5 MR. ROBINSON: Judge, I object to the form of the
6 question. He just said he did not look down from the
7 balcony.

8 THE COURT: That's right. I'll sustain the objection
9 as to the form of the question.

10 BY MR. DEYSACH:

11 Q. So, when the door -- when you heard the knock on the
12 door, there was no phone call that preceded it, that came
13 before?

14 A. No, sir.

15 Q. And you never told Deon that Jesse and Martin were at
16 the door, did you?

17 A. No, sir.

18 Q. Do you know Martin Guzman and Jesse Reese?

19 A. Yes, sir, I do.

20 Q. You saw Deon go down to answer the door, correct?

21 A. Yes, sir.

22 Q. You saw Deon bring marijuana down to the front door,
23 didn't you?

24 A. No, sir, I didn't.

25 Q. So -- and Deon only went down to the front door once.

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

589

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

3 A. I never saw Deon grab marijuana, sir.

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

6 A. Yes.

7 Q. And you would have seen that, right?

8 A. Yes.

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

11 A. Yes, sir.

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

14 A. Yes, sir.

15 Q. And he asks you what do they want?

16 A. Yes, sir.

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

19 A. No, sir.

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

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

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

1 A. No, sir. I was confused as well as. I was wondering
2 why they were popping up at my home.

3 Q. Okay, but you go downstairs to meet with them, right?

4 A. Yes. I went to the door to see what they wanted.

5 Q. Okay, and you walk outside of your door, correct?

6 A. Yes, sir.

7 Q. And you shut the door behind you, right?

8 A. Yes, sir.

9 Q. So, the door is already all the way shut?

10 A. The door could have possibly been partially shut. It
11 could have been shut, but I know the door was closed behind
12 me, but I can't tell you whether it was shut all the way.

13 Q. But you're the one who closed it, right?

14 A. Yes.

15 Q. And so at that time, you said Lucius told you this is
16 the guy I was telling you about, right?

17 A. Yes.

18 Q. And you're telling the jury that that statement just
19 confuses you, right?

20 A. Yes.

21 Q. And that you talked to them for a minute, correct?

22 A. It wasn't, like, it was a minute. It was more like a
23 few seconds. And before I knew it, they had guns.

24 Q. Isn't it true that you let them inside?

25 A. No, sir, I didn't.

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

591

1 Q. Didn't you tell -- do you remember talking to Sergeant
2 Calhoun on July 30th at the hospital?

3 A. Yes, sir.

4 Q. And at that time, this was just two days after the
5 shooting, right?

6 A. July 30th.

7 Q. Right?

8 A. Yes, sir.

9 Q. And he's the investigator that's working the case,
10 right?

11 A. Mr. ---

12 Q. Mr. Calhoun.

13 A. --- Calhoun, yes, sir.

14 Q. And you wanted to give him all the information that
15 you could so that he could investigate the case, right?

16 A. Yes, sir, I did.

17 Q. You didn't want to lie to him then, did you?

18 A. No, sir, I didn't.

19 Q. And at that point, the case was still really fresh in
20 your mind, wasn't it?

21 A. Yes, it was.

22 Q. Because it had just happened two days ago, right?

23 A. That's ---

24 Q. Do you remember telling Investigator Calhoun that you
25 eventually opened the door?

1 A. No.

2 Q. Now, once you get inside, that is when Nina comes down
3 the stairs, Nina, your dog?

4 A. Once we were inside, I don't know how long it took
5 Nina to realize there was someone else in there because
6 once I got in, it was kind of a bit of commotion. But I --
7 pretty shortly after, Nina came around the corner ---

8 Q. And Nina comes down the stairs before Deon comes down
9 the stairs. Is that correct?

10 A. Yes.

11 Q. And that you're saying that Deon catches Nina halfway
12 down the stairs?

13 A. Deon caught Nina before she could get all the way
14 downstairs, yes.

15 Q. Okay, and you're saying that at this point, the two
16 guys who are in your house have guns, right?

17 A. They already had guns.

18 Q. Right, and they're ---

19 A. Before they came in, they had their guns drawn.

20 Q. At any rate, once they're inside the house, the guns
21 are out is what you're saying?

22 A. The guns were out while they were outside standing
23 next to me, before we entered my apartment.

24 Q. So, the guns weren't out when you were inside?

25 A. They were out the whole time. Once they took the guns

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

593

1 out, they never put them away.

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

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

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

7 A. Yes, sir.

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

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

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

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

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

18 A. Yes, sir, it was.

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

21 A. The puppies were playing on the floor.

22 Q. In the living room?

23 A. Somewhere in the house.

24 Q. Could it have been on the balcony?

25 A. No.

- 1 Q. And Lyssa was where?
- 2 A. Lyssa was in the other bedroom.
- 3 Q. With the door closed?
- 4 A. Yes, sir.
- 5 Q. The puppies were Nina's, right?
- 6 A. Yes.
- 7 Q. And so you're saying that Nina goes down the steps and
- 8 Deon catches up with her, correct?
- 9 A. Yes.
- 10 Q. And when Deon sees the two guys with the guns, he
- 11 continues to restrain Nina, right?
- 12 A. Yes, sir.
- 13 Q. Nina never tried to bite any of the two guys, did she?
- 14 A. Nina came down the stairs growling, but she never
- 15 lunged at them, took a bite or anything. Deon was holding
- 16 her.
- 17 Q. Never had a chance to bite one of the guys, correct?
- 18 A. She didn't have a chance to bite them because Deon
- 19 didn't let her get close enough.
- 20 Q. Got you. Even when, even when Deon is shot, she never
- 21 bites the two guys?
- 22 A. No, sir.
- 23 Q. You were there when Deon was ordered to put his hands
- 24 up, correct? Or not?
- 25 A. Deon just put his hands up, said Don't shoot.

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

595

1 Q. So he let go of Nina when he did that?

2 A. I don't know whether he put both hands up or one or
3 how Nina got out of there, but once a shot was fired, I
4 didn't see a trace of Nina. She was nowhere to be found
5 once we heard shots.

6 Q. All right. After Deon is shot, the two guys
7 immediately leave the house, correct?

8 A. They got out of there pretty quickly.

9 Q. They didn't hang around for forty-five seconds or
10 anything like that?

11 A. They ran out the door, and I thought they were gone.

12 Q. And you ran around the house for a little bit. Is
13 that correct?

14 A. I ran around the inside of the apartment. Is that
15 what you're saying?

16 Q. Yes. That's my question.

17 A. After Deon got shot, I was running around. Yes, sir.

18 Q. So, you had to run upstairs, correct?

19 A. Yes, sir.

20 Q. And you ran into the living room, correct?

21 A. I was running all over the place. I was panicked; I
22 was confused.

23 Q. You were angry?

24 A. No, I wasn't angry.

25 Q. You just watched Deon get shot and you weren't angry?

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

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

6 A. No, sir.

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

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

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

12 A. No, sir.

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

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

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

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

24 Q. Which surprised you, right?

25 A. That surprised me, yeah.

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

597

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

3 A. Yes, sir.

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

6 A. Yes.

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

10 A. Yes, I heard him say that.

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

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

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

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

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

24 BY MR. DEYSACH:

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

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

4 Q. Okay.

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

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

9 A. Yes, sir.

10 Q. And this is broad daylight, right?

11 A. Yes.

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

14 A. Yes, sir.

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

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

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

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

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

22 A. Had what, sir?

23 Q. I wonder if you called 9-1-1 after Deon got shot or if
24 9-1-1 didn't get called until you got shot?

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

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

599

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

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

5 A. Yes, I did. I called twice.

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

7 A. I called after I was shot.

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

10 A. Yes, sir.

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

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

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

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

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

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

1 definitely wasn't thinking about any of that.

2 Q. So, you ---

3 A. I was thinking about either my injuries or getting
4 Deon help as well.

5 Q. So, what you did is you picked him up and took him to
6 the car, right?

7 A. No. I couldn't physically pick him up myself.

8 Q. You had help?

9 A. No, I never picked him up. My brother picked him up.

10 Q. But you moved him? Or he was moved?

11 A. I didn't move him, but he was moved.

12 Q. All right. Gotcha. Somebody called another brother
13 of yours to get the dogs out of there, right? Do you know?

14 A. I don't know, sir.

15 Q. You're saying you didn't call anybody? You didn't
16 call a family member?

17 A. No, sir. I found out about the dog situation once
18 everything else -- a few days later, maybe a week or two, I
19 found out what happened with that.

20 Q. All right. So ---

21 A. I was in the hospital at the time.

22 Q. Taking you back up to July 30th, two days after the
23 incident at the hospital, all right?

24 A. All right.

25 Q. The conversation that you had with Investigator

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

601

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

3 A. Yes, I saw some lineups.

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

6 A. Yes, I chose pictures from the lineup.

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

9 A. Yes, sir, I did.

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

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

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

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

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

23 BY MR. DEYSACH:

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

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

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

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

13 A. I identified Mr. Price as the shooter.

14 Q. Of you?

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

17 Q. Okay.

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

19 Q. Okay.

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

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

25 A. Can you say that one more time?

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

603

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

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

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

12 Q. But you did not fight over a gun?

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

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

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

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

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEYSACH

604

1 BY MR. DEYSACH:

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

6 A. No, sir, I didn't.

7 Q. Did Lucius introduce you to his friend?

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

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

13 A. No, sir.

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

16 A. No, sir. They shut the door.

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

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

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

22 A. Yes, sir.

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

24 THE COURT: Go ahead, Mr. Deier.

25 CROSS-EXAMINATION BY MR. DEIER:

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEIER

605

1 Q. Good afternoon, Devin.

2 A. Hello.

3 Q. My name is Chris Deier. I represent Demetrius Price.

4 Do you see this picture okay?

5 A. Yes, sir. I can see.

6 Q. Is that bike there during this incident?

7 A. I'm sorry?

8 Q. Was that bike there? You see there's a bike there by
9 the entryway. Was that bike there while this was all going
10 on?

11 A. I'm not sure whether it was or whether it came after,
12 but that bike was frequently right there.

13 Q. Whose bike is that?

14 A. That's my brother's bike.

15 Q. Which brother?

16 A. My brother Deon.

17 Q. So, it may have been there, may not have been there?

18 A. May have, may not.

19 (PHOTOGRAPHS MARKED INDIVIDUALLY AS DEFENDANT PRICE'S
20 EXHIBITS 4, 5, 6, 7, 8 FOR IDENTIFICATION.)

21 BY MR. GEIER:

22 Q. Devin, I'm going to hand you what has been marked as
23 Defendant's Exhibit 4 for identification.

24 THE COURT: Is that for Defendant Price?

25 MR. DEIER: Yes, Defendant Price. Thank you, Your

1 Honor.

2 THE COURT: Thank you.

3 BY MR. GEIER:

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

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

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

12 Q. What angle?

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

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

19 A. Right here, [REDACTED] On the corner.

20 Q. And that's looking down a sidewalk?

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

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

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

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEIER

607

1 Q. Okay. So, in this -- we've got the apartments on the
2 left and the woods on the right. Is that fair to say?

3 A. Yes.

4 Q. And that is your apartment there at the end?

5 A. At the far end on this photo. My apartment is located
6 at the far end.

7 Q. This one is number 6 for identification. And what are
8 we looking at there?

9 A. This is kind of on the side of my building.

10 Q. And so what is on -- looking at that picture, what is
11 sort of out of the picture on the left?

12 A. The number?

13 Q. No. If I were, if I were walking down in front of
14 this apartment and I was heading to the left, what is over
15 here?

16 A. The parking lot.

17 Q. Parking lot, and then if I was looking at that side of
18 the apartment and I took a right, where would I go to?

19 A. Where would you take a right at?

20 Q. If I was walking this way, so towards the right of the
21 picture.

22 A. So, if you would walk this way, what would you see?

23 Q. Uh-huh.

24 A. When you arrive at that corner? When you arrive at
25 that corner, you would see the angle of that last photo I

1 just saw.

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

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

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

9 THE COURT: Any objection, Mr. Robinson?

10 MR. ROBINSON: No objection by the state.

11 THE COURT: Thank you.

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

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

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

16 BY MR. DEIER:

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

22 A. Yes, sir.

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

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

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEIER

609

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

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

6 A. Yes, sir.

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

11 A. Yes, sir.

12 Q. And what's in that?

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

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

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

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

22 THE COURT: Mr. Robinson?

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

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

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

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

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

9 MR. DEIER: May I publish number 7?

10 THE COURT: You sure can.

11 BY MR. DEIER:

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

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

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

21 A. The furniture?

22 Q. Yeah. Is that fair to say?

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

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEIER

611

1 know.

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

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

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

11 A. This isn't an accurate ---

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

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

14 Q. Okay.

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

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

19 A. Yes, sir.

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

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

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

1 A. Yes, I was running around after I got shot as well.

2 Q. Do you recall where you -- you said you laid down.

3 Where did you lay down?

4 A. Kind of like at the head of the stairs at the top of
5 the stairwell. Like, if you walked in the door and made it
6 to the top of the stairs, I laid down, like, right there,
7 in the view were this right here. Right there, in line
8 with the stairwell.

9 Q. Did you go to the bathroom at all when you were
10 running around after you had been shot?

11 A. I have no idea. I was running around different
12 places. I was frantic; I didn't know what to do.

13 Q. You don't recall if you went to the bathroom or not?

14 A. Which bathroom? There were two.

15 Q. The master bathroom.

16 A. No, I don't recall.

17 Q. Now, turning again to your interview with Sergeant
18 Calhoun on July 30th, didn't you tell him that Deon and --
19 I'm sorry, Demetrius and Lucius pulled their guns out once
20 they were inside?

21 A. No. I didn't say that. They pulled their guns out
22 from the time they came -- when they came, they pulled
23 those guns out and they pushed me back in. They never put
24 those guns up. So once I saw them with those guns, they
25 always had them and they was pointed at me.

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEIER

613

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

4 A. Yes, sir.

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

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

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

15 A. No, sir.

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

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

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

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

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEIER

614

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

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

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

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

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

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

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

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

25 A. Yes, sir.

DEVEROL CANNICK - CROSS-EXAMINATION BY MR. DEIER

615

1 Q. You were both on the lease?

2 A. Yes.

3 MR. DEIER: One moment, Your Honor.

4 THE COURT: Yes, sir.

5 (A PAUSE.)

6 BY MR. DEIER:

7 Q. Are you aware that you had over 20 grams of cocaine in
8 your room?

9 A. Yes. I don't know exactly how much it was, but I'm
10 not going to say that I didn't know that it was there.

11 Q. Mr. Cannick, were any of your statements to the police
12 recorded? Was there a tape recording?

13 A. I don't know. Once maybe.

14 Q. Once maybe. You don't recall which time, though?

15 A. I was interviewed a lot of times.

16 Q. How many times were you interviewed in this?

17 A. I don't know how many times.

18 Q. More than five?

19 A. No.

20 Q. More than two?

21 A. Yes.

22 Q. More than two, and one of the times you may have been
23 recorded?

24 A. Yes.

25 Q. Thank you.

DEVEROL CANNICK - REDIRECT EXAMINATION BY MR. ROBINSON 616

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

2 Thank you.

3 THE COURT: Mr. Robinson, redirect?

4 REDIRECT EXAMINATION BY MR. ROBINSON:

5 Q. I just want to get a couple of things clear, Devin.

6 You testified on direct, during the course of your
7 testimony you testified that you went outside, stepped
8 outside and the door closed behind you. Isn't that right?

9 A. Yes, sir.

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

12 A. Yes, sir.

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

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

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

23 A. Yes, he did.

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

DEVEROL CANNICK - REDIRECT EXAMINATION BY MR. ROBINSON 617

1 A. Yes, sir, I did see it.

2 Q. If the person that was not Tiah's uncle is who you saw
3 shoot Deon, then why would Deon have told you to tell them
4 that the uncle is the one that did that?

5 MR. DEYSACH: I would, I would object to that
6 question.

7 THE COURT: I'll sustain the objection. I don't know
8 how he would know how someone else would have done
9 something.

10 MR. ROBINSON: Beg the court's indulgence.

11 THE COURT: All right, sir.

12 BY MR. ROBINSON:

13 Q. Finally, what kind of gun did Tiah's uncle have?

14 A. Tiah's uncle had a black automatic handgun.

15 Q. What kind of gun did the other guy have?

16 A. The other guy had a revolver.

17 MR. ROBINSON: I have nothing further.

18 THE COURT: Any follow up, gentlemen? Mr. Deysach?

19 MR. DEYSACH: None from me, Your Honor.

20 THE COURT: Mr. Deier?

21 MR. DEIER: None.

22 THE COURT: Thank you. You can step down, Mr.
23 Cannick.

24 MR. ROBINSON: May he be excused, Your Honor?

25 THE COURT: Any objection if he's excused?

1 MR. DEYSACH: I have no objection.

2 THE COURT: Without objection, he may be excused.

3 (THE WITNESS EXITS THE STAND.)

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

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

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

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

16 MR. ROBINSON: Nothing, Your Honor.

17 THE COURT: How many more witnesses will you have?

18 MR. ROBINSON: Three or four.

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

21 MR. DEIER: No, Your Honor.

22 THE COURT: Mr. Deysach?

23 MR. DEYSACH: No, sir.

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

1 (WHEREUPON, THE CASE IS AT EASE.)

2 THURSDAY, NOVEMBER 19, 2009

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

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

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

13 Signed by the foreperson.

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

18 (OFF-THE-RECORD BENCH CONFERENCE.)

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

22 MR. DEIER: Thank you, Your Honor.

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

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

1 Robinson, is the state ready?

2 MR. ROBINSON: State is ready.

3 THE COURT: Mr. Deier?

4 MR. DEIER: We're ready.

5 THE COURT: Mr. Deysach?

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

11 THE COURT: I understand.

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

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

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

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

19 THE COURT: Very good.

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

24 THE COURT: Okay.

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

1 was not.

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

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

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

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

10 THE COURT: That will be good.

11 I know that's without objection, gentlemen?

12 MR. DEIER: It is, Your Honor.

13 MR. DEYSACH: Yes, sir.

14 THE COURT: Thank you.

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

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

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

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

25 And I have shared your note with the attorneys in this

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

622

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

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

7 Mr. Robinson.

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

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

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

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

15 DIRECT EXAMINATION BY MR. ROBINSON:

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

18 A. Thirteen years.

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

21 A. Yes, sir.

22 Q. What did you do in that case?

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

25 Q. Did you respond to the scene?

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

623

1 A. I did.

2 Q. And what's the first thing you did when you got to the
3 scene?

4 A. I met with Sharita Willingham, who was seated in the
5 patrol vehicle. Spoke to her briefly. And then I met with
6 my team of investigators and tasks were assigned.

7 Q. And what is the next thing you did after you speak
8 with Sharita?

9 A. That would be met with personnel at [REDACTED]
10 apartments to view the video surveillance they have in
11 place of the entrance and exit gates at the apartment
12 complex.

13 Q. And did you view footage of cars coming and going from
14 the entrance of the apartments?

15 A. Yes, sir.

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

17 THE COURT: Yes, sir.

18 BY MR. ROBINSON:

19 Q. Staff Sergeant, I'm going to show you what's already
20 been admitted into evidence State's Exhibit 15 and 17. Do
21 you recognize these?

22 A. Yes.

23 Q. What are those?

24 A. These are photos of a vehicle entering and exiting the
25 gates at [REDACTED] But there should also be one

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

624

1 maybe with a tag number on it.

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

5 A. They're pretty accurate.

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

7 MR. DEIER: Your Honor.

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

11 BY MR. ROBINSON:

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

14 Q. Are the colors exact?

15 A. No.

16 Q. What's wrong with the colors?

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

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

21 A. Okay.

22 Q. What color is the car?

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

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

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

625

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

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

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

11 Q. What is LEMS?

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

16 MR. ROBINSON: May I approach the witness?

17 THE COURT: Sure.

18 BY MR. ROBINSON:

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

22 A. Yes, sir.

23 Q. Is that the tag you ran?

24 A. Yes, sir.

25 Q. Who was that tag registered to?

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

626

1 A. Demetrius Price.

2 Q. After you ran the tag, what is the next thing that you
3 did?

4 A. From there I believe we -- Sergeant Calhoun obtained a
5 search warrant at that point. We met back at the apartment
6 to start processing.

7 Q. And by processing, does that mean searching?

8 A. Yes, sir.

9 Q. And clarify for the jury what your role was during the
10 search.

11 A. My role during the search was to inventory and collect
12 evidence. There was a team of people there that were
13 tasked with doing searches. Rather than four or five
14 people collecting evidence at the crime scene, it's easier
15 for accountability if one person is tasked with collecting
16 and inventorying the items. That was my task.

17 Q. So, is it fair to say -- when you use the word
18 inventorying, you are walking around maintaining a written
19 list of what is collected?

20 A. And packaging the items, yes. And keeping them in a
21 central location so that we don't lose evidence or evidence
22 isn't compromised.

23 Q. And there's been previous testimony certain
24 investigators searched certain parts of the scene. Since
25 you were involved in inventorying, was there any part of

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

627

1 the scene you were limited to?

2 A. As far as?

3 Q. Did you go anywhere?

4 A. Yes.

5 Q. You went everywhere evidence was found?

6 A. Yes.

7 MR. ROBINSON: May I approach the witness?

8 THE COURT: Yes.

9 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS

10 29, 30, 31, 32, 33, 34, 35 FOR IDENTIFICATION.)

11 BY MR. ROBINSON:

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

15 A. Sure.

16 Q. Beginning with 29. Take your time.

17 A. Okay.

18 Q. Beginning with 29, what is that?

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

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

24 A. Yes, sir.

25 Q. What is picture number 30 of?

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

628

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

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

8 A. That is correct.

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

10 A. Yes, sir.

11 Q. What is number 31?

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

14 Q. 32?

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

21 Q. 34?

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

24 Q. 35?

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

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

629

1 That's what that is.

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

4 A. Yes.

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

7 A. Yes, sir.

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

10 THE COURT: Any objection as to those?

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

12 (A PAUSE.)

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

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

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

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

20 THE COURT: Certainly.

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

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

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

630

1 BY MR. ROBINSON:

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

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

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

7 WITNESS: Can you hear me?

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

9 BY MR. ROBINSON:

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

13 Q. What is number 4, if you recall?

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

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

19 A. No evidentiary value.

20 Q. Another exhibit, 29, what is that?

21 A. That is a shell casing.

22 Q. And is that where it was found?

23 A. Yes, sir.

24 Q. This is exhibit 31. What is that?

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

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

631

1 Q. Same shell casing. What is that?

2 A. That is a shell casing, the third shell casing that
3 was found later.

4 Q. Is that where it was found?

5 A. That is where it was found.

6 Q. What is that item?

7 A. That is a copper jacket off of a lead projectile.

8 THE COURT: What number is that, please?

9 MR. ROBINSON: This is number 34.

10 THE COURT: Thank you.

11 BY MR. ROBINSON:

12 Q. And what is this?

13 A. That is the front door.

14 Q. So, is this inside of the residence?

15 A. Inside of the front door. And this is a closet, I
16 believe.

17 Q. This is exhibit 35. What is that?

18 A. That is a lead projectile, I believe.

19 Q. And where was that found?

20 A. Inside the front door. That may be a larger -- you
21 may be able to see it, a larger view.

22 MR. ROBINSON: Beg the court's indulgence.

23 Q. Where is that?

24 A. That's in the closet, in the downstairs closet.

25 Q. As you're coming through the front door, where is the

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

632

1 downstairs closet?

2 A. On the right side of the door.

3 Q. And ---

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

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

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

9 BY MR. ROBINSON:

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

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

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

16 A. Yes, sir.

17 Q. When you were participating in the search?

18 A. Yes, sir.

19 THE COURT: Any objection?

20 MR. DEYSACH: None from me, Your Honor.

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

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

25 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

633

1 NUMBER 36.)

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

3 THE COURT: Yes, sir.

4 BY MR. ROBINSON:

5 Q. Is that State's Exhibit Number 36?

6 A. Yes.

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

8 A. Yes, sir.

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

12 A. Yes.

13 Q. You can resume the stand.

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

16 A. Yes, sir.

17 Q. And were they placed in evidence?

18 A. Yes, sir.

19 Q. Who received them?

20 A. Corporal Roberts.

21 Q. Who is Corporal Roberts?

22 A. She is one of our evidence custodians.

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

24 Q. Let's move on to the other things that were found.

25 Were there any guns found in the apartment?

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

634

1 A. Yes.

2 Q. Where were those?

3 A. There were four guns found in the apartment. There
4 were two found in the guest bedroom and two found in the
5 master bedroom closet.

6 Q. What kind of guns were they?

7 A. A Rossi .38 special, a Davis Industries .32 caliber
8 semiautomatic, a .35 caliber, and a Ruger revolver.

9 MR. ROBINSON: May I approach the witness?

10 (FLOOR PLAN MARKED AS STATE'S EXHIBIT NUMBER 37 FOR
11 IDENTIFICATION.)

12 THE COURT: Yes, sir.

13 BY MR. ROBINSON:

14 Q. Show you what's marked State's Exhibit Number 37 for
15 identification. What is this?

16 A. That looks like a floor plan from the apartment except
17 the entry is on the other side. It's actually on the
18 right-hand side of the apartment rather than the left-hand
19 side.

20 Q. With regard to the living -- the location of the
21 living room and the bedrooms and the other rooms, is this a
22 fair and accurate, accurate scheme of the layout of the
23 apartment?

24 A. Yes.

25 Q. But for the stairwell?

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

635

1 A. Yes, sir.

2 (COUNSELORS CONFER.)

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

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

17 MR. DEIER: Yes, sir.

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

20 THE COURT: Over the objection of defense counsel.

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

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

24 THE COURT: Yes, sir.

25 BY MR. ROBINSON:

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

636

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

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

5 Q. And is that where the guns were found?

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

8 Q. And where were they in the rooms?

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

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

13 A. No, not blood on the guns.

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

18 MR. ROBINSON: Certainly.

19 Bailiff, is there a red marker in the closet?

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

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

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

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

637

1 THE COURT: That's all right.

2 BY MR. ROBINSON:

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

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

8 Q. That's fine.

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

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

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

18 Q. Put dots there.

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

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

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

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

638

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

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

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

8 BY MR. ROBINSON:

9 Q. I apologize for my awkwardness.

10 A. That's okay.

11 Q. Was there any marijuana found?

12 A. There was marijuana found.

13 Q. Okay. Where was it found?

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

17 Q. Okay. Let's mark that.

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

21 Q. Okay. Was there any cocaine found?

22 A. Oh, yes.

23 Q. Where was it?

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

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

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

639

1 cocaine found?

2 A. Do you want me to finish the marijuana?

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

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

7 Q. Is that all the marijuana?

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

9 Q. And this is a list that you made?

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

18 Q. Okay.

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

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

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

A. VIENS - DIRECT EXAMINATION BY MR. ROBINSON

640

1 Q. Okay. Have you listened to those recordings?

2 A. I have.

3 Q. Are they time stamped?

4 A. They are time stamped, I think, electronically by our
5 dispatch center.

6 Q. Could you listen to the time stamps?

7 A. Yes.

8 Q. Do you know what times those 9-1-1 calls were made?

9 A. I believe around 13:31.

10 Q. Do you know about how many were made?

11 A. There was a call from a neighboring apartment
12 regarding shots fired. There was a call from the apartment
13 itself, and I then I believe a second call from the
14 neighboring apartment.

15 Q. Other than the first call at 13:31 -- by 13:31 you
16 mean 1:31?

17 A. 1:31.

18 Q. How much longer -- how much later did the other calls
19 come, if you recall?

20 A. I think within a minute or two.

21 MR. ROBINSON: Your Honor, I have nothing further of
22 this witness. The state would pass the witness. Staff
23 Sergeant, please answer these lawyers' questions.

24 THE COURT: Mr. Deysach, you can cross-examine.

25 CROSS-EXAMINATION BY MR. DEYSACH:

A. VIENS - CROSS-EXAMINATION BY MR. DEYSACH

641

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

5 A. As far as?

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

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

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

14 A. Correct.

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

17 A. Yes, sir.

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

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

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

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

A. VIENS - CROSS-EXAMINATION BY MR. DEYSACH

642

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

4 A. That is correct.

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

10 A. Yes.

11 Q. And then you collected those?

12 A. That is correct.

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

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

17 Q. Did you see a mask?

18 A. I did.

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

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

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

25 A. Yes.

A. VIENS - CROSS-EXAMINATION BY MR. DEYSACH

643

1 Q. Okay.

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

4 THE COURT: Mr. Robinson?

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

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

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

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

21 THE COURT: Yes.

22 BY MR. DEYSACH:

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

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

A. VIENS - CROSS-EXAMINATION BY MR. DEYSACH

644

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

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

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

7 Q. Just about every time?

8 A. Yes, sir.

9 Q. Did you attempt to collect fingerprints?

10 A. I myself did not.

11 Q. Did you ask somebody to?

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

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

17 A. No.

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

19 A. I did.

20 Q. And where did you take those?

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

A. VIENS - CROSS-EXAMINATION BY MR. DEYSACH

645

1 Q. I was really asking what you did with the swabs after
2 you took them.

3 A. I submitted in to evidence.

4 Q. It's fair to say you took a number of swabs, though?

5 A. Yes.

6 Q. And let me ask you -- asking about a .45 caliber AMT
7 gun that you found.

8 A. Okay.

9 Q. And you are saying that you did not see anything like
10 blood on that gun?

11 A. No.

12 Q. And you didn't swab the gun either, did you?

13 A. No, sir.

14 MR. DEYSACH: Court's indulgence?

15 THE COURT: All right.

16 (A PAUSE.)

17 BY MR. DEYSACH:

18 Q. You also found a ledger in the apartment, correct?

19 A. There was a piece of paper that I would call a ledger.

20 Q. And you also collected cell phones, correct?

21 A. Yes.

22 Q. How many cell phones did you collect?

23 A. Oh, gosh. Four, I believe.

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

25 THE COURT: Mr. Deier?

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

646

1 CROSS-EXAMINATION BY MR. DEIER:

2 Q. Good morning, Sergeant Viens.

3 A. Good morning.

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

7 A. We collected four, I believe. Yes.

8 Q. Where were they at in the home?

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

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

17 A. Yes.

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

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

23 Q. I see.

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

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

647

1 the apartment.

2 Q. And so is there anything over here? Your recollection
3 from the actual ---

4 A. No. No.

5 Q. --- apartment. So, is there anything up here?

6 A. There's a window and then there's patio upstairs.

7 Q. And so, again, you walk up the stairs, left is the
8 living room and master bedroom. Otherwise it's fine?

9 A. Yes.

10 Q. What about the kitchen? Is the kitchen shown there
11 accurate to your recollection?

12 A. The kitchen is accurate.

13 Q. All right. How about the locations of the bathtub in
14 the master bath and the guest bath? Are those accurate to
15 the best of your recollection?

16 A. To the best of my recollection, this one I'm almost
17 certain was. The other I'm not quite sure about, but I
18 believe it is the same.

19 Q. Thank you. Sergeant, I'm going to hand you what's
20 previously been marked Defendant's Exhibit 8 for
21 identification. Would you look at that?

22 A. Okay.

23 Q. All right. What do you see in that picture? What is
24 that a picture of?

25 A. The living area. This would be the short wall coming

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

648

1 up the stairwell.

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

5 A. I believe so.

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

8 A. I did not take photos.

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

11 A. True.

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

13 A. Yes.

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

16 MR. ROBINSON: No objection from the state.

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

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

21 (PHOTOGRAPH MARKED AS DEFENDANT PRICE'S EXHIBIT NUMBER
22 9 FOR IDENTIFICATION.)

23 (PHOTOGRAPH MARKED AS DEFENDANT PRICE'S EXHIBIT NUMBER
24 10 FOR IDENTIFICATION.)

25 BY MR. DEIER:

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

649

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

5 A. That is a bathroom.

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

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

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

16 A. Yes, sir.

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

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

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

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

25 Q. And what is right next to the blood?

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

650

1 A. A towel. Are you referring to the white -- it looks
2 like a towel.

3 Q. I'm going to hand you what's been marked Defendant's
4 Exhibit 10 for identification, Price. Take a look at that.

5 A. Okay.

6 Q. What does that appear to be?

7 A. A toilet.

8 Q. Does that appear to be the toilet that was in the
9 previous exhibit?

10 A. If you could give me the other photograph.

11 Q. Sure.

12 A. I could reference the trash can, just to be certain.
13 Yes.

14 Q. Now, going back to 9 for identification, Price, is
15 there blood inside the bathroom itself in this picture?

16 A. I can't tell from this photograph. There is again
17 what appears to be blood on the floor here.

18 Q. And that's at the threshold?

19 A. At the threshold, correct.

20 Q. Then if you get a closer look at the toilet, does that
21 appear to be blood next to the toilet?

22 A. There was some blood at the base of the toilet and
23 looks to be blood. I would say possibly that it is blood.

24 Q. Did you personally do the metal detector sweep?

25 A. No.

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

651

1 Q. Were you present for that?

2 A. Yes.

3 Q. Did they just sweep the general area in front of the
4 apartment?

5 A. Well, we knew that there were three, at least three
6 gunshot wounds between the two victims. After Sergeant
7 Holmes had been to the hospital, we had collected two shell
8 casings. Just out of making sure we covered everything,
9 brought it out to make sure that there wasn't a third one.
10 The third one was located in the grass on the sidewalk.

11 Q. So after you found that, you were done?

12 A. Well, they covered the area around the front door,
13 yeah.

14 Q. And, again, outside you found three shell casings?

15 A. Three shell casings.

16 Q. And you found one projectile underneath the mat?

17 A. At the mat at the front door.

18 Q. Did you see any evidence of a ricochet or anything
19 like that in the concrete out there?

20 A. If it was something obvious, it would have been
21 indicated or noted in the report somewhere, but I don't
22 know.

23 Q. You're aware that a bullet was found within Deverol
24 Cannick?

25 A. I don't know.

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

652

1 Q. Referring to the 9-1-1 tapes, you said there was two
2 from a neighbor?

3 A. I believe there were two from a neighbor. She called,
4 I think, to report the shots fired. And I think there may
5 have been a follow-up call after that.

6 Q. From the same neighbor?

7 A. I think so.

8 Q. How long ago has it been since you listened to those?

9 A. A couple of weeks.

10 Q. So, at least fairly recently?

11 A. Yes, sir.

12 Q. In both instances, is it fair to say it occurred
13 immediately after the shooting?

14 A. Yes.

15 Q. Based on your hearing of the tape, do you believe that
16 the speaker was under some stress at the time that she
17 called?

18 A. Yes.

19 Q. Why don't you tell us, then, the contents of each
20 call.

21 A. Have they not been played yet?

22 Q. No.

23 A. No.

24 MR. ROBINSON: Judge, I object to the hearsay, the
25 content of the calls. They're hearsay.

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

653

1 THE COURT: The hearsay rule we've been dealing with
2 this area is 803(2), which establishes the guideline. Mr.
3 Deier has adduced testimony which indicates that the,
4 whoever the person was, was describing something that
5 happened at the time or immediately after it happened and
6 while the event was ongoing. That comes under 803(1),
7 which is present sense impression. 803(2) relates to
8 declarant being under stress and excitement caused by the
9 event. It appears to me under either or both of these
10 rules it would be admissible.

11 Do you want to address those?

12 MR. ROBINSON: I'll withdraw the objection, Your
13 Honor.

14 THE COURT: Thank you. Over objection -- the
15 objection is withdrawn.

16 Ms. Viens, you can testify about the evidence
17 obtained.

18 BY MR. DEIER:

19 Q. Let's start with the first one.

20 A. The first one, I believe, was to call and report
21 gunshots. The lady was scared. I think she was in the
22 bathroom and wanted to call her fiancé or something.

23 Q. So, what did she say on that one?

24 A. There were several shots.

25 Q. Was she able to identify which apartment it came from

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

654

1 in the first call?

2 A. I don't think in the first call.

3 Q. All right. Let's turn to the second call. You heard
4 that one as well?

5 A. From her or the actual -- from the ---

6 Q. From her.

7 A. Uh-huh.

8 Q. And in that call, she did identify what apartment it
9 came from, didn't she?

10 A. I think she said the neighboring apartment.

11 Q. And she specifically said which one it was?

12 A. The unit number? Did she give a unit number?

13 Q. Uh-huh.

14 A. I don't know if she did or not. I can't ---

15 Q. She indicated, though, in that call that she knew who
16 the occupants were of that apartment?

17 A. She did not call them by name. No, I don't believe
18 so.

19 Q. Didn't she say that those people were bad?

20 A. That's a possibility.

21 Q. And that they needed to be arrested?

22 A. I don't know that she said they needed to be arrested.

23 MR. DEIER: Just one moment, Your Honor.

24 Q. Sergeant Viens?

25 A. Viens.

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

655

1 Q. Do you recognize this disc?

2 A. It says 9-1-1 calls and the handwriting on there looks
3 like Irene Reese's. If it's not in the evidence bag, I
4 can't say for certain that's the 9-1-1 called in. But it
5 says 9-1-1 calls with our case number.

6 Q. That is your case number?

7 A. I believe so, yes. On the top of my report.

8 Q. Okay.

9 MR. DEIER: Well, Your Honor, at this time I would
10 move to introduce this tape into evidence so I can play the
11 contents of it.

12 THE COURT: The only difference is the officer says it
13 looks like it says 9-1-1 calls and this case number, but
14 she has not authenticates the calls on there as being the
15 accurate ones. And she can't testified about that since
16 it's not coming from her case file. One way to do it is to
17 play it outside the presence of the jury and let her
18 confirm it. If we can do that, then you can get it in.

19 MR. ROBINSON: More than happy to do that, Your Honor.

20 THE COURT: All right, ladies and gentlemen, I'm going
21 to send you to your jury room. We have to deal with this
22 matter of law outside your presence. It will take just a
23 few moments. We're not going to take any more of your time
24 and, frankly, we're going to try to use this time to
25 expedite any process. Don't talk about the case.

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

656

1 (THE JURY EXITS AT 10:48 A.M.)

2 (A PAUSE.)

3 (TAPE OF 9-1-1 CALLS MARKED AS DEFENDANT PRICE'S
4 EXHIBIT NUMBER 11 FOR IDENTIFICATION.)

5 MR. ROBINSON: I'll recognize that disc as being the
6 copy that I provided with defense counsel.

7 THE COURT: Right.

8 MR. ROBINSON: And I will stipulate that all of the
9 contents of the 9-1-1 calls are on the disc.

10 THE COURT: Okay.

11 MR. ROBINSON: However, I do move that the court play
12 all the phone calls in the interest of adhering to the rule
13 of completeness.

14 THE COURT: Right.

15 MR. ROBINSON: So that it is not selectively presented
16 to the jury.

17 THE COURT: All right. So, all of the calls would be
18 the one from the apartment in question, as well as the
19 neighboring apartment. Is that what you're talking about?

20 MR. ROBINSON: That's correct.

21 THE COURT: Okay. All right, Mr. Geier, what say you
22 to that?

23 MR. GEIER: I'll stipulate to that, Your Honor. I
24 have no problem.

25 THE COURT: Okay. Now, the jury hadn't had a chance

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

657

1 yet to go to the bathroom, so we've got a few more minutes
2 to make use of this time, and here's how I want to use it.

3 If there are any other photographs that need to be,
4 that were going to be introduced -- gentlemen, I want you
5 to listen up, please. Mr. Robinson, please, sir.

6 MR. ROBINSON: Apologize.

7 THE COURT: If there are any other photographs that
8 are going to be offered during the presentation of the
9 state's case, I would like for you to take this time,
10 please, to get those marked and to review them with the
11 state's -- with the defense counsel to see if we can't make
12 better use of the time.

13 MR. ROBINSON: Your Honor, we're not, we're not
14 offering any more photographs.

15 THE COURT: Okay, any other evidence that you intend
16 to offer that defense counsel needs to review before it can
17 be admitted. Obviously, it would have been best if I'd
18 thought of this on Monday, but I didn't.

19 MR. ROBINSON: I'll make those arrangements.

20 THE COURT: If you've got some other evidence, let's
21 see if we can't at least make this jury disabuse themselves
22 of the impression this is the first time anybody in this
23 courtroom has ever seen any of this stuff being put into
24 evidence. So, I know it's been exchanged before, I know
25 that, and I know they've seen it. But the jury is getting

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

658

1 the impression that, my goodness, you know, it looks like
2 nobody looks at anything until we get in the trial, and
3 they're trying to get it into evidence. And then it's like
4 reinventing the wheel or discovering fire or something.

5 MR. ROBINSON: Your Honor, the only things we have
6 left to offer are the shell casings and projectiles which
7 this witness has already testified to.

8 THE COURT: Right.

9 MR. ROBINSON: However, we do need the evidence
10 custodian to testify with regard to chain of custody, and I
11 will, I will be calling them shortly.

12 THE COURT: I understand, and that, and that will be
13 fine. I realize that this -- that Staff Sergeant Viens
14 can't testify about all that stuff. But if it's going to
15 come in through another witness, at least it can be shown
16 to these folks in advance so when the evidence custodian
17 does testify, they'll know what you're talking about, okay?

18 MR. ROBINSON: Thank you, Your Honor.

19 THE COURT: All right, Staff Sergeant, you can step
20 down. You can't talk about your testimony while you're off
21 the stand. We're going to start back at quarter of the
22 hour in about seven minutes.

23 COURT REPORTER: Judge, I've marked 11 I.D.

24 THE COURT: 11 for I.D., is that the tape?

25 COURT REPORTER: That's the tape, yes, sir.

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

659

1 THE COURT: It's now in in evidence. Thank you.

2 (TAPE OF 9-1-1 CALLS MARKED INTO EVIDENCE AS DEFENDANT
3 PRICE'S EXHIBIT NUMBER 11.)

4 (OFF THE RECORD.)

5 (COPPER JACKETED PROJECTILE MARKED AS STATE'S EXHIBIT
6 NUMBER 38 FOR IDENTIFICATION.)

7 (PROJECTILE MARKED AS STATE'S EXHIBIT NUMBER 39 FOR
8 IDENTIFICATION.)

9 (.45 SHELL CASINGS MARKED AS STATE'S EXHIBIT NUMBER 40
10 FOR IDENTIFICATION.)

11 (.40 SHELL CASING MARKED AS STATE'S EXHIBIT NUMBER 41
12 FOR IDENTIFICATION.)

13 (.45 SHELL CASING MARKED AS STATE'S EXHIBIT NUMBER 42
14 FOR IDENTIFICATION.)

15 (COPPER JACKET, SLUG MARKED AS STATE'S EXHIBIT NUMBER
16 43 FOR IDENTIFICATION.)

17 MR. ROBINSON: We have marked the last six exhibits,
18 and they will be admitted with the evidence custodian, and
19 they have been shown to defense counsel. We're ready to
20 proceed.

21 THE COURT: Thank you. Appreciate that.

22 Is the 9-1-1 tape queued up and ready to go?
23 Defendant's Exhibit 11, I understand?

24 COURT REPORTER: Yes, sir.

25 (THE JURY ENTERS AT 10:48 A.M.)

A. VIENS - CROSS-EXAMINATION BY MR. DEIER

660

1 THE COURT: Ladies and gentlemen, thank you for your
2 patience. We've taken some time in this courtroom to get
3 some other evidence premarked to expedite this process.
4 Hopefully things will move a little bit more smoothly.

5 Mr. Deier, you can continue your cross-examination.

6 BY MR. DEIER:

7 Q. Let's go ahead and play the 9-1-1 tape.

8 A. Okay.

9 (WHEREUPON, DEFENDANT PRICE'S EXHIBIT NUMBER 11 IS
10 PLAYED IN OPEN COURT.)

11 BY MR. DEIER:

12 Q. Okay, Sergeant, is that the 9-1-1 tape that you heard?

13 A. Yes.

14 Q. I'm going to hand you what's been previously marked as
15 Defendant's Exhibit 3, Simuel, for identification. Could
16 you look at this, please?

17 A. Uh-huh.

18 Q. Is that something that you all recovered from the
19 apartment as well?

20 A. I don't know if we collected it or not. We did
21 photograph it simply because of some of the symbols and
22 stuff on there.

23 Q. Is that a true and accurate representation of what you
24 saw in the apartment?

25 A. Yes.

A. VIENS - REDIRECT EXAMINATION BY MR. ROBINSON

661

1 MR. DEIER: Your Honor, at this time I'd move to admit
2 previously marked Defendant's Exhibit 3 for identification
3 Simuel.

4 THE COURT: Mr. Robinson?

5 MR. ROBINSON: I'll object for the record because
6 another witness has already testified that he didn't
7 remember that being in the apartment.

8 THE COURT: Thank you. Objection overruled. Comes in
9 subject to defense counsel. Defense 3 in evidence.

10 (PHOTOGRAPH MARKED INTO EVIDENCE AS DEFENDANT SIMUEL'S
11 EXHIBIT NUMBER 3.)

12 MR. DEIER: Your Honor, may I publish?

13 THE COURT: Yes, sir.

14 (A PAUSE.)

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

16 WITNESS: Thank you.

17 THE COURT: Mr. Robinson, redirect?

18 REDIRECT EXAMINATION BY MR. ROBINSON:

19 Q. Sergeant Viens, the first and last 9-1-1 calls were
20 purportedly made by Jamie, you heard those, did you not?

21 A. I did.

22 Q. Did you attempt to make contact with her?

23 A. I did.

24 Q. Were you able to make contact with her?

25 A. No, sir.

A. VIENS - REDIRECT EXAMINATION BY MR. ROBINSON

662

1 Q. And you responded to the scene. Is that correct?

2 A. Yes.

3 Q. You responded how long after the shooting?

4 A. I don't know if I indicated my arrival time on here.

5 I would say probably within the half hour because we would

6 have at most come from the south end of Hilton Head.

7 Q. What efforts did you make to locate that caller?

8 A. I believe officers out there may have attempted to

9 make contact with her while we were on scene. After I

10 received the 9-1-1 calls, a phone number is usually

11 attached with the call itself, and I called that number.

12 Q. And you were not able to make contact with her?

13 A. No, sir.

14 Q. So, you were not able to verify anything that you

15 heard her say on that call. Is that right?

16 A. No, sir.

17 Q. Were any shell casings found inside the apartment?

18 A. None.

19 MR. ROBINSON: I have nothing further from this

20 witness.

21 THE COURT: Thank you. Anything, Mr. Deysach?

22 MR. DEYSACH: None from me, Your Honor.

23 THE COURT: Thank you, you may step down. Without

24 objection you may be excused. Thank you.

25 (THE WITNESS EXITS THE STAND.)

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

663

1 MR. ROBINSON: The state calls Sergeant Dejuan Holmes.

2 THE COURT: Sergeant Holmes, come forward, please,
3 sir, and be sworn.

4 DEJUAN HOLMES, BEING FIRST DULY
5 SWORN, TESTIFIES AS FOLLOWS:

6 WITNESS: Dejuan Holmes, H-O-L-M-E-S.

7 DIRECT EXAMINATION BY MR. ROBINSON:

8 Q. Sergeant Holmes, did you investigate the shooting that
9 happened on July 28th at [REDACTED] Apartments?

10 A. Yes, sir.

11 Q. What's the first thing that you did as part of your
12 investigation?

13 A. I was instructed by Master Sergeant Riley to respond
14 to the Hilton Head Medical Center to meet the victims and
15 any witnesses that may be there.

16 Q. And did you make contact with them?

17 A. Yes, I did.

18 Q. And were you able to interview them at that time?

19 A. Yes.

20 Q. What happened after that?

21 A. I went out to the [REDACTED] incident location at [REDACTED]
22 [REDACTED] apartments in Bluffton.

23 Q. What did you do there?

24 A. I participated in the search warrant at the scene.

25 Q. After participating in the search warrant, what is the

1 next thing you did?

2 A. Myself and Sergeant Calhoun went over to Savannah
3 Memorial Hospital where we met with witnesses that were in
4 the house.

5 Q. Were you able to obtain statements at that time?

6 A. Yes.

7 Q. What is the next thing you did?

8 A. After that, the following day, myself and Sergeant
9 Calhoun went back over to the location and met with
10 witnesses again at the incident location.

11 Q. So, this is day two of the incident?

12 A. Yes.

13 Q. First day of?

14 A. It was 28th.

15 Q. 28th is the day of the incident?

16 A. Correct.

17 Q. The day you're talking about the is 29th. Is that
18 correct?

19 A. Yes, sir.

20 Q. On what day did you develop suspects?

21 A. 29th.

22 Q. How did you develop Demetrius Price as a suspect?

23 A. During the investigation, we were given information
24 that there was video at the front gate of [REDACTED]
25 Apartments. During the investigation, the video captured a

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

665

1 vehicle with Georgia tags leaving the location. At some
2 point in time, the vehicle tags were ran and it came back
3 to Demetrius Price.

4 Q. Did you make contact with Demetrius Price?

5 A. Yes, I did.

6 Q. Where did you do that?

7 A. Savannah. Savannah Metro Police Department in
8 Savannah, Georgia.

9 Q. What date did you do that?

10 A. That was the 31st.

11 Q. The 31st?

12 A. Yes, sir.

13 Q. Was he in custody at that time?

14 A. Yes, he was.

15 Q. What time of day or night did you make contact with
16 him at the location?

17 A. Not exactly sure. I believe it was midday.
18 Afternoon.

19 Q. Was anyone else with you?

20 A. Investigator Calhoun was there for a short time.

21 Q. And did you talk to him?

22 A. Yes, I did.

23 Q. You were where when you talked to him?

24 A. We were in a room, a small interview room on the
25 second floor.

1 Q. Was he cuffed?

2 A. No, he wasn't.

3 Q. Was he dressed in prison garb?

4 A. No, he wasn't.

5 Q. About how long did your interview with him last?

6 A. I'd say about an hour.

7 Q. When you met with him, did you advise him of his
8 Miranda rights?

9 A. Yes, I did.

10 Q. How did you do that?

11 A. At the sheriff's office, we have a standard Miranda
12 rights -- Miranda statements form that we read, and that
13 was our -- I read it to him.

14 Q. And are all those rights listed on that form?

15 A. Yes, it is.

16 Q. Judging from his demeanor, was he able to understand
17 -- did he seem to understand those rights?

18 A. Yes.

19 Q. Did you give him the option of signing the form?

20 A. Yes.

21 Q. Did he sign the form?

22 A. No, he refused. I asked him several times if he
23 understood his rights and asked him to sign the form, but
24 he refused to.

25 Q. But did you ask him if he understood his rights?

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

667

1 A. I did ask him if he understood the rights, and he said
2 yes.

3 Q. Did you have warrants for his arrest at that time?

4 A. Yes, I did.

5 Q. Did you read the warrants to him?

6 A. Yes, I did.

7 Q. In the interview process, you testified that you read
8 the Miranda rights form, that you read the warrants to him.
9 Which came first?

10 A. I read the rights first.

11 Q. Then you read the warrants to him?

12 A. Correct.

13 Q. Did your questioning begin after that?

14 A. Yes.

15 Q. And did he agree to speak?

16 A. Yes.

17 Q. And what did you ask him?

18 A. I asked him about his location on the 28th of July.

19 Q. And what did he tell you?

20 A. He told me that he had -- the morning of the 28th, he
21 woke up and went over to his girlfriend's house -- that was
22 about 10:00 that morning -- to look for a job. He said he
23 had been in Savannah on the 20th looking for a job, jobs.
24 He said he went to his girlfriend's house at 10:00, at
25 which time he called his girlfriend's mother, who is a

1 manager at the Sam's club in Georgia.

2 Q. Did he tell you who his girlfriend was?

3 A. He refused to tell me who his girlfriend was, where
4 she stayed, who his girlfriend's mother was, and where she
5 stayed.

6 Q. Did you ask him all those things?

7 A. Yes, I did.

8 Q. What is the next thing you asked him?

9 A. I then asked him what he did after calling or looking
10 for a job. He said he left the location of his
11 girlfriend's house and went down to a carwash somewhere on
12 Victory Drive. He said he left his car there, and he and
13 his friend went to that location nearby to have lunch or to
14 get something to eat.

15 Q. Where is Victory Drive?

16 A. Victory Drive is a road in Savannah, Savannah,
17 Georgia.

18 Q. Did he say what the carwash was called?

19 A. No, he didn't. He refused to tell me, give me that
20 information also.

21 Q. Did he say who his friend was?

22 A. He refused to give me that information also.

23 Q. What else did he tell you?

24 A. He told me after coming back from the carwash --
25 correction. From getting something to eat, he went to get

D. HOLMES - DIRECT EXAMINATION BY MR. ROBINSON

669

1 his car and go on home. I asked him what time he gotten
2 home. He said it was 3:00. He's sure it was 3:00 because
3 his girlfriend got off work and was home by that time.

4 Q. What else did you ask him? Strike that. What did you
5 ask him next?

6 A. I then asked him if he had been to Bluffton, and he
7 said he had not gone to Bluffton that day. He had never
8 been to Bluffton; he had no reason to go to Bluffton.

9 Q. What did you ask him next?

10 A. I asked him if his vehicle was in Bluffton, how it
11 would have gotten there. And he said that someone from the
12 carwash must have had his vehicle. But they didn't have
13 time to go to Beaufort -- correction, gone to Bluffton and
14 then back by the time he picked up his car.

15 Q. What did you ask him next?

16 A. I then asked him -- told him his vehicle was on video
17 at the location. He said that someone must have taken his
18 car over to Bluffton.

19 Q. What did you ask him next?

20 A. I then told him that his vehicle was on video, and he
21 said that he was not at the location. Someone must have
22 took his vehicle. And after that, I showed him a picture
23 of -- from the location of his vehicle.

24 Q. Did you show him the still frames from the security
25 video?

1 A. Yes, I did.

2 Q. Are those the pictures you showed him?

3 A. Yes, sir.

4 Q. And what did he say then?

5 A. He said that wasn't his vehicle because it didn't have
6 any hubcaps.

7 Q. What did he say next?

8 A. I then showed him a second photo of his vehicle which
9 showed the Georgia tag, which the tag was his vehicle,
10 vehicle tag. It was registered to him.

11 Q. Did he say anything after that?

12 A. He said someone must have had his vehicle.

13 Q. That was after he told you it wasn't possible for
14 someone to have gone to Bluffton with his car?

15 A. That's correct.

16 Q. Other than Demetrius Price, was anyone else with you
17 during the questioning of Demetrius Price?

18 A. Initially Investigator Calhoun was present.

19 Q. At what point did he leave?

20 A. He left shortly after I read the warrants to Mr.
21 Price. I guess he felt that I would build a rapport with
22 Mr. Price, and it would be better for him to leave.

23 Q. At any time in your conversation with Demetrius Price,
24 did you make any promises to him of any kind?

25 A. No.

D. HOLMES - CROSS-EXAMINATION BY MR. GEIER

671

1 Q. Did you make any threats of any kind?

2 A. No.

3 Q. No promises of leniency?

4 A. None at all.

5 Q. Is that the only -- were there any other occasions
6 when you took statements from Demetrius Price?

7 A. No.

8 MR. ROBINSON: Beg the court's indulgence.

9 THE COURT: Yes, sir.

10 MR. ROBINSON: I have nothing further of this witness.
11 Investigator Holmes, please answer these lawyers'
12 questions.

13 THE COURT: Cross-examine?

14 MR. DEIER: Yes, sir.

15 CROSS-EXAMINATION BY MR. DEIER:

16 Q. Good morning, Investigator Holmes.

17 A. Good morning, Mr. Deier.

18 Q. All right, Investigator Holmes, when you interviewed
19 Demetrius Price, you mentioned that you read his rights
20 from a rights form?

21 A. Correct, sir.

22 Q. And he refused to sign that?

23 A. That's correct.

24 Q. Now, you didn't retain a copy of that form and write
25 refuse, did you?

1 A. No, sir.

2 Q. That's commonly done in other types of criminal
3 justice -- like DUI cases, isn't it?

4 A. Up to the officer.

5 Q. You just chose to get rid of that that day?

6 A. I didn't have any of these.

7 Q. Now, you took notes during this interview, didn't you?

8 A. That's correct.

9 Q. And at some time later, you took those notes and
10 prepared an investigation form, correct?

11 A. That's correct.

12 Q. And you received training on how to create these
13 reports and write those notes, didn't you?

14 A. Yes, sir.

15 Q. Both at the police academy and as you're coming up and
16 you make sergeant.

17 A. Yes, sir.

18 Q. And you were taught to prepare complete and accurate
19 reports, right?

20 A. Yes, sir.

21 Q. You were taught to include everything that's important
22 in a case?

23 A. That's correct.

24 Q. And is it fair to say that the reason why it's
25 important to put accurate information is that you're going

D. HOLMES - CROSS-EXAMINATION BY MR. GEIER

673

1 to rely on that later on?

2 A. That's correct.

3 Q. Rely both for your memory and also for the
4 investigation so the solicitor can prosecute the case?

5 A. That's correct.

6 Q. How many different cases would you estimate that
7 you've worked on over the last eighteen months?

8 A. Close to a hundred.

9 Q. You've probably interviewed tons of witnesses during
10 that time?

11 A. Yes, sir.

12 Q. Probably interviewed a number of suspects during that
13 time, too?

14 A. Yes, sir.

15 Q. Have you -- you take the notes. You type up the
16 report. After you write the report, you review the report,
17 don't you, to make sure it's accurate?

18 A. That's correct.

19 Q. And you actually have previously testified regarding
20 the contents of this report with regard to this case,
21 haven't you?

22 A. That's correct.

23 Q. And before you testified there, you probably reviewed
24 the report, didn't you?

25 A. That's correct.

1 Q. And before you come up today, you probably took a look
2 at this to make sure it was all -- refresh your memory,
3 didn't you?

4 A. That's correct.

5 Q. Now, when you interviewed Demetrius Price on
6 7/31/2008, you actually asked him where he was on the 29th?

7 A. I asked him the 28th. The report says the 29th.

8 Q. And, again, didn't you testify the other day that you,
9 in fact, asked him about the 29th?

10 A. I don't recall exactly what I said, but I know I
11 looked at it, and I saw it was the 29th on my report. It
12 was the 28th that I asked him about.

13 Q. Again, you don't know if you asked him about the 28th
14 or the 29th at that time?

15 A. It was the 28th that I asked him about.

16 Q. You certain of that?

17 A. When I interviewed Mr. Price on the 31st, it was the
18 28th that I asked him about.

19 Q. And so then you interview him. He says I was there on
20 the 28th -- I'm sorry, the 28th, you go through there, take
21 down notes. You go back, you write up your report, you
22 review your report and, in fact, the date was the 29th that
23 ends up in your report?

24 A. That is correct, sir.

25 Q. And, again, we just went through all the things we

D. HOLMES - CROSS-EXAMINATION BY MR. GEIER

675

1 talked about while you prepared these reports, and you
2 prepare the notes so you can remember?

3 A. Yes, sir.

4 Q. As you're sitting here, you can't testify that you are
5 certain that you asked him about the 28th as opposed to the
6 29th.

7 A. I'm pretty certain it was the 28th that I asked him
8 about.

9 Q. And so, again, if the record shows that you mentioned,
10 you talked to him about the 29th and you previously
11 testified to this matter, would you have any reason to
12 dispute that at that time?

13 MR. ROBINSON: Judge, I object. He's asking about
14 previous testimony. This is the first time this witness
15 has taken the stand before the jury.

16 THE COURT: That's true, but we all know that he's
17 testified outside the presence of this jury regardless.
18 He's entitled to cross-examine.

19 MR. ROBINSON: I'll withdraw the objection.

20 THE COURT: Thank you.

21 BY MR. DEIER:

22 Q. If you were presented with that evidence as you
23 testified, that you asked him about the 29th previously in
24 this matter, would you have any reason to dispute that you
25 testified to that?

D. HOLMES - CROSS-EXAMINATION BY MR. GEIER

676

1 A. If that's what I said on the record, that's on record.

2 But I know when I interviewed, it was the 28th, sir.

3 Q. Now, you haven't changed your position since then
4 because as this case has gone on. July 28th keeps coming
5 up again and again and again, and you look at your report
6 and say I asked about the 29th.

7 A. That's what I typed in my report. It is a mistake.

8 Q. Would you agree with me that the date an incident
9 occurred is an important fact within a criminal
10 investigation?

11 A. Yes, it is.

12 Q. Critical fact?

13 A. Yes, sir.

14 Q. And as far as you know, Demetrius Price was in
15 Savannah all day on the 28th. Is that correct?

16 MR. ROBINSON: Judge, I object. This is asked and
17 answered; we've gone over this repeatedly.

18 THE COURT: The question was as far as he knows
19 whether it was Demetrius. Now, if he knows where Demetrius
20 was, that's one thing; he can testify about that. But if
21 he's going to repeat what Demetrius told him, then that's
22 the way the question needs to be phrased. The question was
23 does he know. So far as you know, was Demetrius in
24 Savannah on the day in question. That is, the 29th. If he
25 knows, he can answer. If he doesn't, he can't.

D. HOLMES - CROSS-EXAMINATION BY MR. DEYSACH

677

1 A. On the 29th, I don't know where Demetrius was.

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

3 THE COURT: Thank you.

4 Mr. Deysach?

5 MR. DEYSACH: Thank you very much, Your Honor.

6 CROSS-EXAMINATION BY MR. DEYSACH:

7 Q. Good morning, Investigator Holmes.

8 A. Good morning, Mr. Deysach.

9 Q. I want to ask you a couple of questions about your
10 trip to Savannah -- your trips to Savannah Memorial
11 Hospital. You accompanied Investigator Calhoun to the
12 hospital. Is that correct?

13 A. That's correct, sir.

14 Q. And when you talked to witnesses in the case, you
15 talked to them together. Is that correct?

16 A. Yes, sir.

17 Q. When you did the, when you did the photo lineup
18 procedure, you did that together. Is that correct?

19 A. Yes.

20 Q. So, you're in the room with Investigator Calhoun as
21 pictures of possible folks involved are being showed to the
22 witnesses in the case?

23 A. That's correct.

24 Q. And one of those witnesses was Deverol Cannick,
25 correct?

1 A. That is correct.

2 Q. So, you were there when -- you answered that already.

3 All right. So, you were there when Deverol identified
4 Demetrius Price as the person with the uncle who possessed
5 the revolver, entered his apartment, and shot both Deon and
6 Deverol? You were there when Deverol said that, right?

7 A. I was present during the interview and the showing of
8 the photo lineup.

9 Q. Asking you specifically about that statement where he
10 identifies Demetrius Price as the person with the revolver
11 who shot, but it's Deon and Deverol. You were there for
12 that, right?

13 A. Yes.

14 Q. And you heard him say it?

15 A. Pretty sure I did.

16 Q. And then you -- what day was it that you spoke with
17 Demetrius Price again?

18 A. 31st. 31st of July.

19 Q. And when you spoke with him, did you have the warrants
20 for his arrest?

21 A. Yes, sir.

22 Q. And did you -- were you there for the service of those
23 warrants?

24 A. Yes, sir.

25 Q. And so the warrants at that time, two warrants for

D. HOLMES - CROSS-EXAMINATION BY MR. DEYSACH

679

1 assault and battery with intent to kill, were served on
2 Demetrius Price, correct?

3 A. That's correct.

4 Q. One with victim of Deon, correct?

5 A. That's correct.

6 Q. And one with the victim of Deverol, correct?

7 A. Yes, sir.

8 Q. Were you there for the service of warrants on Mr.
9 Simuel?

10 A. Pretty sure I was.

11 Q. And at that time, there were no warrants served on him
12 for assault and battery with intent to kill, correct?

13 A. I would have to refer back to Calhoun's report.

14 MR. DEYSACH: Okay, I'm not exactly sure what page
15 it's on, to be honest, but I can -- if I approach the
16 witness?

17 THE COURT: Yes, sir.

18 MR. DEYSACH: I'll let him have Mr. Calhoun's report.

19 THE COURT: All right.

20 BY MR. DEYSACH:

21 Q. And I know the page where he talks about the
22 application for the warrants, but I don't know if it says
23 the same thing for service. But that is page -- I'll
24 direct you to page 10, if you'd like.

25 A. His report says 31st and possession of a firearm

1 during commission of a violent offense.

2 Q. And no warrants for assault and battery with intent to
3 kill?

4 A. No, sir.

5 Q. And so not for Deon and not for Deverol?

6 A. No, sir.

7 Q. All right, you were also at the hospital, I believe,
8 the day before for a separate encounter with Deverol?

9 A. Yes, sir.

10 Q. July 30th, '08, you met with Deverol Cannick at the
11 hospital, correct?

12 A. That's correct.

13 Q. You were with Investigator Calhoun at that time?

14 A. That's correct.

15 Q. And you were there when Deverol told you -- told y'all
16 that he eventually opened the door. And if you need a
17 little bit of assistance, the first paragraph of Deverol's
18 statement, fourth line down towards the right side of the
19 page, sentence beginning with Deverol.

20 MR. ROBINSON: Judge, I object. Is there a question
21 there?

22 Q. Did you hear Deverol say that he eventually opened the
23 door?

24 A. I don't recall him saying that, but it may be in his
25 report, Calhoun's report.

D. HOLMES - REDIRECT EXAMINATION BY MR. ROBINSON

681

1 Q. Would it help you if I pointed it out? I'm pointing
2 out a little spot on page 9.

3 A. That's what it says. Correct.

4 Q. So, you were there when he said that?

5 A. Yes.

6 MR. DEYSACH: I don't have anything further, Your
7 Honor.

8 THE COURT: Thank you. Mr. Robinson, redirect?

9 REDIRECT EXAMINATION BY MR. ROBINSON:

10 Q. Sergeant Holmes, when you interviewed Demetrius Price,
11 you testified you read the warrants to him. Isn't that
12 correct?

13 A. Yes, sir.

14 Q. Didn't the warrants indicate that the event happened
15 on July 28th?

16 A. Correct.

17 Q. And you got the warrants how long after the day of the
18 shooting?

19 A. I believe I got it that morning, the 31st. Morning of
20 the 31st.

21 Q. Did your investigation end when you got the warrants?

22 A. No, sir.

23 Q. When you got the warrants, had there been any analyses
24 of the shell casings found at the scene?

25 A. No, sir.

D. HOLMES - REDIRECT EXAMINATION/RE CROSS-EXAMINATION 682

1 Q. Had any of those things been sent to the South
2 Carolina Law Enforcement Division for scientific analyses?

3 A. Not to my knowledge.

4 Q. In fact, how long did this investigation last after
5 the incident?

6 A. Several months.

7 Q. At any time, did Devin Cannick indicate to you that he
8 gave either of the two people that were involved in the
9 shooting, meaning the perpetrators, permission to come into
10 his house?

11 MR. DEYSACH: I would object to the hearsay.

12 THE COURT: Not offering for the truth of the matter
13 asserted. He's asking whether or not he told him that.
14 I'll allow the question.

15 BY MR. ROBINSON:

16 Q. Did he indicate that he gave them permission to enter
17 the house?

18 A. No, sir.

19 MR. ROBINSON: Nothing further of this witness.

20 THE COURT: Thank you.

21 Any follow up, Mr. Deysach?

22 MR. DEYSACH: I do just briefly, Your Honor.

23 RE CROSS-EXAMINATION BY MR. DEYSACH:

24 Q. You applied for the warrants at -- you applied for the
25 warrants after you'd done the lineup procedure with Devin.

D. HOLMES - FURTHER EXAMINATION BY MR. ROBINSON 683

1 It was after that, correct, that you applied for the
2 warrants?

3 A. That is correct.

4 MR. DEYSACH: That's all I have.

5 THE COURT: Mr. Deier, I skipped you inadvertently. I
6 didn't mean to skip you.

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

8 MR. ROBINSON: I have one more question.

9 FURTHER EXAMINATION BY MR. ROBINSON:

10 Q. Were there ever any additional interviews of the
11 victims after you got the warrants?

12 A. I believe there was. I'm not sure.

13 Q. Would it refresh your recollection to look at a
14 Sergeant Calhoun's report?

15 A. Yes.

16 MR. ROBINSON: May I approach the witness?

17 THE COURT: Yes, sir.

18 BY MR. ROBINSON:

19 A. Yes, there was interviews conducted.

20 Q. In fact, he was interviewed on September 3rd, was he
21 not?

22 A. That's correct.

23 MR. ROBINSON: I have nothing further.

24 THE COURT: Thank you. You can step down,
25 Investigator.

K. WHITLER - VOIR DIRE EXAMINATION BY MR. ROBINSON

684

1 (THE WITNESS EXITS THE STAND.)

2 MR. ROBINSON: Call Ken Whitler.

3 KEN WHITLER, BEING FIRST DULY SWORN,
4 TESTIFIES AS FOLLOWS:

5 CLERK OF COURT: State your full name for us and spell
6 your last name, please.

7 WITNESS: My name is Kenneth H. Whitler. The last
8 name is spelled W-H-I-T-L-E-R.

9 VOIR DIRE EXAMINATION BY MR. ROBINSON:

10 Q. Agent Whitler, where do you work?

11 A. I work for the South Carolina law enforcement
12 division. That's also known as SLED.

13 Q. How long have you worked there?

14 A. Since 1997.

15 Q. What do you do there?

16 A. I'm a firearms tool marks examiner.

17 Q. And describe your education and training in that
18 field.

19 A. There is no school that you go to to get a degree in
20 firearms identification, which is what I do. You have to
21 learn from other qualified examiners. And when I was
22 employed in the FBI laboratory, I underwent the training
23 program there for approximately two years. During this
24 two-year period, you shoot literally thousands of bullets
25 and cartridge cases and compare them to firearms. You work

K. WHITLER - VOIR DIRE EXAMINATION BY MR. ROBINSON 685

1 on real cases with qualified examiners, and you also do a
2 lot of reading and studying and working on test cases also.

3 At the end of the period when you worked with all the
4 examiners, it has to be a unanimous decision that they
5 decide that you have learned all that you can at that
6 point, and they gave you a series of three tests. If you
7 successfully complete the three tests, the FBI would
8 certify you as a firearms tool mark examiner.

9 I successfully completed the training and was
10 certified in 1991 as a firearms tool mark examiner. In
11 1997, I retired from the FBI and came back to South
12 Carolina to work for SLED in their firearms department
13 doing basically the same job.

14 Q. Have you ever testified in court before?

15 A. I've testified over two hundred times in various
16 state, federal, and territorial courts.

17 Q. Have you ever been recognized as an expert in the
18 field of ballistics and forensic analyses of firearms?

19 A. No.

20 Q. In what areas have you been qualified?

21 A. I've been qualified expert in firearms identification.
22 Ballistics is another area.

23 MR. ROBINSON: Your Honor, at this time I'd move that
24 agent Ken Whitler be recognized as an expert in the field
25 of firearms identification.

1 THE COURT: Any voir dire?

2 MR. DEYSACH: I have some briefly.

3 VOIR DIRE EXAMINATION BY MR. DEYSACH:

4 Q. You said that you were certified in 1996?

5 A. '91.

6 Q. '91. Do you undergo recertification periodically?

7 A. We have a series of proficiency tests yearly that we
8 undergo.

9 Q. And if you fail that test, you lose your
10 certification?

11 A. Well, SLED doesn't certify you. You have proficiency
12 tests that if you don't pass, then you have to have
13 remedial training. But I've always passed all tests.

14 Q. You basically have to -- when was the last time you
15 had one of those tests that SLED administers you?

16 A. Just within the last several months.

17 Q. And how many, how many questions can you get wrong on
18 that test and still pass?

19 A. It is not a question test. You're given actual
20 bullets or cartridge cases or tool marks to look at, and
21 you either get it right or you get it wrong.

22 Q. It's a one hundred percent then. Is that correct?

23 A. Yes, sir.

24 Q. And if it's wrong, then you have to have more
25 training?

K. WHITLER - DIRECT EXAMINATION BY MR. ROBINSON

687

1 A. Yes.

2 Q. And then they'll test you again?

3 A. Yes.

4 MR. DEYSACH: All right, I don't have any more voir
5 dire.

6 THE COURT: Thank you.

7 Mr. Deier?

8 MR. DEIER: I have no questions.

9 THE COURT: Without objection then, Agent Whitler is
10 qualified as an expert in firearms identification. Thank
11 you.

12 DIRECT EXAMINATION BY MR. ROBINSON:

13 Q. Did you examine some firearms in this case?

14 A. Yes.

15 Q. What things did you examine?

16 A. In this case there were four firearms submitted. Two
17 pistols and two revolvers and they ranged in caliber.
18 There was a .45 caliber firearm., a .38 caliber firearm, a
19 .32, and a .22.

20 Q. All right.

21 A. And I examined all those items.

22 Q. Were there any shell casings?

23 A. There was also three .45 caliber cartridge cases
24 submitted, and two .45 caliber bullets, and one .38 caliber
25 bullet jacket, and one lead core that was consistent with

1 being the core from a .38 caliber jacketed bullet.

2 Q. Could any of the shell casings have been fired by the
3 four guns that you examined?

4 A. The three shell cartridge cases I entered
5 microscopically compared to each other and determined that
6 they were all fired by the same firearm. Of the four
7 firearms submitted, only one was a .45 caliber. And when
8 these cartridge cases were microscopically compared to test
9 cartridge cases from that pistol, I determined that those
10 cartridges cases could not have been fired from that gun
11 due to differences in class characteristics.

12 Q. And the .45 caliber, is that an automatic or revolver?

13 A. It can be either. In this case, it was a
14 semiautomatic pistol.

15 Q. Semiautomatic pistol?

16 A. Yes.

17 Q. What about the .45 caliber projectile?

18 A. - The two .45 caliber ---

19 MR. DEYSACH: Your Honor, I have an objection at this
20 time. It has to do with the chain of custody on the .45
21 caliber projectile that came from Savannah Memorial
22 Hospital. There's a break in that chain that hasn't been
23 closed yet by the solicitor or by the state. And before he
24 can testify as to any opinion or testing that he's done on
25 that, on that bullet, he has to -- the chain has to be

K. WHITLER - DIRECT EXAMINATION BY MR. ROBINSON

689

1 closed. And I can explain where I think the hole is if
2 you'd like.

3 THE COURT: Well, the .45 caliber bullet as yet has
4 not been offered into evidence. Is that right?

5 MR. ROBINSON: It has not.

6 THE COURT: All right. I'm trying to struggle with
7 the relevancy of his testimony in the absence of the bullet
8 coming in just yet. Let's talk about the chain of custody.
9 Where is the hole, Mr. Deysach?

10 MR. DEYSACH: Your Honor, from the doctor who said
11 that he removed the projectile from Deverol Cannick, said
12 he handed or gave it to his nurse, who went unnamed. A
13 nurse who was named but who is not identified as the nurse
14 who got it from Dr. Bromberg, I believe his name was, gave
15 it to somebody named Javon Murphy. So, we don't have that
16 nurse to say that Dr. Bromberg -- we don't know who gave
17 her that bullet, whether it was his nurse, somebody else's
18 nurse or anything. We don't have the name of that nurse.
19 And this is -- I would point out this is the trauma center
20 at the hospital so it's not like there's just one bullet
21 there.

22 THE COURT: Well, I'm going to allow him to testify
23 about whether the bullet that he examined, wherever it came
24 from, matched any of the weapons in question.

25 Now, before that has any probative value for this

1 jury's consideration, we're going to have to deal with the
2 issue of that custody. It might well be that I resolve
3 that it doesn't matter because the chain of custody, as you
4 know, doesn't have to be perfect, especially when you're
5 dealing with non-fungible goods. When you're talking about
6 drugs or blood, that's one thing. If we're talking about
7 hard items, that's another thing entirely. We may have to
8 strike his testimony. The jury might not be able to
9 consider it.

10 But I'm going to, rather than reverse this process and
11 try to go back and plug the hole right now with a whole new
12 list of witnesses, we're going to take them in their turn.
13 And I take it somewhere along there line there's an
14 evidence custodian, Ms. Roberts, who is going to testify
15 about chain of custody and these other matters. For right
16 now, I'm going to allow him to testify about whether or not
17 the bullet in question he tested matched these guns.

18 Now, the cart is somewhat in front of the horse, Mr.
19 Robinson, because right this minute I don't know what
20 bullet he's talking about. I don't know whether it's going
21 to be the same bullet that's going to be offered in
22 evidence, through the testimony or not. How is he going to
23 talk about that?

24 MR. ROBINSON: Your Honor, the state maintains the
25 chain of custody was adequately described by the security

K. WHITLER - DIRECT EXAMINATION BY MR. ROBINSON

691

1 official at Savannah Memorial Hospital. Didn't identify
2 the specific nurse from whom the security personnel
3 received the bullet and ---

4 THE COURT: And I might not disagree with that once I
5 look back at my notes. I might not disagree with that.
6 But right now this witness is testifying about a bullet
7 that's not in evidence.

8 MR. ROBINSON: That's correct.

9 THE COURT: Okay. So, now comes in bullets tested.

10 MR. ROBINSON: We can discuss about that particular
11 bullet. Talk about ---

12 THE COURT: If you want to do it that way, that's
13 fine.

14 MR. ROBINSON: That's fine. Okay.

15 BY MR. ROBINSON:

16 Q. Agent Whitler, you looked at two .45 caliber rounds.
17 Is that correct?

18 A. That's correct.

19 Q. Please limit your testimony to the round that was
20 intact, that was not pierced.

21 A. Which one?

22 Q. I believe that would be item 5.

23 A. Discuss item 5?

24 Q. And item 11.

25 A. Could you repeat your question?

1 Q. Projectile, .45 caliber projectile, item 5, could it
2 have been fired by the same gun that fired the three shell
3 casings?

4 A. There's a possibility.

5 Q. Moving on, you also examined a projectile and a metal
6 jacket. What caliber weapon did that -- those two items
7 come from?

8 MR. DEYSACH: Your Honor, at this time I'm going to
9 make the objection as to relevance. I guess at this point,
10 we really don't know what jackets and what items they're
11 talking about right now because they haven't been put into
12 evidence.

13 THE COURT: Well, he's identified one .38 caliber lead
14 core. Is that correct?

15 MR. ROBINSON: That's correct.

16 THE COURT: And that's what you're talking about right
17 this minute?

18 MR. ROBINSON: I am.

19 THE COURT: Okay. I don't think we can get confused
20 on that as much as we could if we're talking about two
21 other bullets in another situation. I don't know where the
22 .38 lead core came from. I don't know its relevance right
23 now. But I'll allow him to testify whether or not it was
24 from the .38 revolver that's in question. Is that the
25 question you're going to ask?

K. WHITLER - DIRECT EXAMINATION BY MR. ROBINSON

693

1 MR. ROBINSON: It is.

2 THE COURT: Go ahead.

3 BY MR. ROBINSON:

4 Q. Could the projectile jacket have been fired by any of
5 the handguns that were submitted?

6 A. The .38 caliber fired bullet jacket under the four
7 firearms submitted, it was the only one that was even
8 calibered right, and it was of the -- it had the wrong
9 rifling characteristics. So, that revolver could not have
10 fired that bullet jacket. The core could have come from
11 that bullet jacket or another one. I can't determine that.
12 And it had no marks of value on it, so you can't identify a
13 core to a particular barrel. So I can't -- but, again, I
14 can say the bullet jacket was not fired by the .38 caliber
15 revolver because of wrong rifling characteristics. And it
16 couldn't have been fired by the other three firearms
17 because different calibers.

18 Q. So, is it fair to say that, excluding item number 5,
19 that the projectile, .45 projectile, the jacket, and the
20 .38 projectile were not fired, were not fired, nor were the
21 three casings fired by any of the guns submitted here,
22 correct?

23 A. That's correct.

24 Q. Furthermore, is it fair to say that the .45 projectile
25 core and the jacket do not match the three casings that

K. WHITLER - DIRECT EXAMINATION / CROSS-EXAMINATION

694

1 were submitted to you. Is that correct?

2 A. There was no .45 caliber core here. There's a .45
3 caliber that could not have been fired by the .45 caliber
4 pistol that was fired because of class characteristics.
5 And it couldn't have been fired by the other three because
6 of caliber differences. The .38 and the .45 couldn't have
7 been fired by the same gun for obvious class and caliber
8 differences.

9 Q. The .38 and .45 can't be fired?

10 A. No. The .38 is smaller than the .45. The .45
11 wouldn't fit in the .38 firearm, and the .38 would slide
12 down the barrel of a .45. One is too big and one is too
13 small.

14 MR. ROBINSON: That's all I have of this witness. The
15 state would pass the witness. Please answer any questions
16 these attorneys might have.

17 THE COURT: Thank you.

18 Mr. Deysach.

19 MR. DEYSACH: Thank you.

20 CROSS-EXAMINATION BY MR. DEYSACH:

21 Q. The jacket in the floor -- by the way, my name is Ian
22 Deysach. I represent Lucius Simuel in this case. Good
23 afternoon.

24 A. Good afternoon.

25 Q. There is a bullet in a core that you tested, correct?

K. WHITLER - CROSS-EXAMINATION BY MR. DEYSACH

695

1 A. That's correct.

2 Q. And you just told me that you couldn't, you couldn't
3 really say that the core came from the same, I guess,
4 projectile as the jacket, right?

5 A. It could have been -- it was consistent with being a
6 jacket from that type of bullet.

7 Q. Right.

8 A. But there's no way to be able to say that that bullet
9 core came from that jacket because of damage.

10 Q. Okay. So, you're unable to really, to give an opinion
11 other than to say it's possible that they came from the
12 same projectile?

13 A. The same bullet, yes.

14 Q. That's possible?

15 A. That's possible.

16 Q. It's also possible that they weren't?

17 A. Yes.

18 Q. And there was a .38 caliber revolver that was
19 submitted to you for testing, correct?

20 A. That's correct.

21 Q. And so you can't, as far as the core is concerned, you
22 couldn't identify what gun the core was fired out of,
23 right?

24 A. No. The revolver that was submitted had dust and dirt
25 in the barrel; its firing pin was broken. It was unable to

K. WHITLER - CROSS-EXAMINATION / J . ROBERTS - DIRECT EXAMINATION 696

1 be fired when it was received. Also, it was the wrong
2 marking characteristics, so at least the bullet jacket did
3 not come from that.

4 Q. But I'm asking about the core.

5 A. Cores, can't determine.

6 MR. DEYSACH: Okay. Thank you.

7 THE COURT: Mr. Deier?

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

9 THE COURT: Redirect, Mr. Robinson?

10 MR. ROBINSON: I have nothing further.

11 THE COURT: Thank you, Agent Whitler. You can step
12 down.

13 MR. ROBINSON: I'd ask the witness be excused.

14 (THE WITNESS EXITS THE STAND.

15 MR. ROBINSON: The state calls Jean Roberts of the
16 sheriff's office.

17 JEAN ROBERTS, BEING FIRST DULY SWORN,
18 TESTIFIES AS FOLLOWS:

19 CLERK OF COURT: State your name and spell your last
20 name, please.

21 WITNESS: Jean Ray Roberts. R-O-B-E-R-T-S.

22 DIRECT EXAMINATION BY MR. ROBINSON:

23 Q. Corporal Roberts, what do you do at the sheriff's
24 office?

25 A. I work in the evidence room in Hilton Head.

J. ROBERTS - DIRECT EXAMINATION BY MR. ROBINSON

697

1 Q. And what do you do there?

2 A. I receive evidence and transport the General Sessions
3 cases over to the Beaufort evidence room.

4 Q. And how are they maintained in the evidence room?

5 A. Once I sign for it, I have access to it until I
6 transport it over here to the Beaufort evidence room and it
7 is put in to storage.

8 Q. While it is in your custody, who has access to it?

9 A. Nobody unless they sign for it.

10 Q. Who can sign for it?

11 A. The investigating officers.

12 MR. ROBINSON: May I approach the witness?

13 THE COURT: Yes, sir.

14 BY MR. ROBINSON:

15 Q. I'll show you something that's going to be marked as
16 State's Exhibit 38 for identification -- 44, I apologize.

17 (EVIDENCE LOG MARKED AS STATE'S EXHIBIT NUMBER 44 FOR
18 IDENTIFICATION.)

19 BY MR. ROBINSON:

20 Q. Do you recognize that?

21 A. Yes, sir. It's an evidence submittal form that I
22 signed for on 7/29 at 14:09.

23 Q. And you signed for it. What does that mean?

24 A. That means it was given to me into custody.

25 Q. And does the form indicate from whom you received it?

J. ROBERTS - DIRECT EXAMINATION BY MR. ROBINSON

698

1 A. Yes, sir. I received it from Angela Viens.

2 Q. And is it dated?

3 A. It is.

4 Q. What is the date?

5 A. 7/29/08.

6 Q. On that evidence form in the bottom, are there a
7 number of things listed?

8 A. Yes, sir.

9 Q. On the bottom third of the items listed, what's
10 listed? I believe they're marked.

11 A. I have a sealed paper bag with copper jacketed
12 projectile; a plastic bag with a .45 shell casing from near
13 sidewalk; a sealed paper bag with a .45 shell casing from
14 sidewalk in front of apartment; plastic bag with two metal
15 canisters, one with a copper jacket and one with lead slug;
16 a sealed paper bag with a .45 auto shell casing from glass
17 near sidewalk; and plastic bag with suspected ledger.

18 MR. ROBINSON: May I approach the witness?

19 THE COURT: Yes, sir.

20 BY MR. ROBINSON:

21 Q. Corporal Roberts, I'm going to show you what's
22 previously been marked for identification as State's
23 Exhibits 38, 40, 41, 42, and 43. I'd like to ask you if
24 you can identify these.

25 A. Yes, sir. These are the items that were listed on

J. ROBERTS - DIRECT EXAMINATION BY MR. ROBINSON

699

1 this form.

2 Q. Are they in the same condition that they were in when
3 you received them?

4 A. Yes, sir, other than the seal that would have been
5 there when I received the paper bags have been opened by
6 somebody.

7 Q. And who sealed those bags?

8 A. The officers sealed the bag before I take it.

9 Q. Who can unseal it?

10 A. When it is needed and processed someplace else, the
11 people that are doing the processing break the seal.

12 Q. While it is stored in your custody, do you have any
13 reason to break the seal?

14 A. No, sir.

15 Q. From the items you identified, is there any notation
16 on the items indicating that they have left your custody?

17 A. The items, the bags that I signed, the evidence bag
18 that I signed is not signed again. The things that were
19 taken to SLED may have additional signatures on it, but
20 the actual evidence bag that I signed does not have any
21 other ---

22 Q. Is that standard?

23 A. Yes, sir. They have their own bags and their own type
24 of chain of custody. So, once I transport it and refile it
25 away, then what the other agencies, how they do a chain of

J. ROBERTS - EXAMINATION BY THE COURT

700

1 custody is different than how we do it is different.

2 MR. ROBINSON: Beg the court's indulgence. I have
3 nothing further from this witness.

4 EXAMINATION BY THE COURT:

5 Q. Ms. Roberts, between the time you received those items
6 into your custody on July 29, 2008, at 4:09 in the
7 afternoon, have they left your custody.

8 A. Yes, sir. I transport them over to Beaufort, and they
9 are stored in the Beaufort evidence room.

10 Q. All right. When did you do that?

11 A. I cannot tell you for sure, sir. I keep them -- at
12 times, I transport them the same day. Sometimes it takes
13 me two or three days depending on my volume of work. And
14 whether the officers that turned in the stuff that was on
15 the whole sheet, if they may need it again, sometimes I
16 will hold on to it for a day or two before I transport it.

17 Q. You said when you received it from Sergeant Viens, you
18 signed for it. Is that right?

19 A. Yes.

20 Q. And you delivered it to the evidence custodian in
21 Beaufort who signed for it then?

22 A. No, sir. We are all the same entity. I am simply a
23 satellite office. I simply receive it over there so the
24 officers don't have to come all the way to Beaufort.
25 Therefore, we do not have to make a chain of custody among

K. WHITLER - EXAMINATION BY THE COURT / REDIRECT EXAMINATION

701

1 the four people that work in evidence here in the Beaufort
2 office.

3 Q. That makes sense. Do you -- when did you get them
4 back from the Beaufort office?

5 A. I do not receive them back.

6 Q. So, that's the first time you seen them since you
7 brought them over here?

8 A. Yes, sir.

9 THE COURT: Thank you, ma'am. Cross-examine?

10 MR. DEYSACH: I have no questions, Your Honor.

11 THE COURT: Thank you.

12 MR. ROBINSON: One follow-up question.

13 REDIRECT EXAMINATION BY MR. ROBINSON:

14 Q. Is it fair to say when you have those items and you're
15 in transit from the south end, the Beaufort office, that
16 they are still in evidence?

17 A. Oh, yes, sir. When I transfer evidence from Beaufort
18 to Hilton Head, nobody has access to my vehicle. It is
19 always locked. I am not allowed to stop anywhere unless it
20 is a major disaster on the road. And at that time if I
21 have to leave my vehicle, it is locked.

22 MR. ROBINSON: Nothing further.

23 THE COURT: Thank you, Ms. Roberts. You can step
24 down.

25 WITNESS: Thank you, sir.

R. COOPER - DIRECT EXAMINATION BY MR. ROBINSON

702

1 (THE WITNESS EXITS THE STAND.)

2 MR. ROBINSON: The state calls Ramona Cooper.

3 RAMONA COOPER, BEING FIRST DULY SWORN,
4 TESTIFIES AS FOLLOWS:

5 CLERK OF COURT: State your full name and spell your
6 last.

7 WITNESS: Ramona Q. Cooper, C-O-O-P-E-R.

8 DIRECT EXAMINATION BY MR. ROBINSON:

9 Q. Ms. Cooper, you work at the sheriff's office?

10 A. Yes, sir.

11 Q. And what do you do there?

12 A. I'm an evidence technician.

13 Q. And what does an evidence technician do?

14 A. We're responsible for taking in the evidence that is
15 collected by case officers, storing it, and preserving it
16 until it needs to either go to a laboratory or to court.

17 Q. Where are you stationed? Are you on north side of
18 Broad River or on the south side?

19 A. Yes, sir. I'm on the north side of the Broad River
20 bridge.

21 Q. Evidence has two places they keep it?

22 A. Yes. We have a temporary holding facility at Hilton
23 Head, which is what we call a satellite office, and the
24 main office here in Beaufort.

25 Q. Is that where you are, the office in Beaufort?

R. COOPER - DIRECT EXAMINATION BY MR. ROBINSON

703

1 A. Yes, sir.

2 MR. ROBINSON: May I approach the witness?

3 THE COURT: Yes, sir.

4 (REQUEST FOR ANALYSIS MARKED AS STATE'S EXHIBIT NUMBER
5 45 FOR IDENTIFICATION.)

6 BY MR. ROBINSON:

7 Q. I'm going to show you what's been marked for
8 identification purposes as State's Exhibit Number 45. Do
9 you recognize that?

10 A. Yes, sir.

11 Q. And what is that?

12 A. This is a request that is made by the case
13 officer/investigator to have items analyzed at SLED for
14 forensic purposes. And this encompasses the actual request
15 and the receipts that are generated by SLED once they take
16 them.

17 Q. Is your signature on the final page?

18 A. Yes, sir.

19 Q. And what is the caption underneath your signature?

20 A. Delivering officer.

21 Q. What does that, what does that mean?

22 A. What that means is since the evidence is stored in our
23 facility, somebody has to take it to Columbia, to SLED, for
24 them to do what they need to do. So what I did, I
25 transported it from here to there for them to do their

1 examination.

2 Q. Is it fair to say that you -- given that your
3 signature is on that document, what did you transport?

4 A. Whatever is listed on this document as being taken up
5 there at the time.

6 Q. What? What?

7 A. We have a .45 AMT handgun, a Davis Industries P32
8 handgun, a Rossi .38 handgun, a Burgo .22 revolver handgun,
9 copper jacketed projectile, another copper jacket, a lead
10 slug, and it looks like three .45 shell casings marked CBC.

11 Q. Did you transport those items to SLED?

12 A. Yes, I did.

13 Q. To your immediate left are some items. Can you
14 examine those, State's Exhibits 38 through 43?

15 (A PAUSE.)

16 Q. Are those the items you transported to SLED?

17 A. Yes, they are.

18 Q. Are they in substantially the same condition that they
19 were when you transported them?

20 A. They have been examined by and markings made by SLED
21 upon their inspection. So, they had to have been opened.

22 Q. So, in other words, those items were opened while they
23 were at SLED. Is that correct?

24 A. Correct.

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

1 THE COURT: Thank you. Cross-examination, gentlemen?

2 MR. DEIER: No, Your Honor.

3 THE COURT: Mr. Deysach?

4 MR. DEYSACH: No, Your Honor.

5 THE COURT: Thank you.

6 Thank you, ma'am. Ms. Cooper, you may step down.

7 (THE WITNESS EXITS THE STAND.)

8 MR. ROBINSON: Your Honor at this time I move ---

9 WITNESS: Thank you.

10 THE COURT: One moment.

11 MR. ROBINSON: Your Honor, at this time I move those
12 items be entered into evidence.

13 THE COURT: Any objection, gentlemen?

14 MR. DEYSACH: I think we've got -- but the one item I
15 made my objection about before, I don't think that's
16 included in this evidence. But no, no objection.

17 THE COURT: Without objection. Thank you.

18 MR. ROBINSON: Exhibit 38, Exhibit 41, Exhibit 42, and
19 Exhibit 40.

20 (COPPER JACKETED PROJECTILE MARKED INTO EVIDENCE AS
21 STATE'S EXHIBIT NUMBER 38.)

22 (.45 SHELL CASINGS MARKED INTO EVIDENCE AS STATE'S
23 EXHIBIT NUMBER 40.)

24 (.40 SHELL CASING MARKED INTO EVIDENCE AS STATE'S
25 EXHIBIT NUMBER 41.)

1 (.45 SHELL CASING MARKED INTO EVIDENCE AS STATE'S
2 EXHIBIT NUMBER 42.)

3 THE COURT: And 45 as well, is that in evidence, the
4 report? Whether that's in evidence or not, that was the
5 list.

6 MR. ROBINSON: No, that's not into evidence.

7 THE COURT: All right.

8 MR. ROBINSON: Your Honor, Exhibit 39, that is the
9 list.

10 THE COURT: It will be marked for ID.

11 MR. ROBINSON: What is 43, just to get house in order?
12 I'd move that that be admitted into evidence as well.

13 THE COURT: What is 43?

14 MR. ROBINSON: That is the jacket and core.

15 THE COURT: Any objection to that, gentlemen?

16 MR. DEYSACH: No, Your Honor.

17 THE COURT: Thank you.

18 (COPPER JACKET, SLUG MARKED INTO EVIDENCE AS STATE'S
19 EXHIBIT NUMBER 43.)

20 MR. ROBINSON: Thirty-nine was not entered, Your
21 Honor.

22 THE COURT: Okay. Thank you.

23 MR. ROBINSON: At this time, Your Honor, the state
24 rests.

25 THE COURT: Thank you.

1 Ladies and gentlemen, that means you have now heard
2 all the evidence and testimony that you will hear from the
3 state in the presentation of its case in chief.
4 Necessarily at this juncture in every trial of this sort,
5 we have to take a break to discuss matters of law and for
6 us to make plans for the continuation the rest of the
7 process of the trial. It's a good time for us to do that
8 right now because it's 12:15, and we'll send you to lunch.

9 I appreciate the fact you all are willing to take a
10 short lunch hour. We have some matters of law that we're
11 going to need to take care of that are going to take
12 anywhere from fifteen to twenty and perhaps thirty minutes.
13 Normally I would cut short the lunch hour to forty-five
14 minutes. But I'm going to short ten it to at least an hour
15 and get you back at 1:15. We'll be in a position at that
16 time to resume the trial of this case.

17 I remind you as always that you may not discuss this
18 case among yourselves or with anybody else or among
19 yourselves when you get back in the jury room at 1:15.
20 Thank you, folks.

21 (THE JURY EXITS AT 12:15 P.M.)

22 THE COURT: All right, Mr. Deier, I'll be glad to now
23 to hear motions as to Mr. Price.

24 MR. DEIER: Well, Your Honor, Mr. Price at this time
25 would like to make a motion for directed verdict. I think

1 it's clear that every occurrence witness that the state has
2 brought up has questionable credibility to say the least.
3 They've made a number of misstatements through the course
4 of this investigation.

5 There's evidence of that, especially in light of
6 Sergeant Calhoun's testimony of their prior statements
7 inconsistent with what they stated on the stand, when they
8 were on the stand. That they made a number of statements
9 inconsistent as the course of the examination went on.

10 Again, they have a car that belongs to Mr. Price
11 that's there at the scene. And then they have I guess only
12 three people now, despite the fact there was a fourth
13 there, only three people there that came in and testified
14 anything about who anybody was.

15 Again, there's conflicting testimony about who held
16 the revolver, who held a .45. At the beginning of this
17 hearing, I think it was about the impression of everybody
18 that Mr. Simuel had a revolver and that Mr. Price had a
19 .45. Since that time, it's flip-flopped. Speaking of the
20 .45 and the revolver, we don't have either of those
21 weapons.

22 Now, I assume that the state will say, well, of
23 course, they took it away from them. But as the
24 investigator today testified to, they didn't even do a
25 search of the immediate area. There's woods across the way

1 just right there not too far away from the front door of
2 the apartment where this all happened.

3 So, again, I don't think the jury can find that there
4 is proof beyond a reasonable doubt that A, it was, in fact
5 Demetrius Price, who was there; B, that he was an
6 aggressor; C, that there was any weapon -- or any weapon
7 supposedly involved in this was taken away.

8 That's all I have, Your Honor.

9 THE COURT: Thank you. Mr. Deysach?

10 MR. DEYSACH: Thank you very much, Your Honor. I
11 would also make a motion for directed verdict. I would
12 make it on the following grounds. All right, I will start
13 with assault and battery with intent to kill.

14 Identity of the shooter of Deverol Cannick, that's the
15 indictment that charges Mr. Simuel with ABWIK and it
16 identified Deverol Cannick as the victim. At no time
17 during testimony did anybody testify that they had seen --
18 nobody testified really that Lucius shot Deverol. Deverol
19 was the only person who testified who was in a position to
20 see it. And he certainly -- he was clear that he never did
21 say I identify Lucius Simuel as the shooter. In fact,
22 there was, through the prior inconsistent statement
23 procedure that I went through, evidence that he had
24 actually pointed out somebody else, the co-defendant, as
25 the shooter and so for -- that is one grounds for motion

1 for directed verdict.

2 I don't think there is any evidence in the record that
3 Mr. Simuel would be the shooter. I think that the
4 solicitor did, you know, imply that some firearms evidence
5 would show us this or show us that. But the bullet that
6 hit -- any of the bullets that hit Mr. Cannick or Deverol
7 Cannick were not identified as coming out of a gun that Mr.
8 Simuel would have been holding. And so that scientific
9 firearms evidence really didn't go anywhere to explain that
10 Mr. Simuel was the shooter of the bullet that hit Deverol
11 at all. So, that's an identity argument.

12 I would say that they haven't shown, by the same
13 token, any malice aforethought, any intent to kill, intent
14 to cause bodily harm, any malignant heart, or anything
15 through the participation in a, in a felony that results in
16 the violent incident.

17 Now, I know we talked about the drug transaction that
18 was there and that's stuff that I elicited. But I think
19 under our law, under the law of South Carolina, which I
20 don't have the case I use *Gore v. Leak* as the -- and Mr.
21 McEnich, in his book, is the one who steered me in that
22 direction as the -- for the authority that if that's the
23 theory they're going under for the felony, that they're
24 attempting to be committed has to be *malum in se*, instead
25 of *malum prohibitum*. That mean's bad because it's bad as

1 opposed to bad just because it's prohibited. And I would
2 say that selling -- drug possession is certainly one of
3 those that is *malum prohibitum* because that's what a
4 controlled substances is, a substance that you're only
5 allowed to possess or control with a permit. And so it's
6 just that permitting process that makes it illegal. And so
7 it would be -- I guess I'm saying would be legal for some
8 people to purchase, to possess that drug, just not Mr.
9 Simuel. So, that's -- I don't see any malice aforethought.
10 So, that is to the assault and battery with intent to kill.

11 The gun charges are the same. There's not a gun
12 recovered, and there's not any bullet evidence that shows
13 any of those bullets would have come from a gun that Mr.
14 Simuel would have held. The burglary, I think that to send
15 the burglary to the jury where there's not any forced
16 entry, anything that physically matches up with what the --
17 with what the victims had said, there's no way that they
18 can come to a verdict of guilty or -- they wouldn't be in a
19 position to deliver a verdict of guilty. I think the
20 appropriate thing to do would be to grant a directed
21 verdict on all of those charges.

22 THE COURT: All right. Thank you.

23 MR. DEIER: Your Honor, I hate to ask for a second
24 bite at the apple, but I was taken by surprise that we were
25 going to do this right now. I just have one other point.

1 THE COURT: Go ahead.

2 MR. DEIER: Yesterday the state's own witness, the
3 doctor who did the surgery on Deon, after state
4 demonstrated that the injury was consistent with Deon
5 Cannick being bent over and the shooter being basically on
6 plane with him, Deon Cannick testified himself that prior
7 to being shot, he let go of the gun and raised his hands at
8 the instruction supposedly of Demetrius Price. And as the
9 doctor so cogently pointed out, it's not inconsistent if
10 you're erect if the shooter is above you. There isn't any
11 testimony as to that. I again, I would reiterate, I don't
12 think there's any evidence here that the state could prove
13 that Demetrius Price had anything to do with that shot.

14 THE COURT: Thank you. Gentlemen, the salient rule of
15 procedure that we follow in dealing with motions for
16 directed verdict is rule 19 of the South Carolina Rules of
17 Criminal Procedure. The cases cited under that rule give
18 us, as a trial court, guidance of the application of that
19 rule that applies to a particular case.

20 We begin with the fact that the evidence has to be
21 viewed in a light most favorable to the state, and that we
22 are concerned at this level only with the existence of
23 evidence, not the weight. And that speaks to credibility
24 is for the jury to determine, not for the trial court at
25 this juncture. My only concern is whether or not the

1 evidence that has been presented so far, if taken in the
2 light most favorable to the state, would produce direct
3 evidence or circumstantial evidence of the guilt of the
4 accused.

5 I don't have to recite all the evidence in this
6 regard. The testimony of the victims alone is sufficient.
7 Through the process of the identification, some by direct
8 evidence, some by circumstantial evidence, of the two
9 individuals as being the two men on trial in this
10 particular case, Mr. Price and Mr. Simuel -- the subsequent
11 photo identification and lineups of those individuals, the
12 circumstantial evidence of the licence plate, the vehicle
13 belonging to Mr. Price leaving the scene immediately after
14 the crime itself -- all of this is evidence of the
15 involvement of these two people as the perpetrators of the
16 crime.

17 Specifically in regard to Mr. Simuel and the motions
18 raised in that regard by Mr. Deysach, there's no evidence
19 that his client fired a shot. In any event, the hand of
20 one being the hand of all is an appropriate theory of law
21 which would be instructed in this regard. And the fact
22 that there may be some ambivalence about who did the
23 shooting -- because whether a revolver was were used or
24 whether an automatic was used, who shot whom in this regard
25 or who shot one victim as opposed to who shot another --

1 all of those issues involve the hand of one being the hand
2 of all. And the jury is entitled, if they believe the
3 evidence they've heard thus far, to find both individuals
4 guilty of the crime charged regardless of who actually did
5 the shooting.

6 Insofar as the absence of malice is concerned, the
7 inference of malice can be drawn. I'm aware of *State vs.*
8 *Melcher*. I have it right here in front of me, and I'm
9 aware of the fact that it applies to ABWIK cases. And it
10 might well be that the evidence at the end of the day
11 entitles the defendants to a charge that does not include
12 the inference of malice. And this -- gentlemen, based on
13 what I've heard, I'm going to allow it to infer malice from
14 what has been introduced thus far because there has been no
15 issue raised sufficient to eliminate that evidence from
16 consideration that I can make and in looking at the status
17 of the evidence right now.

18 As to the burglary and being no evidence of forced
19 entry, the evidence was overwhelming from the victims that
20 they tried -- he tried to hold the door, that they forced
21 him, forced the door open. One of the eyewitnesses
22 testified in that regard. The fact that there was no
23 forced entry -- that is, no evidence of the door being
24 pressured open or the lock being jimmied or anything -- of
25 course does not defeat the crime of burglary.

1 As far as the guns not having been recovered, that is
2 not fatal to either of the charges related to the weapons
3 in this particular case. The testimony of the witnesses in
4 this case is that both of them possessed weapons. That's
5 sufficient for our purposes to survive the directed verdict
6 motion.

7 So, as to all of the counts on indictments as to each
8 of the individuals, there is sufficient evidence, taking
9 that evidence in the light most favorable to the state, of
10 which this jury could conclude if they chose to believe it
11 that the defendants were guilty of any or all of the
12 charges contained in the indictments. For that reason, the
13 motions for directed verdict are respectfully denied.

14 MR. DEYSACH: Thank you, Your Honor.

15 THE COURT: All right. Gentlemen, let's deal with a
16 couple of other housekeeping issues. First of all, Mr.
17 Deier, Mr. Deysach, gentlemen, do you all wish me to
18 instruct your clients on their rights to testify and not to
19 testify?

20 MR. DEYSACH: You know, we've talked about it. I
21 actually do have some witnesses that I do plan to call,
22 three or four. I believe we can certainly get through them
23 all today. And I think then it's most likely after we
24 heard what they said that we would make the final decision.

25 THE COURT: Okay.

1 MR. DEYSACH: But any time you would like to instruct
2 them is fine with me.

3 THE COURT: Well, we have a good time to do it right
4 now while the jury is away. And I realize that that
5 decision doesn't have to come right on the heels of my
6 instruction. As you said, it can come at any time during
7 the course of the trial before you close your case.

8 Mr. Deier, do you wish me to instruct Mr. Price in
9 that regard?

10 MR. DEIER: Yes, sir. Again, I'd like to preserve our
11 option to put him on the stand until after.

12 THE COURT: I understand. Yes, this is not a waiver
13 or a promise in that regard whether or not you're going to
14 present evidence or not.

15 Mr. Simuel, Mr. Price, if you would stand right where
16 you are raise your right hands please.

17 (WHEREUPON, THE COURT ADMINISTERS THE OATH TO
18 DEFENDANTS SIMUEL AND PRICE.)

19 THE COURT: Mr. Price and Mr. Simuel, in this
20 particular case, you may be called to testify as witnesses
21 in your own behalf in this case. That's a decision you
22 will make along with the consultation of your lawyers
23 sometime before your case is closed. Before you make that
24 decision, however, I must instruct you about what your
25 rights are under the law regarding your right to testify or

1 not to testify.

2 Under the Fifth Amendment of our United States
3 constitution and a similar counterpart of our South
4 Carolina constitution, no defendant in a criminal case can
5 be forced or compelled to testify against himself. No one
6 can be compelled to give evidence against himself. In a
7 criminal charge, that is a right that applies to you. And
8 you own that right, and only you can give up that right.
9 And what that means is that you cannot be required in this
10 particular case to take the stand and testify in your own
11 behalf.

12 You may have heard me tell the jury that when they
13 were sworn in before we began the trial of this case on
14 Monday. And if you choose to exercise that right and if
15 you choose not to testify, the jury will be told they
16 cannot consider the fact that you did not testify in the
17 consideration of your guilt or your innocence. They will
18 be instructed you have a constitutional right not to
19 testify. And if you choose to exercise that right, that
20 that cannot and must not be used against you in their
21 deliberations. They will be told they cannot even discuss
22 that fact in their deliberations.

23 On the other hand, if you give up your right not to
24 testify and if you choose to testify in this case, then you
25 will be subject to impeachment and cross-examination by the

1 other lawyers in this case just as every other witness has
2 been thus far. That means that you will be asked questions
3 not only by your own attorney, but you will be asked
4 questions by Mr. Robinson on behalf of the state and by the
5 defendant's counsel if they choose to cross-examine you,
6 and you can be impeached on any issue that is relevant to
7 these proceedings.

8 Mr. Price, do you understand the right? That is, your
9 right to testify and not to testify in this case?

10 DEFENDANT PRICE: Yes, sir.

11 THE COURT: Do you have any questions that you want to
12 ask me about those rights?

13 DEFENDANT PRICE: No, sir.

14 THE COURT: Mr. Simuel, do you understand your right
15 to testify or not to testify in this case?

16 DEFENDANT SIMUEL: Yes, sir.

17 THE COURT: Do you have any questions you want to ask
18 me about those rights?

19 DEFENDANT SIMUEL: No, sir.

20 THE COURT: You can have a seat.

21 All right. Gentlemen, I assume that you all will make
22 this decision eventually, and that your decision will be
23 based fully with the knowledge of what your rights are and
24 what you may and may not do in this regard if you choose to
25 testify in your own behalf or if you choose not to testify,

1 as you have every right to do under our law.

2 All right, understanding now that, Mr. Deysach, that
3 you may choose to offer some witnesses in this case, we'll
4 break now and come back at a quarter after the hour to
5 begin the afternoon's work.

6 Of course, Mr. Deier, as you know, the presentation of
7 evidence by any defendant denies both defendants of the
8 right of last argument under our rules.

9 MR. DEIER: Yes, Your Honor.

10 THE COURT: All right. Anything further before we
11 break for lunch?

12 Mr. Deysach?

13 MR. DEYSACH: I'm sorry. Not to interrupt, Your
14 Honor, I did want to -- I do have a copy of Mr. Simuel's
15 record that I did want to kind of nail down that if he did
16 testify, what prior convictions would be able to be used
17 for impeachment by the solicitor. What he would intend to
18 use for impeachment were Mr. Simuel to testify so that we
19 could know with our eyes open as we go in.

20 THE COURT: Do you all want to discuss that during the
21 lunch hour, or do you want to put it on the record? Can
22 you do that?

23 MR. DEYSACH: We can do that.

24 THE COURT: The way that will be broached, as I said
25 earlier, as I indicated earlier when we were talking about

1 the other issues in regard to the possession of a handgun
2 by prohibited person. That's the rule in -- under Rule
3 609, I think, is akin to the red chief, Indian chief,
4 somebody.

5 MR. DEYSACH: *Old Chief.*

6 MR. REYNOLDS: *Old Chief.*

7 THE COURT: *Old Chief*, thank you. You all are going
8 to educate me before I leave on that case. That is to say,
9 it's a generically written rule that applies to crimes of
10 moral turpitude, crimes that show a propensity for
11 dishonesty, things of that nature, and any crime or any
12 conviction within the last ten years. And ten years, as we
13 know, is from the date of the crime or from the day of
14 release from incarceration, whichever occurred last, that
15 carried a possible penalty more than a year in jail. So,
16 the jury would be entitled to know that any defendant was
17 committed -- was convicted of a crime carrying a possible
18 penalty of more than a year in jail within the last ten
19 years or released within the last ten years. That's as far
20 as it can go.

21 MR. DEYSACH: Yes, Your Honor. The only thing left to
22 argue about after that would be whether or not that
23 balancing test that appears at the end of the rule came
24 into play.

25 THE COURT: Exactly. And of course that's the reason

1 I word it that way: to try to make the balancing test a
2 little easier for me to deal with. And the jury would be
3 instructed, of course, that's the limited purpose, as we
4 know.

5 Mr. Deier, anything further from you before we break?

6 MR. DEIER: No, Your Honor.

7 THE COURT: All right. Let's be back at quarter after
8 the hour. We'll start at that time.

9 MR. DEIER: Thank you, Your Honor.

10 THE COURT: Thank you.

11 (OFF THE RECORD.)

12 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
13 NUMBER 6.)

14 THE COURT: Folks, I've got another question from the
15 jury and it is: Can the jury ask a question in any way? I
16 will instruct them in that regard that they can't. And,
17 you know, I'll tell them they can ask questions during
18 deliberations if they have some questions about that
19 process. For years I told them that routinely as a part of
20 my final charge. And my law clerk -- I mean my court
21 reporter for many years the whole time I was on the bench
22 eventually discouraged me from telling they could ask
23 questions because invariably when I did, they would. And
24 if I didn't tell them that, they would still ask questions
25 if they needed to ask. So, it worked out pretty well.

1 Ms. Harris, I also do not tell them they can have
2 testimony played back if they didn't hear anything right
3 the first time. If they choose to ask that, we'll tell
4 them. I don't encourage that, in any event. So I just
5 tell them that we depend on the lawyers who are
6 knowledgeable about the case to ask the questions that need
7 to be asked. And the reason is that some of the questions
8 are not asked is because the rules perhaps don't allow them
9 to ask or perhaps for strategic reasons. But I'll let them
10 know that that's not a matter for their concern.

11 All right, Mr. Deysach, is the defense ready to
12 proceed?

13 MR. DEYSACH: We are, Your Honor. We have two
14 witnesses waiting, ready to go. I have four coming at
15 2:00. And so I want to say in all candor with the court,
16 let you know that those birds are not yet in the hand.

17 THE COURT: Well, perhaps in about thirty-five minutes
18 maybe they'll be in place by that time. All right.

19 MR. ROBINSON: Your Honor, I wanted to mention one
20 thing briefly.

21 THE COURT: Yes, sir.

22 MR. ROBINSON: I discussed with defense counsel the
23 question of whether or not the defendants could be
24 impeached using their prior convictions.

25 THE COURT: Right.

1 MR. ROBINSON: That's something the court discussed
2 with us before the break. As the court is well aware,
3 there are 609 analyses about that sort of two pronged --
4 the first prong is relatively objective. That is, whether
5 or not the offenses fall within the previous ten years.

6 THE COURT: Right.

7 MR. ROBINSON: Having discussed both of them and all
8 prior convictions of both defendants with both defense
9 counsel, we sort of agree that the timing question is not
10 an issue.

11 THE COURT: Right.

12 MR. ROBINSON: The only remaining question is the
13 balancing. And so it is that sort of, if I may
14 characterize it, that more subjective question which still
15 remains before the court.

16 THE COURT: Right, and if -- which -- I was going to
17 say which charges or which convictions give rise to the
18 balancing concern? But of course the jury is not going to
19 know what the convictions were for. So, rather than taking
20 any more time right now because I think it -- at least
21 you've got two witnesses in place but neither of those is
22 the defendant. Is that right, Mr. Deysach?

23 MR. DEYSACH: Neither of those is the defendant.

24 THE COURT: Okay, and so there may be some -- we might
25 have a break to be able to flush that out more without

1 making the jury wait. But you see my analysis of probative
2 versus prejudicial can impact, I think made it somewhat
3 easier -- at least I adopted this over the years to make it
4 somewhat easier -- that if a defendant with a record takes
5 the stand, the question is not Mr. So and So, were you
6 convicted of murder, rape and mayhem in 2005. The question
7 is Mr. So and So, in 2005 were you convicted of a crime
8 that carried a possible penalty of more than a year in jail
9 in such and such a county. And the answer is yes or no.

10 And, Mr. So and So, were you in April of 2006
11 convicted of another crime in such a county that carries a
12 possible penalty of more than a year in jail? The answer
13 is yes or no. And to some extent that, it seems to me, to
14 blunt some of the prejudicial impact because the only
15 reason the jury can consider that is on the issue of
16 credibility. So, they don't need to know and should not
17 know what the crime was because understand it happened to
18 be a crime of moral turpitude. It really doesn't have any
19 bearing on anything other than credibility. So, anyway
20 that's what we try to do. But I'll address your concerns
21 independently when we have a break this afternoon. We'll
22 talk about that more.

23 MR. DEIER: That's fine, Your Honor.

24 THE COURT: Bring us the jury please.

25 (THE JURY ENTERS AT 1:27 P.M.)

1 THE COURT: Ladies and gentlemen, good afternoon and
2 thank you once again for your prompt return.

3 I've received your question asking whether or not the
4 jury can ask questions in any way. Our Supreme Court has
5 over the years, most recently in 1949 because the question
6 doesn't come up all that often, indicated it discourages
7 strongly allowing jurors to ask questions. The purpose
8 behind that is not to keep you all in the dark or not to
9 require you to be ill informed about the issues that you
10 have to consider. It is acknowledgement of the fact that
11 the lawyers in the case, who know more about it than any of
12 the rest of us do, have to be depended upon to ask the
13 questions they need to ask in order to get whatever
14 evidence they need to get before you for you to make a
15 decision.

16 In a case of this sort, of course, the defendants have
17 no obligation at all. They have no burden of proof. They
18 don't have to ask any questions. The state, on the other
19 hand, has the burden of proving the guilt of the defendants
20 beyond a reasonable doubt. And so at least initially the
21 state must present evidence and ask sufficient questions
22 for you to be able to determine the guilt of the defendants
23 beyond a reasonable doubt, or else the state has not met
24 its burden of proof. The defendants, as I have said, don't
25 have to ask any questions, and they don't have to present

1 any evidence.

2 In this case, they've chosen to ask questions.
3 They've chosen to present evidence. And so we have to
4 depend, you and I have to depend on the lawyers in this
5 particular case in their presentation of their respective
6 sides to ask the questions which they deem are important to
7 be asked in order to get across the points which they are
8 trying to get across to you.

9 And there are a lot of reasons why questions might not
10 be asked you want to have asked. You might have some
11 questions and might say, well, why didn't you ask that?
12 And it might be a legitimate question in your own mind.
13 And I can't answer why. I can tell you that there are a
14 lot of potential reasons, and some of the reasons might be
15 that the question might be an improper question under our
16 rules. It might be one that under the rules of evidence,
17 and you've heard objections to various questions throughout
18 the time, and our rules of evidence outline for us the sort
19 of questions that can and cannot be asked. That can be a
20 reason. It might be for strategic reasons they choose not
21 to ask a question. And there are other reasons as well
22 which might lead to the decision by an attorney involved in
23 a trial of a case not to ask a particular question.

24 Whatever those reasons are, we're not privy to them,
25 and so we have to simply rely upon the questions to be

1 asked that need to be asked in order to get the point
2 across to you. And if a party that has a burden of proof
3 doesn't ask sufficient questions to allow you to determine
4 whether or not the parties met that burden of proof, then
5 they haven't met it. And so, you know -- and as I say, in
6 this particular case the other side is trying to get a
7 point across. They don't have a burden of proof, but if
8 they're trying to get a point across and if they don't get
9 it across, they simply haven't gotten their point across.

10 That's all I can tell you about that, Mr. Foreman and
11 ladies and gentlemen. I wish I could elucidate more. I
12 asked one of the witnesses a question a few minutes ago
13 before we broke for lunch. It was a procedural question
14 because it had to do with a ruling that I was going to have
15 to make as a matter of law on some evidence, and it had to
16 do with the chain of custody question.

17 You recall the two witnesses who testified in that
18 regard. I wasn't trying to find out anything about a
19 factual dispute that was involved. I just wanted to be
20 sure that I was going to be able to have the information
21 before me in order to rule on the admissibility of
22 evidence. Now, the lawyers knew. I did not, but they knew
23 another witness was going to come along and answer the
24 questions I needed to have answered in order to fill that
25 gap. And sure enough, the next witness, Ms. Cooper, did

1 come in and fill the gap on the chain of custody that we
2 needed to have filled in in order for me to make that
3 ruling. But that was a ruling, really, that was designed
4 to deal with a matter of law.

5 Your concern, of course, is questions of fact and so
6 it's a more difficult, more difficult area, obviously, of
7 inquiry in that regard. I will tell you this. That during
8 the course of your deliberation, you should have questions
9 that occur to you. You're entitled to ask those questions
10 then. You can write them down and send them out to us, and
11 we take them up with the lawyers and bring you out.

12 Now sometimes, candidly, the answer to that question
13 is I don't know. And sometimes the answer might be I can't
14 answer that question, and sometimes I can. But in any
15 event, I tell you that at least during your deliberative
16 process there are provisions for you to ask questions if
17 you need to ask them. And we'll do our best to answer them
18 if we can.

19 I wish I could tell you more, Mr. Foreman and ladies
20 and gentlemen, but under the rules that's the best I can
21 do, all right?

22 Now, the state, as you know, has rested its case
23 before we went to lunch. And now the defendants have a
24 right to offer evidence and testimony if they choose to do
25 so. But as you know, they're under no obligation to do so.

M. CAMPBELL - DIRECT EXAMINATION BY MR. DEYSACH

729

1 Mr. Deysach?

2 MR. DEYSACH: At this time -- I should have done this
3 before lunch and I apologize for wasting the jury's time --
4 but I need to renew all the objections I made pretrial and
5 during the state's case. And now I'm ready to proceed with
6 witnesses.

7 THE COURT: All right, and I'll renew all my rulings
8 in that regard. Thank you.

9 MR. DEYSACH: Thank you, Your Honor. At this time,
10 the defense calls Malik Campbell.

11 MALIK CAMPBELL, BEING FIRST DULY SWORN,
12 TESTIFIES AS FOLLOWS:

13 CLERK OF COURT: State your full name and spell your
14 last name.

15 WITNESS: My name is Malik Campbell, M-A-L-I-K.

16 DIRECT EXAMINATION BY MR. DEYSACH:

17 Q. Good afternoon, Mr. Campbell. My name is Ian Deysach.
18 I represent Lucius Simuel in this case. Are Deon and
19 Deverol your brothers?

20 A. Yes.

21 Q. Did you live with them at the time July 28, 2008?

22 A. Yes.

23 Q. Where did you all live?

24 A. [REDACTED]

25 Q. And did you live in [REDACTED]

1 A. Yes.

2 Q. You were at home on July 28, 2008?

3 A. Yes, sir.

4 Q. Did you hear Deon's cell phone ring?

5 A. Yes.

6 Q. Did he answer it?

7 A. No.

8 Q. How many times did it ring?

9 A. It rung a couple times.

10 Q. You never answered it while you were there?

11 A. No.

12 Q. Did you hear a knock at the door?

13 A. Uh-huh. Yes.

14 Q. I guess, and we're obviously here for the incident
15 that occurred. And I don't want to do too much set up, but
16 we're talking about -- are we talking about just before the
17 shooting happened? That's what I'm asking you about.

18 A. Yes.

19 Q. Did you go to the door?

20 A. No.

21 Q. Who went to the door?

22 A. Deon.

23 Q. Did Deon go by himself?

24 A. Yes.

25 Q. Did you see who was at the door?

M. CAMPBELL - DIRECT EXAMINATION BY MR. DEYSACH

731

1 A. No.

2 Q. So, you didn't know if it was Martin Guzman at the
3 door?

4 A. I knew it was Martin, but I didn't see him because I
5 never left.

6 Q. Okay. How did you know it was Martin?

7 A. Because he said Martin called his phone.

8 Q. Okay. Did you see Deon answer Martin's call?

9 A. Yes.

10 Q. Okay. So, he did answer the call from Martin?

11 A. Yes, for only Martin.

12 Q. Okay. When -- how much time passed between Martin's
13 phone call and the knock on the door?

14 A. I think Martin might have called in between the time
15 when they were calling the phone.

16 Q. Okay.

17 A. And, you know, when he saw Martin, he answered but he
18 didn't want to answer for them.

19 Q. I understand what you're saying. But what my question
20 is, is if you remember the amount of time that passes
21 between Deon answering Martin's phone call and the knock at
22 the door. Was it a matter of minutes? Was it hours?

23 MR. ROBINSON: Judge, I object to the leading.

24 THE COURT: No, it's kind of multiple choice. He
25 doesn't suggest the answers necessarily. I'll allow it.

1 BY MR. DEYSACH:

2 A. Can you repeat that please?

3 Q. I want to know the amount of time between Martin's
4 phone call that Deon answered and the knock at the door
5 that you hear. And if you don't know exactly, you can just
6 estimate.

7 A. A couple of minutes.

8 Q. Give or take? Is that what you're saying, a couple of
9 minutes?

10 A. A couple minutes.

11 Q. All right. Did you ever see anybody besides Martin
12 and Jesse at the door? I'm asking if you observed anybody
13 at the door who was not Martin and Jesse and not your
14 brothers.

15 A. Well, I didn't see. I didn't see Martin and Jesse.

16 Q. Okay.

17 A. I just knew they was down there because of the phone
18 call.

19 Q. Okay. Did you see anybody down there who wasn't your
20 brothers?

21 A. After the -- after the gunshot, yeah.

22 Q. So, you don't -- okay. So, when you hear the gunshot,
23 where are you?

24 A. When I heard the gunshot, I was on my way to the
25 stairwell to see what was going on. And before I could

M. CAMPBELL - DIRECT EXAMINATION BY MR. DEYSACH

733

1 make it around the stairwell, that's when I heard the shot.

2 Q. Where were the dogs?

3 A. I think, I think Lyssa might have been in the room and
4 Nina, she might have just been hanging around, walking
5 around us, you know, whatever.

6 Q. What about the puppies?

7 A. The puppies, I can't quite remember if they were in
8 the living room. They probably was back in the bedroom,
9 though. I believe they was back in the bedroom, in my
10 brother's room.

11 Q. Now, when -- did you -- you have to remind me. When
12 the door -- when there was a knock at the door, who
13 answered it?

14 A. Deon.

15 Q. By himself?

16 A. Yes.

17 Q. After he answered the door, did he ever come back up
18 to the living area?

19 A. Yes.

20 Q. When he came back up, did he meet with Deverol?

21 A. Yes.

22 Q. Did Deverol go back to the door?

23 A. Yes.

24 Q. Did he go by himself or with Deon?

25 A. I want to say that he want down with Deon, but I'm not

1 sure. I know at one point they both was downstairs
2 together.

3 Q. Just not sure if they went down at the same time?

4 A. Yeah.

5 Q. Did you see Nina go downstairs?

6 A. Yes.

7 Q. Did she go downstairs by herself?

8 A. Yes.

9 Q. Did she go downstairs before or after Deon? Or with
10 Deon?

11 A. I can't really remember because I was sitting down in
12 the living room. And when Nina went down, both of my
13 brothers -- I couldn't see them because they were down the
14 stairs and I was upstairs in the living room.

15 Q. So, you're not sure if Nina went down before or after
16 Deon? It's a fair answer.

17 MR. ROBINSON: Judge, I object to that. That's a
18 leading question.

19 THE COURT: Rephrase the question.

20 MR. DEYSACH: I apologize, Your Honor. I'm not trying
21 to lead him anywhere, and I'll do better about it.

22 THE COURT: It wasn't a leading question. The comment
23 on the answer was -- I'll sustain the objection to that.
24 Go ahead.

25 BY MR. DEYSACH:

M. CAMPBELL - DIRECT EXAMINATION BY MR. DEYSACH

735

1 Q. When you saw the guys at the door, where were you?

2 A. I was laying on the -- well, what guys are you talking
3 about?

4 Q. Well, what guys came to the door?

5 A. Well, you know, Martin and Nicky.

6 Q. Right.

7 A. They came because Deon answered the phone.

8 Q. Right.

9 A. But the guys that popped up, I saw them after the
10 first shot.

11 Q. So when the first shot is fired, you -- you don't see
12 the shot, right?

13 A. No.

14 Q. When it's fired, you're on your way to the stairway --
15 when the shot is fired, are you on your way to the
16 stairway?

17 A. When the -- can you repeat the question?

18 Q. I guess where were you when the shot is fired?

19 A. I was on my way to the stairwell.

20 Q. And you lay on the ground before or after the shot is
21 fired?

22 A. It was like a chain reaction. The minute I heard the
23 shot, my first instinct was to hit the ground.

24 Q. When you saw the guys that popped up, how many -- how
25 many guys did you see with a gun?

1 A. Well, I never saw the weapons because once I heard the
2 shot, my first reaction, I hit the ground and I don't know
3 if I saw them coming down or I saw them, you know, by
4 peeking up.

5 Q. Okay.

6 A. But all I could really remember was that I didn't
7 really -- you know, because I wasn't trying to look at them
8 like that.

9 Q. Okay. So, really did you -- the only, you knew there
10 was a weapon or the reasons that you knew there was a
11 weapon were because of sounds, not because of seeing it?

12 A. The shot that was fired.

13 Q. Right, and, of course, the injury that caused to your
14 brothers.

15 A. Yes.

16 Q. So, you are or are not able to say that -- who was
17 holding the weapon?

18 A. No, because I was almost afraid to look up, you know.
19 But I don't know if I saw them as I was hitting the ground
20 or if I, you know, peeked up, but I remember seeing.

21 Q. All right. Was your -- was Sharita next to you when
22 this happened?

23 A. Sharita, she was standing up doing something. You
24 know, she was kind of, like, by the dining room table. I
25 don't know exactly what she was doing because we was

M. CAMPBELL - DIRECT EXAMINATION BY MR. DEYSACH

737

1 playing video games. I really wasn't paying attention, but
2 I knew she was there.

3 Q. Was she next to you when this happened?

4 A. No. She was -- she was like -- she was, like, kind of
5 standing by the dining room table.

6 Q. Did you ever see her -- I mean, did you ever see her
7 near the stairway during the incident?

8 A. During the incident, I believe she walked over and
9 peeked over the stairway to see who my brothers was talking
10 to. But other than that, I don't know.

11 Q. All right. Did you make arrangements to -- for the
12 dogs when you had to leave them in the apartment?

13 A. Did we make arrangements?

14 Q. Did you?

15 A. Did I?

16 Q. Yeah. Did you call somebody to get the dog?

17 A. I think it might have been a mutual thing. I think we
18 all, you know, kind of got together, figured out what we
19 was going to do with the dogs.

20 Q. Okay. Did you call 9-1-1?

21 A. Yes.

22 Q. Did you have an opportunity to meet with the police at
23 [REDACTED] Apartments? Did the police come?

24 A. After I called them?

25 Q. Yeah.

M. CAMPBELL - DIRECT EXAMINATION BY MR. DEYSACH

738

1 A. They came but we winded up meeting them to the gate.
2 That's when we, you know, ran into them.

3 Q. And did the police ask you questions?

4 A. Yes.

5 Q. Did you tell the police to -- that they might want to
6 talk to Martin Guzman?

7 A. Did I tell the police?

8 Q. Yeah.

9 A. I believe I did.

10 Q. Okay.

11 A. Because I know Martin, he was -- it was too close to
12 the timing where he was there. So, he had to see at least
13 somebody driving off or something. So, yeah, it's a
14 possibility.

15 Q. Okay. Did you -- let me ask you this. Is your
16 nickname Griff?

17 A. Yes.

18 Q. Did you ask Martin to tell the police something that
19 wasn't true about him being at the apartment?

20 A. No.

21 Q. So, you didn't ask him to say something to cover up
22 the marijuana purchase that he was making?

23 A. No.

24 MR. ROBINSON: Objection, asked and answered.

25 THE COURT: I'll sustain the objection as to making a

M. CAMPBELL - DIRECT EXAMINATION BY MR. DEYSACH

739

1 marijuana purchase. That's not in evidence.

2 MR. DEYSACH: Okay.

3 BY MR. DEYSACH:

4 Q. Did you tell the police that you were playing video
5 games when the knock came at the door?

6 A. Yes.

7 Q. Did you ask Martin to tell the police that he was
8 playing video games with you?

9 A. No.

10 Q. Did you ask Martin to tell the police that the phone
11 had rang a number of times?

12 A. Did I tell Martin that?

13 Q. Yeah, did you ask him to do that?

14 A. Did I ask Martin to do what?

15 Q. Tell the police that he was there when Deon's phone
16 was ringing.

17 A. No.

18 MR. DEYSACH: Court's indulgence.

19 THE COURT: All right, sir.

20 BY MR. DEYSACH:

21 Q. Do you remember talking to an officer named
22 Singleterry that night or that day?

23 A. I really don't remember none of the officers by name.

24 Q. But you remember talking to some officers?

25 A. Yes.

M. CAMPBELL - DIRECT EXAMINATION BY MR. DEYSACH

740

1 Q. Do you remember telling the officer that you saw two
2 black males in the doorway?

3 MR. ROBINSON: I object to the leading. If he wants
4 to ask the witness what did he tell the officers, that's
5 fine.

6 THE COURT: I'll sustain that.

7 MR. ROBINSON: I object to leading.

8 THE COURT: I'll sustain that objection. Thank you.

9 BY MR. DEYSACH:

10 Q. What did you tell Singleterry, or do you remember what
11 you told the first officer at the scene?

12 A. Well, actually, like I said earlier, I didn't see the
13 first officer until we made it to the gate. And I really
14 didn't talk to an officer until I got to a substation.

15 Q. Okay.

16 A. So, I didn't talk to any officers on the scene.

17 Q. Did you, did you tell any of the officers that you
18 only saw one of the males with a gun?

19 MR. ROBINSON: Judge, same objection.

20 THE COURT: I'll sustain the objection.

21 BY MR. DEYSACH:

22 Q. How many guns did you tell the officers that you saw?

23 A. Like I said, I never told any of the officers I seen
24 any guns because I never seen any guns.

25 Q. Okay.

M. CAMPBELL - CROSS-EXAMINATION BY MR. DEIER

741

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

2 THE COURT: Thank you.

3 Mr. Deier?

4 MR. DEIER: Thank you, Your Honor.

5 CROSS-EXAMINATION BY MR. DEIER:

6 Q. Good afternoon. My name is Chris Deier. I'm the
7 attorney for Demetrius Price. I'm sorry, did you say who
8 came to pick up the dogs?

9 A. No, I didn't.

10 Q. Who was that?

11 A. Who came to pick up the dogs? My brother, my oldest
12 brother.

13 Q. What's his name?

14 A. Cory.

15 Q. Did he pick up anything else from the house other than
16 the dogs?

17 A. Not to my knowledge.

18 Q. After you all left, started heading out, it was you,
19 Devin, and Deon, correct?

20 A. You asking when we left the house?

21 Q. No, I'm saying who left? Who left the house?

22 A. After the shootings?

23 Q. Yeah.

24 A. Me, Devin, Deon, and Sharita.

25 Q. Sharita? Sharita didn't stay behind?

M. CAMPBELL - CROSS-EXAMINATION BY MR. DEIER

742

1 A. No.

2 Q. Do you remember talking to Investigator Calhoun at the
3 hospital the day of the shooting?

4 A. Calhoun?

5 Q. Uh-huh. He's a large, bald detective.

6 A. Uh-huh.

7 Q. Do you remember that?

8 A. Uh-huh.

9 Q. Okay. When you were talking to him, you wanted to
10 make sure that the folks who did this got arrested, didn't
11 you?

12 A. Yes.

13 Q. You wanted to give them all the information that you
14 had?

15 A. Yes.

16 Q. You wanted to be truthful, right?

17 A. Yes.

18 Q. Now, when you spoke to Sergeant Calhoun, you told him
19 you saw your brothers fighting with some guys. Do you
20 remember that?

21 MR. ROBINSON: Your Honor, I want to object just for
22 the record. There are two investigators that are large and
23 bald. If he could just lay a little proper foundation?

24 THE COURT: You think you could clear it up a little
25 bit?

M. CAMPBELL - CROSS-EXAMINATION BY MR. DEIER,

743

1 MR. DEIER: Sure. The large, bald, caucasian
2 investigator.

3 THE COURT: Sitting back there.

4 MR. DEIER: There he is, the good looking one.

5 BY MR. DEIER:

6 Q. So, you recall talking to him?

7 A. Yes.

8 Q. And did you recall saying to him you saw your brothers
9 fighting with the subjects?

10 A. No, I didn't. Maybe it got mixed up or misunderstood,
11 but I never said that.

12 Q. Okay. You don't recall at that time identifying the
13 two shooters?

14 A. I identified one.

15 Q. You did?

16 A. Uh-huh.

17 Q. Didn't you just testify a few minutes ago that you
18 only saw their eyes?

19 A. Well, when they showed me the -- when they showed me
20 the mugshots, they only showed me mugshots and only one of
21 the suspects was in the mugshot that they showed me.

22 Q. Who was that?

23 A. That was Lucius.

24 Q. You don't recall telling Sergeant Calhoun, giving them
25 a description of what these folks looked like at the time?

1 A. Yes.

2 Q. Okay. Did you tell them that there was a dark-skinned
3 male in a white shirt with a black pistol, a lighter
4 skinned male with a dark polo shirt who also had a gun?

5 A. I remember describing because I got a brief
6 description of them because I only glanced at them. But I
7 don't remember saying anything about what they were holding
8 in their hands because I didn't see any pistols.

9 Q. Okay. Again, I understand you don't recall speaking
10 with Sergeant Singleterry at the scene, but you did speak
11 with an officer at the scene, didn't you?

12 MR. ROBINSON: Objection. Asked and answered.

13 THE COURT: He indicated earlier that he didn't talk
14 with -- didn't see any officers until they were leaving the
15 gate or something like that. You can ask him when he first
16 talked to the officer if that hadn't already been cleared
17 up.

18 BY MR. DEIER:

19 Q. Okay. At the substation you spoke to an Officer
20 Calendine. You do recall speaking with someone at the
21 substation, correct?

22 A. Yes, sir.

23 Q. Do you recall saying Deon went down after a knock and
24 Deverol went down a few seconds later?

25 A. It's a possibility because that's the way I remember

M. CAMPBELL - CROSS-EXAMINATION BY MR. ROBINSON

745

1 it happening. Deon originally answered the door.

2 Q. And then Deverol went down?

3 A. Later.

4 Q. Did you ever mention anything about Deon coming back
5 upstairs?

6 A. Did Deon ever come back upstairs?

7 Q. Uh-huh.

8 A. Yeah, he originally came back upstairs to get my
9 brother Devin so he could talk to the guys that was at the
10 door.

11 Q. And then what happened?

12 A. Then that's when Devin went down with them. He went
13 downstairs with them.

14 Q. Okay.

15 MR. DEIER: I have nothing further.

16 THE COURT: Mr. Robinson, cross-examination.

17 MR. ROBINSON: Thank you, Your Honor.

18 CROSS-EXAMINATION BY MR. ROBINSON:

19 Q. Before the shooting, Malik, you were playing Halo on
20 the Xbox, weren't you?

21 A. Yes.

22 Q. And you approached -- walked away from the video game
23 to approach the stairs because you heard the commotion
24 downstairs, didn't you?

25 A. Yes.

M. CAMPBELL - REDIRECT EXAMINATION BY MR. DEYSACH

746

1 Q. And isn't it fair to say that just as you got to the
2 stairs, you hit the floor because you heard the shot,
3 right?

4 A. Yes.

5 Q. And so you were looking down the stairs as you were
6 lying on the ground. Is that right?

7 A. I glanced. I don't know if it was as I was dropping
8 but after, but I remember taking a quick glance.

9 Q. Do you see the person in court that you picked out of
10 a lineup in a photograph?

11 A. Yes.

12 Q. Will you point him out to the jury? Describe what
13 he's wearing.

14 A. A blue shirt with a blue tie.

15 Q. Is he wearing a coat?

16 A. No.

17 MR. ROBINSON: Let the record reflect the witness has
18 identified the defendant Lucius Simuel. I have nothing
19 further.

20 THE COURT: Thank you. Mr. Deysach?

21 REDIRECT EXAMINATION BY MR. DEYSACH:

22 Q. Have you ever met Lucius before? Has he ever been
23 over to your house?

24 A. Not while I was there.

25 MR. DEYSACH: That's it, Your Honor.

M. GUZMAN - DIRECT EXAMINATION BY MR. DEYSACH

747

1 THE COURT: Thank you. Mr. Deier, any follow up?

2 MR. DEIER: I have nothing further.

3 THE COURT: All right, Mr. Campbell, you can step
4 down.

5 (THE WITNESS EXITS THE STAND.)

6 THE COURT: Mr. Deysach.

7 MR. DEYSACH: The defendant would call Martin Guzman.

8 MARTIN GUZMAN, BEING FIRST DULY SWORN,
9 TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: State your full name, spell your last
11 name.

12 WITNESS: My name is Martin Guzman, last name M -- I
13 mean, G-U-Z-M-A-N.

14 DIRECT EXAMINATION BY MR. DEYSACH:

15 Q. Good afternoon, Mr. Guzman. My name is Ian Deysach.

16 I represent Lucius Simuel. I'm going to ask you some
17 questions about July 28th of 2008. Can you -- did you call
18 Deon Cannick that day?

19 A. Yes, sir.

20 Q. What did you call him about?

21 A. About buying a bag of marijuana.

22 Q. And what time did you call him?

23 A. I'm not sure. I don't remember that day.

24 Q. How long after you called him did you go over -- did
25 you go over to his house?

1 A. Yes, sir, I did.

2 Q. How long after you called him did you go over to his
3 house?

4 A. A couple of minutes.

5 Q. Who were you with?

6 A. Jesse Reese.

7 Q. What happened when you went to Deon's house?

8 A. I knocked on the door and Devin came out through the
9 window.

10 Q. Came out through the window? How do you mean?

11 A. Oh, he -- the balcony, and I said I was looking for
12 Deon.

13 Q. And so you're saying Devin didn't come to the door
14 when you knocked on the door?

15 A. Yeah, he came out.

16 Q. What floor?

17 A. The second floor.

18 Q. Did you talk to him?

19 A. Yeah, I asked him for Deon.

20 Q. And then what did he do?

21 A. Who?

22 Q. Devin.

23 A. Went back in.

24 Q. What happened next?

25 A. Deon come down.

M. GUZMAN - DIRECT EXAMINATION BY MR. DEYSACH

749

1 Q. How long were you waiting for Deon?

2 A. For a minute.

3 Q. When you were waiting for Deon, did anybody come up to
4 you?

5 A. No, not at that time.

6 Q. Did somebody come up to you at some point? Did you
7 talk to anybody outside of the apartment?

8 A. No. It was just with Jesse.

9 Q. Did anybody ask you to say anything to Deon?

10 A. That's after Deon came down and then I went back in.

11 Q. Okay. So, after Deon -- after Devin goes back inside
12 the upstairs window, what happened next?

13 A. Deon came down.

14 Q. What did you and Deon do?

15 A. We talked about what I needed.

16 Q. Okay. Did you get it?

17 A. After he went back in.

18 Q. At that point, what happened next?

19 A. That's when the two men approached.

20 Q. And what did they say?

21 A. They asked me if Deon was in the house.

22 Q. And what did you tell them?

23 A. I said yeah.

24 Q. And what did they say?

25 A. They said that -- I quite didn't hear the name. I

1 know it was with an L-U, like Luke or something. Something
2 like Luke's looking for him.

3 Q. And then what did those guys do?

4 A. They just kind of standing there.

5 Q. Okay. Did Deon come back to the door?

6 A. Yes, and that's when I received what I needed.

7 Q. Then what did you do?

8 A. Took off with Jesse.

9 Q. When you left, where was Deon?

10 A. Deon had went back in and Devin had come out.

11 Q. So, by the time you and Jesse leave, who is standing
12 outside?

13 A. Devin.

14 Q. With who?

15 A. With the two men.

16 Q. Did you, did you see anybody fighting?

17 A. No, sir.

18 Q. Did you see any weapons?

19 A. No, sir.

20 Q. Did you, did you hear any shots?

21 A. No, sir.

22 Q. And could you see where those shots were coming from?

23 A. No, but I could tell that they were coming from that
24 apartment building.

25 Q. Let me ask you this. Have you ever met, had you ever

M. GUZMAN - DIRECT EXAMINATION BY MR. DEYSACH

751

1 met Lucius Simuel before this?

2 A. At the time whenever they came up, I can't see. I
3 need prescription glasses. I have with me -- I wasn't
4 wearing them that day, and I wear them. I couldn't tell
5 who it was.

6 Q. Okay.

7 A. So, I really didn't know who it was that was standing
8 there that day.

9 Q. If you saw him now, would you know whether or not you
10 knew Lucius Simuel before that day?

11 A. Saw him now?

12 Q. Yeah.

13 A. I'm confused.

14 Q. Okay. My question is whether or not you knew Lucius
15 Simuel before July 28th, '08, and your answer is, I think,
16 I don't know because I can't really see.

17 MR. ROBINSON: Judge, I object to the narrating,
18 leading question.

19 THE COURT: Actually summarizing his answer. I don't
20 think he's necessarily suggesting the answer.

21 BY MR. DEYSACH:

22 Q. I guess my question is if you put your glasses on and
23 looked at Mr. Simuel, would you know whether or not you
24 knew him before July 28th?

25 A. I'm guessing so.

M. GUZMAN - DIRECT EXAMINATION BY MR. DEYSACH

752

1 Q. Well, will you put your glasses on and look at him?

2 A. Okay.

3 Q. I'm asking you to look at the person at the
4 defendant's house with the darker blue shirt and the blue
5 tie. Can you see him?

6 A. Yes, sir.

7 Q. Did you know him before July 28, 2008?

8 A. I actually met him once. I didn't know it was him,
9 though, that day. I met him once because Deon was going
10 out with, I think, his niece.

11 Q. Okay. Can you describe in a little bit more detail
12 the circumstance in which you met Mr. Simuel before July
13 28th?

14 A. I was with Deon in the neighborhood.

15 Q. What neighborhood?

16 A. Simmons Cay Apartments.

17 Q. You live in Simmons Cay Apartments?

18 A. Not no more, sir.

19 Q. Did you at the time?

20 A. Yes, sir.

21 Q. Do you know -- I want you to -- I'm going to ask you
22 to compare the date July 28th of the shooting with the
23 other time you had met Mr. Simuel and ask you how much time
24 had passed between the first time you met him and the July
25 28th date.

M. GUZMAN - DIRECT EXAMINATION BY MR. DEYSACH

753

1 MR. ROBINSON: Judge, I object to this question. This
2 witness has just testified that he was not wearing his
3 glasses on the day of this incident, was not able to see
4 people who were at the door. So, if this is laying a
5 foundation for in-court identification, there's improper
6 predicate, insufficient basis for it.

7 THE COURT: Can you respond to that, please?

8 MR. DEYSACH: Well, that's not my -- I mean, the point
9 of my question was really just the question itself. I'm
10 not really laying a foundation. I just want to know -- he
11 testified that he was with Deon and Lucius at the same
12 time. And I want to know how close in time it was to the
13 incident. That's the point in question.

14 THE COURT: I'll allow you to ask it.

15 BY MR. DEYSACH:

16 Q. I'll ask it again. The time you met Lucius Simuel or
17 the time you met with Deon and Lucius Simuel in Simmons Cay
18 Apartments, how much time was it between that and the day
19 of the shooting?

20 A. I'm not really sure, sir.

21 Q. Can you give us a guess?

22 A. I think maybe, like, a month. I'm not really sure.

23 Q. Did the police call you about this incident?

24 A. No. It was actually Malik who called me.

25 Q. What's Malik's nickname?

1 A. Reese.

2 Q. Did Malik ask you to lie about what you experienced
3 that day?

4 A. No, sir.

5 Q. Do you remember the names of the officers that came to
6 your house to talk to you?

7 A. No, sir. Just one of them.

8 Q. Pardon?

9 A. Just one of them.

10 Q. One of their names?

11 A. Yes, just one of them.

12 Q. Which name do you remember?

13 A. D. Holmes.

14 Q. First initial D, last name Holmes?

15 A. Yes, sir.

16 Q. What did you tell Investigator Holmes when he came to
17 your house to talk to you? What did you tell him about the
18 incident?

19 A. I told him what happened. The first time I lied on my
20 own about the drugs. I didn't want to put that in there.
21 And the second time when they came, I knew that this was
22 not anything to play with. I had to be serious and I had
23 to tell the truth.

24 Q. When you lied to Holmes the first time, what did you
25 say?

M. GUZMAN - DIRECT EXAMINATION BY MR. DEYSACH

755

1 A. I said that I was playing video games.

2 Q. Where did you say you were playing those games?

3 A. At Deon's house.

4 Q. Did you say anything about whether or not the phone
5 was -- whether or not Deon's phone was ringing?

6 A. No, I didn't.

7 Q. To Mr. Holmes on that day, you never said anything
8 about that?

9 A. No, I didn't.

10 Q. When the police came back to you for another
11 interview, do you remember what you told them?

12 A. Yeah. I told them the truth that time about what I
13 was over there doing.

14 Q. Did you write a statement?

15 A. Yes, sir, I did.

16 Q. Do you have a copy of that statement?

17 A. Yes, sir, I do.

18 Q. Can you tell the jury what you wrote?

19 A. Do you want me to read it all?

20 Q. Sure.

21 A. The morning of the shootings, me and Nicky
22 went over to Deon's house to get a \$5.00
23 bag.

24 Q. Please speak up.

25 A. A \$5.00 bag. We knocked at the door. Deon

1 came out. At that time, two men came
2 walking down the path, and I let Deon know
3 that two men were coming. Then I shook his
4 hand and left. When I looked back, Deon had
5 gone in and Reese ---

6 Q. Who's Reese? Sorry, to interrupt. Who's Reese?

7 A. Devin.

8 Q. Okay. Continue.

9 A. Was out there with two men. Walked off down
10 the street. That's when I heard the shots.
11 I told them maybe we should go back. Then I
12 saw the two men running into a tan, khaki
13 car and rode off. Then Nicky came to the
14 neighborhood and I got a call from Griff.
15 He asked me if I had seen anything. I said
16 yeah. So, he let me know what was going on.
17 Then he asked if I would talk to the
18 detectives, so I waited for them. Then we
19 talked about it. Then I came back home.
20 Soon after, I received a copy of this
21 statement.

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

23 THE COURT: Thank you.

24 Mr. Deier?

25 CROSS-EXAMINATION BY MR. DEIER:

M. GUZMAN - CROSS-EXAMINATION BY MR. DEIER

757

1 Q. Good afternoon, Mr. Guzman. My name is Christopher
2 Deier. I represent Demetrius Price. You didn't live in
3 [REDACTED] did you?

4 A. No, sir.

5 Q. But you were familiar with that apartment complex?

6 A. Yes, sir.

7 Q. The 600 building, that's not just, like, right inside
8 the gate, is it?

9 A. No. You have to go down a little curve, and that's
10 where it's at, right there.

11 Q. Okay, and you spoke to the investigators at some point
12 in this case. You said that after you left, you went
13 somewhere. Where did you go?

14 A. To the neighborhood.

15 Q. No. But -- so, after you left Deon's house, you
16 started going back home?

17 A. Yeah.

18 Q. Okay. So, how far had you gone when you heard the
19 shots?

20 A. I was right at that curve.

21 Q. Do you have any way of estimating about how far away
22 it was? I mean, are we talking about a football field?

23 A. Not a football field.

24 Q. Maybe half that?

25 A. I wouldn't be able to tell.

1 Q. Okay.

2 A. It's -- the building here and the road just curves.

3 Let's say the building is here. This is where I was.

4 Q. Now, when you ---

5 A. It wasn't that far.

6 Q. When you come out of Deon's apartment, you could take
7 a right, right, to go back out of there?

8 A. No, that's ---

9 Q. You come downstairs from Deon's apartment, you took a
10 right, right?

11 A. I was never in the house.

12 Q. Well, I know. So, you're walking out that way and you
13 got a bunch of trees over here, a building, right?

14 A. Yes.

15 Q. So, you went all the way down that building and saw
16 the street?

17 A. Uh-huh.

18 Q. And started making your way around that curve, right?

19 A. Yes, sir.

20 Q. Okay. Now, after you met with Deon, you got what you
21 were looking for -- again, it was just your intention,
22 along with Jesse, to get out of there?

23 A. Yes. We just wanted to go back and smoke.

24 Q. Okay. Now, real quickly, going back to your meeting
25 with the detectives -- let's see, you met with Sergeant

M. GUZMAN - CROSS-EXAMINATION BY MR. DEIER

759

1 Holmes and Sergeant Calhoun at the same time. Is that
2 right?

3 A. Yeah.

4 Q. Did you state to him that while you were at Deon's
5 apartment, you kept getting phone calls from a cellular
6 phone and you did not answer them?

7 A. I quite don't remember.

8 Q. You don't remember saying that?

9 A. I don't remember the whole interview thing.

10 Q. No, this is just the day after, though, right?

11 A. It was the first interview -- that was that same day
12 and then the one, the second interview was the second day.

13 Q. So, yeah, this was the second investigation with
14 Investigator Holmes and Investigator Calhoun. So, this had
15 just happened, right?

16 A. Yeah.

17 Q. And there isn't any reason why it wasn't fresh in your
18 mind. Is that correct?

19 A. At that time, I used to smoke a lot. I don't smoke no
20 more.

21 Q. So, you might have been high?

22 A. Yeah.

23 Q. The last question is, and I just ask you this to make
24 sure I'm clear. You're standing there after you called
25 Deon on the phone earlier, right?

1 A. Yes, sir.

2 Q. And he comes down and instead of telling him on the
3 phone what you wanted, you had to tell him in person what
4 you wanted, right?

5 A. No. I told him on the phone.

6 Q. You told him on the phone?

7 A. Yeah.

8 Q. So when he came down, he should have known what you
9 were looking for?

10 A. Yeah, but he didn't know what I was trying to get
11 because I was with Jesse.

12 Q. All right.

13 A. He didn't know what we were trying to get. I mean, we
14 got it.

15 Q. So, he goes back upstairs and you're sitting up there
16 waiting for him to get whatever it is he's getting. And
17 you have two guys walk up, right?

18 A. Yes.

19 Q. And they said is Deon home, right?

20 A. Yes.

21 Q. And you said yes.

22 A. Right.

23 Q. And so they said tell him Luke or somebody is looking
24 for him, right?

25 A. Yeah, somebody looking for him.

M. GUZMAN - CROSS-EXAMINATION BY MR. ROBINSON

761

1 Q. They just stood there basically with you, waited for
2 him to come down?

3 A. They were just standing there. Me and Jesse were
4 standing over there, standing by his house.

5 MR. DEIER: I have nothing further, Your Honor.

6 THE COURT: Thank you. Mr. Robinson, cross-
7 examination?

8 CROSS-EXAMINATION BY MR. ROBINSON:

9 Q. Martin, isn't it true that before you went to Deon's
10 house, you were already smoking marijuana, weren't you?

11 A. Yes, sir.

12 Q. So, it isn't that you -- what's your answer?

13 A. Yes.

14 Q. So, it isn't that you might have been high before you
15 went there. You were high when you went over there,
16 weren't you?

17 A. Yes, sir.

18 Q. So, in addition to being high when you went to Deon's
19 house you weren't wearing your glasses, were you?

20 A. No.

21 Q. So, you were not sober and couldn't see. Isn't that
22 right?

23 A. That's right.

24 Q. You also testified on direct that your second
25 interview with the police was the second day after the

M. GUZMAN - CROSS-EXAMINATION BY MR. ROBINSON

762

1 shooting. Isn't that right?

2 A. Yes, sir.

3 Q. And the shooting was on July 28th, wasn't it?

4 A. Yes, sir.

5 Q. Okay.

6 MR. ROBINSON: May I approach the witness?

7 THE COURT: Yes, sir.

8 BY MR. ROBINSON:

9 Q. Do you recognize this?

10 A. Yes.

11 Q. What is that?

12 A. My statement.

13 Q. Is there a date at the top of it?

14 A. Yes, sir.

15 Q. What's the date?

16 A. '04.

17 Q. What is the month and day?

18 A. Oh, the month, 08/04/08.

19 Q. So, the statement was actually taken on August 4,
20 2008, wasn't it? The second interview was on August --
21 sorry, your second interview with the police was August 4,
22 2008, wasn't it?

23 A. Yes, sir.

24 Q. So, on direct when you testified that your second
25 interview was on the day after the shooting, you were

M. GUZMAN - CROSS-EXAMINATION BY MR. ROBINSON

763

1 mistaken then, weren't you?

2 A. Yes, because I don't quite remember those times. I
3 don't quite -- I remember they came back. I wasn't
4 thinking, you know, looking at my -- a, a calendar looking
5 what day it was. I just knew they came back. They called
6 me and they came back.

7 MR. ROBINSON: Beg the court's indulgence.

8 THE COURT: Okay.

9 Q. You testified on direct -- you read your statement
10 from August 4th into the record just now.

11 A. Yes, sir.

12 Q. And in that statement you testified: I saw the two men
13 running into a tan-khaki colored car. Isn't that what you
14 read?

15 A. Yes, sir.

16 Q. And isn't that what you saw?

17 A. Yes, sir.

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

19 THE COURT: Yes, sir.

20 BY MR. ROBINSON:

21 Q. I'm going to show you what's previously been admitted
22 into evidence as State's Exhibit 15 and 17. Do you
23 recognize those?

24 A. Yes, sir.

25 Q. Isn't that the car you saw leaving the scene as you

1 were leaving Deon's apartment?

2 A. Yes, sir. Now, I don't know if the camera on this
3 didn't get the color of it, I mean the car. That's the
4 one, but I don't know if it's the camera they got out
5 there, but this car is a khaki-tan color.

6 Q. But the color is just a little off. Is that right?

7 A. Yes, sir.

8 Q. The color is just a little off in this photograph,
9 right?

10 A. Yes, sir. It doesn't really look like it's a good
11 camera.

12 Q. And the two men ran and got into this car, didn't
13 they?

14 A. Yes, sir.

15 Q. Is that ---

16 A. Yes, sir.

17 MR. ROBINSON: I have nothing further of this witness,
18 Your Honor.

19 THE COURT: Thank you.

20 Mr. Deysach.

21 REDIRECT EXAMINATION BY MR. DEYSACH:

22 Q. Briefly, when the guys running from the car, did you
23 see any weapons?

24 A. I think Jesse said that they had ---

25 Q. Just what you saw.

M. GUZMAN - RE CROSS-EXAMINATION / T. FRAZIER - DIRECT EXAMINATION 765

1 A. I can't see.

2 THE COURT: Mr. Deier?

3 RE CROSS-EXAMINATION BY MR. DEIER:

4 Q. From the time that you heard the shots and you saw
5 them running, how much time went by?

6 A. None. Maybe, like, a minute. I don't know. Less
7 than that, probably.

8 MR. DEIER: Nothing further.

9 THE COURT: Mr. Robinson, any follow up?

10 MR. ROBINSON: Nothing from this witness, Your Honor.

11 THE COURT: You can step down. Thank you.

12 (THE WITNESS EXITS THE STAND.)

13 Mr. Deysach?

14 MR. DEYSACH: At this time I call Tiah Frazier,
15 please.

16 TIAH FRAZIER, BEING FIRST DULY SWORN,
17 TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: State your full name for us. Spell
19 your last name.

20 WITNESS: Tiah Frazier, F-R-A-Z-I-E-R.

21 DIRECT EXAMINATION BY MR. DEYSACH:

22 Q. Good afternoon. What's the relationship between you
23 and Lucius -- my name is Ian Deysach. I represent Lucius
24 Simuel. What's the relationship between you and Lucius
25 Simuel?

T. FRAZIER - DIRECT EXAMINATION BY MR. DEYSACH

766

1 A. He's my uncle.

2 Q. Do you remember back to July 28th of 2008? Do you
3 remember back that far?

4 A. Oh, yes, sir.

5 Q. Was Lucius living with you at the time?

6 A. Yes, sir.

7 Q. Did you get any phone calls that day?

8 A. Yes, sir.

9 Q. Who did you get a phone call from?

10 A. My uncle.

11 THE COURT: Would you help bend that microphone down a
12 little bit? Thank you.

13 Ms. Frazier if you'll answer the question. The
14 question was if you received a call and who was it from.
15 If you'll answer that, please?

16 BY MR. DEYSACH:

17 A. Oh, I received more than one call.

18 Q. And the first call you received, who was that from?

19 A. Deon Cannick.

20 Q. Who is Deon to you?

21 A. He was an ex-boyfriend.

22 Q. Was he your ex-boyfriend at the time?

23 A. Yes, sir.

24 Q. How long had you all been broken up?

25 A. Like, two days or one.

T. FRAZIER - DIRECT EXAMINATION BY MR. DEYSACH

767

1 Q. And how long were you guys together before that?

2 A. I don't know.

3 Q. How long had you known Deon?

4 A. Well, I knew him from school, from school year.

5 So, it was -- this happened, like, over summer. So, I

6 know him since the school year. So, I don't know

7 exactly.

8 Q. Did Deon ask to talk to Lucius?

9 A. Yes, but he wasn't there. He stayed somewhere for the
10 weekend.

11 THE COURT: You're going to have to speak up. Your
12 voice is really low, and the court reporter and the jury is
13 having some trouble hearing you.

14 WITNESS: Oh, I'm sorry.

15 BY MR. DEYSACH:

16 Q. Okay, did Deon tell you why he wanted to talk to
17 Lucius?

18 A. No. He just asked for him.

19 Q. What did you tell Deon?

20 A. That he wasn't there. I could give him a contact
21 number.

22 Q. Did you give him a contact number?

23 A. Yeah, but I think it was another house number or
24 something like that or a cell phone.

25 Q. Do you remember what that number was?

T. FRAZIER - DIRECT EXAMINATION BY MR. DEYSACH

768

1 A. No, sir.

2 Q. Do you remember talking to the police about this?

3 A. That evening?

4 Q. That day or near that day?

5 A. Yeah, I talked to them.

6 Q. Do you remember what you told them?

7 A. No, sir.

8 Q. Did you, did you end up writing a statement?

9 A. Yes, sir.

10 Q. Do you have a copy of that statement?

11 A. Yes, sir. It's at home.

12 Q. It's at home. Do you remember what you wrote in your
13 statement?

14 A. I wrote two statements, two different statements.

15 Q. On separate days or on the same day?

16 A. I think it was separate occasions.

17 Q. I'm going to give you a copy of your written statement
18 and see if it refreshes your memory.

19 A. Okay.

20 Q. Is that a copy of your statement?

21 A. Yes, sir.

22 Q. Did you write more, or is that the extent of what you
23 wrote for the police?

24 A. That's all I wrote for the police.

25 Q. What did you write in that statement?

T. FRAZIER - DIRECT EXAMINATION BY MR. DEYSACH

769

1 A. Which one? I wrote two.

2 Q. Well, it's the one that's one of two.

3 MR. ROBINSON: Your Honor, I object. A sidebar real
4 quick?

5 (OFF-THE-RECORD BENCH CONFERENCE.)

6 (A PAUSE.)

7 THE COURT: Let me ask security and the bailiffs.
8 Concerned about somebody might have a laptop that has a
9 camera-equipped computer in the courtroom. They don't
10 allow any more computers in here, please.

11 Does that address your concerns, please, ma'am? Thank
12 you.

13 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
14 NUMBER 7.)

15 THE COURT: Cameras are allowed in the courtroom only
16 under specific guidelines set up by our court. Among those
17 guidelines, cameras may not be used to depict the jurors in
18 any fashion or refer to the jurors. I can appreciate your
19 concern in that regard. That's being looked into right
20 now. Thank you.

21 Mr. Deysach you can continue.

22 MR. DEYSACH: All right.

23 BY MR. DEYSACH:

24 Q. Ms. Frazier, does your statement say on the date of
25 the shooting Deon called you and asked for your uncle, and:

T. FRAZIER - DIRECT EXAMINATION BY MR. DEYSACH

770

1 I told him my uncle wasn't with me.

2 A. Yes, sir.

3 Q. Does it say -- and this is what you wrote, correct?

4 A. Uh-huh.

5 Q. Does it say that Deon -- that he said he wanted to buy
6 some pills?

7 A. Yes.

8 Q. Did you tell Deon that you could get the number?

9 A. Yes.

10 Q. Did you write the number in there?

11 A. Um. You want it.

12 THE COURT: What's your answer again, Ms. Frazier?

13 A. I asked did he want the number.

14 Q. Okay, did you give it to him?

15 A. Yes.

16 Q. Are we talking about the police?

17 A. The police? I gave the police number, yes.

18 Q. You wrote it in that statement, right?

19 A. Yes.

20 Q. And the police left with a copy of that statement?

21 A. Yes.

22 Q. Did you write -- and I'm, you know -- did you write
23 anywhere:

24 Weeks before the shooting, my uncle took me
25 and my brother to Deon's so we could hang

T. FRAZIER - DIRECT EXAMINATION BY MR. DEYSACH

771

1 out because my brother was really cool with
2 his little brother, Marcus, and me and Deon
3 were going out.

4 A. Uh-huh.

5 THE COURT: If you'd say yes or no please, ma'am.

6 A. Oh, yes.

7 Q. Did you write:

8 So, my brother and Marcus turned on the
9 Xbox, and me and Deon sat on the chair and
10 watched.

11 MR. ROBINSON: I want to make it clear defense counsel
12 is going back and forth between several statements. If he
13 could just make clear which one he's questioning her about.
14 There are two statements.

15 BY MR. DEYSACH:

16 Q. What you have in front of you is two pieces of paper,
17 correct?

18 A. Uh-huh.

19 Q. And they are -- they are both -- they both have dates
20 on them, correct?

21 A. Yes.

22 Q. And what are the dates on them?

23 A. Four, five -- August 4, 2008. Both of them have
24 August 4, 2008.

25 Q. Okay. Now, the second piece of paper begins with:

1 Weeks before the shooting, et cetera, correct?

2 A. Uh-huh.

3 Q. And so, I mean, to catch back up where we were on that
4 -- and before that, you were reading from the first piece
5 of paper?

6 A. Yes.

7 Q. Did you write that Devin and your uncle: were in the
8 living room with us watching my brother and Marcus playing
9 the game while smoking?

10 A. Yes.

11 Q. Did you write that: We stayed for about thirty minutes
12 and then went home?

13 A. Yes.

14 Q. And what you wrote in that statement -- is that the
15 truth?

16 A. Yes, sir.

17 Q. Did you hear from Mr. Simuel later on the 28th of
18 July, 2008?

19 A. What day?

20 Q. The day of the shooting.

21 A. Oh, yes.

22 Q. The question, I guess, did he call you?

23 A. Yes.

24 MR. DEYSACH: That's all I have right now.

25 THE COURT: Mr. Deier.

T. FRAZIER - CROSS-EXAMINATION BY MR. DEIER / MR. ROBINSON

773

1 MR. DEIER: Thank you, Your Honor.

2 CROSS-EXAMINATION BY MR. DEIER:

3 Q. My name is Chris Deier. I represent Demetrius Price.

4 When you were talking to the police, did you tell them that
5 you felt that Deon was trying to pimp you?

6 A. No.

7 Q. You never said that?

8 A. I never said that.

9 Q. Okay, and when you got that call the afternoon of the
10 shooting, didn't Mr. Simuel say to you that Deon had tried
11 to rob him?

12 A. Yes.

13 MR. DEIER: I have no further questions.

14 THE COURT: Thank you.

15 Mr. Robinson, cross-examination?

16 MR. ROBINSON: Briefly, Your Honor.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION BY MR. ROBINSON:

19 Q. Tiah, you weren't present when this shooting happened,
20 were you?

21 A. No, sir.

22 Q. So, the only thing you know about this shooting is
23 what your uncle told you. Isn't that right?

24 A. Yes, sir.

25 Q. And your uncle was living with you when this occurred.

T. FRAZIER - CROSS-EXAMINATION BY MR. ROBINSON

774

1 Isn't that right?

2 A. Yes, sir.

3 Q. And you love your uncle, don't you?

4 A. Yes.

5 Q. And your -- but your uncle did call to tell you Deon
6 had gotten shot, didn't he?

7 A. Yes, sir.

8 MR. ROBINSON: I have nothing further.

9 THE COURT: Thank you.

10 Mr. Deysach?

11 MR. DEYSACH: Nothing further of this witness.

12 THE COURT: Mr. Deier?

13 MR. DEIER: Nothing, Your Honor.

14 THE COURT: Ms. Frazier, you can step down.

15 (THE WITNESS EXITS THE STAND.)

16 THE COURT: In response to the inquiry about the Apple
17 computer, security has checked. There's no camera in it.

18 Mr. Deysach?

19 MR. DEYSACH: Chris Battle.

20 THE COURT: Mr. Battle, come forward, please, be
21 sworn.

22 CHRIS BATTLE, BEING FIRST DULY SWORN,
23 TESTIFIES AS FOLLOWS:

24 MR. ROBINSON: Your Honor, before this testimony
25 begins, could we approach?

C. BATTLE - DIRECT EXAMINATION BY MR. DEYSACH

775

1 THE COURT: Yes, sir.

2 (OFF-THE-RECORD BENCH CONFERENCE.)

3 THE COURT: Folks, I may have to hedge on my offer to
4 let you come back and ask me about what we're whispering
5 about. There's no way in the world I can remember all
6 this.

7 DIRECT EXAMINATION BY MR. DEYSACH:

8 Q. Good afternoon, Mr. Battle. My name is Ian Deysach.
9 I represent Lucius Simuel in this case. Who is Lucius
10 Simuel to you?

11 A. That's my uncle.

12 Q. Who is Tiah Frazier to you?

13 A. My sister.

14 Q. How do you know Deon Cannick?

15 A. They were friends and went to school.

16 Q. Okay, you went to school with Deon. Any other of his
17 brothers?

18 A. His little brother, Marc.

19 Q. Do you know his other brothers? Do you know Deverol
20 and Malik?

21 A. I know Malik, but I don't know Deverol.

22 Q. How long have you known them?

23 A. About seven months.

24 Q. From now or from ---

25 A. Well ---

1 Q. We're here obviously about July 28th. Seven months
2 ago from July 28, '08 or seven months ago from now?

3 A. Well, it was about when we first met, about two years
4 ago.

5 Q. Two years ago from now?

6 A. Yes, sir.

7 Q. All right. Do you remember July 28, 2008? Do you
8 remember anything about that day?

9 A. Yes, sir.

10 Q. What do you remember?

11 A. Well, he called my sister and he asked about ---

12 Q. Who is he?

13 A. Deon called my sister and asked if Lucius was home.
14 And she said he asked for the number. She gave it to him.

15 Q. Did you talk to Deon?

16 A. I didn't talk him on the cell phone.

17 Q. Did you leave a message?

18 A. No.

19 Q. How many times did you call Deon?

20 A. I'd say about three or four. I don't know. Somewhere
21 around there.

22 Q. Did, did Lucius ever call from your phone?

23 A. Not that I remember.

24 Q. Did you have occasion to talk to the police about what
25 happened on the 28th?

C. BATTLE - DIRECT EXAMINATION BY MR. DEYSACH

777

1 A. Yes, sir.

2 Q. Did you -- do you remember what day you talked to him?

3 A. No, sir.

4 Q. Do you remember what officer you talked to?

5 A. No, sir.

6 Q. Do you know if it was Officer Calhoun?

7 A. Calhoun, that's who it was.

8 Q. Did he ask you to write a statement?

9 A. I think so.

10 Q. Did you write a statement?

11 A. I'm pretty sure.

12 Q. I'm going to hand you a piece of paper and ask you if
13 you recognize it.

14 A. Yes, sir.

15 Q. Is that your statement?

16 A. Yes, sir.

17 Q. Did you date your statement?

18 A. Yes, sir.

19 Q. What is the date?

20 A. 8/5/08.

21 Q. So August 5, 2008?

22 A. Yes, sir.

23 Q. All right. Did you write in your statement that the
24 day of the shooting Deon called your house and asked you
25 and your sister if your uncle was home?

1 A. Yes, sir.

2 Q. Did you write that: We said no?

3 A. Yes, sir.

4 Q. Did you write: Then he asked for his number because he
5 wanted some pills?

6 A. Yes, sir.

7 Q. Did you write: We said we know nothing about pills but
8 here is my uncle's number?

9 A. Yes, sir.

10 Q. Did you write then you: called my uncle and told him
11 Deon asked about some pills?

12 A. Yes, sir.

13 Q. Did you write: Hours blew past without us hearing from
14 my uncle?

15 A. Yes, sir.

16 Q. Did you write: Finally he called and told us the deal
17 went bad and Deon and his brother got shot?

18 A. Yes, sir.

19 Q. Did you write: Minutes after that, the police came to
20 our house questioning us about Deon and the shooting?

21 A. Yes, sir.

22 Q. Is that -- all that you wrote true?

23 A. Yes, sir.

24 Q. And did you sign the statement at the bottom?

25 A. Yes, sir.

C. BATTLE - CROSS-EXAMINATION BY MR. ROBINSON

779

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

2 THE COURT: Mr. Deier?

3 MR. DEIER: I have no questions of this witness, Your
4 Honor.

5 THE COURT: Thank you.

6 Mr. Robinson?

7 CROSS-EXAMINATION BY MR. ROBINSON:

8 Q. You weren't at Deon and Devin's house when they got
9 shot, were you?

10 A. No, sir.

11 Q. So, the only thing you know about it is what your
12 uncle told you. Is that right?

13 A. Yes, sir.

14 Q. And the only thing that you learned about it from your
15 uncle was that Deon and his brother got shot. Isn't that
16 right?

17 A. Yes, sir.

18 Q. And you like your uncle, don't you?

19 A. Yes, sir.

20 MR. ROBINSON: Nothing further.

21 THE COURT: Mr. Deysach?

22 MR. DEYSACH: Nothing.

23 THE COURT: Thank you. You can step down Mr. Battle.
24 Thank you.

25 (THE WITNESS EXITS THE STAND.)

1 THE COURT: Ladies and gentlemen, we're going to take
2 the afternoon recess at this point. We started a little
3 early, and we've been at it for a little bit more than an
4 hour and a half. We're going to take an afternoon recess.
5 We'll start back at five after the hour, and I'll check
6 with the lawyers in the meantime and see what the balance
7 of their afternoon is going to be.

8 Remember, of course, not to discuss this case among
9 yourselves in the jury room. Thank you.

10 (THE JURY EXITS AT 2:50 P.M.)

11 THE COURT: Mr. Deysach, how many more witnesses do
12 you anticipate calling?

13 MR. DEYSACH: I have -- I think I just was going to
14 recall Officer Calhoun for a small point about something
15 Malik had said.

16 THE COURT: Okay.

17 All right, Mr. Geier, have you all got any idea about
18 how long you might need, if any time, in your case?

19 MR. GEIER: Your Honor, I'd probably need to take a
20 few minutes and talk to my client.

21 THE COURT: Sure. That's all right. That's okay.

22 MR. GEIER: How long it would be, I can't tell you
23 just yet, but it won't be too long.

24 THE COURT: All right, thank you. All right, I'm just
25 trying to figure out our work schedule today to see if we

1 can't at least finish all the testimony this afternoon, and
2 that appears to be doable, based on what you all have told
3 me.

4 All right, folks, we'll break, take about fifteen
5 minutes. Thank you.

6 (OFF THE RECORD.)

7 THE COURT: Okay, both sides ready for the jury?

8 MR. ROBINSON: Yes, Your Honor.

9 THE COURT: Good.

10 MR. DEYSACH: Yes, Your Honor.

11 MR. GEIER: Your Honor, before Mr. Price makes the
12 decision on whether or not he's going to testify, I'd like
13 to be able to meet with him and his family.

14 THE COURT: Okay.

15 MR. GEIER: Can we go just right in there with that
16 deputy outside?

17 THE COURT: After Mr. Deysach rests his case, we'll
18 give you a break to do that.

19 MR. GEIER: All right. Thank you, Your Honor.

20 THE COURT: Now, before you go to do it, I believe
21 security is going to have some say in that.

22 MR. GEIER: Thank you, sir.

23 (THE JURY ENTERS AT 3:08 P.M.)

24 THE COURT: Mr. Deysach, you can call your next
25 witness.

T. CALHOUN - DIRECT EXAMINATION BY MR. DEYSACH

782

1 MR. DEYSACH: Investigator Calhoun.

2 THE COURT: Investigator Calhoun, if you'll resume
3 that stand, please, sir. You're still under oath.

4 WITNESS: Yes, sir.

5 TODD CALHOUN, HAVING PREVIOUSLY BEEN
6 DULY SWORN, TESTIFIES AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. DEYSACH:

8 Q. Good afternoon, Investigator Calhoun.

9 A. Good afternoon.

10 Q. And I'll be brief. As part of your investigation, did
11 you have the opportunity to talk to Deverol Cannick on the
12 30th of July, 2008 at Savannah Memorial Hospital?

13 A. Yes, sir.

14 Q. Did you memorialize that conversation in your report?

15 A. I believe so, sir.

16 Q. Do you have a copy of your report up there?

17 A. I do not, sir.

18 Q. Okay. Here is one.

19 A. Thank you.

20 Q. Can you find the spot in the report where that
21 conversation is memorialized?

22 A. This is the interview with Deverol Cannick on July 30,
23 2008.

24 Q. Did Deverol tell you that he opened the door for the
25 two people?

T. CALHOUN - DIRECT EXAMINATION BY MR. DEYSACH

783

1 A. Let me find that here. As I stated in the report,
2 Deverol eventually opened the door.

3 Q. Okay. Did Deverol pick Demetrius Price out of a photo
4 lineup as the person who shot him?

5 A. He did indicate that he did identify Mr. Simuel and
6 Mr. Price.

7 Q. Who did he identify as the person who shot both he and
8 his brother?

9 A. He had indicated -- let me refer to my report to be
10 specific. He referred to -- actually, would it be
11 beneficial if I read the actual paragraph?

12 Q. The -- if you want to. I'm asking about the sentence
13 that he begins with: Upon.

14 A. Upon showing Deverol a photo lineup, Deverol
15 identified the registered owner, Demetrius
16 Price, as the person with the uncle who
17 possessed the revolver, entered his
18 apartment unlawfully, and shot both Deon and
19 Deverol.

20 Q. I'm sorry, the last word you said was?

21 A. Deverol.

22 Q. Okay. Did you, did you talk to Martin Guzman?

23 A. I did.

24 Q. Where did you talk to him?

25 A. I believe it was at his place of residence.

T. CALHOUN - CROSS-EXAMINATION BY MR. DEIER

784

1 Q. Was that the -- was that on the day of the shooting?

2 A. I did not speak to Mr. Guzman on the day of the
3 shooting.

4 Q. Okay. On page 9 of your report, do you memorialize a
5 conversation you had with Mr. Guzman at his residence?

6 A. Yes, sir.

7 Q. Did Martin, did he tell you that he was at Deon and
8 Deverol's playing the video games?

9 A. Again, if you would just bear with me for a moment and
10 let me find that here.

11 (A PAUSE.)

12 A. Yes, sir.

13 Q. Did he tell you Deon kept getting phone calls on a
14 cellular phone?

15 A. Yes, he did.

16 MR. DEYSACH: That's it, Your Honor.

17 THE COURT: Mr. Deier?

18 MR. DEIER: Thank you, Your Honor.

19 CROSS-EXAMINATION BY MR. DEIER:

20 Q. Good afternoon again, Sergeant Calhoun.

21 A. Good afternoon, sir.

22 Q. I also want to talk a little bit about the July 30th
23 interview with Deverol Cannick. During your interview with
24 Deverol, not only did he say that he eventually opened the
25 door, but did he also say he opened the door and once they

T. CALHOUN - CROSS-EXAMINATION BY MR. DEIER

785

1 were inside they pulled out guns?

2 A. As narrated in my report:

3 Deverol eventually opened the door, and once
4 inside both the uncle and his buddy pulled
5 out guns and said shut up. Don't say
6 anything.

7 Q. Actually, that next line then is: Uncle was holding a
8 black pistol, like a .9 mm. or a .380. Is that correct?

9 A. That is correct.

10 Q. He was holding a revolver. Is that correct?

11 A. That is correct.

12 Q. And, again, I won't go into the whole taking of notes
13 and all that stuff. That's true and accurate to the best
14 of your knowledge?

15 A. Best of my knowledge, sir.

16 Q. I want to turn to one more thing. On the 28th of
17 July, you interviewed Malik Campbell, did you not, at
18 Savannah Memorial Hospital?

19 A. Yes, sir.

20 Q. And when you were talking with Malik -- you have the
21 page there?

22 A. I do.

23 Q. Do you? Okay, you were talking with Malik. Did he
24 not say he was at the top of the stairs and saw his
25 brothers fighting with the subject?

1 A. Malik then went to the top of the stairs to
2 see what was wrong and saw two subjects at
3 the bottom of the stairs fighting with his
4 brothers.

5 Q. In that same interview, Mr. Campbell identified
6 supposedly each shooter by a general description, did he
7 not?

8 A. That's correct. He said that:

9 The shooter was a dark-skinned black male
10 with hair on his chin and that he had a
11 black-colored pistol. Malik said the
12 shooter was wearing a white T-shirt, looked
13 to be in his thirties, and was shorter than
14 the other. Malik stated that the other
15 suspect was a lighter skinned black male
16 wearing a brown or black polo shirt and was
17 also holding a gun.

18 I believe that's as far as the description goes.

19 MR. DEIER: One minute, Your Honor.

20 (A PAUSE.)

21 MR. DEIER: Nothing further, Your Honor.

22 THE COURT: Mr. Robinson?

23 CROSS-EXAMINATION BY MR. ROBINSON:

24 Q. Investigator.

25 A. Yes, sir.

T. CALHOUN - CROSS-EXAMINATION BY MR. ROBINSON

787

1 Q. You've been asked a lot about what's in your report.

2 A. Yes, sir.

3 Q. Haven't you?

4 A. Yes, sir.

5 Q. And you've been asked a lot about your interviews with
6 the witnesses, haven't you?

7 A. Yes, sir.

8 Q. And you've been asked a lot about the words that you
9 put in your reports, haven't you?

10 A. Yes, sir.

11 Q. And you had a number of opportunities to review your
12 report, haven't you?

13 A. Yes, sir.

14 Q. At this point in time, is it fair to say you have a
15 good recollection of both what's in your report as well as
16 your conversations with the witnesses in this case?

17 A. Yes, sir.

18 Q. Deverol Cannick never told you he gave any of the two
19 people involved in this shooting permission to come into
20 his house, did he?

21 A. He did not give anybody permission, sir.

22 MR. ROBINSON: Thank you.

23 THE COURT: Mr. Deysach?

24 MR. DEYSACH: I don't have anything further of this
25 witness.

D. SINGLETERRY - DIRECT EXAMINATION BY MR. DEYSACH

788

1 THE COURT: Thank you, Investigator. You can step
2 down.

3 (THE WITNESS EXITS THE STAND.)

4 MR. DEYSACH: At this time I'd call PFC Singleterry.

5 DAVID L. SINGLETERRY, BEING FIRST DULY
6 SWORN, TESTIFIES AS FOLLOWS:

7 CLERK OF COURT: State your full name. Spell your
8 last name, please.

9 WITNESS: My name is David Lawrence Singleterry. Last
10 name spelled single, S-I-N-G-L-E, and the last part is
11 T-E-R-R-Y.

12 DIRECT EXAMINATION BY MR. DEYSACH:

13 Q. Good afternoon, Mr. Singleterry. My name is Ian
14 Deysach. I represent Lucius Simuel in this case. July 28,
15 2008, where did you work?

16 A. I worked at the Beaufort County Sheriff's Office.

17 Q. Did you respond to a shooting at [REDACTED]
18 Road, unit [REDACTED]?

19 A. I responded to that location, yes.

20 Q. Did you, did you write a report?

21 A. I did.

22 Q. And you knew at the time you wrote the report that
23 there had been a shooting, right?

24 A. Yes, I did.

25 Q. So, you knew that it was very important to put

D. SINGLETERRY - DIRECT EXAMINATION BY MR. DEYSACH 789

1 everything in your report accurately, right?

2 A. To the best of my ability, yes.

3 Q. And you took great care in making sure the report was
4 accurate, correct?

5 A. From the knowledge I had at that time, that is
6 correct.

7 Q. Very good, and do you have a copy of that report right
8 now?

9 A. No, sir, I do not.

10 MR. DEYSACH: May I approach the witness?

11 THE COURT: Yes, sir.

12 MR. DEYSACH: If that's okay, Your Honor?

13 BY MR. DEYSACH:

14 I'd ask you if that's a copy of your report?

15 A. That would be correct, sir.

16 Q. Did you -- when you responded to that location on that
17 day, did you talk to Malik Campbell?

18 A. Yes, I did.

19 Q. Did he, did he tell you whether or not he saw the two
20 subjects?

21 MR. ROBINSON: Judge, I object. This is hearsay.

22 THE COURT: It depends on what the answer is. If it
23 is an inconsistent statement to one he's given earlier in
24 court, he can examine him on that issue. I don't know what
25 the answer is. You all do.

1 How do you avoid the issue, Mr. Deysach?

2 MR. DEYSACH: Because I am trying to get to an
3 inconsistent statement, Your Honor. I think that -- that's
4 where I'm going. It's not a major point, but I did kind of
5 want to get to the place in the story where the
6 inconsistency occurs.

7 THE COURT: All right, I'll allow you to do that.
8 We'll deal with -- we got an 801, Rule 801 situation. If
9 not, depending on what the answer is, I'll allow it. Thank
10 you. Go ahead.

11 BY MR. DEYSACH:

12 Q. Did he tell you whether or not he had seen both of the
13 subjects?

14 A. I don't recall whether he seen both subjects. I do
15 recall that he had said that he had seen -- that he was
16 able to describe one of their guns, and recall that this
17 had been over a year. I also remember that Mr. Campbell
18 was understandably very emotional and frantic.

19 Q. Okay. So, did he describe to you one and only one
20 gun?

21 A. If you'll give me a second to review my statement.

22 Q. Certainly.

23 (A PAUSE.)

24 A. From what I recall now after having reviewed my
25 statement, I do recall that he did state that he had seen a

D. SINGLETERRY - CROSS-EXAMINATION BY MR. DEIER

791

1 couple of males at the bottom of the stairwell because he
2 had come to the top of the stairwell. He remembers seeing
3 a gun. I don't remember if he stated whether he saw a
4 second gun or not, but I do remember he stated he had seen
5 one gun. It was a black gun and that after the rounds had
6 started flying, he hit the ground.

7 Q. So, he told you then he seen the two people but only
8 one gun?

9 A. Best as I can recall, yes.

10 Q. And are you using your report to refresh that
11 recollection?

12 A. I am, yes.

13 MR. DEYSACH: All I have.

14 THE COURT: Mr. Deier?

15 MR. DEIER: Thank you, Your Honor.

16 CROSS-EXAMINATION BY MR. DEIER:

17 Q. Good afternoon, Mr. Singleterry. How are you?

18 A. Fine, thank you.

19 Q. My name is Chris Deier. I represent Demetrius Price
20 in this case. Give me just a moment; I need to look at
21 these pictures here.

22 (A PAUSE.)

23 Q. Mr. Singleterry, I'm going to hand you what's already
24 been marked State's Exhibit 9. Take a look at that for me,
25 please.

D. SINGLETERRY - CROSS-EXAMINATION BY MR. ROBINSON

792

1 A. Okay.

2 Q. Do you recognize what's in that photo?

3 A. I recognize the apartment complex and the location
4 where the incident occurred.

5 Q. So, that's where it was. Tell me something. Was this
6 bike there when you showed up?

7 A. I did not go up to the apartment complex. I stopped
8 at the entrance to the actual apartment complex itself.
9 That is where the black vehicle was located when I noticed
10 that there was subjects inside being shot, and I stayed at
11 that location. I never came up to the building until after
12 the fact.

13 Q. So, in fairness, you just recognize this as [REDACTED]

14 [REDACTED] Apartments, not necessarily the [REDACTED]

15 A. Being familiar with that location, yes.

16 Q. Okay. Thank you.

17 MR. DEIER: I have no further questions of this
18 witness. Thank you.

19 THE COURT: Thank you.

20 Mr. Robinson?

21 CROSS-EXAMINATION BY MR. ROBINSON:

22 Q. Deputy Singleterry, you were the first member of the
23 sheriff's office to arrive at this scene, weren't you?

24 A. I did not go all the way up to the actual scene of the
25 accident, but I was the first one to arrive at the location

D. SINGLETERRY - CROSS-EXAMINATION BY MR. ROBINSON

793

1 where the victims were at the time.

2 Q. My emphasis is not on the -- your arrival at the
3 actual apartment. My question is you were the first member
4 of law enforcement, the first member of the sheriff's
5 office, to confront these victims?

6 A. That is correct.

7 Q. You were?

8 A. Yes, sir.

9 Q. And you saw them at the entrance of [REDACTED]
10 Apartments ---

11 A. Yes, sir.

12 Q. --- didn't you? And isn't it true that when you saw
13 them, they were trying to take themselves to the hospital?

14 A. That is correct.

15 Q. And isn't it also true that you had to intervene to
16 tell them no, the ambulance is on the way?

17 A. That is correct.

18 Q. And isn't it also true that this was a state of
19 emergency?

20 A. Very much so. Yes.

21 Q. And isn't it fair to say that the people that you
22 confronted as the first responder were in a frantic state
23 of mind?

24 A. Extremely.

25 Q. And is it fair to say that Malik Campbell, when you

D. SINGLETERRY - CROSS-EXAMINATION BY MR. ROBINSON

794

1 interviewed him, was in a frantic state of mind?

2 A. Yes, sir. That would be very accurate.

3 Q. Isn't it also true that when you confronted Malik
4 Campbell, it had only been moments since he put his -- he
5 helped put his two brothers who had been shot into a car to
6 try to take them to the hospital?

7 A. It could not have been very long, sir. I can't attest
8 to the exact amount of time, sir, but it couldn't have been
9 very long.

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

11 THE COURT: Mr. Deysach?

12 MR. DEYSACH: Nothing, Your Honor.

13 THE COURT: Mr. Deier?

14 MR. DEIER: Nothing, Your Honor.

15 THE COURT: Thank you, Mr. Singleterry. You may step
16 down.

17 WITNESS: Thank you, Your Honor.

18 (THE WITNESS EXITS THE STAND.)

19 THE COURT: Mr. Deysach?

20 MR. DEYSACH: May I approach?

21 THE COURT: Yes, sir.

22 (OFF-THE-RECORD BENCH CONFERENCE WITH MR. DEYSACH
23 ONLY.)

24 THE COURT: Ladies and gentlemen, I need to send you
25 to your jury room very briefly. Let me tell you what our

1 plans are.

2 We will be able to conclude the testimony, the trial
3 testimony this afternoon. We will not be able to present
4 the final arguments and the charge on the law because after
5 the testimony is concluded, then I have to deal with the
6 lawyers. We have to get things in order to present the
7 final argument and the charge on the law. That process
8 takes a while for us to accomplish out of your presence.
9 We do that in order to make tomorrow's time a lot more
10 efficient.

11 Our plans are for you to come back in the morning at
12 9:30 to hear the final arguments, and then the charge on
13 the law which I will give you at that time. We hope, and
14 our plans are, to have this in your hands well before
15 lunch, or certainly before lunch. You'll be guests of
16 Beaufort County for lunch tomorrow. When you see how
17 little you're going to get paid for your work as jurors
18 this week, you're going to be real glad you're getting a
19 free lunch at the hands of the taxpayers tomorrow. So,
20 don't make any plans for lunch tomorrow; you will eat lunch
21 here. That's the best way to use your time.

22 Once this case is in your hands, you can take as much
23 time as you want to with it, but we're going to work hard
24 to make sure you get it in your hands if at all possible
25 prior to lunch and as early as possible before that point.

1 But as you well know from this experience that you've
2 have thus far these nearly four days in court this week, we
3 can't find justice on a time -- on a stopwatch. It just
4 doesn't work that way; there are things that have to be
5 done. There's a small matter of the constitution that has
6 to be complied with, and the laws that have to be complied
7 with, and things of that nature. And we have to take some
8 time to make sure that those things are being done.

9 And so you've been on our clock all week, and we'll be
10 glad to get on your clock tomorrow. But until then, if
11 you'll stick with us a while longer -- and we're going to
12 take just a few minutes to see what's left of the afternoon
13 work -- we'll let you go. You'll be back tomorrow at 9:30.

14 Step to the jury room. Please do not discuss this
15 case among yourselves.

16 (THE JURY EXITS AT 3:30 P.M.)

17 THE COURT: Mr. Deysach, at the sidebar conference you
18 asked me if I wanted to review with Mr. Simuel his
19 information concerning his right to testify or not to
20 testify. I simply will confirm for the record.

21 Mr. Simuel, you've had a chance to talk during the
22 lunch hour with Mr. Deysach concerning whether or not
23 you're going to testify in this case. Is that right?

24 DEFENDANT SIMUEL: Yes.

25 THE COURT: And you did that on the basis of the

1 information that I furnished you before we broke for lunch,
2 and also on the basis of your conversations with him. Is
3 that right?

4 DEFENDANT SIMUEL: Yes.

5 THE COURT: Based on those conversations, do you wish
6 to testify in the trial of this case?

7 DEFENDANT SIMUEL: No, sir.

8 THE COURT: Thank you.

9 All right, Mr. Geier, I understand you want to talk
10 with Mr. Price to determine whether or not he will testify,
11 and you've asked if he could meet with his family. That
12 matter, frankly, is in the control of security. Certainly
13 you can meet with him in the conference room if you'd like.

14 As to whether the family meets with him, ladies and
15 gentlemen, do you want to talk with me about that?

16 (OFF-THE-RECORD BENCH CONFERENCE WITH DEPUTY
17 SHERIFFS.)

18 THE COURT: If you can talk in here, maybe come to the
19 front row and sit behind you while you talk on this side of
20 the room. If you want to go into the conference room, it
21 will just have to be the two of you all and the officer,
22 okay?

23 MR. GEIER: Thank you, Your Honor.

24 THE COURT: All right, folks, we'll stand down for ten
25 minutes.

1 Is that enough time, Mr. Geier, you think?

2 MR. GEIER: Yes, Your Honor, although I might add
3 maybe we should talk about what's going to come in and
4 what's was not going to come in before we make the ultimate
5 decision.

6 THE COURT: Okay. All right. As I understand it from
7 Mr. Price's record, at the very least he has convictions
8 for burglary, armed robbery, and aggravated assault.
9 Assuming that they are within the applicable time, of
10 course they would all be admissible, not as specific crimes
11 but simply crimes that carry more than a year in jail.

12 Are there any other crimes that you would seek to
13 impeach him on, Mr. Robinson?

14 MR. ROBINSON: Yes, Your Honor. Let me consult the
15 copies.

16 (A PAUSE.)

17 MR. ROBINSON: Additionally armed robbery,
18 obstruction, possession of a sawed-off shotgun, aggravated
19 battery, burglary, aggravated assault, armed robbery.

20 THE COURT: Is that another armed robbery?

21 MR. ROBINSON: Just a moment, Your Honor. I don't
22 want to say the wrong thing.

23 (A PAUSE.)

24 MR. ROBINSON: There's only one armed robbery.

25 THE COURT: Okay.

1 MR. ROBINSON: I believe there's also a possession
2 with intent to distribute marijuana, and that's it.

3 THE COURT: Okay, an armed robbery, possession of a
4 sawed-off shotgun, an aggravated battery obstruction,
5 burglary, aggravated assault, PWID marijuana.

6 MR. ROBINSON: That's correct.

7 THE COURT: All right, Mr. Geier, what say you?

8 MR. GEIER: Your Honor, I'm going to refer to *State*
9 *vs. Bryant*, 369 South Carolina 511.

10 THE COURT: Right.

11 MR. GEIER: Which is out of the Supreme Court in 2006.
12 Would you like a copy of it, Your Honor? I have one for
13 you if you'd like.

14 THE COURT: I can get it up on the computer unless
15 you've got an extra copy.

16 MR. GEIER: Maybe I should give this one to the
17 prosecutor.

18 THE COURT: Okay, give me just one moment. I can pull
19 it up on my computer.

20 MR. GEIER: Thank you, judge. I'll give y'all a
21 minute to review that.

22 (A PAUSE.)

23 THE COURT: What's the cite again?

24 MR. GEIER: Your Honor, it's 369 South Carolina 511,
25 *State vs. Bryant*.

1 THE COURT: B-R-Y-A-N-T?

2 MR. GEIER: Yes, sir.

3 MR. ROBINSON: The southeastern cite, Your Honor, is
4 633 SE 2d 152.

5 THE COURT: I get a bunch of *State vs. Bryant*, but
6 none of them match this.

7 MR. ROBINSON: Your Honor, I'm almost done. I can
8 give you my -- this copy.

9 MR. GEIER: Your Honor, I have a cheat sheet that has
10 all of the relevant parts with maybe one exception. I can
11 hand this up to you. I have a part that's highlighted
12 which you can take a look at.

13 MR. ROBINSON: Thank you, Chris.

14 (A PAUSE.)

15 THE COURT: Mr. Robinson, have you had a chance to
16 look at it?

17 MR. ROBINSON: I have, Your Honor.

18 THE COURT: All right, Mr. Geier, I'll be glad to hear
19 argument from you.

20 MR. GEIER: Thank you, Your Honor. Obviously, under
21 the *State vs. Kolf* balancing test, we have a number of
22 points here. You have:

23 Impeachment value of the prior crime, point
24 in time of the conviction, the witness's
25 subsequent history, the similarity of the

1 past crime and the charged crime, the
2 importance of the defendant's testimony, and
3 the centrality of the credibility issue.

4 Mr. Price's conviction, initial round of convictions,
5 occurred when he was sixteen years old in 1992. So, again
6 it's a while back. He served quite a bit of time in prison
7 for that, for those crimes. Ten years to be specific. He
8 had another five years of probation that he had to serve.
9 There was a probation violation in there for something that
10 didn't end up going forward. But, nonetheless, it was a
11 probation violation. And obviously there is the possession
12 with intent to distribute.

13 Especially with the crimes from 1992, I think they are
14 quite smaller to what we have before us today. I mean, we
15 had a burglary. We had a aggravated assault, which is at
16 least an ABHAN here if not an ABWIK. And so I think that
17 it's pretty clear that he would be seriously prejudiced by
18 having this come in.

19 Now, the other thing I'm concerned about is that if
20 there's just an instruction or there's some sort of
21 limitation on what prosecution can bring into this, it
22 won't be enough to diminish that prejudice.

23 One, frankly under this case, I don't think it should
24 come in at all. I know these things are probative for
25 truthfulness. But because of the number that he has from

1 when he was sixteen years old, I think that in and of
2 itself is prejudicial.

3 I would ask that everything that he's got with, I
4 guess, the exception of possession with intent to
5 distribute -- which, granted, has no real relation to what
6 we've got here other than maybe as a secondary effect --
7 all of those things be suppressed. And that Mr. Robinson
8 not be allowed to inquire into any of those things.

9 THE COURT: All right.

10 MR. GEIER: Thank you, Your Honor.

11 THE COURT: Thank you. The *State vs. Bryant* analysis
12 involved whether or not a prior conviction for possession
13 of firearm should be admitted in a case in which the
14 defendant raised the defense of self-defense. The victim
15 in this case had been shot six times. The police arrived.
16 Mr. Bryant had a Mexican standoff with the policemen for
17 some twenty to twenty-five minutes. SWAT team came in,
18 broke into the house. The defendant, Mr. Bryant, by that
19 time had shot himself in the stomach and was lying there.
20 He was subsequently convicted of murder and of possession
21 of a weapon. He had numerous prior convictions, and I
22 haven't read all of them yet, but he did have some prior
23 convictions against him in this regard.

24 The Supreme Court reversed his conviction, finding
25 that:

1 In this case, the petitioner's defense was
2 that he acted in self-defense based solely
3 on his own credibility or on his own
4 testimony. Moreover, the only witness for
5 the petitioner, the victim. And although
6 the record contains evidence which may
7 undermine the petitioner's self-defense
8 theory, the record also contains evidence
9 which supports his self-defense theory.
10 Therefore, the state should not be allowed
11 to attack his credibility with inadmissible
12 prior convictions, especially where the
13 credibility was essential to the defense.
14 Accordingly, we hold the improper admission
15 of his prior firearms conviction was not
16 harmless.

17 Applying the Kulp -- the Golf -- I'm sorry, the Kolf,
18 K-O-L-F, standards which Mr. Geier has read into the
19 record, the one that is most likely to give rise to an
20 improper prejudicial impact is the third one which says:
21 The similarity of the past crimes and the charged crimes.
22 And without a doubt, we have been cautioned not only in
23 Kolf but in other cases, both state and United States
24 Supreme Court cases, that when the crime charged has a
25 similarity to the crime sought to be admitted for

1 impeachment purposes, that the prejudicial impact of that
2 is raised considerably for obvious reasons.

3 The jury could conclude, well, he's on trial for armed
4 robbery this time, and he had an armed robbery conviction
5 in the past. So, he did it once; he must do it again. And
6 in spite of all our instructions to the contrary, it is
7 unlikely that in the real world the jury is going to be
8 able to put those similarities aside and not give some
9 weight to them, however improper it might be.

10 However, when the jury doesn't know the similarity of
11 the past crime and the charged crime, then that prejudicial
12 impact, in my view, is blunted, and certainly insofar as
13 the similarity is concerned because the jury doesn't know.
14 They don't know whether it's the same crime or a different
15 crime.

16 Now, true, they could be left to guess, and that could
17 be harmful in its own sense. But I don't think that the
18 fact a person is testifying in his own defense and that his
19 credibility is going to come into question in and of itself
20 causes us to throw Rule 609 out and supplant it entirely
21 with another rule that says if his testimony is going to be
22 critical to his own defense, then any criminal record can't
23 come in. Or at least a series of criminal records cannot
24 come in.

25 There is a valid right of a jury to be able to

1 determine, if it can, the credibility of a person. And, in
2 part, that credibility under our rules can be based on a
3 person's prior conduct. We do that in the community every
4 day; we base our view of whether somebody's telling the
5 true on what we know about them in the real world. But
6 when it comes to a courtroom setting, the jury doesn't know
7 anything about anybody until they take the stand.

8 And, therefore, our rules have provided there are ways
9 then to allow a jury to assess credibility of people whom
10 they do not know, and whom they don't have any history of
11 in the past as we would of our neighbors or people in our
12 own hometown. And one of those ways is by the introduction
13 of a prior criminal record. We do the balancing test. We
14 do the best that we can to let the jury know that -- or let
15 the jury be ignorant of the fact that the crime charged
16 might be similar to the one which is sought to impeach him.

17 But there is no way we can, nor should we, insulate a
18 testifying defendant or a witness or anyone else entirely
19 from the effects of their past conduct insofar as those
20 impact his credibility.

21 In this particular case, the jury is not going to know
22 what any of these crimes are. They are going to know that
23 he was convicted of crimes that carried a possible penalty
24 of more than a year in jail on the dates in question. And
25 they can be told that the armed robbery was in 1992. Of

1 course if he spent tens years in jail, he was out in 2002.
2 The ten years runs from that date. We don't have to tell
3 them all that. We don't have to tell them he's not getting
4 credit for the fact that he was in jail for ten years. And
5 so the fact that he didn't break the law during that period
6 of time extends or tolls that ten-year period. And they
7 can choose, if they wish, in their own minds to give
8 limited weight to a conviction in 1992 or whenever these
9 other events occurred.

10 But they have the right to know that he's violated the
11 law in the past on those particular dates, and that the
12 crimes with which he was involved carried a possible
13 penalty of more than a year in jail without knowing what
14 those crimes were.

15 I will note your exception in that regard, Mr. Geier,
16 but I'm going to let the jury hear those.

17 MR. GEIER: Thank you, Your Honor.

18 THE COURT: All right, I'm going to give this back.

19 Okay, folks, now let's stop the clock again and see if
20 we can't get back at 4:00. That's ten more minutes, and
21 then we'll move from there on. Thank you.

22 (OFF THE RECORD.)

23 THE COURT: All right, Mr. Geier.

24 MR. GEIER: Your Honor, we're missing our solicitor.

25 (A PAUSE.)

1 MR. GEIER: Your Honor, we elect not to testify.

2 THE COURT: Elect not to, all right. Thank you.

3 And, Mr. Price, once again you have understood your
4 rights in that regard. You've made that decision after
5 talking with your lawyer and I think with your family's
6 input. Is that correct?

7 DEFENDANT PRICE: Yes, sir.

8 THE COURT: Okay, and so your decision not to testify
9 was made with the knowledge of what your rights are?

10 DEFENDANT PRICE: Yes, sir.

11 THE COURT: All right. Thank you. You can be seated.

12 Gentlemen, the jury will be brought in. Mr. Deysach,
13 I will allow you to rest in the presence of the jury and
14 then, Mr. Geier, you will rest in the presence of the jury.

15 Is there anything from the state in reply at this
16 juncture?

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

18 THE COURT: All right, good. Then I'll send the jury
19 home, and we'll get them back at 9:30 tomorrow to listen to
20 the arguments and charge. And after they're gone for the
21 day, we'll deal with charge conference and any other
22 motions that we need to deal with, okay? All right?

23 MR. ROBINSON: Thank you, Your Honor.

24 THE COURT: Bring us the jury, please.

25 (THE JURY ENTERS AT 4:02 P.M.)

1 THE COURT: Mr. Deysach.

2 MR. DEYSACH: At this time, Your Honor, Mr. Simuel's
3 defense rests.

4 THE COURT: Thank you, sir.

5 Mr. Geier.

6 MR. GEIER: Your Honor, Mr. Price's defense rests.

7 THE COURT: Thank you, sir.

8 Mr. Robinson, is there anything from the state in
9 reply?

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

12 THE COURT: Thank you.

13 Now, ladies and gentlemen, that means that you have
14 now heard all of the evidence and testimony that you will
15 hear in the trial of this case. As I indicated to you a
16 few moments ago, you have yet to have the final arguments.
17 That will be done tomorrow morning. The charge on law,
18 that I will give you after you've heard the final
19 arguments. And so I will send you home now a little bit
20 earlier than usual, thankfully.

21 You have been very patient throughout this entire
22 week. You've been attentive throughout the entire week,
23 and we all appreciate that. I'm sure that you understand
24 the importance of continuing to be attentive through the
25 final phase of the trial of this case, which will begin at

1 9:30.

2 And I must insist once again that you not discuss this
3 case with anybody, and don't let anybody talk with you
4 about it. And when you get back into the jury room
5 tomorrow morning at 9:30, don't talk about it among
6 yourselves.

7 You have heard all the evidence in this case; you're
8 not going to hear any more. And you've heard me tell you
9 that you've the judge of the evidence, and so you may wish
10 to know, well, why can't you talk about it since you've
11 heard all you're supposed to hear about it. Well, you
12 haven't heard quite all you're supposed to hear. You
13 haven't heard the arguments and, importantly, you have not
14 yet heard the law.

15 The oath that you took obligated you to well and truly
16 try this case and render a true verdict according to the
17 law and the evidence so help you God. You've heard the
18 evidence but not yet the law.

19 And I know you must think that I must think you're the
20 dumbest people in the world with no memory because before
21 every time you leave that jury box, I say don't talk about
22 this case. You'd be surprised how many jurors in other
23 cases in spite of those admonitions do it anyhow, and we
24 have to do it all over again. All of us as judges have
25 been subject to that.

1 But really the reason is this. You fourteen people,
2 you twelve jurors now and the two alternates if you all
3 have a chance to sit in this case when deliberations begin,
4 are the only people on the face of this globe who are going
5 to be asked to render an opinion in this particular case.
6 No one else's opinion counts except yours. Nobody else
7 knows what you all know about this case. We don't care
8 what they think; we just care what you think. And so
9 please continue to abide by those instructions, and I'll
10 see you tomorrow morning at 9:30. Have a safe trip home.
11 Thank you.

12 (THE JURY EXITS AT 4:05 P.M.)

13 THE COURT: Gentlemen, at this juncture I will note
14 the renewal of all the other motions that were made at the
15 conclusion of the state's case and that have been made
16 since that time, and I will renew my earlier rulings in
17 those motions. If there are additional motions or
18 additional grounds, I'll be glad to hear those at this
19 time.

20 Mr. Deysach?

21 MR. DEYSACH: Thank you very much. I know you noted
22 my renewal of the motion, so that is exactly what I would
23 have done, and renew a directed verdict motion at this time
24 for the same grounds. So, I'm not going to restate the
25 grounds that I have already stated.

1 I did want to -- over last night, I did have an
2 opportunity to read the *State vs. Cheeseboro* case that
3 dealt with the destruction of evidence. And that was a
4 motion that I had made earlier and I renewed, along with
5 all my other motions.

6 And I did have just a couple more words I wanted to
7 say to make sure I made the record on that. I'd asked for
8 the same remedy as I have before. And the rule that I
9 found in *State vs. Cheeseburger* -- *Cheeseboro* when it has
10 to do with destruction of evidence is that there has to be
11 bad faith, or an indication that there is something
12 exculpatory in the material before it's destroyed, and that
13 there's no other way to get comparable evidence.

14 Of course any, any defense attorney looks at that and
15 realizes he's being asked to tell you whether -- if there's
16 something exculpatory on something that's been destroyed
17 feels like he been put in an untenable position. And I
18 feel like that's exactly where I am right now. And how do
19 I know that the evidence that I get from Mr. Holmes's
20 report is as good as the notes that were destroyed without
21 seeing the notes in the first place?

22 And so I feel like in this situation, as opposed to
23 the situation with the gun in *Cheeseboro*, that the
24 destruction, the -- I find it hard to believe that throwing
25 the notes away is part of the procedure at the police

1 department like the way the situation occurred in
2 Cheeseboro, which really is kind of a classic example of
3 how it could happen by mistake. That this, there is no way
4 that you could accidentally throw notes in the garbage can
5 in that way.

6 And so I think that those are grounds, and I think
7 that even with the rules of Cheeseboro that the remedies
8 that I've asked for are still appropriate, which was the
9 mistrial and dismissal.

10 THE COURT: All right. Thank you, Mr. Deysach. The
11 Cheeseboro case obviously had to do with the destruction of
12 a weapon. In fact, the murder weapon that was used in the
13 commission of a very serious crime, the murder of two and
14 the wounding of another. And the weapon, because it was
15 discovered in a setting that did not arise out of the crime
16 itself but out of a separate crime, somehow or other got
17 mixed up, and I don't have to restate Cheeseboro. I am
18 somewhat intimately familiar with it, as you realize from
19 reading that opinion.

20 But, nonetheless, to put the shoe on the other foot,
21 Mr. Deysach, and to comment on your untenable position, the
22 converse of that would require a trial judge to presume bad
23 faith or exculpatory evidence when that evidence has been
24 destroyed or is missing for some reason. And Cheeseboro
25 speaks to the fact that we cannot presume, or do not

1 presume bad faith, or that the evidence is exculpatory in
2 the absence of some evidence to that effect.

3 I realize that the difficulty proving that when the
4 evidence is gone is self-evident, to overuse a word. But
5 in this particular case, the officer testified that he took
6 his notes. They were rough, handwritten notes, and that he
7 almost immediately converted or transcribed those or had
8 them transposed in some other fashion. And he further
9 indicated that the final report which was generated
10 captured the spirit and the tone, if not the exact letter
11 of the notes which he had taken.

12 And so for that reason, I am unwilling to make a
13 presumption of bad faith, or to presume that there was
14 something exculpatory that he left out for any reason. I
15 note your exception in that regard but respectfully deny it
16 and renew my earlier rulings in that regard. Thank you.

17 Mr. Geier.

18 MR. GEIER: Your Honor, I will rely on your observance
19 of my renewal of my motions.

20 THE COURT: Okay, and indeed I do renew all of those
21 earlier motions for the same reasons that we stated
22 earlier.

23 Now, folks, if we can go over charge requests at this
24 time, and what I propose to do is to go over charges that I
25 have been accumulating during the course of this trial.

1 Indicate those to you, allow you to comment upon them, take
2 exceptions to them if you wish to, or propose other
3 charges. And I'll be here early in the morning if you want
4 to submit any additional charges if you're not prepared to
5 submit at this time.

6 My standard felony charge of course contains the
7 presumption of innocence obviously. And the proof beyond a
8 reasonable doubt definition that I use is from *Victor vs.*
9 *Nebraska*. It's United States Supreme Court found at 114
10 Supreme Court 1239. It's a 1994 case. Our state adopted
11 that same opinion. Judge Ed Cottingham was the judge in
12 the case of *State vs. Darby*, D-A-R-B-Y, a 1996 Supreme
13 Court case. I've just got the opinion number here in my
14 notes. I don't have a final cite, but that definition
15 defines reasonable doubt or proof beyond a reasonable doubt
16 as proof that leaves you firmly convinced of a defendant's
17 guilt. It goes on to say that there are very few things in
18 this world that can be proved with absolute certainty, and
19 the law doesn't require proof in criminal cases that
20 overcomes every possible doubt. The jury is then
21 instructed that based on their consideration of the
22 evidence, they are firmly convinced that the defendant is
23 guilty, they must find him guilty.

24 They're also told that if they think, after
25 considering all the evidence, that there's a real

1 possibility that he's not guilty, then the state has not
2 met its burden of proof and they must find him not guilty.

3 I tell you that not because that's the only definition
4 out there that's acceptable under the law because there are
5 many. And there are other definitions of reasonable doubt
6 itself. My definition is of proof beyond a reasonable
7 doubt. I do not define reasonable about. Reasonable doubt
8 has been defined from time to time within our case law, and
9 you know what it is. I just didn't want you all to get too
10 far out on a limb and tell the jury you listen to the
11 judge's charge and when he tells you about reasonable
12 doubt, this is what he's going to tell you. Well, what I'm
13 going to tell them is what I just told you, the guide in
14 that regard.

15 I will instruct on the fact that the defendants in
16 this particular case did not testify. The credibility of
17 witnesses, of course, and expert witness testimony will be
18 offered. Naturally, I will charge on the elements of the
19 offenses in this particular case.

20 MR. ROBINSON: I have a question on that point, Your
21 Honor.

22 THE COURT: Yes.

23 MR. ROBINSON: I want to inquire as to whether or not
24 the court's charge on burglary first degree includes the,
25 include some language saying that all that is required for

1 burglary first degree is crossing the threshold.

2 THE COURT: There does not have to be an actual
3 breaking. Since that's been raised in this particular
4 case, I will include something that's appropriate to that
5 particular situation.

6 MR. ROBINSON: I wanted to make clear that because
7 there's -- I didn't want the jury to have the impression
8 that a burglary requires them to enter the living area.
9 That all that's required is crossing the threshold and
10 entry into the home.

11 THE COURT: Right. I will look that up, and whether I
12 use those exact words or not, I will use something that
13 speaks to that, at least speaks to that issue.

14 MR. ROBINSON: Thank you, Your Honor.

15 THE COURT: I will charge criminal intent. I will
16 charge the identification charge, *U.S. vs. Telfaire*,
17 T-E-L-F-A-I-R-E.

18 The burglary charge:

19 In order to prove that the defendant entered
20 the dwelling, the state does not have to
21 prove that the defendant's entire body
22 entered the dwelling. The smallest entry is
23 sufficient. It may be any part of the body,
24 such as a hand or foot or even an instrument
25 such as a hook or other instrument, et

1 cetera. In addition, the state does not
2 have to prove that force was used to gain
3 entry.

4 That's a part of the standard charge on burglary in
5 the first degree.

6 I will charge assault and battery with intent to kill.
7 Mr. Deysach, Mr. Geier, I'm also inclined to charge assault
8 and battery of a high and aggravated nature. There is some
9 evidence in the record from which some of the testimony has
10 indicated, indirectly though it might be, that this was
11 something perhaps other than just a knocking down the door
12 and going in there and shooting up everybody. And so there
13 may be something there that is sufficient to indicate the
14 absence of malice in this particular case. I will not
15 charge assault and battery of a high and aggravated nature
16 if both of you all object to that charge.

17 Mr. Deysach, what says the state -- the defendant?

18 MR. DEYSACH: We would request that charge.

19 THE COURT: Mr. Geier?

20 MR. GEIER: We would as well.

21 THE COURT: All right. I will charge the elements of
22 possession of a weapon during the commission of a violent
23 crime. I will charge the elements of the offense of
24 possession of a handgun by a prohibited person from the
25 statute itself.

1 I will charge the hand of one being the hand of all.
2 I will charge the charge on confession. Included within
3 that is a statement or an admonition to the jury that a
4 statement allegedly given by one defendant, even if
5 voluntarily given, may not be considered as evidence verses
6 his co-defendant for any purpose whatsoever.

7 I will charge the fact that there are multiple
8 defendants in this case and multiple counts, and that each
9 charge or count must be considered separately and must be
10 decided separately whether each individual is guilty or not
11 guilty as to each charge, et cetera, to avoid the lumping
12 together.

13 Gentlemen, those are things that have occurred to me
14 during the week which would be appropriate, given the
15 factual scenario which we are confronted with.

16 Mr. Robinson, I'll be glad to hear from you at this
17 point in time for any exceptions to those charge or any
18 request for additional charge.

19 MR. ROBINSON: No exceptions, Your Honor. I do want
20 to inquire as to whether or not -- since the court
21 mentioned that, based on the court's listing of the
22 evidence, you decided to charge ABHAN to which we have no
23 objection because of the absence of, the absence -- the
24 jury may find that there was an absence of malice. My
25 question is whether or not in the court's charge regarding

1 criminal intent if there is the standard language about how
2 intent may be formed in an instant.

3 THE COURT: Yes.

4 MR. ROBINSON: Doesn't need to have been premeditated.

5 THE COURT: That's right. The issue of malice, of
6 course when I define malice, I use that specific example
7 that:

8 It is not necessary that the malice exist
9 for any particular length of time prior to
10 the act in order to render the -- in order
11 to satisfy the requirement. It is necessary
12 if it is in the mind of the individual at
13 any time prior to the act.

14 Criminal intent simply says that it's: A state which
15 operates jointly with an act in the commission of a crime.

16 But I think that the question is whether or not the
17 malice was there the time of the act. Is that what your
18 concern is?

19 MR. ROBINSON: I just wanted to make sure that the
20 question, there's no confusion, the jury doesn't get
21 confused. With all the television shows about criminal
22 cases, that they don't think of intent as motive. And
23 motive is why you're doing it. Intending is what you're
24 trying to achieve.

25 THE COURT: Right.

1 MR. ROBINSON: And my understanding that the statement
2 of -- correction^f of the law regarding intent is that it can
3 be formed in an instant. One doesn't -- so in this case,
4 for example, there's been some evidence that one of the
5 defendants, Lucius Simuel, contacted some relatives saying
6 the deal went bad and that he never intended for anybody to
7 get shot.

8 Well, I don't want the jury to think that, well, since
9 he, since he said that, that there was never any intent.
10 Just because he didn't go there with intent to shoot them
11 doesn't mean that -- if he did, in fact -- I mean, you can
12 still intend to shoot somebody even if you didn't go to
13 the, even if you didn't go to the apartment with the intent
14 to shoot. That's why I was curious as to the language
15 regarding that the intent can be formed in an instant, Your
16 Honor.

17 THE COURT: The exact definition which speaks to that
18 without using those exact words says: Criminal intent is a
19 state of mind which operates jointly with an act. So, the
20 criminal intent has to be present at the time of the act.

21 MR. ROBINSON: I think that's fine, Your Honor. Thank
22 you.

23 THE COURT: And on the malice, of course that point is
24 emphasized even more when we're talking about malice under
25 the assault and battery with intent to kill, when:

1 Malice aforethought does not require that
2 malice exist for any particular time before
3 the act is committed, but it must exist in
4 the mind of the defendant just before and at
5 the time the act is committed. Therefore,
6 there must be a combination of the previous
7 evil intent and the act.

8 They're told that twice, so I think that that will be
9 there. And, of course, you can argue that.

10 MR. ROBINSON: Thank you, Your Honor. That's
11 precisely it.

12 THE COURT: All right, Mr. Deysach, let me hear from
13 you with any exceptions to those proposed charges and any
14 requests for additional charges.

15 MR. DEYSACH: All right. Your reasonable doubt
16 explanation, it sounded like you were pretty resolute. And
17 I think that the line that you were talking about when you
18 were going over it was that, you know, many times
19 reasonable doubt is described to jurors as the type of
20 doubt that would cause a reasonable person to hesitate to
21 act. And I think that it's one that has been pretty
22 instructive or been -- problem one that -- one of the
23 definitions of reasonable doubt that's easiest to get your
24 head around, as far I'm concerned, as opposed to describing
25 what is beyond a reasonable doubt. And so I'm asking for

1 that language and hoping that you'll give it.

2 THE COURT: What language is that specifically?

3 MR. DEYSACH: The, that reasonable doubt is the type
4 of doubt that would cause a reasonable person to hesitate
5 to act.

6 THE COURT: I decline to do that, and I have used
7 *State vs. Darby* ever since it came out because I found that
8 the definition of reasonable doubt is the type of act that
9 would cause a reasonable person -- type of act that would
10 cause a reasonable person to hesitate to act. Between that
11 blanket statement, which is good statement and good law on
12 the face of it, in its interpretation by way of argument
13 has been equated to things as superficial as trying to
14 decide what necktie you're going to wear in the morning and
15 hesitating to act on things of that nature, or what shoes
16 you're going to wear with a particular outfit. And that is
17 not an accurate statement of what the law means, of course.
18 That's not an accurate statement of the interpretation.
19 But I don't choose to jump into an argument when that comes
20 and try to get things straight because, frankly, it creates
21 some problems in and of itself. I simply choose not to
22 define it that way and to define it the way that I do.

23 But I note your request in that regard and your
24 exception to my charge in that regard. Okay.

25 MR. DEYSACH: The -- I do have a, I guess, more of a

1 question when it comes to the ABHAN verses ABWIK, the two
2 instructions that you're going to be giving.

3 ABWIK is the unlawful act of violent injury
4 accompanied with malice aforethought. And I think the
5 theory that gets us down to ABHAN is that there's some
6 legal provocation, sufficient legal provocation is that,
7 and correct me if I'm wrong. But I in the past thought of
8 assault and battery with intent to kill as the type of
9 assault and battery that if the person were to die, it
10 would be a murder, whereas the ABHAN would be the
11 manslaughter. Is this -- if I'm -- is this not the law
12 anymore?

13 THE COURT: It's not. As a matter of fact, we were
14 told several years ago not to use that analogy anymore. We
15 do, we do use the fact that -- I think the question was
16 whether or not malice actually existed, could exist under
17 that scenario.

18 When I'm defining the two, I defined as you indicated:
19 The state has to prove beyond a reasonable doubt an
20 unlawful act of violent injury to another person
21 accompanied by malice.

22 And then we define malice. And then I say that:

23 There is included by operation of law in the
24 greater charge of assault and battery with
25 intent to kill of assault and battery of a

1 high and aggravated nature. It is not
2 listed in the indictment, but it occurs as a
3 lesser-included offense by operation of law,
4 and here are the elements of assault and
5 battery of a high and aggravated nature.

6 Then I define and assault and battery then
7 circumstances of aggravation.

8 I don't mention malice or the absence of malice in
9 that, quite frankly, because that's a problem that created
10 a reversible situation several years ago. But it will be
11 clear that the state has to prove malice in order to get a
12 conviction on the one, and it doesn't have to prove malice
13 necessarily to get a conviction on the other.

14 So, that's the way I'll do it. And if you want to
15 present something to me in the morning, to let me look at
16 it that tracks the law, I'll be glad to look at it.

17 MR. DEYSACH: All right, and we can move on to the
18 hand of one, hand of all charge that you propose to give.
19 I think that the law on that is that -- their words are
20 probably -- I'm not going to give an exact, but that there
21 has to be some evidence of a plan to commit -- and I would
22 argue not just in this case a drug deal but to commit a
23 burglary at least, if not a shooting, before we could get
24 to the type of plan that would qualify for the hand of one
25 to be in the hand of all in this situation.

1 THE COURT: Well, let me tell you what I'm going to
2 tell them and see how this tracks. Excuse me just a
3 minute.

4 I charge you, ladies and gentlemen, that
5 when two or more persons aid, encourage, and
6 abet each other in the commission of a
7 crime, all who are present are principals
8 and equally guilty. Where two or more
9 persons combine together to commit a crime
10 and the crime is committed, all of those who
11 are present to aid and abet and assist in
12 the commission of that crime are equally
13 guilty. The act of one becomes the act of
14 all. The hand of one becomes the hand of
15 all. It makes no difference by whose
16 immediate agency the crime was committed.
17 All are principal. However, mere presence
18 at the scene of a crime, even with knowledge
19 of the commission of the crime, without an
20 intent to aid, abet, or assist in its
21 commission, would not constitute guilt. So,
22 the burden is upon the state to establish
23 beyond a reasonable doubt that the
24 defendants, that each of them were present
25 and that they, he or they were there with a

1 criminal intent. That is to say with the
2 intent to aid, encourage, and abet each
3 other in committing the offenses charged.

4 MR. DEYSACH: All right. So, I guess the, in the
5 offenses charged part of that is what explains to the jury
6 that when, hypothetically, if you're going to a drug deal
7 and somebody goes rogue, that the common -- the plan has
8 broken down. So, I guess that...

9 THE COURT: Well, the question is not the, is not the
10 plan to buy drugs. The question is the plan in this case
11 to commit burglary in the first degree and to commit
12 assault and battery with intent to kill, or assault and
13 battery of a high and aggravated nature.

14 MR. DEYSACH: I just want to be sure that the jury is
15 -- that that is made clear to the jury that the plan to
16 sell the drugs doesn't automatically equal the plan to do a
17 burglary or ABWIK.

18 THE COURT: Well, that might be an argument for you.
19 I don't have any evidence in the record that there was a
20 plan to sell drugs, do I?

21 MR. DEYSACH: A plan between the two, between the two
22 defendants, or a plan of my defendant to sell drugs, an
23 agreement between the two men who sit before us?

24 THE COURT: We've got the testimony from the state's
25 witnesses that they didn't know anything about the drugs,

1 and they didn't want any drugs and didn't ask for drugs and
2 weren't going to buy any, or weren't going to sell any.
3 There is some other evidence in the record from which --
4 and I think you got that out through some of your last
5 witnesses -- that somebody had called about bringing some
6 drugs over, or wanting to know ---

7 MR. DEYSACH: Sure.

8 THE COURT: Wanting to buy some drugs or things of
9 that nature. But nobody is on trial in this particular
10 case for aiding and abetting in the sale of drugs. That's
11 not the crime charged.

12 MR. DEYSACH: Right. That's the ---

13 THE COURT: The hand of one, the hand of all applies
14 to guilt for the crime charged in this particular instance.

15 MR. DEYSACH: Right, and that's -- I agree with that.
16 That's what I want the jury to understand. That's all.

17 THE COURT: Well, yeah, I'll talk about the crime
18 charged. So, if y'all want to talk about something else,
19 that's another matter. Just don't get outside the record
20 in doing it. But I'm going to tell the jury just exactly
21 what I read to you all a few minutes ago.

22 MR. DEYSACH: And I heard you also include some
23 language in there about the mere presence.

24 THE COURT: That's right.

25 MR. DEYSACH: And that was going to be my next, my

1 next question.

2 THE COURT: That's right.

3 MR. DEYSACH: All right, I have -- I would, I would
4 ask that as to -- I mean, for Mr. Simuel burglary, second
5 would be appropriate. That -- well, it's hard to fathom,
6 but under the theory that their, the intent -- that he
7 doesn't have a gun, and that he doesn't cause the injury to
8 Deverol or to Deon, which is, I think there is some
9 evidence of that in the record. There is evidence that he
10 said he didn't have a gun. And that if they were to
11 believe that there wasn't this, this plan to do a burglary
12 before, that -- and if he's doing it by himself, that that
13 could be a burglary second if he's not one of the shooters.
14 And the jury goes with the mere presence portion of your,
15 of your instruction.

16 THE COURT: I'm not sure how they would, how they
17 would get around the fact in this particular case that the
18 evidence is there that...

19 (A PAUSE.)

20 THE COURT: Entering the dwelling without consent,
21 and with intent to commit a crime, and is
22 either armed with a deadly weapon, or causes
23 physical injury to a person who is not a
24 participant in the crime, or uses or
25 threatens the use of a handgun or a

1 dangerous instrument, or displays what
2 appears to be a knife, pistol, et cetera.

3 Now, that's the burden of the state. If they can't
4 prove that you client did one of those things, then their
5 option is not burglary in the second degree. It's not
6 guilty.

7 MR. DEYSACH: Well, if they believe everything except
8 for that, he was armed with a deadly weapon and he caused
9 the injury to either Deon or Deverol, then, then -- and
10 there is evidence he didn't have a gun and that he didn't
11 shoot Deon or Deverol. And so then we'd just be left with
12 the regular burglary second of a dwelling.

13 THE COURT: Well, of course you've got the hand of the
14 one, hand of all being there that makes him under the law,
15 if the jury believed it, accountable for everything that
16 happened. And if they choose not to believe it, then he's
17 not guilty. I'm not sure that under the facts of this case
18 that, or under the law that...

19 (A PAUSE.)

20 MR. DEYSACH: Sounds like in causing a reasonable
21 person to hesitate to act.

22 MR. GEIER: Right here.

23 THE COURT: Yes. That's right: Burglary in the
24 second degree, if the person enters a dwelling without
25 consent and with the intent to commit a crime therein. So,

1 that just deals with the fact that you go in without
2 consent and you've got an intent to commit a crime, the
3 crime itself is not complete.

4 You're also guilty of burglary in the second degree if
5 you enter a building without consent. Well, we don't have
6 a building in this case. We have a dwelling by definition,
7 so that part of it doesn't apply.

8 So, I don't think that subsection A, which is the one
9 you're talking about, section 16-11-312(a), fits the facts
10 in this particular case. As a matter of fact, there's a
11 case on a point within the annotations that speaks to that
12 particular point.

13 I will give that some thought over the evening, but I
14 don't think he's entitled to that. I don't see a burglary
15 in this particular case. It's either a burglary first or
16 there's not guilty, all right?

17 MR. DEYSACH: All right, and I don't, I can't think of
18 any other things to bring up right this second, Your Honor.

19 THE COURT: Okay.

20 All right, Mr. Geier.

21 MR. GEIER: At this point, Your Honor, I would just
22 simply echo the things that are relevant to my client that
23 Mr. Deysach brought up rather than taking the court's time.

24 THE COURT: Okay. Gentlemen, let's talk about
25 arguments now.

1 MR. DEYSACH: Your Honor, I think that there is one
2 that Mr. Geier and I had talked about was whether self-
3 defense would be an appropriate charge in this case, with
4 the evidence that I would rely on that's in the record to
5 support such a charge would be in Mr. Simuel's statement
6 that was read out during the state's case that Deon pulled
7 out a gun and said where is it at, as well as those
8 statements that came in through my case that Deon tried to
9 rob them. And so that...

10 THE COURT: I'll note that. I've got my self-defense
11 charge out here because I had put it out here earlier in
12 the week thinking there was going to be some testimony to
13 establish those things. But, frankly, the self-serving
14 statements in and of themselves without some evidentiary
15 support I'm not sure are sufficient to give rise to
16 self-defense charge.

17 There's some things that we don't know. For example,
18 we don't know that the defendant actually believed that he
19 was in imminent danger of losing his life or sustaining
20 serious bodily harm, or that he actually was in such
21 danger. So, I don't know how a jury would reach that
22 conclusion. And since -- and if his defense is based on
23 his belief of an imminent danger, and we really don't know
24 whether he harbored that belief or not because there's no
25 testimony that he believed that he was in imminent danger.

1 And secondly, that he had no other probable means of
2 avoiding the danger, or losing his life, or sustaining
3 serious bodily injury other than to act as he did. Saying
4 that the deal went bad, on the one hand, doesn't meet that
5 element in the face of proof to the contrary, evidence to
6 the contrary. I won't say proof, but evidence to the
7 contrary. That they forced themselves into the apartment
8 of someone else, shot one person on the steps and another
9 lying down on the ground outside, I don't think that those
10 -- that the elements of self-defense can be met based on,
11 or at least those two elements can't be met based on the
12 proof in this particular case.

13 I'll give that some more thought, and I'll take
14 *McEnich* [phonetic] home with me tonight and read a little
15 bit of it to see. All right.

16 MR. GEIER: Your Honor, I'd just quickly add I believe
17 that our standard for bringing in self-defense is
18 incredibly low. It's a mere scintilla, and again the deal
19 gone bad is one thing, but that they tried to rob us is
20 obviously something that we were relying on.

21 If you should decide to grant that instruction, we'd
22 also ask for a self-defense, reputation of violence based
23 on the evidence that we brought in about the Cannicks'
24 character.

25 THE COURT: That applies, of course, if the victims --

1 or in this case the defendants have knowledge about the
2 reputation for violence, does it not?

3 MR. GEIER: Yes, Your Honor, and again I would point
4 out Mr. Simuel is at least somewhat, if not intimately
5 related with Deon and Deverol Cannick; he at least knows
6 the family.

7 THE COURT: Right. I'm not sure that that's the same
8 as evidence of knowledge of violent tendencies or things of
9 that nature. And you're right. The scintilla level is
10 low. Well, I don't say it's just a scintilla, but the
11 evidence is relatively low. There's no burden that the law
12 imposes upon the defendant. But, nonetheless, there does
13 have to be some evidence on each of those four, each of
14 those four elements. And the two that I brought out, I
15 don't know how the proof in this particular case gives rise
16 to the state of mind of the defendants in this case without
17 them having testified as to what their beliefs were about
18 being in actual danger and things of that nature. I don't
19 think that the evidence rises to that level.

20 I note that, but I respectfully deny it. I will
21 continue to look at it overnight, but I think it takes more
22 than that.

23 MR. GEIER: Thank you, Your Honor.

24 THE COURT: All right, let's talk now about arguments.
25 Mr. Deysach, Mr. Geier, how do all want to argue? Who's

1 going to go first? Can you all agree on that?

2 (DEFENSE COUNSELORS CONFER.)

3 MR. DEYSACH: I guess Mr. Geier is going to go in
4 front of me, and I'll be after him.

5 THE COURT: All right. Mr. Robinson obviously goes
6 last.

7 All right, Mr. Geier, how long do you think you might
8 take in your final argument? I'll give you a range, five
9 or ten minutes, give or take.

10 MR. GEIER: I would guess half hour, Your Honor.

11 THE COURT: Mr. Deysach, about how long do you think
12 you might take?

13 MR. DEYSACH: I want to say the same thing.

14 THE COURT: Okay, Mr. Robinson.

15 MR. ROBINSON: I'm going to probably take a half hour
16 as well, maybe more. Roughly half an hour.

17 THE COURT: All right. I can't remember. I may have
18 tried cases with you all, with some of you before. I
19 really can't -- I know I've certainly had the pleasure of
20 having you in court before, but I don't know whether I've
21 had a trial or not. And I tell lawyers that I don't ring a
22 bell when you get to the end of your thirty minutes. But
23 if I get the impression as you continue to go on beyond
24 that point that you have completely forgotten how long you
25 told me you were going to take, I'm going to find some

1 discrete way to let you know.

2 And, as I say, the real important issue is not the
3 time that I keep. It's the time that the jury keeps on
4 you, and this jury has already sent us messages, that they
5 are mindful of redundancies and repetitions. And so I
6 trust that you'll be educated by that and not wait to be
7 educated by a verdict in this particular case about that
8 fact that they are intelligent, they've been keeping notes,
9 and they've been following this case very closely
10 throughout. You've been watching them, I've been watching
11 them, and they have really been on top of this. So, I'll
12 leave that up to you all.

13 The verdict form that I have, gentlemen, I have them
14 here. I want you all to look at them. I only have one
15 copy of each. I have a stack of verdict forms here
16 attached to the indictments for Mr. Price, and the same for
17 Mr. Simuel. The only difference is the name and the
18 indictment numbers, but if you will look at that and take a
19 minute to comment on that, if you would.

20 (A PAUSE.)

21 MR. ROBINSON: Your Honor, these verdict forms look
22 fine to me. I did want to bring to the court's attention
23 on the verdict form for *State vs. Lucius Simuel Jr.*

24 THE COURT: Right.

25 MR. ROBINSON: There is one typographical error.

1 THE COURT: Okay.

2 MR. ROBINSON: Under indictment numbers, it has the
3 last one that says 1366.

4 THE COURT: Right.

5 MR. ROBINSON: That should be 2009, not 2008.

6 THE COURT: Okay. Good. Let me have that, and I'll
7 make that change. Let me make sure I get that right one.
8 That's Mr. Simuel. 1366 is, that's the possession by a
9 prohibited person?

10 MR. ROBINSON: That's correct. That should be 2009.

11 THE COURT: 2009. Thank you. I'll make that change.

12 MR. ROBINSON: Thank you, Your Honor.

13 THE COURT: Mr. Deysach, Mr. Geier, any exceptions on
14 you all's behalf other than the second, burglary second
15 degree request as to you, Mr. Deysach?

16 MR. DEYSACH: None.

17 THE COURT: Okay. All right, anything further then
18 before we break for the evening from the state, Mr.
19 Robinson?

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

21 THE COURT: Mr. Deysach?

22 MR. DEYSACH: No, Your Honor.

23 THE COURT: Mr. Geier?

24 MR. GEIER: No, Your Honor.

25 THE COURT: I'll be around here at 9:00 in the morning

1 if you have any sort of epiphany during the night that
2 raises something else in your mind, charge request and
3 things of that nature. If you'll be in or get it to me
4 some time in the morning when I get here, we'll deal with
5 it so as not to hold the jury up when they get back at
6 9:30.

7 All right, we'll be in recess until 9:30. I'll be
8 here at 9:00 tomorrow morning. Thank you all.

9 MR. ROBINSON: Thank you, Your Honor.

10 (WHEREUPON, THE CASE IS AT EASE.)

11 FRIDAY, NOVEMBER 20, 2009

12 (COURT RESUMES AT 9:41 A.M.)

13 THE COURT: Madame Reporter, I completed a chambers
14 conference a few moments ago regarding requests to charge.
15 Mr. Deysach renewed his request for a charge on burglary in
16 the second degree. I reviewed that with him and went over
17 the stature and respectfully denied that request.

18 Mr. Geier also renewed the request for a self-defense
19 charge. I denied that request also, citing and
20 distinguishing the case of *State vs. Hendrix*,
21 H-E-N-D-R-I-X, from the case at bar, and denied that
22 request.

23 There was also a request to clarify the court's charge
24 on malice. I gave them the charge I intend to give in this
25 regard, and I think that that resolved their concerns in

1 that respect.

2 Mr. Deysach, do you want to put anything else on the
3 record to memorialize the conference?

4 MR. DEYSACH: I think you did -- the only thing I
5 would do is associate myself and Mr. Simuel with Mr.
6 Geier's request for that self-defense charge.

7 THE COURT: All right, thank you.

8 Mr. Geier?

9 MR. GEIER: Nothing, Your Honor.

10 THE COURT: All right, gentlemen, the jury will be
11 brought in. And, Mr. Geier, I understand that you will
12 take the first of the closing arguments on behalf of Mr.
13 Price, and then Mr. Deysach on behalf of Mr. Simuel. Is
14 that correct?

15 MR. GEIER: Yes, Your Honor.

16 THE COURT: All right, and then the state will close.
17 Depending upon how long those arguments are, we may take a
18 brief break before charges. As you know, because of the
19 number of offenses in this case, my charge will be somewhat
20 lengthy, and I may choose to take a brief recess at that
21 time before I instruct them on the law. I'll be governed
22 by what I think their tolerance limits are at that point in
23 time.

24 All right, is everybody now ready for the jury?

25 MR. ROBINSON: The state's ready, Your Honor.

1 MR. GEIER: We're ready, Your Honor.

2 MR. DEYSACH: Yes, Your Honor.

3 THE COURT: Bring us a jury.

4 (THE JURY ENTERS AT 9:45 A.M.)

5 THE COURT: Good morning, ladies and gentlemen, and
6 thank you again for your prompt return as we are now
7 prepared to go into the final phase of the trial of this
8 case.

9 I received yesterday afternoon at the end of the day a
10 request for copies of certain documents: a copy of Lucius's
11 statement, a copy of Devin's statement of July the 30th to
12 Officer Calhoun. Those statements were not offered into --
13 the formal noticed printed statements were not offered into
14 evidence. The content of those statements was obviously
15 read into the record. But the documents themselves were
16 not offered into evidence, and there were some questions
17 about whether the documents themselves could come into
18 evidence under our rules. And for that reason they were
19 not offered to all of the content of the statement, or
20 portions of the statements were obviously offered under our
21 rules. And so the short of it is I don't have that copy to
22 present to you because they are not into evidence
23 themselves.

24 Another question was about the four guns, where did
25 they originate. There has been no evidence in that regard.

1 My recollection is that Officer Viens testified about where
2 the guns were recovered from in the premises. But as to
3 where they originated from, there is no evidence in that
4 regard. So, the answer to that question is I don't know.
5 And that's the best that I can do because there is no
6 evidence beyond that in the record.

7 MR. GEIER: They were recovered from the apartment.

8 THE COURT: According -- Officer Viens's testimony
9 indicated where they were recovered, that's right. She --
10 and I don't think there is any question they were recovered
11 the search, execution of the search warrant on the
12 apartment in question.

13 Is there any question about that, gentlemen?

14 MR. GEIER: No, Your Honor.

15 MR. ROBINSON: No, Your Honor.

16 THE COURT: Okay, all right. All right, that being
17 said, folks, now we're ready to get on with the business of
18 the final arguments. Mr. Geier, on behalf of Mr. Price,
19 will present the first of the final arguments. And after
20 he has presented his final argument, then Mr. Deysach, on
21 behalf of Mr. Simuel, will present their argument. The
22 state, which has the burden of proof in this case through
23 Mr. Robinson, will present the final argument in that
24 regard. After that has been done, we may take a brief
25 break, depending upon the timing of the morning, before I

1 charge you on the law. And after you have received the
2 charge on the law, then you will be able to discuss this
3 case among yourselves.

4 I want to commend you again on your attentiveness
5 throughout the trial. You have paid attention throughout
6 this. Sometimes the testimony has gone long; we've worked
7 long days on certain respects, but your attention has not
8 faltered in that regard. You've been prompt. We haven't
9 always been prompt, at least as far as you're concerned.
10 We've been here, but we haven't been prompt for you always,
11 but you've been prompt for us, and we appreciate that.

12 And I'm sure you understand the seriousness of this
13 case, and the seriousness of it to both sides in this case,
14 and so you've given it that attention. And I'm going to
15 ask that you continue to give that same attention now to
16 the lawyers as they present your final arguments to you.

17 Mr. Geier.

18 MR. GEIER: Thank you, Your Honor.

19 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
20 NUMBER 8.)

21 MR. GEIER: May it please the court?

22 THE COURT: Yes, sir.

23 MR. GEIER: Your Honor, Mr. Foreperson, members the
24 jury, counsel, it's been a long week long for all of us.
25 You've had to sit here and listen to a lot of testimony.

1 We've had to try to elicit a lot of testimony. I'm sure
2 all the lawyers, and we've been up late at night, and this
3 is when we're all a little punchy trying to get this case
4 to its conclusion and get you to reach the right
5 conclusion.

6 When I first came up here, I said that the truth in
7 this case has been concealed. And here we are at the final
8 day of trial, and hasn't it? Hasn't the truth been
9 concealed in this case? I said that the truth was locked
10 behind that door over there, and the only people who had
11 the key were the state and their witnesses. They're the
12 only ones who have the burden of opening that door, and
13 isn't that door still locked? We still don't know what the
14 truth is in this case. We may never know what the truth
15 was in this case.

16 So, who concealed the truth? Let's start with who
17 didn't. The Beaufort County Sheriff's Department did a
18 solid job investigating this case. Now, I have a few
19 complaints; there's a few things I wish they had done. I
20 wish that they had asked Demetrius Price what he was doing
21 on the right day, not the 29th. I wish they had looked for
22 fingerprints, but they didn't. I wish they'd searched more
23 than just immediately outside the door just feet away,
24 probably not any further from where I am to where that door
25 is to the forest. Who knows what they might have found in

1 there. Maybe more iron.

2 It'd be nice to know how -- you'll see the picture in
3 a little bit -- a shell casing could end up standing on its
4 end in the middle of some concrete. Try that at a party
5 sometime. Flip that over and make that happen. Stuff like
6 that doesn't happen.

7 It'd be nice to know what happened to some statements
8 and to some notes. Some people said their statements were
9 recorded. We don't have those.

10 It'd be nice if they'd explain to us how, if somebody
11 is standing at least up a few stairs, but from some
12 testimony halfway up some stairs, and gets shot and the
13 bullet goes through it, and yet the core ends up down by
14 the closet at the basement stairs, and the bullet itself
15 ends up inside of a clothes closet.

16 It'd be nice to know how a relatively intact .45
17 projectile which was found outside ended up under a
18 doormat.

19 It'd also be nice to know where Deon's shirt is. We
20 don't know. We don't have it.

21 There's a lot of things we don't have in this case,
22 and again it's not all the Beaufort County Sheriff's
23 Department fault. It's partially, I guess, the solicitor's
24 fault. There's evidence out there. Let's give it to the
25 jury.

1 All that aside, the investigators in this case did a
2 fantastic job in going in and interviewing people. They
3 interviewed witnesses; they reinterviewed those witnesses.
4 They interviewed the victims; they reinterviewed the
5 victims. They maybe did too good of a job, but because
6 they were doing all these interviews and investigations,
7 because they didn't just settle for that first statement,
8 we have a history, a record which we attempted to show you
9 on the stand there how the story changed over time. If
10 they'd just done the bare minimum, we wouldn't have that.
11 We wouldn't see that the story morphed over time, but it
12 has. If they hadn't done what they were supposed to do,
13 maybe we couldn't have seen the proliferation of the big
14 lie in this case.

15 Now, who concealed the truth? Deon Cannick concealed
16 the truth, the victim. Deverol Cannick concealed the
17 truth, the other victim. Sharita Willingham concealed the
18 truth. While the state didn't call him, Malik Campbell,
19 who was there, concealed the truth. Martin Guzman, who the
20 state didn't call, concealed the truth. They all had this
21 gelatinous story that every time they told something to
22 somebody, to an investigator or to us as they were sitting
23 on the stand, it was different. It was different.

24 Now, I also told you that the devil is in the details,
25 and it was. The problem with a lie, a big lie, especially

1 one that's shared among a number of people, is that it's
2 hard to remember what the lie exactly was. You can't cover
3 all the details, and even if you do cover all the details,
4 it's hard to remember because you didn't live it. When you
5 don't live it, it's hard to remember.

6 Now, the state may say, well, this happened a year and
7 a half ago. How could they be expected to remember small
8 details of this case? I suggest to you that a lot of these
9 details are not small, which we'll get into in a few
10 minutes. But to the first question, I'd say we all have
11 moments in our lives where our lives changed. And make no
12 mistake. For all of those people in that apartment, I
13 don't not think anybody can deny their life changed that
14 day.

15 Now, I haven't had anything like that happen to me,
16 but I've had life-changing events. First, my first child.
17 I can remember with particularity what I did that entire
18 day. He wasn't born until late afternoon, but I can
19 remember what I had for breakfast. I remember where I went
20 with my wife. I remember where we went to lunch. And we
21 didn't know the child was coming that day because if we
22 had, we wouldn't have been standing in the middle of
23 Toys-R-Us when the water broke. But I remember facts and
24 details that I can't remember what happened two days ago or
25 three days ago or a week ago. But because it was a day

1 that changed my life, I remember those details.

2 Now, they may say, well, everybody's different. If I
3 witness something and you witness something, because I'm me
4 and you're you, we're going to see things differently, and
5 that's true. But the lies in this case weren't just among
6 person A and person B. They came from the same individual.

7 And again going back to my example with the birth of
8 my child, my wife remembers everything about that day, too.
9 And occasionally we quibble about how far we walked that
10 day, or did I get bacon with my breakfast, or things like
11 that. But by and large, on the points that have some, even
12 little bit of materiality, we're at least similar. We're
13 at least similar. And the story I would have told you
14 about the birth of my child five years ago is largely the
15 same as it is today.

16 So, when you have this lie that you're trying to put
17 out there, and it's the big lie and you've got all the
18 little lies you have to put out there to support the big
19 lie, the lie gets bigger. It grows and eventually and it
20 loses integrity. Deon Cannick, Deverol Cannick, Sharita
21 Willingham are trying to keep that lie in check to keep it
22 from spinning out of control.

23 Now, when I was thinking about what I was going to say
24 to you and how I was going to present this argument to you
25 and show you the lies that happened throughout the course

1 of this case and the course of this investigation, I
2 thought, well, maybe I'll do this. I'll take each person
3 and I'll say Deon Cannick said this on this date, and then
4 he said this on this date, and then he said this on this
5 date. And then I'd say, okay, and then we have regarding
6 the same incident or part of the story Deverol Cannick said
7 this, and then he said this, and then he said this, and
8 then he said this. Then Sharita Willingham said this, on
9 down the line. And then I'd mix them up together and say
10 look. Look what Deon said versus Deverol. Look what
11 Sharita said versus Deon. And I realized if I did that, my
12 closing would probably take hours, and I'm not using
13 hyperbole. I mean, it would probably take hours.

14 So, instead I decided I'm not going to do that. I'm
15 only going to bring up the ones that I think are really
16 important because you've seen it. That's what we've been
17 doing here, at least defense attorneys have been doing
18 here, for the past several days. That's why this case took
19 so long. Because when somebody got up on the stand and
20 said something that was different than what they said to a
21 police officer just maybe the day of, maybe two days later,
22 maybe a week later, maybe a month later, we had to expose
23 that lie to you.

24 Now, it gets a little convoluted because witness says
25 X. We say didn't you say Y? He says no, I didn't say

1 that. So, then we'd have to pull the officer up and say
2 didn't he say Y? Yes, he said Y. That's how we prove up
3 the inconsistent statements, and I imagine that it gets a
4 little lost in translation. But again, this case probably
5 would have been over days ago it weren't for the fact that
6 we had to prove up those inconsistent statements.

7 So, what is the big lie? The big lie is the story,
8 the grand story that you've heard from the beginning of
9 this case. That Demetrius Price and Lucius Simuel for no
10 reason burst their way into an apartment and for no reason
11 shot Deon Cannick. And then they decided to leave, but
12 they waited outside. And when Deverol Cannick came
13 outside, they shot him. That's the big lie. And I suggest
14 to you how on earth can the state prove that that's what
15 happened that day based on all the lies that those
16 witnesses told on the stand.

17 And I point out not only were some of the statements
18 that were told in the past inconsistent with what they said
19 there. They'd change their story on occasion on the stand
20 itself depending on who asked them.

21 So, again instead of putting up charts or graphs or
22 going through everybody's testimony and saying look, look,
23 look here. See, he said this and then he said that. I
24 want to pose some questions to you that I would like you,
25 when you go back into deliberation room, to think about and

1 ask yourselves whether or not it makes sense.

2 The first question is what motive did Demetrius have
3 to do this? Why would he do this? Why would Lucius do it?
4 There hasn't been any explanation or reason as to why they
5 would decide to do this.

6 The next question is let's say you say, you know, I
7 think I have a reason why they'd do it. Well, why would
8 they do it in the middle of the day in broad daylight?

9 The next question is, assuming they were going to do
10 that, why would they do it to people who could identify
11 them? Who knew who at least one of the guys was, and who
12 could either say to police or to their friends that these
13 guys did this, and we need to care of it. Why would they
14 do that? Why would they do this when there are two
15 witnesses who are independent of anybody except apparently
16 some business relationships with Deon?

17 Why would they do it when they could be placed at the
18 scene by those two people? Hey, we just saw these two guys
19 walk by. Let's go in there, burst our way in, and shoot
20 the place up. Maybe those guys will take off, and they
21 won't remember that they saw us. That doesn't make any
22 sense.

23 Why did Deon tell folks, the investigators in this
24 case, that initially he was interested in getting some
25 pills from Lucius to make a little extra money? And then

1 when he got on the stand, he said, well, no, no. I didn't,
2 I didn't want any pills. Maybe Deverol wanted some pills.
3 Why would he change his story at this point? Why does that
4 make sense? Why, why would anybody care? We know they had
5 tons of drugs in there. Why would you change that part of
6 the story?

7 And again going back to Deon, what did Deon really do
8 after I guess the first phone call he answered? If Martin
9 Guzman called him up and said hey, man, I want some
10 marijuana. Can you hook me up, and he said yeah, and a few
11 minutes later there's a knock at the door, why would Deon
12 go downstairs? Oh, that's right. You want marijuana.
13 Hold on. You stay there, though. You know, that seems a
14 little odd.

15 But then he also said that at that time, he sees
16 Lucius and Demetrius. He goes back upstairs again, and he
17 says he gets Deverol. He says those guys are down there;
18 go find out what they want. I don't know. And instead of
19 going back downstairs to go walk off with his friends to go
20 play X-Box like he said he was going to do, he goes back
21 and plays X-Box upstairs, presumeably with his brother.

22 That whole up and down and up and down, knocks at
23 doors, the whole exchange, only Deon told that story, and
24 yet there were three other people. And yet when you think
25 back to what their testimony was, there was a knock at the

1 door. That they went down, and it was Lucius. Then it was
2 Demetrius.

3 Again, fairly miniscule, little details, but why
4 wouldn't you remember? Why wouldn't you remember coming
5 back up and sitting there, playing a video game with your
6 brother instead of, as Mr. Campbell said, Deverol and
7 Demetrius both went down at the same time. He never said
8 they ever came back.

9 Why would Deverol initially tell the police that after
10 talking with Demetrius and Lucius, he reluctantly opened
11 the door and they all went inside, and then closed the door
12 and suddenly they pulled out guns? Later on he said no,
13 no. I was outside. They pulled out guns, and they forced
14 me inside. Again, this is a day that changed his life, and
15 he can't remember exactly how these folks came in.

16 Why would Malik Campbell tell investigators soon after
17 the accident that he saw his brothers downstairs fighting
18 with two subjects? No else said that, but why would he say
19 that? If Deon Cannick is halfway downstairs and he's
20 holding a pit bull and there's a shooter down there, and
21 imagine for a moment you're the shooter. Why would you,
22 say, put your hands up and thereby let go of a vicious,
23 vicious pit bull? Why would you do that?

24 What did the pit bull do? I've never owned a pit
25 bull. They've got a reputation. I don't know if it's true

1 or not. But as Deon said, he raised this dog as a puppy,
2 and throughout the whole thing, whether it being fighting
3 down below, gunshots, whatever, the pit bull did nothing
4 apparently. Now, Sharita said it tried to bite somebody,
5 but she's the only one who said that.

6 What's going on with the pit bull? Why didn't the pit
7 bull, if it really was there in Deon's hand, and growling,
8 as he testified, why didn't the pit bull get shot? If
9 you're faced with a person with a dog and you feel it's a
10 threat and you have a gun, are you going to shoot the
11 person who's controlling the weapon, the pit bull? Are you
12 going to shoot the pit bull and thereby eliminate the
13 threat? Apparently whoever shot Deon knew the pit bull was
14 trained to not do anything, I guess.

15 Now, this is an important one here. Various witnesses
16 testified that Deon again was bent over and holding this
17 pit bull when Demetrius Price, or somebody that looked like
18 him, shot at him. Now, Deon said on the stand in front of
19 y'all, he told me I put my hands up, and that's when he was
20 shot. We had the doctor in here. You can mess around with
21 the dummy. And the solicitor asked him is that consistent
22 with somebody being bent over and a horizontal shot towards
23 him, and he said yes. Problem is that he testified he had
24 his hands up.

25 Now, maybe the state will say he put his hands up like

1 that. If you believe that, think again as to where he said
2 he was on the stairs. He said he was halfway up by the
3 shoe. And then later on he said, well, I took a few steps
4 down. But the location of the shooter didn't change, which
5 was at the base of the stairs.

6 If you have an occasion to walk up some stairs, just
7 go up a couple and think about it. If somebody were bent
8 over, could I take a shot at somebody that went from high
9 to low out the back without bending the laws of physics?

10 Why is it that anyone, let alone somebody who
11 tragically lost the use of his legs, how could they fall
12 down some stairs and suffer not even a bruise, not so much
13 as a bruise, let alone a sprained ankle, sprained wrist,
14 something, broken nose? Didn't sustain any injuries. You
15 heard that from both Lieutenant Meyer and the doctor who
16 examined him and the guy who did surgery on him.

17 Why would Deverol initially say that after Deon was
18 shot, he grabbed for the gun of Lucius? And then later on
19 he said no. After Deon was shot, I jumped up and ran all
20 around the apartment. Doing what, he never told us what he
21 was doing, but he ran all around the apartment.

22 Why would Demetrius and Lucius, assuming they did
23 this, shoot Deon Cannick and wait there forty-five seconds,
24 as Deon testified, just hanging out? Then he said they ran
25 out the door because the dogs were barking and Sharita was

1 screaming, and it was getting too loud, and they were
2 scared. But yet the blast from the gun wasn't enough noise
3 that they were concerned about. They just decided to hang
4 around forty-five seconds and have a discussion.

5 Then when they ran outside, they stopped. Dogs are
6 barking; Sharita's screaming. A shot's been fired, and
7 this gives Deverol time to run around upstairs and come out
8 unarmed, so he says, to chase down two people who just shot
9 somebody who he says provoked them. And he said I didn't
10 know they were out there. I needed to I.D. the vehicle.

11 Why did Deverol have to go and I.D. a vehicle when he
12 knew who one of the alleged shooters was? Now, he says I
13 only knew him as Tiah's uncle. It's the same person who
14 was able to tell Lieutenant Jeff Meyer with Bluffton Fire
15 Department Tiah's uncle's phone number.

16 Now, I think he said no, it was Deon who said that, or
17 Deon told me. Well, if Deon told him, he's got a
18 remarkable recall which wasn't borne out by his
19 inconsistent statements. He was told the number once and
20 was able to repeat it when, as Lieutenant Meyer said, he
21 was in bad shape. His eyes were sunken in. He looked like
22 he was in really bad shape, and he could remember a phone
23 number he'd heard once.

24 Why would you decide to call on 9-1-1 because you have
25 two people who are seriously injured and rather than

1 waiting for emergency personnel, you decide to pick up
2 somebody and put them in a car and drive to the nearest
3 hospital which is in Hilton Head? They didn't think there
4 was time. I would suggest there's probably some other
5 reasons why they left.

6 Most importantly, the most important question I want
7 you all to ask yourselves is why, when Deon gave his first
8 statement and he discussed what happened after he was shot
9 and he tumbled down the ground, and he lay halfway on the
10 stairs, why he says he heard the two people yelling: Any
11 more iron. Later he changed his statement to: Where's the
12 iron. And Deverol came in and said, no, it was: Where's
13 the iron.

14 Well, why would Deon say any more iron? Because he
15 realized what that meant. That there were guns there
16 already. That one of those two folks had guns. Otherwise,
17 you wouldn't say any more.

18 These are the people that the state has put on to
19 prove their case. People who have made those statements
20 who are also admitted drug dealers, who are admitted gang
21 members. And based solely on their statement, the state is
22 trying to convict two people solely on their statement.
23 There's not a police officer here that can come in and say
24 I know because I saw this event happen. That's exactly how
25 it happened. There is not a third-party independent

1 witness that can say yep, yep, I saw that. The only
2 independent witnesses we had, again, changed their story
3 when they were up on the stand. The only sort of
4 independent witness that we had was the 9-1-1 caller who
5 said those people are bad. You need to come down and
6 arrest them.

7 Why else would you hesitate to believe the testimony
8 of these people? Every single one, Deon, Deverol, Sharita,
9 and even Malik who the state didn't call, are hoping
10 against hope that their testimony is good enough to get the
11 state a conviction. And, thereby, maybe they'll get
12 another sixteen months of no charges filed against them in
13 this case. They may be wrong, but you know they're hoping.
14 You know they're hoping that if they can just get a
15 conviction, maybe they'll just be able to walk free.

16 And what else would they say in this case other than
17 these folks broke in and for no reason tried to shoot us
18 and we ended up shot because what are they going to say?
19 Well, we had a hand in it. We're the ones you caught.
20 They're not going to say that.

21 And again I go back. All you've got is that
22 testimony. You don't have the smoking gun. There's no
23 weapons recovered. You don't have the third-party witness.
24 You have a video tape of somebody going through a gate.
25 That's what you had. You have some bullets to guns you

1 don't have. You have conflicting testimony from Sharita
2 and Deon as to who is holding the pistol and who is holding
3 the .45.

4 Now, this is my last chance to talk to you. And after
5 I'm done, Mr. Deysach is going to come up and talk to you
6 on behalf of Lucius. And my guess is that Mr. Deysach is
7 going to say some of the same things that I said and
8 probably cover some things that I just forgot. And then
9 he's also probably going to say, well, if you don't really
10 believe what I'm telling you, then it was all the other
11 guy. I take that argument for what it's worth.

12 Then the state's going to come up, and they're going
13 to have a chance presumably to rebut everything I said that
14 they feel they need to rebut and everything that Mr.
15 Deysach said. And they're going to try again to convince
16 you that the shoddy evidence that they have in this case is
17 enough to convict.

18 And again I suggest it's not because Mr. Price, as I
19 told you before, is presumed innocent. He's presumed
20 innocent, and in order to find him guilty of any of the
21 charges, you have to look at each charge and say these are
22 the elements of this charge. And they have to prove each
23 and every element beyond a reasonable doubt.

24 And again, as I told you, you have a job because it's
25 your duty to test the state and their evidence. And if by

1 my representation, by Mr. Deysach's representation, or
2 through just your own good sense you come up with a
3 reasonable doubt, the state has to dispel those reasonable
4 doubts. Not one, not two, not five, but all of them.
5 Every single reasonable doubt must be swiped away, and you
6 all unanimously have to say you know what? There is no way
7 it happened any way other than this.

8 I also want to say one thing, too, that's very
9 important. Each one of you has the ability and the power
10 to say no. Each one of you has the duty and the
11 responsibility to have the courage to say no if you don't
12 believe it. If you don't have the conviction that what
13 they're saying is true, please have the duty and
14 responsibility and the courage to say that.

15 I told you before that when this case was all over and
16 the state rested -- and again, we ended up having to throw
17 evidence on there because we thought there was more that
18 you needed to hear and understand. But when it was all
19 over, you would be able to come to one conclusion, and
20 that's I just don't know what happened. Ladies and
21 gentlemen, I'd say right now how could you know what
22 happened? How could you understand and really know what
23 happened based on what you've seen?

24 And I'm going to ask you again. For every single
25 charge the state has brought against Demetrius Price,

1 examine it, test it, and reach the conclusion that he is
2 not guilty, not guilty. Thank y'all very much.

3 THE COURT: Thank you, Mr. Geier.

4 Mr. Deysach.

5 MR. DEYSACH: Thank you very much, Your Honor. May it
6 please the court?

7 THE COURT: Yes, sir.

8 MR. DEYSACH: Thank you for your attention. I know I
9 may have developed a reputation for being redundant or
10 wordy, and if that was a problem, I hope -- I apologize,
11 and I'm going to try to avoid being redundant with what Mr.
12 Geier just said.

13 But what I want to do is jump right into what I think
14 the evidence shows, what type of a verdict that dictates,
15 as opposed to just beating up on what the state didn't
16 prove.

17 I think that there's a pretty good amount of evidence
18 out there that's going to show what probably really did
19 happen. And Mr. Geier talked about how the credibility of
20 the Cannicks -- that would include Malik and Sharita -- how
21 that has been compromised. Their lies are shrouded in
22 part, in all the moving parts in this story. There is,
23 there is Lucius and Demetrius. There's Deon and Deverol.
24 There's Martin and Jesse, and there's Sharita and Malik,
25 and between trying to figure out where everybody is at one

1 time, that the ambiguity in the confusingness [sic] has
2 given a shroud to their lie that has -- kind of makes your
3 brain hurt to try and figure it all out.

4 But I think that it is clear from what you heard that
5 the relationship between Lucius Simuel and the Cannicks is
6 closer than what the state or what the Cannicks led you to
7 believe. And that is because Deon or Deverol, I think they
8 said Deverol was able to give Lucius's phone number. That
9 they had phone calls earlier that day that were not picked
10 up that Deon had assumed were Lucius. That Deon admitted
11 to having a relationship in which he talked to Lucius on
12 the phone on occasion besides the time that he visited the
13 very apartment where this occurred. And when Deon -- or
14 when Lucius shows up at the apartment, he introduces -- he
15 tells Martin, hey, Luke is here or something along those
16 lines. You know, why would he ask Martin to do that if
17 Deon wasn't going to know who Luke was?

18 The way that the -- what Martin told you,
19 surprisingly candid, truthful, that he had actually spent
20 time with Deon and Lucius together, not at the apartment,
21 but in his neighborhood in Simmons Kay. And the way that
22 the Cannicks referred to Lucius by first name on the stand
23 betrayed familiarity. And what we are being asked to
24 believe is that these guys know his phone number but don't
25 know his name. And that is a little bit insulting, I

1 think, to my intelligence.

2 The Cannicks were drug dealers. That was something
3 that I don't think is in dispute at all. The drugs that
4 are found, they said they were drug dealers. There was
5 customers waiting at the door when Lucius and Demetrius
6 arrive. I mean, not only are they drug dealers. They
7 appear to be busy drug dealers.

8 The reason that Lucius and Demetrius are there is not
9 the reason that the state told you in the first place, but
10 it is to sell the ecstasy pills. And in saying that, I
11 have conceded some illegal activity on the part of my
12 client. But in the interest of getting across to you and
13 communicating to you the reality of the situation, that's
14 what I'm doing.

15 We know that this is so because of what Chris and Tiah
16 told you. Both of them said Deon called to ask for pills.
17 Will you please get in touch with your uncle. Deon told
18 you that, yeah, I had talked to Lucius about pills in the
19 past, but that was because my brother had asked me to talk
20 to him about pills. So, we actually do have a conversation
21 between Deon and Lucius about these ecstasy pills. And
22 they tell you, Deon and Deverol both, that when -- that
23 Lucius introduced Demetrius to them when he arrives that
24 day by saying this is the guy I was telling you about. And
25 so by that, we know that there is a conversation in which

1 Lucius is telling Deon and Deverol about the guy with the
2 pills. And so the reason for Lucius to be there is pretty
3 clear: to introduce Demetrius to the Cannicks in order for
4 a drug transaction to take place between those two.

5 Deverol opened the door to the apartment, not because
6 he was tricked or forced, but so that he could conduct the
7 drug transaction. You're not going to do a drug deal in
8 broad daylight 1:00 in the afternoon in the middle of an
9 apartment complex.

10 And the place was, I mean, seems to me to be a pretty
11 nice place. And, in fact, the way the apartment is set up,
12 it almost seems perfect for a drug dealer where if they
13 want to do a drug deal, you don't have to go up into the
14 living quarters. You can just step right inside into that
15 foyer and do your business and then leave. And you're in
16 an upstairs apartment, so I guess if you want to grow
17 marijuana plants in the attic, you can do that, too. And
18 so it was set up perfectly for drug dealing. And you can
19 ask yourself, given all the drugs that were found, how many
20 drug deals could have taken place in that very area? I
21 submit quite a few.

22 I would say this. I would say that -- Mr. Geier
23 talked about the credibility of Deon and Deverol, the
24 Cannicks, being compromised. And so I'm going to point out
25 to you that facts that the state tries to prove simply was

1 what Deon and Deverol said at one time or another, or from
2 the stand, or to the police at some past in the past are
3 not proof of anything. That is probably the evidence that
4 they've put up with the least amount of credibility is what
5 those Cannicks say because they have -- you know, Mr. Geier
6 pointed it out. I'm not going to tell you why you should
7 think that they're lying because it's been covered. But
8 I'm going to tell you when you have somebody who's lying to
9 you about something, you can't trust the liar. You can't
10 trust the liar, and you certainly can't trust it in this
11 context.

12 There is no sign of any forced entry. You would
13 expect maybe -- if you're trying to bust into a place, you
14 don't bust in like this. You bust in like this, you know?
15 You use force. That would leave a mark on the door is what
16 I'm saying.

17 And there's -- Deon's bike is parked right outside the
18 front door. And in any type of a commotion that would have
19 required force to open the door, to think that that
20 wouldn't topple that bike is somewhat ludicrous.

21 The evidence that Lucius went inside is -- the only,
22 the only stuff that the state presented to you on that
23 score was what the Cannicks said. You know, was there a
24 footprint, you know? And sadly, because there was the
25 injury, there was blood and there were areas in which to

1 leave evidence of your presence, whether it's a fingerprint
2 or a footprint or something that you would see that would
3 indicate that there was one people, two people, four
4 people, three people, however many people they want to tell
5 you are in that tiny little area. And none of that is
6 there. And so the only evidence that they have is what the
7 Cannicks say.

8 And it's frustrating to rely on that because, I mean,
9 the point I want to make about certainly Deverol's
10 credibility is that the state is proceeding in a way which
11 makes it seem like they didn't, they don't even believe
12 Deverol when he told the police that Demetrius shot him.
13 So, if they don't believe him, why should you?

14 The idea that the whole thing was a planned robbery, I
15 know I touched on this briefly, but there's a few facts
16 that demonstrate to you that that was no planned robbery.
17 The police didn't charge anybody with an attempted robbery.
18 There was no demand made for anything except for the thing
19 about any more iron. And I know that we'll hear, I guess,
20 later if the state plans to say oh, yes, this was a robbery
21 intended to -- just for the purpose -- of drug dealers,
22 just to take their guns. I don't think that that makes any
23 sense. When you rob somebody, you ask for money. And
24 there has never been any testimony that anybody made any
25 demand for anything. And so to say that it's an attempted

1 robbery is just without any support, no support.

2 Broad daylight, Mr. Geier said. No attempt to
3 disguise even though Lucius has that close relationship
4 with the Cannicks. Giving the name to Martin and Jesse as
5 they're coming up, not consistent with somebody who's --
6 you're just giving evidence to the police when you do that.
7 And if robbery is your game, then that's just not the way
8 you behave.

9 The Cannicks said Lucius had been there before, so he
10 must have known about the pit bulls. He must have known
11 about the pit bulls.

12 All right, so if it's not a robbery and it's a drug
13 deal, I think everybody can agree that Deon and Deverol,
14 they got shot. There's no question about that. That is
15 one of the main -- the few facts that's not in dispute
16 here, that they do get shot. And how does that happen? I
17 think it's easy to say that, hey, it's just a drug deal
18 that breaks down or a drug deal gone wrong. But what I
19 think the evidence that's been in front of you shows, that
20 if it's a drug deal that went bad, it's not because of
21 Lucius or Demetrius but because of the Cannicks. That's
22 what Chris and Tia -- Tiah told you that Lucius told them,
23 the Deon tried to rob them.

24 When Martin tells the police that he was in the living
25 room playing games and hearing the phone ring, he's telling

1 a lie that Malik asked him to tell. Martin said he talked
2 to Malik before he talked to the police, and the story of
3 playing video games, that's not hard to guess. But of the
4 phone ringing multiple times without it being answered,
5 that was information that was fed to him by Gripp he says
6 is the person he talked to before that. And so by asking
7 Martin to lie, it's a -- it's something that somebody is
8 trying to hide would do. And so Malik was trying to hide
9 something when he asked Martin to lie. And if it was just
10 something that Lucius and Demetrius had done wrong, there
11 wouldn't be that reason for lying.

12 Evidence in the record that Lucius is surprised when
13 this happens: Why you shot Little Dude. Why'd you shoot
14 him? Deverol says, you know, when he goes outside that
15 there's some argument between the two.

16 All right, and if there is any question about whether
17 the Cannicks are capable of -- whether we should believe
18 then when they say that they didn't do anything to try to
19 make this drug deal go wrong, that we didn't try to rob
20 anything, anybody or anything, remember and ask yourself if
21 the guys who aspire to this and have this in their
22 apartment are capable of doing something like that.
23 There's no good reason to have a mask like this in your
24 apartment unless you're going to use it for a robbery. And
25 I'm not saying that they had it on that day, but that's

1 what that's for, no question about that.

2 And I brought in the evidence, you know, of the gang
3 stuff and the pit bull stuff. It's not to say hey, you
4 know, these guys deserved to have something bad happen to
5 them. It's to say that they are the ones who are capable.
6 These guys that raised the pit bulls, that are members of a
7 gang, that are dealing drugs, and they're just the type of
8 people that would try and pull something like that off.

9 Lucius never had a gun. That's what's in his
10 statement. The only people that say he's got a gun are the
11 people who live in that apartment. Sharita wants to says
12 he has a gun. Sharita doesn't even know that they deal
13 drugs out of that apartment, no idea that there are drugs
14 anywhere in this apartment. I don't even -- you know, I'm
15 not even sure which all the marked, what each one of them
16 represents. But it was, like, drugs here, here. In the
17 kitchen, in each bedroom, in the attic, everywhere.

18 And so for her to say that, well, I don't they're
19 dealing drugs, for her to say that she saw what was going
20 on when Malik told us that she was in the dining room and
21 that -- were leaning over a banister that's covered with
22 different stuff and nothing seems to be disturbed, so
23 Sharita didn't see anything. And so when she says he has a
24 gun, it's not credible. And proof? No. Beyond a
25 reasonable doubt? You've got to be kidding me.

1 Lucius did not shoot Deon or Deverol. He's not
2 accused of shooting Deon. He is accused in this case of
3 shooting Deverol. At no point during this trial did
4 anybody talk to you, tell you from that stand I saw Lucius
5 shoot Deverol. I'm Deverol. I saw Lucius, I saw Lucius
6 shoot me. He never told you that, never told you that.
7 But what he did tell the police two days afterwards is that
8 Demetrius shot him, and that's why the police got the
9 warrant against Demetrius.

10 And so what it is that the police found out that
11 somehow changes that theory has never been made clear. I
12 have no idea what is in the record, what evidence they have
13 that makes them think that what Deverol told the police
14 with his own mouth is somehow impossible.

15 All right, those facts that I've laid out and the
16 reasons why this should be believed demonstrate a drug deal
17 in that little area. And for some reason, probably because
18 of something, a robbery, something that the Gangsta
19 Disciples who lived there did required Demetrius to
20 apparently try shoot his way out of there. And like I
21 said, no evidence that Demetrius is in there other than
22 just the people who lived there.

23 And what Deverol wanted everybody to believe was that
24 he was chasing -- he owns guns, you know. He's -- the
25 person who we demonstrated him to be, that he is not

1 chasing these guys with a gun? He's running out. They
2 don't -- it stares us in the face that somebody just did
3 something to his brother, and he's not going to want to
4 take revenge with some of the firepower that he has in his
5 house?

6 What would you -- and you don't even have to be a gang
7 member to have this urge. To have seen something go wrong
8 with one of your, not just a friend but your blood brother,
9 your brother and want to exact some revenge. And then they
10 want to come up here and tell us they were just trying to
11 get a license plate number. They weren't trying to shoot
12 them, right?

13 Deverol wants us to believe that he kind of -- it
14 almost seems like a cartoon the way he does it because he's
15 running out, and he gets so far out the house before he
16 realizes that that they're there. That he's, like, stuck.
17 And so he hits the ground, and that's when he's shot.

18 The problem with that idea is that the people who are
19 shooting at him are not laying on the ground shooting at
20 him like this. They're standing up, right? So, the shot
21 that hits Deverol, as he testified, comes from some feet
22 away and from somebody who's standing up. That shot
23 wouldn't go straight across his body like the doctor
24 testified, straight across his body. It'd be coming
25 downward. And you would expect, if he's getting hit in the

1 left side, not for the bullet to lodge way over here on the
2 right side, but to come out more on his stomach.

3 And you'd probably also expect to see a little bit of
4 blood on the sidewalk in that area. And I think the area
5 that we're talking about, I have a good picture of it. I
6 think this is the picture of the front door. The area that
7 we're talking about he said was over in this direction, and
8 the guys were supposed to be standing over here, not, not
9 attempting to get away, which is what you would expect
10 after this, of somebody to be running. But just kind of
11 standing there and dilly dallying. That around in here is
12 where you would expect to see some of the blood on the
13 sidewalk if what he's saying is true.

14 And it also makes you think that when he's got the
15 injury to the hand and the injury to the side, that it may
16 be consistent with him laying down on the ground, but I
17 don't think so. But what it is consistent with is standing
18 like this with your hand outstretched and getting shot at.

19 And, well, well, what is he shooting? Well, probably,
20 probably the gun that ejects the shell casings that land in
21 the area near where he says he was. And so I think that
22 the testimony made clear that none of the guns that they
23 find were matched to those shell casings.

24 But that no way means that none of -- that they didn't
25 have the gun that shot that because the same person who

1 came and gets the pit bulls out of there, which are gone by
2 the time the police come -- it's a lot easier to move a gun
3 than a pit bull, I guess, or it would have been six pit
4 bulls is the point I'm making. And so someone compromised
5 -- I mean, time is quick. I mean, you know, it certainly
6 was not a clean place. But if there's time to get rid of
7 those dogs, there's also time to get rid of that gun.

8 And so using the evidence that the state puts up,
9 there is a more believable, more likely scenario that takes
10 place than what is described by the state's witnesses,
11 okay? And the problem is that that scenario includes my
12 client, Lucius Simuel, going to this house for the purposes
13 of making an introduction for a drug deal. And so that
14 means that he has done something illegal, right?

15 And my point is that he is not on trial for setting up
16 the drug deal. Nor does setting up a drug deal make him
17 responsible for everybody else's actions after that. That
18 he is not on trial for those drugs any more than the
19 Cannicks are on trial or have been charged for levels of
20 drugs, guns, and other things that were found -- really
21 just drugs and guns -- that are found in their apartment.

22 And so for your verdict to speak the truth, it can't
23 be one that says, well, Lucius shouldn't have been there in
24 the first place, so we're going to, you know, mark guilty
25 here, or mark guilty there. It has to be whether or not he

1 has committed the crimes that are charged.

2 And you're not allowed to assume that he has or has
3 not been charged with those other offenses. That's just
4 not anything that's before you right now. And so what's
5 before you is not whether or not Lucius comes with un --
6 with clean hands, but whether or not he's guilty of the
7 ABWIK and the burglary that he's charged with. And so
8 that's, that's my difficulty is explain to you why that's,
9 why that's important.

10 And I guess the easy thing to say is that it is a far
11 cry from setting up a drug deal or making introductions for
12 a drug deal, from shooting somebody, from breaking into
13 their house. And so to find someone guilty of burglary and
14 assault and battery with intent to kill when what they've
15 done is set up a drug deal would be a conviction that
16 didn't reflect reality. And delivering verdicts that
17 reflect that reality is what we're here to do.

18 Now, what I've done is given you what I believe the
19 evidence shows, and it is not my job, it is not my job to
20 prove to you that's what happened, okay? And by doing so,
21 I ran the risk of telling you that -- confusing you. And
22 you might go back in there and say, well, Deysach's
23 version, maybe it happened, but maybe it's a little bit
24 more likely that -- the state's version.

25 That's not the way it works. If this is possible, if

1 it's at all possible, if it's at all possible that the
2 reason that anybody is inside that little stairway is for a
3 drug deal, invited in for a drug deal and not because they
4 forced their way in, you must, you must find them not
5 guilty for burglary. Burglary is entering ---

6 MR. ROBINSON: Your Honor.

7 THE COURT: Yes, sir.

8 MR. ROBINSON: Your Honor, I object. That's a
9 misstatement of the law that it's -- if it is, if it is at
10 all possible.

11 THE COURT: Right. I'll sustain that objection.

12 MR. ROBINSON: Thank you.

13 THE COURT: I will correctly charge the jury in a few
14 moments what we mean by proof beyond a reasonable doubt.
15 Thank you.

16 MR. DEYSACH: And I apologize, too. And, you know,
17 obviously you may take it that I'm trying to maximize the
18 case that's the state's burden. And I would just warn you
19 against them saying anything to you, and I'm guilty of it.
20 The judge just told me I was wrong.

21 But if the state says anything to you that says they
22 are minimizing what their burden is, I want you to listen
23 to that, too, and make sure that they don't try to lower
24 their bar any more than what it's supposed to be because
25 proof beyond a reasonable doubt is the court's way of

1 making sure that innocent people don't get convicted,
2 right?

3 And so if there is the reasonable -- if there is
4 reasonable doubt, you know, that what I'm saying happened
5 happened, or another version happened that's consistent
6 with innocence, then what the duty is is to find not
7 guilty.

8 And so explaining it is one thing. Explaining why it
9 exists is another because it's -- when that burden does not
10 get honored, then it is people like not just Lucius but
11 Demetrius, too, that get caught up. You know, they're the
12 ones who are going to end up suffering.

13 So, that's why I'm asking you. You've got to, you got
14 to hold to the burden. That's what the case is about.
15 That's what the oath that you took is about. This isn't
16 about the car wreck on 278 that we saw in jury selection.
17 This is about convictions. And like I said, I don't think,
18 I don't think anybody needs to be explained what the
19 consequence of a conviction is.

20 Also obviously making the point on the burglary not
21 guilty, assault and battery not guilty. They don't even
22 have the right person. I don't want you to hold Lucius
23 responsible for something that somebody else did.

24 The judge is going to charge you about the state of
25 mind that needed to be present for this to happen. And

1 when this happens without any plan between Lucius and
2 Demetrius, when the shooting happens without any plan and
3 without any expectation of it happening, happening by
4 Lucius, you're not going to be able to hold him responsible
5 for something that somebody else did.

6 And I want you to listen to the judge, listen to the
7 law. And please when you're back in there, remember some
8 of those things I said. And if there's other things that
9 bother you about the case, doesn't mean they don't bother
10 me, too. It just means I didn't have a chance to say them.

11 I want to thank you all, and this is it. That's all I
12 have. Thank you.

13 THE COURT: Thank you, Mr. Deysach.

14 MR. DEYSACH: Thank you.

15 THE COURT: Mr. Robinson.

16 MR. ROBINSON: Thank you, Your Honor. May it please
17 the court?

18 THE COURT: Yes, sir.

19 MR. ROBINSON: Ladies and gentlemen, you just heard
20 discussions about some of the evidence that's presented and
21 almost none of the law. I'd like to review the evidence
22 with you and discuss the law with you.

23 I represent the state. I have the burden of proof.
24 The burden of proof is proof beyond a reasonable doubt, and
25 the first piece of evidence is this: these two defendants,

1 Demetrius Price and Lucius Simuel, are presumed innocent.

2 I want to begin by telling you the way this case
3 started. Lucius Simuel had a simple plan. He had been to
4 the apartment of Deon and Deverol Cannick to smoke weed.
5 He knew that Deon was his niece's boyfriend and a teenager
6 who was selling marijuana. He knew that Deon had an older
7 brother who was selling more than just marijuana:
8 marijuana, pills, and cocaine. A month or so later, he
9 decides to rob them. And so he gets together with
10 Demetrius Price and comes from Savannah to Bluffton.

11 But the reason you're here, the reason this case is
12 here, the reason these charges are what they are is because
13 the plan broke down. They might have been trying to rob
14 them. They might have thought hey, I can steal their
15 money. I can steal their drugs. But the problem is they
16 got inside and the stranger, the person who didn't know
17 Deon and Devin, the person who'd never been there before,
18 Demetrius Price, panicked.

19 They got inside the house. They saw the boys, and
20 then here comes this dog. They were both armed and when
21 this kid came down with the dog when he thought he was in
22 control of the situation, he panicked. Bam, and he shot
23 Deon.

24 Now, that's not what Lucius was planning to have
25 happen. Lucius had been there. He'd hung out with these

1 kids; he fraternized with them. He wasn't expecting this
2 kid to get shot before they even got to ask for money. And
3 so what did they do? They never even got to get anything
4 out of their efforts. They retreated.

5 Deverol Cannick -- the person who was most likely to
6 have interacted with them because he was the one who was
7 dealing drugs, or dealing more drugs than just marijuana to
8 his buddies from Simmons Kay -- reacted. When he went
9 outside to see -- just, my brother's been shot. He thinks
10 they will have run off. They didn't run off. They were
11 standing right outside the door, as he said, going back and
12 forth loud enough, maybe loud enough to be arguing.

13 And when they saw him, what they did was they turned
14 their guns on him because at that point, the panic was
15 over. The plan had failed, and Devin was a witness. And
16 so they tried to kill the witness.

17 That is what this case is about. It's about, as I
18 said to you in the beginning, it's about a burglary that
19 turned into a shooting because of decisions that were made
20 by these two defendants.

21 You've heard a lot of discussion about the testimony.
22 I'm going to discuss the physical evidence, the visual
23 evidence. And in addition, I'd like to include in my
24 discussion some of the defenses', some of the defenses'
25 evidence.

1 These are photographs. You've already seen them.
2 This is Demetrius Price's car arriving at [REDACTED]
3 Apartments at 1:27 p.m. on July 28, 2008. Law enforcement,
4 in the interest of clarity, they use military time and so
5 they, instead of calling it 1:00 p.m., they call it 1327.
6 And since that's the way the 9-1-1 calls are time stamped,
7 that's what I've done just for this diagram, this little
8 graph.

9 At 1327, a car registered to Demetrius Price arrives
10 at [REDACTED] Apartments. Five minutes later at
11 13:32:47, 1:32 and 47 seconds, a neighbor named Jamie calls
12 9-1-1: Oh my gosh, oh my gosh, I just heard three gunshots.
13 You heard her voice. Ma'am, where are you? Did you see
14 anything? No. I heard the shoots. I went to my bathroom.
15 I'm hiding. 1327 while this car is at the apartments where
16 these victims live.

17 Five seconds later, another call to 9-1-1 because
18 they've got more than one operator. It's Devin. How do
19 you know it's Devin? You hear the voice say: I've been
20 shot; I've been shot twice. You hear their voice. You
21 hear how frantic they are. You hear the desperation.

22 A little bit more than thirty seconds later, another
23 9-1-1 call, and this is probably from Malik. He's the one
24 who says I need an ambulance. Where? [REDACTED]
25 Apartments, apartment [REDACTED] Why? Two people have been

1 shot. When he says two people have been shot, he's
2 referring to his brothers. Who shot them? I don't know.
3 And that's consistent with what Malik testified to. I was
4 at the top of the stairs. I heard a shot. I hit the
5 ground. I looked down and saw two people. I saw their
6 eyes. He also testified he wasn't at the apartment when
7 Lucius came there a month or so earlier to smoke weed with
8 Deon.

9 And finally, there's some other 9-1-1, 1334. Don't
10 know who that's from. Caller didn't speak into the phone.
11 We just hear the screams. You just hear the screams,
12 mostly of the girl, Sharita. Where he at? Where he at?
13 Where's the keys?

14 Now, there's another 9-1-1 call that comes at 1340
15 five minutes after Demetrius's car leaves. Jamie calls
16 back and says listen, I just want you to know those boys
17 are dangerous. They've got pit bulls, and I've called
18 animal control on them. Were they involved in any of this?
19 I'm just assuming they were. When law enforcement tried to
20 find this person, nowhere to be found.

21 Did that help you make a decision about whether or not
22 to believe these victims? No, because these victims told
23 you they have pit bulls, told you they had drugs. So, what
24 we know is that when the shooting happened, when the horror
25 was unleashed, Demetrius's car was there. And we brought

1 the sound of the shooting into the courtroom. That isn't
2 police statements. That isn't testimony under oath. That
3 isn't this nice, controlled courtroom, this nice,
4 controlled environment. That is the real shooting.

5 Now, let's discuss the testimony, and before I do, I
6 want to use an image for you. This is our dummy. You've
7 seen him all week long, kind of silly looking. Y'all have
8 lots more eyes than I do. You're looking at this from one
9 side. When you look at this, you see some shoulders,
10 backside, the heels. You don't see a nose, don't see any
11 eyes, don't see any lips. So, as far as you know, you're
12 just -- you only see this is from this side. You don't
13 know if it's got eyes, lips, or a nose. If you turn it
14 from this side and you were to only see it from this side,
15 it's got one ear, one eye, one nostril, and you can see
16 part of one arm.

17 How about if you turn it on this side full? You see
18 both eyes, both nostrils, lips, ears, both hands, the ribs,
19 groin area. Now, if you have people who only see this from
20 one side, their description of it is going to be different.
21 But that doesn't mean they're not all talking about the
22 same thing. They had different perspectives; they had
23 different perspectives.

24 Now, I submit to you, ladies and gentlemen, that the
25 eyewitnesses in this case had different perspectives. When

1 this shooting happened, Malik was playing Halo. When this
2 shooting happened, Sharita had just been playing with the
3 puppies. When this shooting happened, Deon was on the
4 stairwell. Devin was at the base of the stairs. They all
5 saw the same thing from different points of view. So,
6 therefore, they're going to describe it different ways.

7 And, in addition, when this shooting happened, they
8 weren't in this calm, peaceful, stable environment where
9 they're in the same seats and every yes sir, no sir, yes
10 Your Honor. They're in their home, and people showed up at
11 their house that they weren't expecting.

12 You heard Deon say I thought it was awkward that he
13 showed up. I'd just dumped his niece. Devin said only
14 time they ever talked to these guys. It's weird them
15 showing up at our house. You heard the defense witnesses
16 Tiah and Chris say I tried to call Deon, but he didn't
17 answer his phone.

18 And one other thing I wanted to mention about the
19 testimony. These 9-1-1 calls that got made, there was
20 another phone call. There was another phone call that was
21 made that day. Tiah and Chris Battle, Tiah Frazier and
22 Chris Battle told you about it. Lucius Simuel, after the
23 shooting, called Tiah and Chris and said yeah, the deal
24 went bad. Deon and Devin got shot.

25 You've heard all the 9-1-1 calls. Lucius made a phone

1 call, but he didn't call 9-1-1. Did he have any remorse?
2 Did he have any sorrow? Was he, like, oh my gosh, he just
3 shot the Little Dude? That is not in evidence because that
4 didn't happen because he was involved in the shooting; he
5 was involved in the shooting.

6 Now I'd like to go through the witnesses in a little
7 more detail. Devin was only one that was present for the
8 shooting. Mr. Geier asked you why aren't there any
9 third-party witnesses? Why aren't there any cops who saw
10 this? That was part of the plan. You're going to rob a
11 drug dealer, you're not going to do it in front of the
12 police station. I mean, it'd be nice if we had shootings
13 in the nunneries. Then all the nuns could just come in and
14 talk about what happened. But if you're going to rob a
15 drug dealer, one of the advantages of that is a drug dealer
16 isn't going to call the cops because he's got drugs in his
17 house. You can get away with that.

18 Devin is the only one who saw the shooting, both
19 shootings. He said he was overpowered. These guys just
20 took control. Two guys came in. One had a revolver; the
21 other had an automatic. Saw his brother get shot, saw it.
22 Saw this defendant, Demetrius Price, shoot his brother.

23 And I asked. Devin never saw his car. How could
24 Devin Cannick have identified Demetrius Price as the
25 shooter if he never saw a car? Because the way the

1 detectives knew to put Demetrius Price's photo in a lineup
2 is because he was the registered owner of the car. Devin
3 didn't anything about that. He said that's the guy.
4 Didn't hesitate -- that's the guy sitting -- in his
5 hospital bed. And you say Devin testify.

6 One of the things that makes your job so tough is you
7 have to decide from that witness stand who's telling the
8 truth and who's not. You saw Devin's demeanor. You saw
9 how it was for him to talk about seeing his brother get
10 shot. I submit to you that he was telling the truth.

11 Now let's talk about Devin's injuries. We've got some
12 really good visuals on this. I'll keep it simple. That's
13 a bullet. It was put there on July 28th. The expert
14 witness Dr. William Bromberg testified that it went in a
15 diagonal motion. It entered down here and got lodged up
16 here. Devin testified he went outside, saw the guys with
17 the guns. They were still there, and he turned around and
18 got down on the ground. I submit to you that he saw them
19 raise their guns. The first shot that was fired is the one
20 that hit him in the side as he was getting down on the
21 ground, getting down on the ground. You're bent over.
22 Bang. Comes across. That's why this bullet went in an
23 upward motion, cut through his liver, cut through his
24 diaphragm, and nearly killed him. As Dr. Bromberg said, he
25 had never seen a patient with this much internal bleeding

1 that did not die or wasn't seriously sick.

2 He also got shot in his hand. What's significant
3 about that? Well, let's look at the photographs. This is
4 the stack numbers of no evidentiary value. Shell casings
5 right here. Another one of the projectiles was found right
6 there underneath the doormat. It is State's Exhibit Number
7 38. Found, found right there. That's, ladies and
8 gentlemen, I submit to you that's the round that hit his
9 hand. When his hand swelled up, got down on the ground.
10 Bang, hit his hand.

11 As for the shooting of Deon, this is a little bit more
12 -- this, too, is complicated. Deon is coming down these
13 stairs. Now, when he was asked this, he said a guy told
14 him to put his hands up. And one of the things that is
15 indisputable is that the injury which Dr. Gage Ochsner
16 called devastating, which he also testified could have
17 killed him, went diagonally through him. You can see this
18 where the bullet fragments went diagonally through him.

19 If you're coming down the stairs and you're reaching
20 down to grab the dog's harness, and equally as important
21 Demetrius Price is coming up the stairs and holds the gun
22 up like this, the bullet's going to go sideways and Devin
23 -- Deon's going to go -- bang, bang right through him.
24 Shattered his spine. Shattered his spine.

25 Furthermore, what shattered his spine? This did, two

1 things found inside the house: a core and a jacket. This
2 is what did it. It's in evidence, Defense Exhibit number
3 43.

4 Now, you saw from the X-rays when Deon got shot, there
5 were metal fragments in the X-rays. Lit right up. The
6 bullet broke apart. Part of it was still in Deon when they
7 took the X-rays. The other two parts exited the back.
8 Remember Jeff Favor said we got there. I log rolled him.
9 I could see his spine. That's an exit wound.

10 Well, if you're coming down the stairs, and just as --
11 what happened is just what Dr. Ochsner said. He said --
12 Mr. Geier asked him if you got shot like this, what would
13 happen? He said you'd fall down. Well, what did Deon do?
14 He fell down and when he fell down, the bullet landed on
15 the ground where he fell because once that bullet is
16 traveling, once it's hit him, its direction changes. It
17 loses its force; it loses its velocity, and so it landed on
18 the floor.

19 Or even if it landed on the steps, even if it landed
20 on the steps, you heard testimony Deon ran up and down the
21 stairs a couple of times. Sharita and Malik carried -- had
22 to come down the stairs, the two of them, and carry Malik
23 outside. They might have kicked it down the steps. That's
24 very plausible. Either way, there is no question that this
25 bullet was fired inside their house, inside their house.

1 One of the final things I want to discuss is the
2 testimony that got a little rough yesterday, the firearms
3 expert, Ken Whitler from SLED. These items were all
4 admitted into evidence. You can look at them. I want to
5 clarify that.

6 Inside the house, four handguns were found. And we
7 didn't enter them into evidence, but he talked about them
8 because he examined them, and the evidence custodians
9 testified they transported them to him, so he examined the
10 four guns that were found inside house.

11 It was a .45 automatic, a .32 automatic, a .38
12 revolver, and a .22 revolver. Now, Ken Whitler fired all
13 these guns, and he looked at the three .45 shell casings,
14 the .45 projectile, the core, and the jacket. And what he
15 told you was none of these guns were used in the shooting,
16 and that's significant.

17 It's significant for two reasons. First of all, it
18 corroborates what law enforcement found when they searched
19 the house on the day of the shooting. Angie Viens, Angela
20 Viens came in and was writing down everything as they found
21 it. Where did you find it? Where did you find it? The
22 orange dots are where the guns were found.

23 Now, admittedly the stairwell's on this side.
24 Bedroom, closet, closet, closet. Todd Calhoun processed
25 the stairwell that I just showed you. No guns on the

1 stairwell. Furthermore, no blood on the guns, no blood on
2 the guns. Deon had been -- I'm sorry, Devin had been shot
3 in the hand. No blood on the ground.

4 The EMTs arrived at 1342. You heard on the 9-1-1
5 calls at 1333 ten minutes earlier them saying get the keys,
6 get the keys, get the keys. 1344 you just hear the
7 screams. It's maybe two minutes, if that. Ninety seconds
8 after the shooting.

9 Ladies and gentlemen, these two gunshot victims didn't
10 have time to go hide the guns from the shootout; they
11 didn't have time to do that. I submit to you that's not
12 reasonable. It's not reasonable.

13 And more than anything -- that's the second part about
14 Ken Whitler's testimony. It's confirmed by the science.
15 The guns couldn't have shot the rounds. They didn't shoot
16 the rounds. In fact, one of the guns, the revolver -- now
17 these are, these are -- the core and the jacket are both
18 from a .38. He said this .38, pin didn't work, and the
19 barrel was dusty. If you've been firing guns, there's not
20 going to be dust in the barrel.

21 His discussion of the .45 also, the rifling
22 characteristics, they're different. Rifling is when the
23 bullet is leaving the barrel of the gun because when a, if
24 I may, when the bullet is fired, it has to be spun so that
25 it will go straight, and that leaves marks on the casings.

1 Rifling's different. Sorry. What about the shell casings?
2 Sorry. Different. Different.

3 And so that's the significance of his testimony.
4 There were two guns used in this shooting: a .38, or .357,
5 and a .45 automatic, and it wasn't any of these. Wasn't
6 any of these.

7 And finally, that's the significance of the shooting
8 outdoors. That tells you something about this shooting
9 outdoors. When Devin went outside, I think what the
10 defense wants you to think is Demetrius was firing two
11 guns. There is no testimony from the victims, from the
12 eyewitnesses, from the people who got shot that either
13 person that came inside had two guns.

14 Now, I suppose it's plausible that when they came
15 outside and saw Devin, saw this witness, that Lucius handed
16 his gun to Demetrius so that Demetrius could shoot them
17 both. What I submit to you is that Devin -- Demetrius shot
18 Deon inside, and Lucius shot Devin outside because Lucius
19 knew who he was. And he may not have planned to shoot
20 Deon, but he didn't want to get caught.

21 And is there anything that supports that? You bet
22 there is. Lucius made a statement a couple of days after
23 the incident when he says wasn't expecting anybody to get
24 shot. During this whole thing, he was being greedy and
25 wanting money. He also said I'm the one who set this whole

1 thing up. I got myself into this, and I'm going to have to
2 deal with the consequences. He knew what happened.

3 And then later in transit, knows he's in trouble, says
4 to the officer, man, do you believe in God. And then what
5 does he tell the officer? Well, I just told you eighty
6 percent of the truth. You've got to figure out the rest.

7 Ladies and gentlemen, I submit to you that this
8 investigation, one of the reasons we kept talking, we kept
9 talking to these victims, talking to these witnesses, it's
10 because they got the other twenty percent. They got the
11 other twenty percent.

12 Finally, there is one important piece of evidence,
13 small but very important, that was not discussed in either
14 of the previous closings. There's one piece of evidence
15 that's not dispute. Lucius Simuel and Demetrius Price have
16 convictions for crimes of violence. Not in dispute, and so
17 it was illegal for them to be in possession of guns. They
18 weren't supposed to have guns anyway.

19 So, now let me discuss a little bit of the law. Of
20 course the judge is going to instruct you. You follow his
21 instructions, but it's important for what I have to prove,
22 so let me discuss it briefly.

23 Assault and battery with intent to kill, it's a big,
24 long word. It's something simple. It's the unlawful act
25 of a violent nature to a person of another with malice

1 aforethought, an unlawful act. It's not legal to shoot a
2 gun at somebody.

3 Of a violent nature, a violent nature. You've seen
4 what one bullet did to Deon's spine. Shattered it. That's
5 a violent nature. You've seen what the other bullet did to
6 Devin's intestines -- I'm sorry -- his insides. Massive
7 internal bleeding. Nearly killed.

8 With malice aforethought, expressed and implied.
9 That's kind of some old fashioned expression. What that
10 means is malice aforethought, and what the judge is going
11 to tell you, that malice aforethought doesn't mean you have
12 to have gone to the scene with malice and desire to cause
13 harm. It can be formed in an instant. And the law says it
14 can be expressed or implied, or implied. That means you
15 can infer it from the injury.

16 I submit to you, ladies and gentlemen, if you fire a
17 .38 revolver at someone at close range, that is implied
18 malice. It shatters their spine. If you fire a .45
19 automatic at someone twice and it hits them here, that's
20 malice. It's not a kiss on the cheek; it's not affection.
21 Malice.

22 Burglary, burglary first degree is when a person
23 enters a dwelling without consent with intent to commit a
24 crime in the dwelling, in the dwelling. No question this
25 is a dwelling. All the witnesses told you who lived there,

1 who lived in the apartment. In cross-examination, Mr.
2 Geier asked either Deon or Devin was your name on the
3 lease. Yeah, my name was on the lease. They lived there;
4 this is a dwelling.

5 Without consent. You've seen photographs that are in
6 evidence. I'm just going to show them to you so you can
7 see them again. You see the blood on the wall, see all the
8 blood on the wall? They didn't give these guys permission
9 to come in the house. There was a lot of conflicting
10 testimony about, well, who opened the door first. Did he
11 let them in? Did he come outside and shut the door behind
12 him? How did the entry occur?

13 The important thing is, going back to that question
14 about perspectives, did these guys have permission to come
15 in the house? And the answer from all the evidence, from
16 all those perspectives is no.

17 Now, they -- once you've been shot and you've got to
18 talk about it a couple different times, we could easily
19 understand how memories about little details can wane, but
20 one thing is clear. They didn't let them in the house, and
21 if they did, it was not for the purpose of getting shot.
22 And that's one thing the judge is going to explain to you
23 about burglary. Burglary doesn't have to, necessarily have
24 to be forceful. It can be by ruse, by trick. And so maybe
25 they -- I submit to you they did.

1 They tricked them into opening the door. Hey, man.
2 We're here, we're just here to sell you some drugs. Oh,
3 okay. Maybe I want some drugs. Drug deal's over, guys.
4 Drug deal's over. Where's the iron at, any iron? They
5 didn't want to get shot.

6 And in addition to those things, a person can be armed
7 with a deadly weapon, causes physical injury to a person,
8 uses or threatens the use of a dangerous instrument, or
9 displays a weapon, all those things we've got. We got
10 injuries in the house. We got display of a deadly weapon.
11 We got use of a deadly weapon.

12 The next charge, this is also a -- it goes along with
13 the other charges, possession of a weapon during commission
14 of a violent crime. It sounds technical; it's not. ABWIK,
15 assault and battery with intent to kill, is a violent
16 crime. Burglary first is a possession -- is a violent
17 crime. If you have a weapon in your possession when you
18 commit one of those crimes, that's also an offense. You
19 can't commit a burglary with a gun and not also commit that
20 other offense. It goes right along with the other two.

21 And finally, the other offense that I mentioned,
22 possession of a handgun by prohibited persons. You can't
23 shoot somebody if you're not in possession of a handgun,
24 and both defendants have conviction of prior, of prior
25 crimes of violence.

1 Ladies and gentlemen, you saw a lot of evidence. It's
2 been a long week, a longer week than I thought it would be,
3 but I know you've been very patient and very attentive. I
4 don't have time to discuss everything. I think that given
5 your very careful attention, there's no need for me to.

6 There's one thing I want to make real clear to you.
7 All the people in that apartment, most of them -- yeah,
8 Sharita, Malik, Devin -- at least all the people who didn't
9 go into a coma, all identified Lucius Simuel. Lucius
10 admitted to being there. Lucius was in the house; Lucius
11 was in the house. Lucius was there. Lucius knew the boys
12 got shot. Lucius didn't call 9-1-1. The only, the other
13 thing is they all identified Lucius, picked him right out.

14 Demetrius, he was picked out by Devin. Devin is the
15 only person that went out, that answered the door, saw him
16 come up the stairs. Sharita looked over once and only saw
17 the beginning of the break-in. Malik fell down, looked
18 down the side, looked down the side. Only saw the end.

19 Only one person can identify Demetrius. Martin Guzman
20 has glasses that he wasn't wearing and was high. He didn't
21 see people standing there. He remembers them saying Luke
22 or Lou, something like that.

23 Now, his vision must be better from far away because
24 he saw a car. He couldn't see who was there. The only
25 person who could see who was there was Devin. And all of

1 you saw him testify.

2 If you have a stabbing on a pirate ship, the only
3 person who can tell you about the stabbing is the pirates.
4 If you have a shooting at a drug house, the only people who
5 can tell you about the shooting are the drug dealers. If I
6 was trying to prove the moon landing, I could call NASA in
7 here. I'm not trying to prove moon landing. I'm trying to
8 prove that a drug dealer got shot.

9 You've heard all the evidence. We're grateful for
10 your time and for your attention. I'd ask once you've
11 heard the law the judge is going to explain to you that you
12 find both of these defendants guilty of burglary first,
13 assault and battery with intent to kill, possession of a
14 weapon during a violent crime, and possession of a pistol
15 by a prohibited person.

16 The judge is going to explain to you about how the
17 hand of one is the hand of all. Two people show up and one
18 commits the crime, both are culpable.

19 MR. DEYSACH: That's a misstatement of law, Your
20 Honor.

21 THE COURT: It's not. It's just not a complete
22 statement of the law, and I'll charge them as to a complete
23 statement.

24 MR. ROBINSON: Listen to his charge about the hand of
25 one is the hand of all. The judge is going to explain that

1 to you. Both can be culpable. I'm asking you to find
2 these two defendants guilty of those offenses.

3 This was a horrible thing that happened. Deon Cannick
4 is going to spend the rest of his life in a chair. He's
5 not going to stand up at his wedding day; he's not going to
6 march when he finishes high school or college. Devin may
7 never feel safe in his home again, which is one of the most
8 basic things we have is feeling safe in the home.

9 Your duty is to weigh the evidence and render a true
10 verdict. I'm confident that you'll do that. Thank you for
11 your time.

12 THE COURT: Thank you, Mr. Robinson.

13 Ladies and gentlemen, you've heard the arguments, and
14 now I'm prepared to render the charge. My charge is
15 scripted; I have it here in front of me. I don't necessary
16 read every word of it, but I refer to it. And so I can
17 tell you that it's going to take about forty to forty-five
18 minutes because of the various crimes and the necessity of
19 my explaining those crimes and the elements to you.

20 You've been in place now for about an hour and forty
21 minutes, and I'm prepared to go forward. But if any of you
22 all need a brief break, a restroom break before we start
23 that, if any one of you needs it, then we'll take a brief
24 break.

25 FOREPERSON: We'll take five.

1 THE COURT: All right. All right, let's take -- I'll
2 tell you what. Knock on the door when you all are ready.
3 We'll take ten minutes or so, and if you'll knock on the
4 door, we'll be ready when you all are. Thank you. Don't
5 discuss this case yet amongst yourselves.

6 (THE JURY EXITS AT 11:22 A.M.)

7 THE COURT: Gentlemen, thank you so much. You kept
8 well within the time frame you had given me, and I
9 appreciate that.

10 MR. ROBINSON: You're welcome, Your Honor.

11 (OFF THE RECORD.)

12 MR. ROBINSON: Your Honor, are these the verdict
13 forms?

14 THE COURT: Yes, sir.

15 MR. ROBINSON: I did notice numerical typos. On
16 Demetrius Price, page 2, it says indictment 2009-GS-07-64.
17 I think that should be 69.

18 THE COURT: Okay. That's right. It should be.

19 MR. ROBINSON: Similarly, Lucius Simuel, the 2009.

20 THE COURT: Okay, let me make this change.

21 MR. ROBINSON: I'm sorry.

22 THE COURT: That's count 3 on his indictment, right?

23 MR. ROBINSON: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. ROBINSON: The thing on Lucius Simuel's was

1 corrected on page 2, but one page 1 at the caption at the
2 top, the bottom indictment number 1366, that also should
3 say 2009.

4 THE COURT: Okay, now lead me through that again. I'm
5 looking at Lucius Simuel. I'm looking at page 1.

6 MR. ROBINSON: Page 1 where it says numbers.

7 THE COURT: Yes.

8 MR. ROBINSON: The bottom indictment number, 1366,
9 that should say 2009.

10 THE COURT: I've got it marked on mine. That's count
11 4?

12 MR. ROBINSON: That's count 4.

13 THE COURT: I've got it marked. It didn't show,
14 perhaps it didn't show up on ---

15 MR. ROBINSON: I'm just talking about one page 1.

16 THE COURT: Oh, the top of it. Okay. Okay, thank
17 you.

18 MR. ROBINSON: And that's, other than that, I think
19 they look just fine.

20 THE COURT: All right, good. Thank you for bringing
21 that to my attention. All right, good enough.

22 I understand the jury is ready, gentlemen. All right,
23 is everybody ready for the jury to come out?

24 MR. ROBINSON: Yes, Your Honor.

25 MR. DEYSACH: Yes, Your Honor.

1 THE COURT: Okay, you can bring us a jury.

2 (THE JURY ENTERS AT 11:46 A.M.)

3 THE COURT: Now, Mr. Foreman and ladies and gentlemen
4 of the jury, please give me your attention for a few more
5 moments now because you have indeed been patient throughout
6 the trial of this case, and you have listened very
7 patiently to the arguments that have been made ably by
8 the attorneys for the defendants and the attorney for the
9 state in this regard.

10 And I ask that you continue to give that same
11 attention to me now as I charge you as to what the law is
12 because it is my responsibility under our constitution to
13 instruct you as to what the law is that is applicable to
14 this case. And it is your duty as jurors to accept the law
15 as I charge it to you now to be the correct law, and to
16 apply the law that I give you to the facts of the case that
17 you find to exist.

18 As jurors, it is your exclusive duty to decide all
19 issues of fact in the case. And for that purpose, you have
20 to determine the effect and the value, and the weight, and
21 the truthfulness of the evidence and the testimony that you
22 have seen and heard because both the state and the
23 defendants have a right to expect that you will
24 conscientiously consider and evaluate the evidence. And
25 that you will apply the law of the case to that evidence to

1 the end that both the state and these defendants will
2 receive a fair and impartial trial at your hands.

3 Throughout the course of this trial, when I use the
4 words defendants, I am referring to Mr. Lucius Simuel, Jr.,
5 and Mr. Demetrius Price. Mr. Simuel and Mr. Price have
6 been indicted by the grand jury of Beaufort County. The
7 indictments are similar. They are exact for each of the
8 two of them, and they are both charged with the same
9 offenses.

10 Mr. Price and Mr. Simuel are charged with burglary in
11 the first degree, and those indictments read that they did
12 here in Beaufort County on or about July the 28th of last
13 year enter the dwelling of Deon Cannick and Deverol
14 Cannick, located at [REDACTED] Fording Island Road, unit [REDACTED]
15 without the consent of the owners and with the intent to
16 commit a crime while they were there. And that in
17 addition, they were armed with a deadly weapon in violation
18 of the law.

19 They are also both charged with assault and battery
20 with intent to kill. That indictment accuses them with
21 committing an unlawful act of violent injury upon the
22 victim Deverol Cannick in one case and Devin Cannick in the
23 other. Specifically, they are charged with shooting the
24 victims with a handgun in violation of the law.

25 They are also both charged with possessing a handgun

1 or visibly displaying what appeared to be a handgun during
2 the commission of a violent crime, the violent crime being
3 burglary in the first degree.

4 And finally, they are both charged with possession of
5 a handgun when they are a class of prohibited persons.
6 That is, persons who are not allowed to possess handguns
7 under our law.

8 Now, ladies and gentlemen, the indictments which I've
9 just summarized for you I remind you again are neither
10 evidence, nor are they proof of the charges that they
11 contained. They are simply charging papers, legal
12 documents that tell you or me or anybody else who reads
13 them what these charges are all about.

14 I remind you that the defendants have pled not guilty
15 to the charges contained in those indictments. The legal
16 effect of a plea of not guilty by a defendant in a criminal
17 case is to place the burden of proof on the state to prove
18 by evidence the guilt of the accused beyond a reasonable
19 doubt before you, as a jury, can convict him and find him
20 guilty. The defendants are both presumed in law to be
21 innocent of the charges contained in those indictments.

22 It is a cardinal and fundamental rule of our law of
23 evidence that a defendant, regardless of the nature of the
24 charges or the number of the charges or the seriousness of
25 the charges against them, will always be presumed innocent

1 of the charges for which they've been indicted unless and
2 until their guilt has been proven by evidence that
3 satisfies you, as a jury, beyond a reasonable doubt.

4 The presumption of innocence is not a mere legal
5 theory; it is not an empty legal phrase. The presumption
6 of innocence has been likened to a robe of righteousness
7 which is placed about the shoulders of a defendant, and it
8 assigns to that defendant the class known as the innocent.
9 And that presumptive robe of righteousness continues to
10 rest about the shoulders of a defendant until it has been
11 stripped from his person by evidence, evidence that
12 satisfies you of his guilt beyond a reasonable doubt.

13 The presumption of innocence accompanies a defendant
14 from the time of his arrest. It follows him throughout
15 every stage of these proceedings. Indeed, it even
16 continues to exist to his benefit when you go to your jury
17 room to deliberate in this case. The perception of
18 innocence continues to exist until you, as a jury, reach
19 the conclusion that the state has proven his guilt beyond a
20 reasonable doubt. So, that then is a burden upon the
21 state, not just in this, but in every case of this sort: to
22 prove the defendant guilty beyond a reasonable doubt.

23 Some of you may have served as jurors in other cases
24 before, and you may have served as jurors in civil cases.
25 And if you served as a juror in a civil case, the judge

1 told you that it is only necessary for the party in that
2 case that has the burden of proof to present evidence to
3 you that is more likely true than not true in order for the
4 side that has the burden prevail. But in criminal cases,
5 the state's proof has to be more powerful than that. Here
6 it must be proof beyond a reasonable doubt.

7 So, what did we mean by proof beyond a reasonable
8 doubt? Proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of the defendant's guilt. Now,
10 there are very few things that you and I know in this world
11 with absolute certainty. And in criminal cases, the law
12 does not require proof that overcomes every possible doubt
13 beyond a reasonable doubt. And so if based on your
14 consideration of the evidence you are firmly convinced that
15 the defendant is guilty of the crime charged, you must find
16 him guilty. If, on the other hand, you think there's a
17 real possibility that he is not guilty, you must give him
18 the benefit of the doubt and find him not guilty.

19 Reasonable doubt might arise from evidence in the
20 case, or it might arise from the lack of evidence in the
21 case. But you ladies and gentlemen have to determine
22 whether or not reasonable doubt exists as to the guilt of
23 these defendants, or either of them.

24 I charge you that a defendant is entitled to every
25 reasonable doubt which rises in the case. And so if on any

1 issue of fact which is necessary to a conviction and a
2 verdict of guilty you have a reasonable doubt as to how
3 that issue should be resolved, it is your duty to resolve
4 that reasonable doubt in favor of the defendant. Because
5 the defendant, as I have told you, ladies and gentlemen, is
6 never required to prove his innocence. But the state is
7 required in law to prove every essential element of the
8 offense charged against him by evidence that satisfies you,
9 as a jury, of the guilt of the defendant beyond a
10 reasonable doubt before you can convict the defendant and
11 find him guilty.

12 And I instruct you now and emphasize to you in that
13 regard that the fact that the defendants in this case did
14 not testify in their own behalf is not a factor to be
15 considered by you in any way in your deliberation and in
16 your consideration on the question of their guilt or
17 innocence. It must not be considered by you in any manner
18 whatsoever. It must not weigh against the defendant or the
19 defendants in any respect whatsoever because the defendants
20 have a constitutional right to remain silent. And if they
21 choose to assert that constitutional right, that fact
22 cannot and must not be considered by you in your
23 deliberation.

24 And so under your oath, then, you are to reach no
25 inference and draw no conclusion whatsoever from the fact

1 that these defendants did not themselves testify. That
2 fact should not even be discussed by you in the jury room
3 because the burden of proof, as I have said, is upon the
4 state. The defendants have no obligation to prove their
5 innocence, and the burden remains upon the state to prove
6 guilt beyond a reasonable doubt. And the fact that the
7 defendants did not testify is not a factor to be considered
8 by you in determining their guilt or their innocence.

9 And so if then upon the whole case, you have a
10 reasonable doubt as to the guilt or the innocence of the
11 defendants, each defendant is entitled to that reasonable
12 doubt. They would be entitled to an acquittal and a
13 verdict of not guilty. But, on the other hand, if upon the
14 whole case you find the state has proven by evidence that
15 satisfies you, as a jury, of the guilt of a defendant
16 beyond a reasonable doubt, then in such circumstances it is
17 equally your duty to convict that defendant and to find him
18 guilty.

19 During the trial, ladies and gentlemen, each of us,
20 you and I, have our certain duties to perform. As a trial
21 judge, it is my responsibility to preside over the trial of
22 this case. And I also have the responsibility to rule upon
23 or pass upon the admissibility of the evidence that has
24 been offered during the course of this trial. And so you
25 are to consider only the competent evidence before you.

1 That is the testimony from this witness stand, and the
2 items or exhibits that have been offered into evidence
3 during the course of this trial, and any stipulations that
4 have been made. You are to disabuse anything that I have
5 overruled in this case or that I have stricken from the
6 record in this case, if there's been anything during the
7 trial of this case.

8 I have the additional duty to charge you as to what
9 the applicable law is of the case, and that's what I'm
10 doing now. As the presiding judge, I'm made the sole judge
11 of the law, and you must accept the law as I state it to
12 you now to be the correct law. You may have brought with
13 you into your service as jurors this week some preconceived
14 ideas about what you think the law is. Or you might have
15 some decided preference about what you would like the law
16 to be. Well, I tell you now if your preconceived ideas
17 about the law, or of your preferences about the law
18 disagree with what I'm now telling you the law actually is,
19 under your oath you're to forget what you would like for
20 the law to be or you think the law is because you're bound
21 by that oath to accept the law precisely as I state it to
22 you now.

23 Now, in every case tried in this court before a jury,
24 as you know, you, the jury, become the sole and exclusive
25 judge of the facts of the case. You're the judge of the

1 fact; I'm the judge of the law. Our constitution has said
2 that as a trial judge, I can't comment upon the facts of
3 the case. I can't hint to you or intimate to you any
4 opinion that I might have about the facts of the case. I'm
5 not allowed an opinion under the law. And so you're not to
6 gather anything that I have said from anything that I have
7 said during the course of this trial, or anything that I am
8 saying to you now during the course of this charge that I
9 have an opinion about the facts of the case because that is
10 solely a matter for you to determine as jurors then. It is
11 your duty, as I have told you, to determine the effect and
12 the value and the weight and the truthfulness of the
13 evidence that has been offered during the course of this
14 trial.

15 Now, as you determine what the facts of the case are,
16 there are a lot of things that you can take into account.
17 You must first of all pass upon the credibility of the
18 witnesses who have testified during the trial of this case.
19 Credibility is just a legal word in this application that
20 means believability. You have to decide, then, the
21 believability of the witnesses. And you have to also
22 decide the effect and the value and the weight that you
23 will give to the testimony that they have offered.

24 Now, you don't make those decisions in a vacuum.
25 There are a lot of things you can take into account. You

1 can take into account the appearance, the matter of the
2 witness as he or she testified from the witness stand. We
3 sometimes call that the demeanor of the witness. You can
4 ask yourself what was the ability of that witness to know
5 the things that the witness was telling you about. You can
6 ask yourself did the witness have a cause or a reason or an
7 interest to be served by the testimony they were giving.
8 Was the testimony of a witness made stronger by other
9 evidence, or was it made weaker? Was the testimony of a
10 witness consistent, or was it inconsistent because as
11 jurors, ladies and gentlemen, you've got the right to
12 believe a small portion of the testimony of a single
13 witness and to disbelieve the larger portion of the
14 testimony of that same witness, or you can do it the other
15 way around. Believe the larger part, disbelieve the
16 smaller part. You can believe everything that a witness
17 tells you, or you can believe none of what a witness tells
18 you.

19 But what we ask you to do, ladies and gentlemen, is to
20 exercise your good common sense, your sound judgment, and
21 your experiences in life. And you apply those abilities
22 that each of you has that you have accumulated throughout
23 your lifetime of experiences. And you bring those to bear
24 on what you have seen and heard in this courtroom, and
25 using those things, you will be able to determine the truth

1 of this case. And once you have done that, you will apply
2 the truth that you find to the law that I am now giving
3 you. And those two things will come together to result in
4 a verdict which will speak the truth of this case.

5 I now want to instruct you as to the elements of the
6 offenses charged in these indictments. And I'll begin with
7 the charge on the first indictment that I read to you of
8 burglary in the first degree.

9 Under our law, and I cite the section for the record,
10 section 16-11-311. The law provides that a person is
11 guilty of burglary in the first degree if the person enters
12 a dwelling without the consent of the person in charge, and
13 with the intent to commit a crime in that dwelling. And
14 either when going into the dwelling, or while in the
15 dwelling, or while leaving the dwelling, either that person
16 or another participant in the crime is armed with a deadly
17 weapon. Or causes physical injury to person who is not a
18 participant in the crime. Or uses or threatens the use of
19 a dangerous instrument. Or displays what is or appears to
20 be a pistol or revolver or some other firearm.

21 Now, the elements that have to be proven are -- and
22 each of these has to be proven beyond a reasonable doubt
23 for the state to meet the burden that is upon it -- is,
24 first of all, that the person entered a dwelling. And
25 secondly, that the entering was without consent. And

1 thirdly, that they went in, or he went in with the intent
2 to commit a crime. Now, those are necessary elements, and
3 each of those three have to be proven as a threshold matter
4 before you even consider the fourth element which has to be
5 proven. And the fourth element can be proven in one of
6 several ways.

7 In addition to proving that the defendant entered a
8 dwelling, and without the consent of the person in charge,
9 and with the intent to commit a crime, the state must also
10 prove one of the following. That while going into that
11 dwelling or in the dwelling or leaving the dwelling, either
12 that person or another participant in the crime was armed
13 with a deadly weapon. Or that that person or another
14 participant in the crime caused physical injury to someone
15 who is not a participant in the crime. Or that that person
16 or another person who is a participant threatened the use
17 of a dangerous instrument. Or that that person or another
18 participant displayed what appeared to be a pistol or
19 revolver or some other firearm.

20 Now, while it is absolutely necessary that the state
21 prove the first of those three elements, each of them,
22 beyond a reasonable doubt, it does not have to prove all of
23 those other four sub elements that I gave to you. They
24 don't have to prove that the defendant or another
25 participant was armed with a deadly weapon, and caused

1 physical injury, and used or threatened a dangerous
2 instrument, and displayed what appeared to be a firearm.
3 It is sufficient if they prove at least one of those.

4 And so a defendant, then, being charged with
5 first-degree burglary, the state has to prove beyond a
6 reasonable doubt that the defendant entered a dwelling
7 without consent. And I tell you now that a dwelling is a
8 building or a portion of a building in which a person
9 sleeps. A residence, in other words, an apartment, those
10 are examples of dwellings in the eyes of the law.

11 Now, in order to prove that the defendant entered the
12 dwelling, the state does not have to prove that the
13 defendant's entire body entered the dwelling. The smallest
14 entry is sufficient. It may be any part of the body such
15 as a hand or a foot, or even an instrument such as a hook
16 or some other instrument. And in addition, the state does
17 not have to prove that force was used to gain entry because
18 if a person enters a dwelling by using deception or
19 artifice or trick or misrepresentation to get consent to
20 enter, that is an entry without consent.

21 Next, the state must prove beyond a reasonable doubt
22 that the defendant intended to commit a crime, either a
23 felony or a misdemeanor, at the time of the entry because
24 the mere entry into a dwelling without consent is not a
25 burglary. If intent to commit a crime is formed after the

1 entry, it is not burglary.

2 On the other hand, if the defendant intended to commit
3 a crime at the time of the entry, it is a burglary even if
4 the intent should be abandoned at some time after the
5 entry. And it doesn't matter whether the intended crime
6 was not completed. And so intent may be shown by acts of
7 the defendant and other circumstances from which you might
8 reasonably infer intent.

9 And finally, the state has to prove beyond a
10 reasonable doubt one of the following. That while
11 entering, or in the dwelling, or when fleeing, the
12 defendant or an accomplice was armed with a deadly weapon.
13 Or when entering the dwelling, or while in the dwelling, or
14 when fleeing, the defendant or an accomplice caused
15 physical injury to anyone not a participant in the crime.
16 Or while entering, or in the dwelling, or when fleeing, the
17 defendant or an accomplice threatened or used what appeared
18 to be a dangerous object. Or when entering, or while in
19 the dwelling, or when fleeing, the defendant or an
20 accomplice displayed what appeared to be a revolver,
21 pistol, or some other firearm.

22 Now, ladies and gentlemen, if the state is able to
23 meet all the elements of the offense of burglary as I have
24 just instructed you, then it has met its burden of proof.
25 If the state fails to meet any of the elements of the

1 offense that I have just charged you, then it has failed to
2 meet its burden of proof. And the defendant, either or
3 both of them, according to your view of the evidence, would
4 be entitled to a verdict of not guilty in that case.

5 Now, ladies and gentlemen, the defendants are also
6 charged with assault and battery with intent to kill. In
7 order to prove a defendant guilty of assault and battery
8 with intent to kill, the state has to prove beyond a
9 reasonable doubt that the defendant intentionally committed
10 an unlawful act of violent injury or a violent nature to
11 the person of another without just cause or excuse and with
12 malice aforethought. So, I want to define for you, first
13 of all, what we mean by assault, and what we mean by
14 battery, and what we mean by malice aforethought.

15 What is an assault? An assault occurs when a person
16 unlawfully attempts or offers to commit a violent injury to
17 somebody else when that person had the present ability to
18 carry it out and to complete the attempted injury. An
19 assault, in other words, is the intentional creation of a
20 reasonable fear of immediate bodily harm. It is not
21 necessary that the attempted injury or harm actually take
22 place.

23 For example, if someone were to walk up to another
24 person on the street and draw back his arm or his fist or a
25 stick, as if to strike that other person, and when he had

1 the present ability to carry it out, that person has
2 committed an assault on the other person. Even though he
3 didn't touch a hair on the person's head, by putting that
4 person intentionally in fear of reasonable bodily harm,
5 immediate bodily harm, that person has committed an
6 assault.

7 So, what is a battery? Well, the battery is the
8 completion of the assault. It is the unlawful touching of
9 that other person by one who commits the assault by a part
10 of the accused's body, or by some object the accused puts
11 in motion. So, the battery is the completion of the
12 assault by using or applying force to some other person,
13 however slight it might be, in a rude, angry, or resentful
14 manner without legal justification for doing that.

15 Using my earlier example, if a person walked up to
16 that individual in the street and actually carried out the
17 assault by striking the person with his fist or with a
18 stick or with some other object, that would be the battery,
19 assault and battery.

20 Now, in order to prove the defendants guilty of
21 assault and battery with intent to kill, they have to
22 prove, the state has to prove that the assault and the
23 battery were accompanied with malice aforethought. And so
24 what do we mean by malice aforethought? Malice means a
25 hatred. It is an ill will. It is a hostility toward

1 somebody else. It is the intentional doing of a wrongful
2 act without just cause or excuse and with an intent to
3 inflict an injury, or under circumstances that the law
4 would infer an evil intent.

5 Malice aforethought does not require that malice exist
6 for any particular length of time before the act is
7 committed. But malice must exist in the mind of the
8 defendant just before and at the time the act is committed.
9 And, therefore, there must be a combination of the previous
10 evil intent and the act itself.

11 Malice aforethought can be expressed, or it might be
12 inferred. That doesn't mean that there are two types of
13 malice. It just means that malice can be shown in more
14 than one way. That is either by direct evidence or by
15 inference from the facts and circumstances which are
16 proven.

17 Expressed malice is shown when a person speaks words
18 which express hatred or ill will for another, or when the
19 person prepared beforehand to do the act which was later
20 accomplished. For example, lying in wait for someone, or
21 doing any other acts in preparation to show that the deed
22 was within the defendant's mind, that would be expressed
23 malice.

24 Now, malice may be inferred from the conduct of a
25 person if that conduct shows a total disregard for human

1 life. Inferred malice may arise when the deed is done with
2 a deadly weapon. A deadly weapon is any article or
3 instrument which is likely to cause death or bodily harm
4 when the conduct in connection with that bodily -- with
5 that deadly weapon shows a heart fatally bent on mischief
6 and totally disregarding any social consequence.

7 And so if facts are proven beyond a reasonable doubt
8 sufficient to raise an inference of malice to your
9 satisfaction, that inference would simply be an evidentiary
10 fact. And you would take it into account with all the
11 other evidence in the case and give it the weight that you
12 decide it should receive.

13 I tell you that a specific intent to kill is not an
14 element of assault and battery with intent to kill, but
15 there has to be a general intent to commit serious bodily
16 injury. Now, intent means obviously intending the result
17 which actually occurs. In other words, it's something
18 which is not accidentally or involuntarily done. An intent
19 can be shown by acts and conduct of the defendant and other
20 circumstances from which you may naturally or reasonably
21 infer intent.

22 For example, evidence of the character of the assault,
23 the character of the instrument used, the manner in which
24 it was used, the purpose to be accomplished, and the
25 resulting wounds or injuries may be considered in

1 determining the intent with which the assault was
2 committed. And it can be inferred when it is demonstrated
3 that the defendant voluntarily and willfully commits an
4 act, the natural tendency of which is to take somebody
5 else's life.

6 I tell you again that that inference, like all
7 inferences, are simply evidentiary facts, matters to be
8 taken into account and given the weight that you think they
9 should receive according to your view of the evidence.

10 Now, ladies and gentlemen, included within the greater
11 crime of assault and battery with intent to kill is a
12 lesser-included crime of assault and battery of a high and
13 aggravated nature. That is not a part of the indictment,
14 but by operation of law, the greater charge of assault and
15 battery with intent to kill carries with it the lesser
16 charge of assault and battery of a high and aggravated
17 nature.

18 So, what are the elements of that offense? Well,
19 assault and battery is exactly the same in assault and
20 battery of a high and aggravated nature as it is in assault
21 and battery with intent to kill. That definition does not
22 change. But instead of the malice requirement, assault and
23 battery of a high and aggravated nature must be accompanied
24 by circumstances of aggravation.

25 Now, so in order to prove someone guilty of assault

1 and battery of a high and aggravated nature, the state has
2 to prove, first of all, that the defendant committed an
3 assault and a battery, and that it did so under
4 circumstances of aggravation.

5 And so what are examples of circumstances of
6 aggravation that the law recognizes? Circumstances of
7 aggravation include the use of a deadly weapon, the intent
8 to commit a felony, the infliction of serious bodily
9 injury, any great disparity between ages and physical
10 conditions of the parties. These are only examples of
11 circumstances of aggravation, and I offer them to you only
12 as examples of those circumstances of aggravation to aid
13 you in your consideration in that regard.

14 I remind you that the burden of proof is on the state
15 to prove the elements of any offense charged beyond a
16 reasonable doubt before a defendant can be convicted of
17 that particular offense.

18 Now, ladies and gentlemen, next the defendants are
19 charged with possession of a weapon during the commission
20 of a violent crime. Section 16-23-390 makes it illegal to
21 possess a firearm or display what appears to be a firearm
22 during the commission of a violent crime. I tell you,
23 ladies and gentlemen, that under our law, among others,
24 violent crimes are assault and battery with intent to kill
25 and burglary in the first degree.

1 In other words, then, for the state to meet its burden
2 of proof of convicting either or both of these defendants
3 of possessing a firearm during the commission of a violent
4 crime, first of all, the defendant has to be convicted of a
5 violent crime. In this particular case, that is either
6 burglary in the first degree, or assault and battery
7 assault with intent to kill. And secondly, that person
8 must be shown by the state beyond a reasonable doubt to
9 have possessed or did display what appears to be a firearm
10 during the commission of that violent crime. Those are the
11 two elements of that particular offense.

12 And the final charge in the indictment are possession
13 of a handgun by a prohibited person. It is unlawful under
14 our law for a person to possess a handgun if that person
15 has been convicted of a crime of violence in any court in
16 the United States. There are two elements of that offense.
17 First of all, that a defendant was in possession of a
18 handgun. And secondly, that that defendant had a
19 conviction for a crime of violence.

20 Now, ladies and gentlemen, in this particular case the
21 state has offered testimony of one of its witnesses that
22 the defendants both had records for crimes of violence. I
23 tell you that you may consider that evidence, if you
24 believe it to be true, for a limited purpose and for a
25 limited purpose only. And that limited purpose is to

1 determine whether or not the element of this particular
2 offense has been proven beyond a reasonable doubt. You may
3 not consider a record of a prior conviction of a crime of
4 violence by either or both of these defendants as evidence
5 that they committed the other offenses charged in this
6 particular case. You may consider it only for the limited
7 purposes which I have just instructed you.

8 Now, ladies and gentlemen, criminal intent is always a
9 necessary element of each crime that has to be proven by
10 the state beyond a reasonable doubt. And criminal intent
11 is always a matter that has to be determined by you as a
12 jury from the surrounding circumstances. You'd probably
13 just rather I just let my voice run out and have to stop at
14 this point, but I couldn't take the chance.

15 Criminal intent, then, is a matter that has to be
16 shown from the circumstances surrounding a situation
17 because there's no way to prove intent to a mathematical
18 certainty. There's no way that medical science can let us
19 dissect a person's brain and look there and figure out what
20 that person had in mind. So, the law says that criminal
21 intent may be inferred from the circumstances which were
22 shown to have existed at the time. And that's how you, as
23 a jury, make the determination as to whether or not the
24 element requiring intent was present because criminal
25 intent is a state of mind. And it operates jointly with an

1 act in the commission of a crime.

2 It is a mental state. It is a conscious wrongdoing,
3 and so it's up to you, as a jury, to determine what the
4 defendant intended to do based on the circumstances shown
5 to have existed. And I tell you that the state has to
6 prove criminal intent beyond a reasonable doubt, just as it
7 has to prove each and every other element of the offenses
8 charged, as I've explained that to you.

9 I tell you, ladies and gentlemen, that when two or
10 more persons aid or encourage or abet each other in the
11 commission of a crime, all who are present are principals
12 and are equally guilty. Where two or more persons combine
13 together to commit a crime and the crime is committed, all
14 those who are present to aid and abet and assist each other
15 in the commission of that crime are guilty. The act of one
16 becomes the act of all; the hand of one becomes the hand of
17 all. It makes no difference by whose immediate agency
18 crime is carried out. All are principals.

19 I tell you, however, that mere presence at the scene
20 of the crime, even with knowledge of the commission of a
21 crime, but without an intent to aid or abet or assist in
22 its commission would not constitute guilt. And so the
23 burden is on the state to establish beyond a reasonable
24 doubt that the defendants, that each of them were present,
25 and that they were there with a criminal intent. And that

1 is to say with the aid -- with the intent to aid or
2 encourage or abet each other in committing the offenses
3 charged in this instance.

4 One of the issues in this case is the identification
5 of the defendants as the perpetrators of the crime, and the
6 prosecution has the burden of proving identity beyond a
7 reasonable doubt. And you, the jury, must determine
8 whether the state has established the identity of a
9 defendant beyond a reasonable doubt. If you're not
10 convinced beyond a reasonable doubt that the defendant was
11 the person who committed the crime, then obviously you
12 would find the defendant not guilty.

13 And you have to consider the credibility of each
14 identification witness in the same way that you would any
15 other witness. And you should consider the capacity and
16 the opportunity of that witness to make a reliable
17 observation on the matter covered in their testimony. And
18 if after considering the testimony you have a reasonable
19 doubt as to the accuracy of the identification, you must
20 find the defendant not guilty.

21 Now, ladies and gentlemen, the state has the burden of
22 proof, as I have told you, and the state seeks to make that
23 burden of proof by offering -- to meet that burden of
24 proof, I should say, by offering two types of evidence.
25 One is direct evidence, and the other is circumstantial

1 evidence.

2 Now, direct evidence is the testimony of a person who
3 asserts or claims to have actual knowledge of a fact such
4 as an eyewitness. That's a person who comes in here and
5 says I saw this happen, or I heard this being said and
6 tells you that. That's direct evidence.

7 Now, circumstantial evidence is proof of a chain of
8 facts and circumstances which indicates the existence of
9 another fact. An example that I give, a rather innocuous
10 example that I give probably in the Lowcountry South
11 Carolina is not real apropos, but it has to do with a
12 winter scene. If you can imagine a cold winter February
13 and before you go to bed, you look out across your lawn,
14 and you see the brown, dead grass of winter. You get up
15 the next morning and you see that your lawn is covered with
16 snow, and in the snow you see footprints that come up to
17 your door. And so what can you conclude from that
18 circumstantial evidence that you observe the next morning?
19 Well, the first thing you know is that some time after you
20 went to bed, it snowed. You didn't see a single flake
21 fall, but you knew that it's so. And the next thing that
22 you can conclude by circumstantial evidence is that after
23 it snowed, somebody came up to your front door. You don't
24 know who it was; you didn't see them, but you know that
25 they were there. That's circumstantial evidence.

1 Now, ladies and gentlemen, the law doesn't make any
2 distinction between the weight or value to be given to
3 either direct or circumstantial evidence, and it doesn't
4 require a greater degree of certainty of circumstantial
5 evidence than it does of direct evidence. And you should
6 weigh all the evidence in this case. And after weighing
7 all the evidence, if you're not convinced of the guilt of
8 the defendant beyond a reasonable doubt, you must find the
9 defendant not guilty.

10 Now, ladies and gentlemen, there has been admitted
11 into the record of this case statement or statements
12 alleged to have been made by the defendants in this case.
13 And before you can consider these statements as evidence
14 for any purpose, you must first consider whether or not
15 four questions have been satisfied. You first have to ask
16 yourself did the defendant make a statement. And secondly,
17 you have to ask was the defendant warned of advised of his
18 constitutional rights. And thirdly, you have to ask did
19 the defendant knowingly and intelligently waive those
20 rights. And finally, you have to ask yourself was the
21 statement given voluntarily.

22 Now, the fact that I have admitted into evidence
23 through the testimony of witnesses in this case statements
24 should not be considered by you as evidence that the
25 defendant made the statement; or that the constitutional

1 safeguards were, in fact, given and waived; or that the
2 statement was voluntarily given because those are issues
3 that you, ladies and gentlemen, have to determine. And the
4 state has to prove beyond a reasonable doubt each of those
5 four essentials or the four requirements which I have just
6 stated to you before you can consider the statement as
7 evidence for any purpose whatsoever.

8 First of all as to the first requirement, did the
9 defendant make the statement. Well, obviously if you
10 conclude that the defendant didn't make the statement, then
11 you don't go any further; you totally and completely
12 disregard the statement. But if you conclude that the
13 defendant did make the statement, then you go to the next
14 step, and that is was the defendant warned of his
15 constitutional rights. Because under our law, when a
16 person is in custody or deprived of his freedom and by a
17 law enforcement officer, he has to be warned of his
18 constitutional safeguards before any questions can be
19 asked.

20 He must be told that he has a right to remain silent.
21 That any statement that he does make can and will be used
22 against him in a court of law. That he has a right to
23 select a lawyer of his own choice and if he cannot afford
24 one, one will be appointed to represent him without cost.
25 That he has a right to consult with a lawyer before he

1 makes a statement. And that he has a right to have his
2 lawyer present with him during all interviews.

3 Now, if you determine these warnings were not given
4 before any statement was made, before the questions were
5 asked, or that he was not given the chance to exercise
6 those rights, then you would disregard the statement, and
7 you could not consider it in any way whatsoever.

8 But if you find that he did make the statement, and
9 that his warnings were given to him, and that he had a
10 right to exercise -- had the opportunity to exercise those
11 rights, then you would ask yourself did he knowingly and
12 intelligently waive those rights.

13 Therefore, you must determine if the other elements
14 have been proven, that he gave up the constitutional right
15 to remain silent, and the right to an attorney and the
16 other rights which I've just explained to you because if
17 you find that he did not knowingly and intelligently waive
18 those rights, then any statements which he gave cannot be
19 used against him.

20 But if you find that he was given his rights, that he
21 did make the statement, that he had a right to exercise
22 those rights and chose to waive them, then you would
23 finally ask yourself was the statement given voluntarily.
24 That means was it the expression of his own free will.
25 That it was not induced by some pressure, by some threats,

1 by some promises, by some hope of reward or coercion or
2 intimidation because a statement is not voluntary and can't
3 be used against someone if it is a product of an
4 essentially constrained mind, or comes as a result of some
5 coercion.

6 But if the statement is voluntarily and of his will to
7 make it, it can be used against him. If it is not
8 voluntary, it cannot be used against him. And when you
9 decide whether it's voluntary or not, you can consider all
10 of the facts and circumstances surrounding the making or
11 the taking of the statement regarding its voluntary nature.

12 Now, ladies and gentlemen, I tell you that the state
13 has to prove by evidence each and every requirement about
14 which I just instructed you before you can consider a
15 statement for any purpose whatsoever. I tell you in
16 addition to that that a statement which is allegedly given
17 by one defendant, even if it is voluntarily made, may not
18 be considered as evidence against his co-defendant for any
19 purpose whatsoever. It can only be used against the person
20 who made it because in this particular case, as you know,
21 there are two defendants and there are four separate
22 charges. And you must consider each charge separately, and
23 you must decide separately whether each individual
24 defendant is guilty or not guilty of each charge alleged in
25 these indictments. It is your duty, then, to give separate

1 consideration to each individual defendant on each separate
2 charge alleged in the indictments.

3 In other words, you may, if the evidence warrants it,
4 find each individual defendant guilty or not guilty on each
5 charge alleged in the indictment. Your verdict does not
6 have to be the same as to each defendant or as to each
7 charge. That is to say where two persons are charged with
8 crimes, if the evidence warrants it, you may convict all of
9 the defendants or acquit all of the defendants on any or
10 all of the charges contained because you will be asked to
11 write a separate verdict on each defendant and as to each
12 charge.

13 Now, finally, ladies and gentlemen -- that's a word
14 you've been hanging on to for a while, finally. Finally,
15 let me tell you that you don't serve as jurors in this or
16 in any case as partisans or advocates for the state of
17 South Carolina or for these defendants. You don't serve as
18 jurors to publish your enemies, nor to reward your friends.
19 You have been chosen by both the state of South Carolina
20 and these defendants to be fair and impartial jurors. It
21 is your duty, then, by your joint deliberations to
22 determine the truth of this case, giving to the defendants
23 the benefit of every reasonable doubt on each and every
24 issue. And then to the facts which you find to be true,
25 applying the law which I have just given you, and thus

1 arriving at a verdict which speaks the truth of this case.
2 That's what the word verdict means. It comes from the
3 Latin saying that means a truthful saying.

4 And once you've done that, you will have satisfied the
5 oath that you took a long time ago before you began your
6 service as jurors in this case to well and truly try this
7 case, and to render a true verdict according to the
8 evidence and the law so help you God. We have a right to
9 expect that you will do just that, and that you will do
10 nothing less than that.

11 Now, I'm going to give the forms of the verdict now to
12 the foreman because he's the one that has to fill them out.
13 There are two separate verdict forms: one as to defendant
14 Lucius Simuel, and it's indicated by his name here at the
15 top; and the other as to the defendant Demetrius Price,
16 indicated by the name at the top. Other than the
17 difference in the names and the indictment numbers, their
18 verdict forms are exactly the same, and I'll review those
19 with you now.

20 The first choice of verdicts as to each of these two
21 defendants deals with the crime of burglary in the first
22 degree. - There only two possible verdicts in that
23 particular case as to that particular indictment: we, the
24 jury, find the defendant guilty if the state has met its
25 burden of proof as to each of the elements of the offense

1 as I have instructed you; or not guilty if the state fails
2 to meet its burden of proof as to any of those elements in
3 the charge.

4 The second form of the verdict speaks to the charge of
5 assault and battery with intent to kill. There are three
6 possible verdict forms for you to select among in this
7 particular case. The first is: We find the defendant
8 guilty of assault and battery with intent to kill. If the
9 state has met its burden of proof in regard to the elements
10 of that charge, your verdict would be guilty.

11 If you find the state has failed to meet its burden of
12 proof as to the elements of assault and battery with intent
13 to kill, then you would consider the lesser-included charge
14 of assault and battery of a high and aggravated nature. If
15 the state meets its burden of proof as to the elements of
16 that particular offense, your verdict would be guilty. If
17 the state has failed to meet its burden of proof as to that
18 offense or the greater offense charged, your verdict would
19 be not guilty.

20 The third possible verdict form speaks to the
21 possession of a weapon during the commission of a violent
22 crime. Once again, there are only two possible verdict
23 forms: we find the defendant guilty, or we find the
24 defendant not guilty, depending upon whether or not the
25 state has met its burden of proof.

1 And finally, there is a charge of possession of a
2 handgun by a prohibited person. Once again: we find the
3 defendant guilty, if the state meets its burden of proof;
4 we find the defendant not guilty, if the state fails to
5 meet its burden of proof.

6 I remind you again that you consider these charges and
7 these individuals each separate from the other because, as
8 you have seen, you will write a separate verdict as to each
9 charge and to each defendant. And your decision on one
10 charge and one defendant does not necessarily control your
11 charge on another.

12 Now, whatever the verdict is, it has to be unanimous.
13 I have given the verdict form to the foreperson because
14 he's the one that's got to fill it out, but obviously it
15 would not be his verdict alone. The verdict has to be
16 unanimous; all twelve of you have to agree as to what the
17 verdict shall be.

18 And, Mr. Foreman, you're not authorized to write the
19 verdict, nor to sign the form until all twelve of your
20 number have agreed as to what the verdict should be.

21 I'm going to send -- excuse me -- I'm going to send
22 you to your jury room right now, but I ask you to wait just
23 a few moments before you begin your deliberations. As hard
24 as you might find it to believe, in the time I've been
25 talking to you, I could have left something out, or I may

1 have misstated something. And if I have, I'll bring you
2 out to correct it. But if I do not have to bring you back
3 out, we will send in the items of evidence. Once the items
4 of evidence have been delivered, then that that will be
5 your signal to begin your deliberations. Please not begin
6 until then.

7 And once you have begun your deliberations, you will
8 deliberate until you've reached a verdict. At which time,
9 Mr. Foreman, you will fill out that verdict form or those
10 verdict forms, sign them and knock on the door and advise
11 the bailiff, and we'll bring you out to receive the
12 verdict.

13 If during the course of your deliberations you have a
14 question that you would like for us to try to answer -- and
15 I emphasize the fact try to answer -- you have to write
16 that down. Knock on the door, give it to the bailiff.
17 I'll discuss it with the lawyers first, and then we'll
18 bring you out to deal with that question.

19 Your lunch is probably already there. It will be
20 there momentarily. You can deliberate while you eat if you
21 want to. Or if you want to eat and not deliberate, that's
22 up to you. As I told you yesterday, you've been on our
23 clock all week. In just a few minutes, we're going to be
24 on yours. You take whatever time you need to reach
25 decisions that you're being required to reach in this

1 regard.

2 Retire to your jury room right now, Mr. Foreman,
3 ladies and gentlemen. Please don't discuss this case among
4 yourselves until we send in the items of evidence.

5 And, Ms. Moore and Mr. Carr, if you'll stay right
6 where you are, please.

7 (THE JURY EXITS AT 12:32 P.M.)

8 THE COURT: Mr. Robinson, other than previously noted,
9 are there any exceptions or requests for additional charge
10 from the state?

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

12 THE COURT: Thank you.

13 Mr. Deysach, other than previously noted, are there
14 any exceptions or requests for additional charge from Mr.
15 Simuel?

16 MR. DEYSACH: Nothing new, Your Honor. Just the same
17 old ones that have already been stated. Thanks.

18 THE COURT: Thank you.

19 Mr. Geier, other than previously noted, are there any
20 exceptions or requests for additional charge from the
21 defendant Price?

22 MR. GEIER: No, Your Honor.

23 THE COURT: Thank you.

24 All right, folks, if you all would review the evidence
25 and make sure it's all together, and tell the bailiff at

1 that time, we'll turn them lose.

2 (ATTORNEYS REVIEW EVIDENCE WITH THE COURT REPORTER.)

3 (THE COURT DISMISSES THE ALTERNATES.)

4 (JURY DELIBERATIONS BEGIN AT 12:35 P.M.)

5 THE COURT: All right, folks, we will stand at ease
6 until we hear from the jury.

7 (OFF THE RECORD.)

8 THE COURT: Please be seated. Folks, I've received
9 another request from the jury: Your Honor, please give us a
10 written summary of the conditions for ABWIK.

11 I will charge them again as I have done before on
12 ABWIK as well as ABHAN. I know they haven't asked for
13 ABHAN, but their inquiry into ABWIK does not end the
14 inquiry. Depending upon the decision with regard to that,
15 they could well, under my instructions, then be required to
16 examine the evidence in regard to the lesser-included
17 charge. So, I'll give them both. I'll simply recharge
18 what I did before.

19 And then when we finish this and send them back, if
20 you want to try to work in that plea sometime.

21 MR. ROBINSON: We're ready any time, Your Honor.

22 THE COURT: Okay, since we're all back out here.

23 All right, bring us the jury, please.

24 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
25 NUMBER 9.)

1 (A PAUSE.)

2 THE COURT: They've got another question, folks. They
3 want to send them all out at the same time.

4 BAILIFF: I'll bring -- Your Honor, may I bring the
5 jury with the question?

6 THE COURT: If you'll bring the question first.

7 BAILIFF: Yes, sir.

8 THE COURT: I need to talk with the lawyers about it
9 first.

10 (A PAUSE.)

11 THE COURT: The next question:

12 The hand of one becomes the hand of all.
13 Please clarify what this means. Does it
14 apply to all four counts against the
15 defendants?

16 Specifically, it would not apply, in my view, to
17 counts 3 and 4. What do you say to that, Mr. Robinson?

18 MR. ROBINSON: The state agrees. The hand of one is
19 the hand of all applies only for the burglary first and the
20 ABWIK charges on each defendant.

21 THE COURT: All right. All right, I will recharge
22 them on that and clear that up, okay?

23 Okay, that's Court's Exhibit Number?

24 COURT REPORTER: 10.

25 THE COURT: 10. I've got more than you all have got.

1 (JURY NOTE MARKED INTO EVIDENCE AS COURT'S EXHIBIT
2 NUMBER 10.)

3 THE COURT: All right, any exceptions, gentlemen,
4 before I bring the jury out to deal with those two issues?
5 Mr. Deysach?

6 MR. DEYSACH: Thank you very much, Your Honor. That
7 second question, what does it mean as part of what they
8 say, the hand of one is the hand of all. What does this
9 mean, does it apply to all charges I think was the
10 substance of the note, the note. You just answered the
11 question. Does it apply to all charges, what does it mean.
12 I assume that you are going to read the hand of one, hand
13 of all part again?

14 THE COURT: Exactly.

15 MR. DEYSACH: Of course the place that I want there to
16 be less confusion with the jury is that part of your
17 instruction that says for the crime charged. And I'm
18 afraid that, that -- I just want to make sure that that's
19 included and made clear to the jury.

20 THE COURT: I understand, just the valid part.

21 Okay, bring us the jury, please, sir.

22 (THE JURY ENTERS AT 1:49 P.M.)

23 THE COURT: Ladies and gentlemen, I have your
24 questions, and I am able to answer these questions, I hope.
25 We will see momentarily whether sufficiently.

1 You've asked to give you a written summary of the
2 conditions for assault and battery with intent to kill.
3 I'm not allowed to send the charges in as such in printed
4 form. In our script, our charges have certain alternative
5 parenthetical statements in them. They have citations of
6 law which are below them and things of that nature so that
7 we don't have anything clean to submit to you. So, I must
8 give those to you again.

9 And we'll just focus on assault and battery with
10 intent to kill first. And because your decision in that
11 particular instance may not necessarily end your inquiry, I
12 will charge you briefly on the lesser included of assault
13 and battery of a high and aggravated nature.

14 I remind you that assault and battery with intent to
15 kill requires proof beyond a reasonable doubt that the
16 defendant intentionally committed an unlawful act of a
17 violent nature to somebody else without just cause or
18 excuse and with malice aforethought.

19 I take it that I do not need to belabor the definition
20 of assault, which is the threat to do bodily harm, and
21 battery, which the actual carrying out of that. And so I
22 will skip over that and get to the requirement of malice
23 aforethought.

24 Malice is a hatred. It is an ill will. It is a
25 hostility toward somebody else. It is the intentional

1 doing of a wrongful act without just cause or excuse, and
2 with an intent to inflict injury, or under such
3 circumstances that the law would infer an evil intent.

4 Malice aforethought does not require that malice exist
5 for any particular length of time before the act is
6 committed, but malice must exist in the mind of the
7 defendant just before and at the time the act is committed.
8 And, therefore, there has to be a combination of a previous
9 evil intent and the act itself.

10 Malice aforethought can be expressed, or it might be
11 inferred. There are not two types of malice, but expressed
12 and inferred simply means there are more, is more than one
13 way in which malice may be shown to exist. That is by
14 direct evidence or by inference from the facts and
15 circumstances which are proved.

16 So, expressed malice, as I told you earlier, is when a
17 person speaks words which express a hatred or an ill will.
18 Threats, for example, are an example. Or when the person
19 made preparations beforehand to do the act which was later
20 accomplished. For example, lying in wait, performing some
21 other acts of preparation which show that the deed was in
22 the defendant's mind at the time, that would be expressed
23 malice.

24 Malice can be inferred from conduct which shows a
25 total disregard for human life. Inferred malice can arise

1 when the deed is done with a deadly weapon. A deadly
2 weapon obviously is any article or instrument which is
3 likely to cause death or bodily harm.

4 And so if facts are proven beyond a reasonable doubt
5 sufficient to raise an inference of malice to your
6 satisfaction, that's an inference that is simply an
7 evidentiary fact. And you can consider that, along with
8 all of the other evidence in the case, and give it the
9 weight that you think it should receive.

10 I tell you that a specific intent to kill is not an
11 element of assault and battery with intent to kill, but
12 there has to be a general intent to commit serious bodily
13 injury. And intent means intending to do the result. It's
14 something that's not done accidentally, not involuntarily.

15 An intent can be shown by acts and conduct of the
16 defendant and from other circumstances from which you might
17 naturally and reasonably infer intent. For example, the
18 evidence of the character of the assault, the character of
19 the instrument used, the manner in which it was used, the
20 purpose to be accomplished, and the resulting wounds or
21 injuries may be considered in determining the intent with
22 which the assault was committed.

23 An intent can be inferred when it is demonstrated that
24 the defendant acted voluntarily and willfully in committing
25 an act, the natural tendency of which is to destroy

1 another's life.

2 I remind you again that any inference which is
3 submitted or you may draw from the evidence presented
4 simply creates an evidentiary issue for you to determine.
5 And you give the weight that you think it is entitled to
6 receive according to your view of the evidence.

7 Now, as I indicated to you, assault and battery of a
8 high and aggravated nature is a lesser-included offense of
9 assault and battery with intent to kill. It still requires
10 the element of the assault and of the battery. But it also
11 carries with it, in addition to the assault and battery,
12 some circumstance of aggravation such as the use of a
13 deadly weapon, or the intent to commit a felony, or the
14 infliction of serious bodily injury, or the great disparity
15 between ages or physical conditions of the parties, and
16 things of that nature. Those are examples of aggravation
17 which, if accompanied by the assault and the battery and
18 proven beyond a reasonable doubt, could meet the state's
19 burden in connection with that particular charge.

20 Without creating a dialogue which is somewhat
21 problematic, and obviously I know it would be a wonderful
22 situation if we could just talk back and forth among
23 ourselves, but unfortunately our rules don't allow that.
24 But have I seemed to touch on some issues that you all had
25 questions about in those instructions, ladies and

1 gentlemen? Is there anything that I have told you that I
2 need to try to clarify, try to do some other way?

3 (THERE IS NO AUDIBLE RESPONSE BY THE JURY.)

4 THE COURT: All right, you next have asked about the
5 hand of one becoming the hand of all:

6 Please clarify what it means, and does it
7 apply to all four counts charged against
8 defendants?

9 That's a valid question, and I should have made that
10 clearer, frankly, when I charged you initially.

11 And so I tell you, ladies and gentlemen, once again
12 that when two or more people aid, encourage, and abet each
13 other in the commission of a crime, all who are present are
14 principals and equally guilty. Where two or more persons
15 combine together to commit a crime and the crime is
16 committed, all of those who are present to aid and abet and
17 assist in the commission of that crime are guilty. The act
18 of one becomes the act of all; the hand of one becomes the
19 hand of all. It doesn't make any difference by whose
20 immediate agency the crime is committed. All are
21 principals.

22 But at this point in time, let me tell you that this,
23 the hand of one and the hand of all, only applies to the
24 crime of burglary in the first degree, and assault and
25 battery with intent to kill, or assault and battery of a

1 high and aggravated nature. It does not apply to the two
2 weapons charges because those are individual charges
3 against each individual defendant in this regard. The hand
4 of one, the hand of all does not apply to possession of a
5 weapon during the commission of a violent crime, or the
6 possession of a handgun by a prohibited person.

7 However, the hand of one and the hand of all as I am
8 instructing you now does apply, if you find it to exist, to
9 the charge of burglary in the first degree, and assault and
10 battery with intent to kill, and of a high and aggravated
11 nature.

12 So, it makes no difference by whose immediate agency
13 the crime is committed. All are principals. However, mere
14 presence at the scene of a crime, even with knowledge of
15 the commission of the crime, but without an intent to abet
16 or assist in its commission, does not constitute guilt.
17 And so the burden is upon the state to establish beyond a
18 reasonable doubt that the defendants, that each of them
19 were there present, and that they were there with a
20 criminal intent. That is to say with the intent to aid,
21 encourage, and abet one another in committing the offenses
22 of assault and battery with intent to kill, or assault and
23 battery of a high and aggravated nature, and burglary in
24 the first degree.

25 Does that address your concerns in regard to that?

1 (THERE IS NO AUDIBLE RESPONSE BY THE JURY.)

2 THE COURT: All right, thank you, folks. If you will
3 continue deliberating, and let us know if we can try to
4 help you further. Thank you.

5 (THE JURY EXITS AT 1:58 P.M.)

6 THE COURT: Mr. Robinson, any exceptions or requests
7 for additional remarks in connection with those things?

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

9 THE COURT: Thank you.

10 Mr. Deysach for Mr. Simuel?

11 MR. DEYSACH: I, while hearing your explanation,
12 thought that another -- I know it might be repetition or
13 redundant about the instruction you give them that they are
14 two separate defendants and deserve consideration
15 separately on each charge. I thought that when the hand of
16 one, hand of all stuff started getting broached, that maybe
17 some of those instructions as to that had gotten a little
18 pushed aside.

19 THE COURT: Could you be more specific? What would,
20 what ---

21 MR. DEYSACH: I think your -- you have an instruction
22 toward the end that said you are to consider each defendant
23 and each charge separately, something along those lines.

24 THE COURT: In connection with the gun charges, that's
25 right.

1 MR. DEYSACH: That's what you just instructed.

2 THE COURT: Right.

3 MR. DEYSACH: The first set of instructions, and I
4 asked, I guess, for something even before, right when the
5 initial instructions, before we even started the evidence
6 was letting the jury know -- of course I'm going to, I
7 guess, telegraph what my concern is. And that is that they
8 paint both defendants with the same brush. And I want to
9 make sure that that doesn't happen, so we have an
10 instruction that kind of keeps that from happening.

11 THE COURT: Right. I have -- I think that they have
12 been thoroughly instructed in that regard prior to the
13 trial of this case, during the preliminary instructions,
14 during my final charge. I charged them that independently.
15 And when I gave them the verdict form to go over with them,
16 I emphasized that yet again. They've heard three times
17 already. I don't think they're likely to stray in that
18 regard. I'll note your exception in that regard but
19 respectfully decline.

20 Mr. Geier?

21 MR. GEIER: Yes, Your Honor. I just wanted to ensure
22 that your instruction on the ABWIK didn't include the
23 language that was excluded by *State vs. Belcher*.

24 THE COURT: Well, it did to some extent because the
25 facts in *State vs. Belcher* I don't think are applicable

1 here. *State vs. Belcher* is limited to those situations
2 involving self-defense, things that nature. However, I did
3 in my instruction emphasize that the defendant
4 intentionally commits an act, which were concerns that were
5 laid out in the *Belcher* case obviously, the *Belcher*
6 instructions.

7 (A PAUSE.)

8 THE COURT: *State vs. Belcher* is B-E-L-C-H-E-R, Madame
9 Reporter.

10 It's stated several times throughout the opinion that
11 most of the time, as in *Belcher*, the concern is is someone
12 acted in self-defense or in such another way that might
13 tend to mitigate their conduct:

14 Today we return to the rationale underlying
15 Hopkins, Lavell, and Jackson and hold that
16 where evidence is presented that would
17 reduce, mitigate, excuse, or justify a
18 homicide or assault and battery with intent
19 to kill caused by the use of a deadly
20 weapon, juries shall not be charged that
21 malice may be inferred from the use of a
22 deadly weapon. The permissive inference
23 charge concerning the use of a deadly weapon
24 remains a correct statement of law where the
25 only issue presented to the jury is whether

1 the defendant has committed murder or
2 assault and battery with intent to kill.

3 And so in this particular case, I have ruled, of
4 course over you all's objection, that the self-defense
5 charge does not apply in this regard. Now, if I'm wrong on
6 that, then I'm wrong on several other levels, and I'm
7 certainly wrong in charging as I have just done.

8 But under the circumstances of that, and given the
9 fact that I have found that self-defense does not lie in
10 this particular case, I don't think that I have
11 transgressed the *Belcher* mandate.

12 I realize that you all have argued within your
13 argument something that would try to indicate the
14 mitigation of the action. And, frankly, it was that reason
15 that I went back to my charge after I told you what I was
16 going to do and added the preliminary words about
17 intentionally committing an unlawful act of violent nature
18 without just cause or excuse. That's part of the
19 rationale, as I've said, expressed in the *Belcher* case.
20 And I put that in there, although I don't think to comply
21 with *Belcher*. But at least to sort of comport with the
22 arguments that you had given, and to give the jury, let the
23 jury know that in any event, *Belcher* notwithstanding, self-
24 defense or lack of it notwithstanding, that the unlawful
25 act has to be an intentional one, and it has to be without

1 just cause or excuse.

2 And, of course, throughout the charge, that is
3 repeated when I'm talking about specific intent. Intent
4 means intending the result which occurs. It's not
5 accidental and so forth.

6 Let's see, and there's somewhere else in there that I
7 have emphasized that. Yes, the intentional creation of --
8 no, that's not it. Excuse me. Yes, the intentional doing
9 of a wrongful act without just cause or excuse is a part of
10 the definition for malice.

11 So, I think that I have accurately conveyed that part
12 to the jury, which I think they needed to know in any
13 event. But I don't think that I needed to go any deeper
14 into *Belcher* than I did. I note that your exception, Mr.
15 Geier, in that regard.

16 MR. GEIER: Thank you, Your Honor.

17 MR. DEYSACH: I'll associate myself with that
18 objection. I'd like to get on board.

19 THE COURT: Yes, sir. Thank you.. Okay.

20 All right, folks, we will wait on the next missive.

21 (OFF THE RECORD.)

22 THE COURT: Ladies and gentlemen, we are advised the
23 jury has reached a verdict. Are both the state and the
24 defense ready to receive the verdict?

25 MR. ROBINSON: The state is ready.

1 MR. DEYSACH: We're ready, Your Honor.

2 MR. GEIER: Ready, Your Honor. Thank you.

3 THE COURT: Ladies and gentlemen, those of you who are
4 spectators in the courtroom and have an interest in this
5 case and have followed throughout the course of this trial,
6 I appreciate the fact that you have exercised restraint and
7 exercised the proper degree of decorum that this courtroom
8 requires. And I expect you, as the verdicts of the jury
9 are announced, to maintain that same degree of restraint
10 and dignity and decorum that you have shown throughout.

11 None of us knows what the verdict is going to be at
12 this point in time, but I would imagine one side of the
13 courtroom is going to be disappointed; the other side is
14 going to be relieved. None of us know where those feelings
15 are going to fall. And so if you feel like that you cannot
16 control your emotions at this in time regardless of what
17 that verdict is going to be, I'm going to ask that you
18 leave the courtroom now because if you stay here, I'm going
19 to expect you to be the same dignified and restrained
20 people that you've been throughout this trial. Thank you.

21 Bring us the jury.

22 (THE JURY ENTERS AT 2:54 P.M.)

23 THE COURT: Ladies and gentlemen, have you reached a
24 verdict?

25 FOREPERSON: Yes, sir, we have.

1 THE COURT: Is it unanimous?

2 FOREPERSON: Yes, sir.

3 THE COURT: Would you pass it forward to the bailiff,
4 please?

5 CLERK OF COURT: State of South Carolina, County of
6 Beaufort, in the Court of General Sessions, indictment
7 numbers 2008-GS-07-1761, 2008-GS-07-2009, 2008-GS-07-1762,
8 2009-GS-07-1366, *State of South Carolina vs. Lucius Simuel,*
9 *Jr.* Indictment number 2008-GS-07-1761, burglary in the
10 first degree, we find the defendant guilty. Indictment
11 number 2008-GS-07-2009, assault and battery with intent to
12 kill, we find the defendant guilty of assault and battery
13 with intent to kill. Indictment number 2008-GS-07-1762,
14 possession of weapon during the commission of a violent
15 crime, we find the defendant guilty. Indictment number
16 2009-GS-07-1366, possession of a handgun by a prohibited
17 person, we find the defendant guilty.

18 State of South Carolina, County of Beaufort in the
19 Court of General Sessions, indictment numbers
20 2009-GS-07-00068, 2009-GS-07-0066, 2009-GS-07-00069,
21 2009-GS-07-01365, *State of South Carolina vs. Demetrius*
22 *Price*, verdict.

23 Indictment number 2009-GS-07-00068, burglary in the
24 first degree, we find the defendant guilty. Indictment
25 number 2009-GS-07-00066, assault and battery with intent to

1 kill, we find the defendant guilty of assault and battery
2 with intent to kill. Indictment number 2009-GS-07-00069,
3 possession of weapon during the commission of a violent
4 crime, we find the defendant guilty. Indictment number
5 2009-GS-07-1365, possession of a handgun by a prohibited
6 person, we find the defendant guilty.

7 All verdicts are signed and dated by the foreperson.

8 THE COURT: Thank you.

9 Ladies and gentlemen, if this is the verdict of each
10 of you, please indicate by raising your right hand.

11 (THE JURORS COMPLY.)

12 THE COURT: Thank you. You can put them down.

13 Do the defendants desire polling?

14 MR. DEYSACH: Yes, Your Honor.

15 THE COURT: All right, ladies and gentlemen, you are
16 going to be polled now. That means that the clerk of going
17 to read your names individually. And when your name is
18 called, if you will stand in place right where you are, and
19 he will ask you the following questions: were these your
20 verdicts, and are these still your verdicts. And you will
21 gave whatever the appropriate answer to that question is.
22 Please, he will call you by number not by name, all right?
23 So, if you don't know your number, look at your tag because
24 that's what he's going to call you by.

25 All right, thank you, Mr. Clerk.

1 CLERK OF COURT: Juror number 131, was this your --
2 were these your verdicts?

3 JUROR: Yes.

4 CLERK OF COURT: Are these still your verdicts?

5 JUROR: Yes.

6 CLERK OF COURT: Juror number 53, were these your
7 verdicts?

8 JUROR: Yes.

9 CLERK OF COURT: Are they still your verdicts?

10 JUROR: Yes.

11 CLERK OF COURT: Juror number 30, were these your
12 verdicts?

13 JUROR: Yes.

14 CLERK OF COURT: Are they still your verdicts?

15 JUROR: Yes.

16 CLERK OF COURT: Juror number 194, were these your
17 verdicts?

18 JUROR: Yes.

19 CLERK OF COURT: Are they still your verdicts?

20 JUROR: Yes.

21 CLERK OF COURT: Juror number 49, were these your
22 verdicts?

23 JUROR: Yes.

24 CLERK OF COURT: Are they still your verdicts?

25 JUROR: Yes.

1 CLERK OF COURT: Juror number 12, were these your
2 verdicts?

3 JUROR: Yes.

4 CLERK OF COURT: Are they still your verdicts?

5 JUROR: Yes.

6 CLERK OF COURT: Juror number 156, were these your
7 verdicts?

8 JUROR: Yes.

9 CLERK OF COURT: Are they still your verdicts?

10 JUROR: Yes.

11 CLERK OF COURT: Juror number 235, were these your
12 verdicts?

13 JUROR: Yes.

14 CLERK OF COURT: Are they still your verdicts?

15 JUROR: Yes.

16 CLERK OF COURT: Juror number 69, were these your
17 verdicts?

18 JUROR: Yes.

19 CLERK OF COURT: Are they still your verdicts?

20 JUROR: Yes.

21 CLERK OF COURT: Juror number 64, were these your
22 verdicts?

23 JUROR: Yes.

24 CLERK OF COURT: Are they still your verdicts?

25 JUROR: Yes.

1 CLERK OF COURT: Juror number 75, were these your
2 verdicts?

3 JUROR: Yes.

4 CLERK OF COURT: Are they still your verdicts?

5 JUROR: Yes.

6 CLERK OF COURT: Juror number 229, were these your
7 verdicts?

8 JUROR: Yes.

9 CLERK OF COURT: And are they still your verdicts?

10 JUROR: Yes, sir.

11 THE COURT: Mr. Deysach, are there any other matters
12 before the jury is dismissed from Mr. Simuel?

13 MR. DEYSACH: No. I will be making a motion for a new
14 trial, but I think it's appropriate to dismiss the jury,
15 sir.

16 THE COURT: Yes, sir.

17 Mr. Geier, any further matters before the jury is
18 dismissed from Mr. Price?

19 MR. GEIER: No, Your Honor.

20 THE COURT: All right, thank you.

21 Ladies and gentlemen of the jury, I want to thank you
22 for your involvement as jurors in the trial of this case.
23 Throughout this trial, you have been attentive. As I've
24 said, you've been very patient, and you've been thoughtful
25 and deliberate in your consideration of the questions which

1 we have presented to you. You have asked us questions, and
2 we have tried to answer them. It is obvious that you did
3 not rush to judgment in this matter.

4 There is still the matter of sentencing which I must
5 perform in just a few moments, and we will deal with those
6 things. You have some time invested in this. If you'd
7 like to stay, you may, but you don't have to stay. You are
8 free to go in just a moment when I let you go.

9 I would like for you, if you could, remain in the jury
10 room for just a moment until I finish my matters. I would
11 like to come and express to you personally my gratitude for
12 the work that you've done this week. It has been a
13 grueling task that we have placed on your shoulders. It is
14 a difficult thing to sit in judgement of a fellow human
15 being, and you didn't ask for the task, but you've
16 undertaken it.

17 I never comment upon a verdict which a jury reaches.
18 I am delighted, as I have said, that you have the difficult
19 job, and I have the easy job. But I do comment about the
20 quality of your service, your punctuality, your patience,
21 your thoughtfulness, your attention throughout this trial.
22 That's all that we have any right to ask of jurors, and
23 you've given us everything that we had any right to ask of
24 you.

25 You will get a check in the mail in the next few days.

1 It's not going to begin to pay you for the time that you've
2 invested with us this week. You will realize that you have
3 in large measure made a sacrifice of your time. I hope you
4 will add to the small amount of that check the gratitude of
5 each of us who makes up this system for what you have done
6 and be repaid in some way. And I hope you've gained a
7 better appreciation by virtue of your service this week of
8 how important folks like you are to the system that we are
9 all a part of and that all of us serve in some way. Thank
10 you very much.

11 If you would like to go to your jury room now, you
12 can. If you want to stay for the sentencing, you have
13 every right to do that. I'll leave that up to you.

14 (SOME MEMBERS OF THE JURY EXIT AT 3:02.)

15 THE COURT: All right, Mr. Deysach, I'll be glad to
16 hear first from you for motions on behalf Mr. Price -- Mr.
17 Simuel, I'm sorry.

18 MR. DEYSACH: Thank you very much, Your Honor. At
19 this time, I'd move for a new trial and a judgement
20 notwithstanding the verdict. I'll stand on the similar
21 grounds I made up for the directed verdict motion, as well
22 as, as well as the same motion I made at the end of my
23 case.

24 I don't believe there was enough evidence in the
25 record to find Mr. Simuel guilty of the burglary first and

1 the assault and battery with intent to kill, particularly
2 as to the elements of entry without consent. As well as
3 the identity issue as far as assault and battery with
4 intent to kill, as well as the gun issues as far as there
5 being enough evidence in the record to conclude beyond a
6 reasonable doubt that he was, in fact, in possession of a
7 gun during this time.

8 I would also add as a basis, and I didn't do it
9 contemporaneously with the notes, and it really was that in
10 retrospect, that it occurred to me that the notes that came
11 from the jury asking for certain pieces of evidence before
12 the deliberation period had begun could possibly indicate
13 that there is some deliberation that took place before the
14 period was appropriate. So, that's another ground that I
15 would like to add to my motion for a new trial.

16 I will have some motions as to sentencing, but I don't
17 know if they are appropriate right this second.

18 THE COURT: All right, Mr. Geier?

19 MR. GEIER: Your Honor, I would actually join in Mr.
20 Deysach's motion as well on similar grounds. Actually, to
21 the extent they apply to Mr. Price on all grounds.

22 THE COURT: Thank you.

23 In regard to the motions that were previously made and
24 renewed at this time, the motions for directed verdict and
25 similar motions which have been made throughout the trial

1 of this case, I simply renew my earlier rulings. This was
2 the quintessential factual issue for a jury determination.
3 The facts were sufficient before the jury for the jury to
4 reach the verdict which it did, in fact, reach.

5 In my consideration right now, I consider the evidence
6 in the light most favorable to the state, and I conclude
7 that there was more than sufficient evidence, taking it in
8 that light, for the jury to have reached its decision. As
9 a matter of fact, even if the harsh light of the light most
10 favorable to the state is not cast upon the evidence in
11 this particular case, there is still no reason for me to
12 quarrel with the jury's verdict in this instance.

13 As to the additional issue of the notes that were
14 passed up during the course of this trial, I will note that
15 those notes in large measure came from the foreperson.
16 He's been attentive throughout the trial of this case. All
17 of the jurors, most of them have been taking notes. And
18 many of those notes, frankly, would be left when with the
19 bailiff as the jury was leaving the courtroom. And so the
20 fact that we got notes at that juncture is not indicative
21 of premature deliberations. It is indicative of a concern
22 of one of those jurors. In this case, happened to be the
23 foreperson. And in other cases, we got jurors -- notes
24 from another juror, as I recall, that indicated that there
25 were questions they wanted to ask, information which they

1 wanted to be furnished in order to raise questions which
2 they had in their minds. I find that that is not
3 indicative of premature deliberations, just the contrary in
4 this regard.

5 But noting all of those things, I respectfully deny
6 the motions for a new trial and JNOV, finding that the
7 verdict is well within the bounds of the evidence presented
8 to the jury.

9 All right, is the state ready to proceed to
10 sentencing?

11 MR. ROBINSON: Yes, Your Honor.

12 THE COURT: All right, is the defense ready?

13 MR. DEYSACH: We are, Your Honor, and as well as those
14 motions for directed verdict and new trial, also reviewing
15 the objections that I made during the trial. I just wanted
16 to make sure I didn't leave that out by mistake.

17 THE COURT: Okay. I think the record is adequately
18 preserved in that regard. Thank you.

19 (A PAUSE.)

20 THE COURT: Mr. Foreman, while you're still here, can
21 we get you to date these two forms yet? If you'll just
22 fill in the appropriate date, the 20th of November, on the
23 blank.

24 FOREPERSON: Yes, sir.

25 THE COURT: Thank you.

1 MR. ROBINSON: Your Honor, I beg the court's
2 indulgence while I finish out the sentence sheets.

3 THE COURT: Okay.

4 MR. ROBINSON: This will only take a moment.

5 (A PAUSE.)

6 THE COURT: I thought you might have considered at
7 least the possibility of a guilty verdict and maybe had
8 some of these done.

9 MR. ROBINSON: I apologize, Your Honor.

10 THE COURT: All right, sir.

11 (A PAUSE.)

12 MR. ROBINSON: Again, I apologize again, Your Honor.
13 This is all of them. This is Demetrius Price, and this is
14 Lucius Simuel, Jr.

15 Your Honor, at this time I wanted to let the court
16 know that the state is proceeding under South Carolina Code
17 Section 17-25-45, recidivist statute three-strikes law. I
18 have left that box unchecked so that the court could check
19 it.

20 THE COURT: I understand.

21 MR. ROBINSON: Both defendants were noticed by the
22 state that they were eligible for mandatory life without
23 parole. The -- in that regard, defendant has been -- has
24 prior convictions from Chatham County, Georgia, for armed
25 robbery, aggravated assault, and burglary first.

1 THE COURT: Which? Which one is this, please, sir?
2 Which defendant?

3 MR. ROBINSON: This is Demetrius Price.

4 THE COURT: Okay, and what is the record again?

5 MR. ROBINSON: Aggravated assault, burglary, and armed
6 robbery.

7 THE COURT: Okay.

8 MR. ROBINSON: Lucius Simuel has a prior conviction
9 for false imprisonment. The elements of false imprisonment
10 match the South Carolina elements for kidnapping. I have
11 the Georgia statute here if the court would like to review
12 it, as well as the South Carolina kidnapping statute.
13 17-25-45 makes clear that provided the elements of the
14 out-of-state conviction match the elements of a South
15 Carolina offense, that they are compatible. Would you like
16 to see these statutes?

17 THE COURT: I'm familiar with that statute. I'll need
18 to see the Georgia statute, but I'm familiar with 17-25-45.
19 Thank you.

20 MR. ROBINSON: I may have passed you the wrong thing,
21 Your Honor. I think this is the false imprisonment
22 statute. Yes, that's it.

23 THE COURT: Okay.

24 MR. ROBINSON: Well, they're both right.

25 (A PAUSE.)

1 THE COURT: Mr. Geier, in regard to Mr. Price, is
2 there any question about the issue of notice in this
3 regard?

4 MR. GEIER: No, Your Honor.

5 THE COURT: Okay, Mr. Deysach, on behalf of Mr.
6 Simuel, is there any question about the issue of notice?

7 MR. DEYSACH: Not to notice, Your Honor. Simply the,
8 simply the underlying offense.

9 THE COURT: I understand.

10 All right, Mr. Solicitor, let me hear from you and any
11 of the victims in this case on the issue of sentencing.
12 And then, Mr. Geier, Mr. Deysach, I'll be glad to hear from
13 you all on the issues of law to be raised and any other
14 legal issues you want to raise at that time.

15 MR. ROBINSON: Thank you, Your Honor. May it please
16 the court? As Your Honor knows, this case occurred on July
17 28th of last year. The defendants' rap sheets were run by
18 law enforcement after they were charged. I got the case
19 immediately several days after. In fact, this incident
20 occurred when our office was right next door to [REDACTED]
21 [REDACTED] Apartments. I went to the scene several days
22 afterwards.

23 Upon seeing their prior convictions from the
24 neighboring jurisdiction in Georgia, I requested certified
25 copies, which are -- have been marked and to which I

1 referred during the course of this trial. They were
2 provided to me by the -- there were certified copies
3 provided to me by the Chatham County courthouse. They
4 include both the defendants' sentencing sheets, as well as
5 their indictments. In addition to the qualifying charges
6 which make them eligible for the recidivist statute, they
7 have numerous other convictions.

8 In the case of Demetrius Price, he has a possession
9 with intent to distribute marijuana. He was on parole when
10 this event occurred. He was taken into custody by his
11 parole officer.

12 In the case of Lucius Simuel, he has prior convictions
13 for robbery wearing a mask, as well as for discharging a
14 firearm in public, and other charges.

15 There was testimony during the trial that the victims
16 in this case had guns. However, the state's theory of the
17 case, which has been borne out by the jury's verdict,
18 demonstrates that there is a vast gulf between the victims
19 and the defendants in this case. The defendants in this
20 case came from Georgia to South Carolina ---

21 THE COURT: Now, I was here during the trial.

22 MR. ROBINSON: All right.

23 THE COURT: So, I'm pretty familiar with the facts.

24 MR. ROBINSON: Well, I just wanted to say to the court
25 that I think that the imposition of the mandatory life

1 without parole, these defendants, given their criminal
2 convictions, is not only required by law, but just under
3 the facts of the case.

4 Let me check with the victims. Just a moment, Your
5 Honor.

6 THE COURT: Thank you.

7 (A PAUSE.)

8 MR. ROBINSON: Your Honor, may Deon Cannick address
9 the court?

10 THE COURT: Yes, sir.

11 Mr. Cannick, if you'll come forward? You can come
12 right up here toward that rail. That's good; that's fine
13 right where you are.

14 MR. DEON CANNICK: I'll be brief, Judge.

15 THE COURT: Yes, sir. Take whatever time you need.

16 MR. DEON CANNICK: I woke up on July 28th and played
17 video games. I didn't really didn't know that my life
18 would change so much that day.

19 You know, being in a wheelchair, you're not able to do
20 all of the things that normal people are able to do. And
21 it isn't just the fact that on July 28th I got shot and I
22 ended up in a wheelchair. It was the fact that my life was
23 ruined, you know, because having a baby is totally
24 different from getting shot. When you get shot, you're
25 very panicked, very scared of dying, and I just thank God

1 that I lived through this ordeal. That I was able to see
2 my family grow up. And I'm just very fortunate that my
3 brother didn't die or I didn't die.

4 You know, I just, I just wanted to tell the court
5 that, you know, God has a plan for everyone, and I believe
6 his plan for me was to make a difference in someone else's
7 life. That's why he kept me here, and I'm going to do
8 that. I'm going to make a difference in someone else's
9 life.

10 THE COURT: Thank you.

11 Mr. Robinson, do any of the other victims wish to be
12 heard?

13 MR. ROBINSON: No, Your Honor.

14 THE COURT: Is there anything further from the state
15 on the issue of sentencing?

16 MR. ROBINSON: No, Your Honor.

17 THE COURT: Thank you.

18 All right, gentlemen, I'll be glad to heard from Mr.
19 Simuel first of all, Mr. Deysach, on the issue of
20 sentencing, and then, Mr. Geier, from you and Mr. Price.

21 MR. DEYSACH: Thank you very much, Your Honor. The
22 first issue I want to bring up is the false imprisonment
23 statute that the state contends qualifies as the same thing
24 as kidnapping, I guess, here in South Carolina.

25 I think that if you read the statute of the false

1 imprisonment and you match it up with the kidnapping
2 statute here in South Carolina that they do not match. And
3 while there may be some words that appear in both, that is
4 not the test to be applied in this case. You have to match
5 up the elements.

6 I found the South Carolina Court of Appeals case
7 *Hinton vs. The South Carolina Department of Probation*.
8 It's 357 S.C. 327. I do have extra copies for both the
9 court as well as the solicitor.

10 THE COURT: All right, if you'll hand it up, please.
11 Thank you.

12 MR. DEYSACH: That case begins by dealing with the
13 issue of whether or not an out-of-state abduction
14 conviction is -- qualifies as a violent charge. And after
15 the court deals with the fact of whether an out-of-state
16 conviction applies under the violent classification
17 statute, they conclude that it does. But when they go on
18 to match up the elements of abduction with the elements of
19 kidnapping in our state, they find that there is not a
20 perfect match. And even though the two, the two charges
21 are quite, quite similar in nature, I would point out the
22 differences that in -- I think the same elements test is
23 what *Hinton* tells us we should embark upon.

24 And the first difference between the statutes that
25 jumps out at you is the -- how each deals with the issue of

1 parental kidnapping. That under the false imprisonment
2 statute, if it were a parental kidnapping situation, it
3 could still end up as a false imprisonment. Whereas here
4 in South Carolina, there is an exception carved out in our
5 statute for parental, a parental-type of a kidnapping
6 situation. That means that somebody could commit an
7 offense with those types of facts in Georgia, be guilty of
8 false imprisonment, and in South Carolina be guilty -- not
9 guilty of kidnapping.

10 And I point that out because we know that even if we
11 look at the indictment -- you know, we're not, we're not in
12 a position to judge the facts of what happened to give rise
13 to the conviction in Georgia because we know from this case
14 even though we deal with that, even though there are
15 elements enunciated in an indictment, that we're not bound
16 by those.

17 In this case, the burglary first indictment alleged
18 that Mr. Simuel possessed a weapon. But I think the court
19 instructed the jury that they could find that, or that
20 somebody gets hurt, or the weapon is brandished by
21 somebody. And so just because something appears in an
22 indictment -- and in this case it was a conviction for a
23 lesser included.

24 I would point out also in the false imprisonment
25 statute that not only is there that parental situation.

1 The element of detained appears in the false imprisonment
2 statute. And if you look in the kidnapping statute, that
3 word does not appear.

4 Now, the word detained when I look it up in a *Black's*
5 *Law Dictionary* means to -- they'll say to retard, to slow
6 down. It's a much slighter type of a, I guess, verb than
7 what -- anything that appears in the kidnapping statute
8 here in South Carolina.

9 And even if we find that that is kind of a slight
10 difference, the *Hinton* case shows us that differences just
11 like that are the types of things that would render an
12 out-of-state conviction and statute not applicable to the
13 life without parole statute.

14 The false imprisonment in Georgia carries a maximum of
15 ten years. Certainly it was long -- it was over ten years
16 ago that it happened. And certainly nobody when he was
17 convicted and sentenced did not -- wasn't told that it
18 would be somehow a strike later on. I don't, I don't --
19 I've had it ruled on me in the past that that wasn't
20 required.

21 But the main point that I want to get across is that
22 while there are actions that could apply under both the
23 kidnapping and the false imprisonment statute, that there
24 are actions that would constitute a false imprisonment that
25 would not be kidnapping here in South Carolina. And for

1 that reason, we're not allowed to go looking and digging up
2 the court records. If there is a fact that needs to be
3 proven in order to establish something, a jury is required
4 to find that fact, and would have to be beyond a reasonable
5 doubt. And so those are the bases that I have to explain
6 to you why false imprisonment does not qualify under our
7 recidivist statute.

8 THE COURT: All right, Mr. Robinson, what say you to
9 that distinction?

10 MR. ROBINSON: Your Honor, I haven't had time to read
11 *Hinton*. My understanding of our recidivist statute is that
12 plain language says:

13 A person must be -- life without parole must
14 be imposed for a most-serious offence, or a
15 federal, or out-of-state conviction that
16 would be classified as a most-serious
17 offence under this section.

18 False imprisonment, it is true that Lucius Simuel,
19 Jr., pled guilty to a lesser included of Georgia's
20 kidnapping statute as part of a plea. Relevant language
21 that I'd like to draw the court's attention to is they both
22 use the language -- Georgia says:

23 A person commits the offense of false
24 imprisonment when in violation of the
25 personal liberty of another. He arrests,

1 confines, or detains such person without
2 legal authority.

3 Kidnapping statute under 16-3-910 in our code says:

4 Whoever shall unlawfully seize, confine,
5 inveigle, decoy, kidnap, or abduct, or carry
6 away another other persons.

7 We're talking about the exact same language, precisely
8 the same language. Now ---

9 THE COURT: Well, one word is the same, confine.

10 MR. ROBINSON: One word is the same, yes, sir. The
11 state takes the position that both statutes use several
12 synonyms for that word.

13 THE COURT: Right.

14 MR. ROBINSON: But that under the plain language of
15 the recidivist statute, it says: For an offense that would
16 be classified as a most serious offense. And in both
17 cases, the sentence carry -- our sentence carries thirty
18 years. Their false imprisonment carries ---

19 THE COURT: Not more than ten.

20 MR. ROBINSON: Not more than ten.

21 I do think that since they have some identical
22 verbiage and they both carry penalties that are well over a
23 year and a day, well into the high class felony
24 classifications, that their false imprisonment statute does
25 match our kidnapping. Our kidnapping statute does not have

1 any degrees. We have a single kidnapping statute with a
2 wide-ranging punishment. Georgia, however, has degrees of
3 kidnapping.

4 THE COURT: In that regard, can you tell me what their
5 kidnapping statute actually says because obviously ---

6 MR. ROBINSON: I can.

7 THE COURT: Okay.

8 MR. ROBINSON: In fact, I can present it to the court
9 if ---

10 THE COURT: Yes, that would be helpful so I can see
11 what the distinction is.

12 MR. ROBINSON: I think the circumstances under which
13 the Georgia kidnapping statute was charged at his previous
14 conviction is similar to the circumstances in which
15 kidnapping is charged in our state in the sense that any
16 time there is -- it was part of a -- it was one of the
17 charges of armed robbery. And any time there's an armed
18 robbery where is victim is held up, kidnapping is also
19 charged because by virtue of holding the person up by
20 presenting a weapon, they confine them. They limit their
21 movement. It's not something -- it's not a kidnapping so
22 elaborate as to require ransom or exportation of the
23 victim.

24 And that is -- and so in that way, the false
25 imprisonment, they simply chose that lesser included

1 because its language, because it uses the word confine,
2 still fits that narrow application of when a robbery is
3 committed. The victim is confined by having been robbed.

4 THE COURT: I understand.

5 MR. ROBINSON: And that is precisely the way our
6 kidnapping statute is used.

7 THE COURT: Okay. All right, thank you. I've got
8 these to consider.

9 Two things. First of all, I've look at the Georgia
10 kidnapping statute. Requires a greater degree, in my view,
11 of misconduct than our kidnapping statute does. The
12 Georgia kidnapping statute says:

13 A person commits the offense of kidnapping
14 when such person abducts or steals away
15 another person without authority or warrant
16 and holds such other person against his or
17 her will.

18 So, abducting or stealing away is a necessary element
19 of the Georgia kidnapping statute. Abducting or stealing
20 away are not necessarily elements of the South Carolina
21 statute. It does refer to abducting and carrying away as
22 something that does constitute kidnapping, but it also
23 refers to unlawfully seizing or confining. It also talks
24 about inveigling or decoying or kidnapping, et cetera, but
25 we focus on seizing or confining. And as we know, it has,

1 whether advisable or not, it has become almost *de rigueur*
2 in our state or prosecuting attorneys, any time there is an
3 armed robbery in which a clerk is made to sit still while
4 they rifle the cash register, the charge of kidnapping
5 arises because the person's movement has been limited in
6 some way.

7 And that has been upheld as a valid application of our
8 statute because under our statute, as has been suggested,
9 there is a wide range of misconduct and a wide range of
10 sentencing. We have a sentencing from zero to thirty
11 years. I don't think it has a five-year minimum. It's a
12 zero to thirty-year sentence possibility for kidnapping.
13 The Georgia kidnapping statute is not more than twenty or
14 twenty-five years depending upon levels of the offense.

15 And so recognizing, then, that our statute involves a
16 wide range of misconduct from lawfully seizing or
17 conflicting all the way up to kidnapping, abducting, and
18 carrying away, and that the Georgia statute seeks to divide
19 those things, those levels of misconduct, into two separate
20 offenses, but one of them -- that is, false imprisonment --
21 contains the elements or at least some of the elements of
22 the kidnapping offense. I find, therefore, that under the
23 direction of section 17-25-45 and the application of that
24 statute which refers to the -- whether it would constitute
25 a most-serious offense under our law, and since confining

1 someone, unlawfully seizing or confining someone would be a
2 most-serious offense under our law, then the Georgia false
3 imprisonment which makes it unlawful to arrest or confine
4 or detain, which I would submit are synonyms for those
5 other words, brings into application the recidivist
6 statute. And so the motion, then, to disallow the
7 consideration of the prior false imprisonment in Georgia as
8 a triggering act is respectfully denied.

9 The appellate review, of course, is reserved. And I
10 would like for the record to reflect the false imprisonment
11 of Georgia, the kidnapping statute of Georgia, and the
12 *Hinton vs. South Carolina* case which has been cited by Mr.
13 Deysach.

14 All right, Mr. Deysach, anything further?

15 MR. DEYSACH: Just briefly, Your Honor. I think, I
16 guess I want to make sure if I can get a ruling on this,
17 whether you attempted to use the same elements test in
18 making your ruling, or if you did not use a same elements
19 test.

20 THE COURT: I used the provision of 17-25-45 that
21 says: A federal or out-of-state conviction for an offense
22 that would be classified as a most-serious offense under
23 this section. And in arriving at that conclusion, I looked
24 at the elements of our statute which I've just referred to,
25 confining as being a most serious offense. And, therefore,

1 a Georgia statute that says confining would have to be
2 considered, in our view, in my view, a most serious. So,
3 to that extent, I have used the same elements test.

4 MR. DEYSACH: Okay. How have you dealt with the
5 parental kidnapping situation, then, for which an exception
6 is carved out of, out of the South Carolina kidnapping but
7 not so in the false imprisonment?

8 THE COURT: Because it doesn't apply in this
9 particular case because we're not dealing with that, in the
10 first instance. And in the second instance, the Georgia
11 kidnapping statute also carves out two elements of our
12 kidnapping offenses to set up a greater offense. And,
13 therefore, the fact that Georgia has set up two levels of
14 kidnapping, or maybe even three if you count the parental
15 situation, does not necessarily mean that because we have
16 lumped it all together under a single statute, since our
17 single statute is a most serious offense, then I see it as
18 a distinction without a difference.

19 MR. DEYSACH: I just, last thing is, is just want to
20 make sure that when you decided that the parental situation
21 did not apply, were you looking to the facts of the case
22 that Mr. Robinson brought up?

23 THE COURT: I was looking at the elements of the
24 offense.

25 MR. DEYSACH: Okay. I ---

1 THE COURT: I don't know what the facts were.

2 MR. DEYSACH: Okay.

3 THE COURT: I don't know what the facts of the Georgia
4 case were that he pled to. And thankfully under the law,
5 we don't have to do that, and we're not required to do
6 that. We simply look at the elements of the offense and
7 ask ourselves. In Georgia, these are the elements of the
8 offense. Do we have a South Carolina statute that, under
9 those same elements, would qualify as a most-serious
10 offense and make the comparison that way. I don't know any
11 other way to do it without retrying every out-of-state case
12 before we apply 17-25-45 to an out-of-state conviction. I
13 don't know how else to do it. How else would you do it?

14 MR. DEYSACH: I would -- you would do a same elements
15 test making sure that there's not an element of, I guess,
16 behavior that would qualify as a false imprisonment that he
17 would have been convicted of. That if he happened to do
18 the same thing across the state line, he wouldn't being
19 convicted of kidnapping.

20 THE COURT: Right.

21 MR. DEYSACH: And so if that's at all a possibility --
22 I've heard you kind of, I've heard you say detain and
23 arrest may be synonyms. But I think if you look at the
24 *Hinton* case, there are other -- they see a difference in
25 the difference between our kidnapping statute and somebody

1 who, without privilege to do so, knowingly and by force or
2 threat restrained somebody and created a risk of physical
3 harm with threats and fear and did those same things. But
4 they found that the abduction statute had some -- it may be
5 semantic or slight differences.

6 THE COURT: Right.

7 MR. DEYSACH: But different enough. And so if there
8 is a situation that he could have gotten convicted of in
9 Georgia, that whether it's the parental situation or
10 whether it's detention, that would not be a kidnapping
11 here. Then that does not trigger the recidivist statute
12 because I can see a statute in Georgia that would be more
13 narrow than a statute here.

14 THE COURT: Right.

15 MR. DEYSACH: And qualify, but this one is more broad
16 because while there are, there are some of the same words
17 used -- one of the same words that's used is "or," and so
18 we have a lot of or's connecting here. So, because he was
19 convicted of false imprisonment in Georgia does not mean
20 that he confined somebody. That is one of the choices that
21 a jury or a judge or him if he pled could have proceeded
22 under, but there are others. And so -- and some of those
23 others would not qualify as kidnapping here in South
24 Carolina.

25 THE COURT: Well, if he arrests or confines or detains

1 such person without legal authority, those are the three.
2 And I think that all of those are synonymous with what is
3 contained in our statute, are they not?

4 MR. DEYSACH: I don't believe detain is because
5 detain, arrest and, I guess, seize are -- detain, if you
6 look it up even in *Black's Law Dictionary* is a slowing
7 down. I mean, I can see seeing that word in a statute and
8 saying, well, I'd better plead to it because it's going to
9 be pretty -- a lot easier to prove that I detained somebody
10 than it is that I seized, arrested, or confined them.

11 And further, there is the bit about the parental
12 situation where you could confine -- here in South
13 Carolina, you could confine your natural-born child who's
14 under fourteen, I believe, and you would be committing a
15 misdemeanor under that statute. You could do the same
16 thing to a certain person and you would be committing false
17 imprisonment.

18 THE COURT: And that may very well be a distinction
19 that the Appellate Court is willing to look at again as
20 they did in *Hinton*. But I don't know that I can do
21 anything or say anything other than I have said and given
22 the reasons for my ruling so that if I'm wrong, you've got
23 me.

24 MR. DEYSACH: I think we've covered it.

25 THE COURT: Okay. Thank you very much.

1 All right, Mr. Geier.

2 MR. GEIER: Your Honor, I was appointed about four
3 months ago on this case, and one of the first things I did
4 was look at this statute and figure out if I could find a
5 way, as Mr. Deysach has tried to find. And unfortunately
6 my hands are tied.

7 THE COURT: Yes, sir. Yours is a different situation.

8 All right, Mr. Simuel, Mr. Price, come around,
9 gentlemen. Mr. Simuel, I'll be glad to hear from you.

10 MR. DEYSACH: Your Honor, I'd like to say a few words
11 on his behalf.

12 THE COURT: Oh, I'm sorry. I didn't mean to cut you
13 off.

14 MR. DEYSACH: Yeah, I was just -- I did the law stuff,
15 but I didn't tell you about the person.

16 THE COURT: Okay.

17 MR. DEYSACH: Lucius, who's thirty years old, has
18 three children and has considerable family here in the
19 courtroom. Pastor Marion Simuel -- I'll ask them to stand
20 up when I say their name. Pastor Marion Simuel, Lucius's
21 uncle; Pastor Ethel Simuel, his aunt; Jessica Battle, his
22 sister, also is Tiah's mother.

23 THE COURT: Right.

24 MR. DEYSACH: Diane Byrd, who's Lucius's mother;
25 Lester Byrd, his stepdad; and Charlene Simuel, his wife.

1 And there's been others who have been in and out of the
2 courtroom during this week, and it's really more -- and
3 they're good people.

4 THE COURT: Right.

5 MR. DEYSACH: And it reflects well on Lucius that he
6 has such great folks that love him, and I, you know, I know
7 him through work. But I see what it is in him that they
8 like. And so I think people are surprised sometimes when
9 you can describe a client of yours who's accused of
10 something bad, and the jury made their finding, and I even
11 admitted to him that the reason that he was even in that
12 situation was, was a mistake in the first place.

13 THE COURT: Right.

14 MR. DEYSACH: And I still stand by him, and I didn't
15 tell the jury anything that I didn't believe was true.

16 THE COURT: I understand that.

17 MR. DEYSACH: And they may have believed some of what
18 I said or none, but -- and it's possible they believed what
19 I said and still thought it satisfied the elements of what
20 he was accused of.

21 But I do want you to know and he wants you to know
22 that I think during the trial was a little talk of a letter
23 that Mr. Simuel sent to Investigator Calhoun. And in that
24 letter he expressed that he prayed every night for the
25 victims in the case. And there is -- it weighs heavy on

1 his heart, what happened to them. And what the case was
2 about is the level of legal fault in everything. But that
3 doesn't make much of a difference when it weighs on
4 somebody's heart.

5 THE COURT: Right.

6 MR. DEYSACH: And so I want you to know, and I want, I
7 want them to know, and really it's not me wanting. It's
8 him wanting them to know that that does weigh on his heart.

9 And that I think he wants you to know, Your Honor,
10 because he respects you and the way that the court or the
11 trial proceeded, you know, with a lot of -- I think it
12 proceeded with honor and that people behaved well. The
13 jury, the gallery, the lawyers, and certainly the judge,
14 Your Honor. And so he wishes to express to you and others
15 that, that it, you know -- he wants to express that it
16 didn't exactly happen the way that it, that it was played
17 out. And that's not an attempt to escape some moral
18 culpability because it's a different, it's a different ball
19 of wax.

20 THE COURT: I understand you.

21 MR. DEYSACH: But I want you to know, and I'm telling
22 you this not just as a lawyer but as a person. He's
23 somebody that if you met in any circumstance, you would
24 like. And that's why he's got the good family behind him.
25 And those are the things I think I wanted you to know.

1 I've told him to be careful about what he would say at
2 sentencing. It's on record; he's here with his lawyer...
3 So, anything he says if there was an appeal or any type of
4 a reversal would affect him. I'm going to leave that final
5 decision up to him, knowing that saying anything about the
6 case wouldn't be smart. But I am going to leave that up to
7 him.

8 THE COURT: All right, thank you, Mr. Deysach. I
9 appreciate that.

10 (A PAUSE.)

11 MR. DEYSACH: I think he, I think he indicates that I
12 was able to give voice to everything he wanted.

13 THE COURT: Very good. Thank you.

14 Mr. Geier, I'll be glad to hear from you and Mr.
15 Price.

16 MR. GEIER: Thank you, Your Honor. Again, I was
17 appointed to this case four months ago. I was the second
18 attorney that was appointed to Mr. Price. I guess,
19 respectfully, his prior attorney wasn't real diligent.

20 THE COURT: Right.

21 MR. GEIER: And after I met with Mr. Price the second
22 time, he said to me you're already twice as good as the
23 last one that you had.

24 Now, I didn't feel particularly good about myself, but
25 I got to say in the four months that I've been appointed on

1 this case, I've probably seen Demetrius I'd say an average
2 of maybe once a week. There've been, it's a couple of
3 weeks where I didn't see him because I had other things
4 going on unfortunately.

5 In that time, I've found Demetrius to be incredibly
6 intelligent, very well spoken. During this past week, he's
7 been taking notes and posing questions. And I got to say
8 in the seven years or so I've been an attorney, I've had a
9 lot of smart people sitting next me in various situations
10 both in criminal and civil cases, and he is among the
11 sharpest that I've had next to me. I mean, he really is.

12 His sister and girlfriend are here. His sister had to
13 step out. His girlfriend is here, Teresa Price -- Ms.
14 Price, if you'd like to stand up, please -- to support him.
15 His mother passed away unfortunately while he was
16 incarcerated for this. His aunt has been coming regularly,
17 but she has to leave at 2 every day or else she'd be here
18 as well.

19 Let me just touch briefly on Demetrius's history. You
20 know he's got this long and unfortunate criminal record,
21 but I'd point out to the court, and unfortunately I wasn't
22 able to find a way around this either. His convictions
23 came at age sixteen. He and, you know, some of his friends
24 did something they shouldn't have done. Rather than going
25 through the entire trial, he pled guilty to essentially

1 everything that his lawyer at the time told him to plead
2 to, a very competent attorney in Savannah. And he spent
3 ten years in prison for that. So, from sixteen to twenty-
4 six, he was in prison.

5 His later part of his youth was taken away from him
6 unfortunately. Once he got out, he had a few minor issues.
7 But by and large, he stayed on the straight and narrow.

8 And I will echo to some extent Mr. Deysach when I say
9 Demetrius I think accepts, at least to the extent that he
10 can accept at this point in the game, the verdict for the
11 jury. However, he also has his own view as to how things
12 went. And I'd say that it's just a shame Demetrius was put
13 in a position and grew up the way he grew up because I
14 truly believe that had he been given the chance that most
15 people get, he could have been something really special.

16 THE COURT: Thank you, Mr. Geier.

17 MR. GEIER: And I believe Mr. Price has something he
18 would like to say this.

19 THE COURT: Mr. Price, I'll be glad to hear from you,
20 sir

21 DEFENDANT PRICE: You know, I feel like the day
22 everybody was born, we were committed to life without
23 parole on earth. We kept on trying, though. Eventually,
24 we made it to the moon. I'm going to make it to that moon.

25 THE COURT: Thank you, sir.

1 (A PAUSE.)

2 THE COURT: Mr. Deysach, I am sensitive to the
3 concerns that you have raised about the comparisons of
4 Georgia statute, quite frankly. The fact that the Georgia
5 statute under which Mr. Simuel was convicted apparently
6 carries only up to ten years in jail; ours carried up to
7 thirty. Obviously, there is distinction there, and so I'm
8 aware of the fact that they have looked at that crime in
9 certain respects differently from the way we look at
10 kidnapping.

11 But I don't think the law, as I have indicated,
12 indicates that it has to be totally similar. Has the same
13 elements, then they qualify. And I could stand to be wrong
14 on that. And if the Court of Appeals tells me I'm wrong --
15 and they have before -- you know, I would not feel that an
16 injustice has been done, quite frankly, if Mr. Simuel gets
17 resentenced to the sentence imposed by law this particular
18 case. But I have reached a decision based on the things
19 that I've told you, and I feel that's what the law mandated
20 that I do.

21 SENTENCE OF THE COURT:

22 Mr. Price, Mr. Simuel, on the charges of possession of
23 a weapon during the commission of a violent crime, under
24 your respective indictments, the sentence for each of you
25 is that you be committed to the State Department of

1 Corrections for a period of five years.

2 Mr. Simuel, Mr. Price, on the charge of possession of
3 a weapon by a prohibited person, the sentence for each of
4 you is that you be committed to the Department of
5 Corrections for a period of five years.

6 Mr. Price and Mr. Simuel, on the charges of assault
7 and battery with intent to kill, the sentences for each of
8 you is that you be committed to the State Department of
9 Corrections for the balance of your natural life without
10 the possibility of parole under section 17-25-45.

11 Mr. Price and Mr. Simuel, under the indictments
12 charging each of you with burglary in the first degree, the
13 sentences are that you each be committed to the State
14 Department of Corrections for the balance of your natural
15 life without the possibility of parole under section 17-45
16 -- 17-25-45.

17 All of the sentences will run concurrent to each
18 other. You will get credit for whatever time you have
19 already served. Good luck to you.

20 MR. GEIER: Thank you.

21 THE COURT: Folks, this court will stand in recess.

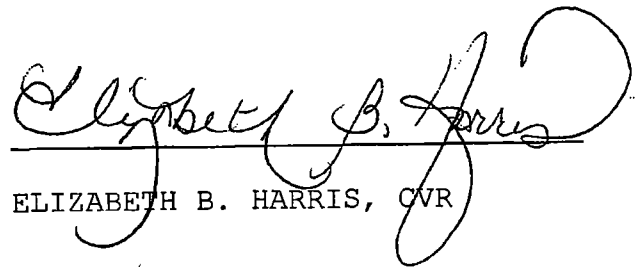
22 (CASE LAW MARKED INTO EVIDENCE AS COURT'S EXHIBIT
23 NUMBER 11.)

24 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR BEAUFORT COUNTY, SOUTH CAROLINA, ON THE 16TH, 17TH, 18TH, 19TH, AND 20TH DAYS OF NOVEMBER, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

JUNE 13TH, 2010

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

BeaufortLucius Simuel 338144

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013 CP-07-287

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 Lieber CI (SCDC)
2. Name and location of Court which imposed sentence General Sessions (Beaufort) SC.
3. Name(s) of co-defendant(s) (if any) Demetrius Price
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 20087GS07-1761, -1762,
 - (b) 2009
 - (c) 2009GS07-1366
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Date of sentence: November 20, 2009
 - (b) Sentence imposed: LWOP + 5yrs for Firearm

(c) 5 year for Firearm in com/violent crime Concurrent

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) ☒ after a plea of not guilty Found guilty at trial
 (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. The State of South Carolina Supreme Court
 ii. Court of Appeals
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Conviction Affirmed
 ii. _____
 iii. _____

(c) the date of each such result:

- i. May 23, 2012
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Memorandum Opinion No. 2012-MD-03 (Heard May 23, 2012)
 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:

- (a) ineffective Assistance of Counsel (see Attached)
- (b) Sentencing court was without jurisdiction to impose sentence.
- (c) Violation of Due process rights 14, 6th, and 5th amendments

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Motion of Discovery & Trial transcript
- (b) Copy of Out of State Conviction VS SG.
- (c) Motion of Discovery, Trial transcript

12. Prior to this application have you filed with respect to this conviction: No

- (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. _____

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. _____

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) _____

(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. Ian Dysach (trial lawyer) 1905 Duke St 2nd Fl. Rm #210
- ii. P.O. Box 525 Beaufort SC. 29901
- iii. Dayne C. Phillips (Appellate Defender) 1330 Lady St. Suite #401
Columbia SC.
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacation of Sentence & New trial

20. Are you now under sentence from any other court that you have not challenged?

No

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.

Lucius Simuel Juan Simuel
Applicant

SWORN or affirmed to and subscribed before me this
18 day of January, 2013

James R. Smith
Notary Public

My Commission Expires: 08-01-2022

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	2013-CP-07-1104
Anthony G. Linton, #345516,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed April 24, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted on March 24, 2011 by the Beaufort County Grand Jury for criminal sexual conduct with a minor- first degree. The Applicant was represented by Ian Deysach and Matthew Walker, Esquire.

On March 29-31, 2011, the Applicant proceeded to trial and was convicted. The Applicant was sentenced by the Honorable Michael G. Nettles to confinement for a period of twenty- seven years.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Susan Hackett, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Linton, No. 2012-UP-595 (S.C. Ct. App.

October 31, 2012). The Applicant filed a Petition for Rehearing which was denied on December 19, 2012. The Applicant filed a Notice of Appeal to the South Carolina Supreme Court. By Order dated March 13, 2013, the Supreme Court dismissed the appeal at the Applicant's request. The Remittitur was issued on March 15, 2013.

Attached herewith and incorporated herein are the records of the Beaufort County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to object, move or mistrial, or request curative instruction due to inflammatory and prejudicial remarks of solicitor during opening and closing argument.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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, the 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, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance 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 the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the 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.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: Al R. Wilson
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 29, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFROT

ANTHONY G. LINTON, #345516

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

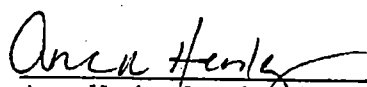
2013-CP-07-1104

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the abovecaptioned 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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer, Esquire
 Shaffer Law Firm
 120 Gantt Street
 Lexington, SC 29072

DATED this 6 TH day of JUNE, 2014


 Anne Henley, Legal Assistant
 For Respondent

1 In the Court of General Sessions for the
2 State of South Carolina, County of Beaufort

3

4 Case No.: 2013-CP-07-0287

5 Lucuis Simuel,

6 Plaintiff(s),

7 vs. Transcript of Record

8 State of South Carolina,

9 Defendant(s).

10

11

12

13

14

15 October 20, 2015

16 Beaufort, South Carolina

17

18

19

20

21 BEFORE:

22 The Honorable Roger L. Couch

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

REPRESENTING PLAINTIFF(S) :

Scott W. Lee, Esquire

PO Box 2124

Beaufort, SC 29901

swlee@swleelaw.com

843-986-9030

REPRESENTING DEFENDANT(S) :

J. Rutledge Johnson, Esquire

Office of the Attorney General

Rembert Dennis Building

1000 Assembly Street, Room 519

Columbia, SC 29201

803-734-3970

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESS:

PAGE:

LUCIUS SIMUEL

Direct Examination By Mr. Lee 10

Cross Examination By Mr. Johnson 27

IAN DEYSACH

Direct Examination By Mr. Lee 30

Cross Examination By Mr. Johnson 59

1 PROCEEDINGS

2 MR. LEE: If you will give me just a minute to set
3 up, Your Honor.

4 THE COURT: Yes, sir. All right. This case is?

5 MR. JOHNSON: Mr. Simuel.

6 THE COURT: Mr. Simuel, okay.

7 MR. JOHNSON: May it please the Court, Your Honor.

8 This is Lucius Simuel versus the State of South
9 Carolina, case number 2013CP070287. Mr. Simuel was
10 indicted at the September 2008 term of the Beaufort
11 County Grand Jury for accessory before the fact of a
12 felony, assault and battery with intent to kill,
13 burglary in the first degree, possession of a weapon
14 during the commission of violent crime, and possession
15 of a handgun by a prohibited person, as he's a prior
16 felon.

17 On November 16th through the 20th, 2009 he
18 proceeded to trial and was found guilty as indicted.
19 The accessory before the fact of a felony charge was
20 nolle prossed. He was sentenced by Thomas W. Cooper,
21 Junior to confinement for a period of life without
22 parole for ABWIK based on prior conviction and burglary
23 first degree. Also life without parole and five years
24 for each of the possession charges, all to run
25 concurrently.