

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Paul M. Burch, Circuit Court Judge

GREG K. ISAAC,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000510

APPENDIX

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STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

GREG K. ISAAC, AND
TAVARES WORLD,

DEFENDANTS,

July 8 & 9, 2013
Columbia, South Carolina

BEFORE:

THE HONORABLE CLIFTON NEWMAN, JUDGE; and a jury.

APPEARANCES:

KATHRYN LUCK CAMPBELL, DEPUTY SOLICITOR
MEGHAN WALKER, ASSISTANT SOLICITOR
JOHN STEADMAN, ASSISTANT SOLICITOR
Attorneys for the State

MARK SCHNEE, ESQ.
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GREG COLLINS, ASSISTANT PUBLIC DEFENDER
Attorneys for the Defendant, Tavares World

KAREN AMBROZIAK
Official Court Reporter

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1 THE COURT: Good morning.

2 All right. Madam Solicitor, Solicitors, Mister...

3 MR. STEADMAN: John Steadman, Your Honor.

4 THE COURT: Steadman. All right.

5 Are you ready to start, State?

6 MS. WALKER: We are, Your Honor. Our -- our only
7 concern at this point in time is that Mr. Isaac isn't
8 dressed out. We don't want that to become an issue.

9 THE COURT: All right.

10 What's the story there, Mr. Schnee?

11 MR. SCHNEE: Well, Your Honor, based on the motion
12 that I had given to both Your Honor and the State on
13 Friday -- you have a signed and filed copy of it.

14 THE COURT: Does he have clothes to get dressed?

15 MR. SCHNEE: Well, Judge, my position is --

16 THE COURT: Does he have clothes to get dressed?

17 MR. SCHNEE: I can get clothes for him.

18 THE COURT: Where is his clothes?

19 MR. SCHNEE: I would have to borrow those from the
20 Public Defender's Office. That's not a problem.

21 THE COURT: All right. Well, we want him dressed for
22 trial immediately.

23 MR. SCHNEE: Respectfully, Your Honor, I'm requesting
24 a Castle Doctrine and Stand Your Ground hearing pursuant
25 to the motion that I filed.

1 Based on the newest case, according to the Court of
2 Appeals, which is procedural in nature, if I do not have
3 this hearing and then if Your Honor denies it, I am
4 required at this time to appeal this to the Supreme Court
5 or it is forever waived.

6 THE COURT: The matter is scheduled for trial.
7 Counsel has a responsibility to have his client prepared
8 for trial. If, for some reason, the trial is not
9 proceeding, then the trial is not proceeding.

10 You have no authority to unilaterally create
11 circumstances that relate to trial, so we're going to
12 recess. The defendant must get dressed for trial.

13 MR. SCHNEE: Yes, Your Honor.

14 (WHEREUPON, a short break was taken.)

15 THE COURT: All right.

16 Ms. Davis?

17 MS. DAVIS: Your Honor, I was just getting ready to
18 approach and hand you my hard copies that I handed up to
19 you on Friday.

20 THE COURT: Okay.

21 MS. DAVIS: I've already given a copy to Ms. Campbell
22 and Mr. Schnee.

23 THE COURT: All right. Mr. Schnee, go ahead.

24 MR. SCHNEE: Thank you, Your Honor. May it please
25 the Court.

1 At this time, I'm requesting a hearing pursuant to
2 16-11-420, Section A, to determine if my client is immune
3 from prosecution.

4 I have set forth the anticipated -- a summary of the
5 anticipated facts that we would present at the hearing
6 along with the applicable law as to why I feel I'm
7 entitled to that at this time.

8 THE COURT: This is the hearing.

9 MR. SCHNEE: I'm sorry?

10 THE COURT: This is the hearing. Go ahead.

11 MR. SCHNEE: Okay. Judge, at this time, I would call
12 Greg Isaac to the stand.

13 THE COURT: All right.

14 GREG ISAAC, after being duly sworn,
15 testified as follows:

16 THE CLERK: State your name for the record.

17 THE WITNESS: Greg Isaac.

18 DIRECT EXAMINATION:

19 BY MR. SCHNEE:

20 Q Just sit far, a little farther. We have to make sure
21 that everyone hears you.

22 Greg, how old are you right now?

23 A Twenty-six.

24 Q At the time all of this happened, how old were you?

25 A Eighteen.

1 Q Okay. Prior to that, have you ever been arrested?

2 A Yes, sir.

3 Q For what?

4 A Burglary.

5 Q Okay. How long have you known Tavares World prior to
6 October of 2005?

7 A A few months.

8 Q Would you consider him a friend?

9 A Sort of.

10 Q Okay. But you've known him for a little while?

11 A Yeah.

12 Q I want to just kind of get right down to it. On the
13 night of October 27th -- I guess start from the beginning.
14 Where were you exactly?

15 A Where we were?

16 Q Yeah. Where were you and Tavares at the very
17 beginning of the night?

18 A In Bethel Bishop Apartments.

19 Q Okay. And what were you doing there?

20 A Just chilling.

21 Q Okay. At -- at some point, a third person came?

22 A Yeah.

23 Q Who is that?

24 A Vernoris Dixon.

25 Q Okay. And what did he come for?

1 A I guess him and Tavares had somewhere to go.

2 Q Okay. Did they tell you where you were going?

3 A Not at that point.

4 Q Okay. Well, did you -- who -- who was driving that
5 night?

6 A Vernoris.

7 Q Okay. Where were you sitting?

8 A I was sitting in the backseat.

9 Q Where did you end up going?

10 A To the apartment. I don't remember the name of the
11 apartment.

12 Q Okay. This is the apartment where all of this
13 happened?

14 A Yeah.

15 Q Okay. What was the conversation like going on inside
16 of the car?

17 A Well, something about some money.

18 Q Okay. Well, who was the conversation between?

19 A Vernoris and Tavares.

20 Q Okay. And do you remember what anyone specifically
21 said about getting money?

22 A I guess somebody owed Tavares some money, I guess.

23 MS. CAMPBELL: Your Honor, I'm --

24 THE COURT: Mr. Isaac, we can't understand anything
25 that you're saying. Can you push up and talk into the

1 mic?

2 MR. SCHNEE: Speak up a little bit, okay.

3 BY MR. SCHNEE:

4 Q What -- what exactly was Tavares or Vernoris saying
5 about getting money, if you remember?

6 A I guess the victim had owed him some money or
7 something.

8 Q Okay. Did you know who this person was before that
9 night?

10 A No, sir.

11 Q Okay. Did it appear that Tavares or Vernoris knew
12 him?

13 A Yeah, they knew him.

14 Q Okay. Do you know how?

15 A No, sir.

16 Q Okay. When you finally got to the apartment complex,
17 explain a little about what happened.

18 A Well, when we got to the apartment and -- and Tavares
19 was like, "Twin, why don't you go with me to help with" --
20 he told me something about some money they owed him.
21 Like, "I ain't got nothing to do with it."

22 Q Okay. You told Tavares that you had nothing do with
23 it?

24 A Yeah.

25 Q Okay. And what did he do?

1 A "Then stop acting like a peach. Come with me."

2 Q Okay. That's what he said to you?

3 A Yeah.

4 Q Okay. Did he do anything else?

5 A Man, threatening me.

6 Q How did he threaten you?

7 A Like, "I'll kill you, Goddammit."

8 Q All right. Did he do anything physically to threaten
9 you?

10 A Yeah. He had a gun on him.

11 Q Okay. And what did he do with that gun?

12 A He pulled it out.

13 Q And did what?

14 A Had it toward me.

15 Q Okay. And he said...

16 A "Come with me."

17 Q Or what?

18 A "Or I'll hurt you. I'll kill you."

19 Q Okay. Has Tavares ever pulled a gun on you before?

20 A Yeah.

21 Q Explain that a little better.

22 A Well, like my twin brother passed in 2005, like in
23 June, like June 2005, Father's Day. He jumped out of a
24 truck, a Mercedes-Benz truck, parked behind the bridge at
25 Bethel Bishop Apartments and pulled a gun in my face and

1 slapped me.

2 Q Okay. Tavares pulled a gun on you.

3 A Yeah.

4 Q In June?

5 A Yeah.

6 Q Okay. Did he say anything at the time?

7 A When he pulled the gun on me?

8 Q Yes.

9 A He told me to stop fucking with him. He's going to
10 hurt me. He was -- he was going to fire me up, get on
11 through, because he ain't from around there.

12 MS. CAMPBELL: I'm sorry, Your Honor. I can't
13 understand him.

14 THE COURT: Can you say all of that again slower or
15 clearer?

16 Back off just a little.

17 MR. SCHNEE: Can you --

18 THE COURT: Mister -- when I'm speaking, I don't need
19 you to help me.

20 MR. SCHNEE: I apologize.

21 THE COURT: If you'll move back from the microphone
22 and come closer but don't -- don't talk into the mic where
23 your mouth is touching it, because it's causing some kind
24 of echo or something.

25 Come closer to the mic and repeat your statement

1 again, whatever you just said earlier.

2 THE WITNESS: Well, he walked up on the bridge,
3 pulled the gun out, told me to stop fucking with him or
4 he'll fire me up.

5 He put the gun in my face and told me he'll kill me
6 if I keep fucking with him. He'll fire me up and get on
7 through because he ain't from around there.

8 BY MR. SCHNEE:

9 Q Okay.

10 A And he slapped me and he left.

11 Q What was this whole argument or discussion about?

12 A We had a couple of words, whatever. I ain't never --
13 before I first seen him or whatever, we had a few words
14 back to back.

15 Q Okay.

16 A Then it escalated to that.

17 Q Well, what were the words about?

18 A Well, we was -- we was on some eye contact type of
19 thing, like mulling each other.

20 Q Okay. Going back to October of 2005, you said he
21 pointed a gun at you.

22 A Yes.

23 Q Okay. And told you that you had to go with him.

24 A Yeah.

25 Q Okay. And what? Then what happened after that?

1 A Well, he pulled a gun.

2 Q Okay. And that was -- which gun was that?

3 A That was a .380.

4 Q Okay. Do you know if he had any other guns with him?

5 A Yeah, he had a nine.

6 Q Okay. Did you see it that night?

7 A Yeah.

8 Q Yes, sir. I'm sorry?

9 A Yes, sir.

10 Q Okay. When you got out of the car, what did you do?

11 What did you do?

12 A When we first got out of the car or whatever, we

13 walked by the man's house or whatever. I didn't even know

14 that was the house, so we was looking all through -- he

15 was looking all through the windows, and I saw --

16 Q Who was looking through the windows?

17 A Tavares.

18 Q And what were you doing?

19 A I was behind him.

20 Q Were you looking through the windows?

21 A No.

22 Q Okay. Continue.

23 A And I told him that -- I mean, I don't do no

24 burglaries or whatever. I don't break in nobody's house.

25 He's like, "Chill the fuck out." I was like, "Man, I

1 don't do burglaries."

2 He was like, "Chill out."

3 So we -- we left, went back and got in the car,
4 sitting there for a minute, him and Vernoris, talking.

5 Q Do you remember what they were talking about?

6 A I couldn't really hear what they were talking about
7 because I was kind of mad about the situation or whatever.
8 You know what I mean. After the situation or whatever,
9 you know what I mean, I'd say about 15, 20 minutes later,
10 a car pulled up. I didn't know the car. All I heard was
11 the dude say, "There he go [sic] right there."

12 Q Okay. Do you remember who said that?

13 A Vernoris did.

14 Q Okay.

15 A So I'd say about -- we waited in the car about ten
16 minutes, ten, 15 minutes. Like, "Come on, Twin."

17 Q Who? Who told you to come on?

18 A Tavares.

19 Q Okay. What? Did he say anything else?

20 A I'm like, "Man."

21 He's like, "Man, come on. Stop acting like a bitch."

22 So we got out of the car.

23 Q Did -- did he threaten you again at that point?

24 A He threatened me again.

25 Q Okay. At any point up to this time, did you feel

1 that you were able to leave or run away or do anything?

2 A Not at that point.

3 Q Why not?

4 A The peer pressure, you know what I mean. I'm young.
5 The man -- the man had to tear me down like.

6 Q Did you feel that you were still -- that your life
7 was still being threatened?

8 A Yeah.

9 Q Okay. So you got out of car with him again?

10 A Yeah.

11 Q All right. What happened then?

12 A We go to the apartment or whatever. We get to the
13 apartment. As soon as we get to the apartment door, he
14 beat on it. Boom. He beat on it like three times, three
15 or four times.

16 Q Who did?

17 A Tavares.

18 Q Where is Vernoris at this time?

19 A In the car.

20 Q Okay.

21 A He beat on the door like three or four times. He
22 kicked it like three times. The door was swung open. The
23 victim was right there at the door. He swung it open
24 while yelling, "Where my [sic] money at? Where my money
25 at?"

1 Q Who is saying, "Where is my money"?

2 A Tavares.

3 Q Okay. What are you doing right now?

4 A I'm still standing outside the apartment.

5 Q Okay.

6 A I'm so shocked. They got to fighting. So I'm just
7 like shocked. I mean, like -- it happened so fast.

8 They're just right there fighting. So I'm trying to --

9 when I step -- the only time I stepped in, I'm trying to
10 pull Tavares away like, "Man, come on. Come on. Come on.
11 Let's go."

12 Q What are you trying to do by stepping in and pulling
13 the plug?

14 A Trying to diffuse the situation so we can leave.

15 Q Okay.

16 A I mean, I'm trying to diffuse the situation, telling
17 him, "Come on."

18 There was a lamp on a little stand. He pushed me
19 into it. That's when I got the lamp, that I touched it.
20 I mean, so the lamp there or whatever, they can take those
21 on the floor or whatever when all of this fell.

22 So I stepped -- when I got back up, I stepped back
23 outside the door. Now they're getting up, still fighting.
24 Tavares, they're coming out the door. Tavares is running,
25 coming towards me.

1 Q Tavares is running out the door?

2 A Yes.

3 Q Towards you?

4 A Yeah.

5 Q Okay. And you're standing where?

6 A I'm standing like 10 feet away, like 10 feet away
7 from the door.

8 Q Okay.

9 A And he is standing only towards me. He pulled me
10 towards him. When he passed me, he like pulled him
11 towards me or whatever. That -- I mean, then I seen the
12 man like he was -- the victim pull--- like he was pulling
13 a gun out. That's when...

14 Q Okay. And exactly what do you mean when you thought
15 he was pulling -- what was he doing?

16 A He was reaching. Like he was reaching like he was
17 pulling out a gun.

18 Q Okay.

19 A That's when I shot.

20 Q Okay. At the time you shot, you're saying you
21 thought he was reaching for a gun?

22 A Yes, sir.

23 Q Okay. Did you think that you could just run away at
24 that point?

25 A It was happening so fast. I mean, it was happening

1 so fast.

2 Q Okay. And while this is going on, where exactly is
3 Tavares?

4 A Like right behind me.

5 Q Okay. And he is running in which direction?

6 A Like we're going back toward the car or whatever.

7 Q Okay. Do you remember how many times you shot?

8 A Like three times.

9 Q Okay. And as soon as you shot, what did you do?

10 A I ran.

11 Q Okay. When you got back to the car -- or I guess did
12 you run back to the car?

13 A Yes, sir.

14 Q Okay. Did Tavares also get back in the car with you?

15 A Yes, sir.

16 Q All right. And Vernoris is still sitting in the car?

17 A Yes, sir.

18 Q What did you guys do now?

19 A Leave.

20 Q All right. Was there anything being discussed inside
21 the car at the time?

22 A I was so shell shocked. It was being -- it was being
23 discussed, but I was so shell shocked, I -- I couldn't
24 even say nothing. Like I wasn't even in the car at the
25 same time.

- 1 Q Okay. So you're just sitting there quietly?
- 2 A Yeah.
- 3 Q Is Vernoris saying -- or is anyone saying anything to
- 4 you that you remember?
- 5 A I just know Tavares got the gun from me.
- 6 Q Okay. He took it back?
- 7 A Yeah.
- 8 Q Okay. Do you know where that gun is now?
- 9 A No, sir.
- 10 Q Did he make any threats to you after all of this
- 11 happened?
- 12 A Just to keep my mouth shut or, "You know what's going
- 13 to happen."
- 14 Q And what did you understand that to mean?
- 15 A Kill me, man.
- 16 Q All right. Was there any point that night that you
- 17 thought you could have gotten away without being at that
- 18 apartment?
- 19 A Just by not being in the car from the get go, from
- 20 the jump start.
- 21 Q Okay. Well, once you got in the car when this
- 22 happened, were you threatened when you were already inside
- 23 the car?
- 24 A Yes, sir.
- 25 Q Okay. From that point on, did you feel that you had

1 any ability to leave without going to that apartment?

2 A Not to my understanding, man.

3 Q Okay. And if you had left, you thought that you
4 would have been killed?

5 A Yeah.

6 MR. SCHNEE: All right. Judge, I think that's all
7 the questions I have right.

8 THE COURT: Any cross-examination?

9 CROSS-EXAMINATION:

10 BY MS. CAMPBELL:

11 Q Mr. Isaac, you mentioned that he had threatened you
12 on a prior occasion.

13 A Yes, ma'am; yes, ma'am.

14 Q And how long before that, before this occurred, did
15 he threaten you on that occasion?

16 A Can you repeat the question for me?

17 Q You mentioned that -- in your testimony about he
18 threatened you about the time that your brother died or
19 something?

20 A Uh-huh, yes, ma'am.

21 Q And that happened before this happened, right?

22 A Yes, ma'am.

23 Q And how long before that was that? What time period
24 are we talking about?

25 A Like June. I guess this happened in October.

1 Q So several months?

2 A Yes, ma'am.

3 Q And when he threatened you at that point, you were
4 scared for your life, is your testimony?

5 A Yes, ma'am.

6 Q So you avoided him?

7 A (There was no response).

8 Q You were scared of him?

9 A Yeah.

10 Q That's your testimony. He put -- he put a gun and
11 pointed it at you, threatened you.

12 A Yes, ma'am.

13 Q Why was he threatening you when your brother died?

14 A Just like we had a little diffuse situation. It was
15 a little words, word-to-word conversation.

16 Q What does a word-to-word conversation mean?

17 A He said something to me. I said something back.

18 Q And that's when he threatened you with a gun?

19 A Yes, ma'am.

20 Q And you were worried for your life, and you stayed
21 away from him from that point on, right?

22 A Yes, ma'am.

23 Q So on the day that this occurred, you were still
24 scared of him?

25 A Basically.

1 Q He had threatened you, and you thought he could kill
2 you, right?

3 A Right.

4 Q But you voluntarily got in the car with him?

5 A Well, we had -- he had -- he had done talked to me
6 after the situation. He had pulled a gun on me the first
7 time.

8 Q He pulled a gun on you the first time, and your
9 testimony is you just told this judge by swearing an oath,
10 right, is that you were scared of him up until the day
11 this occurred?

12 A Right.

13 Q But you got into the car with him?

14 A (There was no response).

15 Q Voluntarily, according to your testimony, right?

16 A Ma'am.

17 Q You got into the car with him?

18 A Yeah.

19 Q And at that point, you knew who was in the car? It
20 was Tavares, right?

21 A Right.

22 Q And Vernoris, right?

23 A Right.

24 Q And at what point after you got in the car did he
25 threaten you again with a gun?

1 A Once we got into the apartment.

2 Q Did he threaten Vernoris?

3 A No.

4 Q Did Vernoris see him threaten you?

5 A Yes, ma'am.

6 Q And at that point, you were scared for your life
7 again, right?

8 A Right.

9 Q And what was the purpose of y'all going over to that
10 apartment complex?

11 A I ain't know about what we was going to the apartment
12 complex [sic] until we got there.

13 Q Okay. And you don't remember them talking about
14 getting the money, robbing him?

15 A It wasn't like a robbery, from my understanding.

16 Q Well, from your understanding, what was the purpose
17 of him threatening you and then going over to this man's
18 apartment?

19 A He owed him some money.

20 Q So when you got there, you mentioned you went up to
21 the door, and he wasn't there at first so y'all waited in
22 the parking lot.

23 A Yes, ma'am.

24 Q And at this point, you weren't free to leave because
25 he was armed.

1 A Yes, ma'am.

2 Q He had a gun. How many guns did he have?

3 A There was two.

4 Q Two guns, and was one a .380?

5 A Yes, ma'am.

6 Q And the other one you testified was a nine
7 millimeter?

8 A Yes, ma'am.

9 Q At that point, though, somebody sees the guy come up,
10 right?

11 A Yes, ma'am.

12 Q And this place where you're going, none of y'all live
13 there, do you?

14 A No, ma'am.

15 Q Then once you -- you see the guy come up, y'all go
16 back over there. Did he have to threaten you again to
17 make you go?

18 A Yeah.

19 Q Okay. And Vernoris was there when he threatened you
20 again?

21 A Yes, ma'am.

22 Q Once he threatened you the second time and you went
23 up to the door, that's when he kicked in the door?

24 A Yes, ma'am.

25 Q And then tell me, you said that the victim in the

1 case, the guy that got shot, right --

2 A Yes, ma'am.

3 Q -- he was inside the door?

4 A Yes, ma'am.

5 Q And then a physical altercation took place, right?

6 A Yes, ma'am.

7 Q Who was involved in that?

8 A Tavares and the victim.

9 Q And where were you standing?

10 A I was outside the doorway when it first started.

11 Q And when it first started, you were standing outside
12 the door?

13 A Yes, ma'am.

14 Q And at this point, Tavares is in a physical
15 altercation with the man, right?

16 A Yes, ma'am.

17 Q So did Tavares pull his gun at that point?

18 A No, ma'am.

19 Q And then as you were standing outside at first, you
20 ended up moving inside the apartment, as well?

21 A Yes, ma'am.

22 Q And once you were inside the apartment, what
23 happened?

24 A I tried to diffuse the situation.

25 Q How did you try to diffuse the situation?

1 A I tried to pull Tavares away.

2 Q You tried to pull Tavares off of him?

3 A Yes, ma'am.

4 Q And at that point, were you still scared?

5 A Yes, ma'am.

6 Q And when you were standing outside the door -- at
7 that point, when Tavares is in a physical altercation with
8 the other guy, did you have an opportunity to leave?

9 A Basically. I mean, I came in, Ma.

10 Q But you went inside instead, right?

11 A (There was no response).

12 Q This is your testimony.

13 A I tried to pull him away from the situation.

14 Q And at that point, you said Tavares got up. That's
15 your testimony now, isn't it?

16 A Yeah.

17 Q And he started to leave, Tavares?

18 A They were still fighting. I mean, the man was
19 running behind him toward the door, and he was running
20 towards me.

21 Q Where were you?

22 A I was outside of the apartment.

23 Q You were back outside at this point?

24 A Yes, ma'am.

25 Q So at that point, you're standing outside, and

1 they're still fighting and Tavares is running towards you?

2 A Yes, ma'am.

3 Q And the other guy is running toward you?

4 A When he came outside the door, it was like he was
5 pulling a gun out.

6 Q And at that point, you were able to pull out a .380
7 and shoot him multiple times?

8 A Yes, ma'am.

9 Q And then you all run outside and got back in the car
10 together?

11 A Yes, ma'am.

12 Q And Vernoris, y'all talked about what happened?

13 A No. I ain't talked about nothing.

14 Q You didn't talk about anything?

15 A (There was no response).

16 Q And then where did you go?

17 A Back to Bethel Bishop Apartments.

18 Q And at this point, you're still scared?

19 A Yes, ma'am.

20 Q You've been threatened. You had to shoot another guy
21 you felt threatened by, according to your testimony. So
22 at that point, did you and Tavares go separate ways?

23 A Once we got to Bethel Bishop Apartments.

24 Q And the police never ever came and talked to you
25 about this case until some five years later, right?

1 A Yes, ma'am.

2 Q And during that time period, did you continue to see
3 Tavares around?

4 A Yeah.

5 Q Did you continue to feel threatened?

6 A Yes, ma'am.

7 Q He threatened your life, right?

8 A Yes, ma'am.

9 Q So once you got away from Tavares and -- you were
10 safe at some point, right? At that point, did you call
11 the police?

12 A No, ma'am.

13 Q Why not?

14 A I got family members. I mean...

15 Q Okay.

16 A So...

17 Q So now your family members are threatened?

18 A If I called the -- if I called the police, I got a
19 kid. I got a child, and I got a mother and a brother. So
20 I mean, if you cut that, he probably would have gotten to
21 my family. You hear me?

22 Q Do you remember when the police made contact with you
23 back in April of last year?

24 A Yeah, I remember.

25 Q Do you remember them talking to you?

1 A Yeah, I remember.

2 Q And do you remember them -- you telling them another
3 version of what happened? Do you remember that?

4 A What other version?

5 Q I'll show you this three-page statement and ask you
6 if you recognize the signature on the bottom of those
7 three pages. Is that your signature?

8 A That's my signature.

9 Q Okay. And do you remember giving them a statement?

10 A Yes, ma'am.

11 Q Okay. So you told them what you knew at that point?

12 A Yes, ma'am.

13 Q When you were standing in the doorway and Tavares was
14 in the fistfight with the guy --

15 A Yes, ma'am.

16 Q -- did you ever see Tavares or the guy pull a gun?

17 A When they were standing in the door? When they was
18 fighting?

19 Q Yeah.

20 A Not while they was fighting.

21 Q And at that point, you were standing in the doorway,
22 but you went inside the apartment where they were
23 fighting?

24 A To pull Tavares away.

25 MS. CAMPBELL: Thank you. I don't have anything

1 further.

2 THE COURT: Anything further of this witness?

3 MR. SCHNEE: Very briefly, Your Honor.

4 REDIRECT EXAMINATION:

5 BY MR. SCHNEE:

6 Q I just want to clear up a couple of things. That
7 statement Ms. Campbell just showed you, did you type that
8 up?

9 A No, I didn't.

10 Q Okay. Did you explain to law enforcement what you
11 just talked about in court today?

12 A Yes, sir.

13 Q Okay. Did they write down every single thing you
14 said?

15 A Yes, sir.

16 Q Everything you said?

17 A I -- I -- I -- I -- I guess but other than that,
18 everything I said I didn't seen [sic] on that paper wasn't
19 on there.

20 Q Okay. But you're not the one that typed that up?

21 A No, sir.

22 Q Okay. Now, Ms. Campbell asked you about while
23 Tavares was fighting with the man inside the apartment,
24 what would have happened if you ran away at that point?

25 A I probably would have -- still would have been hurt.

1 Q You thought Tavares still would have come after you?

2 A Yeah.

3 Q Now, Ms. Campbell talked about why you had -- you're
4 around Tavares all -- where did you live at the time?

5 A I lived with my mother.

6 Q All right. Where?

7 A On Carnegie Street.

8 Q Okay. Is that anywhere near where Tavares lived?

9 A Yeah.

10 Q Where did he live?

11 A He lived at Bethel Bishop.

12 Q Okay. How far away is that?

13 A Right down the street.

14 Q Okay. So your -- your house is in Bethel Bishop
15 also?

16 A I used -- I'd be out there every day. That's where
17 I'm from.

18 Q Okay. Is there any other reason why your family and
19 Tavares' family would be around each other?

20 A He's married to my little cousin.

21 MR. SCHNEE: Okay.

22 Judge, that's all I have.

23 Thank you very much.

24 THE COURT: Anything further, Ms. Campbell?

25 MS. CAMPBELL: No, sir.

1 THE COURT: All right. You may step down.

2 Anything further, Mr. Schnee?

3 MR. SCHNEE: Judge, at this time, that's the only
4 witness I believe I need to present to you to establish
5 that my client was in fear and, therefore, acting under
6 duress for all of the crimes, obviously, up to the murder,
7 and I believe we established that the only reason he fired
8 was in self-defense.

9 THE COURT: Ms. Campbell?

10 MS. CAMPBELL: Your Honor, at this time, we would ask
11 to hand up a number of documents. If I could have just a
12 moment to get them together for your review?

13 THE COURT: Yes.

14 (Pause).

15 MS. CAMPBELL: I don't know if you want to make these
16 Courts Exhibits or hand them up to the Court.

17 THE COURT: What is it?

18 MS. CAMPBELL: It's the driving record from the
19 victim indicating that it was his apartment that they went
20 into.

21 There is a statement from Greg Isaac that was given
22 to the Richland County Sheriff's Department on April 11th,
23 2012 after being advised of his rights which contradicts
24 his testimony here today.

25 In addition, Your Honor, I would hand up the

1 codefendant's statement, Tavares World, which was taken on
2 April 12th, 2012 and Vernoris Dixon's written statement,
3 also, Your Honor, that was taken on August 22nd, 2012.

4 THE COURT: All right. Yes, sir.

5 MR. SCHNEE: Judge, I would object to statements of
6 any codefendants coming in without my opportunity to
7 cross-examine them under this hearing. I believe those
8 are hearsay statements.

9 THE COURT: All right. Ms. Campbell?

10 MS. CAMPBELL: I believe for purposes of this
11 hearing, Your Honor, hearsay is allowed. In all hearings
12 or pretrial motions, we are allowed to use hearsay. The
13 Rules don't preclude that, and I know nothing in any
14 Castle hearings previously -- hearsay has been admissible.

15 I'm not aware of anything that precludes us from
16 offering them just for purposes of this hearing or his
17 right to have this hearing, which we would like to argue
18 before the Court.

19 THE COURT: All right.

20 Yes, sir?

21 MR. SCHNEE: Judge, I would just dispute the contents
22 of those statements without an opportunity to hear from
23 those witnesses themselves. Especially since they're,
24 again, typed statements that are not made by those
25 individuals. They were typed by law enforcement.

1 MS. CAMPBELL: And I believe under Rule 104.

2 Beg the Court's indulgence.

3 (Pause.)

4 Your Honor, I'd refer to Rule 110--- 1101 which then
5 cites Rule 104.

6 THE COURT: Yes, ma'am. Tell me again what I should
7 be looking at.

8 MS. CAMPBELL: Under Rule 1101, the Applicability of
9 Rules, Your Honor, it says generally rules are
10 inapplicable.

11 And as far as preliminary questions of fact, under
12 the determination of questions of fact, preliminary to the
13 admissibility of evidence when the issues are to be
14 determined by the Court under Rule 104.

15 Your Honor, under this hearing and this status, we
16 would just ask that you consider these other statements
17 just as far as credibility goes as far as the defense of
18 duress.

19 Although if you just look at his statement alone,
20 which he has been asked about, which is what he has
21 admitted, is what he told police, we can limit it to that
22 fact in this case, Your Honor, if you feel more
23 comfortable.

24 THE COURT: I don't think that in order to deal with
25 this issue, I don't think the Court needs to review any

1 statements of any codefendants.

2 MS. CAMPBELL: Okay. If I could just --

3 THE COURT: Based on the -- the question before the
4 Court is whether there is any right to any -- any pretrial
5 determination of -- with this Castle Doctrine or whether
6 the issue raised in the submission of Mr. Schnee and the
7 testimony represents an issue.

8 If it's an issue is whether or not it's a matter that
9 he is seeking to raise some affirmative defense as opposed
10 to some question.

11 MS. CAMPBELL: Okay. Your Honor, then I would just
12 ask -- I would hand up the driving record which
13 indicates -- and the defendant has admitted -- that this
14 was the victim's apartment.

15 THE COURT: Well, that's undisputed. Clearly, the
16 submission by Mr. Schnee that the defendant -- the
17 defendants broke into the victim's home and killed him.

18 MS. CAMPBELL: Okay. Your Honor, and I would -- I'm
19 sorry.

20 THE COURT: That's -- I don't need to look at
21 anything to determine that. That's admitted in the motion
22 and in everything suggested by Mr. Schnee.

23 MS. CAMPBELL: Respectfully, Your Honor, we just do
24 not feel like that this -- even with his version of
25 facts -- before you can even get to that point, because

1 this is the victim's home, under Castle, he is not
2 entitled to a Castle hearing because that alone eliminates
3 him from being eligible for a Castle hearing.

4 THE COURT: Well, that's the focus of what this
5 hearing is about. I am --

6 MS. CAMPBELL: I'm sorry, Your Honor.

7 THE COURT: I recognize Mr. Schnee to -- for his
8 presentation, but that's not any acknowledgment that I am
9 weighing any immunity of clients.

10 So Mr. Schnee, you have made a motion holding that
11 this is a claim. Of course, you determine whether -- I'm
12 not sure what you're asking me to determine, but I'm going
13 to hear it now.

14 MR. SCHNEE: Well, Judge, what I'm asking for in this
15 hearing is immunity from prosecution. I believe that --

16 THE COURT: Immunity from prosecution of what?

17 MR. SCHNEE: For all of the crimes that he is
18 currently charged with.

19 THE COURT: Based on?

20 MR. SCHNEE: Based on...

21 Give me a second.

22 (Pause).

23 Based on 16-11-445.

24 THE COURT: Well, what are you talking about? Based
25 on what?

1 MR. SCHNEE: Based on the Protection of Persons and
2 Property Act. The Act provides immunity from prosecution,
3 specifically for the murder itself.

4 Based on the fact that it is my -- not only my
5 client's testimony, but my assertion that he was acting
6 under duress and, therefore, not present unlawfully at the
7 victim's apartment.

8 THE COURT: Say it again.

9 MR. SCHNEE: Assuming Your Honor agrees with my
10 client and believes his testimony and everything that I
11 have submitted, under the laws of duress and coercion, my
12 client was not unlawfully present at the time. Subsection
13 C --

14 THE COURT: Was not unlawfully present.

15 MR. SCHNEE: At the apartment.

16 THE COURT: At the apartment.

17 MR. SCHNEE: He was not there voluntarily based on
18 coercion and duress, and if he's not unlawfully present,
19 then that gets us to Section 16-11-440, which is -- which
20 says a person who is not engaged in an unlawful activity
21 has the right to -- has the right -- has no duty to
22 retreat and has the right to stand your ground and meet
23 force with force if there's reason to believe that force
24 is being used, which is what my client's version is.

25 I suppose theoretically Your Honor might be asking me

1 how that applies to the burglary or an attempted armed
2 robbery, conspiracy. I'm not sure Your Honor could
3 actually rule on that in this particular hearing. That
4 might end up being a question of fact for the jury after
5 the determination of immunity.

6 The law is somewhat unclear about that, whether my
7 client would be immune from all of his actions or simply
8 the murder itself. There is, obviously, very little case
9 law. I would argue he would be immune to all of it.

10 THE COURT: All right. Ms. Campbell?

11 MS. CAMPBELL: May it please the Court, Your Honor.
12 His client simply is not afforded the luxury of Castle in
13 this case because this occurred in the victim's home by
14 his own admission. There is no dispute about that fact.

15 The -- there is also, according to his testimony, no
16 dispute they kicked the door in to the victim's home.
17 Your Honor, I don't know how he can try to bootstrap
18 duress into exonerating him under a Castle theory when,
19 simply, Castle does not apply to his client in a situation
20 that he was in that day, period, under any kind of
21 argument.

22 Your Honor, the other thing I would note, too, is
23 that this did occur back in 2005. That would be
24 pre-Castle, and we would also argue that it would -- that
25 it would not be retroactive.

1 THE COURT: Anything further, Mr. Schnee?

2 MR. SCHNEE: Just very briefly. The fact that this
3 occurred in someone else's home does not eliminate the
4 ability to get immunity under 16-11-440, Subsection C.
5 There is nothing in the statute that says that it would
6 not apply.

7 As for the retroactivity, I agree the statute is not
8 retroactive. It is prospective. I believe I have covered
9 that quite thoroughly in my brief.

10 The only case that deals with that, when they -- when
11 they address the issue of date of importance is the
12 beginning of criminal prosecution.

13 My client was not arrested and no warrant was issued
14 until April of 2012, which is five years and ten months
15 after the effective date of this statute.

16 THE COURT: The legislative intent in passing this
17 Protection of the Persons and Property Act is codified in
18 statute 16-11-420, codifying common law Castle Doctrine.

19 The statute indicates that it's the intent of the
20 General Assembly to recognize that a person's home is his
21 Castle and that's extended to include an occupied vehicle
22 and a person's place of business, and that law-abiding
23 citizens have -- have the right to protect themselves,
24 their families, and others from intruders and attackers
25 without fear of prosecution.

1 So the intent of the statute is to attack persons in
2 their home, in their castle, and extends to include
3 occupied vehicles or a person's place of business.

4 The intent of the statute is not to protect intruders
5 and forward any immunity or protection to intruders or
6 those who might enter the dwelling of another to commit a
7 criminal act.

8 It borders on being -- it borders on preposterous for
9 the defendant in this case to claim that he was lawfully
10 on -- in Mr. Corbitt's apartment and he was acting
11 lawfully in the apartment and that he had the right to
12 kill Mr. Corbitt under -- because he was under duress or
13 threat from Mr. World.

14 If he had the right to defend himself from Mr. World
15 after attacking Mr. -- defending himself from Mr. Corbitt
16 after attacking Mr. Corbitt per the statement, then that
17 issue would be raised as an issue of self-defense during
18 the trial and not as the basis of immunity from
19 prosecution.

20 So it's my finding that the statute does not apply in
21 any form or fashion to the facts of this case and that
22 there is -- that the defendant has no right to a pretrial
23 determination of immunity; that any defense he might have
24 must be presented as an affirmative defense of
25 self-defense to be raised at trial and that this motion is

1 denied.

2 Further, that because the statute has no
3 applicability, that is, it forms no basis to delay the
4 prosecution of this case and the continuation of this
5 trial, and we will proceed with the trial.

6 MR. SCHNEE: Judge, if I may, very respectfully.

7 THE COURT: I'm listening.

8 MR. SCHNEE: May it please the Court, Your Honor. My
9 understanding of the most recent case by the Court of
10 Appeals, along with the other cases, in order for my
11 client to preserve this issue for appeal, which I
12 respectfully disagree with Your Honor, at this time I am
13 notifying Your Honor that I am going to file an appeal
14 immediately with the Supreme Court.

15 THE COURT: You may do whatever you wish. The trial
16 will proceed.

17 MR. SCHNEE: Thank you, Your Honor. I'll be back
18 soon.

19 THE COURT: You're not leaving here, not until we
20 take a break.

21 MR. SCHNEE: Oh, yes, sir. Fair enough.

22 THE COURT: All right. We addressed that matter.
23 What other pretrial matters, Ms. Davis?

24 MS. DAVIS: Your Honor, first and foremost, I guess
25 I'd ask Your Honor to make a ruling on our hearing we had

1 Wednesday regarding our motion to sever.

2 THE COURT: Okay. We will first hear the Jackson v.
3 Denno in this matter.

4 MS. DAVIS: Yes, sir.

5 THE COURT: All right.

6 MS. CAMPBELL: Your Honor, we should proceed with
7 testimony?

8 THE COURT: Yes.

9 MS. CAMPBELL: Okay. The State would call Chief
10 David Wilson.

11 DAVID WILSON, after being duly sworn,
12 testified as follows:

13 THE CLERK: Have a seat in the witness stand, please.
14 State your name for the record.

15 THE WITNESS: David Wilson.

16 DIRECT EXAMINATION:

17 BY MS. CAMPBELL:

18 Q Chief Wilson, where are you employed?

19 A The Richland County Sheriff's Department.

20 Q And what do you do there, sir?

21 A I'm a Deputy Chief over the Investigative Unit.

22 Q How long have you been in law enforcement?

23 A Thirty-five years.

24 Q And as the Deputy Chief over the Investigative Unit,
25 what do your duties include?

1 A Supervision of approximately 150 people to include
2 investigations, criminal forensic labs, evidence, and
3 narcotics.

4 Q And on occasion, you become actively involved in the
5 investigation of certain cases?

6 A Occasionally.

7 Q And in your unit, do you actually have certain
8 investigators that are assigned to what's called the Cold
9 Case Unit?

10 A That is correct.

11 Q And what is the Cold Case Unit?

12 A The Cold Case Unit handles cases that are more than a
13 year, year-and-a-half old that have not been solved.

14 Q I want to turn your attention back to September of
15 2011. Did you become involved in this case?

16 A I did.

17 Q And in this case, when did it actually occur, the
18 actual murder?

19 A It occurred in 2005, October 27th, 2005.

20 Q And at the point when you became involved in 2011,
21 had it been solved?

22 A No.

23 Q And as you started investigating the case again, did
24 you meet with various witnesses in a case?

25 A I did.

1 Q And at some point, was there a key piece of evidence
2 that came forth that pointed y'all in the direction of
3 Greg Isaac and Tavares World?

4 A That is correct.

5 Q And what was that, sir?

6 A It was a fingerprint on a lamp inside the victim's
7 residence.

8 Q And approximately when was that that you received
9 information that there had been a positive match on the
10 fingerprint on the lamp inside the victim's residence?

11 A That was on March 30th, 2012.

12 Q And at that point, who did the fingerprint match come
13 back to?

14 A Greg Isaac.

15 Q And was the lamp considered to be important in the
16 investigation as far as how it had been used during the
17 course of this crime?

18 A Not at that time.

19 Q All right. But at that point, it came back to Greg
20 Isaac?

21 A The fingerprint did, yes, ma'am.

22 Q Based on that information, did you make an attempt to
23 locate Greg Isaac?

24 A We did.

25 Q And tell the judge what you did.

1 A We did a background on Greg Isaac. It was determined
2 that there was a federal probation warrant out for him and
3 also a General Sessions court warrant. We contacted our
4 fugitive team who picked Greg Isaac up.

5 Q And, in fact, did they pick up Greg Isaac?

6 A Yes, ma'am, they did.

7 Q And when did they actually pick him up?

8 A I received word the morning of April 11th, 2012.

9 Q And at that point, what happened?

10 A I was contacted by Investigator Britt, and he brought
11 Greg Isaac to my office at the sheriff's department.

12 Q Once he came to your office at the sheriff's
13 department, what, if anything, occurred?

14 A I told Mr. Isaac that he was under arrest and what he
15 was under arrest for; that I needed to talk to him about a
16 different case and asked him if he was willing to talk to
17 me.

18 Q At that point, did you advise him of anything?

19 A I advised him of his Constitutional Rights by reading
20 it off of a form that we have at the sheriff's office.

21 Q And I'm going to show you -- Your Honor, may I mark
22 these for pretrial?

23 MR. SCHNEE: Judge, if I may, I -- I would stipulate
24 that my client's statements were voluntary.

25 MS. CAMPBELL: Well.

1 THE COURT: All right.

2 MR. SCHNEE: Just to save the Court time.

3 THE COURT: If Ms. Campbell wants to stipulate that
4 his clients' statement was freely and voluntarily given
5 after his client was advised of his Constitutional Rights,
6 he is not seeking a Jackson v. Denno hearing as to his
7 client; is that correct, Mr. Schnee?

8 MR. SCHNEE: Yes, Your Honor.

9 MS. CAMPBELL: Then that's all I would have on this
10 defendant, Your Honor.

11 THE COURT: All right. Well, I find --

12 MS. CAMPBELL: I'll make these --

13 THE COURT: I find based on -- I'm sorry?

14 MS. CAMPBELL: I'm sorry, Your Honor. If I could
15 just mark them real quick.

16 (WHEREUPON, State's Exhibits Nos. 1 - 3 were marked
17 for identification only.)

18 THE COURT: I find based on State's Exhibits,
19 counsel's stipulation, and the testimony of Mr. Isaac that
20 the officer's statement is -- or statements that he gave
21 freely and voluntarily after being fully informed of his
22 Constitutional Rights.

23 MS. CAMPBELL: Thank you.

24 If I may go to the second defendant?

25 THE COURT: Yes.

1 BY MS. CAMPBELL:

2 Q The next day, on April 12th, did -- based on
3 information you had gotten from Mr. Isaac, did y'all pick
4 up a Tavares World?

5 A Yes, ma'am. Investigator Crane and Investigator Dow
6 Thompson picked up Tavares World.

7 Q And when y'all picked up Tavares World, where was he
8 transported to?

9 A He was transported back to the sheriff's department
10 in Major Smith's office.

11 Q And at that point, who was actually conducting the
12 interview on Tavares World?

13 A Investigator Thompson and Investigator Crane.

14 Q And were you actually present when he was advised of
15 his rights?

16 A I don't think so.

17 Q When they were talking to him initially -- or at some
18 point, did you become involved in actually speaking with
19 Mr. World that day yourself?

20 A Yes, ma'am. I had come back in from an outside
21 meeting and had several items in my hands. Walking by the
22 office, I saw them in there talking to them. I stopped
23 for a few minutes and talked to them and got briefed up on
24 what they were doing. Then I went and put the items down
25 in my office.

1 Q Did you then go back in and talk to Mr. World
2 yourself?

3 A I did.

4 Q And tell the judge what you explained to Mr. World at
5 that point?

6 A Well, at that point, I wanted to make sure that it
7 was clear in his mind that in return for his cooperation,
8 that there would be no promises or any kind of deals cut
9 there at the sheriff's department; that only the
10 Solicitor's Office or a judge could do that.

11 Q And what exactly did you tell Mr. World to that
12 effect?

13 A I advised him that only a solicitor or a judge could
14 do that; that we could not promise him anything in
15 connection with his wife's charges that --

16 Q At that point, was he asking for some help in that
17 department?

18 A He was.

19 Q And did you make it clear to him that you all would
20 not be able to help him?

21 A Absolutely, crystal clear.

22 Q So was he promised anything in exchange for giving a
23 statement that day?

24 A No, he was not.

25 Q And while you were there, did he -- at any point, did

1 anyone promise him anything to make him talk to y'all?

2 A No.

3 Q And you actually go one step further and explained
4 that to him yourself?

5 A Absolutely.

6 Q And while you were there, did he ever invoke any of
7 his rights?

8 A No, ma'am. He did not.

9 Q Did -- once you had explained that you could not help
10 him, did he respond?

11 A He said he understood.

12 Q And said he understood you couldn't promise him
13 anything?

14 A Right.

15 Q At that point, did he say anything else to you?

16 A He gave us his version of the story, and I -- he had
17 told me -- I advised him that we knew who the actual
18 shooter was. We knew it wasn't him, and I advised him
19 that, you know, we needed his cooperation. He
20 subsequently told us what about happened that day.

21 Q And at that point, he gave you a full statement?

22 A Yes, ma'am.

23 Q And that was, I believe, actually reduced to writing?

24 A It was.

25 Q Let me get these marked.

1 (WHEREUPON, State's Exhibits Nos. 4, 5 were marked
2 for identification only.)

3 BY MS. CAMPBELL:

4 Q I'm going to show you what's been marked for purposes
5 of this hearing as State's Exhibit No. 5. Do you
6 recognize that?

7 A Yes, ma'am. This would be the statement that
8 Investigator Thompson and Investigator Crane took from
9 Tavares World.

10 Q And it was actually reduced to writing and witnessed
11 by Crane and Dow Thompson?

12 A Yes, ma'am.

13 Q And then the second part of his statement is actually
14 a handwritten statement?

15 A Yes, ma'am. That, again, was taken by Dow Thompson
16 and Bev Crane.

17 MS. CAMPBELL: Thank you.

18 Your Honor, I don't have anything further of this
19 witness on this issue.

20 THE COURT: Ms. Davis?

21 MS. DAVIS: Thank you, Your Honor. May it please the
22 Court.

23 THE COURT: Yes, ma'am.

24 CROSS-EXAMINATION:

25

1 BY MS. DAVIS:

2 Q Chief Wilson, my understanding is that you came in
3 during part of the interrogation or interview of Tavares
4 World?

5 A That is correct.

6 Q And I assume you're aware Investigator Crane and
7 Thompson picked him up about 11:00 a.m. that day?

8 A I'm not sure exactly what time, but I know they were
9 asked to do that that morning.

10 Q Yes, sir. And you actually requested that they go
11 pick him up, correct?

12 A I did.

13 Q Okay. So does it seem about right that it would have
14 been about eleven o'clock?

15 A It's possible.

16 Q What time did you come in to that interview, about?

17 A I would say it was probably after 12:30.

18 Q Okay. So the first hour-and-a-half or so of the
19 interview, you were not present?

20 A No.

21 Q And when you came in -- I'm sorry, you said you put
22 yourself down and then came in and were briefed. Who did
23 you speak to or who briefed you on what the conversation
24 was at that point with Tavares World?

25 A Actually, I stopped by and got briefed because they

1 were -- had the office door open as I was walking down the
2 hall. I saw them in there talking to the defendant.

3 Q Okay. So did you go in the interview room and talk
4 to them with Tavares present or --

5 A It's not really an interview room. It's an office.

6 Q Okay. Did you go in the office?

7 A Right.

8 Q I'm trying to find out did --

9 A I stepped in the door of the office, asked them how
10 it was going. Investigator Thompson and Investigator
11 Crane told me what was going on. I then walked on down to
12 my office down the corridor, put the stuff down, came back
13 to the office and clarified that one point.

14 Q Okay. And my point is this: What was it that you
15 heard that made you think it was necessary for you to walk
16 in the interview room and make an announcement about any
17 promises or cooperation -- or make any announcement that
18 there were no promises being made in this situation or
19 that you could not make -- any promises made?

20 A At that point, he had asked for the detectives to
21 help his wife out on some charges made by the City of
22 Columbia, and not being privy to the prior conversation
23 there and just the brief few minutes of briefing, I wanted
24 to make sure that there was no impropriety there. I
25 wanted to come back in and just make sure we were totally

1 clear there.

2 Q And after you -- after you gave the written statement
3 or the typed statement, you said you were there during
4 that part?

5 A No.

6 Q You were not there?

7 A No.

8 Q Okay. So he initially gave a version --

9 A He gave a verbal version of the events that
10 corroborated what Mr. Isaac, Greg Isaac, had said. The
11 interesting part being that prior to Mr. Isaac talking, we
12 didn't know there were two people involved in the actual
13 burglary. We only had the witness statement from the
14 eight-year-old son.

15 Q Okay.

16 A So that corroborated Mr. Isaac's information that
17 both of them went to the apartment.

18 Q Okay. In terms of -- so you were in the interview
19 from about 12:30 p.m. until about what time would you say?

20 A 12:45, one o'clock, something like that. That's an
21 estimation.

22 Q Okay. So you were only in --

23 A At that time.

24 Q Okay. So you were only in there about 15 or 20
25 minutes total?

1 A Probably 15 to 30 minutes max.

2 Q Okay. And you're aware, he was actually in Major
3 Smith's office for almost six hours?

4 A I'm not sure of the times.

5 Q Were you in there when they did the handwritten
6 statement that Ms. Campbell just showed you?

7 A I don't believe so.

8 Q So you weren't there for when they reduced it to
9 writing?

10 A No.

11 Q Or the typed statement?

12 A No. I saw them after the fact.

13 Q Yes, sir. Are you aware that after this statement
14 was given that Investigator Crane proceeded to contact the
15 victims of Ms. McFadden's case?

16 A No.

17 Q The City of Columbia? You're not aware of that?

18 A No.

19 Q When you talked to -- or when you came in and said
20 that you gave a warning to Mr. World to make it clear that
21 he could not expect anything in return for this or no
22 promises were being made about his wife's situation, did
23 you also instruct Investigator Crane or Investigator
24 Thompson on that issue?

25 A They were present.

1 Q They were present for that. All right. So you
2 didn't have any discussions with them again after that?

3 A No. I think we talked about it maybe afterwards
4 but...

5 MS. DAVIS: Yes, sir.

6 I have nothing further of this witness, Your Honor.

7 THE COURT: All right. Anything further from the
8 State?

9 MS. CAMPBELL: No, sir.

10 THE COURT: All right. Thank you, sir.

11 Next?

12 MS. WALKER: State calls Investigator Thompson,
13 please.

14 WILLIAM THOMPSON, after being duly
15 sworn, testified as follows:

16 THE CLERK: State your name for the record.

17 THE WITNESS: William Dowling Thompson.

18 DIRECT EXAMINATION:

19 BY MS. WALKER:

20 Q Sir, where are you currently employed?

21 A I am.

22 Q Where are you currently employed?

23 A Richland she--- Richland County Sheriff's Department.

24 Q And how long have you been employed at the sheriff's
25 department?

1 A Off and on, about 16 years.

2 Q And you were employed last year, back in April of
3 last year --

4 A I was.

5 Q -- at the department? At some point, did you become
6 involved in the investigation of this case?

7 A Yes. I came to work the morning of the 12th, and I
8 was asked to interview Mr. World. I was briefed on what
9 we felt was in the case at that point and was told that he
10 was at the Richland County Detention Center and asked if I
11 would talk to him along with Investigator Crane. So we
12 picked him up and brought him to the sheriff's department
13 and used Major Smith's office to talk to him about this
14 case.

15 Q And before you talked to him about this case, did you
16 advise him of his rights?

17 A We did.

18 Q I would like to show you what's been marked as
19 State's Exhibit 4 and ask you if you recognize that.

20 A Yes, ma'am. That's the Advice of Rights form that I
21 read to Mr. World, and he signed along with the waiver of
22 his rights.

23 Q What were the rights that you read to Mr. World?

24 A "Before we ask you any questions, you must understand
25 your rights. You have the right to remain silent.

1 Anything you say can be used against you in Court.

2 "You have the right to talk to a lawyer for advice
3 before we ask you any questions and have a lawyer with you
4 during questioning.

5 "If you cannot afford a lawyer, one will be appointed
6 to you before any questioning, if you wish. If you decide
7 to answer questions now without a lawyer present, you
8 still have the right to stop answering at any time. You
9 also have the right to stop answering at any time until
10 you talk to a lawyer."

11 He was asked if he understood that and was he willing
12 to talk to us. He said he was. He signed. I also
13 signed. I read the waiver of the rights.

14 "I have read the statement of my rights. I
15 understand what my rights are. I am willing to talk and
16 answer questions. I understand and know what I'm doing.
17 No promises have been made to me, and no pressure or
18 coercion of any kind has been used against me."

19 He also signed that, along with myself as a witness.
20 This is 11:35 a.m. on April 12th, 2012.

21 Q And he signed that waiver of rights?

22 A He did, in the presence of myself and Investigator
23 Crane.

24 Q Over the course of speaking with him, did you -- did
25 he appear to understand what you were saying to him?

1 A He did.

2 Q Did he appear to be under the influence of drugs or
3 alcohol?

4 A No, ma'am.

5 Q He was coherent the entire time?

6 A He was.

7 Q And he signed the waiver of rights saying that no
8 promises have been made to him?

9 A He did.

10 Q Did you offer him food and drink while he was there?

11 A At least twice.

12 Q And then he began to discuss this?

13 A During the course of the discussion, yes, ma'am. We
14 offered him an opportunity to have something to drink or
15 eat. He declined. This occurred two or more times during
16 the course of our couple of hours we spent talking about
17 it at that time.

18 Q And at some point, did he request something from you?

19 A Around two o'clock after having denied any
20 involvement or any knowledge of this incident up to that
21 point. He broke down tearfully and said that he would
22 tell us what happened. We would tell us who was there,
23 but first, he wanted us to see if we could get his wife
24 out of trouble, out of jail.

25 Q At that point, did you know his wife was in jail?

1 A I did not know anything about his wife at that point,
2 but I asked him, "What are you talking about? What is she
3 in jail for?"

4 He told me. He described the case, and I recognized
5 that as something I had seen on the news about the assault
6 of a pregnant woman.

7 Q His wife was in jail for assaulting a pregnant woman?

8 A Her sister.

9 Q And did he tell you more about that assault?

10 A He said that his wife or his baby's mama, Valerie,
11 had -- was in jail for having assaulted her younger
12 sister, Bashaya or something of that nature. I'm not real
13 sure how to pronounce the name, assaulting her, striking
14 her in the stomach when she was pregnant.

15 I said, "Well, I recall seeing that on television."
16 I said, "We can't do anything about that. We can't
17 interfere in the City's case. We have nothing to do with
18 that."

19 I asserted that to him multiple times, and he
20 continued to ask us to do something about it.

21 Q Did you -- did you make it clear to him that you
22 could not do anything about it?

23 A I told him we couldn't do anything about it. What I
24 said that we would do is I said we can inquire as to what
25 the status is, find out what's going on, if that would

1 make you feel better.

2 Q And --

3 A So I did inquire.

4 Q You inquired with the City of Columbia what the
5 status of that case was?

6 A I did. I was able to locate who the assigned
7 investigator was. I called him and asked him. I told him
8 we were interviewing Tavares and that he was concerned
9 about what was going on with his -- his baby's mother.

10 The officer said he didn't have any trouble with us
11 talking about it. He said, "Actually, nothing is going
12 on, really, because the -- they're not responding. The
13 victim's family is not responding to us." So I passed
14 that information on to him, that --

15 Q To -- when you say "him", who are you referring to?

16 A Tavares.

17 Q Okay. Continue. I'm sorry.

18 A He asked if we would try further to find out what's
19 going on. So I called the victim's home, the younger
20 sister, and she answered but wasn't at home. It was a
21 cell phone. I thought it was the phone. Apparently, it
22 was her cell phone.

23 She answered. I asked her if her mother was there.
24 She said, "No, she is in -- she is in jail." I asked her
25 if her father was there. She said, "Well, he's at home.

1 I'm not at home."

2 I said, "Well, when you get home, we'd like to talk
3 to you -- your parents" because I was going to ask them
4 what was going on with the case.

5 Q And at some point when you made contact with them,
6 their concern was that you were trying to help Tavares
7 World out in this situation?

8 A Did I indicate I was trying to help him out?

9 Q Was that the victim's concern? Did the victim ever
10 talk to you about your involvement with the CSC charge or
11 with the assault and battery charge?

12 A I didn't actually talk to the victim other than the
13 victim being the teenage daughter other than to ask for
14 her parent, when I called on the phone one time.

15 Q And you spoke to Janet Best?

16 A I spoke with Janet Best sometime later.

17 Q And you indicated to Ms. Best that you were not
18 trying to help out Tavares World?

19 A I told her we had nothing to do with that case. I
20 just was inquiring as to what had happened with it. I
21 told her what their interest was.

22 Q And throughout this entire process, did you explain
23 to Mr. World that you could not help him out?

24 A Multiple times.

25 Q That you could not promise him anything in exchange

1 for his statement?

2 A Multiple times.

3 Q And, in fact, that was written out?

4 A That was written in the original handwritten
5 statement when he first asked us to try to do something to
6 get his wife out of jail, and he signed that.

7 MS. WALKER: Thank you, sir. Your Honor, I don't
8 have any further questions.

9 THE COURT: Ms. Davis?

10 MS. DAVIS: Thank you, Your Honor. May it please the
11 Court.

12 CROSS-EXAMINATION:

13 BY MS. DAVIS:

14 Q Investigator Thompson, you were part of the interview
15 from start to finish, correct?

16 A Of Mr. World?

17 Q Yes.

18 A Yes, ma'am.

19 Q All right. Y'all went and picked him up at
20 eleven o'clock in the morning from the detention center?

21 A About that time.

22 Q He was incarcerated at that time on other charges?

23 A Yes.

24 Q And he had an attorney at that time, correct?

25 A As far as I know.

1 Q Did you contact -- well, I was representing him. Did
2 you ever contact the attorney that you were going to
3 interview him on anything additional?

4 A No. There was nobody representing him on this at
5 this time.

6 Q Yes, sir, I understand that.

7 So you picked him up at eleven o'clock. Per your
8 report, you took him back to the detention center at
9 16:00, which was five o'clock.

10 A Okay.

11 Q Right. So he was actually interviewed for about six
12 hours?

13 A We transported him to the sheriff's department. At
14 11:35, which is about the time we got in there and got
15 settled in that office where we found a place we could
16 talk to him, that's when he was advised of his rights, and
17 the form was signed by him, 11:35.

18 Q Yes, sir.

19 A Around 14:00, which was 2:00 p.m. after having talked
20 to him for two, two-and-a-half hours, he said he would
21 tell us. He -- he volunteered to tell us, but he asked us
22 to do something for him.

23 Q Yes, sir, I understand that.

24 A Okay.

25 Q I'm simply trying to say the time you went to pick

1 him up was eleven o'clock, and the time you brought him
2 back to the detention center was five o'clock?

3 A I'm not certain of the time he was taken back, but we
4 had him there most of the day. All afternoon, basically.

5 Q Yes, sir, Your Honor -- oh, I'm sorry. Yes, sir,
6 Investigator Thompson.

7 When you went and spoke with him or picked him up
8 from the detention center, at that point, you already were
9 aware that Greg Isaac had been interviewed and had
10 confessed?

11 A I was aware to some degree. It was my first
12 involvement and only involvement in this particular case.

13 Q Yes, sir. I understand that, but you would have been
14 briefed and told that Mr. Isaac --

15 A Right.

16 Q -- had been interviewed and confessed?

17 A Right.

18 Q Right. Had you read his statement at that point?

19 A I don't know that I read it. I had been told about
20 it.

21 Q All right. So someone told you, essentially, what he
22 said?

23 A Yeah.

24 Q And at that point then, you knew that he had
25 implicated Mr. World?

1 A Yes.

2 Q Okay. So when you went and picked up Mr. World, at
3 that point, your purpose was to get a confession, a
4 statement, from him, correct?

5 A Yes.

6 Q And you took him back to the office. At that point,
7 it was you and Investigator Crane --

8 A Yes.

9 Q -- interviewing him?

10 A Yes.

11 Q And this all took place in --

12 A Major --

13 Q -- Major Smith's office?

14 A Major Smith's office.

15 Q When you initially read him his rights, which
16 according to the form was 11:35, at that point, he said he
17 did not know anything about this and denied involvement,
18 correct?

19 A He denied knowledge of it, yes.

20 Q Okay. And y'all continued to kind of talk to him,
21 and he still continued to deny involvement, correct?

22 A Yes.

23 Q All right. And per your report, you said this went
24 on and off. The conversation went on and off for several
25 hours?

1 A A couple of hours.

2 Q Yes, sir. And at that point, your report states,
3 "World eventually broke down"?

4 A Yes, ma'am, as I said just a moment ago.

5 Q Yes, sir. So he broke down at that point, said he
6 was crying?

7 A Uh-huh.

8 Q And that he at that point had asked -- he was worried
9 about his wife, who was in jail, and his son, correct?

10 A He was worried about his wife, yes.

11 Q Yes, sir. And he was worried because she was in
12 jail, and he was worried about his son, correct?

13 A I don't recall the mention of the son. He may have
14 said that, but his initial concern was about his wife and
15 the fact that she was locked up.

16 Q Yes, sir. And I'm just going based on your report
17 that he said he was worried about getting her out of jail
18 and that he was worried about who would take care of his
19 son?

20 A Yes.

21 Q Fair enough?

22 A That's fair, yes.

23 Q Yes, sir.

24 At this point, like I said, this had been an
25 off-and-on conversation for hours, and he was denying it.

1 At this point, when he breaks down, that's when he -- when
2 you're saying he said he knew something about this
3 incident?

4 A That's when he said he would tell us. He would tell
5 us what went on, who was there, but he wanted us to get
6 his wife out of jail.

7 Q Right.

8 A I told him we can't do that.

9 Q Yes, sir. So he said, "I'm not going to tell you
10 anything unless you help out my wife"?

11 A I don't know that that was his exact words, but he
12 indicated he wanted us to do this for him because he
13 volunteered he would tell us, but he put stipulations on
14 it when he first volunteered that. We told him repeatedly
15 we cannot do that.

16 Q Right, but what I'm asking you is he said, "I will
17 talk to you, but I want y'all to help me help my wife."
18 That was essential--- that was a part of his --

19 A That's essentially what he said, yeah.

20 Q Okay. And at that point, you called Investigator Dow
21 with CPD and inquired about the status of his wife's case?

22 A I told him I would see if I could find out about
23 what's going on, and I did call him.

24 Q And you did call Investigator Dow?

25 A Yes.

1 Q And you called him on speaker phone, actually, right,
2 in the office in front of Mr. World?

3 A I don't remember that part of it being accurate, no.
4 I know I called him. I had to go ask another investigator
5 to find out who was working the case. They gave me that
6 information, and I did call and talk to Investigator Dow.

7 Q Okay. And do you recall in your incident -- or I'm
8 sorry. In your report saying you made those calls in
9 front of Mr. World?

10 A I made the call. I may have made both in front of
11 him. I'm not certain that I did the first one.

12 Q Okay.

13 A But I did try to call the victim's home and the
14 victim of the assault.

15 Q Yes, sir. So you called Investigator Dow?

16 A In his presence, yeah.

17 Q Yes, sir. So you called Investigator Dow. That one
18 you're not sure about if that's in his presence, but then
19 you called the victim in that case, Brochet, and that is
20 in front of World, correct?

21 A Yes.

22 Q Okay. At that point, you're telling him -- what
23 you're saying to him is -- your testimony is that you're
24 telling him you can't promise him anything, correct?

25 A I told him that repeatedly.

1 Q Repeatedly, "I can't promise to help you in any way"?

2 A We can't get -- we can't interfere in the case with
3 the City.

4 Q Correct.

5 A We will not. We will not. We cannot.

6 Q Yes, sir. But then what your action showed was that
7 you were actually calling Investigator Dow and calling the
8 victim in that case just as he was asking you to do,
9 correct?

10 A I told him, "I'll see what the status of the case
11 is," because he was, obviously, upset.

12 Q Yes, sir.

13 A Over that.

14 Q Yes, sir.

15 A So I did try to find out what the status of the case
16 was.

17 Q And after --

18 A To try to effect -- the results of that, no, could
19 not, did not.

20 Q Okay. And so after you called Investigator Dow, you
21 went -- Mr. World was made aware of that phone call,
22 whether it was in his presence or you told him you made
23 that call, told him the status per Investigator Dow,
24 right?

25 A Yes.

1 Q All right. And at that point, he again said, "I'm
2 not going to talk to you unless you help my wife out. I
3 want you to help my wife out more" before he talked to you
4 about anything?

5 A He had asked us to get her out of jail, and we
6 repeatedly told him we could not. We could not interfere
7 with their case.

8 Q Yes, sir. I understand that that's what you're
9 telling him, but after you said that, you then called
10 Brochet, the victim of the case, correct?

11 A I called that number that he provided to me with the
12 intent of asking the parent what is the status of the
13 case.

14 Q Yes, sir. I understand you may not have been trying
15 to reach Brochet, but I mean, you were making another
16 phone call to find out additional information, correct?

17 A To find out what was going on with this case.

18 Q Right. And you called that -- when you made that
19 phone call, we're on the same page, that that was done in
20 front of Tavares World?

21 A That call, I'm certain was made in his presence, yes.

22 Q And after you made that call, you guys -- again, you
23 and Investigator Crane asked him to please talk to you and
24 tell you what he knew at that point, yes?

25 A At some point, Chief Wilson came in. I'm not certain

1 of the exact timing of his coming in, but it was in the
2 vicinity of -- of two o'clock.

3 Q Yes, sir. Do you --

4 A And Chief Wilson also told him they cannot -- I will
5 not allow them to do anything for you to affect that case.

6 Q Yes, sir. I understand. We're going to get to that
7 point. Do you have your report with you?

8 A Which report?

9 Q The summary of the report you did in this case.

10 A You're talking about my...

11 Q Investigative --

12 A Follow up, yeah.

13 Q Before we get to the point where Investigator -- I'm
14 sorry, where Chief Wilson comes in, you know that you make
15 the call to Brochet in front of him --

16 A Yes.

17 Q -- and then you say he was still reluctant to say
18 anything until we fixed things with Valerie first. That's
19 before Chief Wilson comes in, correct?

20 A Uh-huh.

21 Q And he said -- you say that he asked again that we
22 try and set something up with Brochet and her father,
23 correct?

24 A Yes.

25 Q And at that point, you make a second phone call?

1 A We got no answer.

2 Q But got no answer at that point.

3 A Right.

4 Q All right. So at that point, although you had told
5 him multiple times you can't promise him or you told him
6 multiple times you can't help him, your actions are that
7 you are trying, in fact, to find out information and
8 possibly help, not necessarily him, but help his wife at
9 that point.

10 A I would not say it's going to help his wife. My
11 intent was to ease his mind at the moment, because he was,
12 obviously, upset about that.

13 Q And your point was to ease his mind. What do you
14 mean by that?

15 A He was visibly upset about what was going on with his
16 family and did not know what was going on, couldn't get
17 any information about it. So I tried to provide him with
18 what information I could find out.

19 Q Okay. At that point --

20 THE COURT: We're going to stop now for lunch.

21 MS. DAVIS: Oh. Yes, sir.

22 THE COURT: You have any idea about how much longer
23 is your questioning?

24 MS. DAVIS: Not too much longer, Your Honor.

25 THE COURT: All right.

1 MS. DAVIS: Ten to 15 minutes.

2 THE COURT: All right. Finish it up.

3 MS. DAVIS: I can finish this up, yes, sir.

4 THE COURT: All right. Go ahead.

5 BY MS. DAVIS:

6 Q So at that point, you had made three phone calls to
7 find out information for Tavares World, correct?

8 A One to the investigator.

9 Q Yes.

10 A One to the family and one with no answer to the
11 family.

12 Q Yes, sir. And your point was to ease his mind at
13 that point, correct?

14 A As I told him I would, yeah.

15 Q And to ease his mind -- in terms of you easing his
16 mind, what was your hope in doing that after you eased his
17 mind?

18 A Well, I hoped he would calm down and tell us what he
19 said he was going to tell us.

20 Q And after that, that's when you say then-Chief Wilson
21 came by his office, correct?

22 A Yes.

23 Q And who briefed him on what had transpired up to that
24 point with Tavares World?

25 A Myself and Investigator Crane.

1 Q Okay. Did you do that inside the office in front of
2 Tavares, or did y'all step outside and tell him kind of
3 what was going on?

4 A I think we were right inside the office, and Chief
5 Wilson immediately said, "I can't do anything for you."

6 Q Okay.

7 A I won't allow -- I won't allow them to do anything
8 for you to influence that case," which had been said
9 multiple times.

10 Q Yes, sir. So at that point, upon Chief Wilson
11 hearing what had transpired at that point, he took it upon
12 himself to find it necessary -- or he found it necessary
13 to then, again, say, "Look, we can't make any promises for
14 you"?

15 A That's what he said.

16 Q All right. And then y'all actually did a written,
17 handwritten statement, also in which it memorializes that
18 Tavares World had told you, I'll tell you my involvement
19 if you will help in the disposition of my wife's case,
20 Valerie McFadden?

21 A Yes, ma'am. And also in that same statement, it
22 says, "We can't do that."

23 Q Right. Well, you understand -- it says, "Do you
24 understand that investigators cannot promise that they can
25 help your wife with her case?"

1 A That's correct.

2 Q Does that not leave open the option that y'all are
3 going to try?

4 A He had been told, ma'am, multiple times. We cannot.
5 It's not our case. We have nothing to do with it.

6 Q Yes, sir, I understand.

7 A I'm trying to answer you. We just -- multiple times
8 he was told the same thing.

9 Q I understand that, and what I'm trying get out is
10 sometimes you tell somebody one thing but you do something
11 else. The implication there might be confusing.

12 A I don't think there was any confusion.

13 Q Okay.

14 A We did not imply that we were going to fix that case.

15 Q Yes, sir. After he gave that statement to you, that
16 was on August -- I'm sorry, April 12th, a couple days
17 later than that, you actually go out and meet with Janet
18 Best, the mother of --

19 A The next week --

20 Q Yes, of --

21 A -- I went by and asked them what was going on --

22 Q Yes, sir. So you went -- sorry.

23 A And they said what they were hoping for was the
24 family would get back together.

25 Q Yes, sir. And so you went out to that -- to

1 Ms. Beth's house and spoke with her about that you had
2 spoken with Tavares World and that he was worried about
3 Valerie, and you wanted to know their position on the
4 case, right?

5 A I inquired as to what they wanted to happen in that
6 case, and they told me.

7 Q Yes, sir. And you actually told Brochet and
8 Ms. Best, her mother, that they should call Investigator
9 Dow and let them know that they would like Valerie home.

10 A I told them they should pass on to the investigator
11 and the Solicitor's Office what it was they wanted, yes.

12 Q Yes, sir, to call the investigator and to call the
13 solicitor and let them know, correct?

14 A Yeah.

15 MS. DAVIS: Your Honor, that's all I have for
16 Investigator Thompson.

17 THE COURT: All right. Ms. Walker?

18 MS. WALKER: Nothing, Your Honor.

19 THE COURT: All right. Thank you, sir. You may step
20 down.

21 So as far as this matter is concerned, does the State
22 have other witnesses, or is he the last witness?

23 MS. CAMPBELL: I think that's sufficient for the
24 purposes of this hearing, Your Honor.

25 THE COURT: All right. Do you have any witnesses

1 you're going to call on this issue?

2 MS. DAVIS: Your Honor, I was actually --
3 Investigator Crane was present also during this statement,
4 so I planned to ask him questions, as well, about his
5 perception.

6 THE COURT: All right. So we'll break for lunch then
7 for one hour.

8 MS. DAVIS: Thank you, Your Honor.

9 THE COURT: We'll be in recess for one hour.

10 (Whereupon, a lunch break was taken.)

11 THE COURT: Where is the defendant?

12 THE DEPUTY: Other officers went down to get him.

13 MS. CAMPBELL: Can I have a housekeeping matter?

14 THE COURT: Yes.

15 MS. CAMPBELL: I had marked Tavares World's
16 statement. It was actually a written statement and then a
17 typed statement. I marked them as one exhibit, and I
18 showed defense counsel. She agrees with me.

19 If we could mark the typewritten statement as State's
20 Exhibit 5 and then add State's Exhibit 6 to the
21 handwritten one. They're both two pages.

22 THE COURT: Okay.

23 MS. CAMPBELL: With the Court's permission.

24 THE COURT: It is.

25 (WHEREUPON, State's Exhibit No. 6 was marked for

1 identification only.)

2 THE COURT: All right. Your next witness.

3 MS. WALKER: Your Honor, the State would call Bev
4 Crane.

5 THE COURT REPORTER: Do you have a witness list? I
6 don't have the -- the names. I'm not sure.

7 MS. CAMPBELL: I'm sorry. Bev Crane, C-R-A-N-E, and
8 I'll get you a witness list.

9 THE COURT REPORTER: Bev, B-E-V?

10 BEVERLY CRANE, after being duly sworn,
11 testified as follows:

12 THE CLERK: Thank you. Have a seat in the witness
13 stand, please.

14 MS. CAMPBELL: May I approach?

15 THE COURT: Yes.

16 DIRECT EXAMINATION:

17 BY MS. CAMPBELL:

18 Q Investigator Crane, where are you employed?

19 A Richland County Sheriff's Department.

20 Q What do you do there, sir?

21 A I'm a Cold Case Investigator with them.

22 Q I want to turn your attention back to April 12th,
23 2012. Were you involved in the investigation in this
24 case?

25 A Yes, ma'am, I was.

1 Q And on that date, did you and Investigator Thompson
2 make contact with a defendant in this case?

3 A We did.

4 Q And who did you make contact with?

5 A Tavares World.

6 Q Tavares World?

7 A Yes.

8 Q And where did y'all pick Mr. World up from?

9 A Alvin S. Glenn Detention Center.

10 Q Once you picked him up, where did you transport him
11 to?

12 A Richland County Sheriff's Department on Two Notch.

13 Q And once you got to there, before talking to him, did
14 you give him an Advice of Rights?

15 A He was advised of his rights before we began talking
16 to him.

17 Q And at that point, did you begin talking to him about
18 the Tony Corbitt case?

19 A We did.

20 Q And for a period of time, did he admit to knowing
21 anything about the case?

22 A No, ma'am. He just kept telling us we were crazy.

23 Q At some point, did Chief Wilson enter the office
24 where you were interviewing Mr. World?

25 A He did.

1 Q And at that point, what, if anything, happened?

2 A At that point, he introduced himself to Mr. World,
3 and up to that point, Mr. World had not been told by us
4 that we had Greg Isaac in custody, and Chief Wilson kind
5 of cracked that door open as far as letting them know that
6 we had a participant in custody.

7 Q And at that point, was he also informed whether or
8 not the participant, Greg Isaac, had given y'all
9 information?

10 A Yes, he did.

11 Q What happened next?

12 A At that point, it took a lot of the wind out of his
13 sails. He had up to that point -- had stonewalled us,
14 just telling us we were crazy; that we didn't know what we
15 were talking about. At that point, he kind of turned a
16 corner and realized that we weren't crazy. We had a
17 statement that implicated him in this home invasion and
18 robbery.

19 Q And at that point, did he make any requests of y'all?

20 A He did. He stated that his -- his baby's mama was in
21 jail, and he wasn't -- he wasn't going to tell us anything
22 until we could get her out of jail.

23 Q Once he had requested y'all do certain things in
24 order -- so he would tell you what happened, what, if
25 anything, did you inform him?

- 1 A Excuse me?
- 2 Q What did you tell him?
- 3 A I told him that we would not make a deal with him for
4 his statement.
- 5 Q Did you promise him anything?
- 6 A I did not.
- 7 Q At any point, did you tell him you would help him
8 out?
- 9 A I did not.
- 10 Q Did anyone do that while he was in your presence?
- 11 A No, ma'am.
- 12 Q At any point that afternoon, was he offered the
13 opportunity to go to the restroom or -- at all?
- 14 A Yes, he was. Early on -- earlier on in the
15 statement -- even before we started the statement, he was
16 offered the opportunity for a restroom break. He did not
17 want it. Later on in the statement, he was offered an
18 opportunity for a restroom break. He took that
19 opportunity. He went to the restroom. We offered him
20 lunch at lunchtime.
- 21 Q Did you also advise him of his rights in writing that
22 day?
- 23 A We did.
- 24 Q And that's the Advice of Rights that's already been
25 in. Did you witness that?

1 A Yes, ma'am.

2 Q Did he indicate whether or not he wished to waive his
3 rights?

4 A He did.

5 Q And did he sign off wanting to waive his rights and
6 talk to y'all?

7 A He did.

8 Q And during the time period he was in your presence
9 that afternoon, was he cooperative?

10 A He was.

11 Q At any point, did anyone promise him anything?

12 A He was not promised that we could do anything. I
13 think Dow told him he would look into what the situation
14 was, but there was no promise. It was reiterated to him
15 on three separate occasions, we're not promising you
16 anything in return for your statement, period.

17 Q Specifically, was he told anything about the charges
18 involving his wife?

19 A That -- no, that we were not -- we weren't in a
20 position that we could plea bargain for his wife. That
21 was a totally different set of circumstances from a
22 different agency.

23 Q And who all made that clear to him? Who all told him
24 that?

25 A I think myself, Dow, and the Chief, all three made

1 that clear to him.

2 Q And at any point, did any of you change your mind or
3 make him a promise in order to get him to talk?

4 A No, ma'am.

5 Q Did anyone threaten him in any way?

6 A No, ma'am.

7 Q Did anyone deprive him of his rights?

8 A No, ma'am.

9 Q At any point, did he ever invoke his right to be
10 silent?

11 A No, ma'am.

12 Q Did he ever tell you he wanted to talk to a lawyer
13 rather than talking to y'all?

14 A No, ma'am.

15 Q And, in fact, in the entire time he was in your
16 presence, was he at least responding to your questions and
17 cooperative?

18 A He was.

19 Q There's two different statements taken from the
20 defendant that day, a handwritten statement, I believe.

21 A Yes, and then it was transcribed and a typed
22 statement was taken.

23 Q I'm going to show you what's been marked as State's
24 Exhibits No. 5 and No. 6. Do you recognize those?

25 A I do.

1 Q And are those the statements that were taken that
2 day?

3 A That's my signature on them.

4 Q At some point, did Investigator Dow make contact with
5 the victim's parents, I think, something like that?

6 A I think he attempted to. I don't think he ever made
7 contact with them.

8 Q And at no point while you were there, did anyone
9 promise him any leniency or any hope of reward in order to
10 get him to talk to you?

11 A No, ma'am.

12 MS. CAMPBELL: Thank you. I don't have anything
13 further.

14 THE COURT: Ms. Davis?

15 MS. DAVIS: Thank you, Your Honor. May it please the
16 Court.

17 CROSS-EXAMINATION:

18 BY MS. DAVIS:

19 Q Investigator Crane, my understanding is you were also
20 present with Investigator Thompson throughout the duration
21 of the entire interrogation?

22 A I was.

23 Q And that all took place in Major Smith's office?

24 A It all took place in Major Smith's, yes.

25 Q Yes, sir. And that -- the duration from when y'all

1 picked him up until you took him back was from 11:00 p.m.
2 to 6:00 a.m.? I'm sorry, 11:00 a.m. to 5:00 p.m.?

3 A I think it's more like 4:00 p.m. I'm not sure of the
4 exact time, but it was like -- it wasn't an extended
5 duration or anything. I think it was more like 4:00 p.m.

6 Q 4:00 p.m.

7 A We took him back.

8 Q I think you're right. 'It's 16:00.

9 A Yeah.

10 Q So it was about five hours from the time you picked
11 him up until the time you took him back?

12 A Right.

13 Q And just a moment ago, you stated that Tavares was
14 cooperative, but y'all interviewed him for several hours,
15 correct, when he was saying he didn't know anything about
16 it and was telling y'all he was not involved?

17 A He was just telling us that we were crazy. We were
18 with him for several hours, yes.

19 Q Yes, sir. So initially, for those first couple of
20 hours, he was not denying anything. He was not telling
21 y'all anything?

22 A He wasn't telling us anything.

23 Q Okay. And at some point, he then said -- you say --
24 I'm sorry. At some point, he then breaks down, and that's
25 when he tells you about Valerie, about his wife?

1 A Yes. And I'm not sure exactly at what point he told
2 us about his wife.

3 Q Okay. It was before he told y'all any details or
4 anything about his involvement, correct?

5 A It was before he gave us any details of his
6 involvement; that's right.

7 Q Yes, sir. And he -- essentially, I think -- he just
8 said, as you stated, was he was not going to tell y'all
9 anything until he got his wife out of jail or until she
10 got out of jail, I'm sorry.

11 A I think that was basically his statement.

12 Q All right. And I know -- we've heard in terms of
13 Investigator Wilson, Investigator Thompson, and yourself,
14 you're saying all of you told him multiple times that
15 y'all could not promise him anything or bargain with him
16 in any way?

17 A Right.

18 Q Why -- if it was so clear to him, why did y'all have
19 to tell him so many times to make that clear?

20 A Well, probably for the same reason he kept telling us
21 we were crazy. I mean, he was just -- we would ask him
22 questions, and he would dodge the answer. He brought this
23 up several times, and several times we had to explain to
24 him that it was something that we could not do.

25 Q Right. And when you're telling him you can't help

1 him or that you're not going to promise him anything, at
2 that same time, Investigator Thompson was calling and
3 looking into Valerie McFadden's case, correct?

4 A During that timeframe or right after that timeframe,
5 yes.

6 Q Yes, sir. Before he gave y'all any details,
7 Investigator Dow was on the phone -- or I'm sorry,
8 Investigator Thompson was on the phone with Investigator
9 Dow who was the investigator of Valerie's case, correct?
10 A Now, I'm not sure who he was talking to on the phone.
11 I don't know. I was with Tavares World talking with
12 Tavares World.

13 Q Right.

14 A And I assumed that he was talking to someone at
15 Columbia PD to find out what was going on.

16 Q Okay. Well, he then told investigator -- or I'm
17 sorry. He then told Tavares what the conversation was
18 about. Were you not in the room when that happened?

19 A I was there, but I was -- I mean -- I don't -- I
20 don't remember him telling -- I don't remember the
21 conversation between him and Tavares as far as that went.

22 Q All right. You were there when he also called
23 Brochet. I know he was trying to reach her mother, but he
24 made a phone call to her, correct?

25 A Right.

1 Q And you were in the room for that?

2 A I was.

3 Q And that was in the same room as Tavares, correct?

4 A Right.

5 Q So while y'all are telling him you can't help him,
6 calls are being made trying to get him information,
7 correct?

8 A That -- you -- you're correct. We were trying to get
9 information as to what was going on.

10 Q Okay. And at some point after -- this is at some
11 point after he had broken down, I think, as it was
12 described...

13 A I assume it was, yes.

14 Q In terms of -- once he gave the statement, are you
15 aware if Investigator Thompson then went out to visit
16 Janet Best? Were you with him when that happened?

17 A I was not.

18 Q Okay. Are you aware or were you with him when they
19 went down to the jail and told him, "See, we kept our
20 word. She is out of jail"?

21 A No, I was not.

22 Q You weren't present for either of those things?

23 A I wasn't aware of it.

24 Q Okay. If you had told somebody we can get your
25 family member out of jail, that would be a reward,

1 correct?

2 A Excuse me?

3 Q You could see how someone would think it would be a
4 reward or a promise to them if they were told we could get
5 your wife out of jail. That would be a benefit?

6 A He was never told that we could get anybody out of
7 jail.

8 Q Yes, sir. I understand. I'm saying if --
9 hypothetically, if you say that, that's something that
10 could be perceived as a reward?

11 A We never told him that.

12 Q I understand. I'm saying in a hypothetical it would
13 be a reward had that been said. I understand you're
14 saying you did not say that.

15 A I'm -- he was never told in my presence or anywhere
16 else that that would occur.

17 Q And in -- you were present when he gave the typed --
18 or I'm sorry, when he signed what was a typed statement,
19 and that was witnessed by you, correct?

20 A Affirmative.

21 Q And also, the handwritten statement where y'all write
22 in there -- and was that handwritten statement taken or
23 written after he gave the typed signature or signed the
24 typed version of the report?

25 A I am not sure. That was -- it was a busy day. I'm

1 not sure whether the handwritten statement was first or
2 the typed statement was first.

3 Q Okay. If your report says it was -- the written
4 statement was after the fact, would that probably be
5 accurate from your report?

6 A Probably.

7 MS. DAVIS: Beg the Court's indulgence.

8 (Pause.)

9 Nothing further, Your Honor.

10 THE COURT: Anything further from the State?

11 MS. CAMPBELL: Nothing, Your Honor.

12 THE COURT: All right. You may step down.

13 Any further witnesses by the State?

14 MS. CAMPBELL: None, Your Honor.

15 THE COURT: By the defense?

16 MS. DAVIS: Your Honor, we'd call Tavares World.

17 THE COURT: All right. Mr. World.

18 TAVARES WORLD, after being duly sworn,
19 testified as follows:

20 THE CLERK: State your name for the record.

21 THE WITNESS: Tavares World.

22 DIRECT EXAMINATION:

23 BY MS. DAVIS:

24 Q Tavares World, you heard us talk about the situation
25 when you gave a statement to Investigator Crane and

1 Investigator Thompson?

2 A Yes, ma'am.

3 Q Would you have made that statement had you not been
4 told about Valerie getting out of jail?

5 A No. No, ma'am.

6 Q Or about them trying to help get her out of jail?

7 A No, ma'am.

8 Q And at some point after your initial meeting or that
9 meeting at headquarters, did anyone come out to the jail
10 to see you?

11 A Yes, ma'am.

12 Q And who was that?

13 A The investigator right there. I think his name is
14 Thomas.

15 Q Investigator Thompson?

16 A Thompson.

17 Q With the red, red tie?

18 A Yes, ma'am.

19 Q And he came down to the jail?

20 A Yes, ma'am.

21 Q And what did he tell you?

22 A He was like, "Oh, I see -- you see I'm keeping my
23 word. You know, Valerie is out of jail," and that, "I'm
24 just -- I just came to let you know that, you know, I'm
25 holding on to my word, as I told you."

1 Q Okay.

2 A And then he went to ask me more questions about do I
3 know anything about any of the crimes that's unsolved. I
4 told him no.

5 Q So at that point, that's when he went on to another
6 subject and asked you for information?

7 A Yes, ma'am.

8 Q But the initial conversation was that he was letting
9 you know he kept his word?

10 A Yes, ma'am.

11 Q And...

12 (Pause).

13 I have nothing further, Your Honor.

14 MS. CAMPBELL: Briefly.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION:

17 BY MS. CAMPBELL:

18 Q Mr. World, you understood what your rights were that
19 day?

20 A Yes, ma'am.

21 Q And yet, you've been advised of your rights on a
22 number of other occasions. You've got four or five other
23 sets of pending charges?

24 A Yes, ma'am.

25 Q So you understand what your rights were?

1 A Yes, ma'am.

2 Q And did you understand the part about how when they
3 talk about this could be used against you in court?

4 A Yes, ma'am.

5 Q And that you had the right to remain silent and the
6 right to an attorney?

7 A Yes, ma'am.

8 Q So you understood what your rights were that day?

9 A Yes, ma'am.

10 Q And you talked to them, and you gave them these two
11 statements; is that correct?

12 A Yes, ma'am.

13 Q And these are your statements, right?

14 A Yes, ma'am.

15 Q Okay. And that's your signature on the bottom?

16 A Yes, ma'am.

17 Q And the information you gave them was the information
18 that's here in State's Exhibit No. 5?

19 A Yes, ma'am.

20 Q And you're now saying that Investigator Thompson came
21 and saw you at a later date?

22 A Yes, ma'am.

23 Q Do you remember when that was?

24 A Maybe like within a month's period of time after I
25 seen him before. I'm not too sure.

1 Q Within a month, and do you recall who was present
2 when he talked to you?

3 A He had another investigator with him. I don't even
4 know who the other investigator was.

5 Q None of these?

6 A No.

7 Q Do you remember what he looked like?

8 A I would know him if I see him again.

9 Q Can you describe him?

10 A I have to see it.

11 Q You can't describe him?

12 A No, I can't but...

13 MS. CAMPBELL: Okay. Thank you, sir. I don't have
14 anything further.

15 THE COURT: Anything further?

16 MS. DAVIS: No, sir, Your Honor.

17 THE COURT: You may step down.

18 Anything further from the defense?

19 MS. DAVIS: No, sir, Your Honor.

20 THE COURT: From the State?

21 MS. CAMPBELL: Beg the Court's indulgence. I
22 apologize.

23 (Pause.)

24 Your Honor, we have one witness with two questions.

25 THE COURT: All right.

1 MS. CAMPBELL: Investigator Thompson.

2 WILLIAM THOMPSON, being previously
3 sworn, continued to testify as follows:

4 DIRECT EXAMINATION:

5 BY MS. CAMPBELL:

6 Q After April 12th last year, did you have any further
7 involvement with Tavares World?

8 A Directly with him, no, ma'am.

9 Q And did you ever go see him at the jail?

10 A I had no reason to go see him. I wasn't involved in
11 that case any more.

12 Q Did you ever go see him at the jail?

13 A No.

14 Q Ever have a conversation with him at the jail?

15 A No.

16 Q Any conversations after you took the statement?

17 A No.

18 MS. CAMPBELL: Thank you, Your Honor. I have nothing
19 further.

20 THE COURT: Ms. Davis?

21 MS. DAVIS: Just briefly, Your Honor. Beg the
22 Court's indulgence.

23 (Pause.)

24 CROSS-EXAMINATION:

25

1 BY MS. DAVIS:

2 Q Investigator Thompson, so my understanding is after
3 you interviewed Tavares World on April 12th, you didn't
4 have any other conversations with him since then?

5 A I have not seen him again.

6 Q Okay. Never went to the jail?

7 A No.

8 MS. DAVIS: Nothing further, Your Honor.

9 THE COURT: All right. You may step down.

10 Ms. Davis?

11 MS. DAVIS: Yes, sir, Your Honor.

12 Your Honor, we would ask that Tavares' statement be
13 suppressed. I think the testimony is -- we argue that the
14 testimony is that he was promised they would help get his
15 wife out of jail if he were to cooperate.

16 There's numerous -- several hours prior. He was
17 initially interrogated or questioned in which he was
18 denying any involvement and that Investigator Crane's
19 statement was that he was only talking or giving
20 information if they helped his wife.

21 Your Honor, I think that that, under State v. Corns,
22 states that you cannot extract a confession by any sort of
23 threats or violence or obtain by any direct or implied
24 consequences, however slight, from the -- by the exertion
25 of improper influence.

1 Your Honor, I understand we're now under the totality
2 of circumstances, but my argument would still remain that
3 he was promised something. The benefit was his wife
4 getting out of jail.

5 I think the fact that the statement is in evidence --
6 I think it was exhibit -- State's Exhibit 6 -- was that he
7 says, "Yes, I admit I was there. I agreed to tell the
8 investigation everything that happened that night and who
9 was there once the investigation did -- investigators do
10 what they say -- do what they can do to help my wife," and
11 then the following is: "Do you understand the
12 investigators cannot promise that that would help your
13 wife in her case?"

14 Your Honor, I understand what the investigator
15 stated. I think that that statement actually infers that
16 they may not be able to promise that they're going to get
17 her out, but it certainly implies that they're going to
18 help get her out.

19 Investigator Dow made not one but three phone calls
20 in the presence of Tavares trying to get information to
21 help him, and later then after he gave the statement, he
22 talked to his family again.

23 Your Honor, I think the totality of that, I think it
24 can be shown that he was told that they would help his
25 wife -- or help her in any way -- to see if they could

1 help her, I'm sorry, to be released from jail. I think
2 under that scenario, Your Honor, we'd ask that Your Honor
3 suppress the statement.

4 THE COURT: You have referred to three things, none
5 of which I have seen.

6 MS. DAVIS: I'm sorry, Your Honor.

7 THE COURT: State vs. somebody and two exhibits.

8 MS. DAVIS: Oh, I'm sorry, Your Honor. The case I
9 cited is State vs. Corns, 310 SC --

10 THE COURT: Spell that.

11 MS. DAVIS: Corns, C-O-R-N-S. It's 310 SC 546.

12 Your Honor, that was relying on State v. Rochester
13 which is 301 SC 1---

14 (There was a brief power outage.)

15 (Pause).

16 196 and then, Your Honor, I apologize. The
17 statements I was referring to are State's Exhibit 5 and 6,
18 I believe, and actually, most notably, Your Honor, State's
19 Exhibit 6.

20 Your Honor, I think this corroborates what Mr. World
21 is stating that he did, in fact, tell them that he would
22 not give them information unless they helped him or helped
23 his wife get out of jail.

24 The follow-up question is you understand we can't
25 promise that we can help you. I think the inference there

1 is that they might not be able to, but they're certainly
2 going to try. I think that's evidenced by the actions of
3 Investigator Thompson during the interview and after the
4 interview.

5 THE COURT: All right. Ms. Campbell?

6 MS. CAMPBELL: Thank you, Your Honor. Your Honor, we
7 would rely on State vs. Miller and State vs. Arrowood,
8 which also quotes the Rochester case she referred to.

9 In those cases -- Your Honor, in this case, too, the
10 evidence has been from the credible witnesses in this case
11 that there were no promises.

12 In fact, they went above and beyond to make sure he
13 understood they couldn't do anything about another
14 jurisdiction's case, or they couldn't do anything to help
15 his wife.

16 They indicated to him that unequivocally, they
17 couldn't do anything about that. I believe Investigator
18 Thompson's testimony was that he agreed to check on the
19 status of the case, which he did in his presence. That
20 was part of his statement being taken.

21 That was -- even after that he was done, he was told
22 again by multiple investigators that they couldn't promise
23 him anything. They couldn't help him with the wife's case
24 in any way. That is the testimony from all the credible
25 witnesses.

1 Your Honor, in Miller, the cases talk about that --
2 in that case, the police even told him that if he
3 cooperated, it would be taken into consideration.

4 In Arrowood, it said, "I told him that I could help
5 him with -- with -- would tell -- it would be in the
6 courtroom and corroborated." The only thing they said is
7 they had cooperated, Your Honor.

8 I'll hand up those two cases with the Court's
9 permission.

10 THE COURT: All right.

11 MS. CAMPBELL: In addition, Your Honor, I'll ask you
12 also to review State's Exhibit 4 and 5 in addition to what
13 was handed up to you.

14 Your Honor, there's a totality of the circumstances
15 standard. I think taking the credible testimony in this
16 case as a whole, that there were no promises made to this
17 defendant. He did not give a statement in reliance upon
18 any promises.

19 In fact, the opposite was true. He was told over and
20 over again that they couldn't help out in any way. They
21 couldn't promise to help him get his wife out in any way.
22 In fact, there has been no showing that they did help the
23 wife out in any way. Respectfully, Your Honor, I would
24 ask that you find the same.

25 THE COURT: In this case, we have a series of

1 conversations taking place between the officers and the
2 defendant. It appears from the testimony from the
3 defendant introduced the thought of his concern about his
4 wife being in jail and wanting the police officers to
5 help.

6 The -- that fact distinguishes the case from State v.
7 Corn in the -- Corns. In the State v. Corns case, the
8 officers initiated the information to Corns, informed
9 Corns that the wife could be arrested, the children could
10 be taken from them as a basis to induce the defendant then
11 to cooperate.

12 In this case, it appears that we have the defendant
13 seeking to get cooperation, assistance from the officers.
14 So the opposite is true for Corns in that the actions
15 being initiated by the -- by the defendant -- he
16 understood his rights, right to remain silent, and all his
17 Miranda rights based on his history from law enforcement
18 and cross-examination because he has four or five other
19 pending cases or has pending cases.

20 The -- the Court is to evaluate whether or not the
21 statement was -- is voluntary and conducts the evidentiary
22 hearing to determine whether it is a voluntary statement
23 based on the preponderance of the evidence. If the
24 statement is voluntary, then it -- it becomes a question
25 for the jury where voluntariness must be submitted beyond

1 a reasonable doubt.

2 All of this is considered -- without regard to the
3 truth or falsity of the evidence, to assert the defendant
4 isn't claiming or hasn't claimed that -- that he -- that
5 there is any untruthfulness in what he told the officers.

6 With that understanding, I allow the facts for the
7 jury to determine the truthfulness or untruthfulness of
8 the statement, but I think based on the testimony that I
9 have heard, the preponderance of the evidence has been
10 established by the State that the defendant voluntarily
11 made a statement despite his hope and desire that the
12 officers would help his wife.

13 The officers were careful in trying not to cross the
14 line by reiterating to the defendant that they could not
15 have control over -- over the wife's case.

16 As required, I find based on the totality of the
17 circumstances that it's a free and voluntary statement,
18 and it shows beyond a reasonable doubt that it was a
19 voluntary statement. I find that based on a preponderance
20 of the evidence that it was a voluntary statement.

21 All right. What else do you have over there,
22 Ms. Davis? What else do you have over there?

23 MS. DAVIS: Your Honor, I have -- beyond the motion
24 to sever, of course, that's outstanding, the rest of it is
25 fairly routine in terms of following up on Rule 5, State

1 v. Riddle and a couple -- Mr. Collins had a motion in
2 terms of the competency of Rayquan Washington, who was the
3 seven year old at the time of the incident, in terms of
4 that, and he is also doing a motion regarding the nickname
5 of Murder and that -- asking that that be excluded during
6 this trial.

7 THE COURT: All right. Regarding those particular
8 motions, Ms. Campbell?

9 MS. CAMPBELL: Your Honor, I apologize. This is the
10 first I've heard of those motions. I'll be glad to look
11 into them.

12 The defendant goes by the nickname of Murder. That's
13 what -- defendant, Mr. World, I'm sorry. That's what
14 everyone knows him as. It is referred to in a couple of
15 statements. I've had an opportunity to look at that.

16 As far as -- you know, I didn't quite understand it.
17 You're raising an issue as to the competency of the
18 16-year-old?

19 MR. COLLINS: Your Honor, we're getting past the
20 motion to sever. The issue we have with Rayquan
21 Washington is that numerous times in the discovery that we
22 have in this case, Rayquan, was seven or just turned eight
23 when this happened, has given many, many different
24 versions of what he saw to different people.

25 He was interviewed at the Assessment Resource Center.

1 Then nobody has spoken to him since 2006 or so. Part of
2 our Riddle motion is if they talked with Rayquan since
3 then, we would like to know what his version of the events
4 are here today, but competency is the ability to clearly
5 communicate what they saw based on the personal belief or
6 their personal observations.

7 With children, especially at the age of seven or
8 eight when they're interviewed different times, sometimes
9 different memories and different versions of events can
10 become memories in their head, but they're not actually
11 true depending on how they're interviewed and who
12 interviewed them and how many times that they're
13 interviewed.

14 We're not sure exactly how many times he was
15 interviewed, but it was at least four to five by untrained
16 professionals; one time by a trained professional.

17 We know each time he was interviewed, different
18 versions of what happened. I mean, significantly
19 different versions of what happened came out from the
20 young man, and I would just ask for a hearing.

21 If they haven't spoken to him leading up to the
22 trial, just we can start by putting him on the stand. If
23 he says he can remember clearly what happened that day
24 that's what happened, there may not be issue as to
25 competency.

1 But if he's up there saying he's not sure exactly
2 what he remembered or what he saw, it could be misleading
3 for the jury and not relevant in this case. If we could
4 base his testimony based on his own memories that he
5 knows. That makes the most sense.

6 So it could be just with his testimony. If it gets a
7 little bit more complicated, I do have the Assessment
8 Resource interviewer who interviewed him. I do have her
9 under subpoena for today if you'd like to hear from her
10 about how memories can be distorted and changed and how
11 they can be affected by repeated interviews throughout.

12 THE COURT: All right.

13 MS. CAMPBELL: May it please the Court, Your Honor.

14 THE COURT: Yes.

15 MS. CAMPBELL: Mr. -- the child we're referring to
16 does live out of state. He is coming into town, I believe
17 today or is it yesterday.

18 We have not had the opportunity to interview him yet.
19 They did ask me about that on Friday. I told him that we
20 would turn that information, if any, over.

21 For them to say that he has not been interviewed
22 since 2006 is not correct, Your Honor. He was interviewed
23 on February 28th, 2012 by Investigator -- Chief Wilson and
24 Investigator Crane.

25 Every time he has been interviewed, the details have

1 been outlined as far as what he recalls. I would be glad
2 to inquire of him if he has a memory or what memory he
3 has.

4 Your Honor, I think at this point he is a young man.
5 It would go to their arguments. As they allege, he has
6 made these different statements, Your Honor. It would go
7 to the weight of the testimony, or they could
8 cross-examine him on it. It would not go to the
9 admissibility.

10 I will be glad to inquire overnight or at a break,
11 Your Honor. I just apologize for not being able to do
12 that because we've been here in court today as far as any
13 memory problems he may have or anything of that nature.

14 I think if we could just hold that in abeyance, of
15 course, we could take it up again before he would testify.

16 THE COURT: All right.

17 Mr. Schnee?

18 MR. SCHNEE: May it please the Court, Your Honor. If
19 I may approach, I have a copy of the Notice of Appeal I
20 have filed.

21 THE COURT: There was one left on my desk over lunch.

22 MR. SCHNEE: Yes, Your Honor. I did leave one
23 before. I just wanted to make sure you received it.

24 THE COURT: I did.

25 MR. SCHNEE: At this time, pursuant to Rule 205, as

1 well as South Carolina Code 13-3-330, I would ask to be
2 excused from these proceeding along with my client. This
3 is an interlocutory appeal, and Your Honor is, therefore,
4 divested jurisdiction over these matters.

5 THE COURT: Based on what? Based on what Rule?

6 MR. SCHNEE: Based on Rule 205 of the South Carolina
7 Court of -- South Carolina Appellate Court Rules, as well
8 as -- the decision, actually, in State v. Duncan which
9 cites South Carolina Code 14-3-330.

10 It is an interlocutory appeal in nature, as is the
11 nature of refusing to grant the injunction.

12 THE COURT: All right. Ms. Campbell.

13 MS. CAMPBELL: Your Honor, you ruled on this matter
14 before going forward at this point. He is not entitled to
15 a hearing by your ruling. Therefore, there is nothing to
16 appeal, even though he does persist in doing that.

17 In addition to that, Your Honor, in his Notice of
18 Appeal to the Supreme Court, he is appealing your denial
19 of immunity in an oral ruling. It's not that you denied
20 appealing -- based on that hearing, you denied -- that he
21 had the right to a hearing. That is totally different
22 than what he has put in his appeal.

23 THE COURT: All right. Mr. Schnee?

24 MR. SCHNEE: Judge, my understanding is we had a
25 hearing. In fact, that was the very statement you had

1 when I called my client to the stand is, "This is the
2 hearing." You said that you felt it did not apply.

3 THE COURT: Well, you have got to have a right to be
4 heard if you're going to be -- you're representing a
5 person. You have the right to be heard. You appealed it.

6 MR. SCHNEE: Yes, sir, Your Honor, and you denied my
7 client the immunity under that.

8 THE COURT: I didn't deny him the immunity. I ruled
9 that the statute does not apply.

10 The -- this -- your -- the -- my view of the motion
11 raised by you in this case, Mr. Schnee, is a frivolous
12 motion. The statute, the immunity statute, clearly does
13 not apply to this case.

14 The intent of it is not written to create an
15 opportunity for a defendant in a case in which we're
16 seeking to not proceed in a trial or create some
17 opportunity for delay to claim Stand Your Ground
18 regardless of the circumstances. And in this case, the
19 claim is an extreme frivolous claim that could be made for
20 no other purpose other than to seek a delay in the trial.

21 The State has a compelling interest in having this
22 matter prosecuted without any further delay. The defense
23 has no legal basis to create a delay by making a frivolous
24 claim, which you have in this case.

25 Now, I understand the Duncan case. I've read it

1 thoroughly, reviewed it entirely. In that case, the Court
2 considered the merits of the claim that the person who
3 shot the -- the victim had the right to stand his ground.

4 We look at the facts of the case: We have someone
5 coming to someone else's home. The victim left, returned
6 a few minutes later, was opening the screen porch door,
7 and the Respondent exited the front door of the house onto
8 the porch with a gun.

9 The victim then asked him -- crossed the porch, and
10 the homeowner was trying to get the victim off the steps.
11 The victim continued to force his way on the porch. He
12 claimed he pointed the gun, shot the victim and killed the
13 victim.

14 The question is was the Court proper in conducting
15 the hearing in a pretrial manner, and where such issue is
16 raised, and the determination of the Court, whether it's
17 immediately appealable because it's in the nature of an
18 injunction.

19 If it is the legislative intent by the Court making
20 that reference in the footnote that where the Court had an
21 issue or the immunity and whether or not it applied,
22 before the Court issued a ruling on that issue of whether
23 or not the -- the immunity is granted or denied, it's an
24 issue that is immediately, immediately appealable.

25 If the Court intended that, they're going to have to

1 tell me to end this case. I don't believe they do. I
2 don't believe the Court intended or ever created an
3 opportunity for defendants to frivolously claim Stand Your
4 Ground as a means to create an appealable issue to the
5 Court in seeking a delay in trials. That's exactly what
6 you're doing in this case.

7 I don't believe it applies. I did not rule on your
8 case -- your issue on the merits because that is not a
9 legitimate issue to be raised. It's a frivolous issue
10 which I denied.

11 I find that it's not something that's immediately
12 appealable pursuant to Duncan, and if you get a Stay
13 granted by the Supreme Court, you bring that Stay to me,
14 then that's an Order from the Supreme Court. Otherwise,
15 I'm in charge, and I deny your motion to, as you say, be
16 excused from these proceedings.

17 MR. SCHNEE: If I may clarify, Your Honor, just out
18 of --

19 THE COURT: Clarify what?

20 MR. SCHNEE: Are -- are you saying that what I
21 presented was not, in fact, a hearing to determine if my
22 client is --

23 THE COURT: Well, you presented a frivolous motion
24 seeking a continuance by arguing something that's clearly
25 not applicable to this case in law or in fact. Your --

1 your motion on its face is frivolous.

2 MR. SCHNEE: Well, I'll take care of that this
3 afternoon, Your Honor, trust me, to modify this appeal.

4 THE COURT: All right.

5 Now, as far as the severance motion is concerned,
6 there's no way that these two defendants can be tried
7 jointly given the inability of the State to redact the
8 statement in such a way that it does not appear to point
9 to the reference of the potentially non-testifying
10 codefendants.

11 The cases must be severed, and I grant the motion to
12 sever. The State can select whomever the State wants to
13 proceed against.

14 You can proceed against Mr. World, who is here ready
15 to go, or Mr. Schnee, who is seeking to avoid at all costs
16 being in a trial, it appears, or try them back to back:
17 Do one Monday, Tuesday, Wednesday, Thursday, Friday,
18 Saturday, Sunday, Monday, whatever, whatever.

19 We have plenty of jurors. These matters, this is an
20 offense that occurred in 2005. We're in 2013. The matter
21 is going to be resolved. The victim is entitled to it
22 being resolved. The victim's family is entitled for it to
23 be resolved. The defendants are entitled to a resolution
24 in this matter.

25 We'll be at ease for a few moments.

1 MS. CAMPBELL: Thank you, Your Honor.

2 (WHEREUPON, a short break was taken.)

3 THE COURT: All right, sir. Where do we stand at
4 this moment in time?

5 MS. WALKER: Your Honor, at this moment in time we
6 would call Greg Isaac. Your Honor indicated we could do
7 back to back. We do have a conflict for this weekend.

8 THE COURT: For this weekend?

9 MS. WALKER: For this weekend.

10 THE COURT: Like Saturday and Sunday?

11 MS. WALKER: Yes, sir.

12 THE COURT: Oh, we can take off Saturday and Sunday.

13 MS. WALKER: That's what we would like to do, Your
14 Honor.

15 MR. COLLINS: My only concern with the back-to-back
16 issue is we have -- Ms. Davis and I have another scheduled
17 date certain trial for July 22nd which involves child porn
18 where we can't view the evidence unless we're actually at
19 SLED, part of the SLED panel, with our expert.

20 It would be extremely tedious upon us to have a trial
21 next week, week before that where we don't have the
22 opportunity to prepare for that trial. So just scheduling
23 matters, that could be a little bit difficult.

24 THE COURT: Well, we got you first. We got you first
25 on this one, so I may get you out of here.

1 MS. WALKER: Thank you, Your Honor.

2 THE COURT: All right.

3 So the State is pursuing against Mr. Schnee and
4 Mr. Isaac?

5 MS. WALKER: Yes, sir.

6 THE COURT: Well, with regard to -- you know, I don't
7 know how long the trial will take, but do you want to
8 select both jurors on the front end or -- or -- or no.
9 Obviously, there has to be two separate panels.

10 (Pause).

11 MS. WALKER: Your Honor, whatever Your Honor wants to
12 do in terms of when to pick the jurors on these cases.

13 THE COURT: All right. We will pick them one at a
14 time.

15 MS. WALKER: Yes, Your Honor.

16 THE COURT: Mr. Isaac is first, and Mr. World is
17 standing by.

18 MS. DAVIS: Yes, sir, Your Honor. My understanding
19 is it's being called on Monday.

20 MS. WALKER: I'm sorry?

21 MS. DAVIS: As of this moment.

22 THE COURT: It may be Wednesday. It may be Thursday.
23 It may be Friday.

24 MS. DAVIS: Yes, sir.

25 THE COURT: Some folks are not available on Saturday

1 and Sunday, me included.

2 MS. DAVIS: Yes, Your Honor.

3 THE COURT: But we're planning to press on.

4 MS. DAVIS: Yes, sir.

5 THE COURT: Unless it appears that this is going to
6 take the entire week.

7 MS. DAVIS: Yes, sir, Your Honor.

8 THE COURT: And if Mr. Schnee is successful, it might
9 end tomorrow.

10 MR. SCHNEE: Judge, with regard to that, I do have a
11 very limited amount of time in which to file an appeal and
12 request for a supersedes to ask to stay.

13 Seeing that it is now almost 4:00, I would ask Your
14 Honor's permission to take care of those documents and see
15 if the Supreme Court is, in fact, going to grant a stay in
16 this case.

17 I believe my client is entitled to that, especially
18 pursuant to the case in front of you last week of State v.
19 Maryland.

20 THE COURT: Well, your case is called. We're going
21 to press on. You can work on that after we get through.
22 I'm not continuing the case for that purpose for you to
23 determine if you can get something to stop the trial.

24 MR. SCHNEE: Respectfully, Judge, I'm a solo
25 practitioner. I have no one to assist me in terms of

1 filing documents. I believe I am entitled to go file
2 them.

3 THE COURT: I ruled on that issue. You are not
4 granted a continuance. We are going to press on at this
5 time with this case.

6 MR. SCHNEE: Fair enough, Your Honor.

7 THE COURT: Get the jury.

8 (End of partial transcript request.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
partial Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Richland County, South Carolina, on the 8th and 9th days
of July, 2013.

July 15, 2013

Karen Ambroziak

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

S.C. Supreme Court

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2013-001464

State of South Carolina, ... Respondent,

v.

Greg K. Isaac, ... Appellant.

FINAL BRIEF OF APPELLANT

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ISSUES PRESENTED

1. When a determination is made prior to trial that the Protection of Persons and Property Act is inapplicable in a case as a matter of law, is that determination immediately appealable under *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011)?
2. Did the circuit court err in determining the Protection of Persons and Property Act was inapplicable in this case?
3. Can immunity under The Act be established if there is a necessary, prerequisite legal defense such as duress, coercion or necessity?
4. Should the Protection of Persons and Property Act be applied retroactively?

STATEMENT

On October 27, 2005, Antonio Corbitt was shot and killed. The incident took place in and around Corbitt's apartment at 3200 Fernandina Road, Apartment # [REDACTED] Columbia, South Carolina at approximately 9:30 P.M. This case went unsolved with no arrests until April 2012. At that time, a fingerprint came back from a lamp inside of Corbitt's apartment and matched Greg Isaac. Isaac was interviewed and provided a written statement admitting himself as the shooter and also implicated Tavares World and Vernoris Dixon. Subsequently, both World and Dixon were arrested and also gave statements to law enforcement. Isaac, World and Dixon were all charged with Burglary 1st Degree, Criminal Conspiracy, Attempted Armed Robbery and Murder.

On July 8, 2013, a hearing was held before The Honorable Clifton B. Newman. The result of the hearing was either the denial of immunity from prosecution under S.C. Code § 16-11-450(A) ("The Act" hereafter) or a denial of a full hearing pursuant to The Act to determine immunity. This appeal follows.

ARGUMENT

1. When a determination is made prior to trial that the Protection of Persons and Property Act is inapplicable in a case as a matter of law, that determination is immediately appealable under *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011).
2. The circuit court erred in determining the Protection of Persons and Property Act was inapplicable in this case.
3. Immunity under The Act can be established if there is a necessary, prerequisite legal defense such as duress, coercion or necessity.

Appellant asserts these issues are so intertwined that it more appropriate to answer them together.

FACTS

Greg Isaac (Isaac) knew Tavares World (World) for a few months prior to October, 2005 and "sort of" considered World a friend. ROA pg. 7. At the time, Isaac was 18 years old. ROA pg. 6. In June, 2005, World pulled a gun on Isaac at the Bethel Bishop Apartments. ROA pg. 10. World told Isaac to "stop fucking with him" and that World was going to "hurt [Isaac]." ROA pg. 11. World held a gun to Isaac and told Isaac that he would kill him. ROA pg. 12.

In October, 2005, Isaac and World were at the Bethel Bishop Apartments and a third person, Vernoris Dixon (Dixon) arrived. ROA pg. 7. Dixon came to the apartments because

Dixon and World had somewhere to go. ROA pg. 8. Isaac did not know where they were going. ROA pg. 8.

Dixon was driving and they ended up at another apartment complex. This is the apartment complex where the incident happened. ROA pg. 8. Dixon and World were talking in the car. The conversation was about money but Isaac is not sure exactly what was said. ROA pg. 8. Isaac believed that someone owed money to World. ROA pg. 8-9. Isaac did not know the person World and Dixon were talking about. ROA pg. 9. When the three arrived at the apartment, World asked Isaac to come with him. Isaac tried to refuse and said it "got nothing to do with him." ROA pg. 9. At this point, World pulled out a gun and threatened to kill Isaac if Isaac did not go with World. ROA pg. 10. Dixon witnessed the threat. ROA pg. 23.

World pointed a .380 at Isaac and also had a "nine" with him. ROA pg. 13. When World and Isaac first got out of the car, World was looking through the windows in the apartment. Isaac told World that he doesn't do burglaries and "I don't break in nobody's house." World told Isaac to "chill the fuck out." ROA pg. 13. Isaac repeated that he doesn't do burglaries. World and Isaac then returned to the car where Dixon was waiting. ROA pg. 14. Once inside the car, World and Dixon talked to each other. Isaac didn't hear what the conversation was about. After fifteen to twenty minutes, a car pulled up. At this point Isaac heard Dixon say "there he go right there." ROA pg. 14. Isaac, World and Dixon continued to wait in the car another ten to fifteen minutes. ROA pg. 14.

World then told Isaac to "come on" and for Isaac to "stop acting like a bitch." World threatened Isaac again. ROA pg. 14. Isaac did not believe he was able to leave or run away.

Isaac still believed his life was in peril. World and Isaac got out of the car again and went back to the apartment. Dixon stayed in the car. ROA pg. 15.

World "beat on the door" three or four times. World kicked the door approximately three times and the door swung open. Antonio Corbitt (Corbitt) was "right there at the door." World began to yell "where my money at." ROA pg. 15-16. Isaac is standing outside the apartment. World and Corbitt began to fight. The only time Isaac enters the apartment is to attempt to pull World away and "diffuse the situation". ROA pg. 16. As Isaac was trying to stop the fight, he was pushed into a lamp when everyone fell. When Isaac got up, he stepped back outside the apartment. World and Corbitt continued to fight as they got up. World starts to run out of the apartment. ROA pg. 16.

As World is running out of Corbitt's apartment, Isaac is standing approximately ten feet outside of the door. Isaac sees Corbitt reach for what Isaac believes to be a gun. Isaac then pulls out a gun and shoots Corbitt. Isaac states everything was happening too quickly to run away at that moment. ROA pg. 17. As Corbitt is reaching for what Isaac believes to be a gun and Isaac fires his gun, World is running away from Corbitt's apartment. Isaac believes he shot three times. After the shots are fired, Isaac runs back to the car with World. Dixon is in the car waiting for World and Isaac. All three leave in Dixon's car. ROA pg. 18.

Once inside the car leaving the apartment complex, Isaac was not talking. World then takes the gun back from Isaac. Isaac has no knowledge of what World did with that gun after the shooting. ROA pg. 19. World told Isaac to keep his mouth shut or "you know what's going to happen." Isaac understood that to mean World would kill Isaac if he told anyone what happened. ROA pg. 19. After Isaac got into the car at the beginning of the night, he felt he had no ability to

leave. Had Isaac attempted to flee, Isaac believes World would kill him. ROA pg. 19-20. Isaac told the exact same version of events to police. Isaac did not type his statement. ROA pg. 30. Isaac also believes that had Isaac attempted to flee while World and Corbitt were fighting, World would come after him later. ROA pg. 30-31.

ANALYSIS

As a preliminary matter, Appellant asserts that a hearing was in fact held. Counsel requested a full hearing pursuant to the Protection of Persons and Property Act, S.C. Code §§ 16-11-410 et. seq. and the trial court responded by saying "[t]his is the hearing" two times prior to the introduction of evidence. ROA pg. 6. Appellant further asserts that since the State was permitted cross examination (ROA pg. 20) and also given an opportunity to introduce evidence (ROA pg. 32) this was not simply a proffer of evidence. Counsel concedes the trial court eventually held Appellant was not entitled to a pretrial determination of immunity (ROA pg. 40) but when considering the transcript as a whole, a hearing did in fact take place.

Appellant believes the correct standard for trial courts to determine if a full hearing is warranted should be most similar to a request for a temporary injunction pursuant to Rule 65, SCRPC. Injunctions are considered civil in nature. See Rule 65, SCRPC generally. Injunctions are designed, by their very nature, to prevent irreparable injury to the moving party. *Helsel v. City of North Myrtle Beach*, 307 S.C. 29, 413 S.E.2d 824 (1992).

Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits. *Columbia Broadcasting System, Inc. v. Custom Recording Co., Inc.*, 258 S.C. 465, 471-72, 189 S.E.2d 305, 308 (1972). A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction. *Alston v. Limehouse*, 60 S.C. 559, 569, 39 S.E. 188, 191 (1901). *Id.* at 32.

While Appellant is unable to find any case law on the exact issue presented by this Court, he asserts there could be no harm greater than to go through a jury trial if he is in fact immune from prosecution. In *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011), Footnote 2, this Court held:

[A]n order granting or denying a motion to dismiss under the Act is immediately appealable, as it is in the nature of an injunction. See S.C. Code Ann. § 14-3-330(4) (Supp. 2010) ("The Supreme Court ... shall review upon appeal ... an interlocutory order or decree ... granting, continuing, modifying, or refusing an injunction....")

In *Duncan*, this Court stated:

The trial court found the plain meaning of the immunity provision was to shield a person from a "full blown criminal trial." Accordingly, the trial court found the only way this statutorily granted right could be meaningfully enforced was for the defendant to be able to raise immunity in a pre-trial motion. *Id.* at 409.

Most recently, in *State v. Marin*, (Op. No. 5156), the Court of Appeals stated:

Marin also argues the trial court erred in refusing to charge the immunity from prosecution provision contained in South Carolina Code subsection 16-11-450(A). We find the trial court correctly refused to charge this subsection because it does not contain any substantive provisions of law. Rather, it is a procedural subsection under which the circuit court may grant immunity from prosecution before a trial begins if the court finds the defendant acted lawfully in self-defense. See *id.* (providing "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action"); see also *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011) (stating subsection 16-11-450(A) was not intended as an affirmative

defense but rather as a procedure for determining immunity prior to trial). (emphasis added).

If this Court upholds the determination in *Marin* that a pretrial determination of immunity is the only method to assert immunity, Appellant asserts that an immediate appeal of a denial of immunity or the denial of a hearing itself would be the only way to preserve the issue for review. It is very clear that, under S.C. Code §14-3-330(4),

An order or decree ... granting, continuing, modifying, or refusing an injunction is immediately appealable. See *Shapemasters Golf Course Builders, Inc. v. Sapemasters, Inc.*, 360 S.C. 473, 602 S.E.2d 83 (Ct. App. 2004). (emphasis added).

In the short period of time permitted to brief this issue, Appellant was unable to find a single appellate case in South Carolina where the denial of a hearing for an injunction of any type was appealed. Appellant, therefore, asserts this is a novel issue and argues that the denial of a hearing has the same effect as the denial of immunity. Further, in *Duncan*, this Court stated

We agree with the circuit court that the legislature intended defendants be shielded from trial if they use deadly force as outlined under the Act. Immunity under the Act is therefore a bar to prosecution and, upon motion of either party, must be decided prior to trial. *Id.* at 410. (emphasis added).

Appellant asserts the phrase "must be decided prior to trial" leaves no discretion to the trial court. If the mere request for an immunity hearing under The Act is insufficient to trigger the right to a hearing, the obvious, next question is what is necessary to establish the right to a hearing? For example, if a person is stopped by a police officer while driving and the police officer sees drugs in plain view, it would be ridiculous for that person to claim immunity from prosecution for the possession of those drugs under The Act since there could be no allegation of the use of force by that person.

Alternatively, if a person is driving with a suspended license, and therefore engaged in unlawful conduct, it would be equally ridiculous if that driver were forced to defend himself from a carjacking and not be entitled to a hearing under The Act and claim self-defense pursuant to S.C. Code § 16-11-450(A), which states:

A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer. (emphasis added).

Appellant believes the correct standard for trial courts to determine if a full hearing is warranted should be most similar to a request for a temporary injunction pursuant to Rule 65, SCRPC. As discussed and cited above in *Helsel*, that standard is a *prima facie* showing. *Prima facie* is defined as:

At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary. Black's Law Dictionary 1189 (6th ed. 1990).

Duncan also established the standard of proof necessary to establish immunity under The Act. This Court held "the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." *Id* at 411. If a defendant is required to establish the right to a hearing in the first place, it would, therefore, only seem appropriate that a defendant would need to establish a factual and legal basis at a lower standard than what is

required for immunity itself. The only standard our courts use which requires less proof than a preponderance of the evidence is a *prima facie* showing.

Appellant asserts that the anticipated facts to be presented contained in his initial motion (Exhibit 1) along with the testimony presented to the circuit court establish that he was entitled to a full hearing on the merits. Specifically, Appellant established his presence at Corbitt's apartment was not voluntary but was instead the result of duress/coercion.

In *State v. Rocheville*, 310 S.C. 20, 425 S.E.2d 32 (1993), our Supreme Court summarized the definition of duress as follows:

Duress requires evidence showing that the degree of coercion [was] present, imminent, and of such a nature as to induce a well grounded apprehension of death or serious bodily harm if the act is not done. [D]uress ... is not a defense to murder. The rationale of the defense of duress is that if the only means of avoiding greater harm is for the defendant to engage in illegal conduct resulting in a lesser harm, he should not be held criminally liable for the illegal conduct. The commission of the crime which results in a lesser harm is therefore justified. However, when the crime is the murder of an innocent person, the choice of two evils rationale is unavailing. (Internal citations omitted).

In *Frasier v. State*, 306 S.C. 158, 410 S.E.2d 572 (1991), our Supreme Court determined trial counsel was deficient and held Frasier was entitled to a jury instruction on coercion. Frasier was originally convicted of Conspiracy, Kidnapping, and Criminal Sexual Conduct in the first degree. At trial, Frasier testified he was forced at gunpoint to have intercourse with the victim. The Court remanded Frasier's case for a new trial.

Isaac concedes that duress/coercion is not a defense to the charge of murder. Isaac, instead, argues that the duress/coercion from World eliminates any criminal liability for the crimes of Burglary, Attempted Armed Robbery and Conspiracy. The result of the lack of

criminal liability for Isaac's presence at Corbitt's apartment means Isaac was not unlawfully present at the time of the shooting.

The Protection of Persons and Property Act, S.C. Code § 16-11-450(A) provides:

A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer. (emphasis added).

Section 16-11-440 provides, in relevant part:

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60. (emphasis added).

Self defense clearly qualifies as "another applicable provision of law" under Section 16-11-450(A). This principal is clear not only from the very language used by the Legislature when enacting the statute, but is also readily apparent by the most recent case dealing with the immunity provisions. On July 3, 2013, the Court of Appeals published the opinion of *State v. Marin*, (Op. No. 5156) in which both Section 16-11-450(A) and self defense are intertwined.

Specifically, Marin requested jury charges of Voluntary Manslaughter, self defense and an immunity charge under Section 16-11-450(A). The trial Judge refused to charge the jury

under Section 16-11-450(A). The Court of Appeals agreed with the denial of a charge and stated:

We find the trial court correctly refused to charge this subsection because it does not contain any substantive provisions of law. Rather, it is a procedural subsection under which the circuit court may grant immunity from prosecution before a trial begins if the court finds the defendant acted lawfully in self-defense ... [T]he trial court fully charged self-defense — the substantive point of law upon which subsection 16-11-450(A) depends.

A person is justified in using deadly force in self-defense when:

1. The defendant was without fault in bringing on the difficulty;
2. The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
3. If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and
4. The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. (See generally, *State v. Davis*, 282 S.C. 45, 317 S.E.2d 452 (1984)).

Unlike the recent Court of Appeals decision in *Marin*, Isaac contends that under Section 16-11-440(C), the fourth requirement under self defense will not apply. The Act is, therefore, more than just a procedural issue and it establishes substantive law. The *Marin* opinion also contradicts the Court of Appeals' prior holding in *State v. Dickey*, 380 S.C. 384, 669 S.E.2d 917

(Ct. App. 2008). "The Act, by codifying the common-law Castle Doctrine, creates substantive rights for citizens." *Id.* at 404. (emphasis added).

As noted above, Section 16-11-440(C) states a person "has no duty to retreat and has the right to stand his ground." Thus, the ordinary requirement for self defense that a person have "no other probable means of avoiding the danger" is eliminated for the purposes of the requested hearing and the ultimate determination of immunity.

Based on all the facts and legal issues presented above, Appellant asserts the denial of a hearing was improper. Further, Appellant believes he is entitled to immunity for the charge of Murder under The Act. The only testimony before this Court is that Appellant was not a willing participant to the initial confrontation between World and Corbitt. Appellant was, therefore, not unlawfully present at Corbitt's apartment. At the moment Appellant fired his gun, he was acting under the reasonable belief that Corbitt was going to shoot Appellant first.

Whether The Act also shields Appellant from prosecution for the charges of Burglary 1st degree, Attempted Armed Robbery and Conspiracy based on the defense of duress/coercion has never been decided in any court opinion Appellant could find.

If this Court finds that Appellant is entitled to immunity for the Murder charge, it is a necessary conclusion that sufficient evidence of duress/coercion was present. If this Court holds that only a *prima facie* showing is needed as a prerequisite to entitle a defendant to a hearing, the Court must address whether a prerequisite defense, such as duress/coercion, can be used to invoke the immunity protection of The Act and, if so, then what standard of proof is required.

Based on all of the above, the only possible standards of proof are preponderance of the evidence or a *prima facie* showing. Appellant concedes that if the prerequisite defense only

needs to be proven by a *prima facie* showing, than that leaves open the possibility of a conviction to the Burglary 1st degree, Attempted Armed Robbery and Conspiracy charges if not further shown to meet the preponderance of the evidence standard.

If, however, the prerequisite defense must be proven by a preponderance of the evidence to establish the potential right to immunity under The Act and is in fact proven during a full hearing, it is a necessary conclusion that the State would be unable to prove a person guilty beyond a reasonable doubt of those charges at trial.

4. The Protection of Persons and Property Act should be applied retroactively.

Section 16-11-420(A) provides:

It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.

Section 16-11-450(B) states:

A law enforcement agency may use standard procedures for investigating the use of deadly force as described in subsection (A), but the agency may not arrest the person for using deadly force unless probable cause exists that the deadly force used was unlawful.

When Sections 420(A) and 450(B) are read together along with the rest of The Act, the clear legislative intent is not only to provide a means of obtaining immunity but also guidance to police when investigating a use of force incident. As a general rule, police investigations are not limited to a specific day, week or month; they are on-going and a fluid process. In the instant case, the investigation began in October, 2005 and continued well into 2012. Dixon's statement to police occurred August 22, 2012 (Exhibit 2, Dixon advice of rights) more than four months after Isaac was charged.

Under the Rules of Professional Conduct, Rule 407 SCACR, Rule 3.8 titled "Special Responsibilities of a Prosecutor," the issue becomes even more clear. Comment 1 states "[a] prosecutor has the responsibility of a minister of justice and not simply that of an advocate." Thus, the determination of facts and legal issues is something for prosecutors to consider throughout the pendency of any criminal prosecution. Ultimately, Appellant asserts immunity

under The Act is applicable to all prosecutions as long as the issue is raised after June 9, 2006 but before trial.

While the issue of retroactive or prospective application of The Act has never been ruled on by this Court, other cases do provide guidance. In *State v. Varner*, 310 S.C. 264, 423 S.E.2d 133 (1992), this Court dealt with a similar issue regarding the change of law for sentencing provisions. Varner was sentenced to life for kidnapping and, while his appeal was pending, the legislature amended the sentencing provision and reduced the maximum penalty to thirty years. This Court held:

The correct penalty is the one in effect at the time of sentencing, even if the penalty is repealed while appeal is pending. Thus, a criminal defendant receives the benefit of punishment mitigated by legislative amendment **only when the amendment becomes effective before sentence is pronounced.** Varner argues that under *State v. Williams*, 31 S.C.L. (2 Rich.) 418 (1846), courts must administer any lesser punishment that becomes effective before an appeal is final. However, Williams must be read in the context of 1846 appellate practice, under which a conviction was appealed prior to sentencing. Then, if there was no reversible error, sentence was pronounced by the appellate court. (internal citations omitted, emphasis added).

Thus, the "trigger" date for changes in law relating to sentencing are only applicable to benefit a defendant if the law changed prior to the imposition of the sentence. If this Court ultimately decides The Act is only prospective in nature, Appellant asserts the earliest possible relevant date is the "commencement of prosecution" as already established in *Dickey and Bolin* (argued below) and not the date of the incident. Commencement of prosecution in the instant case is clear; Isaac was not even a suspect to any activity until 2012 and no warrant was issued until after Isaac spoke with police on April 11, 2012 (Exhibit 3, Arrest Warrants).

Isaac anticipates the State will argue that immunity under Section 16-11-450(A) cannot apply to the instant case because the statute was not enacted and effective until June 9, 2006 and

the acts alleged here occurred in October, 2005. Isaac contends, however, based on the few cases dealing with the issue of retroactivity or prospectivity of the statute that the "trigger" date important to determine applicability of Section 16-11-450(A) is the date prosecutions begins rather than the date an alleged act occurred.

In *State v. Dickey*, 380 S.C 384, 669 S.E.2d 917 (Cl. App. 2008) (reversed on other grounds), the Court stated "the Legislature clearly manifested its intent that the Act be applied prospectively." The incident giving rise to Dickey's original Murder charge was on April 29, 2004 and Dickey was both charged and indicted prior to the effective date of Section 16-11-450(A). The Court ultimately held that Dickey was not entitled to any relieve under Section 16-11-450(A) and stated "the fact that Dickey's prosecution was pending before the effective date of the Act precludes the application of the Act to this case." (emphasis added).

Subsequently, this issue arose again in *State v. Bolin*, 381 S.C. 557, 673 S.E.2d 885 (Cl. App. 2009). Bolin was indicted in York County on May 18, 2006, almost one month prior to the effective date of Section 16-11-450(A). According to the Clerk of Court Records (Exhibit 1), Bolin was arrested on February 20, 2006. The *Bolin* opinion, citing the legislative intent as well as the prior holding in *Dickey* stated:

[T]hat the Act is to have no effect on pending actions, criminal prosecutions, rights, duties, or liabilities, and that all laws repealed or amended by the Act must be treated as remaining in full force and effect, the clear language of the Act indicates that it is prospective ... Thus, because the legislature clearly and unambiguously specified the Act be applied prospectively, the Act cannot be applied retroactively to Bolin's case. See *[Dickey]*id. (holding retroactive application of the Act to prosecution that was pending before the effective date of the Act was precluded because the Act is prospective). (emphasis added).

Ultimately, if this Court determines The Act is to only be applied prospectively, Appellant contends he is still entitled to immunity since the prosecution did not begin until five years and ten months after the effective date of The Act.

CONCLUSION

Based on the arguments above, Appellant requests this Court find:

1. When a determination is made prior to trial that The Act is inapplicable in a case as a matter of law, that determination is immediately appealable under *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011).
2. The Act is applicable to the instant case and the Appellant should be held immune from prosecution.
3. Immunity under The Act can be established if there is a necessary, prerequisite legal defense such as duress, coercion or necessity.
4. The Protection of Persons and Property Act should be either applied retroactively or, in the alternative, this Court should hold The Act applies prospectively if:
 - a. Commencement of prosecution was after June 9, 2006, or
 - b. The hearing is requested prior to trial but after June 9, 2006.

Exhibit 1

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
 Indictment Number: 2012-GS-40-02435,
 2012-GS-40-02436, 2012-GS-40-02437,
 2012-GS-40-02438

The State of South Carolina,)

vs.)

MOTION FOR A PRETRIAL HEARING TO
 DETERMINE IMMUNITY PURSUANT TO
 S.C. CODE § 16-11-450(A)

Greg K. Isaac,)

Defendant.)

Greg K. Isaac, through undersigned counsel, respectfully moves this Court for a hearing to determine if the Defendant is immune from prosecution under the "Protection of Persons and Property Act," S.C. Code §§ 16-11-410 et. seq. The Defendant intends to prove the following facts and asserts the below issues of law mandate both a full hearing and, ultimately, a finding of immunity from prosecution.

UNDISPUTED FACTS

On October 27, 2005, Antonio Corbitt was shot and killed. The incident took place in and around Corbitt's apartment at 3200 Fernandina Road, Apartment # [REDACTED] Columbia, South Carolina at approximately 9:30 P.M. This case went unsolved with no arrests until April 2012. At that time, a fingerprint came back from a lamp inside of Corbitt's apartment and matched Greg Isaac. Isaac was interviewed and provided a written statement admitting himself as the shooter and also implicated Tavares World and Vernoris Dixon. Subsequently, both World and Dixon were arrested and also gave statements to law enforcement. Isaac, World and Dixon were all charged with Burglary 1st Degree, Criminal Conspiracy, Attempted Armed Robbery and Murder.

FACTS TO BE PRESENTED AT THE HEARING AND ISSUES OF LAW

Isaac asserts during the requested hearing, evidence will be presented sufficient to establish that Isaac was not a willing participant for the initial interactions with Corbitt. Instead, Isaac asserts that World forced Isaac to participate, under threat of death, in the actions resulting in the Burglary, Attempted Armed Robbery and Conspiracy charges. This threat of death eliminates all criminal liability for those three charges as Isaac was only acting under duress/coercion at the time. Specifically, Isaac will produce evidence that World threatened to kill Isaac if Isaac did not accompany World to Corbitt's apartment. Isaac will also present evidence that World also had a gun throughout the incident and that World has threatened Isaac with guns both before and subsequent to this incident. Isaac will also establish that World provided the firearm used to shoot Corbitt and, after returning to the car Dixon was driving, took the firearm back from Isaac. Isaac has no knowledge of the current whereabouts of the firearm.

Further, it will be shown that World kicked Corbitt's door open, demanded money and then began to fight with Corbitt. Isaac did not actively participate other than to try to stop the fight and get World out of the apartment.

In State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993), our Supreme Court summarized the definition of duress as follows:

Duress requires evidence showing that the degree of coercion [was] present, imminent, and of such a nature as to induce a well grounded apprehension of death or serious bodily harm if the act is not done. [D]uress ... is not a defense to murder. The rationale of the defense of duress is that if the only means of avoiding greater harm is for the defendant to engage in illegal conduct resulting in a lesser harm, he should not be held criminally liable for the illegal conduct. The commission of the crime which results in a lesser harm is therefore justified. However, when the crime is the murder of an innocent person, the choice of two evils rationale is unavailing. (Internal citations omitted).

In Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991), our Supreme Court determined trial counsel was deficient and held Frasier was entitled to a jury instruction on coercion. Frasier was originally convicted of Conspiracy, Kidnapping, and Criminal Sexual Conduct in the first degree. At trial, Frasier testified he was forced at gunpoint to have intercourse with the victim. The Court remanded Frasier's case for a new trial.

Isaac concedes that duress/coercion is not a defense to the charge of murder. Isaac, instead, argues that the duress/coercion from World eliminates any criminal liability for the crimes of Burglary, Attempted Armed Robbery and Conspiracy. The result of the lack of criminal liability for Isaac's presence at Corbitt's apartment means Isaac was not unlawfully present at the time of the shooting.

Isaac will further establish, through the testimony of witnesses, that World and Corbitt were engaged in a physical altercation in Corbitt's apartment. Isaac attempted to break up the fight between World and Corbitt. While Isaac tried to get World out of the apartment, Isaac saw Corbitt reach behind him. At the time, Isaac reasonably believed that Corbitt was reaching for a gun. At this point, since Isaac is not unlawfully present in the apartment, Isaac reasonably acted in self defense as both World and Isaac were trying to flee.

The Protection of Persons and Property Act, S.C. Code § 16-11-450(A) provides:

A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer. (emphasis added).

Section 16-11-440 provides, in relevant part:

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60. (emphasis added).

Self defense clearly qualifies as "another applicable provision of law" under Section 16-11-450(A). This principal is clear not only from the very language used by the Legislature when enacting the statute, but is also readily apparent by the most recent case dealing with the immunity provisions. On July 3, 2013, the Court of Appeals published the opinion of State v. Marin, (Op. No. 5156) in which both Section 16-11-450(A) and self defense are intertwined.

Specifically, Marin requested jury charges of Voluntary Manslaughter, self defense and an immunity charge under Section 16-11-450(A). The trial Judge refused to charge the jury under Section 16-11-450(A). The Court of Appeals agreed with the denial of a charge and stated:

We find the trial court correctly refused to charge this subsection because it does not contain any substantive provisions of law. Rather, it is a procedural subsection under which the circuit court may grant immunity from prosecution before a trial begins if the court finds the defendant acted lawfully in self-defense ... [T]he trial court fully charged self-defense – the substantive point of law upon which subsection 16-11-450(A) depends.

A person is justified in using deadly force in self-defense when:

1. The defendant was without fault in bringing on the difficulty;
2. The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
3. If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained

the same belief ...; and

4. The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. (See generally, State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984)).

Isaac contends that under Section 16-11-440(C), the fourth requirement under self defense will not apply. As noted above, Section 16-11-440(C) states a person "has no duty to retreat and has the right to stand his ground." Thus, the ordinary requirement for self defense that a person have "no other probable means of avoiding the danger" is eliminated for the purposes of the requested hearing and the ultimate determination of immunity.

Isaac anticipates the State will argue that immunity under Section 16-11-450(A) cannot apply to the instant case because the statute was not enacted and effective until June 9, 2006 and the acts alleged here occurred in October, 2005. Isaac contends, however, based on the few cases dealing with the issue of retroactivity or prospectivity of the statute that the "trigger" date important to determine applicability of Section 16-11-450(A) is the date prosecutions begins rather than the date an alleged act occurred.

In State v. Dickey, 380 S.C 384, 669 S.E.2d 917 (Ct. App. 2008) (reversed on other grounds), the Court stated "the Legislature clearly manifested its intent that the Act be applied prospectively." The incident giving rise to Dickey's original Murder charge was on April 29, 2004 and Dickey was both charged and indicted prior to the effective date of Section 16-11-450(A). The Court ultimately held that Dickey was not entitled to any relieve under Section 16-11-450(A) and stated "the fact that Dickey's prosecution was pending before the effective date of the Act precludes the application of the Act to this case." (emphasis added).

Subsequently, this issue arose again in State v. Bolin, 381 S.C. 557, 673 S.E.2d 885 (Ct.

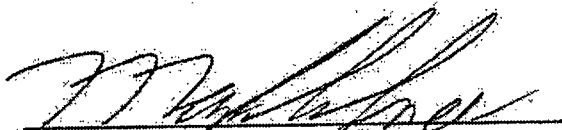
App. 2009). Bolin was indicted in York County on May 18, 2006, almost one month prior to the effective date of Section 16-11-450(A). According to the Clerk of Court Records (attached), Bolin was arrested on February 20, 2006. The Bolin opinion, citing the legislative intent as well as the prior holding in Dickey stated:

[T]hat the Act is to have no effect on pending actions, criminal prosecutions, rights, duties, or liabilities, and that all laws repealed or amended by the Act must be treated as remaining in full force and effect, the clear language of the Act indicates that it is prospective ... Thus, because the legislature clearly and unambiguously specified the Act be applied prospectively, the Act cannot be applied retroactively to Bolin's case. See /Dickey/id. (holding retroactive application of the Act to prosecution that was pending before the effective date of the Act was precluded because the Act is prospective). (emphasis added).

CONCLUSION

Based on the brief facts asserted above, combined with the legal issues addressed, Isaac respectfully requests this Court hold a full evidentiary hearing to determine whether Isaac is entitled to immunity from prosecution pursuant to Section 16-11-450(A).

Respectfully,



Mark Schnee, Attorney for Defendant
The Schnee Law Firm
1720 Main Street, Suite 202
Columbia, SC 29201
(803)771-0075

Columbia, South Carolina

This 8 day of July, 2013



York County Sixteenth Judicial Circuit Public Index



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Switch View					
The State of South Carolina VS Berry Scott Bolin					
Case Number:	2150348	Court Agency:	York County General Sessions	Filed Date:	02/21/2006
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Hayes, John C. III
Disposition:	Trial Guilty				
Disposition Date:	09/06/2006	Date Received:	02/21/2006	Arrest Date:	02/20/2006
Law Enf. Case:		True Bill Date:	05/18/2006	No Bill Date:	
Prosecuter Case:		Indictment Number:	2006GS4601595	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds			
Name:	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Bolin, Berry Scott	0217-Manslaughter / Voluntary manslaughter	0116-Murder / Murder	09/06/2006

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Exhibit 2

RICHLAND COUNTY SHERIFF'S DEPARTMENT

INTERROGATION: ADVICE OF RIGHTS

NAME: Vernoris Dixon PLACE: RCSD
 OFFICER (S): Wilson / Coast
 DATE: 08/22/12 TIME: 9:12

YOUR RIGHTS

- ☒ Before we ask you any questions, you must understand your rights.
- ☒ You have the right to remain silent.
- ☒ Anything you say can be used against you in court.
- ☒ You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning.
- ☒ If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.
- ☒ If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WITNESS: [Signature]

SIGNED: Vernoris Dixon

WITNESS: W. B. [Signature]

WAIVER OF RIGHTS

- ☒ I have read this statement of my rights and understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of any kind has been used against me.

WITNESS: [Signature]

SIGNED: Vernoris Dixon

WITNESS: W. B. [Signature]

Exhibit 3

ARREST WARRANT

J-634174

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Waverly Magistrate

THE STATE
against

Greg Kentrell Isaac

Address:

Hopkins, SC 29209-

Phone:

SSN:

Sex: M

Race: B

Height:

5

7

Weight:

146

DL State:

SC

DL #:

DOB:

Agency ORI #: 04000

Prosecuting Agency:

Richland County Sheriff Department

Prosecuting Officer:

David Wilson - 209

Offense: Murder / Murder

Offense Code:

0116

Code/Ordinance Sec:

16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Greg Kentrell Isaac
4-13-12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Waverly Magistrate
2712 Middleburg Dr., Suite 106
Columbia, SC 29204

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Waverly Magistrate

Personally appeared before me the affiant David Wilson

being duly sworn deposes and says that defendant Greg Kentrell Isaac

did within this county and state on or about 10/27/2005

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on 10/27/2005 while at Apt 113D 3200 Fernandina Rd in the Dutch Fork Magisterial District of Richland County, one Greg
Isaac did commit the crime of Murder in that he along with codefendants did conspire to rob Antonio Corbitt at his residence on
Fernandina Rd. The defendant along with codefendants did proceed to Antonio Corbitt's residence. They did during the hours of
darkness and while armed with a handgun force entry into Antonio Corbitt's residence by kicking the front door open with the
intention of robbing him of money and drugs. Once inside they did physically assault Antonio Corbitt and did with malice and
unfought shot Antonio Corbitt with a handgun causing his death. The defendant has confessed in a sworn statement. Affiant
and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Waverly Magistrate

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/27/2005

defendant Greg Kentrell Isaac

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Richland / Waverly Magistrate

) as set forth below.

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 10/13/2012

Signature of Issuing Judge

Caroline W. Streeter

Judge Code: 7027

Judge's Address 1400 Huger Street

Columbia, SC 29201-

Judge's Telephone (803)576-2311

Issuing Court ☒ Magistrate☐ Municipal☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

ARREST WARRANT

J-634175

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Waverly Magistrate

THE STATE

against

Greg Kentrell Isaac

Address:

Hopkins, SC 29209-

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5' 7" Weight: 146

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: David Wilson - 209

Offense: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

Offense Code: 0049

Code/Ordinance Sec: 16-17-0410

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Greg Kentrell Isaacon 4-13-12

Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

Waverly Magistrate
2712 Middleburg Dr., Suite 106
Columbia, SC 29204

DEFENDANT COPY - DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Waverly Magistrate

Personally appeared before me the affiant David Wilsonbeing duly sworn deposes and says that defendant Greg Kentrell Isaacdid within this county and state on or about 10/27/2005State of South Carolina for ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 10/27/2005 while at Apt 113D 3200 Fernandina Rd in the Dutch Fork Magisterial District of Richland County, one Greg Isaac did commit the crime of Criminal Conspiracy in that he along with codefendants did conspire to rob Antonio Corbitt at his residence on Fernandina Rd. The defendant along with codefendants did proceed to Antonio Corbitt's residence. They did during the hours of darkness and while armed with a handgun force entry into Antonio Corbitt's residence by kicking the front door open with the intention of robbing him of money and drugs. Once inside they did physically assault Antonio Corbitt and did with malice and forthright shoot Antonio Corbitt with a handgun causing his death. The defendant has confessed in a sworn statement. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Waverly Magistrate

Affiant's Address 5623 Two Notch RoadColumbia, SC 29223-Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/27/2005 defendant Greg Kentrell Isaac

did violate the criminal laws of the State of South Carolina for ordinance of

☒ County/ ☐ Municipality of Richland / Waverly Magistrate) as set forth below

DESCRIPTION OF OFFENSE: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 04/13/2012

(L.S.)

Signature of Issuing Judge

Caroline W Streeter

Judge Code: 7027Judge's Address 1400 Huger StreetColumbia, SC 29201-Judge's Telephone (803)576-2341Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ARREST WARRANT

J-634176

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Waverly Magistrate

THE STATE
against

Greg Kentrell Isaac

Address: [REDACTED]

Hopkins, SC 29209-

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5'7" Weight: 146

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: David Wilson - 209

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused:

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to

defendant Greg Kentrell Isaacon 4-5-12

Signature of Constable or Enforcement Officer

RETURN WARRANT TO:

Waverly Magistrate
2712 Middleburg Dr., Suite 106
Columbia, SC 29204

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Waverly Magistrate

Personally appeared before me the affiant David Wilsonbeing duly sworn deposes and says that defendant Greg Kentrell Isaacdid within this county and state on or about 10/27/2005State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Waverly Magistrate)
in the following particulars:DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 10/27/2005 while at Apt 113D 3200 Fernandina Rd in the Dutch Fork Magisterial District of Richland County, one Greg Isaac did commit the crime of Burglary 1st in that he along with codefendants did conspire to rob Antonio Corbitt at his residence on Fernandina Rd. The defendant along with codefendants did proceed to Antonio Corbitt's residence. They did during the hours of darkness and while armed with a handgun force entry into Antonio Corbitt's residence by kicking the front door open with the intention of robbing him of money and drugs. Once inside they did physically assault Antonio Corbitt and did with malice and aforesight shoot Antonio Corbitt with a handgun causing his death. The defendant has confessed in a sworn statement. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Waverly Magistrate

Affiant's Address 5623 Two Notch Road
Columbia, SC 29223-Affiant's Telephone: (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/27/2005 defendant Greg Kentrell Isaac

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Waverly Magistrate) as set forth belowDESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 04/13/2012

(L.S.)

Signature of Issuing Judge

Caroline W. Streeter

Judge Code: 7027Judge's Address 1400 Huger StreetColumbia, SC 29201-Judge's Telephone: (803)576-2341Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ARREST WARRANT

J-634177

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Waverly Magistrate

THE STATE

against

Greg Kentrell Isaac

Address:

Hopkins, SC 29209

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5 7 Weight: 146

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: David Wilson - 209

Offense: Robbery / Attempted armed, or allegedly armed, robbery

Offense Code: 0026

Code/Ordinance Sec: 16-11-0330(B)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Greg Kentrell Isaac on 4-13-12

Signature of Constable or Enforcement Officer

RETURN WARRANT TO:

Waverly Magistrate
2712 Middleburg Dr., Suite 106
Columbia, SC 29204

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Waverly Magistrate

Personally appeared before me the affiant David Wilson whobeing duly sworn deposes and says that defendant Greg Kentrell Isaacdid within this county and state on or about 10/27/2005 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Richland / Waverly Magistrate)

in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Attempted armed, or allegedly armed, robbery

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 10/27/2005 while at Apt 113D 3200 Fernandina Rd in the Dutch Fork Magisterial District of Richland County, one Greg Isaac did commit the crime of Attempted Armed Robbery in that he along with codefendants did conspire to rob Antonio Corbitt at his residence on Fernandina Rd. The defendant along with codefendants did proceed to Antonio Corbitt's residence. They did during the hours of darkness and while armed with a handgun force entry into Antonio Corbitt's residence by kicking the front door open with the intention of robbing him of money and drugs. Once inside they did physically assault Antonio Corbitt and did with malice and aforesight shoot Antonio Corbitt with a handgun causing his death. The defendant has confessed in a sworn statement. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Waverly Magistrate

Affiant's Address 5623 Two Notch Road
Columbia, SC 29223

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/27/2005 defendant Greg Kentrell Isaac

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Waverly Magistrate) as set forth below

DESCRIPTION OF OFFENSE: Robbery / Attempted armed, or allegedly armed, robbery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 04/13/2012

Signature of Issuing Judge

Caroline W. Bfenter

Judge Code: 7027

(L.S.)

Judge's Address 1400 Huger Street

Columbia, SC 29201

Judge's Telephone (803)576-2341

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2013-001464

State of South Carolina, ... Respondent;

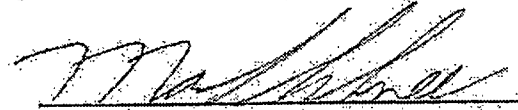
v.

Greg K. Isaac, ... Appellant.

Certificate of Counsel

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

July 17, 2013



Mark Schnee
The Schnee Law Firm
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(803) 771-0075
Attorney for Appellant

Other Counsel of Record:

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Columbia, SC 29201
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2013-001464.

State of South Carolina, ... Respondent,

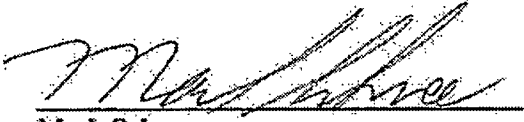
v.

Greg K. Isaac, ... Appellant.

PROOF OF SERVICE

I hereby certify that a true copy of the Final Brief of Appellant in the above-referenced case has been served upon opposing counsel by delivering same this date to her office at the Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, 1701 Main Street, Columbia, SC 29201 and to Attorney General Alan Wilson, 1000 Assembly Street, Room 519, Columbia, SC 29201.

July 17, 2013


Mark Schnee

The Schnee Law Firm

1720 Main Street, Suite 202

Columbia, South Carolina 29201

(803) 771-0075

Attorney for Appellant

Other Counsel of Record:

Assistant Solicitor Kathryn Luck Campbell
Office of the Solicitor, Fifth Judicial Circuit

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1000 Assembly Street

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Room 519
Columbia, SC 29201
Attorneys for Respondent

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Clifton Newman, Circuit Court Judge

Appellate Case No. 2013-001464

STATE OF SOUTH CAROLINA,

Respondent,

v.

GREG K. ISAAC,

Appellant

BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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1. The victim's driving record identifying Corbitt's apartment as his residence. [Exhibit Presented to Circuit Court - See ROA 32-33].
2. April 11, 2012 Statement of Greg Isaac to the Richland County Sheriff's Department which the State claimed contradicted his testimony. [Exhibit Presented to Circuit Court - See ROA 32-33].
3. April 12, 2012 Statement of Tavares World. [Exhibit Presented to Circuit Court - See ROA 32-33].
4. August 22, 2012 Statement of Venoris Dixon [Exhibit Presented to Circuit Court - See ROA 32-33].
5. INDICTMENTS :Murder [2012-GS-40- 2435], Burglary in the first degree [2012-GS-40-2437], Attempted armed robbery [2012-GS-40-2438] and Criminal conspiracy [2012-GS-40-2436].

CERTIFICATE OF SERVICE

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QUESTIONS PRESENTED

In the Order of July 15, 2013, the Supreme Court directed the following questions be briefed:

1. When a determination is made prior to trial that the Protection of Persons and Property Act is inapplicable in a case as a matter of law, is that determination immediately appealable under State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2001)? [1]
2. Should the Protection of Persons and Property Act be applied retroactively? [4]
3. Did the circuit court err in determining the Protection of Persons and Property Act was inapplicable in this case? [2]

In the July 9, 2013 Brief of Appellant, the Appellant asserted as an additional ground the following:

4. Can immunity under the Act be established if there is a necessary, prerequisite legal defense such as duress, coercion or necessity? [3].

RESPONDENT'S STATEMENT OF CASE

This appeal arises from notices of appeal filed by the Appellant, Greg K. Isaac, through his counsel, Mark Schnee, of the Richland County Bar. On July 8, 2013, counsel made an initial "notice of appeal", asserting that he:

appeals the denial of immunity pursuant to S.C. Code § 16-11-450(A). The denial of immunity is filed under S.C. Code § 14-3-330 and this Court's ruling in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011) as it is a request for an injunction barring the State of South Carolina from prosecuting the Petitioner.

Notice of Appeal, July 8, 2013. ROA ___. Subsequently, the Appellant on July 9, 2013 made an Amended Notice of Appeal stating he:

... previously filed a Notice of Appeal on July 8, 2013 appealing the denial of immunity pursuant to S.C. Code § 16-11-450(A). After filing the appeal, Petitioner was informed by the trial court that, despite hearing testimony, no hearing took place and Petitioner was not entitled to a hearing. Petitioner now appeals the denial of a hearing for immunity pursuant to S.C. Code § 16-11-450(A). This appeal is filed under S.C. Code § 14-3-330 and this Court's ruling in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011) as it is a request for an injunction barring the State of South Carolina from Prosecuting the Petitioner.

July 9, 2013 "Amended Notice of Appeal." ROA ___.¹

On July 9, 2013, contemporaneous with filing of the Amended Notice of Appeal, Appellant made an "Emergency Petition to Enforce Automatic Stay in Circuit Court." ROA ___.²

¹ Although the "Amended Notice of Appeal" included a Certificate of Service, the Respondent, through the Solicitor's Office have yet to receive a copy of the "Amended Notice." Counsel for Appellant Schnee confirmed in open court to Judge Newman after the entry of the Stay, that a copy had not been delivered and asserted that the Supreme Court had kept all his copies. Tr. ___, ROA ___.

² Respondent did not receive a copy of this document from Appellant's trial counsel. Copies of the Amended Notice of Appeal and Emergency Petition were sought and

In this pleading, Isaac asserted that he was informed by the trial court that, despite hearing testimony, no hearing took place and that he was not entitled to a hearing. Appellant asserted that he was now appealing "the denial of a hearing for immunity pursuant to S.C. Code § 16-11-450(A). Id. The Appellant also claimed that the original notice had been properly served and filed yet the trial judge had informed Appellant that absent an Order from the Supreme Court stating that the trial court was divested of jurisdiction, the trial would go forward. He additionally claimed that the trial court refused to allow counsel to leave the courtroom to secure such an order from the Supreme Court. Id. Appellant claimed that a trial prior to the completion of his appeal violates his rights of due process and fundamental fairness. Id.

On July 9, 2013, after receipt of the notices of appeal and emergency petition, the Supreme Court, through Chief Justice Jean Toal, entered an Order concluding:

Pursuant to Rule 205, SCACR, upon the service of the notice of appeal on July 8, 2013, and now the filing of the notice of appeal of this date, this Court assumed exclusive jurisdiction over this matter. While the circuit court may proceed with matters not affected by this appeal, we find the trial in this matter is affected by the issue on appeal; therefore, the circuit court is without jurisdiction to proceed with the trial until a final decision is rendered in the appeal.

State v. Greg K. Isaac, Appellant, Appellate Case No. 2013-001464, Order (S.C.S.Ct. July 9, 2013)(Order holding trial judge divested of jurisdiction).

Respondent submits upon receipt of the Order, the ongoing trial in Richland County before the Honorable Clifton Newman ceased and the jury was dismissed.

received from the Supreme Court Clerk of Court's Office by the Solicitor's Office after entry of the July 9, 2013 Order which directed the end of the ongoing trial.

On July 15, 2013, the Supreme Court of South Carolina entered a second order in the matter and a briefing schedule. In particular, the Court directed a briefing schedule and to address the three questions set forth in the Questions Presented herein. This briefing follows.

HOW THE ISSUE WAS RAISED

On October 27, 2005, Antonio Corbitt was shot and killed by Greg K. Isaac according to Isaac's pleadings before this Court. *Motion for a Pretrial Hearing to Determine Immunity Pursuant to S.C. Code Section § 16-11-450(A), dated July -, 2013, p. 1-2. See also, Transcript, p. 18, 27.* The Appellant was arrested on or about April 11, 2012 [warrants returned on April 13, 2012] for murder [J-634174], conspiracy/criminal conspiracy [J-634-175], burglary in the first degree [J-634176], and attempted armed robbery [J-634177]. (Arrest warrants attached to "Final Brief of Appellant as Exhibit 3). He was indicted at the May 10, 2012 term of General Sessions of Richland County for murder [2012-GS-40- 2435], burglary in the first degree [2012-GS-40- 2437], attempted armed robbery [2012-GS-40-2438] and criminal conspiracy [2012-GS-40- 2436]. Appellant is represented at trial by Mark Schnee of the Richland County Bar. The State of South Carolina is represented at trial by Deputy Solicitor Kathryn Luck Campbell Hubbard, Assistant Solicitor Meghan Walker and Assistant Solicitor John Steadman.

At an earlier status conference, the trial date of July 8, 2013 was established. On June 28, 2013, Judge DeAndrea Benjamin heard and denied in chambers a motion to continue by counsel Schnee. Additional pretrial hearings were held on Wednesday July 3, 2013 before Judge Clifton Newman which did not involve a continuance motion.

On Friday, July 5, 2013, counsel Mark Schnee informed Judge Newman and counsel for the State by email that "after careful and lengthy consideration, combined with the most recent

decision in State v. Marin (published on 7/3/13), I must at this time go forward on the attached motion and request a full hearing next week or the issue will be waived. He noted that a hard copy would be filed and served on Monday. *Email July 5, 2013 @ 3:51 PM.*

Motion for a Pretrial Hearing to Determine Immunity Pursuant to S.C. Code Section § 16-11-450(A), dated July 8, 2013.

The Appellant made a written motion styled *Motion for a Pretrial Hearing to Determine Immunity Pursuant to S.C. Code Section § 16-11-450(A), dated July 8, 2013*. [Exhibit 1 in Final Brief of Appellant]. In the written motion, Isaac moved the trial court for a hearing to determine if the Defendant is immune from prosecution under the "Protection of Persons and Property Act," S.C. Code §§ 16-11-410 et. seq. He contended that he intended to prove the following facts and asserted the below issues of law mandate both a full hearing and, ultimately, a finding of immunity from prosecution.

In particular he set forth what he claimed in his written motion were "undisputed facts:"

On October 27, 2005, Antonio Corbitt was shot and killed. The incident took place in and around Corbitt's apartment at 3200 Fernandina Road, Apartment #113D, Columbia, South Carolina at approximately 9:30 P.M. This case went unsolved with no arrests until April 2012. At that time, a fingerprint came back from a lamp inside of Corbitt's apartment and matched Greg Isaac. **Isaac was interviewed and provided a written statement admitting himself as the shooter and also implicated Tavares World and Vernoris Dixon.** Subsequently, both World and Dixon were arrested and also gave statements to law enforcement. Isaac, World and Dixon were all charged with Burglary 1st Degree, Criminal Conspiracy, Attempted Armed Robbery and Murder

Motion for a Pretrial Hearing to Determine Immunity Pursuant to S.C. Code Section § 16-11-450(A), dated July 8, 2013, p. 1. (emphasis added). In the motion, concerning the additional facts he intended to present, he set forth the following:

Isaac asserts during the requested hearing, evidence will be presented

sufficient to establish that Isaac was not a willing participant for the initial interactions with Corbitt. Instead, Isaac asserts that World forced Isaac to participate, under threat of death, in the actions resulting in the Burglary, Attempted Armed Robbery and Conspiracy charges. This threat of death eliminates all criminal liability for those three charges as Isaac was only acting under duress/coercion at the time. Specifically, Isaac will produce evidence that World threatened to kill Isaac if Isaac did not accompany World to Corbitt's apartment. Isaac will also present evidence that World also had a gun throughout the incident and that World has threatened Isaac with guns both before and subsequent to this incident. Isaac will also establish that World provided the firearm used to shoot Corbitt and, after returning to the car Dixon was driving, took the firearm back from Isaac. Isaac has no knowledge of the current whereabouts of the firearm.

Further, it will be shown that World kicked Corbitt's door open, demanded money and then began to fight with Corbitt. Isaac did not actively participate other than to try to stop the fight and get World out of the apartment.

Motion for a Pretrial Hearing to Determine Immunity Pursuant to S.C. Code Section § 16-11-

450(A), dated July 8, 2013, p. 3. In addition, he claimed that:

... Isaac will further establish, through the testimony of witnesses, that World and Corbitt were engaged in a physical altercation in Corbitt's apartment. Isaac attempted to break up the fight between World and Corbitt. While Isaac tried to get World out of the apartment, Isaac saw Corbitt reach behind him. At the time, Isaac reasonably believed that Corbitt was reaching for a gun. At this point, since Isaac is not unlawfully present in the apartment, Isaac reasonably acted in self defense as both World and Isaac were trying to flee.

Motion, p. 3.

Isaac conceded that duress and coercion is not a defense to the charge of murder. Isaac, instead, argued that the duress and coercion from Tavares World eliminated any criminal liability for the crimes of Burglary, Attempted Armed Robbery and Conspiracy. He claimed that "the result of the lack of criminal liability for Isaac's presence at Corbitt's apartment means Isaac was not unlawfully present at the time of the shooting." In the motion, Isaac recognized that in State v. Rocheville, 310 S.C. 20, 425 S.E.2d 32 (1993) that the South Carolina Supreme Court held

that "duress is not a defense to murder." *Motion*, p. 2-3. However, he cited to State v. Frazier, 306 S.C. 158, 410 S.E.2d 572 (1991), a collateral PCR action in a criminal sexual conduct, conspiracy and kidnapping case where the Supreme Court determined that trial counsel was deficient and held Frazier was entitled to a jury instruction on coercion in a non-murder setting where at trial, Frazier had testified he was forced at gunpoint to have intercourse with the victim.

In his motion, Isaac asserted that under The Protection of Persons and Property Act, S.C. Code § 16-11-450(A): "[A] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force . . ."

(emphasis in motion)s. In addition, he cited to §16-11-440 (C) which provided, in relevant part:

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

§16-11-440 (C) (emphasis in motion).

The Appellant asserted that "self-defense" is "another applicable provision of law" under § 16-11-450(A). He claimed that the recent decision in State v. Marin, Op. No. 5156, __ S.C __, __ S.E.2d __, 2013 Westlaw 3361970 (July 3, 2013) supported this assertion. *Motion*, p. 4. He claimed that Marin , counsel had requested a jury charge on immunity under the Act, but the Court of Appeals rejected it concluding:

We find the trial court correctly refused to charge this subsection because it does not contain any substantive provisions of law. Rather, it is a procedural subsection under which the circuit court may grant immunity from prosecution before a trial begins if the court finds the defendant acted lawfully in self-defense

... [T]he trial court fully charged self-defense - the substantive point of law upon which subsection 16-11-450(A) depends.

Marin, supra. *Motion*, p. 4. The appellant then cited to the four elements of self-defense in South Carolina and contended that the fourth element : "the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance" citing State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984), would not apply because § 16-11-440 (C) states a person "has no duty to retreat and has the right to stand his ground." Isaac urged that the ordinary requirement for self defense that a person have "no other probable means of avoiding the danger" was therefore eliminated for the purposes of the requested hearing and the ultimate determination of immunity.³ *Motion*, p. 4-5.

The Appellant next predicted in his motion that the State would argue that the Protection of Persons and Property Act immunity provision under Section 16-11-450(A) cannot apply to the instant case because the statute was not enacted and effective until June 9, 2006, where the operative crime occurred October 27, 2005. Isaac contended, however, that the "trigger" date important to determine applicability of Section 16-11-450(A) is the date prosecutions begins rather than the date an alleged act occurred. He cited to the Court of Appeals decision in State v. Dickey, 380 S.C. 384, 669 S.E. 2d 917 (S.C. Ct. App. 2008)(reversed on other grounds) and State v. Bolin, 381 S.C. 557, 673 S.E.2d 885 (Ct. App.2009). He claimed that in Dickey, the Court of Appeals had held that the operative fact was that the prosecution was pending before the enactment which precluded the applicability of the Act. *Motion*, p. 5-6. He also noted that Clerk records reveal the Bolin was arrested on February 20, 2006 (before the June 9, 2006 effective

³The Appellant did not either assert or address the additional condition precedent of the Act that the actor is where "he has a right to be" under the Act.

date of Act 379). He noted that in Bolin, the Court of Appeals cited to the savings clause in the 2006 Act which stated:

[T]hat the Act is to have no effect on pending actions, criminal prosecutions, rights, duties, or liabilities, and that all laws repealed or amended by the Act must be treated as remaining in full force and effect, the clear language of the Act indicates that it is prospective ... Thus, because the legislature clearly and unambiguously specified the Act be applied prospectively, the Act cannot be applied retroactively to Bolin's case. See [Dickey]id. (holding retroactive application of the Act to prosecution that was pending before the effective date of the Act was precluded because the Act is prospective).

Motion, p. 6 (emphasis in original motion).

The Appellant concluded his motion by requesting a full evidentiary hearing to determine whether he was entitled to immunity from prosecution under § 16-11-450(A). *Motion*, p. 6.

July 8, 2013 Motion Hearing and Trial.

The case was called to trial on July 8, 2013. Counsel Schnee brought to the trial court's attention that he wanted to request a Castle Doctrine and Stand Your Ground hearing pursuant to his earlier motion. [Counsel explained this as a reason why Isaac was not dressed for the trial.] ROA 4-5. Counsel asserted that since under a recent case (Marin), it was procedural and that he had to have a hearing and if denied, then was required to appeal it or was waived. ROA p. 5, ll. 1-5. The trial court recessed to allow the Appellant to get dressed for trial. ROA p. 5, ll. 6-13.

Counsel asserted that he was requesting a hearing pursuant to § 16-11-420(A) to determine if he was immune from prosecution. He asserted that he was adopting a summary of his anticipated facts and law as to why he felt he was entitled to that at this time. Judge Newman responded: "[t]his is the hearing." ROA p. 6, ll. 8, 10. Counsel then called Greg Isaac to testify. ROA p. 6-32.

1. Testimony of Greg Isaac

Isaac testified that he was 18 at the time of the incident. R. 6. He stated that he had a prior arrest record for burglary at that time. ROA p. 7, ll. 1-4.

Isaac declared that co-defendant Tavares World was "sort of" a friend that he had know for a little while or in "a few months" in 2005. ROA p. 7, ll. 5-11. On October 27, 2005 he was at Bethel Bishop Apartments with World and Vernoris Dixon. R. 7.

Isaac testified that he went with them with Vernoris driving and Appellant in the back seat. He stated he overheard a conversation concerning "something about some money", that Appellant thinking: "I guess somebody owed Tavares some money." ROA p. 8, ll. 14-22, p. 9, ll. 4-7 ("I guess the victim owed him some money or something"). Although Isaac claimed not to know the victim, he said that Vernoris and Tavares knew him. ROA p. 9, ll. 8-15.

Isaac testified that once they got to the victim's apartment complex, Tavares asked him ["Twin"] to come and help him with "something about some money they owed him." Isaac stated that he initially responded to Tavares "I ain't got nothing to do with it." ROA p. 9. Tavares told him to "stop acting like a peach, come with me." Isaac asserted Tavares threatened him pulled out his gun and said "come with me ... or I'll hurt you. I'll kill you." ROA p. 10.

Isaac claimed that Tavares had previously "pulled a gun in my face" around Father's Day in June 2005. ROA p. 10, l. 22 - p. 12, l. 19. Isaac stated at that time that he would "fire him up... and told him that he'll kill me if I keep f__ing with him... because he ain't from around here." ROA p. 12, ll. 5-7. He said at that point Tavares slapped him and left. ROA p. 12.

Isaac stated that Tavares told him that he had to go with him and pulled a .380 gun.⁴ He said Tavares also had a "nine" (nine millimeter) that he saw that night. ROA p. 13.

Isaac said they (Tavares and Isaac) got out of the car and walked by the victim's house with Tavares looking through the windows as he followed. Isaac said he told Tavares that he did not do burglaries or break into houses. ROA p. 13, ll. 23-24.⁵ He said Tavares told him to "chill the f__ out." ROA p. 13, l. 25.

He said they then returned to the car. R. 14. He said that he was mad about the situation. After waiting about 15 to 20 minutes, he noticed a car pulled up to the house and Venoris said "there he go right there." ROA p. 14, ll. 8-14.

At that point, Tavares told Appellant to "come on" "stop acting like a b__", and they got out of the car, according to Appellant. Upon prompting, the Appellant stated "he threatened me again." He claimed that he was not able to leave or run away because of "peer pressure" and because he was young and "the man had to tear him down." ROA p. 14-15.

Isaac stated that he and Tavares got out of the car. He said as soon as they got to the door Tavares beat on the door three or four times. ROA p. 15, ll. 8-21. He said Tavares then kicked it three times and the door swung open, while Tavares yelled: "where my money at, where my money at?" ROA p. 15, ll. 21-25.

Isaac testified that he initially stayed outside the apartment while he saw Tavares and the victim fighting inside the apartment. Isaac said he stepped inside, claiming to try to diffuse the

⁴ Isaac had the .380 in his possession when he shot the victim three times. He stated he returned it to Tavares when he got to the car and fled the scene.

⁵ This is inconsistent with earlier assertion about his prior burglary arrest record. R. 7.

situation telling Tavares to come on and leave and trying to pull him away. ROA p. 16, ll. 9-17.

Isaac said he was pushed into a lamp that fell and Isaac fell then he stepped back outside.

While outside, he said Tavares and the victim got up and were still fighting. ROA p. 16, ll. 22-24. Isaac said he then saw Tavares running towards him. ROA p. 16-17. He said Tavares pulled the victim towards Isaac as he passed Isaac. Isaac said it appeared to him that the victim was reaching for or pulling out a gun and "that's when I shot." ROA p. 17, ll. 16-22. He said he shot the victim three times. ROA p. 18, ll. 7-8. He said after he shot the victim, he ran back to the car with Tavares following behind him. ROA p. 18-19.

Isaac testified that after they got back to the car they left. ROA p. 18. He recalled Tavares getting the .380 back from him, but did not know where it was now. ROA p. 19. He recalled Tavares telling him to keep his mouth shut or "you know what's going to happen." ROA p. 19, ll. 12-15. He understood this to mean that he would kill him. Id.

On cross-examination, Isaac stated that the last time Tavares had threatened him before October 2005 was in June 2005. ROA p. 20-21. He claimed to have been scared of Tavares since they had words in June and pointed a gun at him. ROA p. 21.

Isaac admitted that although he was scared of him since June, he still got in the car with Tavares on October 27, 2005 voluntarily. ROA p. 22, ll. 12-21. This was before he was threatened by Tavares on that date when they got to the apartment. ROA p. 22-23. Isaac confirmed the purpose in going to the house was because he owed some money. ROA p. 23.

Isaac claimed that Tavares threatened him again to make him go after the car came to the apartment. Isaac said the victim was inside the door after it got kicked in and the altercation then took place between the victim and Tavares while Isaac was standing outside, although he never

saw Tavares pull his gun. ROA p. 25, ll. 3-18. Isaac stated he went inside "to diffuse the situation" by trying to pull Tavares away. Isaac admitted that while he was outside when the altercation began, rather than leave, he went inside and tried to pull Tavares away. ROA p. 26, ll. 6-13. Isaac said after Tavares got up, the victim was running behind Tavares toward the door and Tavares was running toward Isaac where he was back outside the apartment. ROA p. 26, ll. 17-23. Isaac stated it was "like [the victim] was pulling a gun out" and Isaac was able to shoot him multiple times. ROA p. 27, ll. 3-10.

Isaac stated that he separated from Tavares once they returned to Bethel Bishop Apartments. R. 27. He claimed to continue to see Tavares in the interim five (5) years after the incident, but claimed he still felt threatened. ROA p. 27-28. However, Isaac said he never called the police because he had family members and feared Tavares would have gotten to them. ROA p. 28, ll. 5-21. However, Isaac admitted speaking with the police in April 2012 and gave them a different version of what happened in a three-page statement. ROA p. 29.

Isaac also stated that he never saw Tavares pull a gun while he was fighting with the victim and that he went inside the apartment to pull Tavares away. ROA p. 29, ll. 15-24.

On re-direct, Isaac claimed he told the police what he said in court. He also claimed he probably would have been hurt if he had tried to run away while Tavares was fighting. ROA p. 30-31.

Counsel Schnee then stated that he had no further witness to present to establish that he was in fear and acting under duress for all the crimes up to the murder and "I believe we established that the only reason he fired was in self-defense." ROA p. 32, ll. 3-8.

Deputy Solicitor Campbell next sought to present various documents to the court as court

exhibits including:

1. The victim's driving record identifying Corbitt's apartment as his residence. [Attached to Brief of Respondent]
2. April 11, 2012 Statement of Greg Isaac to the Richland County Sheriff's Department which the State claimed contradicted his testimony. [Attached to Brief of Respondent]⁶.

⁶In the Appellant April 11, 2012 statement, Greg Isaac made different assertions about his involvement in the killing of Corbitt than his testimony. In its pertinent part, he makes no mention about any threat from Tavares to be involved in the crime. After describing going to the victim's apartment and riding around the parking lot a few minutes and seeing his car, Isaac described:

We got out of the Nissan Altima that we were in and walked back to the man's apartment. Tavares and I went up to the door. Dixon stayed in the car. Tavares started beating on the door. Tavares kicked the door but it came open. He went inside, and I stayed in the doorway. Tavares was saying where is the money? The man said something back but I could not understand what he said. I did hear him say "n---r f---k you, f---k you" The man started fighting Tavares. They were fighting by the door I was telling them to chill out. They were fighting all over the furniture. At some point they fell into me and I fell into the end table that the lamp was on. I tried to catch the lamp before it busted and fell but it fell anyway. They were on the floor and the man was on top of Tavares and was beating him. I hit the man in the back and tried to pull him off Tavares. They got up and I was trying to pull Tavares out the door. I saw the man back up and Tavares backed up. The man reached behind him to his waist. I thought he was going for a gun. When I saw that I pulled the gun that I had in my waistband and shot the man. I think I shot twice. We went back to the car. Dixon was waiting and we left.

April 11, 2012 Statement of Greg Isaac, p. 1-2. In the statement, the Appellant stated that Tavares had given him the black .380. However, in contrast to his testimony on July 8, 2013, Isaac stated: "Tavares had given it to me *before* we went to the man's apartment." He stated that the reason they went to the apartment was because "Tavares wanted to confront the man over a drug deal gone bad saying the man was playing him on his money." Statement, p. 2. In addition, Isaac stated that before the shooting they had discussed that "Tavares was made because the man had ripped him off." *Id.* Isaac stated that Tavares made him give it back to him and that he did not know what he did with it. Isaac statement did state that Tavares had pulled the .380 on him before this one month or two when Tavares had pulled the gun on him during an argument. After the shooting Isaac stated that they argued in the car, with Isaac asking Tavares why he didn't

3. April 12, 2012 Statement of Tavares World. [Attached to Brief of Respondent]⁷
4. August 22, 2012 Statement of Vernoris Dixon [Attached to Brief of Respondent].⁸

come out when he tried to get him to leave. He said that Tavares kept asking him if he was alright. However, he said that Tavares "threatened to kill him or some one close to me if I ever talked about the shooting." *Isaac statement*, p. 3.

⁷In Tavares World's April 12, 2012 statement, he indicated that he was with Dixon and Isaac that night and that Dixon told him of a place where they get some "weed." He stated that they went to the apartment that Dixon pointed out and Tavares kicked the door and it opened. He stated that they stepped inside and a person rushed him and grabbed him. World stated that Isaac hit the person with something but it did not affect him. Tavares stated that he shook the person loose and started running out of the apartment when Isaac pulled the pistol he was carrying and shot the person he thought twice. Tavares stated that he kept running and they got back into the car and returned to Dixon's house. Tavares stated that weapon that Isaac shot the person with was a .380 automatic pistol that was Greg's weapon. Tavares denied that he had a weapon with him. He stated that the purpose in going to the apartment was to get some weed and deny any intent to hurt someone. *April 12, 2012 Statement of Tavaris World*.

⁸Vernaris Dixon's August 22, 2012 Statement was in contrast to the statements of both Isaac and Tavares World. Dixon stated that on that date that Tavares had told him that he had bought marijuana from T-love (the victim) and that it was one hundred dollars short. Dixon stated that Tavares called him and needed a ride. "When I got to the apartment World told Isaac to come on and they got into the car. World got into the front seat and Isaac got into the back." He stated that they pulled in front of the apartment and World got out and knocked on the door but there was no answer. After waiting a few minutes, they decided to leave, but then passed Corbitt, coming back. He said that World and Isaac later got out of the car after he had parted it behind the apartment. Dixon stated that he stayed in the car and after 10 to 12 minutes they ran back to the car. World told Dixon to go and they were arguing. He stated that World asked Isaac to give him his gun back and that he didn't have to shoot (sic) him. Dixon stated that World told Isaac that this can't go further and was threatening him. Dixon stated that he saw Isaac had the black gun back to Tavares.

Dixon stated that several days later, they told him what happened that night:

They told me that World beat on the door and didn't get an answer. World kicked the door open. World demanded his money from T-love. They argued and then fought. T-love was getting the best of World so Isaac picked up something and hit T-love. He pulled World back to his feet and was trying to get him to leave. Isaac said T-love was coming at them and was reaching behind his back as if to get a weapon. Isaac said he shot two times and they ran...

ROA p. 32-33. Counsel Schnee objected to the consideration of the documents as hearsay. ROA p. 33, ll. 4-5. The State argued that hearsay was allowed in pre-trial hearings, including *Castle* hearings. The State cited S.C. Rule of Evidence, Rules 1101(d)(1) which cited Rule 104 as "preliminary questions of fact." ROA p. 34.

Judge Newman declined to address the issue. ROA p. 34, ll. 24-25.

The State, through Deputy Solicitor Campbell, argued that even under the Appellant's version, the fact that this is the victim's home under *Castle*, Appellant is not entitled to a *Castle* hearing because this precludes him being eligible for *Castle* hearing. ROA p. 36, ll. 1-14.

Judge Newman then inquired what the Appellant's counsel was asking for. Counsel Schnee responded immunity from prosecution for all the crimes he was currently charged based on § 16-11-450. ROA p. 36, ll. 10-23. When Judge Newman sought the basis of his claim, Schnee responded that it was based on the Protection of Persons and Property Act and is based upon his assertion "that he was acting under duress" and therefore was not unlawfully present at the victim's apartment. ROA p. 37, ll. 9-16.

Schnee claimed that because he was there under duress from Tavares, he was not there voluntarily and under 440 "has no duty to retreat and has a right to stand your ground and meet force with force. . ." ROA p. 37, ll. 17-24. However, counsel Schnee conceded as to how the Act applied to the charges of attempted armed robbery, burglary and conspiracy may be a question of fact for the jury after a determination of immunity. ROA p. 38, ll. 1-9. However, he made the bare claim that he should be entitled to immunity from all.

In response, Deputy Solicitor Campbell argued the following:

August 22, 2012 Statement of Vernoris Dixon.

1. The Castle Doctrine does not apply in the case because it occurred in the victim's home.
2. There is no dispute that the victim's door was kicked in which eliminates duress into exonerating him under a *Castle* theory.
3. The crime happened in 2005 prior to the Act and it would not be retroactive.

ROA p. 38, ll. 11-25.

Counsel Schnee responded that the fact that it was the victim's home does not eliminate the ability for immunity under § 16-11-440(C) where it does not preclude it. Concerning retroactivity, "I agree the statute is not retroactive" and is prospective. He claimed, as he did in his brief, that the arrest for the crime did not occur until April 2012, which is after the Act. ROA p. 39, ll. 2-15.

The Trial Court's Ruling

The Court: The legislative intent in passing this Protection of the Persons and Property Act is codified in statute § 16-11-420, codifying common law Castle Doctrine:

The statute indicates that it's the intent of the General Assembly to recognize that a person's home is his Castle and that's extended to include an occupied vehicle and a person's place of business, and that law-abiding citizens have - - have the right to protect themselves, their families, and others from intruders and attackers without fear of prosecution.

So the intent of the statute is to attack persons in their home, in their castle, and extends to include occupied vehicles or a person's place of business.

The intent of the statute is not to protect intruders and forward any immunity or protection to intruders or those who might enter the dwelling of another to commit a

criminal act.

It borders on being -- it borders on preposterous for the defendant in this case to claim that he was lawfully on -- in Mr. Corbitt's apartment and he was acting lawfully in the apartment and that he had the right to kill Mr. Corbitt under -- because he was under duress or threat from Mr. World.

If he had the right to defend himself from Mr. World after attacking Mr. -- defending himself from Mr. Corbitt after attacking Mr. Corbitt per the statement, then that issue would be raised as an issue of self-defense during the trial and not as the basis of immunity from prosecution.

So it's my finding that the statute does not apply in any form or fashion to the facts of this case and that there is -- that the defendant has no right to a pretrial determination of immunity; that any defense he might have must be presented as an affirmative defense of self-defense to be raised at trial and that this motion is denied.

Further, that because the statute has no applicability, that is, it forms no basis to delay the prosecution of this case and the continuation of this trial, and we will proceed with the trial.

ROA p. 39, l. 16 - p. 41, l. 5.

In summary, Judge Newman concluded that the intent of the Act is not to protect intruders into home or provide any immunity or protection to intruders or those who enter with intent to commit a criminal act. Judge Newman rejected, as a matter of law, the claim that Isaac was lawfully in Corbitt's apartment and had a right to kill Corbitt because Isaac was under duress from co-defendant World. Judge Newman opined that if Isaac had a right to defend himself from Corbitt after attacking Corbitt, the issue would be one of self-defense, but not for immunity under the statute. Since Judge Newman determined that Appellant had no right to a pretrial

determination of immunity since the statute did not apply to the facts, any defense would be presented as an affirmative defense at trial and denied the motion. ROA p. 39-41. Counsel advised the trial court of his intent to appeal. ROA p. 41.

Subsequently, counsel Schnee advised the trial court that he had filed a notice of appeal. ROA p. 106. He stated that he moved, pursuant to SCACR, Rule 205 and S.C. Code § 14-3-330 and State v. Duncan, supra, to stop the trial because the notice of appeal had divested the trial court of jurisdiction. ROA p. 106-07.

Deputy Solicitor Campbell noted that there was nothing to appeal because the trial court had ruled he was not entitled to an immunity hearing. She also noted the notice of appeal was defective since the court had not "denied immunity in an oral ruling", but had denied his right to a hearing. ROA p. p. 107, ll. 13-22.

Counsel Schnee asserted that they did have a hearing. ROA p. 107-08.

Judge Newman clarified that "I did not deny him immunity, I ruled the statute did not apply." ROA p. 108, ll. 8-9. Judge Newman addressed the fact that he considered the motion for a hearing a frivolous motion because the immunity statute had no applicability in this case. Judge Newman opined the intent of the statute was not to create an opportunity for delay to claim "stand your ground" regardless of the circumstances. He concluded the motion was made was an "extreme frivolous claim that could be made for no other purpose other than to seek a delay in the trial." ROA p. 108, ll. 8-24.

Judge Newman distinguished the Duncan case where the person who shot the victim had a right to stand his ground. However, Judge Newman re-affirmed that he did not read Duncan to intend to create an opportunity for defendant to frivolously claim "stand your ground" to create

an appealable issue and delay in trials. He stated he did not rule on the merits because it was not a legitimate issue to raise and was frivolous. He opined it was not immediately appealable under Duncan, R. 110-11.

- I. When a determination is made prior to trial that the Protection of Persons and Property Act is inapplicable in a case as a matter of law, the determination from the Court of General Sessions should not be immediately appealable under Section 14-3-330(4) which is limited to civil actions in the Court of Common Pleas. The *dicta* in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2001) and its mistaken reliance which expanded the Court's jurisdiction should be revisited.**

In State v. Duncan, 392 S.C. 404, 407, n. 2, 709 S.E.2d 662, 663, n.2 (2001), this Court stated:

We find an order granting or denying a motion to dismiss under the Act is immediately appealable, as it is in the nature of an injunction. See S.C. Code Ann. § 14-3-330(4) (Supp.2010) ("The Supreme Court ... shall review upon appeal ... an interlocutory order or decree ... granting, continuing, modifying, or refusing an injunction...").

The Court surveyed other states handling of the immunity provisions and concluded that:

"by using the words "immune from criminal prosecution," the legislature intended to create a true immunity, and not simply an affirmative defense. We also look to the language of the statute that provides, "the General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others." We agree with the circuit court that the legislature intended defendants be shielded from trial if they use deadly force as outlined under the Act. Immunity under the Act is therefore a bar to prosecution and, upon motion of either party, must be decided prior to trial. Accordingly, we find the trial court properly made a pre-trial determination of respondent's immunity.

State v. Duncan, 392 S.C. at 410, 709 S.E.2d 665 (2001).⁹

The question then becomes whether the right to immediately appeal such determinations should similarly exist when it is determined that the Protection of Persons and Property Act is

⁹In this case, the trial judge did not deny a "motion to dismiss," but denied a "Motion for a Pretrial Hearing to Determine Immunity Pursuant to S.C. Code Section § 16-11-450(A),

inapplicable as a matter of law rather than as a matter of fact by the trial judge. Should a criminal defendant be entitled to an immediate interlocutory appeal (and delay of a trial) when the criminal incident pre-dates that Act's applicability or when under the factual scenario, even in the light most favorable to a defendant, is not protected under the Act such as the shooting of an occupant of a residence (who the Act is intended to protect) by armed intruders, or when the defendant is engaged in criminal conduct or the defendant uses deadly force against a law enforcement officer who has identified himself in the performance of his official duties. In these settings, the Act has no applicability as a matter of law and therefore there can be no immunity. Yet, under a strict reading of the Duncan footnote, such a right to immediately appeal can be read to exist. However, this authority for an automatic appeal, where there is inapplicability of the Act leads to unnecessary delay in holding trials and a potential for an unfortunate and unintended opportunity for abuse in some cases by divesting the trial court of the authority to proceed with a proper trial by the mere filing of a notice of appeal in a legally frivolous action.

However, when an order is interlocutory and not immediately appealable, the service and filing of a notice of appeal does not transfer jurisdiction of the case to the appellate court and does not stay proceedings in the trial court. South Carolina Public Service Authority v. Arnold, 287 S.C. 584, 340 S.E.2d 535 (1986); State v. Dingle, 279 S.C. 278, 306 S.E.2d 223 (1983) (where the order is not appealable until final judgment is rendered, the trial court had continuing jurisdiction over the subject matter of the case). Because for the reasons set forth below that Respondent asserts that Appellant is appealing from an interlocutory order, the proceedings in the trial court should be allowed to proceed.

In his brief before this Court, Respondent submits that the Appellant does not address the

predicate question before the Court, other than to rely upon the footnote in Duncan. He fails to recognize that the Court may be addressing the situation beyond Duncan when a trial court concluded as a matter of law - as opposed to a matter of fact - that the Act has no applicability. Unlike a civil setting where counsel's ethical responsibilities preclude making frivolous motions and create a potential for delay, in a criminal setting those restrictions may be guided by interests other than securing a timely resolution of a case. Unfortunately, even if the Duncan footnote is correctly applied after a proper hearing in a case that is applicable under the Act, it would cause a delay in the trial. The issue is whether the right to appeal can be additionally limited to a claim for immunity where there is no showing of the applicability of the Act.

Simply put, Duncan demands revisiting and a change in the conditions precedent to a stay of the trial proceedings. Rather than merely adopting the civil injunction appellate standards, the potential situations present in our current setting, at the least, may require a preliminary showing of applicability of the Act before this Court, when a case is determined by a trial judge to be inapplicable under the Act as a matter of law. It is not unreasonable for a criminal defendant to seek of stay of the trial and require him at that point to make a satisfy a condition precedent that he has made a legal showing of the applicability of the Act to entitle him to further consideration of an appeal. Unlike the automatic divesting of the trial court of jurisdiction on the mere filing of a notice of appeal of a proper orders allowed under the various parts of Section 14-3-330, this would enhance the assurance that at least a prima facie showing of the Act's applicability had been met. As noted herein, the Court has placed similar conditions for an appeal in matters involving guilty pleas and state post-conviction relief orders in SCACR Rule 203. It would further protect the State's interests after it had marshalled its resources in preparation for trial at

that point of time.

First, the footnote in Duncan was *dicta* concerning the defendant's right to appeal because the appeal that was before the Court was from a state appeal. Although parties, including the Attorney General's Office has relied upon the *dicta* in the prior procedure of handling the cases involving the Act, it may be warranted for reconsideration and refinement.

The general rule is that a criminal defendant may not appeal "except from the final sentence imposed by the court." State v. Timmons, 68 S.C. 258, 47 S.E. 140 (1904); Parsons v. State, 289 S.C. 542, 347 S.E.2d 504 (1986); State v. Washington, 285 S.C. 457, 330 S.E.2d 289 (1985). The Court has held that consistent with this rule, an order denying a double jeopardy claim is not immediately appealable. State v. Wyatt, 115 S.C. 325, 105 S.E. 704 (1921); State v. Hill, 74 S.C. 415, 54 S.E. 614 (1906). Like the immunity claim, the double jeopardy claim would be similarly considered as an injunction-type issue, yet the Court has consistently held the denial was not appealable by a criminal defendant. Accord, State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986).¹⁰

In Duncan, the Court relied upon S.C.Code Ann. § 14-3-330(4) citing as a parenthetical

¹⁰ As cited in State v. Miller. See, e.g., State v. Robinson, 337 S.C. 204, 337 S.E.2d 204 (1985) [trial in absence, appeal prior to sentence]; State v. Dingle, 279 S.C. 278, 306 S.E.2d 223 (1983) [order committing defendant to Department of Mental Health]; State v. Hubbard, 277 S.C. 568, 290 S.E.2d 817 (1982) [denial of motion to suppress evidence]; State v. Parker, 267 S.C. 317, 227 S.E.2d 677 (1976) [denial of motion to quash indictment]; Ex parte Murray, 261 S.C. 255, 199 S.E.2d 718 (1973) [adjudication of delinquency, but withholding disposition]; State v. McMillan, 189 S.C. 444, 1 S.E.2d 626 (1939) [denial of motion to quash indictment]; State v. Gellis, 158 S.C. 471, 155 S.E. 849 (1930) [overruling demurrer to an indictment]; State v. Turner, 118 S.C. 383, 110 S.E. 525 (1922) [denial of motion to quash indictment]; State v. Mason, 54 S.C. 240, 32 S.E. 357 (1899) [denial of motion to quash indictment]; State v. Burbage, 51 S.C. 284, 28 S.E. 937 (1898) [denial of plea in abatement]; State v. Hightower, 33 S.C. 598, 11 S.E. 579 (1890) [appeal prior to imposition of sealed sentence]; State v. McKettrick, 13 S.C. 439 (1880) [appeal after conviction, trial judge refused to sentence].

("The Supreme Court ... shall review upon appeal ... an interlocutory order or decree ... granting, continuing, modifying, or refusing an injunction...") to authorize an immediate appeal for an order denying a motion to dismiss under the act. ² The Duncan Court additionally asserted that it was in the nature of an injunction. However, the Court's reliance on § 14-3-330(4) to provide appellate jurisdiction is misplaced. The Code section expressly limits its applicability to a civil cases in the Court of Common Pleas. Particularly, the General Assembly limited the Court power in this area to: "(4) An *interlocutory order or decree in a court of common pleas* granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver." Therefore, Section 14-3-330(4) has no applicability to an appeal from the **Court of General Sessions**. More particularly, it does not create appellate jurisdiction from an appeal from the Court of General Sessions from a decision by a trial judge that the Act has no applicability as a matter of law to the Appellant's 2005 action. The Court's reliance upon this statutory section to create jurisdiction is misplaced. While it may be similar to a civil injunction, the General Assembly has not taken steps to create appellate jurisdiction from the Court of General Sessions for these types of appeals. To the contrary, it limited it to Common Pleas and further did not create an exception either expressly in the Act or by amendment to Section 14-3-330 to empower the Court to consider these types of interlocutory appeals from General Sessions.

Respondent therefore submits that there is no right to an interlocutory appeal from a

²"An interlocutory order or decree in a court of common pleas granting, continuing, modifying or refusing an injunction . . ." is immediately appealable. S.C. Code Ann. § 14-3-330(4) (Supp. 2004); Appeal of Paslay, 230 S.C. 55, 94 S.E.2d 57 (1956); Lyles v. Williams, 96 S.C. 290, 80 S.E. 470 (1913); Lamar v. Croft, 73 S.C. 407, 53 S.E. 540 (1906); Williams v. Jones, 62 S.C. 472, 40 S.E. 881 (1902).

denial of a motion to dismiss based upon immunity. It is not provided for in Section 14-3-330.

Respondent submits that the notice of appeal must be dismissed as interlocutory.³

Respondent submits that there should be no right to appeal this determination by the trial court of inapplicability of the Act where a determination as a matter of law that the Act is inapplicable. However, if appealable, the Court may wish to consider limitations concerning the right to appeal to ensure that a prima facie case was presented of the Act's applicability. Rule 201 SCACR holds that an appeal may be taken, as provided by law, from any final judgment, appealable order or decision. Rule 205 states that upon service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal, but notes that nothing in the rules prohibit the lower court from proceeding with matters not affected by the appeal. Rule 246 states that service of the notice of appeal by a criminal defendant shall operate as a stay of the sentence, but does not address a pretrial notice of appeal by a defendant.

On May 1, 2008, the South Carolina Supreme Court pursuant to Article V, § 4 adopted

³ Respondent asserts that the State's right to appeal the granting of immunity to a criminal defendant would be immediately appealable under pretrial order granting suppression of evidence which significantly impairs prosecution of criminal case is directly appealable under Code 1976, § 14-3-330(2)(a):

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (2) An order affecting a substantial right made in an action when such order
 - (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action . . .

See State v. McKnight, 287 S.C. 167, 337 S.E.2d 208 (S.C., 1985). Also State v. Mabe, 306 S.C. 355, 412 S.E.2d 386 (1991).

amendment to the appellate court rules particularly, Rule 203(d)(1) to require with the filing of a Notice of Appeal in a guilty plea setting that there is an issue that can be reviewed on appeal, identifying the issue to be raised, the factual basis for the issue and how it was raised, and argument on how it can be reviewed. Under the amended rule, if the appellant fails to make a sufficient showing, the notice of appeal is dismissed. Similar conditions precedent to appeals were made for lower court determinations of successive or untimely post-conviction relief actions and "habeas corpus proceedings where the lower court determined that habeas corpus relief was improper because it could have been raised in a timely [post-conviction relief] application..."

If this Court is of the opinion that Article V of the South Carolina Constitution and § 14-3-330 authorize pre-trial appeals of denials of immunity and particularly where the trial court has determined that there is no applicability under the Act due to non-retroactivity or lack of any factual basis for protection under the Act as a matter of law, the Court could and should require similar conditions precedent to be met in an expedited fashion or have the notice of appeal dismissed.

Alternately, if the Court concurs that Duncan's dicta was in error and it lacks appellate jurisdiction through § 14-3-330, independent of this appeal, the Court may wish to consider procedures in its original jurisdiction through South Carolina Constitution, Article V, Section 5 which provides:

The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs. The Court shall have appellate jurisdiction only in cases of equity, and in such appeals they shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside. The Supreme Court shall constitute a court for the correction of errors at

law under regulations as the General Assembly may prescribe.

This procedure for original writs pursuant to Rule 245 would require the criminal defendant to show his entitlement to relief or protection under the Act. Included in the original writs under the Constitution are injunction and certiorari (State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997)(certiorari issued in capital case where circuit court denied defendant's motion to proceed pro se).

However, for the reasons set forth above the notice of appeal should be dismissed.

II. When the crime occurred on October 27, 2005, prior to the June 9, 2006 effective date of the Protection of Persons and Property Act, the Act has no applicability because the crime was a "pending action" under the savings clause and the Act cannot be applied retroactively to it.

The notice of appeal should be dismissed and the trial allowed to proceed because the Act has no applicability to a crime which occurred on October 27, 2005. This condition precedent to the applicability of the Protection of Persons and Property Act limits its use to crimes which occurred after June 9, 2006. Absent its threshold applicability as a matter of law, there can be no issue on entitlement to immunity under a set of facts because immunity would not be authorized nor expected at the time the Appellant acted in 2005. His suggestion that the Act applies because of the delay in not making his arrest until after the effective date of the 2006 act is in error. The Act does not provide sanctuary for acts which happened prior to that date before immunity was created for a defined set of acts. Although the General Assembly could have provided such a windfall for pre-existing events, they elected not to do so. Rather, they chose to limit its application by the use of a savings clause.

On June 9, 2006, 2006 Acts and Joint Resolutions Act 379, the "Protection of Persons and Property Act" was enacted and approved by the governor. Section 6 of the Act provided that it was to take effect upon approval by the Governor. This Act states, "It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business." Id. § 16-11-420(A). The title of the Act provided that it was "an act . . . to authorize the lawful use of deadly force against an intruder or attacker in a person's dwelling, residence, or occupied vehicle under certain circumstances, to provide exceptions, to provide that there is no duty to retreat if the person is in a place where he has a right to be, including the

person's place of business, and the use of deadly force is necessary to prevent death, great bodily injury or the commission of a violent crime, and to provide that a person is immune from criminal prosecution and civil action and may not be arrested unless probable cause exists that the deadly force used was unlawful . . ." 2006 Acts and Joint Resolutions, No. 379, p. 2908. The Act became effective on June 9, 2006, and contained a "Savings Clause," which provides:

The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, **does not affect pending actions, rights, duties, or liabilities founded thereon**, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

2006 Acts and Joint Resolutions, No. 379, § 6, p. 2913 (emphasis added).

On October 27, 2005, Antonio Corbitt was shot and killed by Greg K. Isaac according to Isaac's pleadings before this Court. *Motion for a Pretrial Hearing to Determine Immunity*

Pursuant to S.C. Code Section § 16-11-450(A), dated July 8, 2013, p. 1-2. See also, ROA p. 18,

27. The Appellant was arrested on or about April 13, 2012 for murder [J-634174],

conspiracy/criminal conspiracy [J-634-175], burglary in the first degree [J-634176], and

attempted armed robbery [J-634177]. The trial began on July 8, 2013.

HOW THIS ISSUE WAS PRESENTED BELOW

In his motion before the trial court, the Appellant anticipated that the State would assert that the 2006 Act was not retroactive to his case. It was the Appellant's assertion before the trial court, and again before this court, that the Act is not retroactive, but it applies to him because he was arrested on April 11, 2012 [and warrants served on April 13, 2012] - after the enactment of

the 2006 Act, ROA 39, 1. 2-15, *Motion for a Pretrial Hearing to Determine Immunity Pursuant to S.C. Code Section § 16-11-450(A)*, dated July 8, 2013, p. 6.

The State through Deputy Solicitor Campbell asserted before the trial court that the Act did not apply to this prosecution because the crime occurred before the passage of the Act, ROA 38, 1. 11-25. Judge Newman did not expressly address this issue, but concluded that the Act was inapplicable to this situation, ROA 39-41, 108-111.

THE ACT DOES NOT APPLY TO INCIDENTS THAT OCCURRED BEFORE JUNE 9, 2006.

A review of prior decisions of this Court and the Court of Appeals addressing this Act and similar savings clauses supports a conclusion that the Act is not retroactive to crimes that occurred prior to June 9, 2006 -the effective date of the Act. See State v. Dickey, 380 S.C. 384, 669 S.E.2d 917 (S.C. Ct. App. 2008), reversed on other grounds, 394 S.C.2d 491, 716 S.E.2d 97 (2011); State v. Bolin, 381 S.C. 557, 673 S.E.2d 885 (S.C. Ct. App. 2009). Respondent submits that the critical part of the savings clause, albeit ignored in the Appellant's brief before this court and motion, is the determination of "pending action." Recent decisions of this Court have clarified that an action is "pending" for purposes of a similar savings clause when the crime occurred. State v. Dawson, 402 S.C. 160, 740 S.E.2d 501 (2013); State v. Brown, 402 S.C. 119, 740 S.E.2d 493 (2013).⁴ For the reasons set forth below because the October 27, 2005 crime was a "pending action" prior to the effective date of the Act, the Act has no applicability in this case.

The retrospective operation of a statute is not favored by the courts, and statutes are presumed to be prospective in effect. State v. Davis, 309 S.C. 326, 334, 422 S.E.2d 133, 139

⁴See, Hyder v. Jones, 271 S.C. 85, 245 S.E.2d 123 (1978); and State v. Bolin, 381 S.C. 557, 673 S.E.2d 885 (Ct. App. 2009); Dorsey v. United States, __U.S.__, 132 S. Ct. 2321 (2012).

(1992), overruled on other grounds by Brightman v. State, 336 S.C. 348, 352 n. 2, 520 S.E.2d 614, 616 n. 2 (1999). The Supreme Court has recognized that "[a] statute is not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt." Am. Nat. Fire Ins. Co. v. Smith Grading & Paving, 317 S.C. 445, 449, 454 S.E.2d 897, 899 (1995). The exception to this rule of prospective operation is where the statute is remedial or procedural in nature. Hercules, Inc. v. S.C. Tax Comm'n, 274 S.C. 137, 143, 262 S.E.2d 45, 48 (1980).⁵

The Act, by codifying the common law Castle Doctrine, creates substantive rights for citizens. The Act "extends the [Castle] doctrine to include an occupied vehicle and the person's place of business." The Act also gives citizens the right "to protect themselves, their families and others from intruders and attackers without fear of prosecution or civil action." Therefore, because the rights are substantive, the Act will only operate retroactively if there is a clear indication from the legislature that this was intended. Am. Nat. Fire, 317 S.C. at 449, 454 S.E.2d at 899. There is no such indication in the Act. The Act specifically states it was not effective until

⁵ In Hyder v. Jones, 271 S.C. 85, 87-88, 245 S.E.2d 123, 125 (1978), the Court held that in the construction of statutes there is a presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision or clear legislative intent to the contrary, citing Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973). The Court stated that "no statute will be applied retroactively unless that result is so clearly compelled as to leave no room for reasonable doubt." Id. Further the Court held:

... the party who affirms such retroactive operation must show in the statute such evidence of a corresponding intention on the part of the Legislature as shall leave no room for reasonable doubt. It is not necessary that the Court shall be satisfied that the Legislature did not intend a retroactive effect. It is enough, if it is not satisfied that the Legislature did intend such effect. Ex Parte Graham, 47 S.C. Law (13 Rich. Law) 53 at 55-56 (1864). See also: Pulliam v. Doe, 246 S.C. 106, 142 S.E.2d 861 (1965).

Hyder v. Jones, 271 S.C. 85, 87-88, 245 S.E.2d 123, 125 (1978).

approved by the Governor, which occurred on June 9, 2006. 2006 S.C. Act No. 379 § 6. This effective date was after the October 27, 2005 shooting.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). Thus, in interpreting statutes, we look to the plain meaning of the statute and the intent of the legislature. State v. Gaines, 380 S.C. 23, 32, 667 S.E.2d 728, 733 (2008). A statute's language must be construed in light of the intended purpose of the statute. *Id.* at 33, 667 S.E.2d at 733. Whenever possible, legislative intent should be found in the plain language of the statute itself. *Id.* "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Pittman, 373 S.C. at 561, 647 S.E.2d at 161 (citing Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

Where the legislative intent is not clear, courts generally adhere to the presumption that statutory enactments are to be given prospective rather than retroactive application. See State v. Varner, 310 S.C. 264, 266, 423 S.E.2d 133, 134 (1992). The exception to the presumption of prospective operation arises when the statute is remedial or procedural in nature. State v. Davis, 309 S.C. 326, 334, 422 S.E.2d 133, 139 (1992), overruled on other grounds by Brightman v. State, 336 S.C. 348, 352 n. 2, 520 S.E.2d 614, 616 n. 2 (1999).⁶ However, as indicated,

⁶ The Appellant seeks to suggest that language in the Court of Appeals opinion in State v. Marin, __ S.C. __, __ S.E.2d __ (S. C. Ct. App. July 3, 2013) made reference to a request for an immunity instruction before the jury was a "procedural subsection" suggests that the section should be retroactive. However, he does not make this claim before the Court that the act subsection should be retroactive. Given that the legislature clearly specified the Act to apply prospectively in the savings clause, the Court does not need to determine whether the Act is remedial or procedural in nature for purposes of the retroactivity issue.

legislative intent is paramount in determining whether a statute will have prospective or retroactive application. Jenkins v. Meares, 302 S.C. 142, 146, 394 S.E.2d 317, 319 (1990).

Here, there is no evidence of legislative intent that the Act be applied retroactively. In fact, the plain language of the Act specifically indicates the legislature's intent that the Act be applied prospectively. Id. Section 4 of the Act expressly provides:

The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

2006 S.C. Act No. 379 § 4.

"Generally, a savings clause is intended to be 'a restriction in a repealing act, which is intended to save rights, pending prosecutions, penalties, etc., from the annihilation which would result from an unrestricted appeal.' " State v. Bryant, 382 S.C. 505, 509, 675 S.E.2d 816, 817 (Ct. App. 2009) (emphasis added and citations omitted). Thus, by including the savings clause in the Act, the General Assembly clearly manifested its intent to preserve the rights, statutes and penalties in effect prior to the statutory amendments and for the amendments to apply prospectively and not retroactively. See, e.g., Warden v. Marrero, 417 U.S. 653, 661 (1974) (referring to general federal savings clause codified under 1 U.S.C. § 109, which contains highly similar language to the savings clause included in the Act, and instructing: "[T]he savings clause has been held to bar application of ameliorative criminal sentencing laws repealing harsher ones in force at the time of the commission of an offense.").

If the General Assembly had intended for the statute to be applied retroactively, it would have included such language in the amended provision in light of the language it used in the savings clause. See, e.g., United States v. Fisher, 635 F.3d 336, 339-340 (7th Cir. 2011) ("If Congress wanted retroactive application of the [Fair Sentencing Act], it would have said so. Given the absence of any direct statement or necessary implication to the contrary, we reaffirm our finding that the FSA does not apply retroactively, and further find that the relevant date for a determination of retroactivity is the date of the underlying criminal conduct, not the date of sentencing."); United States v. Sidney, 648 F.3d 904, 908 (8th Cir. 2011) ("In the end, the fact remains that Congress could easily have included a single sentence in the FSA to give it retroactive effect, but for whatever reason, it did not do so. It is beyond the province of this Court to do so now."). However, no such language was included by the legislature. See State v. White, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999) ("We, of course, must take the statute as we find it, giving effect to the legislative intent as expressed in its language. We cannot under our power of construction supply an omission in the statute."). Accordingly, the Act did not apply retroactively to Appellant's case.

By stating that the Act is to have no effect on pending actions, criminal prosecutions, rights, duties, or liabilities, and that all laws repealed or amended by the Act must be treated as remaining in full force and effect, the clear language of the Act indicates that it is prospective. See Dickey, 380 S.C. at 405, 669 S.E.2d at 928. Thus, because the legislature clearly and unambiguously specified the Act be applied prospectively, the Act cannot be applied retroactively to Isaac's case. See *id.* (holding retroactive application of the Act to prosecution that was pending before the effective date of the Act was precluded because the Act is prospective).

The Appellant limits his claim that the Act applies to him to the fact that although the crime occurred before the enactment, he was neither arrested nor indicted until after the enactment. He limits his argument to the savings clause terms of “pending . . . prosecution” and contends that since the “prosecution did not begin until five years and ten months after the effective date of the act,” he is entitled to the benefit. Final Brief of Appellant, p. 21. However, the Appellant does not take into account the additional phrase of “pending actions,” which is also within the Savings Clause. This issue was addressed, contrary to the Appellant’s position recent in State v. Dawson. Therein, the Court concluded:

Because Appellant committed breach of trust in October 2009—prior to the Act’s effective date—her criminal prosecution arose from, and her penalty was incurred under, the former version of section 16–13–230. See Dorsey v. United States, U.S. 132 S.Ct. 2321, 2330–31, 183 L.Ed.2d 250 (2012) (“[P]enalties are ‘incurred’ under the older statute when an offender becomes subject to them, i.e., commits the underlying conduct that makes the offender liable.”) (citing Great N. Ry. Co. v. United States, 208 U.S. 452, 464–70, 28 S.Ct. 313, 52 L.Ed. 567 (1908)); see also State v. Dickey, 380 S.C. 384, 405, 669 S.E.2d 917, 928 (Cl.App.2008) (finding an action is “pending” for purposes of a savings clause where the crime occurred before the effective date of the new legislation), overruled on other grounds, 394 S.C. 491, 716 S.E.2d 97 (2011).⁷ This is made clear by Appellant’s arrest warrant, supporting affidavit, and indictment, all of which indicate Appellant was charged with committing a breach of trust involving an amount between \$1,000 and \$5,000—a monetary range recognized by the former version of section 16–13–230 but not the Act’s amended version.

State v. Dawson, 402 S.C. 160, 165, 740 S.E.2d 501, 503 (2013) (emphasis added). See also

State v. Brown, *supra*.

⁷ Respondent would be remiss in not pointing out that in this Court’s decision in State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011), Justice Beatty in dissent, also recognized the correctness of the Court of Appeals retroactivity analysis of the Act in concluding that the Act did not apply to the 2004 incident because the Act created substantive rights for citizens and in the savings clause “the Legislature clearly manifested its intent that the Act be applied prospectively.”

Similarly, in State v. Bolin, the Court of Appeals noted the statute was not retroactive because "the Act went into effect on June 9, 2006, four months after the events leading to the instant matter." This reference was to the crime itself on February 18, 2006, not the arrest or the May 2006 indictment. Although the Appellant seeks to distinguish the facts of Bolin by the fact that he was also indicted before the Act, the analysis of the Court of Appeals went to the date of the crime and not the indictment date. Also, in Dickey, the Appellant points out that Dickey was indicted prior to the enactment date and therefore his prosecution was pending at the enactment date. This is a true fact, but it does not prevent the analysis.

Under the Appellant's theory, he would be entitled to assert a claim for immunity for any crime which occurred prior to June 9, 2006 as long as the actor was able to avoid detection or delay the issuance of an arrest warrant or indictment until after June 9, 2006. This turns the particular savings clause on its head. Under his theory, there could be simultaneous trials going on after the date of the Act for crime that happened on the same date and immunity could be considered for the actor that was charged after the Act, but immunity could not be considered for a person charged before the Act passed, even though the crimes occurred on the same date. This is more than procedural because the knowledge of the law suggests specific actions that a person can take against intruders when they act. The Legislature did not intend this result and thus prevented it by the inclusion of the savings clause which included it having "no effect on pending actions, criminal prosecutions, rights, duties, or liabilities. . . ." Since the Act revises rights, duties and liabilities" that existed prior to the act by the creation and expansion of the castle doctrine and revision of a duty to retract in certain circumstances, it revises the applicable law. The narrow reading by the Appellant ignores the additional clauses that surround his operative phrase.

The Appellant's reliance on State v. Varner, 310 S.C. 264, 265, 423 S.E.2d 133, 133 (1992) is misplaced. In State v. Varner, Varner was convicted of kidnapping and sentenced to life imprisonment. *Id.* at 265, 423 S.E.2d at 133. Following Varner's conviction and while his appeal was pending, the kidnapping statute was amended to reduce the maximum possible penalty for kidnapping. *Id.*; see Act No. 273, § 1, 1991 S.C. Acts & Joint Resolutions (amending the kidnapping statute by reducing the maximum potential sentencing range). On appeal, Varner contended he was entitled to resentencing under the new version of the statute. Varner, 310 S.C. at 265, 423 S.E.2d at 133. The Supreme Court disagreed and affirmed Varner's sentence. *Id.* The Court found that, in the absence of a controlling statute, a convicted defendant should receive the punishment in effect at the time of sentencing. *Id.* However, because the pre-amendment kidnapping statute was in effect at the time of Varner's sentencing, the Court found Varner was properly punished under the former statute and was not entitled to any relief on appeal. *Id.* at 266, 423 S.E.2d at 134.⁸

Thereafter, in State v. Gay, 343 S.C. 543, 541 S.E.2d 541 (2001), Gay committed a murder at a time when the punishment for the crime was life imprisonment or death. On the day after Gay committed the murder, the murder statute was amended to allow for a defendant convicted of murder to be sentenced to a minimum thirty-year term of imprisonment in addition to death or life imprisonment. *Id.* at 552, 541 S.E.2d at 546. Gay was convicted after the effective date of the amending legislation, and the trial judge sentenced him to a life sentence.

⁸ Notably, the controlling statute in Varner's case did not include a savings clause or any other language to preclude retroactive application of the reduced sentencing limits to defendants who committed the offense before the effective date of the legislation. See 1991 Act No. 117, § 1, 1991 S.C. Acts & Joint Resolutions (containing no savings clause to preclude retroactive application of the reduced penalties for kidnapping).

which the trial judge determined was mandatory. *Id.* at 552-553, 541 S.E.2d at 546. Gay appealed, arguing the trial judge should have considered the new statute in effect at the time of sentencing in light of the Supreme Court's decision in State v. Varner. *Id.* On appeal, the Supreme Court instructed: "[T]he Varner Court indicated that the Legislature could state its intent for new, lesser penalties to take effect based on the date of the crime rather than the date of sentencing." *Id.* at 553, 541 S.E.2d at 546. Based on the legislature's inclusion of language stating the statute amending the penalties for murder was to be applied prospectively after its effective date, the Court concluded the general rule articulated in Varner was inapplicable to Gay's case. *Id.* Accordingly, the Court affirmed Gay's life sentence. *Id.*

The trigger date here is the criminal event on October 27, 2005. Since the Act has no applicability to this crime, his claim must be rejected. Further, the notice of appeal should be dismissed and interlocutory stay vacated because of the inapplicability of the Act.

III. The Circuit Court Properly Determined that the Protection of Persons and Property Act is inapplicable to the Appellant's case where the incident occurred prior to the enactment of the Act, the Appellant failed to show any right under the Act when the victim was the occupant of the dwelling, the Appellant was an intruder, the Appellant aided another intruder in the victim's dwelling, the Appellant was not "in another place that he had a right to be," that the Appellant was engaged in unlawful activity and that where duress is no defense to murder. The Circuit Court properly rejected the attempted prima facie showing for a hearing without considering the State's proffer which contests the presentation made by Appellant in his pleading and testimony. The notice of appeal should be dismissed.

The Circuit Court properly determined that the Protection of Persons and Property Act is inapplicable to the Appellant's case where the incident occurred prior to the enactment of the Act, the Appellant failed to show any right under the Act when the victim was the occupant of the dwelling, the Appellant was an intruder, the Appellant aided another intruder in the victim's dwelling, the Appellant was not "in another place that he had a right to be," that the Appellant was engaged in unlawful activity and that where duress is no defense to murder. The Circuit Court properly rejected the attempted prima facie showing for a hearing without considering the State's proffer which contests the presentation made by Appellant in his pleading and testimony. The notice of appeal should be dismissed where the Appellant has wholly failed to show entitlement to protection under the Act.

Judge Newman concluded that the intent of the Act is not to protect intruders into home or provide any immunity or protection to intruders or those who enter with intent to commit a criminal act. Judge Newman rejected, as a matter of law, the claim that Isaac was lawfully in Corbitt's apartment and had a right to kill Corbitt because Isaac was under duress from co-defendant World. Judge Newman opined that if Isaac had a right to defend himself from Corbitt

after attacking Corbitt, the issue would be one of self-defense, but not for immunity under the statute. Since Judge Newman determined that Appellant had no right to a pretrial determination of immunity since the statute did not apply to the facts, he concluded that any defense would be presented as an affirmative defense at trial and denied the motion. ROA p. 39-41. Judge Newman later clarified that "I did not deny him immunity, I ruled the statute did not apply." ROA p. 108, II, 8-9. Judge Newman addressed the fact that he considered the motion for a hearing a frivolous motion because the immunity statute had no applicability in this case. Judge Newman opined the intent of the statute was not to create an opportunity for delay to claim "stand your ground" regardless of the circumstances. He concluded the motion was made was an "extreme frivolous claim that could be made for no other purpose other than to seek a delay in the trial." ROA p. 108, II, 8-24. He stated he did not rule on the merits because it was not a legitimate issue to raise and was frivolous. R. 110-11.

Respondent submits that the trial court correctly determined that the Act was inapplicable.

Standard of Review

Whether a defendant is entitled to immunity under the Protection of Persons and Property Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." Id. at 411, 709 S.E.2d at 665.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson,

345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citing State v. Cutter, 261 S.C. 140, 199 S.E.2d 61 (1973)). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. Review is limited to determining whether the trial judge abused his discretion. Id. The appellate court may not re-evaluate the facts based on its own view of the preponderance of the evidence, but must determine whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; see generally Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991) ("In law actions, the lower court must be affirmed where there is "any evidence" to support its findings.").

1. The Appellant Failed to Show Conditions Precedent For Immunity Where the Victim Was the Occupant of the Dwelling And the Appellant - not the victim - was the intruder. § 16-11-440 (A), (B)(1), (3).

The lower court properly rejection the Appellant attempt to make a prima facie showing for a full hearing under the Act. The trial court's conclusion that the Act did not apply since the victim was the occupant of the dwelling and the Appellant was the intruder was a correct conclusion of law. The State argued below:

1. The Castle Doctrine does not apply in the case because it occurred in the victim's home.
2. There is no dispute that the victim's door was kicked in which eliminates duress into exonerating him under a *Castle* theory.
3. The crime happened in 2005 prior to the Act and it would not be retroactive.

ROA p. 38, ll. 11-25.

S.C. Code § 16-11-440 provides:

- (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended

or likely to cause death or great bodily injury to another person if the person:

- (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
- (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

However, it also provides :

- (B) The presumption provided in subsection (A) does not apply if the person:
 - (1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or . . .
 - (3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity . . .

In addition, S.C. Code § 16-11-450 provides for immunity from criminal prosecution in a limited setting:

- (A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force . . .

The intent of the Act is clear. The General Assembly found that "it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others." In addition, it found that "persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles." Further, it concluded "that no person or victim of crime should be required to surrender his personal safety to a criminal, nor

should a person or victim be required to needlessly retreat in the face of intrusion or attack.”

S.C. Code § 16-11-420.

In the presentation made by the Appellant in his pleadings he showed that this Act has no applicability to him because he had no right to use deadly force against the victim and it was not permitted under this Article.

First, the victim was the occupant of the dwelling and was subject to a burglary and attempted armed robbery. *Motion for Pretrial Hearing*, p. 3. ROA 15-16, 25. The Act protects the victim from intrusions and allows the victim to use deadly force - not the intruders. At no time does the Appellant suggest otherwise. Under S.C. Code § 16-11-440 (B)(1), it is the occupant who is protected from the attack.

Second, it is clear that the Appellant was the intruder. He arrived at the scene armed. In addition he was present when his accomplice kicked the door open committing a burglary. Although he claims he arrived “under duress” in his testimony and pleadings, he entered the apartment with the intent to aid the accomplice and allegedly diffuse the situation.⁹ However, at the time he shot the victim, he had no right to use deadly force against the victim of the break-in who was acting lawfully - particular consistent with the Act ROA 16-19.

Isaac testified that he initially stayed outside the apartment while he saw Tavares and the victim fighting inside the apartment. Isaac said he stepped inside, claiming to try to diffuse the situation telling Tavares to come on and leave and trying to pull him away. ROA p. 16, II. 9-17. Isaac said he was pushed into a lamp that fell and Isaac fell then he stepped back outside. While

⁹ In the Appellant April 11, 2012 statement to the police admitting shooting the voictim during the burglary, Appellant makes no mention that he was present acting under duress of World.

outside, he said Tavares and the victim got up and were still fighting. ROA p. 16, ll. 22-24. Isaac said he then saw Tavares running towards him. ROA p. 16-17. He said Tavares pulled the victim towards Isaac as he passed Isaac. Isaac said it appeared to him that the victim was reaching for or pulling out a gun and "that's when I shot." ROA p. 17, ll. 16-22. He said he shot the victim three times. ROA p. 18, ll. 7-8. He said after he shot the victim, he ran back to the car with Tavares following behind him. ROA p. 18-19.

"[O]ne who provokes or initiates an assault cannot escape criminal liability by invoking self defense" Ferdinand S. Tinio, Comment Note: Withdrawal After Provocation of Conflict, As Reviving Right Of Self-Defense, 55 A.L.R.3d 1000, 1003 (1974). Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide. 40 Am.Jur.2d Homicide § 149 (1999).

State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999).

The Appellant's claimed entry to aid his accomplice did not warrant the use of deadly force. ROA 16-17, 25-26. "Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense." State v. Long, 325 S.C. 59, 64, 480 S.E.2d 62, 64 (1997).

"The doctrine of freedom from fault in bringing on a difficulty as a condition precedent to a plea of self-defense applies with equal force to a case in which one person interferes in a difficulty between two others in behalf of, or to protect one of them; and generally speaking a person who does this will not be allowed the benefit of the plea of self-defense, unless such plea would have been available to the person whose part he took in case he himself had done the killing, since the person interfering is affected by the principle that the party bringing on the difficulty cannot take advantage of his own wrong."

State v. Cook, 78 S.C. 253, 257, 59 S.E. 862, 863 (1907)(quoting *Wharton on Homicide* § 332 (3d Ed. 1907)).

In such case the right to take the life of such assailant upon such unprovoked assault extends to any relative, friend, or bystander who would likewise have the right to take the life of such assailant if such act was necessary to save the person so wrongfully assailed from imminent danger of being murdered by such assailant. In other words, if the assailant makes a malicious and unprovoked assault with a deadly weapon upon one person with the apparent malicious intention to take the life of the person assailed and thereby commit murder, then, where the danger of the commission of such murder is imminent, any relative, friend, or bystander would have the right to take the life of such assailant if necessary in order to prevent the commission of such murder, **provided there was no other reasonable means of escape for the person so assailed, and provided both the person assailed and the person coming to his defense were without legal fault in bringing on the difficulty.**

State v. Hays, 121 S.C. 163, 168, 113 S.E. 362, 363 (1922)(emphasis added). Plainly, under the

Appellant theory, his accomplice was not without fault in bringing on the difficulty. He is not entitled to immunity under the Act.

2. The Appellant Failed to Show the Applicability of the Act Where the Victim Was Acting Lawfully In Defending His Home From Attack When He Was Shot By the Appellant As The Intruders Attempted To Flee. § 16-11-440 (B)(3).

There is no question under the facts asserted by Appellant that the victim was acting lawfully in defending his home. It was the victim - not the Appellant - who had a right to use force. Under § 16-11-440 (B)(3) the presumption of Appellant's right to use deadly force does not apply where against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence.

3. The Appellant Failed to Show the Applicability of the Act Where He Shot the Occupant of the Apartment After The Accomplice Kicked In The Door In A Burglary And the Appellant assisted his Accomplice in the accomplice's fight with the Occupant attempted to secure money from him. He was engaged in unlawful activity and did not have a right to be at that place. § 16-11-440 (C), (D).

Simply put, the Appellant had "no right to be" at the victim's residence during this

activity. He had no possessory interest in the apartment and claimed no interest in it. § 16-11-440

(C) and (D) provide in pertinent part:

- © A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.
- (D) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

Isaac cannot claim that he was attacked by the occupant in a place he had a right to be. To the contrary, he had no right to be there, even if he was found to be engaged in lawful activity prior to the shooting. Further, when he entered the dwelling in aid of his accomplice, he was not engaged in lawful activity. More importantly, his shooting of the victim was to aid his own escape.

4. **The Appellant's Contested Claim of Duress From Accomplice World Does Not Provide A Defense To Murder. Therefore, the use of deadly force by Appellant was not permitted by the provisions of this article or another applicable provision of law. The defense had no right to be at the place at the time of the shooting and burglary. § 16-11-440 (C) ; 16-11-450 (A).**

The defense claims that he was present at the burglary under "duress" from Tavares World, even though he was independently armed with a .380 during the incident. Respondent notes that this is a contested fact as revealed by Appellant's statement, as well as the statements of World and Dixon proffered by the prosecution and attached to this brief. However, "duress" did not permit the use of deadly force under the provisions of the Act "or another applicable provision of law" to mandate immunity. There is no statutory provision of law that authorizes the

use of duress to shot an occupant defending his home to allow the escape.

Further, the Appellant recognizes that in duress as a defense to murder has been rejected by this Court:

Second, duress, as Rocheville concedes, is not a defense to murder. The rationale of the defense of duress is that if the only means of avoiding greater harm is for the defendant to engage in illegal conduct resulting in a lesser harm, he should not be held criminally liable for the illegal conduct. W. McAninch & W. Faurey, *The Criminal Law of South Carolina* 552 (2d ed. 1989). The commission of the crime which results in a lesser harm is therefore justified. However, when the crime is the murder of an innocent person, the choice of two evils rationale is unavailing. The resulting harm, the murder of an innocent person, is at least as great as the threatened harm, the death of the defendant. Rocheville argues duress negates the element of malice and, therefore, should mitigate the punishment so that a charge of voluntary manslaughter would have been appropriate. **We find for the same reason as duress is not a complete defense to murder**, it cannot be used to mitigate the crime to voluntary manslaughter. Accord *United States v. LaFleur*, 971 F.2d 200 (9th Cir.1991); *State v. Nargashian*, 26 R.I. 299, 58 A. 953 (1904).

State v. Rocheville, 310 S.C. 20, 26, 425 S.E.2d 32, 35 -36 (1993).

Therefore, his claim of duress provides no sanctuary for his action in shooting the occupant. He cannot bootstrap an improper defense to murder to create a claim of immunity. This borders on the absurd in light of Rocheville. While "duress" may exist as a defense to other crimes, it does not have application to the murder and shooting. Particularly, this fails where he was not directed or coerced to shoot the victim by his accomplice. The record is void of such a suggestion.

5. The Act was not applicable to the October 27, 2005 Incident Which Predated the Act.

For the reasons set forth in argument 2, the Act does not apply to this incident because it is not retroactive. His claim for protection must be rejected.

CONCLUSION

For all the foregoing reasons the appeal is without merit. Respondent requests the notice of appeal be dismissed.

Respectfully submitted,

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July 19, 2013.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

JUL 22 2013

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

S.C. Supreme Court

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2013-001464

State of South Carolina, ... Respondent,

v.

Greg K. Isaac, ... Appellant,

REPLY BRIEF OF APPELLANT

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AGRUMENT

As a preliminary matter, the State mentions that Counsel requested a continuance in a chambers hearing on June 28, 2013. (Brief of Respondent pg. 4). The State further implies that an appeal is a delay tactic and mentions "ethical responsibilities" and "frivolous motions." (Brief of Respondent pg. 23). This is a gross misrepresentation by omission and Counsel for Appellant believes it is necessary to explain the situation as a whole.

By way of background, Counsel's home suffered severe fire damage near the end of December, 2012 rendering the house un-inhabitable. Pursuant to an insurance policy through State Farm, Counsel has been living in a rental house since the middle of January, 2013. All furniture and furnishings (couches, beds, tables, dishes, pots, pans, glasses, silverware, towels, etc.) are being provided through a rental company paid for by State Farm. Counsel has virtually no personal property in this rental house other than clothing and a few items taken from the home the night of the fire.

On June 21, 2013, Counsel was notified by the rental agency that State Farm was no longer willing to provide housing and Counsel was required to vacate the rental home on July 10, 2013. Counsel notified the Solicitor handling the case of this issue and was told the State would call the trial regardless of Counsel's personal situation. At the time of the chambers meeting on June 28, 2013, Counsel's attorney was unable to change State Farm's position and Counsel informed Judge Benjamin of the upcoming eviction. This was the ONLY basis for the requested continuance and Counsel objects to any inference or assertion by the State that he was unprepared for trial. Counsel invites this Court to obtain the remainder of the trial transcript if there is any question as to whether Counsel's performance was inadequate.

ISSUES CONCERNING STATE EXHIBITS

Respondent's brief includes an April 12, 2012 statement from Tavares World and an August 22, 2012 statement from Vernoris Dixon. (Exhibits 3 and 4). Neither of these documents were reviewed by the circuit court. ROA pg. 34. Appellant objects to the inclusion of the content of those statements as they are testimonial hearsay and were not subject to cross-examination. Appellant disputes much of the content and this Court should not consider them in any way when rendering a decision in this case.

APPEALABILITY

Respondent contends that, in general, a criminal defendant may not appeal except from the final sentence imposed by the court. (Brief of Respondent pg. 24). Respondent cites numerous cases, many of them decided long before the existence of our current statutory scheme dealing with appeals in S.C. Code § 14-3-330 pursuant to *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011), to support this position. None of those cases, however, deal with the immunity provisions associated with the Protection of Persons and Property Act, S.C. Code §§ 16-11-410 et. seq. (The Act hereafter) or any similar statutes.

Respondent contends the footnote in *Duncan* is *dicta* because it was the result of an appeal filed by the State and should, therefore, be revisited. (Brief of Respondent pg. 23, 24). Courts in other jurisdictions dealt with this very issue. In *Farmer v. Kentucky*, 2012-CA-001659-MR (Ct. App. 2013), a criminal defendant was denied immunity prior to trial and the

Kentucky Court of Appeals determined the issue was immediately appealable. The *Farmer* court analyzed the issue based on their civil rules of procedure for injunctions in part because their immunity act (much like South Carolina) also affords a person immunity from civil suits.

The Kentucky statute, KRS 503.085 reads:

503.085 Justification and criminal and civil immunity for use of permitted force -- Exceptions.

(1) A person who uses force as permitted in KRS 503.050, 503.055, 503.070, and 503.080 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom the force was used is a peace officer, as defined in KRS 446.010, who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law, or the person using force knew or reasonably should have known that the person was a peace officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1) of this section, but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.

(3) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff, if the court finds that the defendant is immune from prosecution as provided in subsection (1) of this section.

Effective: July 12, 2006

History: Created 2006 Ky. Acts ch. 192, sec. 6, effective July 12, 2006.

(emphasis added).

The South Carolina immunity provision, Section 16-11-450 reads:

(A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

(B) A law enforcement agency may use standard procedures for investigating the use of deadly force as described in subsection (A), but the agency may not arrest the person for using deadly force unless probable cause exists that the deadly force used was unlawful.

(C) The court shall award reasonable attorneys' fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of a civil action brought by

a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (A).
(emphasis added).

The only difference in the wording is that South Carolina law refers to "deadly force" as opposed to "such force." Appellant asserts this difference in language is inconsequential to the current determination. The *Farmer* court went on to establish an expedited hearing procedure for this type of appeal to eliminate any long delay if a trial is necessary.

Respondent points out that S.C. Code § 14-3-330(4) only addresses orders from the Court of Common Pleas. While this is a technically correct statement, the statute has not been amended since 1991. Even after the creation of The Act in 2005 and 2006, the issue of an injunction was only first addressed in 2011. Further, Respondent concedes that all parties in cases subsequent to *Duncan* have relied on that footnote holding and acted in accordance with a decision being immediately appealable by either side. Simply put, there was no need for the Legislature to amend Section 14-3-330(4).

Further, S.C. Code § 18-9-50, titled "Practice and proceedings on appeal from courts of general sessions" states:

The practice and proceedings in cases of appeal from the courts of general sessions shall conform to the practice and proceedings in cases of appeal from the courts of common pleas.

RETROACTIVITY

Respondent contends the savings clause associated with The Act prevents application to Appellant's case because the incident date was prior to June 9, 2006. Respondent further claims

the term "pending action" is related only to the incident date. Appellant asserts the term "pending action" is ambiguous and a criminal defendant should receive the benefit of that ambiguity. Respondent cites both *State v. Dickey*, 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008) (reversed on other grounds) and *State v. Bolin*, 381 S.C. 557, 673 S.E.2d 885 (Ct. App. 2009). Both of these cases were addressed in Appellant's original Motion in Circuit Court and also in his Final Brief. Respondent then cites *State v. Dawson*, 402 S.C. 160, 740 S.E.2d 501 (2013) and *State v. Brown*, 402 S.C. 119, 740 S.E.2d 493 (2013) to support the conclusion that "pending action" relates to the date of the incident.

In *Dawson*, the arrest warrant was issued on January 14, 2010 and the defendant was arrested on January 22, 2010. The relevant change of law in *Dawson* became effective June 2, 2010, nearly 5 months after the arrest warrant was issued and the was defendant arrested. The *Dawson* court and Respondent in this case cite *State v. Gay*, 343 S.C. 543, 541 S.E.2d 541 (2001). *Gay* related to a sentencing change for murder that eliminated the mandatory life sentence. Most importantly, the savings clause in that statute was very specific:

The Act which amended section 16-3-20 specifically addressed its effective date. Section 62 states that the Act "takes effect January 1, 1996, and applies prospectively to all crimes committed on or after that date" 1995 S.C. Acts No. 83, § 62. Id at 546. (emphasis added).

As a result of the language the Legislature chose to use in 1995, it is clear the Legislative intent in the savings clause in The Act in this case was different. The *Brown* decision provides the most guidance here. *Brown* was arrested May 23, 2010 (See Clerk of Court records, Exhibit 1) and the relevant law change became effective June 2, 2010. The savings clause involved in *Brown* states:

The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty,

forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws. Act No. 273, § 65 (emphasis added).

The *Brown* court, when addressing the issue of retroactivity stated:

A statute is not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt. *S.C. Nat'l Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989). The statute must contain express words evincing intent that it be retroactive or words necessarily implying such intent. *Pulliam v. Doe*, 246 S.C. 106, 110, 142 S.E.2d 861, 863 (1965). The only exception to this rule is a statutory enactment that effects a change in remedy or procedure. *Jenkins v. Meares*, 302 S.C. 142, 146, 394 S.E.2d 317, 319 (1990). (emphasis added).

Clearly, The Act in this case does create a new remedy and, pursuant to *Duncan*, creates a pre-trial procedure. The *Brown* Court went on to say:

The General Assembly's inclusion of a savings clause demonstrates clear legislative intent to avoid disrupting pending or ongoing criminal prosecutions. To read the savings clause in any other way would result in a prohibited alteration of the statute's operation. Moreover, section 16-13-30's savings clause provides that the amendment to section 16-13-30 does not affect liability incurred under the prior version of the statute. Appellant clearly incurred liability for grand larceny at the time he committed the crime. Thus, the trial court did not err in charging the jury under the version of section 16-13-30 in effect at the time Appellant committed grand larceny. *Id.* at 497. (emphasis added).

The important difference in the instant case is that The Act is not a substantive, criminal offense. The final holding in *Brown*, therefore, is not an accurate comparison. Most important in the *Brown* case is footnote 3, which holds:

The savings clause in this case does contain an ambiguous term. The savings clause refers to "pending" actions, and it is unclear when an action is pending. For example, this term could refer to either the actual commission of the crime, the arrest, or the indictment. (emphasis added).

The only definition Appellant can find that would establish when an action is pending comes from the Rule of Civil Procedure. Specifically, Rule 3(A), SCRCP, states "[a] civil action

is commenced when the summons and complaint are filed with the clerk of court..." Appellant suggests, when read together with Footnote 3 in *Brown*, the most obvious conclusion is that a criminal action becomes "pending" based upon either the arrest warrant or the indictment. Additionally, S.C. Code § 17-1-10 defines the "manner of prosecuting" a criminal action as:

A criminal action is prosecuted by the State, as a party, against a person charged with a public offense, for the punishment thereof.

The most reasonable conclusion is that an action is "pending" when the actual prosecution begins and not when an offense is committed or when police begin investigating. The savings clause also refers to "rights" not being affected prior to June 9, 2006. Appellant asserts this Court should look to when other types of rights attach in a criminal action. For example, it is important to recognize the distinction between Sixth Amendment right to counsel and Fifth Amendment right to speak to counsel. In *State v. Register*, 323 S.C. 471, 476 S.E.2d 153 (1996), this Court explained:

The Sixth Amendment right to counsel attaches when adversarial judicial proceedings have been initiated and at all critical stages. Compare *Brewer v. Williams*, 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977) with *Michigan v. Jackson*, 475 U.S. 625, 106 S.Ct. 1404, 89 L.Ed.2d 631 (1986). Hence, the right to counsel in judicial proceedings is distinguished from the Fifth Amendment *Miranda* -- Edwards right to speak with counsel upon request in a custodial setting. *McNeil v. Wisconsin*, 501 U.S. 171, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991); *State v. Wilder*, 306 S.C. 535, 413 S.E.2d 323 (1991). The Sixth Amendment right does not attach simply because the defendant has been arrested or because the investigation has focused on him. *Hoffa v. United States*, 385 U.S. 293, 87 S.Ct. 408, 17 L.Ed.2d 374 (1966). Further, the Sixth Amendment right attaches only "post-indictment", at least in the questioning/statement setting. See *Michigan v. Harvey*, 494 U.S. 344, 110 S.Ct. 1176, 108 L.Ed.2d 293 (1990). *Id.* at 157. (emphasis added).

See also *Rothgery v. Gillespie County, Texas*, 554 U.S. 191, 128 S.Ct. 2578, (2008):

The Sixth Amendment right of the "accused" to assistance of counsel in "all criminal prosecutions" is limited by its terms: "it does not attach until a prosecution is commenced." We have, for purposes of the right to counsel, pegged commencement to "the initiation of adversary judicial criminal proceedings whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." The rule is not

"mere formalism," but a recognition of the point at which "the government has committed itself to prosecute," "the adverse positions of government and defendant have solidified," and the accused "finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law." *Id.* at 197. (Internal citations omitted).

APPLICABILITY TO THE INSTANT CASE

Respondent claims Appellant:

Failed to show Conditions Precedent For Immunity Where the Victim Was the Occupant of the Dwelling And the Appellant - not the victim - was the intruder. § 16-11-440 (A), (B)(1), (3). (Brief of Respondent pg. 42).

Respondent further claims that the State argued:

2. There is no dispute that the victim's door was kicked in which eliminates duress into exonerating him under a *Castle* theory. (Brief of Respondent pg. 42).

First, there is nothing in the Record on Appeal that even suggests that since Corbitt's door was "kicked in" that duress is eliminated as a defense. See ROA pg. 36. This "conclusion" is also a misstatement of the law of duress/coercion. Second, Appellant never suggested immunity is appropriate under Section 440(A) or (B). Appellant has consistently maintained that Section 440(C) is the relevant basis for immunity under Section 450(A). Section 440(B) specifically applies to the presumptions listed in subsection (A) only and does not apply to subsection (C).

Finally, Respondent incorrectly construes Appellant's argument regarding duress. (Brief of Respondent pg. 48). Appellant has never alleged that duress is a defense to the Murder charge. Instead, it is very clear that Appellant maintains that duress is a defense to the first group of charges (Burglary, Attempted Robbery and Conspiracy) and was the only reason Appellant

was at Corbitt's apartment. Thus, Appellant was not unlawfully present at the apartment and immunity applies under Sections 440(C) and 450(A).

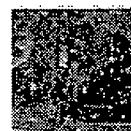
CONCLUSION

Based on the above, Appellant reasserts the conclusions stated in his Final Brief.

Exhibit 1



Williamsburg County Third Judicial Circuit Public Index



Williamsburg County Home Page South Carolina Judicial Department Home Page SC GOV Home Page

Switch View

The State of South Carolina VS Lawrence Brown

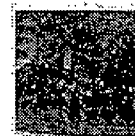
Case Number:	N062177	Court Agency:	General Sessions	Filed Date:	06/16/2010
Case Type:	Criminal-Clerk	Case Sub Type:		Disposition Judge:	Newman, Clifton
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Arrest Date:	05/23/2010
Disposition:	Trial Guilty	Date Received:	06/16/2010	No Bill Date:	
Disposition Date:	05/12/2011	True Bill Date:	05/05/2011	Waiver Date:	
Law Enf. Case:		Indictment Number:	2010GS4500197		
Prosecutor Case:					
Probation Case:					

Case Parties	Charges	Sentencing	Associated Cases	Actions	Financials	Bonds
Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date			
Brown, Lawrence	0478-Larceny / Grand Larceny, value more than \$1,000 but less than \$5,000	0478-Larceny / Grand Larceny, value more than \$1,000 but less than \$5,000	05/12/2011			

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The State of South Carolina VS Lawrence Brown

Case Number:	M062179	Court Agency:	General Sessions	Filed Date:	06/16/2010
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Appeal	Assigned Judge:	Clerk Of Court C P, S, And Family Court	Disposition Judge:	Newman, Clifton
Disposition:	Trial Guilty				
Disposition Date:	05/12/2011	Date Received:	06/16/2010	Arrest Date:	05/23/2010
Law Enf. Case:		True Bill Date:	05/05/2011	No Bill Date:	
Prosecutor Case:		Indictment Number:	2010GS4500197	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2013-001464

State of South Carolina, ... Respondent,

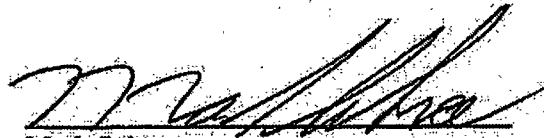
v.

Greg K. Isaac, ... Appellant.

PROOF OF SERVICE

I hereby certify that a true copy of the Reply Brief of Appellant in the above-referenced case has been served upon opposing counsel by delivering same this date to her office at the Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, 1701 Main Street, Columbia, SC 29201 and to Attorney General Alan Wilson, 1000 Assembly Street, Room 519, Columbia, SC 29201.

July 22, 2013



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2013-001464

State of South Carolina, ... Respondent,

v.

Greg K. Isaac, ... Appellant.

Certificate of Counsel

The undersigned certified that this Reply Brief complies with Rule 211(b), SCACR.

July 22, 2013



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Greg K. Isaac, Appellant.

Appellate Case No. 2013-001464

Appeal From Richland County
Clifton Newman, Circuit Court Judge

Opinion No. 27302
Submitted August 7, 2013 – Filed August 21, 2013

DISMISSED

Mark E. Schnee, of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Donald J. Zelenka, Solicitor Daniel E.
Johnson, and Deputy Solicitor Kathryn Campbell
Hubbard; all of Columbia, for Respondent.

CHIEF JUSTICE TOAL: Appellant has appealed the ruling of the trial judge denying his request for a hearing to determine whether he was immune from prosecution under the Protection of Persons and Property Act (the Act).¹ This Court expedited this matter so that it could be decided without an excessive delay of the trial. We dismiss the appeal.

¹ S.C. Code §§ 16-11-410 to -450 (Supp. 2012).

FACTS

On October 27, 2005, Tavares World, an acquaintance of Appellant's, asked Appellant to help him get money the victim owed to him. According to Appellant, he refused until World pointed a gun at him² and threatened to kill him if he did not accompany World to the victim's apartment. Thereafter, Appellant agreed, and World gave him the .380 caliber handgun.

The victim was not at home when Appellant and World first arrived at the victim's apartment,³ so the pair waited in World's vehicle in the parking lot for fifteen to twenty minutes before seeing the victim returned home. After the victim returned, Appellant and World remained in the vehicle for an additional ten to fifteen minutes before again approaching the victim's apartment.

When Appellant and World subsequently arrived at the victim's apartment door, World beat on and kicked the door to the victim's apartment until it opened. World entered the victim's apartment yelling "where my money at?" while Appellant initially remained outside. During the ensuing fight between World and the victim, Appellant entered the victim's apartment and attempted to intervene. When Appellant's attempts to diffuse the situation were unsuccessful, Appellant exited the victim's apartment but remained nearby, directly outside the apartment's door. Thereafter, Appellant saw World running from the victim's apartment with the victim chasing him. Although Appellant had not seen World or the victim draw a gun during the altercation, Appellant subsequently drew the .380 caliber handgun World had given him and shot the victim three times. The victim fell to the ground and died. World and Appellant then fled the apartment and were not apprehended until 2012.⁴

² According to Appellant, World was armed with two guns—a nine millimeter and a .380 caliber handgun.

³ According to Appellant, upon initially arriving at the victim's apartment complex, Appellant and World got out of the car and "walked by the [victim]'s house . . . looking all through the windows."

⁴ Appellant was arrested in April 2012 after a fingerprint found on a lamp inside the victim's apartment matched Appellant's. Despite Appellant's contention that he agreed to accompany World only as a result of duress, at no time in the intervening seven years did Appellant contact law enforcement regarding the incident.

Appellant was indicted for murder, first degree burglary, attempted armed robbery, and criminal conspiracy. At the beginning of trial, Appellant moved for a hearing to determine whether he was immune from prosecution under the Act. Despite Appellant's contention that he was not afforded a hearing, the able trial judge held a full hearing, at which Appellant testified, and determined the Act did not apply to this case as a matter of law. Specifically, the trial judge found the intent of the Act "is not to protect intruders and [afford] any immunity or protection to intruders or those who might enter the dwelling of another to commit a criminal act." Accordingly, the trial judge denied Appellant's request for immunity.

APPEALABILITY

Appellant asserts the order of the trial judge denying his request for immunity under the Act is immediately appealable. We disagree.

The right to appeal a criminal conviction is conferred by section 14-3-330 of the South Carolina Code. In order to exercise the right to appeal, a defendant must come within the terms of the statute. *State v. Miller*, 289 S.C. 426, 427, 346 S.E.2d 705, 706 (1986). An order denying a request for immunity under the Act does not fall within any category of orders which are immediately appealable under section 14-3-330.

Pursuant to section 14-3-330, an immediate appeal may be taken in a law case from:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; *provided*, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

This Court concluded in *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011), that an order *granting* a motion to dismiss on the ground that the defendant is immune under the Act is immediately appealable. Although we indicated in *Duncan* that an immediate appeal is allowed because the order is in the nature of an injunction, we now clarify that an order granting a request for immunity under the Act is immediately appealable because it is a final order in the case.⁵ However, an order *denying* a request for immunity is not a final order in the case.

An order involving the merits "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Mid-State Distrib., Inc. v. Century Imp., Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). An order denying an immunity request is not an order involving the merits in that it does not finally determine a substantial cause of action or defense. Accordingly, it is not immediately appealable under section 14-3-330(1).

Further, an order denying a motion to dismiss under the Act is not an interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver under section 14-3-330(4).

This Court has held that, generally, a criminal defendant may not appeal until sentence is imposed. See *In re Lorenzo B.*, 307 S.C. 439, 439, 415 S.E.2d 795 (1992) (an order adjudicating a juvenile delinquent is not appealable until imposition of final judgment at the dispositional hearing); *Parsons v. State*, 289

⁵ We note that an injunction is an equitable remedy available only when there is no adequate remedy at law. See *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 545, 627 S.E.2d 687, 689 (2006) (noting an appeal is an adequate remedy at law, which precludes injunctive relief). Further, a criminal action is one at law and one which can be appealed following conviction and sentencing. See *State v. Thrift*, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994) (noting a criminal action is one at law); *State v. Miller*, 289 S.C. 426, 346 S.E.2d 705 (1986) (noting that a criminal defendant may appeal after a sentence has been imposed).

S.C. 542, 542, 347 S.E.2d 504, 504 (1986) (denial of bail pending trial is not immediately appealable); *Miller*, 289 S.C. at 427, 346 S.E.2d at 706 (denial of a claim of double jeopardy is not immediately appealable); *State v. Washington*, 285 S.C. 457, 458, 330 S.E.2d 289, 289 (1985) (a conviction at a trial in absentia prior to imposition of sentence is not immediately appealable); *State v. Dingle*, 279 S.C. 278, 282, 306 S.E.2d 223, 225 (1983), *abrogated on other grounds*, *Horton v. California*, 496 U.S. 128 (1990) (an order committing the defendant to the Department of Mental Health is not immediately appealable); *State v. Hubbard*, 277 S.C. 568, 569, 290 S.E.2d 817, 817 (1982) (the denial of a motion to suppress evidence is not immediately appealable); *State v. Lockhart*, 275 S.C. 160, 161, 267 S.E.2d 720, 720 (1980) (an order transferring jurisdiction over a juvenile from family court to general sessions court is not immediately appealable); *State v. Parker*, 267 S.C. 317, 323, 227 S.E.2d 677, 679 (1976) (the denial of a motion to quash an indictment is not immediately appealable).

As stated in *State v. Hughes*:

It is a bad practice, and generally condemned, to hear appeals by piecemeal, especially in criminal cases; for it is destructive of the prompt administration of justice, which is so essential to the peace of society. To allow appeals to be heard from such preliminary rulings would enable a party charged with the most serious crime always to secure a continuance, when otherwise not entitled to it, by simply moving to quash the indictment, and, when his motion is overruled, give notice of appeal from such ruling, and thereby stop the trial . . .

56 S.C. 540, 35 S.E. 214, 215 (1900).

The denial of a request for immunity under the Act is analogous to the denial of a motion to dismiss a criminal case on the ground of double jeopardy, which is not immediately appealable. *Miller*, 289 S.C. at 427, 346 S.E.2d at 706. Absent an unambiguous expression of legislative intent, we see no reason to alter settled law concerning appealability, which additionally would have the illogical effect of elevating a statutory immunity claim over one constitutionally based.

Appellant cites *State v. Marin*, Op. No. 5156 (S.C. Ct. App. filed July 3, 2013), for his argument that he cannot preserve the issue for review unless he immediately appeals the ruling of the trial judge in this matter. However, *Marin* does not require an immediate appeal from the denial of a request for immunity. That decision refers only to the fact that the determination is made prior to trial. The *Marin* decision does not purport to create a right to an immediate appeal when the

circuit court determines a defendant is not entitled to immunity. Instead, any error in the denial of a request for immunity from prosecution may be raised on appeal after conviction and sentencing based on the plain language of section 14-3-330(1).

The concurring opinion claims the General Assembly clearly manifested its intent in the Act to dictate an immediate appeal from the denial of a motion for immunity, transforming the Act's purpose in finding an unmistakable expression of legislative intent to mandate an immediate appeal from the denial of an accused's motion pursuant to the Act. In doing so, the concurrence suggests that the prefatory language of the Act allows this Court to interpret section 14-3-330 to create a nonexistent right to immediate appeal based on a denial of immunity under the Act. We have no quarrel with the concurring opinion's reading of the purpose of the Act. However, we do part company with the concurrence in its extrapolation of a legislatively mandated immediate appeal from the denial of an immunity motion under the Act. The suggestion that such legislative intent is clear from the statutory language borders on frivolity. Indeed, there are many matters on which the Act is silent, which this Court sought to answer in *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). As noted in *Duncan*, "the Act does not explicitly provide a procedure for determining immunity." If the concurring opinion's clairvoyance is correct, we invite the General Assembly to amend the Act to reflect its intent to allow an immediate appeal in clear terms.

Further, the concurring opinion's reliance on section 14-3-330(4), which allows an immediate appeal from an order granting or denying an injunction, is misplaced as that section only applies "*in the court of common pleas*." Although the General Assembly specifically references the court of general sessions in section 14-3-330(1), it did not provide for immediate appeals in cases similar in nature to an injunction in general sessions court. We cannot see how the legislative intent set forth in section 16-11-410 justifies the concurring opinion's extrapolation of the clear and unambiguous language in section 14-3-330(4), referring only to "a court of common pleas," to also include a court of general sessions.

In conclusion, the language in *State v. Duncan* addressing appealability was dicta and regrettable. We, therefore, clarify *State v. Duncan*, and hold the denial of a request for immunity under the Act is not immediately appealable.⁶

⁶ In light of the concurring opinion's reference to extraordinary writs, we caution the Bench and the Bar that such writs are aptly named, as they are intended only for the most *extraordinary* and exceptional situations. See *In re Breast Implant Prod. Liab. Litig.*, 331 S.C. at 543, 503 S.E.2d at 447 ("Although we will not

RETROACTIVITY

Although Appellant was not arrested until April 2012, and his trial did not commence until July 8, 2013, the crimes with which he was charged were committed on October 27, 2005. The effective date of the Act is June 9, 2006. Appellant contends that the Act should be applied retroactively since his trial began after the effective date of the Act.

The retrospective application of a statute is not favored, and statutes are presumed to be prospective in effect. *State v. Dickey*, 380 S.C. 384, 404, 669 S.E.2d 917, 928 (Ct. App. 2008), *rev'd on other grounds*, 394 S.C. 491, 716 S.E.2d 97 (2011). Legislative intent is paramount in determining whether a statute will have prospective or retroactive application. *Jenkins v. Meares*, 302 S.C. 142, 146, 394 S.E.2d 317, 319 (1990). A statute is not to be applied retroactively unless that result is so clearly compelled as to leave no room for doubt. *Am. Nat. Fire Ins. Co. v. Smith Grading & Paving*, 317 S.C. 445, 448, 454 S.E.2d 897, 899 (1995).

As stated by the Court of Appeals in *State v. Bolin*, 381 S.C. 557, 673 S.E.2d 885 (Ct. App. 2009), there is no evidence of legislative intent that the Act be applied retroactively. Instead, the savings clause of the Act specifically indicates the General Assembly's intent that the Act be applied prospectively. Section 4 of the Act provides:

generally accept matters on a writ of certiorari that can be entertained in the trial court or on appeal, a writ of certiorari may be issued when exceptional circumstances exist."). We stress that denial of immunity under the Act will not meet this high threshold absent a showing of truly extraordinary circumstances, and we seek to discourage unsuccessful defendants from seeking such writs.

We further note that, in South Carolina, a writ of prohibition is not an appropriate remedy for criminal defendants denied immunity under the Act. This is so because "it has been settled in this state from an early period that . . . if the inferior court or tribunal has jurisdiction of the person and subject-matter of the controversy, the writ [of prohibition] will not lie to correct errors and irregularities in procedure, or to prevent an erroneous decision" *New South Life Ins. Co. v. Lindsay*, 258 S.C. 198, 199-200, 187 S.E.2d 794, 796 (1972) (quoting *Ex Parte Jones*, 160 S.C. 63, 158 S.E. 134, 137 (1931)). "There is no dispute that the circuit court qualifies as a court of general criminal jurisdiction under the South Carolina Constitution." *State v. Odom*, 382 S.C. 144, 150, 676 S.E.2d 124, 127 (2009) (citing S.C. Const. art. V, § 11).

The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Act No. 379, § 4, 2006 S.C. Acts 2913.

This identical savings clause was the basis for this Court's decisions in *State v. Dawson*, 402 S.C. 160, 740 S.E.2d 501 (2013), and *State v. Brown*, 402 S.C. 119, 740 S.E.2d 493 (2013). In both *Dawson* and *Brown*, we held the General Assembly did not intend for amended versions of statutes defining crimes and the penalties to be applied retroactively; rather, the law in effect at the time the crimes were committed controlled. Similarly, by stating that the Act is to have no effect on pending actions, criminal prosecutions, rights, duties, or liabilities, and that all laws repealed or amended by the Act must be treated as remaining in full force and effect, the General Assembly clearly specified the Act is to be applied prospectively.

Because the savings clause indicates the General Assembly did not intend for the Act to affect the rights and liabilities in effect prior to its enactment, Appellant cannot claim the benefit of the extension of the law.

CONCLUSION

Because the General Assembly did not intend for the Act to apply to a shooting that occurred prior to the Act's effective date and because the denial of a defendant's request for immunity under the Act is an interlocutory order not subject to immediate appeal, this appeal is dismissed and the matter is remanded for trial.

DISMISSED.

BEATTY, KITTREDGE, and HEARN, JJ., concur. PLEICONES, J., concurring in separate opinion.

JUSTICE PLEICONES: I concur in the decision to dismiss this appeal because the Act does not apply retroactively and thus appellant is not entitled to invoke its protections. *E.g. State v. Dawson*, 402 S.C. 160, 740 S.E.2d 501(2013). I would hold, however, that a pretrial order denying immunity under the Act is immediately appealable under S.C. Code Ann. § 14-3-330 (4) (Supp. 2012) because it is in the nature of an injunction.⁷

The General Assembly, as is its prerogative, has codified and modified what was at common law a defense, and instructed that a person who establishes that defense may not be criminally prosecuted. The legislature has unequivocally expressed its intent that persons who are rightfully within the Act's terms are immune from prosecution. Section 16-11-420 of the Act is titled "Intent and Findings of General Assembly," and provides in part:

The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers **without fear of prosecution** or civil action for acting in defense of themselves and others.

§ 16-11-420(B) (Supp. 2012) (emphasis supplied).

Lest there be any doubt of the legislature's intent, § 16-11-450 of the Act is titled in part "Immunity from criminal prosecution" and provides in relevant part "A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and **is immune from criminal prosecution**" § 16-11-450(A) (Supp. 2012) (emphasis supplied). In my view, we can honor the General Assembly's clear mandate only if we can review any pre-trial denial of criminal immunity for reversible error, for to require a defendant wrongly denied immunity to endure a criminal prosecution is to violate the statutory injunction.

⁷ The Court of General Session has subject matter jurisdiction to issue injunctions where necessary to protect its proceedings. *Ex parte: The State-Record Co., Inc.*, 332 S.C. 346, 504 S.E.2d 592 (1998).

I readily acknowledge that an order denying a criminal defendant pre-trial immunity does not fit neatly within our general appealability jurisprudence. In order to effectuate the General Assembly's explicit instruction, I would read the term "common pleas" in § 14-3-330(4), allowing immediate appeals from injunctions, as "trial court" in order to permit this interlocutory appeal from the Court of General Sessions.⁸ This broad reading of the statute is not unique, however, as the appellate courts regularly apply § 14-3-330, which by its title only governs law cases, to equity matters arising from the family courts. *E.g. Terry v. Terry*, 400 S.C. 453, 734 S.E.2d 646 (2012); *Smith v. Smith*, 359 S.C. 393, 597 S.E.2d 188 (Ct. App. 2004).

It is the legislature's prerogative to dictate appealability, and the intent that a person within the Act's terms be immune from criminal prosecution is clear and unequivocal. I therefore respectfully dissent from the decision holding that a criminal defendant denied immunity must nonetheless submit to prosecution and, if convicted, then seek review of the order denying him the very protection afforded him under the Act.

⁸ In light of the majority's decision that a pretrial order denying a criminal defendant immunity under the Act is not immediately appealable, an individual in that position may now seek relief by filing a common law petition for writ of certiorari in this Court's original jurisdiction. *E.g. City of Columbia v. S.C. Pub. Serv. Comm'n*, 242 S.C. 528, 131 S.E.2d 705 (1963). Depending on the individual's circumstances, it is possible that she may invoke other extraordinary writs to prevent her wrongful criminal prosecution.

1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
2 COUNTY OF RICHLAND) COURT
3)
4 STATE OF SOUTH CAROLINA,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 GREG ISAAC,) 2012-GS-40-2437 2438
9) AND 2435
10 DEFENDANT.)

11

12 SEPTEMBER 30, 2013 THROUGH OCTOBER 2, 2013

13 RICHLAND, SOUTH CAROLINA

14

15 B-E-F-O-R-E:

16 HONORABLE CLIFTON NEWMAN, JUDGE; AND A JURY

17

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

19 FOR THE PLAINTIFF:

20 LUCK CAMPBELL, ESQ.

21 NICHOLE SIMPSON, ESQ.

22 JOHN STEADMAN, ESQ.

23 FOR THE DEFENDANT:

24 MARK SCHNEE, ESQ.

25

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25		

1 (The following proceedings were held on
2 September 30, 2013.)

3 THE COURT: Good morning.

4 MS. CAMPBELL: Your Honor, we just received from
5 the Defense a list of pretrial motions. I don't know which,
6 if any, of those he wants to take up prior to jury
7 selection. I would assume he wants to take up number one
8 and number three.

9 THE COURT: All right.

10 Mr. Schnee.

11 MR. SCHNEE: May it please the Court, Your Honor.

12 THE COURT: We'll take up the motion to recuse
13 trial judge. That's first one, right?

14 MR. SCHNEE: Yes, Your Honor.

15 THE COURT: Yes, sir.

16 MR. SCHNEE: Judge, I have attached a somewhat
17 lengthy memorandum of law and factual basis. I know Your
18 Honor just received a copy of it. I'll be happy to give you
19 an opportunity to review it. To go along with that, I do
20 have copies of both the pretrial transcript, that is a
21 transcript of the prior trial and I ask that it be made a
22 part of the record in this case.

23 THE COURT: All right. Do you have any additional
24 argument?

25 MR. SCHNEE: Judge, I think the motion is mostly

1 sufficient. I did forget, I do have a copy of the -- to
2 make a part of the record.

3 THE COURT: All right.

4 MR. SCHNEE: Judge, the only addition I would, I
5 suppose, argue is that my client, pursuant to the Sixth
6 Amendment as well as the State Constitution, Strickland V.
7 Washington -- my client is entitled to competent free
8 representation. I believe the direct threats that are
9 apparent from the record, the condescending remarks towards
10 myself makes it very difficult for that to even be
11 accomplished. I believe it violates my client's right to
12 due process and a fair trial. And I would ask that Your
13 Honor be recused.

14 THE COURT: Anything from the State?

15 MS. CAMPBELL: Your Honor, of course, this is a
16 decision for you to make. I would just in the eyes --
17 itself, which resulted as part of this appeal that the
18 court, the supreme court, actually, I believe noted in
19 there -- and I don't remember the exact language, that you
20 are a very capable or able trial judge and, actually, agree
21 with your reasoning totally, Your Honor. We would just
22 ask -- it's already in the record, it doesn't need to be
23 made a part of the record, but we just note that the court
24 did commend you on your position and your findings after
25 reviewing the record.

1 MR. SCHNEE: Judge, very briefly. The supreme
2 court addressed two issues. One was appealability, which
3 they decided to overturn their language in Duncan. And the
4 other issue was retroactivity. They never discussed any
5 substantive law with regard to the fact or allegations.
6 They, simply, did not apply because of the timing -- and
7 determined it was not appealable.

8 THE COURT: Having tried the case and I am
9 familiar with the transcript, I am familiar with the record,
10 I am also familiar with the code of judicial conduct and
11 the -- ethic. A judge should disqualify himself or herself
12 if there is some basis for impropriety or prejudice. That
13 being said, the Defense does not have a right to dictate who
14 a trial judge should be or to create a conflict with a trial
15 judge to form a basis for their recusing.

16 The opinion stated by the Court with regard to the
17 Defense's standing your ground motion was that the motion
18 borders on preposterous because it cannot form the basis for
19 immunity from prosecution based on the facts in the record
20 of this case. The Court stated during the course of the
21 hearing that if the Defense sought to present a defense of
22 self-defense that that is a jury issue. It is a jury issue
23 to determine whether or not the Defendant is guilty or not
24 guilty, whether or not a defense of self-defense is one
25 which a jury should consider or accept. The law of this

1 state is quite clear -- I have on bias against this
2 Defendant, against this lawyer, against any of the parties
3 in this case. I am not recusing myself in this case and the
4 motion is denied.

5 Next motion.

6 MR. SCHNEE: Your Honor, based on that, there is,
7 at least, in my opinion -- perceived threat that I will be
8 either reported to the disciplinary council or supreme court
9 or held in contempt. As a result, I believe my client is
10 not going to be represented to his fullest -- show my
11 ability to present adequate and complete defenses and
12 therefore --

13 THE COURT: Can you repeat that?

14 MR. SCHNEE: Judge, based on all of the factual
15 allegations and statements from the transcript that I
16 included in the motion to recuse Your Honor, I believe it's
17 apparent that at the end of proceedings, Your Honor
18 threatened me with either a complaint to disciplinary
19 council or supreme court directly. I do not --

20 THE COURT: Can you refer to what portion of the
21 transcript in which you were threatened?

22 MR. SCHNEE: It was certainly -- threat, but it,
23 certainly, appeared to be that. On page 217 and 218, you
24 said that you -- long term ramifications from what had
25 occurred in this case will be spelled out and dealt with by

1 the supreme court. I think -- appears to be clearly a
2 frivolous and meritless motion -- and it continues.

3 THE COURT: I think all of that spoke for itself.

4 The supreme court agreed with my interpretation of the
5 issue -- and the trial cannot proceed. I believe the answer
6 or the long term ramification of what is apparent in this
7 court will be spelled out and dealt with by the supreme
8 court. The supreme court dealt with it. They agreed with
9 the court, that the stand your ground law does not apply to
10 this case, that the -- it is a matter -- as I view it, the
11 legislature did not intend for matters such as the Defense
12 raised causing delay of the trial. The supreme court agreed
13 by their expeditious resolution of this issue. There's no
14 veil of threat whatsoever in the comments. The comments
15 that I made were born out by what has transpired since the
16 hearing. It has been addressed and dealt with swiftly by
17 the supreme court. We'll see how all this shakes out. But
18 we will -- the court having the issue of -- the case cannot
19 continue and going to release the jury as I did. That book
20 is closed. This is a new book. This is a new day. This is
21 a matter before the court once again. And I'm not going to
22 let the record go unchallenged by your assertion that some
23 veil of threat was made toward you. There was no threat
24 made to you. I indicated to you that the matter will be
25 addressed by the supreme court and they have addressed the

1 matter. And that's the end of that. Go ahead.

2 MR. SCHNEE: Your Honor, it's unclear to me as to
3 finally addressed. I do not know what Your Honor may or may
4 not have said to the supreme court. The simple fact is I
5 have a reasonable basis to believe based on a number of
6 times you accused me of being either frivolous or meritless
7 and therefore, unethical. I do not know if you have sent
8 anything or planned to send anything.

9 THE COURT: This case -- the recommend in this
10 case is clear. You have the transcript. The transcript is
11 the transcript. If there was something sent to the supreme
12 court concerning you, you would have received notice from
13 the supreme court of that fact. Nothing has been sent to
14 the supreme court. I have no basis or no need to send
15 anything to the supreme court. The record -- everything
16 that's occurred in this case is a matter of record. We have
17 a court reporter here and we had a court reporter there.
18 I've had no contact with you since then. I'm not sure where
19 you're -- what you're trying to generate here.

20 MR. SCHNEE: Judge, I'm not trying to generate
21 anything. I am simply informing Your Honor of what it
22 appeared during the trial in July, what it appears to be
23 based on the transcript after reviewing it. I believe that
24 my client is entitled to conflict-free representation. And
25 if you --

1 THE COURT: And your motion is what at this point?

2 MR. SCHNEE: To be -- to be relieved from
3 representation as a result. Based on the fact that I
4 believe that I will be forced to tone down everything I do
5 in this courtroom to prevent any sort of complaint with
6 disciplinary council or be held in contempt.

7 THE COURT: You will be forced to tone down your
8 representation or you will be subjected to being disciplined
9 or held in contempt.

10 MR. SCHNEE: That's correct, Your Honor. That's
11 what it appears to be to me from reading that record and how
12 it would appear when I was in Your Honor's presence
13 July 8th.

14 THE COURT: All right.

15 What says the State?

16 MS. CAMPBELL: Your Honor, I believe there's no
17 bases for him to be -- I don't think his client wants him to
18 be removed. And I think at this point, he can be effective
19 and go forward. There's no basis to anything he's saying.

20 THE COURT: All right.

21 Motion is denied.

22 MR. SCHNEE: Your Honor, at this time, I would
23 renew my Brady and Rule 5 motions. I would also like the
24 motion to compel discovered and, also, motion to compel
25 pursuant to Riddle. I have already handed up a copy of the

1 guilty plea transcript and this also ties into my motion to
2 submit for violation of Brady and Rule 5.

3 This is a guilty plea transcript of Travares World
4 where Your Honor accepted a negotiated plea for Travares to
5 negotiate a range 25 to 30 years. And the solicitor's
6 recitation of the facts, particularly, on page -- starting
7 on page 14 and discussing it further, it appears that a
8 separate incident, which is on August 17th, 2009, involving
9 United Car Sales. Apparently, mr. World went there and met
10 with Vernorris Dixon, the other codefendant in this case,
11 and manager, Paul McCunning. The manager, Mr. McCunning and
12 Vernorris left the dealership and Mr. World was left alone
13 at the dealership and then armed robbed someone for
14 12,000-dollars.

15 I have made numerous requests to Ms. Campbell. I
16 also made a request prior to trial to Your Honor to get full
17 discovery for Travares World incident based on the fact that
18 it's possible that he would either testifying or that there
19 would be other exculpatory or impeaching evidence.
20 Ms. Campbell represented numerous times that there was
21 absolutely nothing of value in there. And the first I
22 learned that Vernorris Dixon may have involvement in a
23 separate arm robbery, who has always been listed as one of
24 the main prosecution witnesses in this case against Greg
25 Isaac was, in fact, involved in another armed robbery.

1 At this time, I am again demanding a copy of all
2 discovery for Tavares World and any information
3 involving Vernorris Dixon, any statements, full
4 investigations, videotapes, I need everything in order to
5 proper present a defense and impeach these witnesses, if
6 not, also, impeach law enforcement with their
7 investigations.

8 THE COURT: All right.

9 MS. CAMPBELL: Your Honor, I don't know what
10 theory he thinks that he can – possibly involved in a
11 possible separate incident would have anything to do with
12 this and how he would go about impeaching with that. I
13 don't understand that he thinks that would be useful to him.
14 And as for as any involvement of whether or not he was
15 charged in a separate incident. Of course, I will turn over
16 as required all pending charges on Vernorris Dickson. I
17 will turn over a copy of his prior record and we will go
18 through what would be impeachable, what wouldn't be
19 impeachable. But to go beyond that, Your Honor, is simply
20 beyond the scope of what he's allowed to do by law. I don't
21 know under what theory he thinks that he gets the entire
22 discovery of all the codefendants, although I would submit I
23 think he's had access to, at least, part or most of it
24 through the public defender's office. But, Your Honor, I
25 just don't know under what theory he thinks he can use that

1 to impeach. And I just don't understand where he's going
2 with that. Mr. World, I don't have a copy of that.

3 What page was it on?

4 MR. SCHNEE: It starts on page 14.

5 (pause.)

6 MS. CAMPBELL: Your Honor, of course, if Mr. Dixon
7 was convicted in that case of anything, that would be turned
8 over and has been turned over with his rap sheet and he
9 would be aware of it. To say that he was uncharged possible
10 participate doesn't make him guilty and if he wasn't
11 charged, of course, he wasn't guilty. And even if he was
12 charged and was convicted, the only thing he would be able
13 to impeach him with is the fact that he was -- if it's a
14 crime that's impeachable, is the fact that he was convicted
15 of that crime. I don't understand under what theory he
16 thinks the discovery is going to entitle him to further
17 inquire into it even if it were true, even if he were
18 charged.

19 MR. SCHNEE: If I may, Your Honor? What is
20 readily apparent to me based on the transcript of this
21 guilty plea is that Vernorris Dixon and Tavares World -- to
22 plan robberies together. That is certainly impeachable
23 against both of them. The course of the entire
24 investigation because it is the same police departments
25 involved from what I can tell and that is the entirety of

1 the State of South Carolina. It is, certainly, irrelevant
2 whether someone has been charged or not or convicted or not.
3 The standard for -- evidence is show by clear and convincing
4 evidence. And I can, certainly, do that whether the police
5 decided not to charge him.

6 And on page 15 of the transcript, the State said
7 early on in the investigation they didn't know who this
8 person was. Eventually, they were given a few names and
9 Tavares World's name came up. Well, I can only assume
10 without reading any of the discovery, which I have had
11 access to none of it because I do not represent Mr. World,
12 the public defender's office does not give me their
13 discovery for other cases, that Vernorris Dixon is, in fact,
14 the one that gave Tavares World's name to law enforcement.
15 And if he's having contact with law enforcement over his --
16 one of best friend committing arm robberies, I believe that
17 is something that I should have an opportunity to attempt to
18 explore. I can't do any of that without the discovery. I
19 asked for this six months ago. I was told there's
20 absolutely no basis or relevance. Clearly, that is not the
21 case.

22 THE COURT: And this is under the -- which motion
23 are you referring to at this point?

24 MR. SCHNEE: This would be the motion to compel
25 and renew Brady and Rule 5.

1 THE COURT: Is that a motion you've handed up?

2 MR. SCHNEE: It's not, actually, in writing. It's
3 just renewing the Rule 5 and Brady motion and motion to
4 compel discovery.

5 THE COURT: Renewing Brady and motion to compel
6 discovery.

7 MR. SCHNEE: There's not a separate written
8 motion.

9 THE COURT: Anything further on this issue?

10 MS. CAMPBELL: Your Honor, in review his rap
11 sheet, he was not charged in that as far as we know. I'm
12 double checking with my office to make sure that's accurate.
13 Mr. Dixon. And he does have a copy of the rap sheet.

14 THE COURT: It appears that the transcript of
15 guilty plea of Tavares World clearly outlines the State's
16 plea arrangement with Mr. Tavares World. I don't know what
17 else the Court can order the State to do in regard to any
18 discloser requirement under Rule 5.

19 MS. CAMPBELL: It's my understanding the extent of
20 Mr. Vernorris Dixon's involvement in that crime is that he
21 was there with the Defendant along with another man earlier
22 before the crime actually happened, as outlined in the plea.

23 THE COURT: Okay. Well, I don't see a violation
24 of Rule 5. I don't know what the Defense wants me to do,
25 Mr. Schnee.

1 MR. SCHNEE: Judge, my motion is also based on
2 Brady V. Maryland. And it clearly says that I'm entitled to
3 any evidence to be disclosed from the solicitor that has
4 potential impeachment value. And if either Tavares World or
5 Vernorris Dixon are going to be testifying, if they have
6 colluded to commit other crimes afterwards, that is
7 impeachment evidence.

8 THE COURT: All right.

9 MR. SCHNEE: Additionally, if law enforcement is
10 involved, I should be entitled to know exactly what
11 involvement there was.

12 THE COURT: All right.

13 Are you aware of any such information?

14 MS. CAMPBELL: Your Honor, the extent of
15 Mr. Dixon's involvement in that crime is outlined in the
16 plea agreement, which says he was there earlier before the
17 crime actually occurred with Mr. World. There is no dispute
18 and it has been turned over to the Defense that Mr. Dixon
19 and Mr. World were -- I don't know if friends would be the
20 right word, but they hung out together and that they were
21 around each other. Even in the plea agreement, as he
22 outlines it, he says it damning, it, clearly, shows that Mr.
23 Dixon was not even present during the time the crime,
24 actually, occurred to which Mr. World pled guilty.

25 THE COURT: The Court is unaware of any Rule 5

1 violation with --

2 MR. SCHNEE: Judge, if I may, the transcript that
3 I have, I'm reading it correctly, it says Tavares World went
4 to see Vernorris Dixon and the manager. Mr. Dixon and the
5 manager left and Tavares World was left at the dealership
6 alone. I don't understand how that is not possible to see a
7 connection between that act and then the subsequent armed
8 robbery of a potential customer.

9 THE COURT: Well, you want to ask them that
10 question. If they testify, you have a right to do so.
11 Mr. World pled guilty to armed robbery stemming from that and
12 are you aware of that. The motion -- is denied.

13 MR. SCHNEE: Judge, if I may for the record, I
14 don't understand how I'm supposed to impeach Vernorris Dixon
15 with any of that information. It's not his guilty plea.
16 And he, in fact, the one that's more than likely going to be
17 testifying.

18 THE COURT: Well, you stated what you wanted for
19 the record.

20 MR. SCHNEE: Thank you.

21 My next motion is to reveal the deal that was
22 given to Tavares World and if there is a deal to Vernorris
23 Dixon and, specifically, the basis for the deal to Tavares
24 World.

25 THE COURT: All right.

1 Ms. Campbell?

2 MS. CAMPBELL: Your Honor, he's aware of the
3 extent of the deal that's outlined in the plea, which he has
4 a transcript of, so he is aware of the entire realm of those
5 deals. I'll be glad to get his lawyer up here to -- I don't
6 understand under what theory he thinks he gets the basis of
7 the deal. Maybe I just don't understand what he's asking
8 for. But as far as the parameters of what Mr. World pled to
9 and what his deal was, that's outlined clearly in the plea
10 agreement.

11 THE COURT: As to Mr. Dixon?

12 MS. CAMPBELL: As to Mr. Dickson, Your Honor, we
13 have had no negotiations with him, however, I am going to
14 get his lawyer up here, I told Mr. Schnee I would, to put it
15 on record after lunch with the Court's permission just
16 briefly that there have been no deals to make sure that
17 that's all clear.

18 THE COURT: All right.

19 MS. CAMPBELL: He's also aware of what his pending
20 charges are.

21 MR. SCHNEE: Judge, with regard to Mr. World, I
22 was informed prior to Your Honor issuing a -- right
23 afterwards that there was a question with one of the lead
24 investigators in this case who questioned Tavares World.
25 Apparently, the testimony was that he had never gone back to

1 the jail to visit Mr. World. That turned out to be a false
2 statement. My belief is that the basis for the deal that
3 was offered to Mr. World was to not expose an experienced
4 Richland County Sheriff's Department investigator committed
5 perjury. If that's the case, I need to have that on the
6 record.

7 THE COURT: You need to have what you just stated
8 on the record?

9 MR. SCHNEE: I need to have confirmation of that
10 on the record if that is, in fact, the reason why the
11 solicitor's office made that deal.

12 THE COURT: All right.

13 Ms. Campbell?

14 MS. CAMPBELL: Your Honor, the reason for the
15 deal, as in every case, you look at the evidence, you
16 examine the evidence, you basically talk to the family, they
17 have input. There are a number of factors, which I don't
18 think under the work product theory I have to go into. For
19 me to have to explain to the defense attorney my reasoning
20 for making an offer is absolutely ludicrous.

21 MR. SCHNEE: Judge, I'm not asking for every
22 single time a solicitor makes an offer. I'm not asking for
23 what generally goes into making an offer. I understand all
24 that. I'm asking for a specific instance, whether the
25 potential perjury of the lead investigator involved in this

1 case was part of the basis for offering a deal. If so, that
2 is something that I would, obviously, be looking to use
3 during this trial.

4 MS. CAMPBELL: While we're on that subject, Your
5 Honor, under what theory does he think, unless Tavares will
6 testify that he gets into any deal Tavares World received as
7 far as his plea agreement and what he pled to? And we would
8 make a motion at this time, Your Honor, in response to make
9 sure that he doesn't mention any deals or what the
10 sentencing was as far as Tavares World is concerned in front
11 of this and until or if he testifies, which we do not
12 anticipate.

13 MR. SCHNEE: Well, Judge, I, certainly, get to
14 question law enforcement officers if that same law
15 enforcement officer testifies if, in fact, he has committed
16 perjury.

17 In terms of Tavares World pleading guilty, that is
18 a matter of public record and I, certainly, do plan on
19 informing the jury that he has already pled guilty. I don't
20 see how that could possibly be found as improper form of
21 argument. The lead investigator is, certainly, going to be
22 aware of that.

23 THE COURT: I'm not making any advisory ruling as
24 to any arguments or as to any examination of witnesses.

25 What else?

1 MR. SCHNEE: Judge, the only motion that we would
2 have to take up before actually picking the jury would be a
3 motion to prevent shackling for any client. It's the same
4 motion I filed last time. Your Honor has another copy of
5 that in writing.

6 THE COURT: What was my ruling the last time?

7 MR. SCHNEE: What we decided the last time was
8 that we would turn the desk around to make sure my client's
9 feet could not be seen.

10 THE COURT: All right. Is that what you want to
11 do this time?

12 MR. SCHNEE: I'm, certainly, happy to do that.
13 Obviously, my client will be testifying and we need to
14 address what will happen when he goes up to testify.

15 THE COURT: Well, that's down the road. We can
16 address that when that issue comes -- that's nothing new.
17 People in jail testify all the time and Richland County
18 deals with that in such a way that the jury is not exposed
19 to him being in jail.

20 MR. SCHNEE: I understand that, Your Honor. I was
21 just putting that on the record. Everything else can taken
22 up after we pick the jury if that's what Your Honor desires.

23 THE COURT: All right. We ready for the jury?

24 MS. CAMPBELL: (Ms. Campbell nodded head.)

25 THE COURT: All right.

1 MR. SCHNEE: Just have a minute to move the
2 tables.

3 THE COURT: All right.

4 (Pause.)

5 BAILIFF: The jury's all present, Your Honor.

6 THE COURT: All right. Thank you.

7 Good morning, ladies and gentlemen. I am Clifton
8 Newman. That's my law clerk, Simone Martin. And we're
9 presiding in this courtroom. You've been sent here for jury
10 selection. I look forward to working with you. The State
11 will call the next case.

12 MS. CAMPBELL: May it please the Court?

13 THE COURT: Yes.

14 MS. CAMPBELL: The State calls the State vs. Greg
15 Isaac, 2012-GS-40-2435, 2437, 2438, charged with the
16 offenses of murder, burglary in first-degree and attempted
17 armed robbery.

18 THE COURT: If you will pass the indictment or
19 indictments to me.

20 THE CLERK: This is your last juror, Your Honor.
21 Is that all right, Your Honor?

22 THE COURT: (The witness nodded head.)

23 All right, ladies and gentlemen, the State has
24 called for trial the case of State v. Greg Kentrell Isaac.
25 This case comes into court as a result of indictments

1 returned by the Grand Jury of Richland County charging
2 Mr. Isaac with the offense of murder, burglary in the
3 first-degree and attempted armed robbery. He has pled not
4 guilty to each of these three charges. He is presumed to be
5 not guilty of these charges. He cannot be found guilty
6 unless the State presents evidence which convinces a jury of
7 his guilt beyond a reasonable doubt. And that is the
8 purpose of the trial.

9 Mr. Isaac, if will stand and face the jury, along
10 with counsel.

11 And, Counsel, if you will introduce yourself.

12 MR. SCHNEE: Good afternoon, my name is Mark
13 Schnee. This is Greg Isaac.

14 THE COURT: All right. Thank you. The State is
15 represented through the office of the Fifth Judicial
16 Circuit, Solicitor Dan Johnson through deputy solicitors.
17 The solicitors will introduce themselves as well.

18 MS. CAMPBELL: Thank you, Your Honor.

19 My name is Luck Campbell and I'm assistant
20 solicitor in the Fifth Judicial Circuit.

21 MS. WALKER: I'm Meghan Walker. I'm also an
22 assistant solicitor here in the Fifth Judicial Circuit.

23 STEADMAN: My name is John Steadman. I'm also an
24 assistant solicitor.

25 THE COURT: All right. Ladies and gentlemen, the

1 indictment in this case alleges that Mr. Isaac murder
2 Antonio Corbitt in Richland County on or about October 27th,
3 2005.

4 In what area of Richland County, Solicitor?

5 MS. CAMPBELL: On Fernandino.

6 THE COURT: In the Fernandino Road area of
7 Richland County. Any member of the jury panel knows
8 anything about this case or you heard anything about this
9 case or if you think you have heard anything about this
10 case? If so, please stand.

11 (There was no response.)

12 THE COURT: And, ladies and gentlemen, the --
13 through the juror qualification process, you were
14 administered an oath and that oath that you took earlier
15 this morning is that you would give complete and truthful
16 responses to all questions that you are asked during the
17 qualification process. And that same oath pertains to the
18 jury selection process. And that is if any questions that
19 are asked applies to you or if you think that they apply to
20 you, it is your sworn obligation as a juror to stand and to
21 disclose any information in which the Court ask you a
22 question that applies to you. Certainly, it's -- perhaps, a
23 natural tendency to not want to stand and be the person
24 standing and answering questions or giving information, but
25 you're on jury duty and your oath as jurors require that you

1 disclose any information that might apply to any question
2 that you are asked during this process. And I have a number
3 of questions to ask.

4 The first of which is, has any member of the jury
5 panel any or any of your immediate family members or close
6 friends ever been the victim of a violent crime? Violent
7 crime particularly includes the crimes of rape, murder,
8 robbery, burglary. If you or any member of your immediate
9 family or any close personal have ever been the victim of a
10 violent crime, please stand.

11 (Jurors stand.)

12 THE COURT: And tell us your jury number first and
13 tell us how this question might apply to you.

14 Yes, ma'am.

15 PROSPECTIVE JUROR: I'm Juror No. 38 and the
16 Defendant's my cousin.

17 THE COURT: Pardon me?

18 PROSPECTIVE JUROR: He's my cousin (indicating).

19 THE COURT: The Defendant is your cousin.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: And how close a cousin is he?

22 PROSPECTIVE JUROR: His great grandmother and my
23 grandmother are first cousins.

24 THE COURT: His great grandmother and your
25 grandmother are first cousins?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: And would that affect your ability to
3 be a fair and impartial juror?

4 PROSPECTIVE JUROR: No, it wouldn't.

5 THE COURT: All right. Juror No. 38, thank you
6 for standing. And Juror No. 38, let ask you this one
7 question, are you -- have you -- do you know anything about
8 the facts of this case or have you heard anything about the
9 facts of this case?

10 PROSPECTIVE JUROR: No, I haven't.

11 THE COURT: All right. Thank you.

12 Yes, sir.

13 PROSPECTIVE JUROR: Juror No. 304. I've been in
14 bank robberies, multiple bank robberies.

15 THE COURT: All right. Would that fact affect
16 your ability to be fair and impartial in this case?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Thank you.

19 And behind you, yes, ma'am.

20 PROSPECTIVE JUROR: 158.

21 THE COURT: Yes, ma'am.

22 PROSPECTIVE JUROR: Several of my clients have
23 been raped or abused.

24 THE COURT: And would that fact affect your
25 ability to be fair and impartial if you were selected in

1 this case?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Juror No. 158 not be considered.

4 Yes, sir?

5 PROSPECTIVE JUROR: Yes, sir. Juror No. 303. I

6 had a family friend that was shot and killed, probably about

7 ten or 15 years ago, but that would not affect my ability.

8 THE COURT: All right. Thank you, sir.

9 Yes, sir.

10 PROSPECTIVE JUROR: Juror No. 78, sir. I had a

11 cousin that was killed some years ago when I was a child --

12 THE COURT: All right. And would that fact affect

13 your ability to be a fair and impartial juror in this case.

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: All right. Thank you, sir.

16 Yes, ma'am.

17 PROSPECTIVE JUROR: Juror 306.

18 THE COURT: Yes, ma'am.

19 PROSPECTIVE JUROR: My cousin was killed because

20 he was robbed.

21 THE COURT: Would that fact affect your ability to

22 be fair and impartial in this case?

23 PROSPECTIVE JUROR: Yes, it would.

24 THE COURT: All right. Jury 306 --

25 PROSPECTIVE JUROR: (The witness nodded head.)

1 THE COURT: -- will not be considered for
2 selection in this case.

3 Yes, sir.

4 PROSPECTIVE JUROR: Juror 240. I was a victim of
5 an armed robbery. I was shot. And yes, this would -- this
6 case wouldn't be my ability to be impartial.

7 THE COURT: All right. Juror 240 will not be
8 considered for selection in this case. Thank you, sir.

9 Yes, sir.

10 PROSPECTIVE JUROR: I had a close friend who was
11 raped and murdered when I was in college and would not
12 affect my ability to be fair.

13 THE COURT: All right. And your juror number once
14 again?

15 PROSPECTIVE JUROR: 237. I'm sorry.

16 THE COURT: 237. All right. Thank you, sir.

17 Has any member of the jury panel or any of your
18 immediately family members or close friends ever been
19 accused of committing a violent crime? If so, please stand?
20 Any of you or any immediate family member or close friends
21 ever been accused of committing a violent crime? If so,
22 please stand.

23 PROSPECTIVE JUROR: Juror No. 313. I have a close
24 friend's son was arrested and currently serving time for
25 murder.

1 THE COURT: All right. Would that fact affect
2 your ability to be fair and impartial in this case?

3 PROSPECTIVE JUROR: Not at all.

4 THE COURT: All right. Thank you, ma'am.

5 Yes, sir.

6 PROSPECTIVE JUROR: I had a cousin -- Juror No.
7 78, Your Honor. I had a cousin that was accused of murder
8 in New York City, first cousin, sir.

9 THE COURT: Would that fact affect your ability to
10 be fair and impartial in this case?

11 PROSPECTIVE JUROR: No, sir.

12 THE COURT: Thank you, sir.

13 Yes, sir.

14 PROSPECTIVE JUROR: Actually, this is the first
15 question.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: I apologize for that.

18 THE COURT: Yes, sir.

19 PROSPECTIVE JUROR: I had a brother that was shot
20 and killed, murdered.

21 THE COURT: And your juror number is?

22 PROSPECTIVE JUROR: Nine.

23 THE COURT: Would that fact affect your ability to
24 be fair and impartial?

25 PROSPECTIVE JUROR: No.

1 THE COURT: All right. Thank you, sir.

2 Any of you or any of your immediate family members
3 ever been employed or currently employed with any law
4 enforcement agency in the local, state or federal level,
5 including, but not limited to Columbia Police Department,
6 Richland County Sheriff's Department, SLED, FBI, any law
7 enforcement agency? If so, please stand.

8 (Jurors stands.)

9 THE COURT: Tell us your juror number.

10 PROSPECTIVE JUROR: 183, I work for the City of
11 Cayce Police Department.

12 THE COURT: All right. Thank you.

13 PROSPECTIVE JUROR: Number 104. My -- works for
14 the department of public safety.

15 THE COURT: Thank you.

16 I've already struck you.

17 Yes, sir.

18 PROSPECTIVE JUROR: I was a volunteer with the
19 sheriff's office in --

20 THE COURT: Juror No. 9. All right. Thank you.

21 Yes, sir.

22 PROSPECTIVE JUROR: My wife is employed at the
23 Hopkins Magistrate, sir.

24 THE COURT: Juror 78, right?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: All right. Thank you.

2 PROSPECTIVE JUROR: Juror No. 313. I am
3 arbitrator -- of Lexington County detention.

4 THE COURT: All right. Thank you.

5 PROSPECTIVE JUROR: My son is also investigator
6 police officer in U.S. Air Force.

7 THE COURT: All right. Thank you.

8 Yes, ma'am.

9 PROSPECTIVE JUROR: I am Juror No. 7. I have a
10 cousin who works with the Richland County Police Department.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR: Juror No. 232. My cousin is a
13 federal police officer in Virginia, but she does come down
14 here.

15 THE COURT: All right. Thank you.

16 Yes, ma'am.

17 PROSPECTIVE JUROR: Juror No. 239. My niece's
18 husband is policeman.

19 THE COURT: All right. Thank you.

20 If you have ever testified for the State or
21 defense in any criminal case, please stand. If you ever
22 testified for the State or defense in a criminal case,
23 please stand.

24 Yes, ma'am, juror number?

25 PROSPECTIVE JUROR: 140.

1 THE COURT: All right. Tell us about it.

2 PROSPECTIVE JUROR: Long time ago, I was probably
3 around 21 years of age, I testified in a murder trial.

4 THE COURT: All right. Thank you.

5 Any member of the jury panel --

6 Sorry, go ahead.

7 PROSPECTIVE JUROR: Sorry. Your Honor, I don't
8 know if this is relevant or not, but I am designee for
9 custodian of records for Palmetto Health Richland.

10 THE COURT: The designee --

11 PROSPECTIVE JUROR: To the custodian --

12 THE COURT: To the custodian of records --

13 PROSPECTIVE JUROR: Yes, so I've testified --

14 THE COURT: As a records custodian --

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: -- for the Richland Palmetto --

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: All right. Thank you.

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: All right. Thank you.

21 If any member of the jury panel is a contributor
22 to or member of any group which has as its primary concern
23 the promotion of law enforcement or victim's rights, such as
24 CAVE, MADD, SADD, Sister Care or neighborhood watch program
25 or if you are a member or contributor to any program who has

1 its primary concern or promotion of defendant's rights, such
2 as ACLU, Innocence Project, or any other prisoners rights
3 program. If so, please respond.

4 (There was no response.)

5 THE COURT: No one's standing.

6 If there is anything in the nature of the
7 allegations in this case that would cause any of you any
8 problems sitting as an impartial juror? If so, please
9 stand.

10 (There was no response.)

11 THE COURT: No one is standing.

12 Ladies and gentlemen, the following people may
13 testify in this case --

14 And if you are here, I need you to stand.

15 Sheila Ponds, Chris Cummins, Trina Gist, John
16 Gist, Anastenia Singletary, Juct Duckworth, Lakisha Brown,
17 Rayquan Washington, standing there, Rayquan Corbitt, Antonie
18 Quattlebaum, Jirch Fladger, Robert Washington, Taj Cooper --

19 You're Taj Cooper?

20 MR. COOPER: Yes, sir.

21 THE COURT: All right. Thank you, Mr. Cooper.

22 Karen Ambroziak; Eric Barnes; Matt Ellis; Tena
23 Goff; Clay Nichols, custodian of records for Cingular;
24 custodian of records for Cellco Partnership d/b/a Verizon;
25 Alicia Benedetto; Anthony Branham; Jay Russell from Forest

1 Acres PD; Ted Powell, Richland County Coroner's Office; Gary
2 Watts, Richland County Coroner's Office; EMS worker Ross;
3 EMS worker Ister; Deputy Chief Dave Wilson, Richland County,
4 standing there.

5 Thank you.

6 Investigator Beverly Crane, stand right there;
7 Investigator Bryan Godfrey, standing there; Investigator Dow
8 Thompson; Deputy Thomas Hodges; Deputy John Baker; Hodges is
9 in the back (indicating) from Richland County Sheriff's
10 Department; Deputy John Baker from the sheriff's department;
11 Deputy Michael Mazarolle, sheriff's department; Ray
12 Livingston, back there, sheriff's department.

13 (Juror stands.)

14 THE COURT: I'll get to the questions after I go
15 through the list.

16 David Goff, sheriff's department; Chris Lindler,
17 sheriff's department, Investigator Ben Bolding, sheriff's
18 department; Carl Craig, sheriff's department; Lieutenant
19 Scott McDonald, sheriff's department; Shawn McDaniels,
20 sheriff's department; Investigators Trisha Odom, Tonda
21 Scott, Odom is standing there in the back.

22 Thank you.

23 Tonda Scott, Howell Siniard and Gray Amick, all
24 from the sheriff's department; Lieutenant Zane Padgett,
25 sheriff's department, standing back there (indicating);

1 Patricia Weed, sheriff's department; David Collins,
2 sheriff's department; Curtis Bennett, sheriff's department;
3 Diane Bodie, sheriff's department, standing back there
4 (indicating); Major Stan Smith from the sheriff's
5 department; Stan Richards from the sheriff's department;
6 Christine Barrickman from the sheriff's department; Michael
7 Bouknight, sheriff's department; Christopher Duke, sheriff's
8 department; Tom Darnell, sheriff's department; William
9 Cedarstaff, sheriff's department.

10 If you are a friend, associate, acquaintance of
11 any of those perspective witnesses? If so, please stand.

12 Yes, ma'am, juror number?

13 PROSPECTIVE JUROR: 239. Investigator Livingston
14 is my niece's husband.

15 THE COURT: Is your niece's husband?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Would that fact affect your ability to
18 be a fair and impartial juror should he testify?

19 PROSPECTIVE JUROR: No, it would not.

20 THE COURT: All right. Thank you very much.

21 Yes, ma'am?

22 PROSPECTIVE JUROR: Juror No. 302 --

23 THE COURT: All right. Would that fact affect
24 your ability to be fair and impartial should he testify?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: All right. Thank you.

2 Any additional voir dire questions the State would
3 like me to ask?

4 MS. WALKER: No, Your Honor.

5 THE COURT: Any additional voir dire questions the
6 Defense would like me to ask?

7 MR. SCHNEE: May we approach, briefly, Your Honor,
8 for a second?

9 THE COURT: Yes, sir.

10 (Whereupon, a bench conference was held
11 off the record, in the presence of the
12 jury, but out of the hearing of the
13 jury.)

14 THE COURT: All right. Ladies and gentlemen,
15 I've asked a number of questions, if -- if there are any
16 questions that you did not respond to and you think that you
17 should respond to, now is your opportunity. If we went too
18 fast, if you think you know someone what you didn't stand
19 and say you knew, if you didn't respond to any question that
20 you think you should respond to. If you know of any reason
21 based on all of the questions asked why -- any reason
22 whatsoever why you cannot give both the State and Defense a
23 fair and impartial trial, please stand.

24 (There was no response.)

25 THE COURT: If there's anything going on with any

1 of you this week that would prevent you giving this case
2 your fair and your undivided attention and may have you so
3 distracted that you shouldn't be a juror, please stand.

4 (There was on response.)

5 THE COURT: Anything else the State or the Defense
6 would like me to ask?

7 MS. WALKER: Nothing from the State, Your Honor.

8 MR. SCHNEE: No, Your Honor.

9 THE COURT: All right. We will proceed with jury
10 selection.

11 Let's see, Juror No. 38, who's 38?

12 (Juror stands.)

13 THE COURT: Thank you, No. 38, you may be seated.
14 158, Juror 158. 306, Juror 306 is not considered for
15 selection. All right. Thank you. Juror 240 in the crowd.

16 THE CLERK: 240.

17 PROSPECTIVE JUROR: I can't really hear you back
18 here, Your Honor.

19 THE COURT: Okay. I sorry. I've got my finger on
20 mute.

21 (Laughter.)

22 THE COURT: Okay. No. 240 is not considered as
23 well. All right.

24 MR. SCHNEE: Judge, may we approach for a second?

25 THE COURT: Sure.

1 (Whereupon, a bench conference was held
2 off the record.)

3 THE COURT: All right. Let's have a jury.

4 THE CLERK: Ladies and gentlemen of the jury, as I
5 call your number, please come down, bring all your
6 belongings with you, stand here in front of the microphone
7 facing both the State and the Defense and give us your
8 occupation.

9 No. 239.

10 (Whereupon, a black female, came
11 forward.)

12 PROSPECTIVE JUROR: My name is Patricia Simons.

13 THE CLERK: Just give us your occupation.

14 PROSPECTIVE JUROR: I'm the -- coordinator for
15 Palmetto Health Richland and also, slash, one of the
16 designees to the custodian of records.

17 THE CLERK: What says the State?

18 MS. CAMPBELL: Please present the juror.

19 THE CLERK: What says the Defense?

20 MR. SCHNEE: Please excuse the juror.

21 THE CLERK: Have a seat in the back of the
22 courtroom.

23 No. 183.

24 (Whereupon, a white male, came forward.)

25 PROSPECTIVE JUROR: I'm the fire Marshall for the

1 City of Cayce Public Safety Department.

2 THE CLERK: What says the State?

3 MS. CAMPBELL: Please present the juror.

4 THE CLERK: What says the Defense?

5 MR. SCHNEE: Please seat the juror.

6 THE CLERK: Have a seat in jury box, please.

7 No. 130.

8 (Whereupon, a black female, came
9 forward.)

10 PROSPECTIVE JUROR: Chrystal Jones --

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 CLERK: What says the Defense?

14 MR. SCHNEE: Please seat this juror.

15 THE CLERK: Have a seat in the jury box, please.

16 No. 9.

17 (Whereupon, a white male, came forward.)

18 PROSPECTIVE JUROR: --

19 THE CLERK: What says the State?

20 MS. CAMPBELL: Please present the juror.

21 THE CLERK: What says the Defense?

22 MR. SCHNEE: Please excuse the juror.

23 THE CLERK: Have a seat in the back of the
24 courtroom.

25 No. 160.

1 (Whereupon, a black male, came forward.)
2 PROSPECTIVE JUROR: Cook aid National Health.
3 THE CLERK: What says the State?
4 MS. CAMPBELL: Please excuse the juror.
5 THE CLERK: Have a seat in the back of the
6 courtroom, please.
7 No. 279.
8 (Whereupon, a white male, came forward.)
9 PROSPECTIVE JUROR: Mobile service mechanic.
10 THE CLERK: What says the State?
11 MS. CAMPBELL: Please present the juror.
12 THE CLERK: What says the Defense?
13 MR. SCHNEE: Please seat the juror.
14 THE CLERK: Have a seat in the jury box, please.
15 No. 145.
16 (Whereupon, a black male, came forward.)
17 PROSPECTIVE JUROR: Service tech at Discount Tire.
18 THE CLERK: What says the State?
19 MS. CAMPBELL: Please excuse the juror.
20 THE CLERK: Have a seat in the back of the
21 courtroom, please.
22 No. 144.
23 (Whereupon, a white male, came forward.)
24 PROSPECTIVE JUROR: I do landscaping and
25 irrigation.

1 THE CLERK: What says the State?

2 MS. CAMPBELL: Please present the juror.

3 THE CLERK: What says the Defense?

4 MR. SCHNEE: Please seat the juror.

5 THE CLERK: Have a seat in the jury box, please.

6 No. 304.

7 (Whereupon, a white male, came forward.)

8 PROSPECTIVE JUROR: Banker, BB&T.

9 THE CLERK: What says the State?

10 MS. CAMPBELL: Please present the juror.

11 THE CLERK: What says the Defense?

12 MR. SCHNEE: Please excuse the juror.

13 THE CLERK: Have a seat in the back of the

14 courtroom.

15 No. 222.

16 (Whereupon, a black male, came forward.)

17 PROSPECTIVE JUROR: Customer service

18 representative at --

19 THE CLERK: What says the State?

20 MS. CAMPBELL: Please present the juror.

21 THE CLERK: What says the Defense?

22 MR. SCHNEE: Please seat the juror.

23 THE CLERK: Have a seat in the jury box, please.

24 No. 285.

25 (Whereupon, a black male, came forward.)

1 PROSPECTIVE JUROR: I'm a programmer at --
2 THE CLERK: What says the State?
3 MS. CAMPBELL: Please present the juror.
4 THE CLERK: What says the Defense?
5 MR. SCHNEE: Please seat the juror.
6 THE CLERK: Have a seat in the jury box, please.
7 No. 42.
8 (Whereupon, a white female, came
9 forward.)
10 PROSPECTIVE JUROR: Real estate agent.
11 THE CLERK: What says the State?
12 MS. CAMPBELL: Please present the juror.
13 THE CLERK: What says the Defense?
14 MR. SCHNEE: Please excuse the juror.
15 THE CLERK: Have a seat in the back of the
16 courtroom, please.
17 No. 113.
18 (Whereupon, a white male, came forward.)
19 PROSPECTIVE JUROR: I am corporate chaplain.
20 THE CLERK: What says the State?
21 MS. CAMPBELL: Please present the juror.
22 THE CLERK: What says the Defense?
23 MR. SCHNEE: Please excuse the juror.
24 THE CLERK: Have a seat in the back of the
25 courtroom, please.

1 No. 292.

2 (Whereupon, a white female, came
3 forward.)

4 PROSPECTIVE JUROR: I am in --

5 THE CLERK: What says the State?

6 MS. CAMPBELL: Please present the juror.

7 THE CLERK: What says the Defense?

8 MR. SCHNEE: Please seat the juror.

9 THE CLERK: Have a seat in the jury box, please.

10 No. 284.

11 (Whereupon, a black female, came
12 forward.)

13 PROSPECTIVE JUROR: I'm a registered nurse.

14 THE CLERK: What says the State?

15 MS. CAMPBELL: Please present the juror.

16 THE CLERK: What says the Defense?

17 MR. SCHNEE: Please excuse the juror.

18 THE CLERK: Have a seat in the back of the
19 courtroom.

20 No. 84.

21 (Whereupon, a black male, came forward.)

22 PROSPECTIVE JUROR: Manager of -- department of

23 C&C --

24 THE CLERK: What says the State?

25 MS. CAMPBELL: Please present the juror.

1 THE CLERK: What says the Defense?
2 MR. SCHNEE: Please seat the juror.
3 THE CLERK: Have a seat in the jury box, please.
4 No. 88.
5 (Whereupon, a black female, came
6 forward).
7 PROSPECTIVE JUROR: -- advocate Blue Cross Blue
8 Shield.
9 THE CLERK: What says the state?
10 MS. CAMPBELL: Please present the juror.
11 THE CLERK: What says the Defense?
12 MR. SCHNEE: Please seat the juror.
13 THE CLERK: Have a seat in the jury box, please.
14 No. 104.
15 (Whereupon, a white female, came
16 forward.)
17 PROSPECTIVE JUROR: -- Blue Cross Blue Shield.
18 THE CLERK: What says the State?
19 MS. CAMPBELL: Please present the juror.
20 THE CLERK: What says the Defense?
21 MR. SCHNEE: Please excuse the juror.
22 CLERK: Have a seat in the back of the courtroom,
23 please.
24 No. 32.
25 (Whereupon, a white female, came

1 forward.)

2 PROSPECTIVE JUROR: Administrative assistance

3 Russell Jeffcoat Real Estate.

4 THE CLERK: What says the State?

5 MS. CAMPBELL: Please present the juror.

6 THE CLERK: What says the Defense?

7 MR. SCHNEE: Please seat the juror.

8 THE CLERK: Have a seat in the jury box, please.

9 No. 232.

10 (Whereupon, a white female, came

11 forward.)

12 PROSPECTIVE JUROR: I'm a CT technologist for

13 Kershaw Health.

14 THE CLERK: What says the State?

15 MS. CAMPBELL: Please present the juror.

16 THE CLERK: What says the Defense?

17 MR. SCHNEE: Please excuse the juror.

18 THE CLERK: Have a seat in the back of the

19 courtroom, please.

20 No. 140.

21 (Whereupon, a white female, came

22 forward.)

23 PROSPECTIVE JUROR: I work part time for South

24 Carolina DHEC Environmental Preservation.

25 THE CLERK: What says the State?

1 MS. CAMPBELL: Please present the juror.

2 THE CLERK: What says the Defense?

3 MR. SCHNEE: Please excuse the juror.

4 THE CLERK: Have a seat in the back of the
5 courtroom, please.

6 Reviewing the strikes, for the State I have two,
7 for the Defendant, I have nine.

8 No. 302.

9 (Whereupon, a white female, came
10 forward.)

11 PROSPECTIVE JUROR: I'm a certified veterinary
12 technician.

13 THE CLERK: What says the State?

14 MS. CAMPBELL: Please present the juror.

15 THE CLERK: What says the Defense?

16 MR. SCHNEE: Please seat the juror.

17 THE CLERK: Have a seat in the jury box.

18 No. 248.

19 (Whereupon, a black female, came
20 forward.)

21 PROSPECTIVE JUROR: Educator.

22 THE CLERK: What says the State?

23 MS. CAMPBELL: Please present the juror.

24 THE CLERK: What says the Defense?

25 MR. SCHNEE: Please seat the juror.

1 THE CLERK: Have a seat in the jury box, please.

2 PROSPECTIVE JUROR: Jury box.

3 (Laughter.)

4 THE COURT: No. 303.

5 (Whereupon, a black male, came forward.)

6 PROSPECTIVE JUROR: -- psychiatry for Palmetto
7 Health Baptist.

8 THE CLERK: What says the State?

9 MS. CAMPBELL: Please present the juror.

10 THE CLERK: What says the Defense?

11 MR. SCHNEE: Please seat the juror.

12 THE CLERK: Have a seat in the jury box, please.

13 No. 185.

14 (Whereupon, an Asian female, came
15 forward.)

16 PROSPECTIVE JUROR: I'm a stay at home mom.

17 THE CLERK: What says the State?

18 MS. CAMPBELL: Please present the juror.

19 THE CLERK: What says the Defense?

20 MR. SCHNEE: Please seat the juror.

21 THE CLERK: Have a seat in the jury box, please.

22 THE COURT: Are there any matters of law regarding
23 the jury selection?

24 MS. CAMPBELL: Beg the Court's indulgence.

25 (pause.)

1 MS. CAMPBELL: Nothing from the State, Your Honor.

2 MR. SCHNEE: May I just have one minute, Your

3 Honor?

4 (Pause.)

5 MR. SCHNEE: No motions, Your Honor.

6 THE COURT: All right. Ladies and gentlemen, you

7 have been selected to be the jury in the trial of this case.

8 I'm going to ask you to step to the jury room for a few

9 minutes while I speak with the other jurors and with the

10 lawyers. We'll have you come back soon. Once you've

11 selected on the jury, you cannot discuss the case in any

12 form or fashion until I tell that you it is time to do so.

13 That will be after you've heard the entire case, including

14 the arguments of counsel and the instruction by the Court.

15 So, please, go to the jury room. We'll have you come back

16 soon.

17 (Whereupon, the jury left the courtroom

18 at 1:25 p.m.)

19 THE COURT: All right. Madam Clerk, the folks

20 that weren't selected, what do you want them to do?

21 THE CLERK: They go back downstairs.

22 THE COURT: All right. Thank you all. If you

23 will go back downstairs.

24 (Whereupon, the remaining members of the

25 jury panel left the courtroom at 1:26

1 p.m.)

2 THE COURT: With regard to our scheduling, are you
3 ready to move forward?

4 MR. SCHNEE: I just have two other motions I need
5 to take up?

6 THE COURT: How long do you think those motions
7 will take? First of all, what are the motions?

8 MR. SCHNEE: On my list that I already handed up
9 to you, that would be numbers five, six, seven, 10 and 11.
10 I believe nine is by consent by the State.

11 THE COURT: All right. I don't have none -- none
12 of these are numbered, so I'm not sure which ones you're
13 talking about.

14 MR. SCHNEE: Well, I handed up a list of motions.
15 Does Your Honor need another copy of that?

16 THE COURT: All right. Number what now?

17 MR. SCHNEE: Five, six, seven, 10 and 11 and
18 number nine, I believe, is by consent.

19 THE COURT: All right. So I would think 20 to 30
20 minutes would be all we would need do all of these. All
21 right.

22 That sound right to you, Ms. Campbell?

23 MS. CAMPBELL: Yes, sir.

24 THE COURT: All right. I'm going to have the jury
25 go to lunch and come back at 3:00 and we'll come back at

1 2:30.

2 MR. SCHNEE: Sounds good.

3 THE COURT: All right. If you will bring them
4 back out, please.

5 BAILIFF: Yes, sir.

6 (Whereupon, the jury returned to the
7 courtroom at 1:28 p.m.)

8 THE COURT: And, ladies and gentlemen, generally,
9 when you come into the courtroom, we'll want to make sure
10 that everyone's ready to come in before you come in. I know
11 that sometimes someone will go off to the restroom or
12 something, but make sure that everyone is ready before the
13 jury comes in.

14 We've reached the moment where it's time for
15 lunch, which I'm sure y'all are well aware of that. We'll
16 need you back at 3:00 o'clock.

17 Now, ladies and gentlemen, once you're selected on
18 the jury, when you come back, you will follow the directions
19 of the bailiff and come in the back hallway area. At no
20 time should you come through the courtroom (indicating), at
21 no time should you congregate out in the area where the
22 general public may congregate or people who may otherwise
23 have something to do with this case and may congregate. We
24 don't want you to be exposed to any type of loose
25 conversation, inadvertent conversation concerning this

1 matter. So we'll take lunch now. We need you back in the
2 jury room at 3:00 o'clock. Have a good lunch.

3 (Whereupon, the jury left the courtroom
4 at 1:31 p.m.)

5 THE COURT: All right. We'll break now until
6 2:30.

7 MS. WALKER: Thank you.

8 (Whereupon, a short recess was held.)

9 THE COURT: All right. Motions.

10 MR. SCHNEE: May it please the Court, Your Honor.

11 THE COURT: Yes.

12 MR. SCHNEE: First, I would like to start with my
13 motion number six. You have a typed-up motion that I handed
14 up as well with that. It's motion to exclude all
15 photographs showing any autopsy and gruesome photographs. I
16 know there are quite a large number of crime scene
17 photographs. I don't know if they plan on introducing any
18 autopsy photographs. There aren't that many of them. I
19 would simply like to get a pretrial ruling on which ones are
20 useful to the prosecution without it being prejudicial and
21 which ones need to be excluded. If we get through that,
22 pretty much all of the rest of them will come in by consent.
23 I would like to go through all of those and deal with them
24 pretrial and not have to send the jury out and not have to
25 do side bars or anything else, just streamline the process.

1 THE COURT: Yes, sir.

2 Ms. Campbell?

3 MS. CAMPBELL: Your Honor, I believe that was one
4 the motions that were before you last time. I do have a
5 transcript from your rulings last time. We would like to
6 make that a part of Court's record. And I believe you
7 indicated you would rule on that as it came up. At this
8 point, we anticipate, at least for today for the first
9 several witnesses just putting in the same photographs we
10 did last time. I don't know if he has had a chance to
11 review those. We are not anticipating any additional.

12 THE COURT: All right.

13 Have you seen the photographs they want to offer
14 today?

15 MR. SCHNEE: I have not. I mean, I've seen them
16 in general —

17 MS. CAMPBELL: They're the same exact ones that we
18 marked and that are identified in the transcript from last
19 time.

20 THE COURT: Any objection?

21 MR. SCHNEE: Well, I object — I'm going to object
22 to the same ones I objected to last time.

23 THE COURT: All right. Do you have any additional
24 argument that you didn't make the last time?

25 MR. SCHNEE: Judge, I stand by my written motion

1 for all of them.

2 THE COURT: All right.

3 Well, as a preliminary matter, I deny the motion.

4 And if they -- any individual photograph that you have a
5 particular objection to, then we'll address the objection as
6 they're offered.

7 MR. SCHNEE: Judge, I would also move at this time
8 to settle records of all witness and my client and
9 codefendants that might be testifying just to make everyone
10 crystal clear as to what is impeachable and what is not.

11 MS. CAMPBELL: Your Honor, we might be able to
12 get -- on our next break, I can get with him on the on the
13 codefendant and his client and if there are any disputes, we
14 can bring it to the Court's attention. But that's,
15 certainly, not something that's going to come up today, just
16 to save the Court time.

17 THE COURT: All right.

18 Mr. Schnee?

19 MS. CAMPBELL: The other rap sheets on the lay
20 witness have been turned over.

21 MR. SCHNEE: Yes, I don't remember any of them
22 having anything.

23 MS. CAMPBELL: They don't that I'm aware of.

24 THE COURT: Okay.

25 MS. CAMPBELL: But I could be wrong, but I don't

1 recall. But I will double check that, too. But just to
2 save the Court time, we can do that on break.

3 THE COURT: Okay.

4 MR. SCHNEE: Next, Your Honor, I request to view
5 all exhibits, photographs, any boards or demonstratives
6 prior to beginning of trial. Obviously, we can -- but I
7 don't know what else they plan to introduce. I would like
8 to be able to view all of it before it is shown to the jury
9 and before there are more interruptions to the procedures.

10 THE COURT: All right.

11 Ms. Campbell?

12 MS. CAMPBELL: Your Honor, I believe he has seen
13 the blow-up of the fingerprint because that was in last
14 time. And I believe the aerial view of the area -- other
15 than that, he has the opportunity to view all the evidence
16 in the case as well as he's been provided his own copy of
17 all of the photographs in the case.

18 THE COURT: All right. Are there any additional
19 exhibits offered that the Defense did not expect to be
20 offered or that the State offers the Defendant did not --
21 Defense did not see?

22 MS. CAMPBELL: He's had an opportunity to see
23 every single exhibit we have. He's reviewed all the
24 evidence in the case, so he's seen everything. As far as
25 what -- we aren't, of course, introducing every single item

1 into evidence. He's seen everything other than I believe
2 maybe some -- something with respect to autopsy that might
3 be coming in, things of that nature, but he has seen
4 everything, Your Honor. As far as the general board, I will
5 be glad to show him that one.

6 THE COURT: Uh-huh.

7 MS. CAMPBELL: This is --

8 MR. SCHNEE: That's good.

9 MS. CAMPBELL: Good.

10 MR. SCHNEE: (The witness nodded head.)

11 MS. CAMPBELL: He's seen all the -- and he's got a
12 copy of every photo we have.

13 THE COURT: All right.

14 Well, what else, Mr. Schnee?

15 MR. SCHNEE: Next, Your Honor, I request a hearing
16 to determine if there are -- there are two statements in
17 particular. One of them has testified -- they both have
18 been testified to collect the exact same evidence a day a
19 part. It is physically impossible for them both to have
20 been telling the truth. If, in fact, one of them has lied,
21 this is a very key piece of evidence in terms of the
22 Defense. As Your Honor is well aware, this incident not
23 only involves one apartment, but there is a -- window in an
24 apartment across the parking lot. That bullet was found
25 either that night or the next day, it's somewhat unclear.

1 But it is not a complete match to the bullet that was taken
2 from Mr. Corbitt during the autopsy.

3 Mr. Isaac has always maintained and it is our
4 contention that Mr. Corbitt was reaching for what appeared
5 to be a gun. If, in fact, there is a projectile found
6 across the street, it would make sense that Mr. Corbitt did,
7 in fact -- the police were not there for several minutes.
8 It's very clear that other people had gone into the scene,
9 into the actual apartment and taken certain items out.
10 Obviously, some was taken out by -- based on, at least, the
11 evidence from initial responding officer and what was later
12 found, it's probably very likely that large amounts of
13 marijuana were removed from that apartment before police
14 showed up. It is just as equally likely they picked up a
15 gun --

16 THE COURT: You base that on what?

17 MR. SCHNEE: Based on the --

18 THE COURT: That marijuana was removed from the
19 residence, what do you base that on?

20 MR. SCHNEE: Based on the testimony and reports
21 from the initial responding officer and the crime scene
22 officer saying extremely strong orders of marijuana. They
23 found large garbage bags with nothing more than half gram of
24 residue from what has apparently been placed into evidence.
25 The only way to have such a strong order -- and the other

1 testimony knowing that Mr. Corbitt was, in fact, a drug
2 dealer, all of that combined shows that there were
3 definitely people that went into that apartment. And if
4 they went into the apartment, they easily could have taken a
5 gun, at which point, the crime scene could be tainted, which
6 bolsters my client's argument that Mr. Corbitt was -- which
7 gets us back to the original two crime scene witnesses, who
8 testified they both collected that projectile two separate
9 days.

10 THE COURT: All right.

11 Mr. Campbell?

12 MS. CAMPBELL: I missed the part where his client
13 has ever testified or put a statement or anything about the
14 victim shooting. I believe he said he thought he was
15 reaching for a gun was his final testimony. I could be
16 wrong.

17 MR. SCHNEE: That is the testimony of my client as
18 he -- and then he ran away. It's entirely possible that
19 Mr. Corbitt did fire a round afterwards. And if he did,
20 that is highly exculpatory.

21 THE COURT: What is it you want me to do?

22 MR. SCHNEE: Well, Judge, there are two witnesses.
23 I believe they are both in the courtroom right now. They
24 both testified to picking up the same evidence on two
25 separate days. I would like to have a hearing to determine

1 which one is, first of all, being truthful, if either, and
2 if not --

3 THE COURT: So you want me to play the role of the
4 jury and weigh the credibility?

5 MR. SCHNEE: No, sir, if one of these witnesses
6 has committed perjury, which would be the definition of
7 untruthful testimony, then I should be entitled to not only
8 cross-examine them on that, but, possibly, get an
9 instruction to the jury that perjury should be considered.

10 THE COURT: So you want me to determine whether
11 one of them committed perjury?

12 MR. SCHNEE: In a certain sense, yes, Your Honor.

13 THE COURT: And then what do I do, sentence then
14 to perjury or what?

15 MR. SCHNEE: You can, certainly, have them
16 arrested, yes, Your Honor. You can hold them in contempt.
17 Both of those are felonies and I think that is impeachment
18 evidence.

19 THE COURT: I see. All right.

20 MS. CAMPBELL: May it please the Court, Your
21 Honor. The evidence that he's referring to, which is a
22 projectile that was collected that evening by Trisha Odom.
23 I believe it was -- said that that was collected by him. It
24 was not intentional on anyone's part. He has the testimony.
25 He can impeach whoever he wants with it. I don't know what

1 further things he would get from the Court as far as that.

2 There was no intentional perjury by anyone, Your Honor. And

3 he's got --

4 THE COURT: I decline to conduct a hearing to
5 weigh credibility of testimony.

6 MS. CAMPBELL: Thank you.

7 MR. SCHNEE: Your Honor, the only other motions I
8 have, which I provided in writing as well, is request to
9 prevent the solicitor's office from leading witnesses. It
10 is a common practice that they lead witnesses through much
11 of their testimony and I'm objecting to that on the front /
12 end of the record.

13 THE COURT: And if I sustain the objection, then
14 what would be the meaning?

15 MR. SCHNEE: Judge, I simply want Your Honor to
16 remind them that the rules of evidence require that they ask
17 open-ended questions of their witnesses.

18 THE COURT: All right. So instructed.

19 MS. CAMPBELL: Thank you.

20 MS. WALKER: Thank you.

21 THE COURT: All right. What else?

22 (There was no response.)

23 THE COURT: All right. 3:00 o'clock, no more
24 pretrial motions. Ready for the jury?

25 BAILIFF: Your Honor, all of the jury is not in

1 it.

2 THE COURT: All right. How many do we have?

3 BAILIFF: We're still waiting on one.

4 MS. CAMPBELL: Your Honor, if I may, a scheduling
5 matter?

6 THE COURT: Yes.

7 MS. CAMPBELL: Your Honor, as far as -- Ms. Walker
8 has been requested by the attorney general's office to
9 participate in a program, the silent witness domestic
10 violence program and it's my understanding that at 11:00 on
11 Wednesday, they requested that -- 11:00 tomorrow, they
12 requested that she go the State ground, I believe, and she
13 will be holding a memorial of one of the victims of a case
14 she tried recently. They did make this request a while
15 back. I didn't know if we would accommodate her or them and
16 I just wanted to bring it to the Court's attention. I have
17 talked to Defense counsel about this case. There's not a
18 whole lot that's in contention other than his client's
19 testimony. We do anticipate finishing testimony by
20 Wednesday with normal hours.

21 THE COURT: All right.

22 MS. CAMPBELL: I didn't know if the Court could --
23 I know Ms. Walker is anxious to do this.

24 THE COURT: So you want us to recess for what
25 period of time?

1 MS. WALKER: Your Honor, I think it usually takes
2 around an hour, so if I could leave here at 10:45, I think
3 could be down there in time to do this and be back around
4 noon. If Your Honor is not inclined to break, I understand.

5 THE COURT: I'm sure we can work around that.

6 MS. CAMPBELL: Thank you.

7 MS. WALKER: Thank you.

8 MS. CAMPBELL: Your Honor, just in anticipation
9 of -- we should have submitted these. I'm just handing up
10 some case law on arrest with the Court's permission.

11 THE COURT: All right. Ms. Campbell, you said you
12 were about to hand up the transcript with some prior
13 ruling --

14 MS. CAMPBELL: I'm sorry.

15 MR. SCHNEE: That should have already been part of
16 the record.

17 THE COURT: Oh, that's an extra copy so that my
18 clerk can have a copy.

19 As we get ready for openings, we'll be at ease for
20 a moment. We'll see how we're coming with that last juror.

21 MS. CAMPBELL: Thank you, Your Honor.

22 (Whereupon, a short recess was held.)

23 THE COURT: Is there anything else before we bring
24 in the jury from the State?

25 MS. WALKER: Nothing from the State, Your Honor.

1 THE COURT: From the Defense.

2 MR. SCHNEE: No, Your Honor.

3 THE COURT: All right. Let's bring the jury in.

4 BAILIFF: Yes, Your Honor.

5 (Whereupon, the jury returned to the
6 courtroom at 3:07 p.m.)

7 BAILIFF: Your Honor, the jury is present.

8 THE COURT: Thank you, sir.

9 Welcome back, ladies and gentlemen. If you all
10 will stand at this time to be sworn.

11 THE CLERK: Raise your right hand.

12 (Where, the jury was sworn.)

13 THE CLERK: Take your seat, please.

14 THE COURT: Well, ladies and gentlemen, I guess
15 several weeks ago, you probably received a summons in the
16 mail telling you that you had to report for jury duty.
17 Pursuant to receipt of that summons, you appeared today for
18 jury qualifications. And you went through the jury
19 qualification this morning with Judge Manning. You were
20 then sent up here for jury selection and we went through the
21 voir dire process, that's when we asked you certain
22 questions. And following the voir dire process, you were
23 selected by the State and the Defense to be the jury in the
24 trial of this case. And now you've taken an oath to well
25 and duly try this and render a true verdict according to the

1 law and according to the evidence so help you God. And if
2 you fulfill that oath, then you will have done what you have
3 sworn -- taken an oath to do and no one will have any right
4 to complain about anything that you do.

5 Now, out of all the folks who were summoned to
6 jury duty, out of all the people who live here in Richland
7 County, out of all the people who live in the State of South
8 Carolina, out of all the people who live in the United
9 States of America, out of all of the people who live in the
10 world, only the 12 of you who will deliberate can decide
11 whether or not the Defendant is guilty or not guilty of the
12 charges contained in these indictments. And you will make
13 that decision, whether he's guilty or not guilty, based on
14 your consideration of the evidence presented during the
15 course of this trial and applying the law as I will instruct
16 you.

17 Now, just as only you can decide the facts of this
18 case -- and as jurors, that is your responsibility to
19 determine the facts of this case, just as only you can
20 determine the facts of this case, as the presiding judge, I
21 am the sole judge of the law in this case and you must
22 accept as correct the law as I instruct it to you at this
23 time, during the trial and in grave detail at the end of the
24 trial. You will find the facts as you find them to be and
25 apply the law as I will give it to you and then you will

1 reach a verdict, whether it be guilty or not guilty, based
2 on the evidence presented during the trial.

3 Now, this case comes into court as a result of
4 three indictments returned by the Grand Jury of Richland
5 County. The indictments charge the Defendants, Greg
6 Kentrell Isaac, with the offense of murder, burglary
7 first-degree and attempted armed robbery. Now, the
8 indictments are simply the charging papers. The indictments
9 are not evidence. The Defendant has plead not guilty to the
10 charges contained in the indictments and that plea places
11 the burden on the State to prove the Defendant guilty. And
12 the State has the burden of proving the Defendant guilty
13 beyond a reasonable doubt.

14 Now, it is extremely important that you perform
15 your duty as jurors diligently and conscientiously because
16 ordinarily, there is no way to correct an erroneous
17 determination of the facts by a jury. You will determine
18 the facts of this by listening to the evidence and weighing
19 the credibility of the witnesses and of the evidence
20 presented during the course of this trial.

21 As I stated to you a little earlier before you
22 went out, it would be improper for you to engage in any form
23 of premature deliberations or discussions of the case.
24 You're not to discuss the case with each other, with anyone
25 who's not on the jury and you're not to engage in any form

1 of independent investigation or research. You must decide
2 this case solely based on the evidence presented here in
3 this courtroom. You're not to read anything about the case,
4 listen to anything about the case, watch any news reports
5 about the case, engage in any form of Internet or social
6 networking conversations concerning the case because you are
7 to listen to the case and discuss the case solely with the
8 folks who listened to the same thing that you listened to
9 and then through that process of deliberation reach your
10 verdict.

11 It's important that you keep an open mind and not
12 decide any issue in the case until all of the evidence has
13 been presented in the case and the parties have had an
14 opportunity to make closing arguments and I have had the
15 opportunity to instruct you on the law that applies to the
16 case.

17 Now, in a moment, the State through the
18 solicitor's office will make an opening statement in which
19 the State will explain what they believe the evidence would
20 show. And the Defendant, through his attorney, would then
21 have the opportunity to make an opening statement as well,
22 though he's not required to do so.

23 Now, later in the process, I will appoint one of
24 you to serve as the foreperson of the jury. And the
25 foreperson will have the responsibility as serving as the

1 spokesperson for the jury. That person will have the
2 responsibility of presiding over the jury deliberations.
3 And that person will have the responsibility of signing the
4 verdict form representing the unanimous verdict of the jury
5 once the jury reaches a unanimous.

6 I look forward to working with you all on this
7 case. I will do all that I can to make it go as smoothly as
8 possible, for you not to get too worn out sitting over there
9 in those chairs for long periods of time, so we'll take a
10 stretch every now and then and we'll take breaks. If you
11 unduly tired or worn out for any particular reason, you
12 bring it to my attention and I promise you I will address
13 those concerns by taking a break if we need to. We want to
14 do all we can to keep you as comfortable as possible
15 considering the circumstances.

16 So with that being said, we're going to turn now
17 to the State for opening statements.

18 MR. STEADMAN: May it please the Court?

19 THE COURT: Yes, sir.

20 MR. STEADMAN: No child should ever see what
21 eight-year-old Rayquan Washington witnessed on October 27th,
22 2005. Make no mistake about it, he is scared by what he saw
23 that night. From approximately 20 feet away, Rayquan
24 Washington watched helplessly as his dad, Tony Corbitt, was
25 beat repeatedly and then shot to death in his own home by

1 the Defendant, Greg Isaac.

2 October 27th, 2005 was supposed to be a great day
3 for Tony and his son, Rayquan. They spent most of the day
4 together. They went shopping, went to the mall. Tony
5 bought Rayquan a pair of shoes and then they went out for
6 dinner. After dinner, they headed back to their apartment
7 off of Fernandina Road. And when they got back to their
8 apartment that evening, Rayquan eventually went upstairs to
9 his bedroom and Tony stayed downstairs talking on the phone
10 and watching TV in the living room.

11 But what Tony didn't know was that at that point
12 in the evening, Greg Isaac and his friend had already agreed
13 to rob Tony. And they were just waiting in the parking lot
14 for Tony to get home that night. They believed that Tony
15 had marijuana and money in his apartment. And it was Greg
16 Isaac and Tavares World's plan to go over there and rob him.

17 They also got the help of their friend, Vernorris
18 Dixon. He was supposed to be the get-away driver that
19 night. He was told to wait in the parking lot until they
20 came back. And, ladies and gentlemen, you're going to hear
21 from Vernorris Dixon, the get-away driver. He's going to
22 take this witness stand and he's going to tell you what
23 happened that night.

24 It was about 9:30 p.m. when Greg and Tavares
25 approached Tony's apartment. Soon as they got up to the

1 door, Tavares kicked the door in, they both rush inside,
2 Greg pulled out a pistol and he pointed it at Tony.
3 Tavares, meanwhile, attacked Tony, repeatedly kicking him
4 and punching him demanding his money. While all of this is
5 happening in the living, at the top of the steps sat
6 eight-year-old Rayquan, peeking around the corner as he
7 watched two complete strangers come into his home and attach
8 his father.

9 Tony, he defended himself in his own home. He
10 fought back until, eventually, Greg Isaac pointed a pistol
11 at Tony and fired several shots, one of which hit Tony in
12 the stomach. As soon as Greg fired those shots, he and
13 Tavares fled out the apartment. They hopped in their
14 awaiting vehicle and they fled the scene.

15 Tony knew he had been shot and he knew he needed
16 help quick. So he rushed out of the apartment and he went
17 to his neighbor's for help. He collapsed on the ground
18 right outside of his neighbor's front door. A few neighbors
19 rushed to his side. They called 911. And they asked Tony
20 what happened? Who shot you? And Tony, laying on the
21 sidewalk, he tried to speak, but nothing came out. And he
22 took his last breath right there on the sidewalk outside of
23 his apartment. A few of the neighbors realized that Rayquan
24 was still inside the apartment. They went inside and they
25 grabbed Rayquan and they tried to shield him as much as

1 possible from had just happened.

2 Officers soon arrived on scene and a murder
3 investigation began. Witnesses told the officers they heard
4 a loud bang. They heard fighting, shouting and then
5 gunshots. Crime scene investigators showed up and they
6 inspected the inside of the apartment for any evidence that
7 may be useful to solve the crime. And what they found was a
8 fingerprint on a lamp that was knocked over in the living
9 room during the struggle.

10 Now, early on, investigators found no matches to
11 this fingerprint. Investigators questioned hundreds of
12 people about the incident, friends, family, acquaintances,
13 but nobody could provide any information that would lead to
14 a viable suspect. Investigators, after questioning every
15 lead they could find, had nowhere else to go. The case went
16 cold and it was eventually assigned to the cold case squad
17 at the sheriff's department.

18 Eventually, the case was passed down from
19 investigator to investigator, each working that case. Year
20 after year went by and the case remained unsolved. But,
21 thankfully, the Richland County Sheriff's Department never
22 gave up on that case. And Tony's, certainly, never gave up
23 hope. And seven years after the murder in March of 2012,
24 investigators got a break in that case. The fingerprint
25 that was found on that lamp inside the apartment on the

1 living room floor was matched positively to the Defendant
2 (indicating) Greg Isaac. He was brought in for questioning
3 in the sheriff's department and he was advised of his
4 rights. And then he went on to make a full written
5 confession that he was, in fact, the one who murdered Tony
6 Corbitt. Finally, seven years after this murder, the family
7 had their answer. Greg Isaac is responsible for the murder
8 of Tony Corbitt.

9 Greg Isaac is charged with murder, attempted armed
10 robbery and burglary in the first-degree. Murder in South
11 Carolina is the killing of another person with malice
12 aforethought. And in this case, going over to somebody
13 else's house armed with a pistol with the intent to rob
14 them, it doesn't get any more malicious than that. That's
15 clear malice aforethought. Attempted armed robbery is
16 attempting to take another person's property by force while
17 armed with a deadly weapon. So when Greg Isaac pointed that
18 pistol in Tony's face and they demanded his money, he
19 committed a crime of attempted armed robbery. Burglary in
20 the first degree is defined as breaking into another
21 person's home, either at night or while armed with a deadly
22 weapon or causing injury to somebody during a burglary. In
23 this case, we have all three because he was armed with a
24 deadly weapon, it was at nighttime and they caused Tony's
25 death.

1 And, ladies and gentlemen, as you know, this is a
2 criminal case and the State has the burden of proof in this
3 case. We have to prove our case beyond a reasonable doubt.
4 Proof beyond a reasonable doubt is proof that leaves you
5 firmly convinced that the Defendant is guilty. It does not
6 require us to overcome every and all possible doubt. And it
7 does not require us to prove this case to an absolute
8 certainty. But in this case with these facts, we welcome
9 our burden. And at the end of the case, once you've heard
10 from all of the witnesses and you've had a chance to view
11 all of the evidence, we're going to come back before you and
12 we're going to ask you to do what the evidence compels and
13 what justice demands and that's to find Greg Isaac
14 (indicating) guilty of attempted armed robbery, murder and
15 burglary in the first-degree. Thank you.

16 THE COURT: From the Defense?

17 MR. SCHNEE: May it please the Court?

18 Good afternoon. This case that you're going to
19 hear over the next couple of days, the Solicitor describes
20 it as a very horrible and violent act. And it really is.
21 And the Solicitor kept talking about they went in there,
22 they did this, they did that. That's not really what
23 happened.

24 See, what happened is there were really three
25 people involved. First, this was a drug dealer. Second is

1 an 18-year-old scared, threatened and victimized kid. And
2 third, he's an older more violent man who rapes children --

3 MR. STEADMAN: Objection, Your Honor.

4 MR. SCHNEE: -- and shoots at people.

5 THE COURT: The objection is overruled.

6 MR. SCHNEE: Who rapes children, shoots at people
7 and robs them. That's what he does. He's done it for
8 years. And he's pled guilty to doing all that. That man's
9 name is Tavares World.

10 And on the night we're talking about here, Tavares
11 World, who, admittedly, is an acquaintance of Greg Isaac,
12 went to Greg and said, you need to come with me. We're
13 going to go over to this man's house, this drug dealer. He
14 owes me some money or something or he shorted me on a bag or
15 kind of -- Greg got in the car with Tavares World and
16 Vernorris Dixon, didn't really think much of it. He hangs
17 out with him, it's not a big deal. Finally, gets to that
18 apartment. And Tavares starts talking about wanting to
19 break into the place, and trying to rob the man. Greg Isaac
20 says no, I don't want to do that, don't want to do that.
21 Tavares World pulls out a gun, points it to his head and
22 says you are coming to this apartment or you die. That's
23 what that older, violent, child raping, shooting, robbing
24 man said to an 18-year-old kid. So he went to that
25 apartment.

1 Greg did not kick in that door. Greg did not try
2 to fight with Tony Corbitt. He tried to stop the fight. He
3 wanted to leave. And then at the very last minute, Tony
4 Corbitt, the drug dealer, reaches behind his back and is
5 going for a gun. Well, he's -- well, Greg is standing
6 there. And he didn't think this through. He didn't act
7 with malice. He, unfortunately, made a bad decision.

8 Now, the State wants to talk to you about
9 fingerprints. Well, what they're forgetting to tell you is
10 that there was also a bullet recovered in the apartment
11 across the street. Well, that bullet doesn't match the one
12 that's in Tony Corbitt. So who shot that round? They don't
13 want to talk about all the lack of fingerprints from any one
14 else in that apartment. They don't mention the fact in
15 their opening statement that Tony is a drug dealer. They
16 don't mention that the initial responding officers go there
17 and say there's an overwhelming smell of marijuana, find
18 trash bags full of nothing but a couple of drops of powder,
19 just tiny little flakes. Someone or multiple people went
20 into that apartment before the police arrived. They took
21 the marijuana out. And if there was a gun there, they
22 probably took that as well. We don't know because those
23 people aren't going to come and testify.

24 Now, the State, they spent all this time pointing
25 at Greg, pointing at Greg, pointing at Greg, saying it's

THOMAS HODGES DIRECT BY MR. STEADMAN

1 horrible that an eight-year-old goes through this whole
2 ordeal. And it is horrible. But they're pointing at him
3 like he's somehow guilty. Point over there (indicating) in
4 your minds. That's what you need to do as jurors. What
5 have they done as prosecutors, as police officers? What are
6 they going to present? They're going to present to you cop
7 after cop after investigator after crime scene investigator.
8 They're going to rattle off a whole list of -- you heard
9 that list. All of those potential witnesses. There must be
10 50 or 60 police officers that they could call to testify.
11 And not one of them saw any of this. The only person that's
12 going to testify that saw anything that actually happened is
13 Greg (indicating). He's going to get up on that stand and
14 he's going to tell you what happened (indicating). He's
15 going to tell you how he was threatened. He's going to tell
16 you how scared he was. All I am asking you and all Greg is
17 asking you is to keep an open mind, listen to all the
18 evidence. Don't prejudge him because he admits to shooting
19 the man. That doesn't make him guilty of murder. Thank
20 you.

21 MS. CAMPBELL: State calls Thomas Hodges.

22 THEREUPON,

23 THOMAS HODGES,

24 after having been duly sworn, testified as follows:

25 THE CLERK: Have a seat in the witness box, state

THOMAS HODGES DIRECT BY MR. STEADMAN

1 your full name for the record and spell your last.

2 THE WITNESS: Thomas Hodges, H-O-D-G-E-S.

3 DIRECT EXAMINATION

4 BY MR. STEADMAN:

5 Q What is your current occupation?

6 A I'm a criminal investigator for the Lexington County
7 Sheriff's Department.

8 Q How long you been in that position?

9 A I've been at Lexington County Sheriff's Department
10 since October of 2008.

11 Q And what are your duties as an investigator with the
12 Lexington County Sheriff's Department?

13 A I'm a --

14 Q Have you also worked for the Richland County Sheriff's
15 Department?

16 A I have.

17 Q And when did you work for the Richland County Sheriff's
18 Department?

19 A May 2004 to October 2008.

20 Q And what was your position during that time with the
21 Richland County Sheriff's Department?

22 A I was a sheriff's deputy working road parole in
23 the region four area of Richland County.

24 Q And were you assigned a specific area of parole?

25 A I worked region four, which was the Broad River, St.

THOMAS HODGES DIRECT BY MR. STEADMAN

1 Andrews Road area all the way up to northwest Richland
2 County.

3 Q Does that encompass the incident location of Fernandina
4 Road?

5 A Yes, it does.

6 Q And were you working on October 27, 2005?

7 A Yes.

8 Q What point did you become involved in this case?

9 A I received a call for service at the incident location
10 in reference to shots fired.

11 Q And do you have a partner that works with you or is it
12 just you?

13 A I was a sole parole work on shift. I was by myself.

14 Q And what was the nature of that call?

15 A It was a shots fired call and it was -- during the
16 course of me responding there, it was later changed
17 from dispatch that they heard somebody outside
18 screaming.

19 THE COURT: Officer, can you get closer to the
20 microphone?

21 THE WITNESS: I apologize.

22 THE COURT: That works.

23 BY MR. STEADMAN:

24 Q Investigator, I'm going to show you what's been marked
25 as State's 73. Do you recognize that?

THOMAS HODGES DIRECT BY MR. STEADMAN

1 A It appears to be an overhead view of the -- location
2 and the -- location.

3 Q Is that a fair and accurate depiction of what it was on
4 October 27, 2005?

5 A Yes, it appears to be.

6 MR. STEADMAN: Your Honor, at this time, the State
7 would move to introduce State's Exhibit No. 73 into
8 evidence.

9 MR. SCHNEE: No objection.

10 THE COURT: Without objection.

11 (State's Exhibit No. 73 was admitted
12 into evidence.)

13 BY MR. STEADMAN:

14 Q If you don't mind pointing out kind of the route you
15 took.

16 A This is going to be -- here. This is I-26. This is
17 Fernandina Road. I believe the area in question is
18 somewhere around here (indicating), that would put me
19 coming in the second entrance, which you -- I don't
20 believe you can see over here, but it is close the --
21 Road, which is off of this map (indicating).

22 Q And did you confirm that this location was encompassed
23 in Richland County?

24 A The location, yes, is in Richland County.

25 Q Okay. Thank you. You may be seated.

THOMAS HODGES DIRECT BY MR. STEADMAN

- 1 A (Witness complies.)
- 2 Q Do you know how long it took to get on scene from the
- 3 time you received the call?
- 4 A I believe I received it at 9:27 p.m. and I arrived on
- 5 scene at 9:32 p.m. so six minutes.
- 6 Q Do you have a copy of the report in front of you?
- 7 A I do not.
- 8 Q All right. Let me get you that. When you arrived on
- 9 scene, what was the first thing you observed?
- 10 A I observed a black male lying on the ground in front of
- 11 Building [REDACTED]
- 12 Q What was your next step of the investigation once you
- 13 realized that somebody was down there on the ground?
- 14 A I believe I noted my findings. I also noticed a door
- 15 that was opened that appeared to have been forced open.
- 16 Q How did you know the door had been forced open?
- 17 A I saw what appeared to be shards of wood from the door
- 18 frame itself on the ground.
- 19 Q And there was several witnesses on scene at that point?
- 20 A There were people outside, yes.
- 21 Q And did you speak with those witnesses?
- 22 A I eventually spoke with them, yes.
- 23 Q Okay. What did you learn from those witnesses?
- 24 A I believe there were two gunshots heard in the area and
- 25 I people heard screaming beforehand and 911 was called.

THOMAS HODGES DIRECT BY MR. STEADMAN

1 Q And did you get there before EMS or paramedics arrival
2 on scene?

3 A I don't recall seeing them there. It's standard
4 practice the sheriff's department --

5 Q All right. Sir, I'm going to hand up a copy of the
6 report that you did.

7 A Thank you.

8 Q Just take a look at that. So throughout the course of
9 your investigation, once you arrived on scene, what
10 were the steps that you took within your duties as a
11 patrol officer?

12 A I did my best to secure the scene.

13 Q And are you -- how do you mean you secured the scene?

14 A Basically, like set it up where nobody -- keep people
15 clear on it so somebody can come in.

16 Q Okay. And are you responsible for a crime log or do
17 you start that or how does that --

18 A I did not start the crime scene log, but there was one
19 started.

20 Q Okay. Once you started the crime log, what happened
21 next?

22 A Investigators in the crime scene unit responded.

23 Q So after investigators arrive, is your duty fulfilled
24 at that point?

25 A --

THOMAS HODGES CROSS BY MR. SCHNEE

1 Q How do you handle it once investigators get there?

2 A Turn the scene over to them and do what I'm instructed
3 at that point.

4 Q And the crime scene investigators arrived on the scene
5 pretty shortly after --

6 A I know they arrived after, I don't remember the time
7 frame, but they did arrive after, yes.

8 Q Thank you. All right, sir, thank you. No further
9 questions.

10 A Thank you.

11 CROSS-EXAMINATION

12 BY MR. SCHNEE:

13 Q You were the first one on scene?

14 A Yes, sir.

15 Q You know what time you arrived?

16 A 9:33 p.m.

17 Q Okay. What time you were called out there?

18 A Shows dispatch time was 9:27.

19 Q And does it show incident time range -- when did the --

20 A Listed between 9:20 and 9:33.

21 Q So the start time is 9:20?

22 A That's the estimate, yes.

23 Q Okay. The end time is when you show up?

24 A That's correct.

25 Q So 13 minutes?

THOMAS HODGES CROSS BY MR. SCHNEE

- 1 A According to this, yes.
- 2 Q Did you, actually, go into the apartment?
- 3 A I do not recall going in there. If I would have gone
- 4 in, I believe I would listed it in the report. I know
- 5 two of the officers that arrived shortly after I did,
- 6 they did go inside.
- 7 Q Okay. When you got there, you saw the outside of the
- 8 apartment?
- 9 A I saw the outside, yes.
- 10 Q Okay. The door was kicked in?
- 11 A It appeared to be forced in somewhat.
- 12 Q Okay. And you smelled a very strong odor of marijuana?
- 13 A I did smell an odor of marijuana.
- 14 Q Do you know if any was found inside the apartment?
- 15 A I'm not aware if any was or not.
- 16 Q Okay. Now, was Rayquan Washington there when you got
- 17 there?
- 18 A That is the --
- 19 Q Decedent's son.
- 20 A -- decedent's son? I don't recall him being inside. I
- 21 remember seeing him outside of the apartment.
- 22 Q So he had already left when you got there?
- 23 A From what I remember, yes.
- 24 Q And he was with other adults at that point since he's
- 25 only eight years old?

THOMAS HODGES CROSS BY MR. SCHNEE

- 1 A He was with others, yes.
- 2 Q Okay. So you -- let me stop right there. You said you
- 3 secured the crime scene?
- 4 A That's correct.
- 5 Q Okay. And I believe your word were to prevent people
- 6 from going in?
- 7 A That's correct.
- 8 Q Okay. So for the 13 or so minutes before you got
- 9 there, anyone could have gone in or come out?
- 10 A That's correct.
- 11 Q All right. So you don't know what happened before you
- 12 got there?
- 13 A I was not there, no, sir.
- 14 Q Any of the witnesses you talk to see anyone leaving the
- 15 area at a high rate, running away?
- 16 A May I have a moment?
- 17 Q Sure.
- 18 A The only thing I know to tell you in my report is that
- 19 one of the witnesses reported seeing a black colored
- 20 vehicle with dark tinted windows, but they had no idea
- 21 whether it was involved or not.
- 22 Q Okay. Thanks. No further questions.
- 23 A Thank you.
- 24 THE COURT: Anything further?
- 25 MR. STEADMAN: No, Your Honor.

RAY LIVINGSTON DIRECT BY MS. WALKER

1 THE COURT: All right. Thank you, sir.

2 THE WITNESS: Thank you.

3 THE COURT: Next witness.

4 MS. WALKER: State calls Investigator Ray
5 Livingston.

6 THEREUPON,

7 RAY LIVINGSTON,

8 after having been duly sworn, testified as follows:

9 THE CLERK: Have a seat in the witness box, spell
10 your last name, please.

11 THE WITNESS: All right. My name is Ray
12 Livingston, L-I-V-I-N-G-S-T-O-N.

13 DIRECT EXAMINATION

14 BY MS. WALKER:

15 Q Good afternoon, sir.

16 A Good afternoon.

17 Q Sir, can you tell this jury where you're employed?

18 A Richland County Sheriff's Department.

19 Q And how long have you been with the sheriff's
20 department?

21 A Since '95.

22 Q And in what capacity do you work with the sheriff's
23 department?

24 A Now, I'm a senior patrol officer out of region seven,
25 which is northeast section of Richland County.

RAY LIVINGSTON DIRECT BY MS. WALKER

- 1 Q What does a senior patrol officer do?
- 2 A Uniform patrol, patrol the streets and the
- 3 neighborhoods.
- 4 Q And I want to take your attention back to October of
- 5 2005, were you employed with the sheriff's department
- 6 then?
- 7 A I was.
- 8 Q And in what capacity were you working with the
- 9 sheriff's department?
- 10 A Crime scene investigator.
- 11 Q Can you explain to the jury what a crime scene
- 12 investigator does?
- 13 A Crime scene investigators go out and process crime
- 14 scenes, photograph, preserve and collect evidence.
- 15 Q What is the purpose of doing those things?
- 16 A For trial, in case you have to go to trial and to -- if
- 17 we have to go back and redo a case or redo a scene,
- 18 we'll have the evidence to do it with.
- 19 Q Preservation of evidence?
- 20 A Yes.
- 21 Q On October 27th of 2005, did you have the opportunity
- 22 to respond to a crime scene that night?
- 23 A I did.
- 24 Q And that was the scene of a murder?
- 25 A That was the scene of a murder at Fernandino Road.

RAY LIVINGSTON DIRECT BY MS. WALKER

1 Q And that's here in Richland County?

2 A Yes, ma'am.

3 Q Can you please tell the jury what you did upon
4 responding to the crime scene?

5 A Once I got on the scene, as always, I always meet with
6 the officers. And the officers -- the first responding
7 officers, they tell me what they found when they
8 arrived. And then we go around and point out different
9 objects to them. I go through the crime scene and
10 look, also. Then if I need to, I call additional
11 people in.

12 Q What is the purpose of that initial conversation you
13 have with the responding officers?

14 A To see what they found when they arrived on scene.

15 Q Okay. Is that important to you?

16 A Yes, ma'am.

17 Q And why is that important?

18 A It tells me where I need to start my investigation at.

19 Q And when you arrived on scene that night, what, if
20 anything, did you learn?

21 A I learned that the individual was at home and,
22 apparently, the house was broken into, the apartment
23 was broken.

24 Q When you say the individual, are you talking about the
25 victim in this case?

RAY LIVINGSTON DIRECT BY MS. WALKER

1 A Yes, ma'am.

2 Q I'm sorry. Continue.

3 A The victim was at home. Evidently, there was a
4 disruption of some type, fight or something in the
5 apartment that lead to the outside and the victim had
6 been shot.

7 Q In your initial observation of the crime scene, was
8 that consistent with what you were being told happened?

9 A Yes, ma'am.

10 Q After your initial walk-through, what was your -- what
11 did you do then?

12 A Well, my initial walk-through was the victim was still
13 there. I was looking at the victim, going outside the
14 apartment and inside of the apartment. The next thing
15 I did was started to collect my camera to photograph
16 and photograph the scene as is we found it --
17 photograph it inside and outside.

18 Q You said the initial thing you did was photograph the
19 victim in this case?

20 A The victim and the outside and inside of the apartment,
21 yes, ma'am.

22 Q And sir, I want to show you what's been marked as
23 State's Exhibits 7 through 11.

24 MS. WALKER: Your Honor, may I approach the
25 witness?

RAY LIVINGSTON DIRECT BY MS. WALKER

1 THE COURT: Yes.

2 BY MS. WALKER:

3 Q And ask you if you recognize these?

4 A Yes, ma'am.

5 Q And how do you recognize these?

6 A As to my initials and that the victim's photograph of
7 the victim there.

8 Q Okay. Do these fairly and accurately represent what
9 you saw that night?

10 A Yes, ma'am.

11 MR. SCHNEE: Judge, there's a matter of law that
12 we need to take up?

13 THE COURT: All right. Ladies and gentlemen, I
14 ask you go to the jury room for a break. Please do not
15 discuss the case.

16 (Whereupon, the jury left the courtroom
17 at 3:44 p.m.)

18 THE COURT: All right. Yes, sir.

19 MR. SCHNEE: May it please the Court, Your Honor.

20 At this point, I am going to renew my objection to these
21 photograph based on the pretrial memorandum I filed with
22 Your Honor. I also note for the record that last time you
23 already excluded photograph number seven. Photograph number
24 seven is an extreme close-up of Mr. Corbitt's left eye.

25 Photograph numbers eight and nine appear to be most of his

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1 body and/or his entire body pretty much the same angle lying
2 on the ground. Number ten is a close-up of the full view
3 and the side. And number 11 is a close-up of the bottom of
4 his chin. I would argue, first and foremost, number seven
5 is not relevant to anything that the State is trying to
6 show. It is highly prejudicial. Numbers eight and nine,
7 while not by themselves all that horrible, both of them
8 combined would give -- meet the level of prejudicial as they
9 would be cumulative. Number 10 shows what appears to be --
10 substantial amount of blood. And I have no objection to 11.

11 MS. WALKER: Do you won't see the pictures, Your
12 Honor?

13 THE COURT: I want to hear your response to his
14 argument and, of course, I want to see the pictures.

15 MS. WALKER: Your Honor, may I approach, Your
16 Honor?

17 THE COURT: Mr. Schnee, what are your -- in the
18 transcript from the previous hearing.

19 MR. SCHNEE: The previous hearing, in the list of
20 exhibits of at the very beginning, it listed number seven, I
21 think for ID purposes, and it list others, all of them were
22 on page 33. The others were introduced on page -- actually,
23 entered into evidence on page 35.

24 THE COURT: All right. Yes, ma'am.

25 MS. WALKER: Your Honor, page 33, I think you said

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1 that Exhibit 7 could be revisited at a later time. It was
2 marked for identification purposes. You did, Your Honor, at
3 the previous trial admit Exhibits 8 through 11. As Your
4 Honor is well aware, the Court for the first time at last
5 trial the Defendant raised a self-defense defense in this
6 case. At that point, Your Honor, I think the argument that
7 was made last time, the argument that the State stands by is
8 that it's important then for the jury to be able to see the
9 victim in this case, how he presented that day. The
10 Defendant makes claims that he was reaching for a gun, that
11 he didn't know what was going on, that they were in the
12 middle of a tussle, which shows Your Honor -- the pictures
13 I'll hand up whenever Your Honor request them, a shirtless
14 individual with a -- with tight sweatpants on, which would
15 have made the existence of nonexistence of a gun at that
16 time evident. And that's the argument we made last time in
17 terms of getting in the picture of the Defendant's body.

18 And in conjunction with that, Your Honor, this --
19 the victim is attacked in his own home and these pictures go
20 to corroborate the imminence that there was a struggle at
21 the place and the victim was violently attacked and beaten.
22 And these are the scarrings and marks of that attack are
23 preserved in the photographs of the victim.

24 We just ask that Your Honor stand by his previous
25 ruling in this matter.

RAY LIVINGSTON DIRECT BY MS. WALKER

1 THE COURT: Yes, sir.

2 MR. SCHNEE: Very briefly, Your Honor. There's
3 absolutely no testimony that Mr. Corbitt at the time that he
4 was in that fight with Mr. World and was subsequently shot
5 was not wearing a shirt, nor is there any testimony
6 presented by any competent witness thus far that those pants
7 were even capable of holding a gun in the waistband.
8 They're sweat pants. In terms of a shirt, there's nothing
9 to say. There was no shirt there. In fact, the hands in
10 the photograph are bagged and already been processed by law
11 enforcement.

12 THE COURT: All right. Let me see them.

13 MS. WALKER: Thank you, Your Honor.

14 (pause.)

15 THE COURT: Ms. Walker, referring back to the --
16 claim of self-defense or lack of claim, whatever his claim
17 was in opening, how did it relate to -- if it did to
18 self-defense struggle and the admissibility of these
19 pictures?

20 MS. WALKER: Your Honor, the State's position is
21 that the claim is self-defense --

22 THE COURT: I'm referring to his opening
23 statement.

24 MS. WALKER: I think he said in opening statement
25 that he saw the Defendant -- or Greg Isaac is going to

RAY LIVINGSTON DIRECT BY MS. WALKER

1 testify that he saw the victim going behind his back and
2 reaching for something. I think the pictures, Your Honor,
3 show that if he was, in fact, going -- if he's involved in a
4 tussle, which is what Mr. Schnee said in his opening
5 statement, that he is going behind himself reaching for
6 something, the presence -- there is no gun found and that
7 would be evident to someone who is observing him and
8 watching him as he in his home moving around. That's why,
9 Your Honor, the shirtless picture. There is nothing to
10 conceal a gun in this case.

11 THE COURT: I understand that part of it.
12 Regarding the injuries in number seven -- which I excluded
13 the last time, what about the close-up of the face?

14 MS. WALKER: Your Honor, I think that the
15 testimony, Your Honor, will be, of course, at this trial
16 that he was attacked. I think Mr. Schnee concedes that in
17 his opening statement, that the victim in this case was
18 attacked in his own home. And that corroborates that in
19 terms of showing the beating that he was taking. Can I see
20 the picture, Your Honor? In terms of the cut that's over
21 the -- the cut that's over his eye, Your Honor.

22 THE COURT: Yeah.

23 MS. WALKER: And the bluing around the eye would
24 corroborate the fact that this man was attacked in his own
25 home.

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1 THE COURT: Mr. Schnee?

2 MR. SCHNEE: Judge, the existence or nonexistence
3 of a fight is not the issue of the photographs. The issue I
4 have with the photographs is that they are showing highly
5 prejudicial -- they are in a highly prejudicial way
6 depicting that. There's no dispute there was a fight. The
7 content of the photos themselves that are a problem for my
8 client's Constitutional rights, which is what I described in
9 my four or so page motion as to why they should be excluded.

10 THE COURT: Well, I understand your motion, but
11 then you make an opening statement in which you're in
12 effect -- the question is whether you're seeking the jury to
13 create a scene or picture a particular scene of your client
14 going in there under duress and acting as he did in wanting
15 the jury to view a scene in the way that you created it in
16 your argument.

17 Are you asking that -- so the question is whether
18 or not you're asking the jury to speculate as to what the
19 scene was versus what the photographic evidence show at the
20 scene actually is. Hence, the -- whether despite whatever
21 possible prejudicial effect the photograph may have, the
22 probative -- comparing that with probative value of the
23 State seeking to prevail upon the jury that the facts are as
24 the State argues versus the facts that you're arguing. So
25 they become critical to assess the credibility of the

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1 evidence.

2 MR. SCHNEE: Well, Judge, the photographs
3 themselves do not necessarily paint the picture. The
4 officer clearly testified that --

5 THE COURT: Well, you said to the jury that none
6 of the officers were there, so, obviously, none of the
7 jurors -- and you weren't there and I wasn't there, so the
8 whole nature of the trial is seeking to explain what
9 occurred in retrospect now some eight years later.

10 MR. SCHNEE: Yes, Your Honor, it is to explain
11 what happened, but in a fair -- fair matter to my client
12 within the rules of evidence, which I do not believe all of
13 these photos would qualify. They are more than just
14 slightly prejudicial. The fact that Mr. Corbitt has been
15 lying there, he has had his hands bagged, he's been
16 processed by -- I don't know if EMS took his shirt off.
17 There's no testimony in that regard at this point. And
18 those pictures without further testimony are improper.

19 THE COURT: All right.

20 How about that aspect regarding whether EMS or
21 whether there's evidence that anyone -- that they did or did
22 to take his shirt or evidence by his son that he didn't have
23 shirt on?

24 MS. WALKER: Your Honor, there is no evidence that
25 EMS took the shirt off. I think Investigator Livingston

RAY LIVINGSTON DIRECT BY MS. WALKER

1 will be able to testify to that, how the Defendant was when
2 he found him because he got there before EMS was there. I
3 can, certainly, lay that foundation that that's how he
4 presented at that time.

5 THE COURT: All right. I'll give you that
6 opportunity.

7 BY MS. WALKER:

8 Q When you arrived on the scene, was EMS there?

9 A They had already left?

10 Q They had already left at that point in time?

11 A Yes.

12 Q And had you gotten any information that his body was in
13 any way disturbed or clothing was removed as --

14 MR. SCHNEE: Objection, hearsay.

15 MS. WALKER: Your Honor, I can -- may I respond?

16 THE COURT: You want me to rule on the objection
17 or you just want to respond?

18 MS. WALKER: Can I respond to the objection?

19 THE COURT: Oh, yes.

20 MS. WALKER: The investigator can talk about what
21 he learned over the course of his investigation that goes
22 into him proceeding with --

23 THE COURT: I'm aware of that.

24 MS. WALKER: Okay.

25 THE COURT: So the objection is overruled.

RAY LIVINGSTON DIRECT BY MS. WALKER

1 BY MS. WALKER:

2 Q Did you have any information --

3 A That the victim had a shirt on?

4 Q That EMS had removed the shirt from the victim?

5 A No, ma'am.

6 Q That anyone had removed anything from the victim?

7 A No, ma'am.

8 Q And did you photograph the scene as you found it?

9 A I photographed the scene as I found it.

10 Q The pictures that I showed you earlier, State's 7
11 through 11, those fairly and accurately depict what you
12 saw that day?

13 A Yes, ma'am.

14 THE COURT: The ruling of the Court is the same as
15 it was the last time, these photographs No. 8, 9, 10, 11 are
16 in, 7 is for identification purpose.

17 MS. WALKER: Thank you, Your Honor.

18 (State's Exhibit Nos. 8, 9, 10, 11 are
19 admitted into evidence.)

20 THE COURT: All right. Anything else before the
21 jury comes back?

22 MS. WALKER: Nothing from the State.

23 THE COURT: Let's take a two-minute stretch, then
24 we'll bring them in.

25 (Whereupon, a short recess was held.)

RAY LIVINGSTON DIRECT BY MS. WALKER

1 THE COURT: Okay. Let's bring in the jury.

2 THE BAILIFF: Bring in the jury, Your Honor?

3 THE COURT: Yes, bring them on.

4 (Whereupon, the jury returned to the
5 courtroom at 4:03 p.m.)

6 THE BAILIFF: The jury is present, Your Honor.

7 THE COURT: All right. You may proceed.

8 MS. WALKER: Thank you Your Honor.

9 BY MS. WALKER:

10 Q I think we were discussing State's Exhibits 8 through
11 11. Can you tell me what this is?

12 A That's the victim on the outside of his apartment.

13 Q Okay. And this was taken by you that night?

14 A Yes, ma'am.

15 Q Okay. And the bags that are on his hand, can you
16 explain what that is for the jury?

17 A That's to bag the hands. We know there was a
18 struggle -- anything under his fingernails or any other
19 evidence on his hands there.

20 Q And where is his body in relation to the apartment?

21 A Just outside the door.

22 Q And this photo as well?

23 A Yes, ma'am.

24 Q And State's Exhibit 11, what's that depict?

25 A That depicts a wound to the victim's chin.

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1 Q And was that important to you?

2 A Yes, ma'am.

3 Q Why that was?

4 A Well, we know that there was a struggle, so that he had
5 been in a fight there or something.

6 Q And State's Exhibit 10?

7 A That is the bullet wound.

8 Q As you continue photographing the crime scene that
9 night, I want to show you State's Exhibits 12 through
10 15 and ask if you recognize those?

11 A Yes, ma'am.

12 Q And do these fairly and accurate depict what you saw
13 that night?

14 A Yes, ma'am.

15 MS. WALKER: Your Honor, at this time, the State
16 seeks to admit State's Exhibit 12 through 15?

17 MR. SCHNEE: No objection.

18 THE COURT: They're admitted without objection.

19 (State's Exhibit Nos. 12 through 15 were
20 admitted into evidence.)

21 BY MS. WALKER:

22 Q State's Exhibit 12 and 13, why did you photograph this?

23 A That's a picture of the damage to the door showing that
24 force had been used on the door.

25 Q And can you explain to the jury how you knew that force

RAY LIVINGSTON DIRECT BY MS. WALKER

1 was used on the door?

2 A Well, this photograph here (indicating), the side
3 paneling had been forced away from the wall. On the
4 other one, the threshold had been damaged and split
5 open.

6 Q This was the victim's apartment?

7 A Yes, ma'am.

8 Q And 14 and 15 as well?

9 A Yes, ma'am. 14 shows show the strike in the deadbolt.

10 Q Can you explain what a striker in a deadbolt?

11 A Strike is when you lock a deadbolt, it goes into the
12 main frame. And you can tell it was still out there.
13 And that shows the damage to the door (indicating)
14 where it was --

15 Q And as you continue to go inside of the apartment, what
16 room did you gather evidence or -- I'm sorry,
17 photograph first?

18 A The first room I photographed was the living room area.

19 Q Okay. And why was that?

20 A That's where -- the room was in disarray. You could
21 tell that something happened there. The lamp shade was
22 knocked over. The couch had blood on it and the
23 stairwell case had blood on it, also.

24 Q You say this room was in disarray. The other rooms in
25 the apartment, were they in disarray as well?

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1 A No, ma'am.

2 Q So this was out of the ordinary?

3 A Yes, ma'am.

4 Q Let me show you 16 through 26 and ask you if you
5 recognize these photos?

6 A Yes, ma'am.

7 Q And do they as well fairly and accurately represent
8 what you saw?

9 A Yes, ma'am.

10 MS. WALKER: Your Honor, at this point -- at this
11 point, Your Honor, the State seeks to introduce Exhibit 16
12 through 26 into evidence?

13 MR. SCHNEE: No objection.

14 THE COURT: Admitted without objection.

15 (State's Exhibit Nos. 16 through 26 were
16 admitted into evidence.)

17 BY MS. WALKER:

18 Q What room is this?

19 A That's the living room area.

20 Q Is this how you found it?

21 A Yes, ma'am.

22 Q And can you describe for the jury why you say a
23 struggle took place in this room?

24 A Well, how the room was found.

25 Q (The witness nodded head.)

RAY LIVINGSTON DIRECT BY MS. WALKER

- 1 A The couch had pillows taken off of it. The lamp shade
2 was on the floor. Again, we found blood on the back of
3 the couch as also around the curtains and on the
4 stairwell there.
- 5 Q And in Exhibit 17, what is this right here
6 (indicating)?
- 7 A Oh, the lamp.
- 8 Q Okay. And did the lamp become important in this case?
- 9 A Yes, ma'am.
- 10 Q And this is how you found it that night?
- 11 A Yes, ma'am.
- 12 Q And State's Exhibit No. 20, is this a different angle
13 of the living room?
- 14 A Yes, ma'am.
- 15 Q And State's Exhibit 26, what's this?
- 16 A That's where we found the money on the floor and --
- 17 Q And Exhibit No. 22, can you describe what this is?
- 18 A That is the side of the couch closest to the door where
19 we found the blood on the back of the couch and side of
20 the couch.
- 21 Q This is where -- my finger is pointing to the blood?
- 22 A Yes, ma'am. And on the curtain.
- 23 Q Okay. So my three fingers on State's 22 are where the
24 blood is?
- 25 A Yes, ma'am.

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1 Q Continuing, sir, with the photographs of the apartment
2 there, I show you State's 27 through 35 and ask you if
3 you recognize these?

4 A Yes, ma'am.

5 Q And do these fairly and actually depict what you saw
6 that night?

7 A Yes, ma'am.

8 MR. SCHNEE: Judge, I have an objection to three
9 of them. I prefer to have a matter of law on the record.

10 THE COURT: All right. Ladies and gentlemen,
11 we'll have you go to the jury room once again. Please leave
12 all of the exhibits in the courtroom and we'll have you come
13 back as soon as possible.

14 (Whereupon, the jury left the courtroom
15 at 4:15 p.m.)

16 THE COURT: Yes, sir.

17 MR. SCHNEE: Judge, at this time, I object to
18 State Exhibit Nos. 28, 30, 31. The others I have no problem
19 with. All three of these are showing a large pool of blood
20 on the floor of the apartment, both directly inside and
21 outside. There's no useful purpose for these photographs.
22 They're far away photos. The close-ups that are, actually,
23 being attempted to introduce are close-ups of shell casings,
24 part of the door frame and a cell phone that apparently had
25 fallen down or was broken. There's nothing in these

RAY LIVINGSTON DIRECT BY MS. WALKER

1 photographs of any useful value for the jury. All they can
2 do is insight prejudice and I would ask that they be
3 excluded.

4 THE COURT: All right.

5 MR. SCHNEE: If I may approach?

6 THE COURT: All right. The State's position?

7 MS. WALKER: Your Honor, in the struggle that
8 takes place, he's charged, Your Honor, with both burglary
9 and murder. The blood, Your Honor, starts in the foyer of
10 the apartment. Your Honor, I think it's crucial to the
11 State's case to be able to show the victim was inside of his
12 own home, the door was kicked in, he was shot inside of his
13 home. In terms of any self-defense or duress, whatever
14 their argument is at this time, in order to show that the
15 victim was inside of his own home, I think we can show, Your
16 Honor, where the blood starts. I don't even think their
17 gruesome, Your Honor. There is no body in the picture.
18 They show blood and shell casing.

19 THE COURT: Mr. Schnee?

20 MR. SCHNEE: Judge, there's no dispute that there
21 was a fight inside of the apartment. The only question is
22 is there a lawful defense to it. The — those bloody photos
23 do not do anything to aid the jury in determining facts nor
24 does it aid in any way the prosecution in terms of
25 describing that there was blood inside of the apartment.

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1 They've already shown blood inside of the apartment on the
2 couch and on the curtain. That's not in dispute. This
3 witness can, certainly, testify as to what he found and
4 where, but to show the actual photos of blood puddles, that
5 is my objection.

6 THE COURT: All right. I find that the probative
7 value outweighs any prejudicial effect, that the State is
8 entitled to present the evidence to convince the jury
9 regarding the evidence. And at this point, everything is in
10 dispute in this case. So the photographs are admitted over
11 objection. 28, 30 and 31. And the others are in without
12 objection.

13 (State's Exhibit Nos. 27 through 35 are
14 admitted into evidence.)

15 THE COURT: All right, you can bring them back.
16 (Whereupon, the jury returned to the
17 courtroom at 4:19 p.m.)

18 THE BAILIFF: Your Honor, the jury's present and
19 seated.

20 THE COURT: All right. Very well.
21 You may proceed.

22 BY MS. WALKER:

23 Q Again, going back to State's Exhibits 27 through 35,
24 can you tell me what's shown in this picture?

25 A That's the shell casing behind the door.

RAY LIVINGSTON DIRECT BY MS. WALKER

- 1 Q Okay. And is preserved by a marker in this picture?
- 2 A It is.
- 3 Q What marker is that?
- 4 A Let me see that. Marker number three.
- 5 Q So 27 would be a close-up of the marker in Exhibit 28?
- 6 A Yes, ma'am.
- 7 Q Why was this shell casing important?
- 8 A Ma'am?
- 9 Q The photograph of the shell casing, why did you do
- 10 that?
- 11 A Showing that's where we located the shell casing there
- 12 behind the door inside of the apartment.
- 13 Q And Exhibit 29 and 30?
- 14 A Yes, ma'am.
- 15 Q Okay. Is that --
- 16 A Same.
- 17 Q Shell casing as well?
- 18 A Yes, ma'am.
- 19 Q Can you tell me what's depicted in Exhibit 31 and 32?
- 20 A That is a cell phone on 31. I think it's a battery,
- 21 also, I'm not sure. This is the striker that goes to
- 22 the door.
- 23 Q Is that part of the lock?
- 24 A Part of the lock.
- 25 Q So the lock was kicked off of the door?

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1 A Yes, ma'am.

2 Q And that cell phone was preserved in Exhibit 33 as
3 well?

4 A Yes, ma'am.

5 Q And State's Exhibit 34 and 35?

6 A Shell casing on the outside.

7 Q Where was the shell casing found?

8 A Right outside on the porch there.

9 Q Porch area. So how many shell casings were found on
10 the scene?

11 A Two.

12 Q Now, sir, I would like to show you State's Exhibit 36,
13 37 and 64 through 66. Do you recognize these?

14 A Yes, ma'am.

15 Q Do these fairly and accurately depict what you saw that
16 night?

17 A Yes, ma'am.

18 MS. WALKER: Your Honor, at this point, the State
19 seeks to introduce State's 65, 66, 64, 36, and 37 into
20 evidence?

21 MR. SCHNEE: No objection.

22 THE COURT: Admitted without objection.

23 (State's Exhibit Nos. 36, 37, 64, 65, 66

24 were admitted into evidence.)

25

RAY LIVINGSTON DIRECT BY MS. WALKER

1 BY MS. WALKER:

2 Q Exhibits 36 and 37, can you tell me what this shows?

3 A It shows a menu or newspaper there and it had blood
4 strike on it.

5 Q And where was the menu found?

6 A On the coffee table.

7 Q In the living room?

8 A Yes, ma'am.

9 Q And 64?

10 A That's the turned over lampshade right at the
11 staircase.

12 Q And that's depicted in 65 and 66 as well?

13 A Yes, ma'am.

14 Q Okay. Sir, I want to show you Exhibits 38 through 42
15 and ask if you recognize those?

16 A Yes, ma'am.

17 Q And do these fairly and accurately depict what you saw
18 that night?

19 A Yes, ma'am.

20 MS. WALKER: Your Honor, at this point, the State
21 would seek to admit State's Exhibits 41, 42, 40, 39 and 38.

22 MR. SCHNEE: No objection.

23 THE COURT: Admitted without objection.

24 (State's Exhibit Nos. 38 through 42 were
25 admitted into evidence.)

RAY LIVINGSTON DIRECT BY MS. WALKER

1 BY MS. WALKER:

2 Q Forty-two, State's Exhibit 42?

3 A Yes, ma'am -- by the couch.

4 Q Okay. And what was significant there?

5 A Showing the blood on that -- I think it's a letter of
6 some type.

7 Q And 39, 40 and 41?

8 A It shows the blood on the stairwell at the bottom of
9 the staircase.

10 Q And Exhibit No. 38, what does that show?

11 A It shows pointing up from the bottom of the stairs
12 looking up at the top of the stairs where the child
13 would have been standing.

14 Q Would you tell the jury why this angle was important?

15 A To show that where he was standing, he could really see
16 from the top of the stairs and look down.

17 Q When you say he, who are you referring to?

18 A The victim's son.

19 Q Was he present at the time?

20 A When I took the photograph, no, ma'am.

21 MR. SCHNEE: Objection, Your Honor.

22 THE COURT: Objection sustained.

23 BY MS. WALKER:

24 Q And did you continue to photograph other rooms in the
25 house?

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1 A Yes, ma'am.

2 Q Why was that done?

3 A To show that the house wasn't in disarray. I think the
4 kitchen area, back of the house and living room and
5 upstairs in the bedrooms there.

6 Q I want to show you Exhibits 43 through 55 and ask if
7 you recognize those?

8 A Yes, ma'am.

9 Q And do these fairly and accurately depict what you saw
10 there that night?

11 A Yes, ma'am.

12 MS. WALKER: Beg the Court's indulgence, Your
13 Honor. Your Honor, at this point, the State seeks to
14 introduce Exhibits 43 through 55.

15 MR. SCHNEE: No objection.

16 THE COURT: Admitted without objection.

17 (State's Exhibit Nos. 43 through 55 were
18 admitted into evidence.)

19 BY MS. WALKER:

20 Q These are the other areas of the house that you
21 photographed?

22 A Yes, ma'am.

23 Q Forty-five, 46?

24 A That was in the kitchen area, just a mark on the floor,
25 both of the kitchen areas there.

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- 1 Q As well as 47?
- 2 A Yes, ma'am.
- 3 Q And where is the kitchen in relation to the living
- 4 room?
- 5 A Right to the rear of the living room.
- 6 Q And Exhibits 43 and 44?
- 7 A That shows the upstairs bathroom and yes, that's the
- 8 closet there (indicating).
- 9 Q Forty-eight and 49?
- 10 A That would be the son's bedroom, both of them there.
- 11 Q And 50, 51, 54 and 55?
- 12 A I think those were all of the victim's bedroom.
- 13 Q And were both of those bedrooms upstairs?
- 14 A Yes, ma'am.
- 15 Q Okay. And finally, 52?
- 16 A That was the hallway upstairs.
- 17 Q Okay. After photographing the residence, did you
- 18 continue to collect evidence?
- 19 A Yes, ma'am.
- 20 Q I think you already testified to those shell casings
- 21 that were photographed?
- 22 A Yes, ma'am.
- 23 Q I want to show you State's Exhibits 57 and 62. Can you
- 24 tell me what these are?
- 25 A Yes, these appear to be the envelopes that I put the

RAY LIVINGSTON DIRECT BY MS. WALKER

1 shell casings in.

2 MS. WALKER: Your Honor, at this point, the State
3 seeks to introduce Exhibits 57 and 62 into evidence.

4 MR. SCHNEE: No objection.

5 THE COURT: Admitted without objection.

6 (State's Exhibit Nos. 57 and 62 were
7 admitted into evidence.)

8 BY MS. WALKER:

9 Q These were collected by you that night?

10 A Yes, ma'am.

11 Q Did you also take a number of swabs that night?

12 A Yes, ma'am.

13 Q Can you explain to the jury why you take swabs?

14 A Well, take jobs with blood and other areas of the house
15 there -- and you send it to the lab for analysis.

16 Q And Exhibits 59 and 71, do you recognize those?

17 A Yes, ma'am, this is a blood swab from the corner table
18 and this is from the newspaper.

19 MS. WALKER: Your Honor, at this point, the State
20 seeks to introduce Exhibits 59 and 71 into evidence.

21 MR. SCHNEE: No objection.

22 THE COURT: Admitted without objection.

23 (State's Exhibit Nos. 59 and 71 were
24 admitted into evidence.)

25

RAY LIVINGSTON DIRECT BY MS. WALKER

1 BY MS. WALKER:

2 Q Can you tell the jury how you take swabs?

3 A Swabs are -- sterile water or you can use dry swabs,
4 just barely touch the blood there and collect it. We
5 have a cardboard box that we take it and put it in
6 there and seal it up and no one is get into it until it
7 gets to the lab.

8 Q And Exhibit 56?

9 A This is the cell phone that was found in the
10 entranceway.

11 MS. WALKER: Your Honor, the State seeks to
12 introduce Exhibit 56 into evidence?

13 MR. SCHNEE: No objection.

14 THE COURT: Admitted without objection.

15 (State's Exhibit No. 56 was admitted
16 into evidence.)

17 BY MS. WALKER:

18 Q And finally, did you do a GSR kit that night?

19 A A GSR was taken; yes, ma'am.

20 Q Explain to the jury what a GSR kit is how you do the
21 testing, please.

22 A It's a gunshot residue kit. You get a kit and it has
23 swabs and it -- swab the hands, put them inside a
24 sealed container and send them to the lab to be
25 analyzed. It will tell if the victim or any one else

RAY LIVINGSTON CROSS BY MR. SCHNEE

1 fired a weapon anywhere.

2 Q And the Exhibit 9 that's being introduced into
3 evidence, his hands are bagged here, was that before or
4 after the test was done?

5 A I done it before I bagged his hands.

6 Q You did the GSR before you bagged his hands?

7 A Yes, ma'am.

8 Q Okay. And let me show you State's Exhibit 63? Do you
9 recognize this?

10 A Yes, ma'am.

11 Q Okay.

12 MS. WALKER: Your Honor, at this point, the State
13 seeks to introduce Exhibit 63 into evidence.

14 MR. SCHNEE: No objection.

15 THE COURT: Admitted without objection.

16 (State's Exhibit No. 63 was admitted
17 into evidence.)

18 BY MS. WALKER:

19 Q What is this, Exhibit 63?

20 A Should be gun primer. If you want, I can open it up
21 and take a look at it for you.

22 Q There you go.

23 A Okay. It's a gunshot residue kit and gun primer is
24 what it looks like -- sent that to SLED.

25 Q After photographing and collecting this evidence that

RAY LIVINGSTON CROSS BY MR. SCHNEE

1 night, what did you do?

2 A After we collected evidence, you know, we went around
3 and just relooked to see if there was anything that we
4 missed or anything that --

5 Q And after doing that, what did you do next? After
6 making sure that you had collected all the evidence,
7 what did you do?

8 A After that, we sealed the apartment. The victim had
9 already been taken away, so we sealed the apartment.

10 Q And was that the extent of your involvement in this
11 investigation?

12 A For that night, yes, ma'am.

13 Q Did you do something later on after that night?

14 A No, ma'am, I don't believe so. Outside of just
15 collecting the evidence, that was it.

16 Q Okay. Thank you, sir. No further questions.

17 THE COURT: Cross examination?

18 MR. SCHNEE: May it please the Court?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. SCHNEE:

22 Q Do you know what time you arrived on the scene?

23 A I know it was somewhere just after nine. It doesn't
24 depict here exactly what time.

25 Q Would the crime scene log assist you in that?

RAY LIVINGSTON CROSS BY MR. SCHNEE

1 A It will.

2 MR. SCHNEE: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. SCHNEE:

5 Q Do you recognize this?

6 A It's 2159.

7 Q That's 9:59 p.m.

8 A Right.

9 Q Does it say on there when EMS left?

10 A 2145.

11 Q So about 15 minutes before you got there, they were
12 gone?

13 A Uh-huh.

14 Q Okay. You didn't talk to anyone with EMS, did you?

15 A No, I didn't.

16 Q So you don't know what they did in terms of processing
17 Mr. Corbitt?

18 A Oh, no, sir.

19 Q You have no idea if they took his shirt off?

20 A No, sir, I don't.

21 Q You don't know what they did with any of his clothing
22 or anything else?

23 A If they took anything off -- normally, EMS don't talk
24 anything with them.

25 Q But there were other officers on the scene before you

RAY LIVINGSTON CROSS BY MR. SCHNEE

1 got there?

2 A Yes, sir.

3 Q While EMS was there?

4 A Yes, sir.

5 Q Did you talk to those officers about what EMS did?

6 A No, sir, I didn't.

7 Q So your job was just go to the apartment, go inside,
8 take photos and collect evidence?

9 A Talk with them, find out what happened and to
10 photograph and process the scene and the victim.

11 Q Okay. And you said that you took the GSR kit, gunshot
12 residue?

13 A Yes, sir.

14 Q How do you do that exactly?

15 A You have dabbers and you have swabs there. You put
16 acid on there, dab, swab, tighten them up and you put
17 them in a sealed kit and you send them up to SLED.

18 Q This is the kit over here, Exhibit 63?

19 A Yes, ma'am -- yes, sir, excuse me.

20 Q Okay. And it's kind of hard to see since it's in a
21 sealed bag, what exactly is in here?

22 A That's the swabs, the dabs.

23 Q Okay. When you say swabs, you're talking about
24 something --

25 A Yes, sir.

RAY LIVINGSTON CROSS BY MR. SCHNEE

- 1 Q And you go over the back of the hand, the front of the
2 hand?
- 3 A Yes, sir, each hand.
- 4 Q Do you do the fingers?
- 5 A No, sir, I didn't.
- 6 Q Okay. So if there's any DNA under the fingernails, you
7 wouldn't have disturbed that?
- 8 A I wouldn't have disturbed that. That's one of the
9 reasons I bag the hands.
- 10 Q Okay. And you did that after you took the gunshot
11 residue test?
- 12 A Yes, sir, I did.
- 13 Q I would like to show a couple of photos and ask you a
14 question if I could. I show you Exhibits 24, 25, 26.
15 Those are photograph you took that night?
- 16 A Yes, sir.
- 17 Q Okay. Twenty-four and 26, does it show that there's
18 money sitting there on the floor?
- 19 A Twenty-four has money on the floor, 26 has the wallet
20 with money in it, yes, sir.
- 21 Q What about 25?
- 22 A That's the one with the money and wallet there.
- 23 Q Okay. 25 is the wallet, what about 26?
- 24 A Twenty-six has money on the floor along with 24 with
25 money on the floor.

RAY LIVINGSTON REDIRECT BY MS. WALKER

1 Q Okay. Now, the wallet, that's sitting there on the
2 coffee table?

3 A Yes, sir.

4 Q And that's right near the entrance to the apartment?

5 A Yes, sir.

6 Q And the wallet is just sitting there laid opened?

7 A It was opened.

8 Q Okay. That's how you saw it?

9 A That's how I saw it, yes, sir.

10 Q There's a large stack of money in there?

11 A Yes, sir.

12 Q Credit cards?

13 A Yes, sir.

14 Q Driver's license?

15 A Yes, sir.

16 Q None of that's been taken?

17 A None.

18 Q No further questions.

19 THE COURT: Anything further?

20 REDIRECT EXAMINATION

21 BY MS. WALKER:

22 Q When you were there that night --

23 A No, ma'am.

24 MS. WALKER: Thank you. No further questions.

25 THE COURT: Anything further?

DIANE BODIE DIRECT BY MR. STEADMAN

1 MR. SCHNEE: No, Your Honor.

2 THE COURT: All right. Thank you, sir. You may
3 step down.

4 Call your next witness.

5 THEREUPON,

6 DIANE BODIE,
7 after having been duly sworn, testified as follows:

8 THE CLERK: Have a seat in the witness box and
9 state your full name for the record.

10 THE WITNESS: My name is Diane Watts Bodie,
11 B-O-D-I-E.

12 DIRECT EXAMINATION

13 BY MR. STEADMAN:

14 Q Ma'am, where are you currently employed?

15 A Richland County Sheriff's Office.

16 Q And what is your position with the Richland County
17 Sheriff's Office?

18 A I'm a latent print analyst AFIS operator.

19 Q And what are your duties as a latent print operator?

20 A I operate the automated fingerprint identification
21 system at the sheriff's department.

22 Q So as part of your duties as the latent print analyst
23 and AFIS operator, you operate a system called AFIS?

24 A Yes, sir.

25 Q AFIS is the database that contains known fingerprint

DIANE BODIE DIRECT BY MR. STEADMAN

1 cards; correct?

2 A Yes, sir.

3 Q And as part of your duties, do you take unknown prints
4 and run them through AFIS for comparison?

5 A Yes, sir. I take unknown prints, prints from a crime
6 scene and run them against the known database.

7 Q On March 30th, 2012, did you receive a print that was
8 lifted from the crime scene in this case?

9 A I received a photograph of the print from this crime
10 scene.

11 Q And after you received that photograph, please tell the
12 jury what steps you take next?

13 A I entered the photograph to search against the known
14 database using the automated system where I encode
15 characteristics unique to the print in hopes to find a
16 print unique to those characteristics as well.

17 Q Okay. And in this the case, once you encoded it and
18 after you uploaded it into the AFIS system, what
19 occurred?

20 A We, typically, encode the characteristics and send it
21 out for a search and it will bring back a candidate
22 list. And I go through the candidate list in hope to
23 find a print and possibly hope --

24 Q You mentioned that you forward that on to another print
25 analyst; is that correct?

TRISHA ODOM DIRECT BY MS. CAMPBELL

1. A Yes, when I send the print off for a search, it comes
2 back with what we call a verification packet where I
3 will go through the candidates, the system, the
4 possible matches. I could get hundred candidates back
5 and there not be matches or I could encode it and get
6 it back and it be a match after comparing
7 characteristics. But we don't rely just on looking at
8 the computer screen. So I forward that information to
9 another latent print analyst to do the actual -- she
10 would compare the photograph to the known print on the
11 file.

12 Q And who is that laten print analyst?

13 A Trisha Odom.

14 Q So she's actually responsible for the comparison and
15 maching of the print?

16 A She did the comparison and matched the print, yes.

17 Q Okay. And after uploading the print from the crime
18 scene into AFIS and then turning over the results to
19 latent print analysts, did you have any other
20 involvement in this case?

21 A Yes, we also do verification of any identifications we
22 made and I did the verification of the match.

23 Q So is that basically you following up behind her work
24 to make sure it was done correctly?

25 A Right. We always have two people agree on the

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 identification.

2 Q Thank you. No fer questions.

3 THE COURT: By the Defense?

4 MR. SCHNEE: No questions, Your Honor.

5 THE COURT: All right. Thank you.

6 Your next witness.

7 MS. CAMPBELL: May it please the Court. May the
8 last two witnesses be excused?

9 THE COURT: All witnesses are excused once they
10 step down.

11 MS. CAMPBELL: The State calls Trisha Odom.

12 THEREUPON,

13 TRISHA ODOM,

14 after having been duly sworn, testified as follows:

15 THE CLERK: Have a seat in the witness box, state
16 your name for the record and spell your last name, please.

17 THE WITNESS: My name is Trisha Collins Odom. The
18 spelling of my last name is O-D-O-M.

19 DIRECT EXAMINATION

20 BY MS. CAMPBELL:

21 Q And Investigator Odom, where are you employed?

22 A At the Richland County Sheriff's Department.

23 Q What do you currently do there now?

24 A I am the senior latent print analyst.

25 Q And as the senior latent print analyst, what do your

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 duties include?

2 A My prior responsibility is for the comparison of latent
3 prints, latent prints we recover from a crime scene to
4 a known print to try to determine whether or not the
5 suspect made the prints.

6 Q Are you familiar with crime scene investigation?

7 A Yes, ma'am.

8 Q Do you have certain training in that area as well?

9 A I do.

10 Q And what type of training do you have in that area?

11 A Including with my latent print training, we have a
12 fairly detailed in-service training program once you
13 get promoted to the laboratory. In addition to my on
14 the job training, I've also gone through courses
15 including law enforcement photography, the chemical
16 development and enhancement of latent, advanced palm
17 print identification, advanced -- excuse me, basic
18 fingerprint training -- the recovery of fingerprint
19 evidence from human skin, crime scene reconstruction
20 and complex latent print identification to name just a
21 few.

22 Q Have you ever been qualified before in court as an
23 expert in either crime scene investigation or latent
24 print comparison?

25 A I have.

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 Q And approximately how many times have you been
2 qualified in those areas?

3 A Twenty-six in latent fingerprints and twice in crime
4 scene.

5 MS. CAMPBELL: Your Honor, at this time, we'd
6 offer her as an expert crime scene investigator as well as
7 latent print comparison.

8 THE COURT: What says the Defense?

9 MR. SCHNEE: No objection.

10 THE COURT: All right. Ladies and gentlemen, this
11 witness is qualified as an expert witness in the field of
12 latent fingerprint identification. An expert witness can
13 offer opinions in area where lay witnesses cannot. She is
14 qualified as an expert based on her education, training and
15 experience.

16 MS. CAMPBELL: Thank you, Your Honor.

17 BY MS. CAMPBELL:

18 Q I want to turn your attention back to October of 2005.
19 Did you have an opportunity to respond to the crime
20 scene in question?

21 A I did.

22 Q And what was your capacity on that evening when you
23 went out there?

24 A I served as an assistant to Investigator Livingston. I
25 was technically the supervisor on call for that night.

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 Q When you go to a crime scene such as a murder crime
2 scene, typically, what kind of evidence are y'all
3 looking for? Tell the jury how you go through the
4 scene and what type of evidence you collect?

5 A When you first get to the crime scene, what you want to
6 do is speak to either first responding officers or,
7 perhaps, the investigators that might already be there
8 or possibly some other witnesses that might have been
9 there because you want to determine what happened. The
10 first thing you're going to look for are -- what you do
11 look for is you look for forced entry, if it were like
12 a burglary or if there -- like in this case, there was
13 forced entry into the front door. You also want to
14 look for things like blood or other body fluids,
15 projectiles, weapons, anything that seems out of place,
16 anything that looks like it could have been touched
17 because that's where you're going to find your evidence
18 on the items that have been touched. In this case,
19 there was a lamp that was turned over and the door was
20 forced open. And those are the things that we sort of
21 focused on at that point in addition to the blood stain
22 evidence that we saw. And, of course, the victim, if
23 there's any evidence that might be on the victim. We
24 want to photograph -- we want to preserve the evidence,
25 collect it and turn it in for analysis.

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 Q That evening when you got to the scene, can you tell
2 the jury who your observations were generally?

3 A Sure. May I refer to my report?

4 Q Sure.

5 A When I arrived on the scene at apartment [REDACTED], I
6 observed a black male laying on the sidewalk outside
7 the door. The front door was standing open and blood
8 was pooled on the floor.

9 Q And where was the blood pooled on the floor?

10 A In front of [REDACTED]

11 Q And where was the body that you observed?

12 A Outside the residence.

13 Q Okay. Continue.

14 A I apologize, the blood was pooled below the stairs
15 inside the residence. Inside the living room, lamp was
16 on the ground, couch cushions was askew and the coffee
17 table appeared to have been moved. A wallet lay on the
18 corner of the coffee table and cash was on the floor.
19 The rest of the lower level was basically neat and
20 appeared not to have been disturbed. In the kitchen,
21 on the floor were two brownish stains. Upstairs in the
22 front bedroom, it appeared to belong to children or a
23 child or it was basically neat.

24 Q You mentioned you noticed that a lamp was -- I want to
25 go back and show you State's Exhibit No. 16. Is this a

TRISHA ODOM DIRECT BY MS. CAMPBELL

- 1 photograph that was taken that night?
- 2 A Yes, ma'am.
- 3 Q And -- oh, let me back up just a little bit. That
- 4 night, also, Investigator Livingston was there as well
- 5 as you?
- 6 A Yes, ma'am.
- 7 Q It is unusual for more than one crime scene
- 8 investigator to go to a murder scene?
- 9 A No, we almost always have at least two people working a
- 10 crime scene like that.
- 11 Q And that night, your role was what?
- 12 A I was there technically as the supervisor on call, but
- 13 I was there to assist him with any processing or
- 14 photographing that he needed help with.
- 15 Q In fact, did you take some photographs in this case?
- 16 A I did.
- 17 Q And in addition to that, did you also collect some
- 18 swabs as well as some fingerprint evidence?
- 19 A Yes, ma'am.
- 20 Q Looking at State's No. 16, you mentioned that the area
- 21 where you noticed what appeared to be a struggle, is
- 22 this the area you're talking about?
- 23 A Yes, ma'am.
- 24 Q What was it in that area that proved to be significant
- 25 that caught your attention when you first got to the

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 scene that night?

2 A The lamp was laying on the ground.

3 Q And what condition was the lamp in itself?

4 A It was intact, but it had been knocked over. It wasn't
5 standing up on its base, it was on its side.

6 Q And that's how it appeared when you got there that
7 night?

8 A Yes, ma'am.

9 Q Once you assisted -- prior to collecting any evidence,
10 what do you normally do?

11 A Photograph.

12 Q Okay. And that was done in this case?

13 A Yes, ma'am.

14 Q Once the photographing is done to memorialize the scene
15 as it is when y'all get there, what did you do next?

16 A At that point, you want to process any items that might
17 have been touched or moved for possible fingerprints
18 and also swab for potential DNA.

19 Q When you say swab for potential DNA, were there any
20 body fluids there at the scene that caught your
21 attention that were significant?

22 A Blood.

23 Q And is that something that you would want to collect
24 and memorialize?

25 A Yes.

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 Q And did you do that that night?

2 A I did.

3 Q And were there different areas -- we'll go back through
4 that, that you actually swabbed for any possible DNA
5 evidence?

6 A Yes, ma'am.

7 Q Was it also apparent -- or what was apparent as far as
8 the victim's condition when you were there?

9 A He had already been pronounced dead.

10 Q Tell this jury -- you mentioned that you processed the
11 scene for fingerprints. How did you go about
12 processing this scene and what areas were you focused
13 on that night?

14 A In particular, I was focusing on the front door because
15 it had been forced opened. And like I said earlier,
16 you want to focus on the areas that you know have been
17 touched because that's where most of your evidence is
18 going to be found. To process something for
19 fingerprints, you take a fingerprint brush, put
20 fingerprint powder on it and you can either move the
21 brush in a rotating motion or I use a brush that I use
22 to just lightly brush the powder on.

23 Now, the moisture in the fingerprint is what the
24 fingerprint powder adheres to and as soon as you start
25 to see a fingerprint, you want to try to develop it

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 more without completely wiping it off. Once you do
2 that, you want to secure it to fingerprint tape, put in
3 on a fingerprint backer and then fill out where it came
4 from so that later on when the comparisons are done,
5 you will be able to put it back where it had been.

6 Q And in certain fingerprints, are you always able to
7 collect the actual fingerprint itself without
8 destroying it?

9 A No, ma'am.

10 Q Why is that?

11 A Well, it depends on what the surface is. You might
12 have a surface that has a bad texture that you can
13 actually see the fingerprint that's been left behind,
14 but to lift it, you might get nothing but the texture
15 of the item. Another possibility is you might have a
16 fingerprint that is left in dust. If you try to
17 process that or lift it, you're probably going to brush
18 it away.

19 Q If I walk up to something and touch it, such as this,
20 am I necessarily going to leave a print?

21 A Not necessarily.

22 Q And what are the factors that inhibit or help to leave
23 a fingerprint?

24 A Well, some -- will tell you that you will always get a
25 fingerprint as long as you have a perfect finger with

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 the perfect substance on it on the perfect surface. So
2 if all those things, you have completely flat and
3 nonporous surface, like glass, for example, is a great
4 surface, that's one surface you can get a fingerprint
5 off of -- I liken fingerprints to something like an ink
6 stain that you might get out of a -- store. And as
7 long as that -- because ink's the same way -- same
8 exact impression. But if you don't have the same
9 amount of ink on it, you're not going to get the same
10 impression, it's going to be -- and in the world of
11 fingerprints, the ink is typically -- the oil, et
12 cetera on your finger or, perhaps, other contaminants
13 like blood or dirt or oil or cooking grease or
14 something along those lines. But if you have just the
15 right amount of moisture on the finger, on the right
16 surface and the finger itself is in good shape and
17 ridges are nice and round, you will get a fingerprint,
18 but that's not what always happens.

19 Q Are you familiar with the term smudge?

20 A Yes, ma'am.

21 Q What does that mean?

22 A A smudge is a fingerprint that one of two things has
23 typically happened. Either there is an excessive
24 amount of pressure during the deposition of the
25 fingerprint or there is movement, which it essentially

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 makes unreadable fingerprints.

2 Q And in order to make an identification from a
3 fingerprint, does it have to be a certain amount of
4 what's called ridge detail?

5 A Ridge detail has to be present. You can look at your
6 finger and notice that our fingers and the lower digits
7 and the palmar side of your hand have some lines on
8 them. They're called friction ridges. And they are
9 what help you grip items. Those ridges and how they
10 are on your finger are what identify you. And they
11 identify every other person. We have to have that
12 ridge detail present in order to do any type of
13 comparison -- make an identification.

14 Q Okay. And a high traffic area such as a door in a
15 business or something like that, can it sometimes be
16 complicated if the place is touched over and over by
17 different persons?

18 A Sure, because instead of the ridges and furrows that go
19 in between that will show the fingerprint itself, you
20 end up filling in that space. Just like if you hit
21 that ink stamp over and over again, those blank spaces
22 tend to get filled in.

23 Q You've heard the term latent print versus patent print?

24 A Yes.

25 Q What's the difference between those two?

TRISHA ODOM DIRECT BY MS. CAMPBELL

- 1 A For crime scene purposes, we use the term latent print.
2 All latent means is unseen, but we use it to cover all
3 types of fingerprints that we can potentially find at a
4 crime scene. The latent prints are the one that are
5 unseen, that you have to do something to develop out.
6 Patent prints are ones that you can actually see with
7 the naked eye without any kind of enhancement. Then
8 you also have a third type that's called a plastic
9 print, which is a 3-D impression like you might get in
10 Silly Putty.
- 11 Q When we're talking about patent prints or known prints,
12 typically, in your course of business, are you making
13 comparisons to say prints that are rolled or gathered
14 in some manner?
- 15 A Right, the known prints themselves are going to be
16 taken in a controlled situation where we know who the
17 donor is.
- 18 Q Can you tell how long a fingerprint has been -- if
19 there is a fingerprint there, if one is left, can you
20 tell how long it's been there?
- 21 A No, ma'am.
- 22 Q In this area where you -- as far as that goes?
- 23 A No.
- 24 Q Starting with the first area that you processed in this
25 house as far as collecting fingerprints, what area did

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 you process first?

2 A I did the front door and the door jam.

3 Q And that would be the front door to the apartment?

4 A Yes, ma'am.

5 Q And were you able to lift any fingerprints from those
6 areas?

7 A I was.

8 Q Tell the jury, basically, what you were able to find?

9 A I was able to get five partial fingerprint impressions
10 and a shoe wear impression.

11 Q I'm going to show you what's been marked as State's
12 Exhibit No. 76, do you recognize this?

13 A Yes, ma'am.

14 Q And what is that?

15 A These are the fingerprints that I collected from the
16 crime scene.

17 Q Which area did these come from?

18 A They came from the door, the door and the door area.

19 MS. CAMPBELL: Your Honor, at this time, we would
20 offer State's Exhibit 76 into evidence.

21 MR. SCHNEE: No objection.

22 THE COURT: Admitted without objection.

23 MS. CAMPBELL: Thank you, Your Honor.

24 (State's Exhibit No. 76 was admitted
25 into evidence.)

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 BY MS. CAMPBELL:

2 Q Tell the jury exactly how these were collected and --

3 A Like I said, to process an item for fingerprints, you
4 put a little bit of powder on a brush, dust the area
5 that you think might have been touched and see if the
6 fingerprints develop out. One the fingerprints are
7 developed out, you secure them on a fingerprint backer
8 and draw a diagram, put all the information on the back
9 of the card so that you know where it came from.

10 In this case, what I lifted the fingerprints from
11 were the -- the front door and the door jam,
12 specifically, the area on -- the front of the door was
13 glass, the top half was glass and the bottom half
14 was -- I don't know if it was metal or if it was wood,
15 but it was a solid surface that was not glass. And
16 part of the fingerprint came from the actual glass and
17 part of it came from the area under --

18 Q And how many fingerprints lifts were you, actually,
19 able to make from the door, the front door?

20 A There were five -- there were five latent prints.

21 Q And --

22 A Five latent prints and one shoe wear impression, so a
23 total of six images.

24 Q And I show you this, this is from the inside, State's
25 Exhibit No. 28, is that the door you were referring to?

TRISHA ODOM DIRECT BY MS. CAMPBELL

- 1 A Yes, ma'am.
- 2 Q And you would have been processing the inside or the
- 3 outside of that door?
- 4 A The exterior.
- 5 Q And how many prints were you able to get from the glass
- 6 area?
- 7 A I'm sorry. I would have to refer to my report for
- 8 that.
- 9 Q Sure.
- 10 A Two were from the actual glass, the third from the
- 11 glass was the shoe wear impression. And then there
- 12 were three more that came from the area below the glass
- 13 on the door.
- 14 Q Okay. And you say shoe wear impression, what were you
- 15 able to lift on that as far as that was concerned?
- 16 A It was a partial shoe wear impression that had been
- 17 left on the door.
- 18 Q And in order to make a comparison of the shoe wear
- 19 impression, do you have to be provided a known standard
- 20 of some sort?
- 21 A Yes, ma'am.
- 22 Q In order to make a positive?
- 23 A Or any kind of comparison, that's right.
- 24 Q How many years was it before this crime was, actually,
- 25 solved?

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 A The crime happened in 2005 and we solved it in 2012.

2 Q Once you had collected these cards --

3 Can you open that up so I can show them?

4 When you're doing your collection, when you're

5 transferring it onto a card like you did with these

6 prints, do you -- can you alter it in any way to make

7 it look like someone else's?

8 A No, all the powder's done is that it's made visible the

9 impression that was left by the moisture on the

10 fingerprint. And all the tape is doing is lifting it

11 up so that you can put it on a contrasting backer.

12 Q In this case, it's on the exterior of the door?

13 A Yes, ma'am.

14 Q And in this case, you also mentioned there was ridge

15 detail all the way on one side of your hand; is that

16 correct?

17 A That's right.

18 Q But in this case, were the prints you collected

19 fingerprints, palm prints or part or both or what?

20 A They were all partial fingertips.

21 Q Partial fingertips?

22 A Yes, ma'am.

23 Q Except for the shoe wear impression, obviously. And

24 just so the jury can see, like this one is marked L-6,

25 and you just put numbers on them randomly as you

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 collect them?

2 A Not, typically, as I collect them, but once I get them
3 back to a controlled environment like my office, I will
4 label them so that we can -- once we do write a report,
5 we can reference them and whoever is reading the report
6 understand what we're referencing.

7 Q And then on the back of these cards, I see where
8 it's -- after you've collected the print, where it's
9 shown the general area where you collected it from the
10 door?

11 A That's correct, that's for orientation.

12 Q And those are the prints that you, actually, were able
13 to get from the front door?

14 A Yes, ma'am.

15 Q And again, can you tell how long they've been there?

16 A No, ma'am.

17 Q Are everyone's fingerprints unique to them?

18 A Yes, ma'am.

19 Q Once you collect the fingerprints and the shoe
20 impression from the front door -- and by the way, were
21 you were able to tell exactly how entry was made into
22 this house?

23 A It was forced open, that's all I could tell.

24 Q Did you collect any other fingerprints from the
25 interior or photograph any other fingerprints of the

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 interior?

2 A Yes, I did.

3 Q And, specifically, what did you find?

4 A On the lamp that was knocked over, there was a
5 fingerprint on the base of the lamp.

6 Q And I'll show you what's been marked as State's Exhibit
7 No. 79, do you recognize that?

8 A Yes, ma'am.

9 Q What's that a photograph of, ma'am?

10 A The lamp.

11 Q And you mentioned that you were able to get a
12 fingerprint — or photograph a fingerprint. I show you
13 State's Exhibit No. 80, what does that show?

14 A That's the fingerprint that I photographed.

15 Q Why did you not collect this fingerprint as you did the
16 others on the front door?

17 A Well, like I said, it was a dust fingerprint and there
18 was a really good chance that were I to try to lift it
19 that it would destroy the fingerprint and I wouldn't be
20 able to do any kind of comparison. It wouldn't be
21 worth anything anymore.

22 MS. CAMPBELL: Your Honor, at this time, I would
23 offer State's Exhibits 79 and 80 into evidence.

24 MR. SCHNEE: No objection.

25 THE COURT: Admitted without objection.

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 (State's Exhibit Nos. 79 and 80 were
2 admitted into evidence.)

3 BY MS. CAMPBELL:

4 Q State's Exhibit No. 79, that shows the lamp there on
5 the floor?

6 A Yes, ma'am.

7 Q And then you mentioned this was on the base, so that
8 would have been this curvy part?

9 A Right, right. You can actually see the color of the
10 lamp in the photograph.

11 Q Did you take any special precautions in order to
12 preserve this fingerprint when you photographed it to
13 make sure it was usable later?

14 A Well, I photographed it, that was the best way to
15 preserve it.

16 Q And once it's photographed, that goes into the file?

17 A Yes.

18 Q That evening or as that investigation continued, at
19 first, were there any known suspects?

20 A No, ma'am.

21 Q Were there any requests made of you specifically at
22 first to compare to any or all of those photographs?

23 A No, ma'am.

24 Q Even if a case goes cold as in this case, over the
25 years, is it possible for investigators to develop

TRISHA ODOM DIRECT BY MS. CAMPBELL

- 1 suspects and ask you to make comparisons?
- 2 A Yes.
- 3 Q Is there also a system in your office known as AFIS?
- 4 A Yes.
- 5 Q And has AFIS been in your office for a while?
- 6 A Yes, since long before I got there.
- 7 Q Okay. Have improvements been made to it recently?
- 8 A Yes.
- 9 Q In the last few years?
- 10 A Yes, ma'am.
- 11 Q That evening, did you also go to another apartment
- 12 within the complex to collect certain evidence?
- 13 A I did.
- 14 Q And what was that, ma'am?
- 15 A I went to apartment [REDACTED] which was -- which was across
- 16 the parking lot in a diagonal manner. I went there to
- 17 project -- to collect a projectile.
- 18 Q Okay. When you say you collected a projectile, what
- 19 are you collecting for people who don't do guns that
- 20 much?
- 21 A A projectile is the part this comes out of the gun when
- 22 you shoot it.
- 23 Q What I call the bullet?
- 24 A What you call the bullet.
- 25 Q And you're familiar with the shell casing versus what I

TRISHA ODOM DIRECT BY MS. CAMPBELL

- 1 call the bullet or projectile?
- 2 A Yes, ma'am.
- 3 Q And, typically, where does the shell casing end up in a
- 4 semi-automatic?
- 5 A Somewhere around where the weapon was fired.
- 6 Q And the apartment that you went to, was it located in
- 7 the same apartment complex where this murder occurred?
- 8 A Yes, ma'am, just across the parking lot.
- 9 Q Across the parking lot?
- 10 A Yes, ma'am.
- 11 Q So if you went out the front door, it would have been
- 12 across from that?
- 13 A Yes, ma'am, but diagonal.
- 14 Q Okay. That evening, while there at the scene, too, did
- 15 you also -- you also mentioned earlier y'all all
- 16 collect DNA evidence on the swabs?
- 17 A Yes, ma'am.
- 18 Q Did you collect a number of swabs from the interior of
- 19 the house as well as the door?
- 20 A Yes, ma'am, at [REDACTED]
- 21 Q I'm going to show you what's been marked as State's
- 22 Exhibit No. 58. Does that include the projectile you
- 23 collected at that time as well as packed separately
- 24 within that package of the swabs?
- 25 A Yes, ma'am.

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 MS. CAMPBELL: Your Honor, at this time, we would
2 offer State's Exhibit No. 58 into evidence. I believe
3 without objection.

4 MR. SCHNEE: No objection.

5 THE COURT: Admitted without objection.

6 (State's Exhibit No. 58 was admitted
7 into evidence.)

8 BY MS. CAMPBELL:

9 Q On this, in addition to the projectile you collected,
10 does it also indicate the areas where you collected DNA
11 swabs?

12 A Yes, ma'am.

13 Q And what were those areas.

14 A It would be stains on the wood part of the door, swabs
15 of the glass door, the lower right pane, the swabs of
16 the door, the middle row left pain, swabs of stains in
17 the kitchen on the floor, the swabs of the stain on the
18 exterior glass, swabs of the glass, door glass, middle
19 pane, lower row and swabs an exterior front door knob.

20 Q And in that, you refer to stains consistently, what
21 type of stains are you talking about?

22 A Bloodstains.

23 Q What appears to be blood?

24 A Yes.

25 Q And at that point, do you know how many people -- would

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 you have any way to know how many people were actually
2 bleeding there at the scene?

3 A No, ma'am.

4 Q I want to turn your attention to 2007, was there a
5 request made of you as the investigation progressed to
6 compare the prints you collected, including the lamp at
7 the front door, to a certain person?

8 A Yes.

9 Q And what request was made of you, ma'am?

10 A I was to compare the latent print -- it was L1 through
11 L6 were compared to Retha Jenkins.

12 Q Retha Jenkins?

13 A Yes, ma'am.

14 Q At that point, were you able to obtain a known standard
15 or card for Ms. Retha Jenkins with her fingerprints on
16 it?

17 A Yes, ma'am.

18 Q And when you did that comparison, what were your
19 results?

20 A I was not able to match the fingerprints on that door
21 to any of Ms. Jenkins' fingerprints.

22 Q And when you go through doing your match when you have
23 what's known as a fingerprint card -- and I'll get to
24 that in a minute, do you do -- you look at each
25 fingerprint?

TRISHA ODOM DIRECT BY MS. CAMPBELL

- 1 A Yes, ma'am.
- 2 Q Because each one is unique to each one as well as to
3 the person?
- 4 A That's correct.
- 5 Q So were you able to match any of those fingerprints to
6 Ms. Retha Jenkins?
- 7 A No, ma'am.
- 8 Q And is it unusual as the investigation continues,
9 especially over the years, for you get more than one
10 request to compare?
- 11 A No, it's very normal.
- 12 Q I want to turn your attention to June the 8th of 2010.
13 I believe you submitted a report after there was
14 another request made; is that correct?
- 15 A Yes, ma'am.
- 16 Q And, again, were you asked to compare certain
17 fingerprints to another individual?
- 18 A I was.
- 19 Q And who was that?
- 20 A I believe the pronunciation of the name is -- Jarret.
- 21 Q And did you do any comparison to try to include or
22 exclude Mr. Jarret as contributing to the fingerprints
23 on the door?
- 24 A Yes.
- 25 Q What were your results?

TRISHA ODOM DIRECT BY MS. CAMPBELL

- 1 A I was not able to match any of the fingerprints to him.
- 2 Q And of the fingerprints that you found on the front
- 3 door, I believe there were six of them or five of them?
- 4 A Five.
- 5 Q That's right. Were they all usable fingerprints?
- 6 A They were all suitable for comparison purposes,
- 7 although I don't know that all of them could be
- 8 positively identified.
- 9 Q Could you explain that?
- 10 A Sure. There are cases when you might be able to look
- 11 at a fingerprint and you see that it will be a --
- 12 fingerprints come in three basic patters, whirl
- 13 patterns, loop patterns and arch patterns. And if you
- 14 can tell that the subject has all whirls and you can't
- 15 tell anything except the pattern of your fingerprint is
- 16 say an arch, if your suspect is all whirls, you know
- 17 that person couldn't possibly have made that print.
- 18 You can't positively say someone has made it, but you
- 19 might be able to eliminate them or you might not be
- 20 able to say that because if that same person has the
- 21 same pattern, but you can't tell anything else other
- 22 than the pattern, then it would be inconclusive because
- 23 you can't say one way or the other.
- 24 Q But in this case when you compared it to Mr. Jarret,
- 25 you weren't able to match it?

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 A I was able to exclude all of the prints that he -- that
2 he -- I was able to exclude that he made any of the
3 prints.

4 Q So he was absolutely excluded as making --

5 A Right, except for L-5. I do have that listed as no
6 value on this report.

7 Q And what does no value mean?

8 A That means nothing can be done with it.

9 Q Okay. And again, why would it be that?

10 A The quality of the print isn't there. There isn't
11 enough ridge detail.

12 Q I'm going to turn your attention to 2012. Did you
13 become aware that there had been a request performed by
14 Ms. Bodie in your office?

15 A Yes.

16 Q How did you become aware of that?

17 A I don't recall if I knew that she had run it or if I
18 knew she was going to run it, but I had become aware
19 that she had run the print. And after that, she got a
20 hit back on it.

21 Q Okay. And once a hit is done -- explain to the jury
22 what that means and what y'all do?

23 A What a hit is -- and let me specify, what she ran was a
24 photograph of the print from the lamp. And what she
25 did was she went through the candidate list. She found

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 what she believed to be a source that could have made
2 that print. She gave the known print card of that
3 individual to me and I compared that to a photograph of
4 the same print that she ran through the AFIS system.
5 When you get back a positive, a possible positive, we
6 call that a hit and that's what we do the comparison
7 on.

8 Q And why is it that y'all make an independent
9 verification of that hit?

10 A We want to make sure that what the information that the
11 computer gives up is correct. It is an investigative
12 tool. It doesn't do a one to one comparison. It
13 doesn't look at the individual ridges on the
14 fingerprint. It creates a -- it works off a
15 mathematical equation based on latent fingerprints.
16 It's plotted. The minutia points are plotted. And we
17 want to make sure -- even after we have someone look at
18 it on the screen, we want to make sure that what
19 they're seeing, they're seeing correctly.

20 Q At that point, did you an actual one-on-one comparison
21 to some known fingerprints from the Defendant?

22 A I did.

23 Q And when the hit came back, who did the hit give you
24 information about?

25 A Greg Kelvin Isaac.

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 Q And what was his date of birth?

2 A [REDACTED].

3 Q [REDACTED]?

4 A Yes.

5 Q [REDACTED]?

6 A That's correct.

7 Q Were you able to make any determinations independently
8 involving him?

9 A Yes. The fingerprint that was on the lamp was made by
10 Mr. Isaac's left middle finger.

11 Q I'm going to show you what's been marked for
12 identification purposes only State's Exhibit 75? Do
13 you recognize that?

14 A Yes, ma'am.

15 Q And then I'll show you what's been marked State's
16 Exhibit 81. Is that a copy of the --

17 A Yes, ma'am.

18 Q And is that the fingerprint card that you used to
19 verify the hit from AFIS?

20 A Yes.

21 MS. CAMPBELL: Your Honor, at this time, we would
22 offer -- we would not offer 75, that would be ID only. We
23 would offer State's Exhibit 81 into evidence.

24 (State's Exhibit No. 75 was marked for
25 identification only.)

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 MR. SCHNEE: Can we approach for a second, Your
2 Honor?

3 THE COURT: Yes, ma'am.

4 Ladies and gentlemen, let's stand for a moment,
5 everybody.

6 (Whereupon, a bench conference was held
7 off the record, in the presence of the
8 jury, but out of the hearing of the
9 jury.)

10 THE COURT: Okay. Any objection?

11 MR. SCHNEE: No objection.

12 THE COURT: Admitted without objection.

13 (State's Exhibit No. 81 was admitted
14 into evidence.)

15 BY MS. CAMPBELL:

16 Q And again for the record is just a copy of the card you
17 actually used?

18 A Yes, ma'am.

19 Q When did you, actually, issue a report with those
20 findings?

21 A The report was written on March the 30th, 2012.

22 Q And once you issued that report, was it verified by
23 anyone else in your office?

24 A Yes, Ms. Bodie did.

25 Q Okay. And she did an independent verification as well?

TRISHA ODOM DIRECT BY MS. CAMPBELL

- 1 A Yes, ma'am.
- 2 Q Is your laboratory accredited?
- 3 A It is.
- 4 Q And who accredits your laboratory?
- 5 A The American Society of Crime Lab Directors.
- 6 Q As part of your accreditation, are there certain
- 7 protocols and procedures in place?
- 8 A Right, we have to have a protocol we follow.
- 9 Q Was that done in this case?
- 10 A Yes.
- 11 Q And so you met all those standards?
- 12 A Yes.
- 13 Q And once you, actually, make a comparison and make a
- 14 positive, is your work available for review by any one?
- 15 A Yes, ma'am.
- 16 Q I want to turn your attention to April 11th after you
- 17 issued your report. Did Chief Wilson make contact with
- 18 you again?
- 19 A He did.
- 20 Q What was the purpose of that?
- 21 A To -- to bring Mr. Isaac in to roll an additional set
- 22 of fingerprints, I guess, to double extra check that we
- 23 were correct that it was this gentleman who had made
- 24 the fingerprint.
- 25 Q Again, what date was that?

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 A I wrote the report on April the 11th, 2012.

2 Q And at that point, tell the jury what you did when
3 Mr. Isaac was brought to you?

4 A I, actually, rolled a set of known fingerprints on our
5 live scanning system. Live scan is inkless -- it's
6 essentially a photograph of the fingerprint detail and
7 a way of rolling the fingerprints that doesn't involve
8 ink. So I did live scan prints of Mr. Isaac and then
9 did a comparison of that card with the latent print
10 that we had gotten off of the lamp.

11 Q During the course of time, I show you State Exhibit 82,
12 is that also a set of known prints from the Defendant?

13 A Yes, it is.

14 Q And State's Exhibit 83, is that a copy of the --
15 State's Exhibit 82.

16 A Yes, it is.

17 MS. CAMPBELL: Your Honor, at this time, we would
18 offer State's Exhibit 83 into evidence and 82 for ID only.

19 MR. SCHNEE: No objection.

20 THE COURT: Admitted without objection.

21 (State's Exhibit No. 83 was admitted
22 into evidence.)

23 (State's Exhibit No. 82 was marked for
24 identification.)

25

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 BY MS. CAMPBELL:

2 Q And then you also had a set from the live scan that you
3 actually did yourself?

4 A That's correct.

5 Q And comparing the fingerprint that you found from the
6 lamp that was in dust, were you able to verify the
7 results?

8 A Yes.

9 Q And whose fingerprint is the one on the lamp?

10 A Greg Isaac's.

11 Q And did you ever compare it to any one else at that
12 point?

13 A We compared it to one other person and that was
14 Mr. Isaac's brother.

15 Q And what was the purpose of that?

16 A To make sure that it was not his brother.

17 Q Who request that you did that?

18 A I belief that Chief Wilson did.

19 Q Was that around the same time period in April?

20 A Yes, it was on the same report as a matter of fact.

21 Q Once you are able to match a fingerprint to an
22 individual, can it match anyone else?

23 A No.

24 Q When you did the comparison to his brother, is there
25 any way his brother was a possible contributor to that

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 fingerprint?

2 A No.

3 Q I want to show you what's been marked as State's

4 Exhibit 78. Do you recognize this?

5 A I do.

6 Q This is something you actually prepared?

7 A Yes.

8 Q What does this show?

9 A On the left-hand side, it is a blown-up photograph of
10 the fingerprint from the lamp. And on the right-hand
11 side, it's Mr. Isaac's left middle finger.

12 Q On State's 83 or 81, these were rolled at different
13 times, but do they show the same fingerprints? Sorry.

14 A That's okay.

15 Q Without being up close at this very moment, they all
16 have the same patterns. And the blow-up here of the
17 know print is taken from one of your scans?

18 A Yes.

19 Q One of your rollings?

20 A Yes.

21 Q And that's one that was definitely associated with Mr.
22 Greg Isaac?

23 A Yes.

24 MS. CAMPBELL: Your Honor, at this time, may the
25 witness step down?

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 THE COURT: Yes.

2 BY MS. CAMPBELL:

3 Q You can come over on this side so the court reporter
4 can hear you. I notice there are some little blue dots
5 on there. Who put those on here?

6 A I did.

7 Q What was the purpose of the dots on the two different
8 --

9 A For this purpose, it was so that the jury could look at
10 the fingerprints and see what we call -- minutia. A
11 minutia is just one of the small points. For
12 fingerprint purposes, the most difficult minutia points
13 that we see are going to be right here (indicating).
14 See this ridge (indicating) that runs along here and
15 then it splits? We call that a bifurcation. And then
16 we have other ridges that flow and then stop. Stop,
17 that would be an ending ridge or ridge ending. We also
18 have something called a dot, which is right there
19 (indicating). Those are the typical minutia points
20 that we use to effect an identification.

21 Q And in this, I notice there are a number of
22 corresponding dots on each of these two pictures.

23 A Uh-huh.

24 Q And are those indicating areas -- what do those
25 indicate?

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 A You see the dots are in the proximate area on both of
2 the fingerprints. These are showing that this minutia
3 point and that minutia point are the same. When we
4 start looking at fingerprints, we try to go to
5 something to begin with that sort of catches our eye.
6 A really good place to start is the very center of the
7 fingerprint called core, that be right here. If you
8 have that, that's really a good place to start because
9 you can look on both fingerprints and say, okay, what
10 do I have here? I have a bifurcation and then a ridge
11 that flows down a little bit from that bifurcation and
12 there's another bifurcation.
13 You've got that same feature right there. And
14 then from that, you go -- you have a ridge that's
15 immediately above that that doesn't have a bifurcation
16 or it doesn't end, so it's just uneventful. So one
17 ridge above that, you have another bifurcation. So you
18 look over here and you see do I have the same thing.
19 So here's that same ridge that uneventful, and then
20 another bifurcation. Immediately up from that
21 bifurcation that we just looked at, you could have
22 another bifurcation and it's pretty much on top of the
23 other one. And you see that one right there. And then
24 over to your left, you have one, two, three, four
25 ridges and then a -- or four ridges over is a

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 bifurcation. Then you have the same four ridges, but
2 you have a bifurcation. And then from that bottom
3 ridge bifurcation, if you follow that up, you see
4 there's another bifurcation and then you see that one
5 right there, too. And one I don't even have marked is
6 just a little bit down, you see it's right here
7 (indicating). It comes off of the top of the prong of
8 the bifurcation that we have marked here (indicating),
9 same thing right there (indicating). And what we're
10 looking for is anything that doesn't agree.

11 So I go through all of these minutia points that I
12 find, go a little bit further up here (indicating). If
13 you go from over here, follow it around and then one,
14 two, four, four, you've got another bifurcation right
15 here. You've got the same thing one, two, three, four
16 five. There's that bifurcation right there and it's
17 got that kind of strange little dip in it right there.

18 So up from that, you have one, two, three, four,
19 call that an ending ridge, then you do the same thing,
20 one, two, three, four, and there's an ending ridge.
21 And then you go one, two, three, there's a little short
22 ridge right there, that little teeny, tiny little ridge
23 right there. I don't even have that marked, but you
24 can see that right there, one, two, three and there's
25 that little ridge. And then an additional one, two

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 ridges up, you've got that bifurcation. Bifurcation
2 that's one, two up there, you've got that bifurcation.
3 And then just up from that, you have that little
4 bifurcation there, you have that little bifurcation
5 there and that's there. And then one ridge up and then
6 this bifurcation. And then one ridge up and that
7 bifurcation.

8 And the more you look at it, you start seeing not
9 just the fact of the minutia point through there and
10 not just the fact that it's the same kind of minutia,
11 but that the ridges flow in the same manner. You see
12 the way these ridges kind of flow up in a sharp manner
13 and then they flow back down in a sharp manner. You've
14 got that same exact flow right there. And that's what
15 helps identify the fingerprint.

16 Q Okay. In this case, I notice you have a number of dots
17 and you've already pointed out two or three places you
18 didn't even mark; is that correct?

19 A Right. I mean, the ones I put on there are for display
20 purposes only.

21 Q And is there any certain number of these minutia
22 details that have to match for you to make a call?

23 A No.

24 Q But in this case, is there any doubt about this match?

25 A No.

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 Q In fact, the quality of this print is?

2 A It's a remarkably good print to be in dust.

3 Q And in your review of this, there is no question as to
4 whose fingerprint was on that?

5 A No, there's no doubt.

6 Q And that would be Greg Isaac?

7 A Yes, ma'am.

8 MS. CAMPBELL: Your Honor, may the witness step
9 back up?

10 BY MS. CAMPBELL:

11 Q In addition to Mr. Isaac, were you provided two other
12 codefendant's names in this case?

13 A I was.

14 Q What were those name?

15 A Tavares World and Vernorris Dixon.

16 Q Did you make any attempt to compare their prints?

17 A I did.

18 Q What was that?

19 A The other five prints that were not identified.

20 Q As well as I believe Mr. Isaac was compared to those,
21 too?

22 A Yes, ma'am.

23 Q Did either Greg Isaac, Tavares World or Vernorris Dixon
24 match any of the fingerprints --

25 A No.

TRISHA ODOM DIRECT BY MS. CAMPBELL

1 Q In fact, were they eliminated as being possible
2 contributors?

3 A I called the L4 inconclusive due to the quality of the
4 known prints.

5 Q Okay. But you weren't able to identify any of them to
6 those prints?

7 A No, ma'am.

8 Q Thank you. And again, do you know whether or not
9 anyone who made entry that day, actually, touched the
10 door with their fingerprints?

11 A I have no idea.

12 Q At a later date, did you also ask -- Cooper?

13 A Yes.

14 Q And what were the results when you did the comparison
15 of the fingerprints from the front door?

16 A Mr. Cooper didn't make any of them.

17 Q He was eliminated?

18 A Yes, ma'am.

19 Q And, finally, whose fingerprint was on the lamp?

20 A Greg Isaac's.

21 Q Could it be anyone else's?

22 A No.

23 Q And when you say no one else, even identical twins, do
24 they have different fingerprints?

25 A Yes, identical twins have different fingerprints.

TRISHA ODOM CROSS BY MR. SCHNEE

1 Q Thank you.

2 MS. CAMPBELL: I have no further questions.

3 THE COURT: The Defense?

4 MR. SCHNEE: May it please the Court.

5 CROSS-EXAMINATION

6 BY MR. SCHNEE:

7 Q Good afternoon.

8 A Good afternoon.

9 Q Actually, almost evening at this point. When you got
10 to the apartment, you took a lot of photographs of it?

11 A I didn't take a lot of photographs. I took some. I
12 believe I took 43 in the victim's apartment.

13 Q Okay. And that's just to show not only fingerprints,
14 but, also, the general appearance of the apartment?

15 A That's right.

16 Q Okay. And in your own words, I believe you said there
17 was obviously a fight in the apartment?

18 A No, I don't think I said that there was a fight. I
19 said that there was a lamp on the ground and cushions
20 were skew and the coffee table appeared to have moved.

21 Q Okay.

22 A I don't believe I ever characterized it as having been
23 a fight.

24 Q Would you describe it as a struggle there?

25 A I could see that something had occurred that moved

TRISHA ODOM CROSS BY MR. SCHNEE

1 things around.

2 Q Okay. And you also took a lot of pictures of the front
3 door?

4 A Yes.

5 Q Okay. Because it was forced open?

6 A I took the pictures of the front door for the
7 impressions that were on there specifically.

8 Q Okay. But you looked at the door?

9 A Yes.

10 Q Okay. And you were taking impressions, including a
11 shoe impression on the door?

12 A Right, there was a shoe impression on the door.

13 Q Which would be very consistent with someone kicking the
14 door open?

15 A I know the door was forced open, that's all I can say.

16 Q Okay, so it was forced open?

17 A Yes.

18 Q Okay. And you took a shoe impression off the door?

19 A Yes.

20 Q And a number of fingerprints?

21 A Yes.

22 Q Okay. And you just mentioned L4?

23 A Uh-huh, yes.

24 Q That was off the door?

25 A Yes.

TRISHA ODOM CROSS BY MR. SCHNEE

- 1 Q Okay. You said it was inconclusive, I believe, to
2 Tavares World and Vernorris Dixon?
- 3 A Yes, ma'am.
- 4 Q Okay. And that's because the known prints were too
5 poor?
- 6 A Right, the quality of the known prints, that's right.
- 7 Q Did you ever request a better copy of the known prints
8 from them?
- 9 A I had -- every copy that I had was not complete. I
10 couldn't do enough with it. And that's to say that I
11 couldn't hundred percent eliminate it, but I couldn't
12 because I wanted to make sure I was correct. And there
13 were areas of the fingerprint card that were not
14 represented, like the tip of it specifically.
- 15 Q Okay. Well, did you ever ask for a new copy, a new
16 fingerprint card be done?
- 17 A Not in addition to what I had, no.
- 18 Q Okay. Well, you are aware that both of those people
19 were arrested in connection with this case?
- 20 A Yes.
- 21 Q Okay. And, in fact, you personally rolled Mr. Isaac's
22 prints again?
- 23 A I did.
- 24 Q Including digitally?
- 25 A Right.

TRISHA ODOM CROSS BY MR. SCHNEE

- 1 Q Okay. You didn't do that for Mr. Dixon or Mr. World?
- 2 A No.
- 3 Q Was that your decision or someone else's?
- 4 A There was no real decision being made. I didn't
- 5 request it and I didn't have anybody request me to roll
- 6 them.
- 7 Q Okay. Now, the other people that you were asked to
- 8 examine and compare prints to, Retha Jenkins and --
- 9 Jarret?
- 10 A Yes, sir.
- 11 Q Okay. Typically, when you're looking at prints and an
- 12 investigator comes to you and says look at these prints
- 13 and compare it to X latent prints. That would mean
- 14 there's a suspect in the case; would it not?
- 15 A I think that would be a typical assumption.
- 16 Q Okay. Well is that what you would assume it to be?
- 17 A Yes.
- 18 Q Okay. Especially -- that means someone believes that
- 19 they were there in the apartment?
- 20 A The -- yeah, yes.
- 21 Q Okay. And because they're asking you to do it would
- 22 somehow involved in the case?
- 23 A I would say that would be correct.
- 24 Q Okay. Now, you collected that shoe print?
- 25 A Yes.

TRISHA ODOM CROSS BY MR. SCHNEE

- 1 Q You photographed it?
- 2 A Yes.
- 3 Q Do you photograph it with a scale?
- 4 A I don't recall.
- 5 Q Do you have that in your notes?
- 6 A Whether I photographed with a scale?
- 7 Q Correct.
- 8 A I don't have it in my notes, no.
- 9 Q Because a scale could be used to determine the possible
- 10 size of the shoe itself and therefore, potentially, the
- 11 foot and possibly the size of the person?
- 12 A Right.
- 13 Q Okay. But you're not sure you did that?
- 14 A I have not seen the picture of -- if you have a
- 15 picture, I'll be glad to look at it.
- 16 Q Well, I was just curious if you did.
- 17 A I don't recall and I don't have it in my notes.
- 18 Q Okay. You also saw money on the floor and a wallet on
- 19 the table?
- 20 A Yes.
- 21 Q Okay. And you were there for several hours?
- 22 A I was there for a few hours, yes, from about 10:40 to
- 23 about 1:40.
- 24 Q Okay. When you -- just very briefly, when you're
- 25 talking about comparing and putting prints into AFIS to

TRISHA ODOM CROSS BY MR. SCHNEE

1 all the known databases, for example, your prints and
2 the officer's prints, they're going to be in there to
3 eliminate; aren't they?

4 A Yes.

5 Q Okay. To make sure that -- because if an officer
6 touched the door, then all of a sudden, they're not
7 chasing and trying to figure out oh, wait, it was this
8 person that responded?

9 A I don't know that that's why, but law enforcement
10 prints are in AFIS, yes.

11 Q Okay. So the other prints are still unknown as far as
12 you know?

13 A Yes.

14 Q Did you compare them against Mr. Corbitt?

15 A No. Not that I have documented, no.

16 Q You didn't make a comparison to the person that lived
17 in the apartment?

18 A Not that I recall, no.

19 Q Did you compare them to his son, who also lived in the
20 apartment.

21 A No.

22 Q Okay. I have no further questions.

23 THE COURT: Anything further?

24 MS. CAMPBELL: Just a couple questions.

25 REDIRECT EXAMINATION

TRISHA ODOM REDIRECT BY MS. CAMPBELL

1 BY MS. CAMPBELL:

2 Q I show you State's Exhibit No. 67 and 68?

3 A Yes, ma'am.

4 Q The projectile that you mentioned, State's No. 68, is
5 that photographed there?

6 A Yes.

7 Q And is that how it appeared at the apartment, you said
8 diagonally across from --

9 A Yes.

10 Q And that's how it appeared that night?

11 A Yes.

12 MS. CAMPBELL: Your Honor, at this time, I would
13 offer 67 and 68 into evidence.

14 MR. SCHNEE: No objection.

15 THE COURT: Admitted.

16 (State's Exhibit Nos. 67 and 68 were
17 admitted into evidence.)

18 MS. CAMPBELL: Your Honor, we have a matter of
19 law -- or, I mean, may I approach?

20 THE COURT: All right.

21 (Whereupon, a bench conference was held
22 off the record, in the presence of the
23 jury, but out of the hearing of the
24 jury.)

25 MS. CAMPBELL: I don't have anything further, Your

TRISHA ODOM REDIRECT BY MS. CAMPBELL

1 Honor.

2 THE COURT: Anything further, Mr. Schnee?

3 MR. SCHNEE: No, Your Honor.

4 THE COURT: All right. Thank you. You may step
5 down.

6 Ladies and gentlemen, we're through for the day.

7 Thank you very much. We need you back at 9:30 tomorrow
8 morning. Have a good evening. Please do not discuss the
9 case.

10 (Whereupon, the jury left the courtroom
11 at 5:46 p.m.)

12 THE COURT: All right. Ms. Campbell, regarding
13 the last side bar and your line of questions you wanted to
14 get into.

15 MS. CAMPBELL: Your Honor, the only thing I wanted
16 to put on the record is, basically, on his cross-examination
17 of Investigator Odom, he went into the fact of whether or
18 not law enforcement's fingerprints are in the database. You
19 know, we wanted to make sure we didn't go into the fact that
20 the vast majority of who's in the database are people who
21 have prior arrests. That's how a database is typically made
22 up, so we didn't go into that. He then asked -- law
23 enforcement's fingerprints are in the database. So the
24 inference there is that's all that's in the database. All
25 I'm concerned about and we took it up before, Your Honor,

TRISHA ODOM REDIRECT BY MS. CAMPBELL

1 and I've got a copy of the transcript is the fact that once
2 he did that then he opens it up and we get to get into the
3 fact that people who have been arrested before are in the
4 database. That's typically -- it's not just law
5 enforcement. It's not just normal -- the database is
6 comprised of people who -- his inference to this jury is the
7 database is comprised of people who are in law enforcement.
8 Greg Isaac is not in law enforcement.

9 THE COURT: And what's Isaac's record, if any?

10 MS. CAMPBELL: As far as his prior record, Your
11 Honor, as to what's impeachable, it's going to come out,
12 assuming he takes the stand. He does have a prior burglary
13 conviction as well as malicious injury to real property. I
14 am getting his juvenile record to make sure there is nothing
15 else -- I think as far as what's impeachable, he has other
16 convictions. That would be the extent of what we would get
17 into.

18 THE COURT: Yes, sir.

19 MR. SCHNEE: Judge, the question I asked the
20 witness was if she -- in using that system if she eliminated
21 any officers that were there and her fingerprints from the
22 scene in terms of that specific examination. I didn't ask
23 her anything about the content of the database or the extent
24 of how many different types of ways of getting it in. I
25 simply asked if she eliminated law enforcement prints. And

TRISHA ODOM REDIRECT BY MS. CAMPBELL

1 I followed up with you didn't get photo prints of Tavares
2 World, you didn't get -- prints of Vernorris Dixon. I asked
3 her about other people she was requested to compare it to
4 and there were still unknown prints. I simply got out the
5 facts.

6 The only thing I was eliciting was that her prints
7 and all law enforcement involved on the scene were
8 eliminated by definition. That has nothing to do with
9 whether anyone is in system or in the database and whether
10 my client is in simply because he's not in law enforcement.
11 That's not a logical connection. There's no insinuation
12 that it's only law enforcement in the database.

13 THE COURT: All right.

14 MS. CAMPBELL: The follow-up question when he
15 asked her initially was oh, so law enforcement is in the
16 database? And I will rely on the record.

17 THE COURT: All right. Well, I would think the
18 whole thing is going to come full circle. Mr. Schnee says
19 that Mr. Isaac's is going to testify. Of course, I don't
20 know if he will or he won't, but -- so then he -- of course,
21 you still have to deal with what's impeachable and what's
22 not. But I think that the connection will be made, at least
23 at some point, it's likely to be made should he testify --
24 I'm not suggesting -- you know, trying to discourage him or
25 encourage him, but that whole thing will come full circle.

TRISHA ODOM REDIRECT BY MS. CAMPBELL

1 I would have to review the transcript because it -- I missed
2 those fine points that you all were -- to give me the bases
3 to allow the State to get into his character at this point
4 in the trial. So that can be reserved and take up this
5 argument later on if it's worth taking up later on.

6 MS. CAMPBELL: Thank you, Your Honor.

7 THE COURT: All right. You can refer me to
8 whatever pages of the transcript. I can review the
9 transcript along with a very fine court reporter --

10 Anything else before we recess?

11 MR. SCHNEE: No, sir.

12 THE COURT: All right. 9:30 in the morning.

13 (The proceedings were concluded for
14 September 30, 2013.)

15 (The following proceedings were held on
16 October 1, 2013.)

17 THE COURT: Good morning.

18 You ready for the jury?

19 MS. CAMPBELL: Yes, sir.

20 THE COURT: You can bring the jury in.

21 BAILIFF: Yes, Your Honor.

22 (Whereupon, the jury returned to the
23 courtroom at 9:30 a.m.)

24 BAILIFF: Your Honor, the jury is present.

25 THE COURT: All right.

SHEILA PONDS DIRECT BY MS. WALKER

1 Good morning. Welcome back, ladies and gentlemen,
2 to day number two. We will proceed.

3 Call your next witness.

4 MS. WALKER: Thank you, Your Honor. The State
5 calls Sheila Ponds.

6 THEREUPON

7 SHEILA PONDS,
8 after having been duly sworn, testified as follows:

9 THE CLERK: Thank you. Have a seat in the witness
10 stand, please. State your name for the record.

11 THE WITNESS: Sheila Ponds.

12 DIRECT EXAMINATION

13 BY MS. WALKER:

14 Q Good morning.

15 A Good morning.

16 Q Ma'am, where do you live?

17 A In West Columbia.

18 Q Have you been in the Columbia area -- how long have you
19 lived in the Columbia area?

20 A I've lived in the Columbia area since '85.

21 Q And what is it that you do for a living?

22 A I work with the Department of Juvenile Justice.

23 Q And back in 2005, where did you live?

24 A In Willow Creek Apartments.

25 Q I'm sorry, can -- I'm having a little trouble hearing

SHEILA PONDS DIRECT BY MS. WALKER

1 you, will you speak up little bit?

2 A Okay.

3 Q Where did you live then?

4 A In 2000 --

5 Q Five?

6 A In Willow Creek Apartments.

7 Q And where is that located?

8 A On Fernandino Road.

9 THE COURT: If you pull the mike down just a
10 little bit, then maybe you will speak up.

11 BY MS. WALKER:

12 Q And back in October of 2005, were you living there in
13 that month?

14 A I was.

15 Q Were you -- ma'am, did you know the victim in the case?

16 A I did not.

17 Q Had you seen him before?

18 A I would see him in passing.

19 Q Okay. In what context would you see him?

20 A Just in passing as neighbors, coming and going from his
21 apartment.

22 Q In terms -- how were y'all -- how close were y'all's
23 apartments?

24 A We lived in townhouses. There were my apartment and
25 another apartment and his was on the right side of

SHEILA PONDS DIRECT BY MS. WALKER

1 mine, so it was just a little distance. It was two on
2 either side, then his was just a little further down.

3 Q And on the night of October 27th, 2005, can you -- do
4 you remember that night?

5 A I do.

6 Q Can you tell me -- actually, let me back up, who were
7 you living with in your townhouse?

8 A Me and my daughter.

9 Q And how old was she at that time?

10 A She was 17 at the time.

11 Q And can you tell me what the two of you were doing that
12 night?

13 A We had just arrived home from dance practice and we
14 were preparing for -- I think we had already gone to
15 bed that night.

16 Q After you went to bed, what happened?

17 A I heard banging noise or felt sound like something had
18 dropped. I went into her room to find out what had
19 happened. And when I went to her room to ask her what
20 had happened, she pointed to the apartment adjacent to
21 ours. That's when I heard the tussling and fighting
22 and commotion that was going on.

23 Q And how long did this tussling and commotion last, do
24 you recall?

25 A How long?

SHEILA PONDS DIRECT BY MS. WALKER

- 1 Q Yes.
- 2 A I can't recount how long it was going on, but it
- 3 sounded like a couple of guys were fighting, so at that
- 4 time, I called what I thought may have been security on
- 5 staff at the apartment complex. And as I was calling
- 6 security, when I didn't reach, that's when I heard the
- 7 gunshots and I called 911.
- 8 Q Do you remember how many gunshots you heard?
- 9 A Two.
- 10 Q After you heard the gunshot, what did you do?
- 11 A That's when I called 911.
- 12 Q And then after that?
- 13 A After that, at that time, I was trying to calm my
- 14 daughter down because she was screaming. We were on
- 15 the front -- her bedroom was on the front side of the
- 16 apartment and I was trying to calm her down. I was
- 17 taking her to my bedroom, which is on the backside. At
- 18 that time, I was -- but prior to that, I was trying to
- 19 look out to see if I saw something. I couldn't because
- 20 of the covering of the roof.
- 21 Q Because of the what?
- 22 A The covering of the roof.
- 23 Q Okay.
- 24 A And I couldn't see anything.
- 25 Q Did you remain in your apartment after that?

SHEILA PONDS DIRECT BY MS. WALKER

1 A Until the -- right before the police came, yes, I did.

2 Q And what made you leave your apartment?

3 A After the police came, they came and talked to me --

4 well, I'm trying to remember. No, I'm sorry, right

5 before the police came, I went downstairs because I

6 heard him asking for help.

7 Q When you saw him, who are you referring to?

8 A The victim. I heard him asking for help.

9 Q You remember exactly what he was saying?

10 A He was knocking on the other neighbor's door that was

11 closer to him. He said help, help, someone please

12 help. And after that, I think he may have collapsed

13 and the neighbors from across the street came over to

14 see if they could offer assistance.

15 Q Do you remember those neighbors' names?

16 A No, I don't recall who they were.

17 Q Did you -- and said you went outside and what?

18 A I did. I didn't go to him, but I did -- I opened my

19 door.

20 Q Could you see him?

21 A I could.

22 Q What did he look like at that point in time when you

23 saw him?

24 A He at that point was lying on the ground. I couldn't

25 tell if he was -- they were looking at him to see if

SHEILA PONDS DIRECT BY MS. WALKER

1 they could offer assistance because I want to say that
2 one of the neighbors, it was a male neighbor and a
3 female neighbor, but one of the neighbors don't touch
4 him. The female neighbor, seem like she said I have to
5 because -- sounded like she said she was a nurse or
6 something -- I have to see if he's okay. And at that
7 point, that's when I think the male neighbor saw the
8 son and he said to me, hey, do you know who the fellow
9 is. And if I remember correctly, he said, that's my
10 dad. And I think they kind of had him to come out of
11 the apartment and by that time, the police was showing
12 up.

13 Q When you saw the victim lying on the floor, do you
14 remember what he was wearing?

15 A If I can remember correctly, he had on some pants. I
16 don't remember him having on a shirt because I can
17 remember blood was coming out on the concrete.

18 Q And you said you observed the police arrived at that
19 point?

20 A I did. EMS -- I remember EMS showed up first.

21 Q Did you speak with the police officers that night?

22 A I did.

23 Q You said you saw the neighbors help the son out of the
24 apartment. Did you see any one else go into the
25 apartment that night other than --

SHEILA PONDS CROSS BY MR. SCHNEE

1 A Go into the apartment?

2 Q Yes.

3 A None other than the police, no. The neighbors did not
4 go into the apartment. They had the son to come out.

5 MS. WALKER: Beg the Court's indulgence. No
6 further questions.

7 THE COURT: Yes, sir.

8 MR. SCHNEE: May it please the Court.

9 CROSS-EXAMINATION

10 BY MR. SCHNEE:

11 Q Morning.

12 A Good morning.

13 Q That night when you heard the fighting going on inside
14 the apartment, what was your main concern?

15 A My main concern?

16 Q Yes, what were you paying attention to most?

17 A Just that someone maybe possibly getting hurt, what was
18 going on, just the possibility of someone maybe getting
19 hurt over there.

20 Q Okay. And your first reaction to hearing, at least,
21 the start of this was to run up the stairs to see your
22 daughter?

23 A I was -- we were already upstairs.

24 Q So you just ran into her room?

25 A I was running into her -- going into her room to make

SHEILA PONDS CROSS BY MR. SCHNEE

- 1 sure that something didn't happen in her room.
- 2 Q Okay. And that's when you hear the fighting in the
- 3 townhouse --
- 4 A I didn't hear it in my room. I thought something had
- 5 happened in her room and that's when I heard the
- 6 fighting and --
- 7 Q Okay. And you stated you at some point took her to
- 8 your bedroom?
- 9 A After I heard the gunshots, yes.
- 10 Q Okay. And you said you -- you heard what you thought
- 11 were two male voices?
- 12 A I hear two men voices, yes.
- 13 Q Did you hear specific words?
- 14 A I did not hear any words.
- 15 Q And after the shots, you said you looked outside, but
- 16 you couldn't see anything because of the roof?
- 17 A Correct.
- 18 Q Okay. How long was it before you walked out of your
- 19 apartment?
- 20 A I can't quote a specific time, but after I got her
- 21 settled and after the gunshots and after I heard him
- 22 ask for help is when I went downstairs. I did not open
- 23 the door immediately, but after I heard the neighbors
- 24 come across the street is when I opened my door.
- 25 Q Okay. So couple minutes, maybe?

TAJ COOPER DIRECT BY MR. STEADMAN

1 A Probably about five.

2 Q About five?

3 A About five minutes, maybe.

4 Q Okay. And, obviously, at that point, you couldn't see
5 if anyone else was going into his apartment or out or
6 anything else?

7 A No.

8 Q And you, obviously, didn't see what was going on inside
9 the apartment during the night or the shooting?

10 A No.

11 Q I have no further questions. Thank you.

12 A Thank you.

13 THE COURT: Anything further?

14 MS. WALKER: Nothing further, Your Honor.

15 THE COURT: All right. Thank you. You may step
16 down.

17 You may call your next witness.

18 MR. STEADMAN: The State calls Taj Cooper.

19 THEREUPON,

20 TAJ COOPER,

21 after having been duly sworn, testified as follows:

22 THE CLERK: Thank you. Have a seat in witness
23 stand, please. State your name for the record.

24 THE WITNESS: Taj Cooper.

25 DIRECT EXAMINATION

TAJ COOPER DIRECT BY MR. STEADMAN

- 1 BY MR. STEADMAN:
- 2 Q Good morning, Mr. Cooper?
- 3 A Good morning.
- 4 Q Where are you from?
- 5 A Originally from Columbia, South Carolina.
- 6 Q And where do you live now?
- 7 A Rock Hill, South Carolina.
- 8 Q And how long have you lived in Rock Hill, South
- 9 Carolina?
- 10 A Approximately eight to ten years.
- 11 Q Before that, you lived in Columbia?
- 12 A Briefly in Charlotte, but before that in Columbia, yes,
- 13 sir.
- 14 Q How long have you lived in Columbia?
- 15 A The first 19 years of my life.
- 16 Q What part of Columbia did you grow up?
- 17 A I grew up in the — King Park area and graduated from
- 18 Richland Northeast.
- 19 Q So the northeast side of Columbia?
- 20 A Is where I graduated, yes, sir.
- 21 Q And did you know the victim in this case, Mr. Tony
- 22 Corbitt?
- 23 A Yes, sir, very well.
- 24 Q Did you grow up with him?
- 25 A I first met him when I was around 15 or so, but we

TAJ COOPER DIRECT BY MR. STEADMAN

1 became friends when we were about 17, our senior year
2 of high school.

3 Q So you established a relationship with him when you
4 were in high school?

5 A Yes, sir.

6 Q And that was at Richland Northeast High School?

7 A Yes, sir.

8 Q Can you describe your relationship with Mr. Corbitt?

9 A I mean, best friend I ever had. We became close from
10 day one and never had any problems. We just -- he was
11 my best friend ever.

12 Q And y'all maintained that close friend relationship
13 after high school?

14 A Yes, sir, we did.

15 Q And even after you moved to Rock Hill, you maintained
16 that relationship?

17 A Yes, sir.

18 Q Did you visit him often in Columbia?

19 A Yes, sir.

20 Q And did he -- he stayed in Columbia while you went to
21 Rock Hill?

22 A Yes, sir.

23 Q And how often would you say you talked to him on the
24 phone?

25 A Almost daily, sometimes twice a day, but I would say

TAJ COOPER DIRECT BY MR. STEADMAN

1 daily.

2 Q Had you ever visited his apartment on Fernandino Road?

3 A Yes, sir. He had only been there about four months
4 before this incident, so I only went maybe once or
5 twice before.

6 Q And do you remember where Tony worked at the time?

7 A Yes, sir, Babies-R-Us.

8 Q He worked at Babies-R-Us?

9 A Yes, sir.

10 Q Do you know how long he had that job?

11 A I want to say about eight to ten years, maybe eight or
12 ten. At least, eight.

13 Q And he was working at Babies-R-Us on October 27th,
14 2005?

15 A Yes, sir.

16 Q And do you remember the day of the murder?

17 A Yes, sir.

18 Q What were you doing that day?

19 A I was actually at work in Charlotte. I was working like
20 a second shift job, so I spoke to him approximately
21 seven or so that day on my last break. He was at the
22 mall. Told me to give him a call back and that's what
23 I did. I called him back when I got off around nine or
24 so that evening.

25 Q Did you call him or did he call you?

TAJ COOPER DIRECT BY MR. STEADMAN

1 A I believe I called him both times. I know I called him
2 the second time. I believe I called both times.

3 Q So the first time you spoke with him, that was when he
4 was at the mall?

5 A Yes, sir.

6 Q Do you know who he was at the mall with?

7 A I'm not exactly sure, no, sir.

8 Q And approximately what time was that?

9 A Between seven and eight that evening.

10 Q And then you made a second phone call, approximately
11 what time was that?

12 A It was after 9:00, but between 9:00 and 9:30, I'd say,
13 but closer to 9:30 that evening.

14 Q Why don't you tell me how that phone call went?

15 A Just spoke briefly, general conversation. We were
16 laughing, talking. Like I said, when I spoke to him
17 earlier, he was in the mall. I actually had -- my
18 youngest son just turned eight the other day,
19 September 29th, which is his God son, and he made the
20 comment that I got to get up there and see my new God
21 boy or whatever. We were laughing about that. And
22 like I said, we were just having general conversation
23 and then the call dropped. I attempted to call him
24 back, it went straight to his voice mail, so I just
25 assumed that his phone needed charging. And that was

TAJ COOPER CROSS BY MR. SCHNEE

1 the last I heard from him.

2 Q So when you called back, there was no ring tone, it
3 just went straight to voice mail?

4 A Straight to voice mail, yes, sir.

5 Q And what did you do after you got his voice mail?

6 A Like I said, I just assumed he just -- his phone needed
7 charging. I went about my business, normal life, just
8 chilling pretty much until I received a phone call
9 about one or so that morning from a mutual friend, who
10 was actually from Columbia as well, but lives up in
11 Charlotte, told me that Tony had been shot. And I'm
12 like no, I just talked to him, you know, kind of
13 brushed it off. And he like no, he just got shot. So
14 I made a few phone calls and found out that was the
15 truth.

16 Q Who told you about his murder?

17 A Our friend Dedrick Alexander.

18 Q Once you confirmed he was, in fact, murdered, what did
19 you do next?

20 A I was kind of in a state of shock, like I couldn't even
21 cry. I was just -- I was just crazy, like I don't
22 know. I guess I didn't want to accept it. And by
23 then, it was -- by the time I finished talking to
24 people on the phone, it was probably two or three in
25 the morning. I was going to attempt to come to

TAJ COOPER CROSS BY MR. SCHNEE

1 Columbia that night, but my father was like no, try to
2 get some rest and just come in the morning, so I came
3 as soon as I could that next morning to give support to
4 the family.

5 Q So you didn't make the trip that night, but you made it

6 --

7 A The very next morning.

8 Q What time in the morning?

9 A I guess I came down about 9:00 or 10:00 the next
10 morning. And I don't know, I probably made it over to
11 the family around 11:00 that morning, somewhere like
12 that. I'm not exactly sure.

13 Q Thank you, sir. No further questions.

14 CROSS-EXAMINATION

15 BY MR. SCHNEE:

16 Q Mr. Cooper, 9:30 at night, you said you were on the
17 phone. You said you could hear laughing or something
18 like that?

19 A No, we were laughing. We were just having a general
20 conversation.

21 Q Then the phone went dead?

22 A Yes, sir.

23 Q You didn't think anything unusual about that?

24 A Not at all.

25 Q Okay. The next morning when you came to Columbia, did

TAJ COOPER CROSS BY MR. SCHNEE

1 you talk to the police or any time after that?

2 A After that, yes. I don't think that next day.

3 Q Okay. They were talking to you about trying to figure
4 out who possibly did this?

5 A Yes, sir.

6 Q Trying to figure out possibly why they would have done
7 it?

8 A Yes, sir.

9 Q And I know he's your friend and I'm not trying to talk
10 badly about a dead man, but he was a drug dealer;
11 wasn't he?

12 A Yes, sir.

13 Q And that's one of the reasons they were asking trying
14 to find suspects?

15 A Yes, sir.

16 Q Okay. I have no further questions.

17 THE COURT: Anything further?

18 MR. STEADMAN: No, Your Honor.

19 THE COURT: You may step down.

20 Next witness.

21 MS. WALKER: Your Honor, the State calls Rayquan
22 Washington.

23 MR. SCHNEE: Judge, there's a brief matter of law
24 we need to take up.

25 THE COURT: All right. Ladies and gentlemen,

TAJ COOPER CROSS BY MR. SCHNEE

1 we'll have you step to the jury room for a moment. Please
2 do not discuss the case.

3 (Whereupon, the jury left the courtroom
4 at 9:52 a.m.)

5 THE COURT: Yes, sir.

6 MR. SCHNEE: Thank you, Your Honor. May it please
7 the Court.

8 At this time, I would once again renew my motion
9 related to Rule 5 pursuant to -- inquire of the solicitor's
10 office or any of their investigators who talked to
11 Mr. Washington. At the time of this incident, he was
12 approximately, I believe, seven or eight years old. He has
13 given numerous statements to law enforcement -- and over the
14 years been reinterviewed multiple times and given
15 significant very different stories about what happened such
16 that even the lead investigators in this case determined
17 that he was too young and too traumatized to fully remember
18 exactly what happened that night. I would just simple ask
19 if there is some new or additional version they wish to
20 inform me about they talked to him about in terms of events
21 he is going to testify about and if -- even the fact he's
22 capable of testifying. And based on his very young age and
23 the fact of everything that happened that night, I would ask
24 specifically for a hearing to determine if he has competent
25 memory.

TAJ COOPER CROSS BY MR. SCHNEE

1 THE COURT: How many motions have you just made?

2 MR. SCHNEE: I suppose that would be two sets of
3 motions. One to find out if the solicitor investigator have
4 information. Second to have a hearing to determine if he
5 has memory of those events.

6 THE COURT: All right. What says the State?

7 MS. WALKER: Your Honor, the information that our
8 office has from this young man is the same that we've turned
9 over to Mr. Schnee in this case. In terms of a hearing, I
10 mean, he's 16 years old. I guess I don't see the purpose
11 for a hearing. A 16-year-old, there's no reason for us to
12 believe that he's not competent to testify.

13 MR. SCHNEE: Judge, I'm not questioning --

14 THE COURT: I didn't request any argument.

15 MR. SCHNEE: Sir?

16 THE COURT: I didn't request any argument from
17 you.

18 MR. SCHNEE: I apologize.

19 THE COURT: The Defense is entitled to a hearing
20 on the competency of the witness to testify. He may be call
21 as a witness to determine his competency to independently
22 recollect the facts which he is seeking to testify.

23 MS. WALKER: Thank you, sir.

24 THEREUPON,

25 RAYQUAN WASHINGTON,

RAYQUAN WASHINGTON DIRECT BY MS. WALKER

1 after having been duly sworn, testified as follows:

2 THE CLERK: Thank you. Have a seat in the witness
3 stand, please. State your name for the record.

4 THE WITNESS: Rayquan Washington.

5 DIRECT EXAMINATION

6 BY MS. WALKER:

7 Q How old are you?

8 A Sixteen.

9 Q And what grade are you in?

10 A Tenth.

11 Q Did you understand that when you just got sworn, you
12 were sworn to tell the truth?

13 A Yes, ma'am.

14 Q Do you understand what that means?

15 A Yes, ma'am.

16 Q Do you understand that -- do you remember what happened
17 on the night that your father was murdered?

18 A Yes.

19 Q And you have an independent recollection of that?

20 (There was no response.)

21 Q You can recall that on your own?

22 A Yes.

23 Q And it's been a long time since your father was
24 murdered?

25 A Yes.

RAYQUAN WASHINGTON CROSS BY MR. SCHNEE

1 Q But you can take the stand and tell the truth about
2 what happened that night?

3 A Yes.

4 MS. WALKER: No further questions.

5 CROSS-EXAMINATION

6 BY MR. SCHNEE:

7 Q Mr. Washington, how old were you when all this
8 happened?

9 A I was seven.

10 Q Seven years old?

11 A (The witness nodded head.)

12 Q Okay. Do you remember going to a place called the
13 Assessment Resource Center?

14 A No.

15 Q Do you remember doing a video with a woman on camera?

16 A No.

17 Q Okay. Do you remember talking with anyone from law
18 enforcement?

19 A Yes.

20 Q Do you remember how many different times you talked to
21 them?

22 A No.

23 Q Do you remember a specific thing you told them?

24 A Yes.

25 Q Okay. Do you remember describing seeing the car that

RAYQUAN WASHINGTON CROSS BY MR. SCHNEE

1 was leaving the scene that you believe was involved?

2 A Yes.

3 Q Okay. What was the description of the car you gave?

4 A I -- it was all black, that's what I seen.

5 Q Okay. Did you give any other details?

6 A No.

7 Q Not at any time?

8 A No.

9 MR. SCHNEE: Beg the Court's indulgence.

10 BY MR. SCHNEE:

11 Q Do you remember how many people came into your
12 apartments that night?

13 A Yes.

14 Q Okay. How many?

15 A Two.

16 Q There were two people?

17 A (The witness nodded head.)

18 Q Can you describe them?

19 A One had dreadlocks. I remember one had long haircut.

20 Q Okay. How -- about how big was your father?

21 A About like six feet even --

22 Q Did you describe one of them as being bigger?

23 A The mens?

24 Q (Counsel nodded head.)

25 A Yes.

RAYQUAN WASHINGTON CROSS BY MR. SCHNEE

- 1 Q You said you saw a second one?
- 2 A Yes.
- 3 Q Okay. Did you tell law enforcement that ever?
- 4 A No.
- 5 Q Okay. So you never told law enforcement you saw a
- 6 second person?
- 7 A No.
- 8 Q But you remember it now?
- 9 A Yes.
- 10 Q Okay. Did you remember it back then?
- 11 A No.
- 12 Q Okay.
- 13 A I just remember that one person.
- 14 Q When did remember it.
- 15 (There was no response.)
- 16 Q When did you remember there was a second person?
- 17 A Excuse me?
- 18 Q You didn't tell law enforcement there was a second
- 19 person in the --
- 20 A Yes, but I seen the two people, though, that's what I'm
- 21 saying.
- 22 Q When did you say that, I guess I'm asking you?
- 23 A No, because you asking now, I'm telling you now. You
- 24 asking me so I'm telling you I seen the second person.
- 25 Q Okay. Well, did anyone else ever ask you that?

RAYQUAN WASHINGTON CROSS BY MR. SCHNEE

1 A No.

2 Q They never asked how many people were in there?

3 A Yes, they did, but I don't remember telling them that.

4 Q Okay. Well, why wouldn't tell them?

5 A Because I didn't remember back then.

6 Q Okay.

7 A But now I remember now because my memory coming back to
8 me.

9 Q Okay. When did it come back to you?

10 A I --

11 Q I mean, was it last week, last month, two years ago?

12 A No idea.

13 Q Okay.

14 MR. SCHNEE: Judge, I have on further questions of
15 this witness.

16 I would ask that Your Honor review in camera a
17 copy of the video recording of his interview at the
18 Assessment Resource Center dated November 9th, 2005, which
19 is only about two weeks afterwards. This is the freshest
20 memory he had and I would ask Your Honor to review this in
21 camera. And that would be to --

22 THE COURT: For what purpose?

23 MR. SCHNEE: To determine if his memory is --
24 various interviews or anything else -- it's a long video and
25 goes through pretty much his version of events back when he

RAYQUAN WASHINGTON CROSS BY MR. SCHNEE

1 could remember when he was seven years old.

2 THE COURT: So you want me to review an interview
3 that took place five, six, years ago?

4 MR. SCHNEE: Yes, Your Honor.

5 THE COURT: To determine whether he's competent to
6 testify today?

7 MR. SCHNEE: To determine whether his testimony is
8 a result of his own memories or anyone else's influence.

9 THE COURT: And what authority are you relying on?

10 MR. SCHNEE: Due process for my client, Your
11 Honor.

12 THE COURT: Well, a person is entitled to due
13 process, but when you're in court arguing the principle of
14 law, I would assume you to have some case for your
15 proposition.

16 MR. SCHNEE: Judge, there are no cases in South
17 Carolina that deal directly on point that I found for this
18 type of situation. Usually, the only case involves
19 significantly younger children at the time they're
20 testifying. But in term of number of different interviews
21 that were given in a number of different states, I think,
22 Your Honor can make the determination very quickly if his
23 memories, in fact, have been adjusted in some way, whether
24 intentionally or not. I'm not accusing anyone of doing
25 anything improper, I'm just suggesting that the memories are

RAYQUAN WASHINGTON CROSS BY MR. SCHNEE

1 not necessarily his own.

2 THE COURT: All right. What says the State?

3 MS. WALKER: Your Honor, he's testified that he
4 can recall the events independently and that he has an
5 independent memory of the night that his father was
6 murdered. He was present during the murder. I think a
7 possible prior inconsistent statement don't make someone
8 incompetent to testify.

9 THE COURT: -- review of statement that occurred
10 six or seven years ago to determine whether the witness is
11 competent to testify today. In determining whether the
12 witness competent to testify is whether he is mature enough
13 to understand the questions, the nature of the answers, to
14 perceive the facts accurately through his own senses, to
15 recall them correctly and to relate a true version of the
16 facts perceived and further to know the difference between
17 right and wrong and obligation to testify truthfully as well
18 as the fear of punishment for not telling the truth. The
19 Court should base the ruling on the issue of competency
20 based on the trial judge's personal observation of the
21 witness's demeanor and the responses to the inquiry of the
22 questions posed during the hearing to determine his
23 competency. Based on my observation of the witness, the
24 witness's demeanor, his responses to the questions, I
25 determine that he is competent to testify and any -- and

RAYQUAN WASHINGTON CROSS BY MR. SCHNEE

1 that for the Court to review prior statements or interviews
2 given six or seven years ago would, certainly, serve no
3 purpose in assisting the Court to make that determination
4 and I decline to do so. I find the witness is competent to
5 testify.

6 All right. It's now 10 after 10 --

7 MS. WALKER: I'm sorry, Your Honor, I didn't mean
8 to interrupt. There are other witness that we can put up
9 before we put this witness up that may be a little bit
10 longer. We can put those witnesses up in a shorter period
11 of time. We can take them out of order and instead of
12 calling Mr. Washington, we can call one of our -- two of our
13 other witnesses and then possibly take Mr. Washington after
14 the break.

15 THE COURT: All right.

16 Any objection to him being taken out of order?

17 MR. SCHNEE: No, sir.

18 THE COURT: All right. You can step down, then,
19 sir.

20 Mr. Schnee.

21 MR. SCHNEE: Judge, I would just like to have --

22 THE COURT: Out of an abundance of caution, I will
23 review -- and since this -- particularly since this witness
24 is not being called, I will review the tape as part of --
25 during whatever delay that we have here in the court.

JOHN GIST DIRECT, BY MR. STEADMAN

1 MR. SCHNEE: Yes, Your Honor.

2 THE COURT: I will review it and see if it affects
3 my ruling in any way.

4 All right. Let's bring them in.

5 (Whereupon, the jury returned to the
6 courtroom at 10:09 a.m.)

7 BAILIFF: Your Honor, the jury is present and
8 seated.

9 THE COURT: Very good.
10 You may call your next witness.

11 MR. STEADMAN: John Gist.

12 THEREUPON;

13 JOHN GIST,
14 after having been duly sworn, testified as follows:

15 THE CLERK: Have a seat in the witness stand,
16 please. State your name for the record.

17 THE WITNESS: John Gist.

18 DIRECT EXAMINATION

19 BY MR. STEADMAN:

20 Q Good morning, Mr. Gist. Where do you currently live?

21 A Lancaster, South Carolina.

22 Q How long have you lived in Lancaster, South Carolina?

23 A About four years.

24 Q And where did you live before then?

25 A Columbia, South Carolina.

JOHN GIST DIRECT BY MR. STEADMAN

- 1 Q And about what time frame did you live in Columbia,
2 South Carolina?
- 3 A About '99 to '07.
- 4 Q And where did you live in Columbia during that time
5 frame?
- 6 A Willow Creek Apartments.
- 7 Q You lived at Willow Creek Apartments that whole time
8 frame?
- 9 A I also lived in —
- 10 Q When did you move to Willow Creek Apartments?
- 11 A 2003.
- 12 Q Is that off Fernandino Road?
- 13 A Yes.
- 14 Q Who did you live with in Willow Creek Apartments?
- 15 A My wife and daughter.
- 16 Q Your wife and daughter?
- 17 A Yes.
- 18 Q Do you remember the night of October 27th, 2005?
- 19 A Yes.
- 20 Q Why don't you tell me a little bit about what y'all
21 were doing that night?
- 22 A We were watching T V that night and we heard a gunshot.
23 And I went to the window to see what was going on and I
24 seen a guy outside of his apartment complex — get
25 help. He was just bending over.

JOHN GIST DIRECT BY MR. STEADMAN

1 Q And you said you heard a gunshot?

2 A Yes, a gunshot.

3 Q You just heard one gunshot?

4 A That's all I remember, yes, sir.

5 Q Do you have a copy of your statement with you?

6 A No, sir.

7 MR. STEADMAN: Your Honor, may I approach the
8 witness?

9 THE COURT: Yes.

10 BY STEADMAN:

11 Q Here's a copy of your statement. So after you heard
12 the gunshot, what did you do next?

13 A I went outside of the apartment towards the guy to see
14 what was going on. And I asked him -- I noticed when I
15 got up on him that he had been shot, so I asked him who
16 shot him. And he couldn't say anything. And I asked
17 him several times, then he collapsed.

18 Q Did you call 911?

19 A Yes.

20 Q Okay. And who else is there around you, around Tony?

21 A My wife. She, actually, came out behind me when we
22 went to see Tony.

23 Q I want to back up just a little bit. When you heard
24 the gunshot and looked out the window, what did you
25 observe him doing?

JOHN GIST DIRECT BY MR. STEADMAN

- 1 A I observed him going from door to door trying to get
2 somebody to come out and help him.
- 3 Q And when you finally got up to Tony, what did you
4 observe about his appearance?
- 5 A When I got to him, he was -- he was bleeding and he was
6 just breathing very, very heavy. And like may a minute
7 or so, he just collapsed.
- 8 Q Was he in front of -- right outside of his apartment?
- 9 A He was like in between his apartment and the apartment
10 to his left.
- 11 Q Do you remember who lived in the apartment to the left?
- 12 A It was a guy and his family. I really don't know him.
- 13 Q You said you saw blood. Where did you see the blood?
- 14 A The blood was coming from Tony.
- 15 Q Okay.
- 16 A And it was like a trail from him to the apartment next
17 to Tony.
- 18 Q There was a trail from Tony to where?
- 19 A To the apartment that was to the left of him.
- 20 Q And did you see any blood anywhere else?
- 21 A I didn't.
- 22 Q Once you got to him, you said you spoke to him?
- 23 A Right.
- 24 Q What did you say?
- 25 A I asked him who shot him. And I asked him several

JOHN GIST DIRECT BY MR. STEADMAN

1 times and he couldn't say anything. He just collapsed.

2 Q Was he trying to say something?

3 A He was trying to say something, but then he just died.

4 Q How do you know he was dead?

5 A He was breathless. And my wife tried to get his pulse

6 and he didn't have any pulse. She, actually, tried to

7 revive him, but there was no response.

8 Q She tried to revive him?

9 A Right. She tried to do CPR on him and she had no
10 response from him.

11 Q And after you realized that he -- Tony was dead, what
12 happened next?

13 A After I realized he was dead, I heard something in the
14 house. And I told my wife, I said, there's somebody
15 still in the house. So I stuck my head in the door and
16 on the top step, his son was standing on the top step.
17 And he was just shivering. So I told him to come down
18 the steps and I took him to our apartment. And I told
19 him that his dad was sick and that we needed to take
20 him to the hospital, we was going to take him to the
21 hospital to get him some help. And my wife took him in
22 the house and started talking to him trying to calm him
23 down and I went back to the scene. And then when I got
24 back to the scene, the police and ambulance was there.

25 Q So when you-- did you know that Tony had a son?

JOHN GIST DIRECT BY MR. STEADMAN

- 1 A I didn't.
- 2 Q And when did you realize that he was inside the
- 3 apartment?
- 4 A He was standing on top of the -- I heard a noise in the
- 5 apartment. And I was like there's somebody still in
- 6 there, so I stuck my head in the doorway and I seen him
- 7 standing on the top of the steps (indicating). Then
- 8 that's when I told him to come down and we took him to
- 9 our apartment.
- 10 Q Did Rayquan Washington say anything?
- 11 A He didn't say nothing.
- 12 Q And you mentioned that your wife took him and watched
- 13 over him at your apartment?
- 14 A Correct.
- 15 Q Did police, paramedics show up shortly thereafter?
- 16 A They did.
- 17 Q What happened when they showed up?
- 18 A When they showed up, they took over and I went back to
- 19 my apartment. And probably five minutes later, the
- 20 officer came, a detective came and talked to me and my
- 21 wife about what happened, what we saw.
- 22 Q Do you remember who spoke to you?
- 23 A I don't.
- 24 Q And you gave a written statement or just a verbal
- 25 statement?

JOHN GIST DIRECT BY MR. STEADMAN

- 1 A A verbal statement.
- 2 Q And how well did you know Tony?
- 3 A I didn't know him. I just seen him in the neighborhood
- 4 passing. I ain't know him.
- 5 Q If you can, describe where your apartment is located
- 6 from his apartment?
- 7 A If my apartment was here (indicating), his apartment
- 8 was probably at the pew, it was right across the
- 9 disroot.
- 10 Q Which pew?
- 11 A Where the guy in the gray shirt.
- 12 Q The one with the yellow tie?
- 13 A Yes.
- 14 Q So it's pretty much directly across?
- 15 A Right across, yes, sir.
- 16 Q Were there any cars in the parking lot that night?
- 17 A There was only a few out there that night.
- 18 Q But you had a pretty clear line of sight outside your
- 19 living room window?
- 20 A Actually, it was my kitchen window, yes, sir.
- 21 Q Excuse me, kitchen window. Did somebody eventually
- 22 come and pick up Rayquan?
- 23 A Yes, a family member did come and pick him up.
- 24 Q And how soon after y'all took him over to your
- 25 apartment?

JOHN GIST CROSS BY MR. SCHNEE

1 A He probably was in our apartment for maybe, 20, 25
2 minutes, maybe, from the time that I saw him and
3 somebody came and picked him up, yes.

4 Q Let me reiterate something. When you went to Tony and
5 he collapsed on the sidewalk and, eventually, you
6 realize he was dead, how long was it before paramedics
7 or police arrived on the scene?

8 A It was, maybe, five, ten minutes, maybe. I really
9 can't remember.

10 Q And you stayed there until they showed up?

11 A I stayed there the whole time, yes, sir.

12 Q Thank you. No further questions.

13 CROSS-EXAMINATION

14 BY MR. SCHNEE:

15 Q Morning?

16 A Morning.

17 Q Do you still have a copy of the statement that you gave
18 to the police in front of you?

19 A Yes, sir.

20 Q Okay. Just read me the very first sentence of your
21 answer?

22 A You talked about the first question?

23 Q Yeah, just your first answer.

24 A I was sitting on the couch looking at TV and I heard
25 two shots. I got up and went to the window and I saw a

JOHN GIST CROSS BY MR. SCHNEE

1 male at the door next to -- knocking on the door and he
2 was yelling for help.

3 Q Okay. In your statement, you said you heard two shots
4 back then?

5 A Yes, sir.

6 Q Okay. But you think you only heard one now?

7 A I can't really recall. It was like seven years ago,
8 but yes.

9 Q Oh, I understand, but it's hard to remember something
10 that long ago?

11 A Yes, sir.

12 Q Okay. So you remember the bigger events, it's kind of
13 hard to remember some of the maybe smaller details.

14 A I can pretty much remember pretty much everything that
15 happened that night, yes, sir.

16 Q Okay. You said you heard a noise in Mr. Corbitt's
17 apartment and saw Rayquan Washington at the top of the
18 stairs?

19 A Yes, sir.

20 Q And you described him as shaking?

21 A Yes, sir.

22 Q Okay. You said he was in shock?

23 A Yes, sir.

24 Q And you and your wife took him to your apartment?

25 A Yes, sir.

JOHN GIST REDIRECT BY MR. STEADMAN

1 Q You had to calm him down?

2 A Yes, sir.

3 Q And he didn't say anything to either of you?

4 A He didn't say anything.

5 Q All right. Did you see anything or hear anything

6 before the shots?

7 A I didn't. I was sitting on the couch watching TV.

8 Q Okay. Thank you. I have no further questions.

9 MR. STEADMAN: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. STEADMAN:

12 Q Once you took Rayquan over to your apartment and you

13 went back there, did you see anybody go into Tony's

14 apartment?

15 A I didn't.

16 Q Thank you.

17 THE COURT: Anything further?

18 MR. SCHNEE: No, Your Honor.

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

20 Next witness?

21 MR. STEADMAN: Trina Gist.

22 THE COURT: Trina Gist.

23 THEREUPON,

24 TRINA GIST,

25 after having been duly sworn, testified as follows:

TRINA GIST DIRECT BY MR. STEADMAN

1 THE CLERK: Thank you. Have a seat in the witness
2 stand, please. State your name for the record.

3 THE WITNESS: Trina Gist.

4 BY MR. STEADMAN:

5 Q Good morning, Ms. Gist.

6 A Good morning.

7 Q Where do you live?

8 A Lancaster, South Carolina.

9 Q Do you live there with your husband?

10 A I do and my daughter and son.

11 Q And have you lived there the same time he's lived
12 there?

13 A Yes.

14 Q And did -- how long had you lived in Columbia?

15 A I livid Columbia -- I lived there -- moved there in
16 '98, want to college there.

17 Q Did you go to Benedict as well?

18 A I did.

19 Q And you and your husband moved to Willow Creek
20 Apartments at the same time?

21 A No, I moved before he did with my roommate from
22 college. I stayed in [REDACTED] first.

23 Q So you were in [REDACTED] first?

24 A Uh-huh.

25 Q Then where did you move?

TRINA GIST DIRECT BY MR. STEADMAN

1 A From [REDACTED] we moved to IT&J, that's when me and my
2 husband moved in together.

3 Q You said IT&J?

4 A It was [REDACTED] I'm sorry. I'm combining all of the
5 apartments we stayed it. It was apartment [REDACTED] We
6 stayed in [REDACTED] and then my husband and I moved in [REDACTED]
7 And then from [REDACTED] we moved to [REDACTED]

8 Q Okay. Did you live there on October 27th, 2005?

9 A Yes.

10 Q Do you remember the night of the murder?

11 A I do.

12 Q Tell me a little bit about what you were doing that
13 night?

14 A I was laying on the couch watching TV and all of a
15 sudden, we heard the gunshots. Then I got up and I was
16 like John, did you hear that? He said yes. And he ran
17 to the window and I ran behind him. And that's when we
18 were looking out the window and John said, oh, God,
19 there's a guy out there. We had seen him going from
20 door to door trying to get help. And he said, I'm
21 going out there. So he turned around and ran past me.
22 I picked up my baby, she was two at the time, and I ran
23 upstairs, took her to the girl upstairs and I came back
24 down and ran out behind him.

25 By the time I got over there, the guy, Tony, he

TRINA GIST DIRECT BY MR. STEADMAN

1 was laying on the ground. And I got down on the ground
2 with him and this time he was still living. I was
3 talking to him. I was rubbing his arm, holding his
4 hand and I was telling him, you know, breath slow.
5 We've called 911. Hold on. They're coming. I was
6 just talking to him trying to keep him clam. And our
7 neighbor at the time, she was out there, too, with us
8 trying to help me, you know, keep him calm. When he
9 started like breathing his last breath, she and I
10 turned him over because at this time, he was kind of on
11 his side. So we turned him over and started giving him
12 CPR, but he wouldn't -- he was dead then.

13 Q And who that was neighbor?

14 A I don't recall her name.

15 Q I want to back up just little bit. You said your
16 husband John, he was -- was he the first one over to
17 Tony?

18 A Yes. I mean, I was directly behind him, but he was
19 there before I was because I had to run upstairs and
20 take the baby upstairs. And I turned right back around
21 because my neighbor from upstairs, she was coming down
22 because she heard the same thing. She was on her way
23 down and as I was on my way out, I asked her can you
24 take the baby. She grabbed the baby and I went out the
25 door.

TRINA GIST DIRECT BY MR. STEADMAN

1 Q And once you got up to Tony, was he already laying on
2 the sidewalk?

3 A Yes. He collapsed by that time, but he was still
4 alive.

5 Q What did you observe about his appearance?

6 A He looked like he had been in a scuffle. He did have
7 the gunshot wound. I could tell he had been shot. He
8 had some scratches on his face like something had
9 happened to him and he was bleeding.

10 Q And do you remember what he was wearing?

11 A I don't remember what kind of pants he had on. He may
12 have had on some basketball-type shorts, but he didn't
13 have a shirt on at all.

14 Q Was he laying in front of his apartment or somebody
15 else's apartment?

16 A It was his -- more or less his apartment, more or
17 less -- it was like in front of his front door like
18 right -- not directly, it was more or less in front of
19 his front door. Because once he -- he went to the left
20 to try -- first, he went to the right to try to get
21 help and no one came, then he went to the left, nobody
22 came. And then he was easing back toward his
23 apartment.

24 Q And you said you made -- you and your neighbor made
25 attempts to revive him?

TRINA GIST DIRECT BY MR. STEADMAN

1 A Yes.

2 Q Can you describe that a little more?

3 A Like I said, he was kind of laying on his side. He was
4 completely on his side, but he was to the side a little
5 bit. So we turned his body over and she took his head
6 and she held it back and she gave him breaths, and I
7 tried the chest compressions. And then we both were
8 kind of like oh, God, this is not working. And he kind
9 of did a gurgle and -- he was really gone. I was like
10 oh, my God, he is gone. There's nothing else we can
11 do. She was like well, we need to stop because she was
12 in nursing school at the time. She said we need to
13 stop. I said well, take his pulse. And she took his
14 pulse and she was like, no, he's gone.

15 Q Once you realized he was gone, how soon after that did
16 paramedics or police arrive on the scene?

17 A They got there pretty quick. I want to say it was,
18 maybe, five to ten minutes for them to get there, for
19 every one that arrived to get there. I can't remember
20 exactly how long it took. I know it wasn't -- it
21 didn't take them long at all to get there.

22 Q And when did notice somebody else was still inside
23 Tony's apartment?

24 A I was, actually, still down on the ground with him
25 because I was still holding his hand because I was just

TRINA GIST DIRECT BY MR. STEADMAN

1 in so much shock. And that's when my husband, he
2 turned to me and he was like, did you hear that? And I
3 was like, yeah. And that's when he stuck his head in
4 and I turned around and he said, it's a little boy in
5 here. And he was standing at the top of the stairs.
6 And at this point, I'm still on the ground and I looked
7 up. And my husband told him to come on down and that's
8 when he came on down. So it was after his father had
9 passed that we noticed he was in the apartment.

10 Q Once you told Rayquan Washington to come downstairs,
11 what did you do with Rayquan Washington?

12 A Once my husband got him out from around the body --
13 because I wanted to stay down there. I didn't want him
14 to, actually, know what was going on. So I stayed down
15 there a few minutes. And when my husband got him out
16 to the road a little bit, that's when I got up off my
17 knees and started to walk toward the apartment with my
18 husband because there were other people that stayed out
19 there at that time. So we just walked him over across
20 the street to our apartment.

21 Q And I know your husband said that he went -- as soon as
22 he walked y'all across the street, he went back where
23 Tony was --

24 A Right.

25 Q -- laying?

TRINA GIST DIRECT BY MR. STEADMAN

- 1 A Uh-huh.
- 2 Q And you stayed with Rayquan at your apartment?
- 3 A Yes.
- 4 Q Do you remember who came and picked him up?
- 5 A I do not recall. I think maybe his uncle. And I think
- 6 at some point in time I did meet his grandmother, but I
- 7 can't remember exactly which one of those was, in fact,
- 8 when they came that night to pick him up. But I do
- 9 remember his uncle being there and I seen later -- I
- 10 think it was later I seen his grandmother and talked to
- 11 her. We just briefly talked.
- 12 Q Do you remember how much time had passed before they
- 13 showed up?
- 14 A I don't. I don't.
- 15 Q Did the police eventually speak with you?
- 16 A They did.
- 17 Q Did you give a statement?
- 18 A Yes. I did a verbal statement as well outside of my
- 19 apartment on the stairs. We have a breezeway, but we
- 20 did it on the outside.
- 21 Q And what was your relationship with Tony, did you know
- 22 him?
- 23 A I didn't know him at all. I didn't. I seen him in
- 24 passing, but I didn't actually know him.
- 25 Q Thank you.

TRINA GIST CROSS BY MR. SCHNEE

1 A You're welcome.

2 THE COURT: Mr. Schnee.

3 MR. SCHNEE: May it please the Court?

4 CROSS-EXAMINATION

5 BY MR. SCHNEE:

6 Q You said just a couple minutes ago that Mr. Corbitt
7 went to the left and then went to the right?

8 A He went to the right. We were looking out the window
9 and I could see him moving to the right. And it was a
10 little brick wall in between his apartment. So he
11 didn't quite make it to this lady's door. There was a
12 lady that stayed there. So he went to the left, he was
13 holding himself, he went to left and no one came. So
14 he started back towards his apartment and by that time,
15 w were turning around. I don't know what he was doing
16 in between that time because, you know, we were turning
17 around trying to get outside. So I don't know what
18 happened in between that time frame.

19 Q Okay. So you were looking out the window after you
20 heard the gunshots?

21 A Yes.

22 Q Okay.

23 A We ran to the window.

24 Q Okay. Did you see anyone else out there?

25 A I did not.

TRINA GIST CROSS BY MR. SCHNEE

1 Q Okay.

2 A Nobody.

3 Q Did see anyone else in the apartment or anything other
4 than the son?

5 A No.

6 Q Okay. And before the gunshots, you were just laying on
7 the couch and you weren't paying attention to anything?

8 A No, we were just watching TV, just relaxing on a normal
9 day, just sitting there watching television.

10 Q Okay. Thank you. No further questions.

11 THE COURT: Anything further?

12 MR. STEADMAN: No, Your Honor.

13 THE COURT: Thank you. You may step down.

14 All right. Will the parties approach?

15 (Whereupon, a bench conference was held

16 off the record, in the presence of the

17 jury, but out of the hearing of the

18 jury.)

19 THE COURT: Ladies and gentlemen, we're going to

20 take a break in the trial now until noon, until 12 noon.

21 You all are not required to stay in the jury room. You can

22 take a stroll down Main Street if you want to. We need you

23 back by about five minutes to noon. But just coordinate

24 with your bailiff you're coming and going because we would

25 like to not have too much chaos. If anyone is going to

JAY RUSSELL DIRECT BY MR. STEADMAN

1 leave, leave and plan to come back around the same time.
2 Please remember not to mill around outside where any parties
3 might be. Please do not discuss the case or allow any one
4 to discuss it in your presence. And we need you back at 12
5 noon, five minutes before noon. We'll take a break.

6 (Whereupon, the jury left the courtroom
7 at 10:34 a.m.)

8 THE COURT: All right. Anything else then?

9 MS. WALKER: Nothing from the State, Your Honor.

10 MR. SCHNEE: No, Your Honor.

11 THE COURT: All right. Then we'll meet back about
12 that time.

13 (Whereupon, a short recess was held.)

14 THE COURT: Is the State ready to proceed?

15 MR. STEADMAN: Yes, Your Honor.

16 MS. CAMPBELL: Ms. Walker, apparently, is still
17 missing, but we can go on without her.

18 THE COURT: All right. And I've had the
19 opportunity to view the video interview of the young man.
20 What's his name?

21 MR. SCHNEE: Rayquan Washington.

22 THE COURT: Washington. And viewing the interview
23 reconfirms my ruling. It seems that he had an amazing
24 ability to recall events. It was, obviously, a traumatic
25 situation for him. There may be some inconsistencies

JAY RUSSELL DIRECT BY MR. STEADMAN

1 regarding the number of persons involved. You know, that
2 could be explained by his vantage point or failure to
3 remember or whatever trauma alone. None of that impacts his
4 ability to testify as a witness. I find that he is
5 competent to testify.

6 Let's bring in the jury.

7 BAILIFF: Yes, Your Honor.

8 (Whereupon, the jury returned to the
9 courtroom at 12:02 p.m.)

10 BAILIFF: Your Honor, the jury's present and
11 seated.

12 THE COURT: Very well.

13 You may call your next witness.

14 MR. STEADMAN: The State calls Investigator Jay
15 Russell.

16 THEREUPON,

17 JAY RUSSELL,

18 after having been duly sworn, testified as follows:

19 THE CLERK: Thank you. Have a seat in the witness
20 stand, please. State your name for the record.

21 THE WITNESS: My name is Jerry Allen Russell.

22 DIRECT EXAMINATION

23 BY MR. STEADMAN:

24 Q Good afternoon, Investigator Russell. Where are you
25 currently employed?

JAY RUSSELL DIRECT BY MR. STEADMAN

1 A With the Forest Acres Police Department.

2 Q How long have you been employed with the Forest Acres
3 Police Department?

4 A Since 2006.

5 Q And what capacity are you employed with the Forest
6 Acres Police Department?

7 A Criminal investigator and crime scene analyst.

8 Q And explain your duties with respect to --

9 A -- criminal case load as well as going and teaching
10 crime scene to new people that we bring in. And that
11 involves doing fingerprinting, DNA, swabbing for DNA,
12 going to autopsies, just about anything forensically.
13 That's kind of my expertise there as well as working
14 the criminal cases.

15 Q Before 2006, were you employed with Richland County
16 Sheriff's Department?

17 A Yes, sir.

18 Q And how long were you employed with the Richland County
19 Sheriff's Department?

20 A Probably about six or seven years.

21 Q And what capacity were you employed with the Richland
22 County Sheriff's Department?

23 A Before I came to Forest Acres, I was a crime scene
24 analyst. I worked in the crime scene unit. I
25 responded to crime scenes and also worked in the lab

JAY RUSSELL DIRECT BY MR. STEADMAN

1 with evidence, processing evidence, packaging it, doing
2 examination and whatnot.

3 Q So a crime scene analyst, did that require you to
4 respond to crime scenes?

5 A Yes, sir.

6 Q And you were working in that capacity on the night of
7 the murder October 27th, 2005?

8 A Yes, sir, I was.

9 Q And at what point did you become involved in the case?

10 A I, actually, didn't become involved until the morning
11 after this incident took place. I was contacted -- I
12 believe I was contacted by voice mail from Investigator
13 Livingston giving me a run down of what had taken place
14 during the night. And they had an autopsy scheduled
15 for that morning. I was the daytime person, that's
16 what my duty would be, to attend the autopsy.

17 Q So you were given a run down by Investigator
18 Livingston?

19 A I believe it was. It could have been someone already
20 on say shift that day.

21 Q And what was the run down you were given?

22 A Just what had taken place. There had been an incident
23 during the night. And that an individual had been shot
24 and killed. And that kind of gives me a game plan for
25 the autopsy, what I have to do there at the autopsy.

JAY RUSSELL DIRECT BY MR. STEADMAN

1 Q So when you're given that sort of run down, how does
2 that help you in your investigation at the autopsy?

3 A I'll know what to look for. Like I said, there was a
4 gunshot wound. Based on the situation, there could
5 have been some type of struggle -- like fingernail
6 scrapings, debris on clothing, trace and fiber that
7 might be on the clothing would be preserved to send to
8 another area in the forensic division for them to do
9 some examination there.

10 Q And where was the autopsy held?

11 A It was at Palmetto Richland, there at the hospital in
12 the morgue.

13 Q Who all is present for the autopsy?

14 A I know myself, Dr. Clay Nichols and I think the
15 assistant to the pathologist -- I know they were there
16 that day.

17 Q All right. Can you describe the observations that you
18 made during the autopsy?

19 A Yes, sir. When I arrive there, usually, after an
20 incident takes place where somebody is deceased, they
21 put them in a bag and they're put into the morgue.
22 It's sealed and locked with a snap-tie-type thing.
23 When they pull it off, I take photos of the bag as it
24 is. And then once they open the bag, I observed a
25 black male. He had tattoos on the right arm, chest,

JAY RUSSELL DIRECT BY MR. STEADMAN

1 right shoulder blades and left arm. He had a
2 laceration over his left eyebrow, swollen left eye. He
3 had what appeared to be fingernail marks on the neck
4 area, under here (indicating) and abrasions to the left
5 elbow. He had an entrance wound, which -- autopsy. He
6 does the handling, so to speak, on the deceased. And
7 as they do that, I take photos of -- tattoos,
8 obviously, the bullet hole. And they also do an x-ray
9 to identify the projectile inside, still left inside
10 the body. I take photos of that x-ray. And, of
11 course, later on, I take custody of the projectile to
12 be examined by the firearms division.

13 Q In this case, did you take custody of the projectile?

14 A Yes, sir.

15 Q Do you recognize that?

16 A Yes, sir.

17 Q Is that the projectile you collected that night?

18 A Yes, sir, it is.

19 Q Once you collected it, did you properly seal it and
20 package it and submit it to evidence yourself?

21 A That's correct.

22 MR. STEADMAN: Your Honor, at this time, the State
23 would move to introduce State's Exhibit 61 into evidence.

24 MR. SCHNEE: No objection.

25 THE COURT: Admitted without objection.

JAY RUSSELL DIRECT BY MR. STEADMAN

1 (State's Exhibit No. 61 was admitted
2 into evidence.)

3 BY MR. STEADMAN:

4 Q After you collected the projectile, what was the next
5 step in your investigation?

6 A Aside from collecting that, the normal routine at
7 autopsy at that time, we collected or rolled ink
8 fingernail impression, head hair, pubic hair,
9 fingernail scrapings. And like I said before, along
10 with the clothing, that would be package to preserve
11 any kind of fibers or trace.

12 Q What's the purpose of doing all of that?

13 A The rolled ink impressions are to verify that is the
14 individual, even though we're pretty sure that that's
15 the individual we've identified already. The head
16 hair, pubic hair are for DNA or anything that might be
17 used -- evidence custodian of the sheriff's department.

18 Q And fingernail scrapings, what would be the purpose of
19 that?

20 A These are a routine thing to do. If you were in a
21 struggle with someone, you know, you do get skin, small
22 skin fibers or scratched. A lot of times that -- it's
23 microscopic, but it would be under your fingernails, so
24 we would scrape them and preserve that for the analyst
25 to do further.

JAY RUSSELL DIRECT BY MR. STEADMAN

1 Q Let me show you what's been mark as State's Exhibit 72,
2 do you recognize that?

3 A Yes, sir.

4 Q What is that?

5 A This is the fingernail scrapings I collected.

6 Q Did you submit these into evidence yourself?

7 A Yes, sir.

8 MR. STEADMAN: Your Honor, at this time, the State
9 would move to introduce State's Exhibit 72 into evidence.

10 MR. SCHNEE: No objection.

11 THE COURT: Admitted.

12 (State's Exhibit No. 72 was admitted
13 into evidence.)

14 BY MR. STEADMAN:

15 Q So after you collected these fingernail scraping, does
16 the lab process those at some point?

17 A Yes, sir. Like I said, they're placed in evidence.

18 They're stored there for any other division -- several
19 different divisions got DNA. You have firearms
20 examination. Also, have drug analysis part of the lab.
21 It's kind of all inclusive of the forensic department
22 there. They would, in turn, go and check it out or do
23 a chain of custody from evidence and take it back to
24 there laboratory and do whatever analysis they were,
25 whatever their expertise was, DNA, trace or fiber.

JAY RUSSELL DIRECT BY MR. STEADMAN

1 Q You also mentioned that there were -- the injuries on
2 the victim was a swollen left eye, the laceration or
3 abrasion to the left elbow and the fingernail marks on
4 the victim's neck?

5 A Yes, sir.

6 Q What would you -- what was normal protocol with respect
7 to those injuries?

8 A More then likely, they were sustained during the
9 incident that took place the evening before. I would
10 photograph each of the injuries with and without a
11 scale in case there was something someone needed to go
12 back latera and look at. The fingernail marks on the
13 neck, obviously, would have taken photos of those and
14 held onto them for trial or whatever might be.

15 Q And everything you collected at the autopsy, clothing,
16 fingernail scrapings, was that all submitted into
17 evidence by you?

18 A Yes, sir.

19 Q Thank you, sir. No further questions.

20 A Thank you.

21 CROSS-EXAMINATION

22 BY MR. SCHNEE:

23 Q Good afternoon.

24 A Good afternoon.

25 Q You mentioned that you were trained in crime scene

JAY RUSSELL DIRECT BY MR. STEADMAN

1 investigations?

2 A Yes, sir.

3 Q Back in 2005, you were also trained in crime scene
4 investigations?

5 A Yes, sir.

6 Q How long had you been doing it back then?

7 A Three or four years. I think I went into crime scene
8 in 2001.

9 Q Okay. And you're trained to collect fingerprints?

10 A A whole lot of evidence, not just fingerprints. Touch
11 DNA, anything that could be examined later.

12 Q Okay. So you're trained to receive touch DNA, to take
13 it?

14 A Right.

15 Q Okay. What about other kinds of DNA? You talked about
16 scraping under Mr. Corbitt's fingernails.

17 A That's correct.

18 Q Now, you mentioned that there were fingernail scrapings
19 or scratches on Mr. Corbitt's neck?

20 A Right, appeared to be fingernails.

21 Q You said you photographed those?

22 A Yes, sir.

23 Q Because you thought they were involved in the incident?

24 A Right.

25 Q And you wanted to be prepared to testify about that at

CHRIS CUMMINGS DIRECT BY MR. STEADMAN

1 trial?

2 A Right.

3 Q And you wanted other investigators to be able to use
4 that and go along with the case?

5 A Yes, sir.

6 Q Did you take DNA swabs from there?

7 A No, sir.

8 Q Why not?

9 A DNA swabs of those weren't protocol at that time for
10 us. Most of the DNA would have been under the
11 fingernails if he ever scratched the individual.

12 Q Well, if Mr. Corbitt was in a fight, which is probably
13 what the investigators told you, would it be reasonable
14 that he scratched his own neck?

15 A That's possible.

16 Q Would it be -- would you agree it's more likely that
17 someone else scratched his neck?

18 A That's correct.

19 Q But it wasn't your protocol to take DNA, though?

20 A No, sir.

21 Q But you, certainly, could have?

22 A I could have, but it wasn't protocol, so I -- we follow
23 the standard operating procedure at autopsies -- like I
24 said, with experience and knowledge, most DNA would
25 have been under the fingernails or whatever had scraped

CHRIS CUMMINGS DIRECT BY MR. STEADMAN

1 him.

2 Q Okay.

3 A Under your fingernails, to my knowledge, aren't going
4 to leave a lot of stuff --

5 Q Well, if somebody else's hand is around another
6 person's neck, it could leave DNA?

7 A Yeah, that's possible.

8 Q At the time back in 2005, it wasn't your protocol to
9 collect that?

10 A That's correct.

11 Q All right. No further questions.

12 THE COURT: Anything further?

13 MR. STEADMAN: No, Your Honor.

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

15 MR. STEADMAN: The State calls Chris Cummings.

16 THEREUPON,

17 CHRIS CUMMINGS,

18 after having been duly sworn, testified as follows:

19 THE CLERK: Thank you. Have a seat in the witness
20 stand, please. State your name for the record.

21 THE WITNESS: Chris Cummings.

22 DIRECT EXAMINATION

23 BY MR. STEADMAN:

24 Q Good afternoon, Mr. Cummings.

25 A Good afternoon.

CHRIS CUMMINGS DIRECT BY MR. STEADMAN

- 1 Q Where do you currently live?
- 2 A Lexington.
- 3 Q And how long have you lived there?
- 4 A About eight years.
- 5 Q And before that, where did you live?
- 6 A Willow Creek Apartments.
- 7 Q Off Fernandino Road?
- 8 A Yes.
- 9 Q How long did you live at Willow Creek Apartments?
- 10 A From 2000 -- excuse me, 2001 to the end of 2005.
- 11 Q Could you speak up just a little bit?
- 12 A From 2001 to end of 2005.
- 13 Q Who did you live at Willow Creek Apartments with?
- 14 A My wife.
- 15 Q And you were living there on the night of the murder?
- 16 A Yes.
- 17 Q Do you remember the night of the murder?
- 18 A Vividly, yes.
- 19 Q What were you doing that night?
- 20 A Sitting down watching TV.
- 21 Q With your wife?
- 22 A She was in the bedroom. She was laying down.
- 23 Q And what do you remember about that night?
- 24 A Just a regular night, sitting down watching TV. And I
- 25 heard a pop, bang. And my window broke, that's what

CHRIS CUMMINGS DIRECT BY MR. STEADMAN

1 really caught my attention.

2 Q When you say pop, bang, you mean gunshot?

3 A Gunshot, fire cracker, something was close to the
4 window, then I heard a loud bang and then the window
5 break.

6 Q Did you hear those two sounds very close together?

7 A Yes.

8 Q And did you do next after you heard?

9 A I was sitting in the recliner. I jumped up and,
10 actually, walked in the kitchen and looked out the
11 window thinking it was my kitchen window. And it
12 wasn't. Once I looked out the window, I saw someone
13 like across the street and I saw a guy staggering and
14 he fell down.

15 Q And when you're looking out your kitchen window, where
16 was the guy that was staggering?

17 A Probably up to 45-degree angle to my right across the
18 parking lot or drive at the bottom of the apartments.

19 Q The parking lot?

20 A Parking lot.

21 Q So if you're -- if you're looking out the kitchen
22 window of your apartment, where was he located?

23 A Across the street to my right.

24 Q To the right?

25 A Yes.

CHRIS CUMMINGS DIRECT BY MR. STEADMAN

- 1 Q And after you looked out and saw Tony stumbling, did
2 you eventually see him collapse on the ground?
- 3 A I saw him fall and then I called 911 -- well, I called
4 my wife and I said I think somebody is hurt, somebody
5 got shot.
- 6 Q So you did call 911?
- 7 A Yes.
- 8 Q What did you do after you called 911?
- 9 A I stayed at the window and made sure -- just looking to
10 see if, you know, the police were coming.
- 11 Q And what did you see out the window?
- 12 A Just the guy laying there.
- 13 Q And at some point, did you find out about your broken
14 window?
- 15 A Yes, once I went outside, I had a neighbor that I was
16 close to -- not close to, but, you know, we frequently
17 talked because we worked together prior, a couple years
18 ago. And I made sure she was okay, so when I saw her,
19 I started talking to her. And while we out there
20 standing on the sidewalk, I looked up to my apartment
21 and I saw that the window was broke in the bedroom.
- 22 Q And that's after you came outside, that's when you saw
23 your window --
- 24 A Yes.
- 25 Q -- broken?

CHRIS CUMMINGS DIRECT BY MR. STEADMAN

1 A Yes, sir.

2 Q I'm going to show you what's been marked as State's
3 Exhibits 70 and 69. Can you take a look at those?

4 A (The witness complied.)

5 Q What do those pictures depict?

6 A My old apartment and the broken bedroom window.

7 Q Are those a fair and accurate depiction of what the
8 scene looked like that day?

9 A Yes.

10 Q The day after?

11 A Yes.

12 MR. STEADMAN: Your Honor, at this time, the State
13 would seek to introduce State's Exhibits 69 and 70 into
14 evidence.

15 MR. SCHNEE: No objection.

16 THE COURT: They're admitted.

17 (State's Exhibit Nos. 69 and 70 were
18 admitted into evidence.)

19 BY MR. STEADMAN:

20 Q So once you noticed that your window had been broken,
21 what did you do after that?

22 A Well, I called one of the officers over and told
23 them -- well, I went upstairs and opened the curtain,
24 you know. I called my wife and told her that make
25 sure -- because it's an open window. And once I pulled

CHRIS CUMMINGS DIRECT BY MR. STEADMAN

- 1 the curtain back, I saw a bullet sitting in the window
2 seal.
- 3 Q Could you see any -- what else did you observe? Did
4 you observe a broken glass?
- 5 A Broken glass and bullet just sitting on the window
6 seal.
- 7 Q Did you observe any type of impact point or anything
8 like that?
- 9 A It hit the corner, the left side of the window. If I'm
10 facing, looking down, it's the left corner of the
11 window pane. So it must of just fell right there.
- 12 Q And did an investigator go over and inspect the window?
- 13 A Yes, I called him over and told him what I found.
- 14 Q And they collected the projectile?
- 15 A Yes.
- 16 Q Once you showed the investigator and they came and
17 looked at it, what did you do next?
- 18 A That was it. Waited for them to take pictures and
19 gather the projectile and left. That was it.
- 20 Q Now, did you know Tony Corbitt?
- 21 A No.
- 22 Q Did you know him in passing?
- 23 A No.
- 24 Q Okay. Thank you. No further questions.
- 25 MR. SCHNEE: May it please the Court.

CHRIS CUMMINGS CROSS BY MR. SCHNEE

1 CROSS-EXAMINATION

2 BY MR. SCHNEE:

3 Q When you looked out your window and saw Mr. Corbitt,
4 did you see anyone else around there?

5 A No, sir.

6 Q How long do you think it took you from the time you
7 heard the pop, bang until you looked out the window?8 A It was probably about less than 30 seconds. It's not a
9 big apartment.10 Q Okay.. And did the sound appear that it was coming from
11 your apartment or from outside or --

12 A Outside.

13 Q Okay. And you didn't know which window was broken or
14 if there was window broken?15 A I know there was a window broken, but I wasn't sure
16 which one.

17 Q And there was no one else around that you could see?

18 A No.

19 Q And you think at the most 30 seconds passed?

20 A Yes.

21 Q Thank you.

22 MR. SCHNEE: Nothing further, Your Honor.

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

24 Next witness.

25 MR. STEADMAN: State calls Jirch Fladger.

JIRCH FLADGER DIRECT BY MR. STEADMAN

1 THEREUPON,

2 JIRCH FLADGER,

3 after having been duly sworn, testified as follows:

4 THE CLERK: Thank you. Have a seat in the witness
5 stand, please. State your name for the record.

6 THE WITNESS: Jirch Fladger.

7 DIRECT EXAMINATION

8 BY MR. STEADMAN:

9 Q Good afternoon, Mr. Fladger. Where do you live?

10 A Irmo, South Carolina.

11 Q How long have you lived there?

12 A Approximately seven years.

13 Q And where did you live before that?

14 A Fernandino Road.

15 Q In the Willow Creek Apartment complex?

16 A Correct.

17 Q And what time frame did you live there?

18 A From August of '05 to January of '07, I believe or –
19 no, the end of '06.

20 Q So you were living there on the night of the murder?

21 A Yes, sir.

22 Q Who was living there with you?

23 A My sister and my nephew.

24 Q Do you remember the night of the murder?

25 A Vividly, yes.

JIRCH FLADGER DIRECT BY MR. STEADMAN

- 1 Q What were you doing that night?
- 2 A I was watching TV. I believe a game was on that night.
- 3 Q And where is your apartment in relation to Tony's
- 4 apartment?
- 5 A I think he was [REDACTED] I was [REDACTED] so we were right
- 6 beside each other, connected.
- 7 Q So you're facing your front door, where --
- 8 A Immediately to the left. Doors are right beside each
- 9 other.
- 10 Q Okay. And when did -- what did you notice that night
- 11 of the murder?
- 12 A I heard some commotion, like something was banging
- 13 against the wall, but I just thought it was the kids
- 14 playing. I wasn't sure what was going on. But after
- 15 the commotion, then I heard gunshots going off. I'm
- 16 not sure how many. I know it was more than one.
- 17 Q And before that you heard commotion?
- 18 A Yes.
- 19 Q Describe the commotion.
- 20 A Just sounded like something was banging against the
- 21 wall. I mean, I didn't know what it was. I just
- 22 thought maybe the kids were playing or something.
- 23 Q You thought it might have been a kid. Did you know
- 24 Tony had a kid?
- 25 A Yes, his son went to school with my nephew.

JIRCH FLADGER DIRECT BY MR. STEADMAN

1 Q So they went to school together?

2 A Yes.

3 Q And what was your relationship with Tony?

4 A I was new to the area, so I didn't really know him. I
5 just saw him in passing. We just spoke, that was it.

6 Q After you heard the gunshots, what did you do next?

7 A I called 911 -- well, at first, initially, I went to
8 get my nephew because the commotion woke him up. He
9 was upstairs asleep. The commotion woke him up. So as
10 he was coming down the stairs, that's when the gunshots
11 went off. So I grabbed him and we went to the rear of
12 the apartment and then I called 911.

13 Q Do you remember what time it was that you called 911?

14 A I don't. I know it was dark, so it had to be around
15 ninish.

16 Q After you called 911, what did do you next?

17 A I just stayed to the rear of the apartment because I
18 was waiting on the arrival of my sister. She was,
19 actually, gone at the time. So I told her to come to
20 the back of the apartment because the front door was,
21 actually, crime scene at the time.

22 Q So at any point did you go out the front door?

23 A Never, no.

24 Q Did you speak with investigators that evening?

25 A I did.

JIRCH FLADGER DIRECT BY MR. STEADMAN

- 1 Q How quickly did they show up and make contact with you?
- 2 A By the time they came by, my sister and her friend had
- 3 arrived, so it was about maybe an hour and a half after
- 4 I called 911 to two hours, something like that.
- 5 Q You said the front part of your apartment, the front
- 6 door was part of the crime scene, so you were
- 7 instructed to stay in the back?
- 8 A Well, I knew it was, so I wasn't sure what was going
- 9 on. I didn't know if the perpetrator was still out
- 10 there, so I knew to stay in the rear.
- 11 Q So you stayed at the rear of your apartment?
- 12 A Yes.
- 13 Q Okay. And investigators eventually did come speak with
- 14 you?
- 15 A Correct.
- 16 Q Do you remember, did you give them a written statement
- 17 or verbal statement?
- 18 A I know I gave them a verbal. I'm not sure if I wrote
- 19 anything down or not. I'm not sure.
- 20 Q Did they speak with any of your family members as well?
- 21 A Just me because I was the only adult present at the
- 22 time of the incident.
- 23 Q Thank you.
- 24 A Thank you.

25

CROSS-EXAMINATION

JIRCH FLADGER CROSS BY MR. SCHNEE

1 BY MR. SCHNEE:

2 Q When you talked to the police investigators when they
3 arrived, do you remember what you told them?

4 A What I just told the Court just now. I heard a
5 commotion. I heard gunshots and called 911.

6 Q Did you ever look outside?

7 A No, not until after EMS was on the scene and -- on the
8 scene.

9 Q Okay. You use the word commotion now, but back then do
10 you remember what word you used. Did you by any chance
11 say fighting?

12 A No, because I didn't know what was going on.
13 Initially, I thought it was kids playing or banging
14 something against the wall, so no, I never knew it was
15 a fight going on until after the fact.

16 MR. SCHNEE: May I approach the witness?

17 THE COURT: Yes.

18 BY MR. SCHNEE:

19 Q Do you recognize this document?

20 A That's my signature, yes.

21 Q Okay. And is this the statement that you signed that
22 the police took from you? I know that's not your
23 handwriting.

24 A Yes.

25 Q Okay. And in that statement, you described the

JIRCH FLADGER CROSS BY MR. SCHNEE

- 1 commotion as a fight?
- 2 A I didn't see that part. Can I look at it again?
- 3 Q Oh, sure. Take your time.
- 4 A I can barely read the writing, but I don't see anything
- 5 about fighting in there. Can you show me where it says
- 6 fight?
- 7 Q Sure. I believe it says tussle?
- 8 A Okay. That's the commotion, tussling.
- 9 Q Okay.
- 10 A Kids and tussle.
- 11 Q Okay. How many shots did you tell the police you
- 12 heard? It's the second sentence.
- 13 A I don't see it. I can barely see the handwriting.
- 14 Q Right there (indicating).
- 15 A Okay. Okay. It says two or three shots.
- 16 Q Okay.
- 17 A So that's more than one.
- 18 Q Right. But you said two or three?
- 19 A Yes.
- 20 Q I just wanted to make sure because I know it's been a
- 21 long time. I just wanted to make sure --
- 22 A Yes.
- 23 Q -- we have everything the way you told the police?
- 24 A Okay.
- 25 Q You agree your memory was better back then than it is

JIRCH FLADGER CROSS BY MR. SCHNEE

1 today?

2 A I mean, yes, it would have been, but that was two or
3 three. I mean, it could have been more.

4 Q Okay.

5 A But I heard two or three. It could have been more.

6 Q All right. Thank you.

7 THE COURT: Any redirect?

8 MR. STEADMAN: No, Your Honor.

9 THE COURT: You may step down.

10 THE WITNESS: Thank you, sir.

11 THE COURT: And, ladies and gentlemen, we need to
12 brick again until about 1:45. So we'll break until that
13 time. Please do not discuss the case and we'll see you at
14 that time, 1:45.

15 (Whereupon, the jury left the courtroom
16 at 12:31 p.m.)

17 THE COURT: And we'll recess until then.

18 (Whereupon, a short recess was held.)

19 THE COURT: Anything before the jury comes in?

20 MS. CAMPBELL: No, sir.

21 THE COURT: All right. Let's have them come in,
22 please.

23 BAILIFF: Be glad to.

24 (Whereupon, the jury returned to the
25 courtroom at 1:46 p.m.)

GRAY AMICK DIRECT BY MS. CAMPBELL

1 BAILIFF: Jurors all pr-esent, Your Honor.

2 THE COURT: All right. Welcome back.

3 Next witness.

4 MS. CAMPBELL: The State calls Gray Amick.

5 THEREUPON,

6 GRAY AMICK,

7 after having been duly sworn, testified as follows:

8 THE CLERK: Thank you. Please have a seat in the
9 witness stand and state your name for the record.

10 THE WITNESS: My name is Gray Amick.

11 DIRECT EXAMINATION

12 BY MS. CAMPBELL:

13 Q Mr. Amick, where are you employed?

14 A Richland County Sheriff's Department.

15 Q What do you do there, sir?

16 A I'm the technical leader of the DNA laboratory.

17 Q And as the technical leader of the DNA laboratory, what
18 do your duties include?

19 A It's basically supervise the DNA laboratory as well as
20 active analyst in the DNA lab.

21 Q So you do some of the testing, actually, yourself?

22 A Yes.

23 Q Are there a number of other analysts also in your
24 department?

25 A There's two other analysts.

GRAY AMICK DIRECT BY MS. CAMPBELL

1 Q Can you tell this jury a little bit about your
2 education and training in the field of DNA analysis?

3 A Yeah. I have a biology degree, a BS degree in 1989 and
4 a Ph.D. in biochemistry from 1993 from USC. From
5 there, I was hired by the State lab, the State Law
6 Enforcement Division, commonly known as SLED, where I
7 worked for 11 years and was trained by court qualified
8 experts in forensic DNA and forensic serology. In
9 2004, I was hired by Sheriff Lott to start up the
10 Richland County DNA laboratory and I've been there ever
11 since.

12 Q Is your laboratory accredited in any way?

13 A Yes, it's accredited internationally by a group by
14 called ASCLD/LAB.

15 Q Y'all adhere to the standards they propose as far as
16 your DNA laboratory?

17 A We do.

18 Q There are certain protocols or checks in the place to
19 ensure the quality of your analysis?

20 A That's correct.

21 Q And prior to submitting any report, is there any type
22 of review that goes on?

23 A Yes. All of the laboratories in our agency is ascribed
24 to hundred percent peer review and administrative
25 review. So there is a peer review of the results as

GRAY AMICK DIRECT BY MS. CAMPBELL

1 well as administration.

2 Q When you say peer review, what do you mean, sir?

3 A That means another analyst in my laboratory looked at
4 my results and --

5 Q You also mentioned that you had specific training in
6 the field of serology and DNA, can you tell -- describe
7 to the jury what those fields?

8 A Forensic serology is basically identification of body
9 fluids, so is it blood, is it semen, is it saliva. And
10 then forensic DNA analysis is whose body fluid is it or
11 whose cells were left on the certain stain or certain
12 area.

13 Q And have you been qualified before in areas of forensic
14 serology or forensic DNA analysis?

15 A Yes, I have.

16 Q Approximately how many times have you been qualified?

17 A Over 75 times.

18 Q Over 75 times?

19 A (The witness nodded head.)

20 MS. CAMPBELL: Your Honor, at this time, we offer
21 him as an expert in forensic serology and forensic DNA.

22 MR. SCHNEE: I stipulate.

23 THE COURT: All right. Ladies and gentlemen, this
24 witness is an expert in the fields so stated.

25

GRAY AMICK DIRECT BY MS. CAMPBELL

1 BY MS. CAMPBELL:

2 Q And tell the jury how you receive evidence in a case.

3 A Typically, we get swabs and other types of evidence,
4 clothing, items -- other items from either the crime
5 scene team that's gone out and worked the criminal
6 scene or from deputies who have collected swabs at the
7 scene. Those come in through our evidence log in
8 department and then I or a technician will retrieve
9 them from the evidence log in.

10 Q And in this case as in every case, do you also check to
11 make sure the chain of evidence is complete and that
12 the items don't appear to have been tampered with or
13 altered?

14 A I do.

15 Q And you did that in this case?

16 A Yes, I did.

17 Q And to do a DNA analysis, specifically, is there a
18 known sample that is pretty much necessary for you to
19 do any kind of comparison?

20 A To do a comparison, yes. You can do -- or try to
21 develop any profile just by itself, but yeah, you
22 either need to enter that data into the database or
23 compare it to suspect or victims in the case.

24 Q In this case, were there any known samples that were
25 initially submitted in this case?

GRAY AMICK DIRECT BY MS. CAMPBELL

1 A Yes, it looks like there was blood from Antonio
2 Corbitt.

3 Q Okay. And is blood a known standard for DNA that can
4 be used by you?

5 A Yes.

6 Q And is there another manner in which you can also --
7 from a person in order to use it for comparison in DNA
8 analysis?

9 A Yes, it's what we call buccal swab, which is a swab of
10 the mouth.

11 Q And how is a swab of the mouth obtained?

12 A Basically, you take a Q-tip and stick it the mouth and
13 --

14 Q You mentioned you got blood from the victim in this
15 case, Antonio Corbitt?

16 A That's correct.

17 Q And that would have been gotten at autopsy?

18 A I believe so.

19 Q And in addition to that standard, did you also have an
20 additional standard to compare the results to?

21 A I did. Buccal swab, item 18, from Rayquan Washington.

22 Q Rayquan Washington?

23 A Yes.

24 Q And did you know that was the victim's son?

25 MR. SCHNEE: Objection, leading, Your Honor.

GRAY AMICK DIRECT BY MS. CAMPBELL

1 She's been doing this the entire witness so far.

2 THE COURT: Your objection is overruled.

3 Did you know that he was the victim's son.

4 THE WITNESS: I did not.

5 BY MS. CAMPBELL:

6 Q Once you got the known standard -- what other standards
7 were submitted for your analysis, what types?

8 A What other standards?

9 Q I'm sorry, I misspoke. What other evidence was
10 submitted for your review?

11 A Looking at my reports, several swabs from the crime
12 scene, from table, stair rail, newspaper, kitchen
13 floor, door glass, doorknobs, banisters and then
14 fingernail scrapings, which I assume from the victim,
15 sheets and socks, looks like some clothing and some
16 swabs from the pants, a cell phone and another cell
17 phone, stuff like that.

18 Q Okay. And once you receive those items, did you first
19 perform some tests serological?

20 A Yes. The way we would approach a case like this is
21 basically process the evidence, look at it and see if
22 there's any visual stain. And if there is, test that
23 to see what it is. And this case, we tested for
24 presence of blood on several of these items.

25 Q Once that test is done, did you then do further testing

GRAY AMICK DIRECT BY MS. CAMPBELL

1 to see if there was any DNA that could be analyzed from
2 the sample?

3 A Yes, that's what we do. We take those items and make
4 cuttings and attempt to get a DNA profile from them.

5 Q You also issued a report in this case?

6 A I did.

7 Q And I want to show a chart. Have you had an
8 opportunity to review this chart to make sure that it's
9 accurate?

10 A I --

11 Q This is a blow-up of the chart, actually.

12 A Yes, it looks familiar.

13 Q And does this accurately reflect your finding in this
14 case?

15 A I believe so.

16 Q Some of all of your findings.

17 MS. CAMPBELL: Your Honor, at this time, we'd
18 offer State's Exhibits 164 and 165 into evidence.

19 MR. SCHNEE: No objection.

20 THE COURT: Admitted without objection.
21 (State's Exhibit Nos. 164 and 165 were
22 admitted into evidence.)

23 MS. CAMPBELL: Your Honor, may the witness step
24 down?

25 THE COURT: Yes.

GRAY AMICK DIRECT BY MS. CAMPBELL

1 MS. CAMPBELL: You can step down, sir.

2 BY MS. CAMPBELL:

3 Q First, explain to the jury how DNA is done.

4 A Well, basically, we take those cutting and those
5 cuttings from swabs, we extract the DNA -- DNA, then we
6 run a series of experiments and, basically, the
7 instrument will develop a DNA profile or not. It's
8 based on quantity of DNA, how much is there with the
9 swab or the cutting and the quality of it, if it's
10 degraded or not. So sometimes you may get a profile,
11 sometime you may not get profile. And then we take
12 those --

13 Q And at a crime scene, such as a murder crime scene,
14 typically, are body fluids a way that DNA may be left
15 at the scene?

16 A I -- yes, a murder crime scene, pretty much, we'll look
17 for blood from the victim, blood from the suspect and
18 then, depending on the scenario, perhaps, other types
19 of evidence as well.

20 Q And in the past few years, has there been a field
21 developed with touch DNA?

22 A Yes. Touch DNA has become a big field, especially to
23 property crimes. So if somebody breaks into a business
24 and touches a cash register or point of entry and they
25 can, perhaps, leave their DNA there and we can get the

GRAY AMICK DIRECT BY MS. CAMPBELL

1 DNA profile from that. In some scenarios of this type
2 of crime, we may -- for touch DNA as well.

3 Q If I walk up -- and I touch this, am I necessarily
4 going to leave DNA there?

5 A No, not necessarily.

6 Q And what are the factors involved there?

7 A It's similar to a fingerprint. It kind of depends on
8 environment, temperature, the person, if they're
9 sweating or not, if they shed cells or not. So it
10 depends on the person, the surface and the environment.

11 Q If you test and item serologically and find the
12 presence of blood, is your chances of getting a result
13 somewhat greater?

14 A Yes. If we see blood on an item, we will usually be
15 surprised if we don't get the DNA profile.

16 Q But that's not necessarily true with touch DNA?

17 A That's correct. We do not know if they will leave one
18 or not until we do it.

19 Q When you're looking at DNA, the DNA profile you look
20 at, is a person's DNA profile unique?

21 A It is unique, unless you have an identical twin.

22 Q An identical twin?

23 A Identical.

24 Q Not fraternal?

25 A Correct. In an identical twin, this test will not be

GRAY AMICK DIRECT BY MS. CAMPBELL

1 able to tell you or your brother apart, other than
2 that, you --

3 Q When evidence is submitted to you such as be it touch
4 DNA swab -- is that how you would collect touch DNA?

5 A Yes.

6 Q And with blood, would you process --

7 A Yes.

8 Q Can you tell how long that DNA has been there or when
9 it was deposited?

10 A No, you cannot.

11 Q Can you date it in any way?

12 A Nope.

13 Q If you will come over on this side and go through the
14 items that were submitted to you in this case. And
15 when were these items initially submitted, what year?
16 Do you remember?

17 A It would have been shortly after October 2005.

18 Q And can you go through, basically, what was submitted
19 to you and what you did and your results?

20 A Sure. I do it based on this chart. The blood from
21 Antonio Corbitt, as I mentioned before, that's the
22 standard from him. There's a swab from a table, item
23 one -- these are items over here --

24 Q Let me just ask you, do you go out and, actually,
25 collect this evidence yourself?

GRAY AMICK DIRECT BY MS. CAMPBELL

- 1 A No, I do not.
- 2 Q It would have been collected by whom?
- 3 A Either crime scene or -- in this case, major crime
- 4 scene analyst or investigators.
- 5 Q Okay. Go ahead. I'm sorry.
- 6 A Okay. So swab one from the table -- just kind of read
- 7 this left to right. I got no blood on it. There was,
- 8 obviously, no DNA extracted, therefore, it was kind of
- 9 no results at that point. Item two, swab from the
- 10 stairwell. There was blood -- I'm sorry. There was
- 11 blood and there was DNA that matched the victim.
- 12 Q The victim?
- 13 A Yes.
- 14 Q And what's the victim's name?
- 15 A Antonio Corbitt.
- 16 Q Okay. So maybe that helps you guys. Item two is the
- 17 same result. A lot of this evidence matched the
- 18 victim. So blood at the crime scene -- I don't know
- 19 what the manner of the crime was, but the victim bled
- 20 and the blood -- a lot of this blood on these items
- 21 matched the victim. So that's what these first three,
- 22 one, two, three items are saying. Basically, it's off
- 23 the table, stairwell and they all match the victim in
- 24 this case --
- 25 A Black wallet, swab from that, I got no DNA from that.