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STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM MARLBORO COUNTY

J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID ERIC DIXON,

APPELLANT

APPELLATE CASE NO. 2013-002386

RECORD ON APPEAL

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THE FOLLOWING EXHBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT #50 (STATEMENT OF DAVID DIXON)

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

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

August 13, 2013
Bennettsville, South Carolina

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE.

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

MIA DAVID, ASSISTANT SOLICITOR
Attorney for the State

BRANDON STEEN, PUBLIC DEFENDER
Attorney for the Defendant

JAMIE SEALES, Marlboro County Sheriff's Office

HATTIE O. GORDON
Circuit Court Reporter

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NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

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

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

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

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

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

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

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

THE COURT: Sir?

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

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

MR. SEALES: Yes, sir, Your Honor.

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

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

THE COURT: Sir?

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

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

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

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

THE COURT: Sir?

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

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

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

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

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

MR. DIXON: Yes, sir.

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

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

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

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

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

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

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

MS. DAVID: Yes, sir.

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

MS. DAVID: Yes, sir. Thank you.

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

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

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

MR. DIXON: Yes, sir.

THE COURT: Does he hear me?

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

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

MR. DIXON: Yes, sir.

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

MR. DIXON: Yes, sir.

THE COURT: Who are these folks behind him?

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

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

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

MR. DIXON: Twenty-two, sir.

THE COURT: Talk a little louder for me.

MR. DIXON: Twenty-two.

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

MR. DIXON: Ninth grade.

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

MR. DIXON: Yes, sir.

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

Defendant?

MR. DIXON: Yes, sir.

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

MR. STEEN: Yes, Your Honor.

THE COURT: Have you conveyed that to him?

MR. STEEN: Yes, Your Honor.

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

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

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

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

MS. DAVID: Yes, sir.

THE COURT: Do you understand that?

MR. DIXON: Yes, sir.

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

MR. DIXON: Yes, sir.

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

MR. DIXON: Today, sir.

THE COURT: Sir?

MR. DIXON: Today.

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

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

MR. DIXON: Yes, sir.

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

denied.

END OF TRANSCRIPT OF RECORD

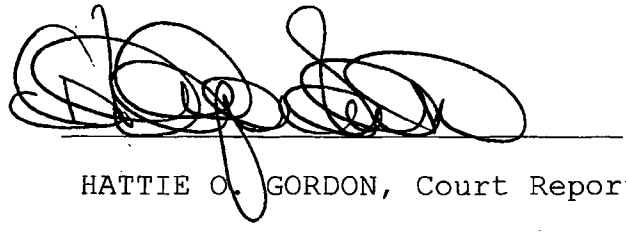
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

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

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

April 3, 2014



HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF MARLBORO	)	
	)	
	)	**MOTION FOR PRODUCTION OF EVIDENCE, CONTINUANCE, SCHEDULING ORDER, AND TO KEEP THE STATE'S OFFER OPEN**
THE STATE	)	
	)	Indictment No(s):
-Vs-	)	2013-GS-34-0086
	)	2013-GS-34-0087
DAVID ERIC DIXON,	)	2013-GS-34-0086
Defendant	)	
	)	

TO: The Honorable William B. Rogers, Solicitor, Fourth Judicial Circuit

The undersigned representative will move before the Court on the tenth day after service or as soon thereafter as Counsel for the Defendant can be heard as for why evidence should be produced and a continuance granted in the above referenced matter.

I. MOTION TO ORDER STATE TO PRODUCE EVIDENCE

Defendant moves before the Court that favorable evidence should be turned over to the defense pursuant to Rule 5, SCRCrimP, *Kyles v. Whitley*, 514 U.S. 419 (1995), *Brady v. Maryland*, 373 U.S. 83 (1963), and *Gibson v. State*, 514 S.E.2d 320, 334 S.C. 515 (S.C. 1999).

"The prosecution, which alone can know what is disclosed, must be assigned the consequent responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of 'reasonable probability' is reached. This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case" *Whitley* at 437. "A 'reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial'" *Id.* At 434. The prudent prosecutor will resolve doubtful questions in favor of disclosure" *Gibson* at 325.

The State has sent off numerous items of evidence collected at the crime scene to the State Law Enforcement Division (SLED) to be analyzed in preparation for trial.

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William B. Rogers
CLERK OF COURT
MARLBORO COUNTY
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2013 SEP 9 PM 2 05
WILLIAM B. ROGERS
CLERK OF COURT
MARLBORO COUNTY, S.C.

These material items include buccal swabs from the victims and defendant, fired bullets recovered from victim's body, handguns, cartridge cases, shotshells, unfired cartridges and shotshells. SLED has not processed this evidence as of the date of this filling.

Because the State is under a duty to learn of any favorable evidence, and upon discovering favorable evidence, the State is under a duty to disclose such favorable evidence, the Defendant asks the Court to order that SLED reports analyzing material evidence be turned over to the Defense.

II. MOTION TO ALLOW DEFENSE SUFFICIENT TIME TO INDEPENDENTLY INVESTIGATE TURNED OVER EVIDENCE

Defendant moves before the Court that evidence should be turned over so that the Defense will be able to perform its own independent investigation of the evidence pursuant to Rule 5, SCRCrimP and *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (S.C. 2007).

A criminal defense attorney has a duty to perform a reasonable investigation. "While the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case" *Ard* at 33-32.

As stated before, The State has sent off numerous items of evidence collected at the crime scene to the State Law Enforcement Division (SLED) to be analyzed in preparation for trial. These material items include buccal swabs from the victims and defendant, fired bullets recovered from victim's body, handguns, cartridge cases, shotshells, unfired cartridges and shotshells. SLED has not processed this evidence as of the date of this filling.

Because the Defense is under a duty to perform a reasonable, independent investigation, the Defendant asks the Court to turn order that the physical evidence collected at the crime scene and corresponding SLED analysis reports be turned over to the Defense.

III. MOTION TO CONTINUE TRIAL AND FOR THE COURT TO ISSUE A SCHEDULING ORDER

To ensure the Defendant receives the discoverable evidence and to ensure the Defense has the opportunity to conduct a reasonable, independent investigation, the

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WILLIAM B. RUMBAUGH
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Defendant moves the Court to continue his trial set for September 30 and to issue a scheduling order pursuant to *State v. Langford*, 735 S.E.2d 471, 400 S.C. 421 (S.C. 2012).

In *Langford*, the Court stated that "the Solicitor has discretion in choosing how to proceed with a case, [. . .] and he must grabble with marshaling witnesses, ranging from victims, to police officers, to experts. Because the State bears the burden of proof, the [S]olicitor also does not want to call the case before he himself is ready" *Id.* At 448. However, the Court stated that these are the "prerogatives of the [S]olicitor (and, to a large degree, of defense counsel as well)" Id.

The State has placed Defendant's trial on the fast track to be prosecuted without any deference to the Defendant's defense. The incident happened about eight (8) months ago, and SLED is still processing the evidence submitted by the State.

Because, as The Court stated *Langford*, it is the prerogative of the defense counsel as well as to when a case is called for trial, the Defendant asks the Court to continue the September 30, 2013 trial date and issue a scheduling order with a new trial date.

VI. MOTION TO KEEP THE STATE'S OFFER OPEN UNTIL DISCOVERABLE EVIDENCE IS TURNED OVER

The Defendant moves the Court to order the State to keep the current offer on the table pursuant to Chief Justice Toal's March 1, 2004 order on Plea Agreements and Discovery.

In said order, C.J Toal stated that "it is unethical to premise a plea agreement on the defendant relinquishing the right to discovery in criminal cases. This practice is going to have adverse consequences in the future with claims of ineffective assistance of counsel based on a claim that the plea was not voluntary because the applicant did not have access to the solicitor's file."

In the current action, the State has placed an offer of 25 years on the table that has sense expired. The offer expired prior to the Defendant receiving material evidence that is discoverable under Rule 5, SCRCrimP and *Brady*. Defendant's offer expiring before the State has turned over discoverable evidence is tantamount to the Solicitor offering a plea agreement to the Defendant on the condition they forgo discovery, which is, as stated before, and unethical practice.

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William B. Sunderland
CLERK OF COURT
MARLBORO COUNTY
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2013 SEP 9 PM 2 06

For this reason, the Defendant moves the Court to order the State to keep the 25 year offer open until all discoverable evidence has been turned over to the Defense.

V. FOR THE AFOREMENTIONED REASONS, THE DEFENDANT RESPECTFULLY ASKS THE COURT:

(1) To order the State to turn over favorable and otherwise discoverable evidence prior to a trial date being set;

(2) To continue Defendant's trial set to begin September 30, 2013;

(3) To issue a scheduling order for trial that allows the Defendant a chance to review and investigate evidence turned over by the State.

(4) To order the State to keep Defendant's offer open until evidence is turned over by the state.

Respectfully Submitted,

Brandon Steen 9/9/13

Brandon Steen, Bar #100241
Assistant Public Defender, Fourth Judicial Circuit
Attorney for the Defendant,

September 9, 2013

A CERTIFIED TRUE COPY
William B. Funderburk
CLERK OF COURT
MARLBORO COUNTY

WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S/C.
2013 SEP 9 PM 2 08
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COUNTY OF MARLBORO	)	FOURTH JUDICIAL CIRCUIT
	)	
THE STATE,	)	**MOTION TO SUPPRESS**
	)	**DEFENDANT'S STATEMENT PURSUANT**
	)	**TO JACKSON V. DENNO**
V.	)	
	)	
	)	INDICTMENT NO(s):
DAVID ERIC DIXON,	)	2013-GS-34-0086, 2013-GS-34-0087,
Defendant.	)	2013-GS-34-0088
	)	

TO: The Honorable William B. Rogers, Solicitor, Fourth Judicial Circuit

Counsel for the Defendant moves before this Court as for why Defendant's statement in this matter should be suppressed. Defendant respectfully requests This Court to suppress Defendant's statement recorded on December 21, 2012.

In the alternative, Defendant respectfully requests This Court to suppress by redaction the following segments of Defendant's recorded statement:

Position Begin	Position End	Timestamp Begin	Timestamp End	Redaction: Basis
7:35	7:50	2:00:05	2:00:20	Discussion of Prison: Defendant's Prior Convictions
8:00	8:10	2:00:30	2:00:40	Discussion of Probation: Defendant's Prior Convictions
24:35	24:45	2:17:05	2:17:15	Inv. Stating No GSR on Victim: Contradictory to Direct Evidence Presented at Trial
28:35	28:45	2:21:05	2:21:15	Discussion of How Jury Could Handle Certain Facts: Interfering in the Jury's Job as Trier of Fact
32:20	32:45	2:24:50	2:25:15	Discussion of How Jury Could Handle Certain Facts: Interfering in the Jury's Job as Trier of Fact
32:45	32:55	2:25:15	2:25:25	Discussion of Prison: Defendant's Prior Convictions
38:20	39:00	2:30:50	2:31:30	Discussion of Prison: Defendant's Prior Convictions

RESPECTFULLY SUBMITTED,

s/ Brandon Steen
Assistant Public Defender
Fourth Judicial Circuit
Attorney for the Defendant

Date: October 28, 2013

STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

COUNTY OF MARLBORO) CASE NO: 2013-GS-34-0086, 0087 & 0088

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

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.



DAVID ERIC DIXON,

Defendant.

APPEARANCES:

Mia David, Esq.
Mary Johnson-Lee, Esq.
Shipp Daniel, Esq.

Attorneys for the State.

Brandon Steen, Esq.
Nick Lewis, Esq.

Attorneys for the Defendant.

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11	Serology analysis
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13	Items of Evidence form
14	Crime scene summary
15	Search warrant
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17	Colored photo
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P R O C E E D I N G S

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

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

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

MR. STEEN: Yes, Your Honor.

THE COURT: How does he plead to all three?

MR. STEEN: Not guilty.

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

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

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

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

Go ahead, Counsel, introduce yourself.

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

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

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

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

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

MS. DAVID: Yes, Your Honor.

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

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

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

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

JUROR: Robin Sally, Juror 181.

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

JUROR: I'm related to Mia David.

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

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

THE COURT: Very good. Just one moment.

(A pause in the proceedings.)

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

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

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

MS. DAVID: Yes, Your Honor.

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

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

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

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

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

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

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

THE BAILIFF: Yes.

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

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

(A brief pause in the proceedings.)

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

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

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

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

THE COURT: Tell me your name.

JUROR: Ashley.

THE CLERK: Clerk 214.

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

JUROR: I know Mr. Garner real close.

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

JUROR: About two weeks ago.

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

JUROR: No.

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

JUROR: Yeah.

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

JUROR: Yes, sir.

THE COURT: Are you certain of that?

JUROR: Yes, sir.

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

JUROR: Cindy Rogers, 175.

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

JUROR: Woodrow Garner.

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

JUROR: I just know him.

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

JUROR: Saturday night at the restaurant I work.

THE COURT: What is name of your restaurant?

JUROR: Outlaws.

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

JUROR: No, sir.

THE COURT: Are you certain of that?

JUROR: Yes, sir.

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

JUROR: 81, Mildred Grooms.

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

JUROR: Woodrow Garner.

THE COURT: How is it you know him?

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

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

JUROR: No, but I know him.

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

JUROR: I don't know.

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

JUROR: No, sir it, would not.

THE COURT: Are you certain of that?

JUROR: Yes, sir.

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

JUROR: Tonya Alford, Juror 4.

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

JUROR: Woodrow Garner.

THE COURT: How do you know him?

JUROR: Just socially.

THE COURT: When is the last time you have seen

him before today?

JUROR: It's been a few months.

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

JUROR: No, sir.

THE COURT: Are you certain of that?

JUROR: Yes, sir.

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

JUROR: Juror 216, Amanda Flowers Williams.

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

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

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

JUROR: 15 years.

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

JUROR: No, Your Honor.

THE COURT: Are you certain of that?

JUROR: Yes, sir.

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

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

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

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

JUROR: Yes, sir.

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

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

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

JUROR: (Nods head.)

THE COURT: That is a yes?

JUROR: Yes.

THE COURT: Are you certain of that?

JUROR: Yes, sir.

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

JUROR: 174.

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

JUROR: Both sides.

THE COURT: Of this case?

JUROR: Yes, sir.

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

JUROR: Yes, sir.

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

JUROR: No, sir.

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

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

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

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

JUROR: No, sir.

THE COURT: Are you certain of that?

JUROR: Yes, sir.

THE COURT: I find you are qualified, ma'am. Thank you for your response. Sir, tell me your name and --

JUROR: 202.

THE COURT: Which one of the parties are --

JUROR: Mr. Garner.

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

JUROR: Friends and co-worker.

THE COURT: What was the last thing?

JUROR: We were once co-workers.

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

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

THE COURT: Tell me that one more time.

JUROR: Been a while.

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

JUROR: No, sir.

THE COURT: Are you certain of that?

JUROR: Yes, sir.

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

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

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

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

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

Ma'am, give us your name and number.

JUROR: Debora Byus, No. 27.

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

JUROR: Kerry Clark.

THE COURT: What is your connection to that witness?

JUROR: We are friends and co-workers.

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

JUROR: Probably.

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

JUROR: It would be difficult, yes.

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

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

Ma'am?

JUROR: Cindy Rogers, 175.

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

JUROR: Brandi Jones.

THE COURT: What is your connection to that witness?

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

THE COURT: How long ago has that been?

JUROR: About six months.

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

JUROR: No, sir.

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

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

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

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

MR. STEEN: None, Your Honor.

THE COURT: Very good, thank you. Ladies and

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

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

There is also an indictment for attempted

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

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

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

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

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

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

name and number.

JUROR: Anthony Ellison, Juror No. 55.

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

JUROR: Yes.

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

JUROR: North Carolina Department of Corrections.

THE COURT: How long ago has that been?

JUROR: 15 years ago.

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

JUROR: No, sir.

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

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

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

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

JUROR: Morgan Taylor, I don't remember.

THE COURT: Your name?

JUROR: Morgan Taylor.

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

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

THE COURT: Here in South Carolina?

JUROR: Uh-huh.

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

JUROR: No.

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

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

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

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

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

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

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

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

(A brief pause in the proceedings.)

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

MS. DAVID: Nothing further.

THE COURT: Defense?

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

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

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

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

MR. STEEN: Nothing.

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

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

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

THE BAILIFF: 220.

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

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

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

THE COURT: And how long ago has it been?

JUROR: About 15 years.

THE COURT: Was it a murder?

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

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

JUROR: Uh-huh.

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

JUROR: No, sir, Your Honor.

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

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

It won't bother me.

THE COURT: Thank you for that.

THE BAILIFF: 199.

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

JUROR: I know Mr. Dixon.

THE COURT: How is it that you know him?

JUROR: We went through high school together and friends.

THE COURT: And what?

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

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

JUROR: Maybe a year or two.

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

JUROR: Probably.

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

THE BAILIFF: 130.

THE COURT: How are you?

JUROR: Fine. How are you?

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

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

THE COURT: Where do you work?

JUROR: Inaberry.

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

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

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

MS. DAVID: No objection.

MR. STEEN: No objection.

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

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

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

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

JUROR: 181.

THE COURT: We'll release you.

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

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

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

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

MS. DAVID: Yes, Your Honor.

THE COURT: Defense ready to strike?

MR. STEEN: Yes, Your Honor.

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

How many strikes claimed by the State?

MS. DAVID: Five, Your Honor.

THE COURT: Defense.

MR. STEEN: Ten.

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

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

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

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please excuse the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

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

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please excuse the juror.

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

MS. DAVID: Please strike the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please excuse the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please strike the defendant.

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

MS. DAVID: Present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please excuse the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please excuse the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

THE CLERK: Come on down. 134, Hazel R. Mclain. What says the State?

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

THE CLERK: Come on down. 191, Drayton A. Strickland. What says the State?

MS. DAVID: Please strike the juror.

THE CLERK: You can have a seat. No. 4, Tonya R. Alford. What says the State?

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please excuse the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

THE CLERK: Come on down, sir. No. 40, Patricia B. Collins. What says the State?

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please excuse the juror.

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

MS. DAVID: Please strike the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

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

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

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

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

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

What says the State?

MS. DAVID: Please present the juror.

THE CLERK: What says the defendant?

MR. STEEN: Please seat the juror.

THE CLERK: That completes it.

THE COURT: Thank you, Clerk.

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

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

MS. DAVID: None from the State.

THE COURT: What says the defense?

MR. STEEN: None from the defense.

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

(Whereupon, a bench conference was had.)

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

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

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

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

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

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

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

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

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

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

MS. DAVID: Nothing from the State.

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

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

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

THE COURT: Are there other issues other than that?

MR. STEEN: No, Your Honor.

THE COURT: Then we will be in recess until

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

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

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

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

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

motion that you make?

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

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

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

THE COURT: You say by that time the deadline had

passed?

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

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

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

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

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

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

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

THE COURT: And the deadline for acceptance was

given in court?

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

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

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

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

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

was ready to proceed, and still ready to proceed.

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

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

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

MS. DAVID: That bullet is lost.

THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

voluntary based on being intoxicated.

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

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

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

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

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

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

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

THE COURT: Thank you. Just one moment.

(A brief pause in the proceedings.)

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

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

sir.

THE COURT: Okay.

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

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

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

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

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

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

THE COURT: All right. Thank you.

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

THE COURT: Is that marked, Natalie?

COURT REPORTER: It is not marked.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. DAVID: Beg the Court's indulgence.

(A brief pause in the proceedings.)

MS. DAVID: May I approach, Your Honor?

THE COURT: You may.

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

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

Now, what is your position specifically on

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

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

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

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

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

MR. STEEN: Yes, Your Honor.

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

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

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

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

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

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

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

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

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

MR. STEEN: No, Your Honor.

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

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

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

MR. STEEN: Thank you, Your Honor.

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

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

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

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

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

THE COURT: Understood. Just one moment.

(A brief pause in the proceedings.)

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

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

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

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

MS. DAVID: Nothing, Your Honor.

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

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

MS. DAVID: Yes, Your Honor.

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

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

THE COURT: Are there any other issues?

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

THE COURT: Okay. Any other issues?

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

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

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

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

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

MS. DAVID: Oh, yes, boxes.

THE COURT: Have you marked them at all?

MS. DAVID: They haven't been marked.

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

MS. DAVID: Okay.

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

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

we'll take issue of the sequester.

MS. JOHNSON-LEE: Can we --

THE COURT: Off the record.

(A discussion was had off the record.)

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

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

MR. STEEN: Joint.

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

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

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

THE COURT: Anything further?

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

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

MS. DAVID: No, Your Honor.

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

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

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

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

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

MS. DAVID: Nothing from the State.

THE COURT: And from the defense?

MR. STEEN: Nothing.

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

(State's Exhibits 1 through 51 marked.)

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

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

STATE'S EXHIBITS 1 THROUGH 51 IN EVIDENCE

anything from the defense?

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

THE COURT: Very good. From the State?

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

MR. STEEN: That is correct, Your Honor.

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

(State's Exhibits 1 through 51 admitted.)

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

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

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

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

BY THE COURT

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

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

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

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

(Whereupon, the jury was duly sworn.)

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

JURY SWORN - THE COURT ADDRESSES JURY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I'll wait just one moment.

(A brief pause in the proceedings.)

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

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

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

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

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

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

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

THE COURT ADDRESS JURY

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

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

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

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

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

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

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

THE COURT ADDRESS JURY

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

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

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

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

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

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

MS. DAVID: May it please the Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Defense.

OPENING STATEMENT - MR. STEEN

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

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

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

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

You heard evidence, as the State said, that

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

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

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

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

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

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

THE COURT: Prosecution, call your first witness.

MS. DAVID: Woodrow Garner.

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

THE CLERK: State your name for the record.

WITNESS: Woodrow Franklin Garner.

MS. DAVID: Beg the Court's indulgence.

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

DIRECT-EXAMINATION

BY MS. DAVID:

Q State your full name.

A Woodrow Franklin Garner.

Q How old are you?

A 43.

Q Where do you live, Mr. Garner?

A McColl, South Carolina.

Q Are you married?
A No, ma'am.
Q Do you have any children?
A Yes, ma'am.
Q How many?
A I have three children.
Q Do you remember the evening of December 20, 2012?
A Yes, ma'am.
Q Why do you remember this day?
A Because on that day, this fellow here, David Dixon, tried to shoot me and kill me, and he did kill a friend of mine.
Q Where were you all located when this happened?
A On Stoneaway Road at a bar called Woody's.
Q I'll show you what has been marked as State's Exhibit No. 17. Do you recognize it?
A Yes, ma'am. That is my bar.
Q This is your bar. Has this photo been changed or altered in any significant way?
A No, ma'am.
MS. DAVID: At this, time the State would like to offer this to be published to the jury.
THE COURT: You may offer it to the jury for review, and you may pass it around. I'll tell you

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

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

A Between 20 and 30.

Q Were they people that you knew?

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

Q Was Mr. Dixon there that night?

A He popped up a little later after the crowd.

Q Had you ever seen him there before?

A He had never been in before.

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

A Yes, ma'am.

Q Will you tell the Court what it is?

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

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

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

THE COURT: Overruled.

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

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

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

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

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

MR. STEEN: Objection, hearsay.

THE COURT: I'll sustain.

MR. STEEN: Yes, sir.

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

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

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

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

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

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

A Sitting right over there with white turtleneck sweater.

Q Is it okay if you point at him?

A David Dixon (indicates).

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

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

A No, ma'am.

Q Bristow?

A No, ma'am.

Q Dixon himself?

A No, ma'am.

Q Chalupa?

A Now.

Q Anybody in the bar?

A Nobody in my bar had a weapon.

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

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

MS. DAVID: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

(A brief pause in the proceedings.)

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

A Yes, ma'am.

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

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

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

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

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

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

Q Where were you when the second gun is fired?

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

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

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

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

Q Has it been changed or altered in any way?

A No, ma'am.

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

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

Q Exhibit 22?

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

Q How many jackets are on stools here?

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

Q Just for clarification purposes, what is 24?

A Pool tables at my bar.

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

MR. STEEN: What was the last number?

MS. DAVID: 24.

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

A Not that I can think of.

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

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. STEEN:

Q Was the shots fired before or after?

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

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

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

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

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

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

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

Q Do you know why he was there that night?

A No, sir, I sure don't.

MR. STEEN: One moment, Your Honor.

THE COURT: Yes, sir.

(A brief pause in the proceedings.)

MR. STEEN: No further questions.

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

MS. DAVID: Nothing further.

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

MS. DAVID: Hosea Lemon.

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

THE CLERK: State your name for the record.

WITNESS: My name is Sergeant Hosea Lemon.

DIRECT-EXAMINATION

BY MS. DAVID:

Q What is your occupation, Mr. Lemon?

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

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

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

Q Where was your previous law enforcement experience?

A In Latta.

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

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

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

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

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

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

Q What were you responding to?

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

Q What did she call and say?

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

spot right there.

Q What did you do once you heard this call?

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

Q Did you ever find out what was going on?

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

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

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

A A couple of minutes. A couple of minutes.

Q Once you received help to contain the scene,

did you do anything else?

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

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

A I did not. I did not.

MS. DAVID: Beg the Court's indulgence.

(A brief pause in the proceedings.)

MS. DAVID: No further questions at this time.

MR. STEEN: No questions from the defense.

THE COURT: Call your next witness.

MS. DAVID: Christopher Sanchez.

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

THE CLERK: State your name for the record.

WITNESS: My name is Christopher Sanchez.

DIRECT-EXAMINATION

BY MS. DAVID:

Q Ms. Sanchez, do you have a nickname?

A Yes, ma'am.

Q What is it?

A Chalupa.

Q How old are you?

A 21.

Q Where do you live?

A In Bennettsville, South Carolina.

Q Are you married?

A No, ma'am.

Q Do you have any children?

A No, ma'am.

Q Do you have a girlfriend?

A No, ma'am.

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

A I was at Woody's on Stoneaway.

Q Who did you go there with?

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

Q Who all was there?

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

Q Did you all hang out there often?

A Pretty much.

Q Is this the usual crowd?

A Yes, ma'am.

Q Was anyone else there?

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

Q Did you see Dixon?

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

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

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

MS. DAVID: If I may approach?

THE COURT: You may.

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

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

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

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

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

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

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

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

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

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

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

A No, ma'am.

Q Bristow?

A No, ma'am.

Q Dixon?

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

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

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

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

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

Q Did you know Bristow had been hit?

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

Q How did you know to run after Dixon?

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

MS. DAVID: Beg the Court's indulgence.

(A brief pause in the proceedings.)

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

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

Q Care for what?

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

didn't do none of that.

Q What do you think that flag represented?

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

Q Did you know that?

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

Q But did you know?

A That David?

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

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

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

A Yes, ma'am.

Q What is this?

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

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

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

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

A Yeah, that's the flag.

Q Do you recognize this?

A Yes, ma'am.

Q Is this the flag you saw on that evening?

A Yes, ma'am.

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

THE COURT: You may.

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

CROSS-EXAMINATION

BY MR. STEEN:

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

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

MR. STEEN: One moment, Your Honor.

(A brief pause in the proceedings.)

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

A Yes, sir.

Q And those charges are no longer pending?

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

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

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

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

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

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

A Put his hands on him?

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

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

Q But Mr. Bristow was --

A He patted his pockets, yeah.

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

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

Q That night you didn't --

A We didn't want no trouble.

Q You didn't want him there?

A We didn't want no trouble.

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

A We discussed that he was there?

Q Yeah.

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

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

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

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

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

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

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

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

A He was right there at the bar.

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

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

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

A No.

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

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

Q And did you have anything on you that night?

A No, I didn't have nothing.

MR. STEEN: One second, Your Honor.

(A brief pause in the proceedings.)

MR. STEEN: No further questions.

THE COURT: Is there redirect?

MS. DAVID: Yes, Your Honor.

REDIRECT-EXAMINATION

BY MS. DAVID:

Q Did you ever touch David Dixon on that evening?

A No, ma'am.

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

A Only time is when he patted him.

Q Why was he patting him down?

A Checking --

MR. STEEN: Calls for speculation.

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

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

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

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

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

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

Q So, again, did you ever hit Dixon?

A I never touched David.

Q Did you ever see Bristow hit Dixon?

A No, he never hit him.

Q Thank you.

MS. DAVID: No further questions.

THE COURT: Follow-up on anything in recross?

MR. STEEN: No.

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

MS. DAVID: May I approach for a moment?

THE COURT: You may.

(Whereupon, a bench conference was had.)

RECESS - BY THE COURT

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

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

THE COURT: Court is in recess for 15 minutes.

(A recess was taken.)

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

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

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

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

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

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

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

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

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

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

Call your next witness.

MS. DAVID: Ms. Sonya Caulder.

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

THE CLERK: State your full name for the record.

THE WITNESS: Sonya Caulder.

DIRECT-EXAMINATION

BY MS. DAVID:

Q How old are you?

A 23.

Q Where do you live.

A I live with my parents.

Q Are you married?

A No, ma'am.

Q Do you have any children?

A No, ma'am.

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

A Yes, ma'am.

Q And where were you on this night?

A I was at Woody's.

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

A Me and my boyfriend, Dustin, and Travis.

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

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

Q Did you all go in the inside?

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

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

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

Q Around what time do you think you went outside

to your car?

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

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

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

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

MR. STEEN: Objection, hearsay.

THE COURT: Sustain that, Counsel.

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

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

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

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

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

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

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

A Yes, ma'am.

Q Is that person in the courtroom today?

A Yes, ma'am.

Q What is he wearing?

A His white button-up white turtleneck.

Q Do you mind pointing at him for me?

A (Indicates.)

MS. DAVID: May the record reflect that Sonya

Caulder identified David Dixon as the shooter.

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

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

Q Where is Bristow?

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

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

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

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

Q Now, did you ever hear any more gunshots?

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

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

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

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

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

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

A Yes, ma'am.

Q Has Woodward Garner already been shot?

A Yes, ma'am.

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

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

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

Q Do you recall calling 911 that evening?

A Yes, ma'am, somewhat.

Q Okay.

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

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

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

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

THE COURT: Anything further?

MS. DAVID: Yes, Your Honor.

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

A Yes, ma'am.

Q Is this the weapon that Dustin Locklear --

A Yes, ma'am.

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

A No, ma'am.

Q Did you ever see Bristow with the weapon?

A No, ma'am.

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

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

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

A Hit him? No, I did not.

MS. DAVID: Answer any questions defense would have.

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

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

THE COURT: Thank you.

(A brief pause in the proceedings.)

THE COURT: It is unloaded?

MR. SEALS: It is unloaded.

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

CROSS-EXAMINATION

BY MR. STEEN:

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

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

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

A Yes, sir, with the windows rolled down.

Q Windows rolled down?

A The passenger and my window was rolled down.

Q Did you have your radio on or off?

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

Q You state that you normally carry a gun?

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

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

A Yes, sir.

Q Was Dustin outside during this conversation?

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

Q So Dustin was inside when the --

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

Q Okay. Did you see David shoot Woody Garner?

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

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

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

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

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

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

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

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

Q One moment.

MR. STEEN: One moment, Your Honor.

(A brief pause in the proceedings.)

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

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

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

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

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

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

Q So everybody that was there?

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

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

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

Q You said the gun was in the glove box?

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

Q How does Dustin get the gun?

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

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

Q At that point --

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

Q Thank you.

A You're welcome.

THE COURT: Redirect?

REDIRECT-EXAMINATION

BY MS. DAVID:

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

A No, ma'am.

MS. DAVID: Nothing further.

THE COURT: You may --

MR. STEEN: May I do recross?

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

MR. STEEN: The issue with no other guns.

THE COURT: You may.

RECROSS-EXAMINATION

BY MR. STEEN:

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

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

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

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

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

A No.

THE COURT: Do you want to follow?

MS. DAVID: Nothing further, Your Honor.

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

Call your next witness.

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

THE COURT: You may.

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

DIRECT-EXAMINATION

BY MS. DAVID:

Q What is your current age, Mr. Locklear?

A 20.

Q And where do you live?

A Wallace, South Carolina.

Q Are you married?

A No, ma'am.

Q Do you have any children?
A No, ma'am.
Q Do you have a girlfriend?
A Yes, ma'am.
Q Do you recall the night of December 20, 2012?
A Yes, ma'am.
Q And why is this night important to you?
A That was the night that one of my best friends got killed.
Q Where were you on this night?
A At Woody's.
Q Around what time do you think you got there?
A Around 9 o'clock.
Q Who were you with?
A My girlfriend and Travis Pruitt.
Q Did you all go in the inside?
A Yes, ma'am.
Q And what were you doing?
A Shooting pool.
Q Did you go outside?
A Yes, ma'am.
Q What I want you to do at this time is slowly walk me through the events as it occurred on this evening.
A We pulled up about 9:00 and Bristow was

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

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

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

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

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

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

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

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

Q During the discussion, where are you located?

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

Q Okay. What happens after the shots are fired?

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

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

Q How many shots did you fire?

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

Q Were you scared?

A Yes, ma'am.

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

A No, ma'am.

Q Did you see Bristow with the weapon?

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

Q Did you see Dixon with a weapon?

A No, ma'am.

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

A No, ma'am.

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

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

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

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

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

Q One glove? What do you mean?

A He had one glove on his right hand.

Q What did it look like?

A Just a black glove on the right hand.

Q Did you say anything to him about this glove?

A No, ma'am.

Q Were you friends with him?

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

Q Did you know him?

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

Q Did you have a problem with him?

A No, ma'am.

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

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

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

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

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

A Yes, ma'am.

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

A No, ma'am.

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

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

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

THE COURT: You may. Is that the same weapon?

MS. DAVID: It is.

THE COURT: It is in evidence. You may proceed. Go ahead.

Q I'm not going to take it out, just asking you if this is the weapon that you fired on that evening?

A Yes, ma'am.

Q What did you all do with this weapon after you fired it?

A After I fired it, I put it in my old lady's glove box. When I seen the law and everything, I put it back in my girlfriend's glove box.

Q Did you ever turn this over?

A Yes, ma'am. I turned it over to Mr. Shawn Felton on the sheriff's department.

MS. DAVID: No further questions by the State at this time. Please answer any questions the defense may have for you.

CROSS-EXAMINATION

BY MR. STEEN:

Q You were convicted off burglary third last year; is that correct?

A Yes, sir, six months probation.

Q Did you see Mr. Dixon shoot?

A No. My back was turned walking in the

building.

Q Did you see Mr. Dixon shoot Woody Garner?

A No, sir.

Q Why did Bristow and Chris Sanchez tell David to leave?

A Nobody never seen David in the area before, and a man walking in an area no one saw him before with one glove, that is a threat to our group. It was our people hanging there, nobody else. The neighborhood really come to the bar, and he just shows up with one glove on. It was just basically telling us that there was something there, that it was just a vibe, so they were telling him to leave so there wouldn't be nothing like this.

Q So everyone wanted Mr. Dixon to leave because he was not from around there? He was surrounded by people he didn't know --

A No, he knew us. He knew us, but we didn't mess with him outside of the neighborhood, because they say he had problems with boys in the neighborhood. We didn't want this to go on like the way it did.

Q Did you see Mr. Dixon wearing his glove while playing pool?

A I really can't remember, but when he came in,

he did have his glove on. I can't remember if he was playing pool and had it on. I didn't pay no attention.

Q Have you ever seen someone wear a glove while playing pool?

A No, sir.

Q So everyone wanted Mr. Dixon to leave prior to anything happening that night, as soon as he got there?

A No, sir. It was just a vibe. Him and Bristow shook hands. He bought Bristow a beer, and when we walked outside, Mr. Bristow walked behind him and they were talking. There was no fussing or arguments, just telling him to leave. It was just a vibe he was giving everybody.

Q So David buys Chris a beer, David goes outside, Chris followed him outside and tells him to leave?

A Yes, sir.

Q When you told Bristow to watch him, he might have a gun, you had not seen a gun at that point?

A No, sir.

Q Why did you tell Bristow that?

A I just had that bad feeling.

Q Had anything happened that gave you that bad

feeling?

A I had a couple of people pull guns out, just by the way they was dressed. I had a feeling by the way he walked in that there was a possibility he had a firearm in his possession.

Q You hang out at Woody's regularly?

A Yes, sir. I was there basically every night shooting pool.

Q Do you know why David and Brian went out?

A No, sir.

Q Was it so that Brian could get a beer since he can't drink?

A I don't know how hold they were at that time.

Q Do you know why David and Brian went outside?

A No, sir.

MR. STEEN: One moment.

(A brief pause in the proceedings.)

MR. STEEN: Nothing else.

MS. DAVID: Nothing further from the State.

THE COURT: Sir, you may step down. You can remain in the courtroom, or you are free to leave.

Call your next witness.

MS. DAVID: Kerry Clark.

(KERRY CLARK, having been duly sworn, testified as follows:)

THE CLERK: State your name for the record.

WITNESS: Kerry Lynn Clark.

DIRECT-EXAMINATION

BY MS. DAVID:

Q How old are you, Ms. Clark?

A 21.

Q Where do you live?

A With my grandma.

Q Are you married?

A Yes.

Q Do you have any children?

A Yes.

Q Do you remember the night of December 20, 2012?

A Yes, unfortunately.

Q Why is this night important to you?

A That was the night Bristow got killed.

Q And where were you all that night?

A I was in my car trying to leave.

Q When this happened?

A Yes, ma'am.

Q Okay. I promise I'll be quick. I'll show you what is marked as State's Exhibit No. 49. Can you show me where you were located?

A Right there.

KERRY CLARK - DIRECT EXAMINATION

Q Would you please walk me through what happened on that evening?

A We were all in there playing pool and everything and Brandi needed to take some of my nausea pills to her mom, because I was pregnant at the time and her mom was sick. We were getting ready to leave. We got in the car and next thing I know, I have two people standing behind my car. Bristow comes out and I think Chalupa came out, and I don't know who else all came out. I'm sitting there trying to figure out what is going on. We hear them having an argument, disagreement, whatever you want to call it. Next thing I know, I hear gunshots, so I just drop to the floorboard.

Q Did you do anything else after you drop into the floorboard?

A Yeah. I sat there for a minute to make sure that everything was all right.

Q Were you scared?

A Yeah, I was pregnant.

Q Are you scared now?

A Yeah.

Q You mentioned --

A I don't do good.

Q You mentioned the argument and they are all

outside. Do you hear anything?

A I hear them arguing, but it wasn't like screaming and hollering at each other.

Q What did it sound like?

A Sounded like they were having a disagreement.

Q Could you make out anything they were saying?

A Not exactly. I mean, I could hear they were having a disagreement. I could understand Bristow wanted David to leave, but I didn't know exactly what all was going on. I don't know exactly what all started it.

Q Did you ever see Bristow pass looks to Dixon, or Dixon pass looks to Bristow?

A No, ma'am.

MS. DAVID: No further questions. Answer any questions the defense may have.

CROSS-EXAMINATION

BY MR. STEEN:

Q Do you know why Mr. Bristow wanted David Dixon to leave?

A I have no idea.

Q And did you see David Dixon shoot Chris Bristow?

A I didn't.

Q Did you see Dixon shoot Woody Garner?

A I didn't. I wasn't facing that way.

MR. STEEN: Nothing further.

THE COURT: Redirect?

MS. DAVID: Nothing further.

THE COURT: You are free to go.

MS. DAVID: Mr. Travis Lee Pruitt.

(TRAVIS PRUITT, having been duly sworn, testified as follows:)

THE CLERK: State your name for the record.

WITNESS: Travis Lee Pruitt.

DIRECT-EXAMINATION

BY MS. DAVID:

Q How old are you?

A 24.

Q Where do you live?

A Bennettsville, South Carolina.

Q Are you married?

A No, ma'am.

Q Do you have any children?

A Yes, ma'am, two.

Q Do you remember the night of December 20, 2012?

A Yes, ma'am.

Q Why was this night important to you?

A That is the night that my brother got killed.

TRAVIS PRUITT - DIRECT EXAMINATION

Q Where were you all located?

A At Woody's.

Q Is this a blood brother?

A No blood brother, just real close friends.

Q Who all was at Woody's that night?

A Bristow, Chalupa, of course Woody, Donna, Doug, Sonya, Kerry, Trey, Brandi, Billy Jackson, that is about all I can remember.

Q And can you just slowly walk me through the events and tell me what occurred?

A When I walked in, you know, David and Brian was already there. Bristow and Chalupa was already there. When I walked in, we came in and, you know, got a beer, walked over there and started shooting a game of pool. Next thing I know, everybody started moving around and I seen him outside. I don't know when they went outside, but I looked out the window and saw them. They had an argument going on, and I told Woody, You may need to walk out, it might be getting ready for, you know, a fight or something. So he goes out there. I turned around to go back to shoot my game of pool, and next thing I know bullets -- I mean gunshots going off.

Q What do you see when you look outside? How do you know they are having an argument?

A Because, you know, David was talking with his hands, you know. I could just tell, you know, they weren't talking like me and you talking, it was more aggressive.

Q What do you mean talking with hands?

A You know how some people talk with their hands, they might point over here or something like that, it wasn't pointing at a person.

Q Do you stay inside the whole time?

A Yes, ma'am.

Q Did you ever go outside?

A Yes, ma'am.

Q At what point?

A After all the gunshots was over with, because the door got locked in case -- we didn't know that he was going to come in and shoot anything or -- we didn't know if he was going coming in for the people inside, didn't know what was going on. When everything was over, I went outside and they told me that Bristow had been shot, and I ran over to where he was at.

Q Did you have a weapon that night?

A Did I have a weapon? No. No, ma'am.

Q Did you know anybody else in the bar with a weapon --

A No, ma'am.

Q -- that night? Had you ever seen Dixon down there before?

A First time ever.

Q Did you know him?

A I know of him I don't know him as far as friends, but I know of him.

Q Did you have a problem with him?

A Not that I know of.

Q Do you know of any specific person that was there that had a specific issue?

A Not that I know of. I mean, I don't really recall hearing anything about anybody having any problems. I know -- I think they might have had words back in the past, but nothing serious, though.

MS. DAVID: Beg the Court's indulgence.

(A brief pause in the proceedings.)

MS. DAVID: Nothing further at this point.

CROSS-EXAMINATION

BY MR. STEEN:

Q Did you see the shooting outside?

A I didn't actually see the shooting. I was shooting pool. It was my shot. By the time I turned around to shoot my shot, that is when the gunshots went off. Bristow and Chalupa was coming back

inside. They was walking towards -- coming inside, so I figured everything was all right, so I turned around and shot my game of pool, and gunshots went off.

Q Do you know why Chris Bristow wanted David Dixon do leave?

A Why would he want him to leave? We don't have no problems down there. We all go down there and we're all friends, and we didn't want nothing to happen that night, but it wound up happening anyway. We wanted him to leave because we didn't want trouble.

Q Prior to the outside incident, had there been any problems outside?

A Not that I know of.

Q Thank you.

MR. STEEN: No further questions.

THE COURT: Redirect?

MS. DAVID: Nothing further, Your Honor.

THE COURT: Sir, you are free to remain in the courtroom or leave. Watch your step. Call your next witness.

MS. DAVID: Brandi Marie Jones.

(BRANDI JONES, having been duly sworn, testified as follows:)

TRAVIS PRUITT - CROSS-EXAMINATION

THE CLERK: State your name for the Court.

WITNESS: Brandi Marie Jones.

DIRECT-EXAMINATION

BY MS. DAVID:

Q How old are you, Brandi?

A 20 years old.

Q Where do you currently live?

A In Bennettsville.

Q Are you married?

A No, I'm not.

Q Do you have any children?

A I have one son.

Q Do you remember the night of December 20, 2012?

A Yes, I do.

Q And why do you remember this night?

A That was the night my friend was murdered.

Q Where did this occur?

A At Woody's on Stoneaway in Bennettsville.

Q Who all was there?

A Kerry, me, Trey, Bristow, Chris, Dustin, Sonya, Woody, Donna, couple other people, but those are the main people I do remember.

Q Who did you go out there with?

A Kerry and Trey Clark.

Q So safe to say you were riding with them?

A Yes, ma'am.

Q Now, did you all go in the inside?

A We were in and out. We would come sit in the car and listen to music, and then go in and play pool. We were in and out of the building.

Q I'll show you State's Exhibit No. 49. Do you recognize it?

A Yes, ma'am.

Q Would you slowly walk me through, for the jury, and tell what occurred on this evening?

A We had pulled back up to Woody's that night, and we pulled right here by the entrance. We sat in the car for, oh, probably 10, 15 minutes. David and Brian came around the side of the building, and they came to the car and talked for a second. They went inside, and probably five minutes after that, we followed them in and sat at the bar, me and Kerry sat at the bar.

We sat there for probably 20 minutes, came out and watched everybody play pool. Then we walked outside, we had to go back to my house. We got in her car. She started her car up, and I told her not to leave because I noticed that Bristow and Chris and David were arguing. I told them -- I felt that

something bad was going to happen, so I told her not to leave. So we cut the car off and we sat there. They kept arguing, and then Bristow turned around to leave. David turned around like he was going to leave, and he turned back around and he shot him. Whenever the shots were fired, I turned around in my seat with my arm like this (indicates), and Kerry she was down in the floorboard. So, of course, she didn't see. Bristow, he ran around the side of the building to the back.

Q Where did he run?

A Around this side of the building. I didn't think he was shot because he didn't have blood or anything on his back.

Q Did you see Dixon fire these shots?

A Yes, ma'am.

Q And how were you able to see him?

A I was in the passenger's seat of the car. He was at the back of the car, and whenever I heard the first shot, I turned around and seen him fire several other shots.

Q So you looked at it with your eyes?

A Yes, ma'am.

Q Is that man in the courtroom today?

A Yes, ma'am.

Q What is he wearing?

A White shirt.

Q Can you point at him for me?

A (Indicates.)

MS. DAVID: May the record reflect that Ms. Brandi Jones has identified Mr. David Dixon as the shooter that she saw with her own eyes.

Q (MS. DAVID) Did you know Mr. Dixon?

A Yes, ma'am.

Q How did you know him?

A He was the father of the child of my best friend.

Q Had you talked to him on this evening?

A Yes, ma'am.

Q What did you guys talk about?

A He called me. Me and Kerry went to town to get something and he called me on my cell phone and asked me was I around him, and I told him no, but I lied, I was. He said he needed a ride to the pool tournament at Lucy's, it is another place. I told him I didn't hear about no pool tournament, I didn't know about there being one tonight. He said, If you just talk to Kerry or Trey, call me because I need a ride, and I said okay. I hung the phone up. By the time I got to Woody's, how he got there that fast, I

don't know.

Q Did you all talk to each other while you were in the inside?

A Yeah, we did.

Q What did you talk about?

A He showed me his tattoo on his stomach, how he got it finished. Just small talk.

Q Did you ever see him with the weapon?

A No, ma'am.

Q You didn't? But he showed you his tattoos on his stomach, but you never saw a weapon?

A No.

Q Did you know if he had a problem or did you know about any problems between anyone and Woody's that night?

A I didn't know there was any problems until they started arguing about them.

Q Tell me a little bit about this argument. What do you mean by the word "argument?" Were they talking?

A They were talking at first, and then they started getting angry with it. They weren't really loud at first, and then they started getting loud. Bristow told him if he was going to start problems, he needed to leave, that we didn't have problems, we

were all friends and we never had problems down there.

Q Did you see anything occur between those two? Were you looking at that time?

A I was in and out looking. They were just like moving their hands and stuff like that. Personally, I thought it was about to be a fight or something like that. I didn't think anybody would shoot anybody.

Q What occurred -- did anything occur for Dixon to shoot?

A Bristow grabbed his bandanna out of his pocket.

Q What type of bandanna is this?

A It's a blue bandanna.

Q Does that mean anything?

A It means something to David. It doesn't mean anything to me, but, yeah, I guess you could say gang violence.

Q Do you know what gang that is for?

A Yep.

Q Let's go back inside the bar for a moment or while we're outside. Do you recognize this?

A Yes, ma'am.

Q What is it?

A David's bandanna.

MS. DAVID: May the record reflect that Ms. Brandi Jones identified that.

Q (MS. DAVID) Do you recognize what is marked as State's Exhibit No. 22?

A Yes, ma'am.

Q What is it?

A It is the bar stools inside Woody's.

Q Maybe I need to get closer to you because these photos are kind of dark. Can you tell me where you were sitting that night?

A I was sitting right here, and Ms. Kerry was here.

Q Do you recognize any of the coats in the photo?

A I don't remember whose coat it was. Like I said, we were all friends and stuff, and everybody just kind of threw their coats wherever, so it didn't matter. I didn't know whose coat I was sitting on.

MS. DAVID: Beg the Court's indulgence.

(A brief pause in proceedings.)

MS. DAVID: Nothing further at this time. Answer any questions defense may have.

CROSS-EXAMINATION

BRANDI JONES - DIRECT EXAMINATION

BY MR. STEEN:

Q How well do you know Mr. Dixon?

A I would say pretty well. He stayed at our house, me and the father of my child. He stayed with us for probably five to six months. I know him pretty well.

Q Who is the father of your child?

A James Herden. He's in the courtroom today.

Q You said David is friends with James Herden?

A Was, yes.

Q They were when Mr. Dixon called you earlier that day? Was that the first time you heard from him in awhile?

A Yes, it was.

Q And he told you he was going to a store called Lucy's for a pool tournament?

A He was asking if I had heard about a pool tournament at Lucy's, and I told him I hadn't heard about a pool tournament going on that evening, and he asked if I had talked to Kerry or Trey to give them a call that he needed a ride.

Q Did you tell him at that time that you were going to Woody's that night?

A No, he did not. Where I was at I told him I wasn't with Kerry when I was, but he didn't ask where

my location was.

Q Was Trey with you at the time, Trey in the car?

A Trey Clark? No, he was at Woody's.

Q Do you know how Mr. Dixon knew you were at Woody's?

A He didn't know.

MR. STEEN: One moment, Your Honor.

(A brief pause in the proceedings.)

Q (MR. STEEN) Did you see Mr. Dixon shoot Bristow?

A Yes, I did.

Q Did you see him shoot Woody Garner?

A No, I did not.

MR. STEEN: No more questions. Thank you.

THE COURT: Redirect for this witness?

MS. DAVID: Beg the Court's indulgence.

REDIRECT EXAMINATION

BY MS. DAVID:

Q What direction were you facing when you saw Dixon with the pistol?

A Whenever I seen him with the pistol? I was like this (indicates). My legs were this way, but my head was this way with my arm over the back of the car seat.

Q So you were turned around facing the back of the parking lot?

A Yes, ma'am.

Q How many shots did you see Dixon fire?

A Five.

Q Did anyone else have a gun firing shots at the same time as Dixon?

A No, ma'am.

Q Did you ever turn back around to the front of the bar?

A Yes, ma'am, when I realized what was going on. Because I seen the shots and I realized what was going on, and I turned back around and I got down.

Q Did you see Woody at that time?

A No, I didn't.

MS. DAVID: No further questions.

THE COURT: You may step down. You are free to remain or you can leave. Watch your step as you exit the witness box. Call your next witness.

MS. DAVID: May we approach about scheduling?

THE COURT: You may.

(Whereupon, a bench conference was had.)

THE COURT: Our jurors that are taking notes, if you will secure those notes and give them back in the morning please and make sure no one sees them

overnight.

MR. BROWN: Yes, sir.

THE COURT: The State tells me they have finished with their witnesses that were here and prepared to go forward. They have concluded the witnesses who are present. The next witness is not present and possibly the next witness would be beyond the 5 o'clock hour, so it is time to conclude these proceedings for the day.

When you go home this evening, tell your loved ones that the Court asked you not to discuss the facts of the case, whatever facts we may know, with anyone, and let's be back tomorrow morning at 9:00. We'll begin at 9:00 in the morning, and I'll ask you to be here on time to start promptly at 9:00. Any questions about scheduling from the jury? We'll see you at 9:00 in the morning. We'll remain where we are out of respect for you as you leave for the day. Have a nice evening. We'll see you at 9 o'clock in the morning.

(The jury exits at 4:32 p.m., and the following is heard out of the presence of the jury.)

THE COURT: The jury is clear. For the record, is there anything that either side wishes to place on the record before we adjourn for the day from the

BY THE COURT TO THE JURY

State?

MS. DAVID: Nothing further.

THE COURT: From the defense?

MR. STEEN: Yes, Your Honor. This is in regards to the conversation we had regarding the bench warrant that is --

THE COURT: We can take that up at this time. First of all, I'm told that there was a no-show among the witnesses who were subpoenaed from the State. One of the witnesses did not appear, did not respond to the subpoena. What is that witness' name, Ms. David?

MS. DAVID: His name -- I have it as Brian Gratia, on some paperwork he goes by Brian Wilson.

THE COURT: I'll leave it to the State. First of all, do you have the witness under subpoena?

MR. STEEN: I do not. Me and the solicitor discussed it, and I didn't do one because she filed it, but I was going to ask for the bench warrants since we haven't been able to locate him, and I've been trying.

THE COURT: I'll have the State's position on the bench warrant on that individual for failing to respond.

MS. DAVID: The State did do a subpoena for

BY THE COURT

Mr. Brian Gratia for the week of October 28th and I think through November 1st. It was served and confirmed on -- last week by Ms. Wilks.

THE COURT: And the sheriff's department serves your -- is the agency that serves your subpoenas?

MS. DAVID: Yes, Your Honor.

THE COURT: The Court is going to issue a bench warrant for that gentleman, so have any law enforcement pick him up and bring him to this court. If you would present the paperwork, we'll sign it before we leave today. Pick him up over the evening hour if you are able to reach him; if not, any time you can reach him whether the trial is in process or over, we'll pick him up and hold him so he can explain why he did not appear. Anything further?

MR. STEEN: No, sir.

THE COURT: This court is in recess until 9 o'clock in the morning.

(Whereupon, the proceedings for October 29, 2013 concluded, but resumed on October 30, 2013 at 9:04 a.m., and the following took place out of the presence of the jury.)

THE COURT: Welcome everyone to the courtroom. I'm advised that the jury is in and we're ready to go, so please bring in the jury.

THE COURT ADDRESS JURY

(The jury enters at 9:04 a.m., and the following is heard in the presence of the jury.)

THE COURT: Good morning. I trust you had a nice evening and welcome back to the courthouse. Has any member of the jury panel had a discussion concerning the facts of this case or any aspect with this case with anyone; if you have, please raise your hand. No one has raised their hand.

Thank you for the compliance with the Court's request. You may recall when we began this case and were qualifying you as jurors, we asked about a series of witnesses who may appear in the case, and the State tells me that they omitted a name of an individual that they intend to call, so I want to ask you if there is any member of the jury panel related by blood or marriage to a gentleman named Johnny Roscoe. Mr. Roscoe lives in this area where this event occurred. He is a Caucasian male, approximately 60 years old, just for description information. Is there any member of the jury panel who believes you are related to him by blood or marriage or has a close business, professional or social relationship; if so, raise your hand. Let the record reflect no one raised their hand so, therefore, Ma'am Solicitor, you may call him if he

you wish. Call your next witness.

MS. DAVID: Johnny Roscoe.

(JOHNNY ROSCOE, having been duly sworn, testified as follows:)

THE CLERK: State your name.

WITNESS: Johnny Roscoe.

DIRECT-EXAMINATION

BY MS. DAVID:

Q Good morning.

A Good morning.

Q How old are you?

A I'm 48 years old.

Q And where do you live?

A [redacted].

Q Are you married?

A Yes, ma'am.

Q Do you have any children?

A Two kids.

Q Okay. Do you remember the night of December 20, early morning of December 21, 2012?

A Well, I was in the bed asleep and my daughter woke me up and said someone was knocking on the door. I went to see who it was. The fellow asked could he use the phone. He told me he was walking from Drakes up Salem Highway going to Brusher Bay and it started

raining on him and he got wet. He said he wanted to use the phone to get someone to pick him up.

Q Did you know this fellow?

A No, I did not.

Q Did you allow him to come inside your house?

A Yes, ma'am. He walked out on the front porch, made his phone call, came back in, handed me the phone, I hung it back up and I asked him to sit down on the couch to wait on his ride. The phone rang again. My wife answered it and they asked for him. So she handed him the phone and they just said David, I think, is David there. She handed him the phone, and he walked back out on the porch to talk to whoever he was and came back in and sat down. Next thing I know, Johnny Walters came through the door and arrested him.

Q Who is Johnny Walters?

A John?

Q Who is John Walters?

A Deputy sheriff.

Q Do you know who Mr. Dixon was talking to on the phone?

A No, ma'am, I do not.

Q Do you see Mr. Dixon in this courtroom?

A It's been awhile, but I assume it is the

fellow in the white shirt, not sure.

Q Thank you. About how far do you live from Woody's?

A I would say close to a half a mile.

Q Okay. I show you what is marked as State's Exhibit No. 48. Can you show me the approximate location of your house?

A Right here.

Q And can you show me the approximate location of Woody's?

A (Indicates).

Q Is this an accurate reflection of the area?

A It looks like our neighborhood.

Q Okay.

MS. DAVID: Beg the Court's indulgence.

(A brief pause in the proceedings.)

MS. DAVID: Thank you. Please answer any questions the defense may have for you.

THE COURT: Cross-examination, if any.

CROSS-EXAMINATION

BY MR. STEEN:

Q Did Mr. Dixon make you or your daughter or anyone in your family feel threatened that night?

A No, sir, he did not.

THE COURT: Any redirect?

MS. DAVID: Nothing further, Your Honor.

THE COURT: Sir, if you would, watch your step. Also, you are free to remain here or free to go, your choice.

MR. ROSCOE: All right, sir. If it is okay with the Court, I'll go back to work.

THE COURT: All right, sir. Have a good day.

MR. STEEN: May we approach?

THE COURT: Is there some issue --

MR. STEEN: Mr. Walters is not on the witness list.

THE COURT: Madam Solicitor, did you query the jury panel with Mr. Walters when you called out your potential witnesses?

MS. DAVID: I would need to double check for a moment.

THE COURT: Let's do that. Sir, just one moment. You can stay there, you are fine where you are.

Out of an abundance of caution. You see the next witness who has been called, which is Officer Walters, and I ask you, ladies and gentlemen, any member of the jury panel related by blood or marriage or have a close business, professional or social connection, raise your hand. Once again, the jury has not raised their hand, so please come around and

be sworn by the clerk.

(JOHN WALTERS, having been duly sworn, testified as follows:)

THE CLERK: state your name for the record.

WITNESS: John Wilson Walters.

DIRECT-EXAMINATION

BY MS. DAVID:

Q Good morning. And what is your current occupation?

A Marlboro County deputy for the sheriff's office.

Q How long have you been employed with the Marlboro County Sheriff's Office?

A 15 years.

Q Do you have any previous law enforcement experience?

A No.

Q What are your present duties with the sheriff's office?

A I'm shift supervisor.

Q What shift do you typically --

A Day shift.

Q On the night of December 20th, 2012, were you working that night?

A No.

Q No. Can you explain to the Court how did you become involved with the case?

A We got called out to assist with the case to set up a perimeter.

Q Where did you get called out to?

A I got called out to Stoneaway, at the crime scene at Stoneaway, a small club.

Q Do you know the name of the club?

A Woody's, I think.

Q Now, did you go to Woody's that night?

A We went to the crime scene, from that point we were asked to set up a perimeter.

Q Why did you set up a perimeter?

A Around Stoneaway -- Salem Road and Stoneaway -- Salem...

Q Did you do anything else with this investigation or crime scene on that night?

A No.

Q Did you ever participate in an arrest on that night?

A Yes.

Q How did you become involved with that?

A That night I was informed by my wife -- my wife's cousin, they were on the Facebook and they received some information through Facebook pertaining

to they had a shooting down there somewhere in the neighborhood. At that point, my wife didn't know exactly what was going on, but my wife's cousin told her that, look, it's on the Facebook, somebody got shot down at the little club below our house.

At that time, they told -- my wife's cousin's daughter told my wife, said, look, you need to come down here, I think this gentleman is in my house.

Q At that time my wife informed me, and at that time I informed everybody on the radio that I know where the suspect is. The suspect that they informed was on Facebook was Mr. Dixon. At that time, Lieutenant Akers (phonetic) responded by radio, and I advised him I know where the suspect is at. I didn't know the address at the moment, but I knew what was in the driveway.

According to the address, that is the Roscoe's residence. There is a pontoon boat sitting in the driveway, that is all I could remember, pontoon boat. The suspect is supposed to be at that address. At that time I responded to the residence, Lieutenant Akers assisted me. As we were walking in, my wife's cousin and her two daughters were walking out back. She was on the phone, but she was on Facebook with my wife. She was on the phone with Facebook with my

wife that he's in the house with my daddy, sitting there in the living room.

At that time we walked up to the front porch, went into the screen door part, entered the door and she told me to go ahead on in the house. As I walked in, I noticed Mr. Dixon and Mr. Roscoe sitting right there. The reason he went to that residence, he knocked on the door and wanted to use the phone, so Mr. Johnny let him use the phone to call someone. I don't know who he called or from what point on, but, anyway, we went in the residence, and he was sitting there.

I can't remember what he had on at that moment, but I know he was soaking wet. At that time, myself and Lieutenant Akers advised him to get on the floor, he was being under arrest. We handcuffed him, picked him up, patted him down and he didn't have anything on him at that moment. We walked him outside. I think I put him in my car for just a few minutes, and then Investigator English drove up and at that point he said bring him to him. We brought him to him, and he was turned over to the investigator from that point.

Q Now, did you do anything further with this investigation?

A No.

MS. DAVID: Beg the Court's indulgence.

(A brief pause in the proceedings.)

MS. DAVID: Thank you. Answer any questions the defense may have.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. STEEN:

Q Did Mr. Dixon put up a fight or resisted at all that evening?

A No. He seemed cold and startled.

MR. STEEN: Nothing else.

THE COURT: Redirect?

MS. DAVID: Nothing further, Your Honor.

THE COURT: Sir, you may step down. You are free to remain in the courtroom or you can leave if you wish.

Yesterday I discussed with you the hearsay rules that are inappropriate under many circumstances to testify about what someone said, what someone told you. You can testify about what you did or what you observed yourself and, again, what you did as a result of what someone said, but typically you cannot testify about what someone else said because that is hearsay. Now, that testimony was replete with

BY THE COURT TO THE JURY

hearsay and those of you who heard me describe the rule, I'm sure you are aware, but for your information, the way the Court runs the process here is that generally the Court does not self-start and correct what it perceives to be a violation of the rules. We let the lawyers try the cases. If there is an objection, they can raise it. It's not like a police officer who sees a traffic violation and thus responds and stops whatever is happening, the Court doesn't act in that fashion. We simply respond to whatever objections are made, so I'll tell you as to why you may be wondering why did I hear testimony that is hearsay, that is how it occurred.

Again, the lawyers may have strategies and tactics they want to permit testimony or not, and if they don't object, the Court doesn't respond.

With that understanding, you may call your next witness.

MS. DAVID: Investigator Brittany English.

(Whereupon, Brittany English was duly sworn and testified as follows:)

DIRECT-EXAMINATION

BY MS. DAVID:

Q And what is your current occupation, Mr. English?

A Investigator at the sheriff's office, Marlboro County.

Q How long have you been employed there?

A Since October of 2002.

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

A Investigator, on-call investigate anything that may need investigating.

Q Now, were you employed in your present capacity on December 20, 2012?

A Yes, ma'am, I was.

Q And how did you become involved in the investigation against Mr. Dixon?

A Yes, ma'am, I did.

Q Now, would you briefly tell the Court what was your involvement, how did you become involved?

A On that night I received a call from Lieutenant Jamie Seales. He advised me that we had an incident take place at a place called Woody's, place out on Stoneaway, and that some people had been shot and I needed to come out and work.

Q Where did you go?

A Well, when I got dressed and signed on, it came over central dispatch they needed the investigator to come to the hospital, and when I left

my home and responded, I went to Marlboro Park.

Q What was happening at Marlboro Park Hospital when you arrived there?

A There was a large crowd there. I went inside and one of the persons -- one of the victims was already there. I proceeded to take my camera out. I talked to him and started talking with some of the people that was outside standing around to determine who was there, who was a witness and who needed to be interviewed.

Q Which victim was there when you arrived?

A Mr. Garner, Woody Garner.

Q I'll show what you is marked as State's Exhibit No. 5; do you recognize it?

A Yes, ma'am.

Q Who is that?

A Mr. Garner.

Q Did you take this photo?

A I did.

Q Is it in the same condition?

A Yes, ma'am, it is.

Q This is State's Exhibit No. 6; do you recognize it?

A Yes, ma'am.

Q What is this?

A A wound that Mr. Garner had to his head area and I photographed it.

Q Thank you. Did you do anything else while at the hospital?

A Took photographs, spoke with the people that was hanging out outside, the family members, just tried to determine what was there and who was a witness and who we needed to interview. During the time, I was communicating with Lieutenant Jamie Seales and Investigator Shawn Feldner trying to organize who we were going to interview and who needed to be interviewed first.

Q So what did you do when you left the hospital?

A When I left the hospital, I went -- went back up to the sheriff's office to see what needed to be done. A manhunt was taking place for the defendant, and I went down to that area and we began to try to locate the defendant.

Q Can you explain to us, what is a manhunt?

A The information we had at the time is that the defendant ran on foot. We had -- having lack of manpower at the time, we called Chesterfield Sheriff's Office to bring the bloodhounds and extra personnel, a lot of auxiliary people to set up a perimeter around the block that he ran into.

Q And about how long did you participate with the manhunt?

A Well, I didn't actually get involved in the manhunt. I was out -- through the sheriff's office through the manhunt, I was also looking for a person that we wanted to interview that was supposed to have been with the defendant.

Q Okay. Did you ever find him?

A I did not, not that night.

Q And then what happens next?

A Sergeant Walters came over the radio that he had gotten a phone call and a location on the defendant. At that point in time, I left if I recall, I instructed Sergeant Walters to take somebody with him and try to arrest the defendant. Before I could get to where they were at, they had the defendant in custody.

Q And what happens when you arrive there?

A When I arrived, he is handcuffed in their vehicle. I immediately take him out of their vehicle and put him in the front passenger's seat of my truck, and I backed out into the road from the residence where he was arrested.

Q And why did you take him into your custody?

A Because naturally he was going to be

interviewed, and we had some evidence that needed to be collected.

Q When you have him in your custody, do you ever have the opportunity to read him Miranda rights?

A I did.

Q I'll show what you is marked as State's Exhibit No. 2; do you recognize that?

A I do.

Q Will you explain what it is?

A It is a Miranda form that was read to the defendant by me and has a place for the date and a time and has two signatures on it as witnesses, and it has the defendant's signature along with the defendant's initials by the five Miranda we read. The place is listed as [redacted] date is 12/21/2012 and the time is 12:38 a.m.

Q And will you tell us whose signatures are on there?

A David Dixon's signature is on there, DD is initialed by the first five witness signatures as mine and Lieutenant Larry Turner with the Bennettsville Police Department.

Q What does that form say? Will you read it to us?

A I will. It is a common form. It says, Your

rights, and it says, Before we ask you any questions, you must understand your rights. Number one, You have the right to remain silent. Number two, Anything you say can and will be used against you in court. Number three, You have the right to talk to a lawyer for advice before we ask you any questions and have him with you during questioning. Four says, If you cannot afford a lawyer, the court will appoint one for you before any question if you wish. And five says, If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time until you talk to a lawyer.

Also below that is a Waiver of Rights, and I read that also, and I'll read it now, I have read this statement of my rights and I understand what my rights are and willing to make a statement, answer questions. I do not want a lawyer at this time. I understand and know what I'm doing. No promises or threats have been made to me, and no pressure or coercion of any kind has been used against me by anyone.

Q Will you tell the Court what time is it that this Miranda form --

A 12:38 a.m.

Q A.m. At the time this form signed, what was the defendant's demeanor like?

A Defendant was wet, cold. He was requesting to talk to Lieutenant Larry Turner with the Bennettsville Police Department.

Q Did he appear to understand you?

A He did, yes.

Q Was Larry Turner with you?

A When I backed out into the road, I may have went up a couple hundred yards and I stopped. Larry Turner pulled up behind me and actually walked up to the passenger's side and opened the door and witnessed me reading this and signing it.

Q Now, please explain to the Court what happens after this? What is your further involvement?

A At that point in time, I make contact with the investigator at the crime scene and request that a SLED crime scene unit come to where I was at to collect -- to do a gunshot residue collection kit on the defendant.

Q Where are you located when you make that request?

A In the roadway up from [redacted]

Q Do they come?

A They do, yes.

Q And what happens after the kit is done?

A After the collection was made, I had spoken with Lieutenant Seales and Lieutenant Larry Turner, placed the defendant in his vehicle and transported him directly to the sheriff's office.

Q Do you have any further involvement with this case?

A I do not.

MS. DAVID: I beg the Court's indulgence.

(A brief pause in proceedings.)

MS. DAVID: Thank you. Answer any questions the defense may have for you.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MS. LEWIS:

Q Have you ever been called out to Woody's at any point?

A Sir?

Q Have you ever been called out to Woody's before, prior to this?

A No, sir, I had not.

Q Have you ever had any violent incidents happening there prior to this?

A No, sir.

Q And just to repeat for the record, when you

came into contact with Mr. Dixon, was he violent or aggressive at all?

A He was not at the time, no, sir.

MS. LEWIS: No further questions.

THE COURT: Is there any redirect?

MS. DAVID: No further questions at this time.

THE COURT: Sir, you may step down. You are free to remain or free to leave.

MS. DAVID. May we approach briefly, Judge, about witnesses.

(Whereupon, a bench conference was had.)

MS. DAVID: Mr. Larry Turner.

(LARRY TURNER, having been duly sworn, testified as follows:)

THE CLERK: State your name.

WITNESS: Larry Turner, T-U-R-N-E-R.

DIRECT EXAMINATION

BY MS. DAVID:

Q What is your current occupation?

A Lieutenant with the Bennettsville Police Department over investigations.

Q And what are some of your job duties?

A I work criminal cases as far as burglaries, murder and also work drug cases.

Q How long have you been with the

Bennettsville --

A October will be 17 years.

Q 17 years. Did you become involved in the investigation against Mr. David Dixon?

A Yes, ma'am, I did.

Q And how did you become involved?

A I actually went to the location on Stoneaway where the incident happened and assisted the sheriff's office. I heard about the incident happening. It is close where I live, so I called Lieutenant Seales to ask if he needed assistance.

Q And which location on Stoneaway did you go to?

A Woody's, a club on Stoneaway.

Q Once at that location, what did you do?

A Once I got there, I was briefed on actually what had happened. They had me go to a residence to sit there, because they thought that is where the defendant may go.

Q And how long did you sit there?

A For about 45 minutes, and then he was -- sometime after that he was located, and I went back to the incident location.

Q You went back to Woody's?

A Yes, ma'am.

Q And from Woody's, what did you do?

A I was told that the defendant wanted to talk to me. I met with the defendant and Investigator English at his vehicle that was located in the roadway outside -- out front of Woody's.

Q Okay. Did you go to talk to the defendant?

A I did. I walked up to Investigator English's truck where the defendant was.

Q What was taking place at that point?

A He kept saying that he wanted to talk to me. Investigator English advised me he needed to Mirandize him because he wanted to talk, and he was read his Miranda warnings.

Q I'll show you first what is marked as State's Exhibit No. 2; do you recognize it?

A Yes, ma'am, I do.

Q What is it?

A It was the Miranda warning that was given by Investigator Brittany English. It was witnessed and signed by myself, and also the defendant, David Dixon.

Q Okay. And what time is this Miranda warning?

A 12:38 on 12/21/2012.

Q Okay. What does it say about the defendant at the bottom?

A You want me to read the Miranda today?

MS. DAVID: Beg the Court's indulgence, one moment.

(A brief pause in the proceedings.)

Q (MS. DAVID) Mr. Turner, would you repeat what it says about the description of the defendant?

A It has his name, date of birth, if that's what you are asking.

Q Yes, sir.

A Name David Dixon, date of birth, [redacted] of '90.

Q Does it have height or weight?

A No, ma'am.

Q What was the defendant's demeanor like at that time?

A He appeared to be a little cold and very talkative.

Q Was he trying to talk to you?

A Yes, ma'am, he was.

Q So you Mirandized him, or you watched the Miranda along with Brittany English, and what do you all do next?

A Once he is Mirandized and David wants to talk, he tells me that he wants to talk to me and does not wish to talk to anybody else. We tell him we'll take him up to the sheriff's department to be interviewed.

During the ride to the sheriff's office, I

explained that this incident happened in the county and that I would prefer someone from the sheriff's office to sit in on the interview while I'm talking to him.

Q Do you talk to him before you get to the county at all?

A No, ma'am, just general conversation. I told him that once we got there, we would try to find clothes to put on since his were wet, and he was cold.

Q Did you find him clothes?

A Yes, ma'am, we did.

Q Once you are at the county, what happens from there? And what do you mean by "at the county"?

A Once we get to the sheriff's office, we take him to the interview room. I meet with Investigator Seales, and I explained to him that he wants to talk -- that he wants to talk to me, but I got him to agree to let an investigator from the sheriff's office to come in and sit in during an interview, which is Investigator Seales. I also told him he needed clothes because he was wet. The clothes he had on -- he was cold. Investigator Seales made arrangements and got clothes from the jail for him to put on to get his wet clothes off.

LARRY TURNER - DIRECT EXAMINATION

Q I'll show you State's Exhibit No. 1, do you recognize this?

A Yes, ma'am. This is the Miranda read to him by Investigator Jamie Seales at 1:53 a.m. on 12/21, witnessed and signed by myself and also signed by the defendant, David Dixon.

Q Will you share with us the basic information on that Miranda form?

A Has his name, date of birth, height, weight and basically advising him of his rights, that he can have a lawyer present to talk to if he wishes, if he desires not to talk, he has a right not to talk.

Q Will you share his date of birth?

A Height is the 6'3", [redacted]/1990, 150 pounds brown hair, brown eyes, Social of [redacted]

Q How did he appear at the time this was given?

A Normal, just as we are today.

Q Did he understand everything that you were saying to him? Did he appear to understand it?

A Yes, ma'am.

Q And at this time that he talks to you, is that a voluntary statement given?

A Yes, ma'am, it is.

Q Will you briefly describe to the Court what you guys discussed?

A Investigator Seales did the majority of the talking, and I basically sat in. Dixon described to us what had happened at Woody's on Stoneaway. He said that he went there, he was shooting pool. Him and the deceased victim, Mr. Bristow, got into a verbal altercation. He initially said that Bristow pulled a gun on him and he shot basically in self-defense. Once he went through his story of the self-defense, Investigator Seales explained the evidence that was collected by SLED and the sheriff's office didn't not match his story and he needed to be truthful, at which time he changed and said he pulled on the defendant, on the victim, after he pulled a flag out of his pocket in which he said disrespected him. He shot a number of times hitting the deceased victim, along with another victim at the incident location.

Q About how long was this statement?

A 45 minutes to an hour.

Q Okay. Now, you mentioned earlier that Mr. Dixon himself was requesting to speak with you. Did you know him?

A Yes, ma'am. I've known David since he was a child. His grandmother worked for us at the police department. She was a records specialist with the

police department.

MS. DAVID: Beg the Court's indulgence.

(A brief pause in the proceedings.)

Q (MS. DAVID) Let's discuss the statement once more. Can you go back through it with more detail for the jury?

MR. STEEN: Objection, calls for a narrative response.

THE COURT: I'll sustain that, Counsel. I'll let you ask if you have specific areas of the statement. Please rephrase your question.

Q (MS. DAVID) Will you specifically explain to me what was the first story that Mr. Dixon told you?

A He basically said that Mr. Bristow followed him outside in the parking lot of the incident location. They had a verbal altercation, that Mr. Bristow started patting him down, I guess to see if he had a weapon. He said he felt threatened because Bristow reached around as if he was attempting to get a weapon, I guess from his back. He said in return that scared him, so he pulled his gun and started firing at Mr. Bristow.

Q What was the second story he told you?

A Second story was that Mr. Bristow, when he was patting him down, pulled a blue bandanna out of his

pocket, which he took it as disrespect towards him, that he disrespected him by doing that, I guess because he was in a gang.

MR. STEEN: Objection, calls for speculation.

THE COURT: Sustain that as to speculation, and I ask the jury to disregard that comment. You may proceed.

A Once he felt he disrespected him, he said that is when he pulled his weapon up and started firing at him.

MS. DAVID: Beg the Court's indulgence, one moment.

(A brief pause in the proceedings.)

Q (MS. DAVID) In relation to the flag and the disrespect, please tell the Court what was specifically said to you.

A He told us during his interview that he disrespected him by pulling his flag, because he was a gang member, he was a Crip, that was disrespectful, he shouldn't have disrespected him, during his interview with myself and Lieutenants Seales.

Q Did he go into any further detail with you?

A He said that members of that gang took care of him. He showed love for them, and they showed love for him. He said that was disrespectful, what he did

by pulling that flag out of his pocket and throwing it on the ground.

Q Did you have any further involvement with this investigation?

A The only other time I had any involvement, I went to Investigator Alderman to obtain two DNA swabs like a week later at the detention center.

Q But this particular night, December 20, early morning of December 21, did you have any more involvement?

A Yes, ma'am, along with Lieutenant Seales. We took Mr. Dixon back to the incident location after we finished at the sheriff's office to get a better understanding where the weapon that he used was placed -- inside a wooded area across from the location -- to assist SLED, and we were able to find the weapon.

Q Did the defendant take you?

A Yes, ma'am. He took us and gave us the general area. He couldn't remember the exact area, but he put us in close proximity.

Q About how long were you looking for this weapon?

A Several hours.

Q Once the weapon, and anything else involved in

the case, once those items were found, what did you do next?

A Basically SLED collected items, we took Mr. Dixon back to the sheriff's office where he was processed by Marlboro County Sheriff's Office and taken to jail.

Q And did you have any further involvement?

A Other than the collection of the two DNA swabs about a week later.

Q Okay. I'll show you what is marked as State's Exhibit No. 7. What is this?

A It was the Miranda that was read to him by Investigator Susan Alderman, Marlboro County Sheriff's Office, 12/27/2012, 11:22, witnessed and signed by myself along with David Dixon, date of birth was [redacted]/1990; Social, [redacted] height, 6'3"; weight, 150; brown eyes, brown hair.

Q And at that time, why did you Mirandize the defendant?

A Investigator Alderman felt that because she was collecting a swab, she needed to Mirandize him.

Q Did he say anything at that time?

A Not that I recall, no, ma'am.

MS. DAVID: Beg the Court's indulgence.

(A brief pause in the proceedings.)

MS. DAVID: Thank you.

CROSS-EXAMINATION

BY MR. STEEN:

Q Would you say Mr. Dixon was cooperative from the time you came into contact with him that night?

A Pretty much, yes, sir.

Q He said that he took you to the general area where the gun was located?

A Yes, sir.

Q You stated that Mr. Dixon's story changed after he was told about the SLED did not match; at that time, had that SLED evidence been in and processed?

A I'm sorry?

Q You said Mr. Dixon changed his story when Lieutenant Seales said that the SLED evidence did not match his story?

A Yes. When Investigator Seales told him what he was saying did not match to the crime scene, he changed the story, yes, sir.

Q At that time, did you have any SLED evidence in your possession?

A Not that I'm aware of.

Q So that was an investigative technique?

A Yes, sir.

MR. STEEN: No further questions.

THE COURT: Redirect? Any redirect?

MS. DAVID: Beg the Court's indulgence.

(A brief pause in the proceedings.)

MS. DAVID: No further questions.

THE COURT: Sir, you may step down. You are free to leave or remain with us.

Call your next witness.

MS. DAVID: Dr. Hardik Parekh.

MS. DAVID: Dr. Hardik Parekh.

(HARDIK PAREKH, having been duly sworn, testified as follows:)

DIRECT EXAMINATION

BY MS. DAVID:

Q Can you spell your name for the Court?

A H-A-R-D-I-K, P-A-R-E-K-H.

Q What is your current occupation, Mr. Parekh?

A I'm the emergency room doctor at Marlboro Park Hospital.

Q And are you licensed to practice law (sic) in this state?

A To practice medicine.

Q Are you licensed in the State of South

Carolina?

A Yes.

Q What medical college did you attend?

A East Tennessee State University.

Q Where did you intern?

A Same place.

Q Since that time, where all have you practiced?

A Marlboro Park Hospital.

Q For how long have you been at Marlboro Park?

A Two years and three months.

Q Is the nature of your practice general, or specialized?

A Emergency room.

Q Emergency room. Do you remember the night of December 20th, 2012?

A Uh-huh, yes.

Q And do you recall seeing any gunshot victim on that night?

A Yes.

Q Do you recall seeing -- can you tell me what was going on? Who did you see?

A As far as I remember, two patients. One with gunshot wound to the back, and one with gunshot wound to the head.

Q Do you recall the name of the individual with

the gunshot wound to the back?

A I would have to look. I think the one to the back was Mr. Christopher Bristow.

MS. DAVID: Beg the Court's indulgence, one moment.

THE COURT: Sir, you may refer to your records if it assists you, you may do so.

MS. DAVID: I apologize for that.

Q (MS. DAVID) How long have you been in the practice of medicine?

A I finished my residency in 2011, so since then I've been licensed independently. Before that, I was in residency training, which is part of the education also.

Q Have you ever testified in court before?

A No.

MS. DAVID: Your Honor, we would like to have Dr. Parekh qualified as an expert in medicine.

THE COURT: All right. Ladies and gentlemen, this witness is offered as an expert witness. The previous witnesses have been lay witnesses. Lay witnesses come in to testify about what they saw or heard or did, as you've already observed in the courtroom, but an expert witness, because of some training or knowledge, experience in a particular

area is allowed -- if qualified as an expert -- to come in and testify about not only what they saw or heard or did, but also what opinion they derived from that, and that is the difference from a lay and expert witness. We stop right there, go to the other side to see if there are questions concerning the expertise of the witness.

Is there voir dire on the issue of expertise?

MR. STEEN: No voir dire.

THE COURT: Is there objection to qualifications?

MR. STEEN: No, sir.

THE COURT: The witness is qualified as an expert in the area of emergency medicine and may testify as so. Please understand that an expert witness' testimony is not given to you for the purpose of controlling your judgment, it is given for the purpose of assisting you in finding matters of fact that are before you that are within the purview of that expert, if you deem it to be helpful. It is up to you to give any weight to any witness, including the expert witness.

You may proceed.

Q (MS. DAVID) Thank you. I apologize for skipping that step before questioning you.

Now, let's go back to where we were. You said

you saw a victim with gunshot wounds to the back?

A Yes.

Q And do you recall the name of that victim?

A That was Christopher Bristow.

Q I'll show you now what has been marked as State's Exhibit No. 3. Do you recognize this photo? I'll get closer so you can see it.

A It does look like that. I mean, I'm not certain of the person, but it looks similar, yes.

Q Is this photo consistent with the gunshot wounds you saw on that night?

A It does appear to.

Q And I'll show you what is marked as State's Exhibit No. 4; do you recognize this?

A It does appear -- I mean, I don't recall among all of the activity, but, I mean, the location does seem consistent to the injuries that I seen on the patient.

Q Thank you. Did you see anyone else on that night besides Mr. Christopher Bristow?

A Yes.

Q Who else did you see?

A That was Mr. Woodrow Garner.

Q What were his injuries?

A His injuries were claimed to be gunshot, one

to the head on the right side.

Q I'll show you what is marked as State's Exhibit No. 6; do you recognize this?

A That seems to be right for what I marked on the chart.

Q Is this the injury you saw that night?

A I think so, yes.

Q My next question for you is, is this type of injury consistent with a gunshot? Is this what a gunshot wound would typically look like?

A Gunshot wound can also look like this. I mean, of course, other sharp instruments can inflict injuries like this, but it does look like a gunshot, and based on the history I got from the patient at that time.

Q And what injuries -- what was his condition at the time you saw him?

A Are you asking for the diagnosis?

Q Yes.

A Well, his diagnosis was he had subarachnoid hemorrhage. He had a little bleeding inside the brain at the site of the injury. His condition, as the patient goes, he was walking. He came into the emergency room on his own, as far as I recall. He wasn't brought in by the EMS or the ambulance, and he

gave his own history, he was talking to me.

Q And did you treat him?

A Yes, I did.

Q Did you -- what did you do further with Mr. --

A Based on the type of injury, he was transferred to another hospital, Carolina Hospital in Florence, which is a higher level hospital where they have more experts in managing injuries like that. Marlboro Park Hospital does not have expert for that, so.

Q So why did you transfer him?

A There was -- because there were other doctors. He needed other specialists to manage his injuries.

Q Okay. And one more question. If we go back to Christopher Bristow, was he alive when you saw him?

A When I saw him, the paramedics were working on him. He did not have a pulse. He was not breathing. His pupils were fixed and dilated. So, basically, no.

Q About what time was it?

A The time he arrived to the emergency room was 10:22 at night on December 20th. The time he was pronounced dead was 10:32 at night on December 20, 2012.

MS. DAVID: At this time, the State moves to publish the photos to the jury.

THE COURT: You may provide those to the jury.

MS. DAVID: Thank you. Would you answer any questions the defense has.

CROSS-EXAMINATION

BY MR. STEEN:

Q I think I may have missed it. What time was he pronounced dead?

A 10:32 at night.

Q Would you consider Mr. Garner's injuries life-threatening?

A Yes.

Q You said he was transferred to Carolina Medical Center because they had the specialists that could deal with his situation?

A I'm sorry, I missed that part.

Q Mr. Garner, the one with the head jury --

A What was the question?

Q Would you consider his injury life-threatening?

A It can be if the hemorrhage is bigger. At that time, it was a serious jury.

MR. STEEN: One second, Your Honor.

(A brief pause in the proceedings.)

HARDIK PAREKH - CROSS-EXAMINATION

Q (MR. STEEN) Did any kind of delay in Mr. Bristow, the deceased, have any effect on him dying -- the time lapse between the incident and him getting to the hospital, in your opinion, did that have anything to do with his injuries getting any worse?

A As far as I recall, the time lapse, or whatever time lapse there was, was the time it took the paramedics to do all of the treatment that they needed to do, so, I mean, I don't think so.

Q And what time did Mr. Garner arrive at the hospital?

A He arrived at 22:11.

Q What time did Mr. Bristow arrive at the hospital?

A Mr. Bristow came by ambulance at 22:22.

Q So Mr. Garner arrived at the hospital before Mr. Bristow arrived?

A Yes. As far as I recall, Mr. Garner came on his own, not by ambulance.

MR. STEEN: No further questions.

THE COURT: Is there redirect for the witness?

REDIRECT EXAMINATION

BY MS. DAVID:

Q Is it true that Mr. Garner's injuries were

significant to you to send him to another hospital?

A Yes.

MS. DAVID: That's all.

THE COURT: You are free to go, sir.

Counselor, how long do you believe the next witness will be?

MR. DANIEL: Our next two will be fairly significant, and we have things we need to set up.

THE COURT: So we'll take a morning break. You can go outside if you wish, and we'll be in recess for 15, 20 minutes. Let's remain where we are until the jury departs. Court stay in order.

(The jury exits at 10:06 a.m., and the following is heard out of the presence of the jury.)

THE COURT: Court is in recess now.

(A recess was taken.)

THE COURT: Please bring in the jury.

(The jury enters at 10:31 a.m., and the following is heard in the presence of the jury.)

THE COURT: Welcome back, ladies and gentlemen. Please call your next witness.

MR. DANIEL: If it pleases the Court, State calls Dawn Claycomb.

(DAWN CLAYCOMB, having been duly sworn, testified as follows:)

THE CLERK: State your name for the record.

WITNESS: Dawn Claycomb.

DIRECT EXAMINATION

BY MR. DANIEL:

Q Good morning.

A Good morning.

Q Can you please tell the jury where you work?

A SLED.

Q What are your responsibilities at SLED?

A I work specifically with crime scene. We respond to crime scenes and we document, preserve and we collect evidence at crime scenes.

Q What is your experience in law enforcement?

A I have approximately a total of four years in law enforcement. One year at SLED, and prior to that I worked with the Richland County Sheriff's Department.

Q So you've been at SLED one year?

A Yes.

Q And in that year, have you been solely in the unit of crime scene investigations?

A Yes, sir.

Q And have you ever testified in court?

A I have.

Q What sort of training and experience --

training have you had with regard to crime scene investigation?

A In reference to SLED, they have what we call "in-house training." It is approximately eight months. It consists of anything from oral to written tests that are given throughout the eight months responding to crime scenes, on-the-job training and several written tests we have to complete before we are accepted to be a --

Q And you passed those tests?

A Yes, sir. Yes, sir.

MR. DANIEL: I ask that Ms. Claycomb be offered as an expert in crime scene investigation.

THE COURT: Are there questions for the witness on area of expertise?

MR. LEWIS: No questions.

THE COURT: Any objection?

MR. LEWIS: No objections.

THE COURT: Without objection, the witness is an expert in crime scene investigation. You may proceed.

MR. DANIEL: Thank you, Your Honor.

Q (MR. DANIEL) What is your title?

A Crime scene investigator.

Q Investigator. I keep calling you "Ms." Did

you have an occasion to respond to Marlboro County on or about December 20, 2012?

A Yes, I did.

Q And how does that work? Why do you or why does SLED get involved in a crime scene like this?

A Typically the local law enforcement agency contacts our operations and requests crime scene. At that point operations contacts us, "us" as in myself and my partner, we usually work as two, a team, and our operations desk contacts us to respond to that location.

Q Do you respond to every kind of crime in the county, or just certain crimes you respond to?

A It depends. Anywhere from officers involved in shootings, homicides, even things like burglaries, any kind of requests, usually.

Q You mentioned something about a partner, who is that?

A Al Brown.

Q And how long has he been with SLED, do you know?

A Approximately two years, I believe.

Q Now, where is Al right now?

A He's currently out on medical leave due to a knee surgery.

Q And in this particular case, you both responded to Marlboro County?

A Yes, sir.

Q All right. Now, the first thing you do when you and your partner get on the scene is what?

A We make contact with the local law enforcement agency securing the scene.

Q Did that happen in this case?

A Yes, sir.

Q And what do you talk about?

A They basically brief us on the scene what we have, what happened, when they responded and basically what the scene consists of and how it was secured.

Q When you arrived in Marlboro County on the 20th of December 2012, did you have that conversation with local law enforcement?

A Yes, we did.

Q And did you go straight to the crime scene; is that where you went?

A Yes.

Q And when you got there, had the scene been secured?

A Yes, with crime scene tape and several vehicles.

Q What does it mean for a scene to be secured?

A Basically blocked off to the public and no citizens can enter the crime scene, or anyone in general.

Q So after you had the conversations with local law enforcement and briefed on what is going on, what is the first thing you do?

A First thing we do is we usually do a walk-through with the local investigator, whoever is taking the case. We'll do a quick walk-through to give us heads up what was at the scene, what to look for, what they had already seen and where the scene in general happened.

Q What's next?

A Next, we usually photograph and we document the scene, and once that is done, we'll collect the evidence.

Q All right. Let's look at some photographs that you and your partner took that night.

MR. DANIEL: Assuming that Investigator Claycomb can be loud enough, is it okay if she steps down?

THE COURT: I only ask that she faces our court reporter so she can hear.

Q (MR. DANIEL) State's 17, can you identify this?

A Yes, sir. That is a photo of the front of the

bar.

Q This is where you responded?

A Yes, sir.

Q Now, I'm showing you State's 18.

A That is the other side of the bar.

Q State's 19?

A That is just a closer photo of the bar.

Q 20?

A That is a closer photo of the vehicle and the evidence around it.

Q 21?

A That is a photo of a bandanna that was located outside in the parking lot in front of the bar.

Q 22?

A That is an interior photo of the bar, and that is the bar inside.

Q 23?

A That is just another photo of the bar inside.

Q 24?

A That is a photo of pool tables of the interior of the bar.

Q What is that down there?

A That is the blood trail we located inside the bar.

Q 25?

A That is a photo from the left side of the bar showing the entryway.

Q 26?

A Another close-up photo of the bar inside.

Q What is that?

A That is a camouflage jacket we located on one of the barstools.

Q 29?

A Close-up photo of that prior camouflage jacket you showed us, a tag showing the size and the brand.

Q 27?

A That was a bag located inside the pocket of the camouflage jacket that you had just shown, and it had several cartridges inside the bag.

Q And then, finally, 28?

A Yes, sir. Close-up photo of the stamp of one of the cartridges that we found inside the bag.

Q Can you identified also State's 49?

A Enlarged photo of the diagram that was done for the scene.

Q And you and your partner would have taken these photos and completed this diagram?

A Yes, sir. Yes, sir.

Q You can return to your seat. Thank you, ma'am.

So, Investigator Claycomb, you get to the scene, you find out from local law enforcement what is going on, take photos -- by the way, are those all the photos you took?

A No, that's just a few of the many we took.

Q And you sketched the scene. So what happens next?

A After we -- right after we sketch the scene -- on scene, is that what you're talking about?

Q Yes, ma'am.

A After we sketch, we document, we photograph, we even place markers down at the scene to document that as well, and in this particular instance, it was very windy that night. There was rain and our markers would not stay in place, so once the photographs are taken and that is documented, that is when we start collecting the evidence.

Q When you say "markers," you are talking about the yellow markers?

A Placards, they have a letter or number on them, yes.

Q So in this case did you begin your investigation after the photos and after the diagram? Did you begin your evidence collection in the parking lot?

A Yes, that was the first -- yes, outside.

Q Tell the jury what you found in the parking lot.

A In the parking lot we found two cartridge cases outside in front of the bar in the parking lot in the dirt. There was another shotgun shell that was outside in the parking lot, a bandanna was located in the parking lot and also a partial case of beer.

Q I'll show you what is marked as State's 38. I'll take out a couple of boxes. Can you identify that?

A Yes, sir. That's one of the shell casings that we located outside of the bar in the parking lot.

Q Outside of the bar?

A Yes.

Q This is also a part of State's 38?

A That is another cartridge case located outside of the bar, outside in the parking lot.

Q And another part?

A That is the shotgun shell located outside in front of the boor.

Q And --

A I believe that is the same (indicates).

Q And, finally (indicates)?

A That is the Crown Royal bag with cartridges we located inside the camouflage jacket.

Q So would it be fair to say that this bag comprising all of State's 38, these are all of the shell casings and bullets you found with regard to this case?

A Yes. Yes.

Q And this tape with all of that stuff on it, do you put it on there (indicates)?

A Yes. When we package evidence, it needs to be sealed, initialed and dated. Yes, sir, we seal it.

Q Now, you said something about a bandanna?

A Yes, sir.

Q You found -- I think we saw a picture of it -- a blue bandanna?

A Yes, sir.

Q This was in the parking lot?

A Yes.

Q I'll show you State's 42. I won't ask you to take it out, but is that it?

A Yes, it is.

Q That is how you marked it there?

A Yes.

Q We opened it earlier with defense counsel.

(Whereupon, the bandanna was published to the jury.)

Q You all found a case of Bud Light?

A Yes, sir.

Q I'll show you State's 45. Is that a case of Bud Light?

A Yes, sir.

Q And, finally, you found a camouflage jacket, which we saw photos of, and this is State's 44; is that what it is?

A Yes, sir.

Q So that concludes all of the evidence you collected outside; is that right?

A Yes, sir.

Q All right. After you collected this evidence outside, what happened?

A That is when we -- I believe Investigator Seales arrived on scene and we were notified that a possible suspect was located, and that he requested that a GSR is collected from him.

Q And please tell the jury what a GSR is?

A Gunshot residue kit. It is used to collect microscopic particles from clothing, human hair, anything that needs to be collected, but they are small little vials that has an adhesive tab that

collect those particles that may possibly arise from when a gun is fired.

Q So just to be clear, if I fire a gun right now --

A Yes, sir.

Q -- with nothing on my hand, after I fire that hand, you would put a piece of tape on my hand, and what comes off I might be able to see with the naked eye, but there is particles that indicate that I just fired a gun?

A Correct.

Q I'll show what you is marked as State's 41. Do you recognize that?

A Yes, sir. Those are two GSR kits, yes, sir.

Q Are these the kits that you and your partner collected?

A Yes, sir.

Q And you went and collected that from whom?

A At this point it was collected from Mr. Dixon.

Q After you collected the GSR from Mr. Dixon, what did you do?

A At that point we had keys to the club, because it was originally locked with a padlock, and they arrived on scene with keys to get into the interior of the bar, and that is when we entered inside.

Q And what did you find upon your entry in the bar?

A Initially, right on the doorstep, before we entered, there was suspected blood observed on the steps, and once the door was opened, there was an obvious blood trail leading inside the bar.

Q And you said one of your jobs is to collect evidence. How do you collect evidence that is blood on the floor?

A Particularly, that, we usually take a swab of the blood, and that is sent to our lab and processed.

Q Did you do that in this case?

A Yes, sir. We did.

Q Also inside, I believe your testimony is, is where you found the jacket and the other things on the barstool?

A Yes, sir.

Q Now, did that complete your evidence collection from the scene, both inside and out?

A Yes, sir.

Q What did you do next?

A Next, we went to the Marlboro Park Hospital, and that is where the victim, Mr. Bristow, was located. We collected a GSR kit from him and also prints, major case prints.

Q That GSR kit from him, that is in the same package?

A Yes, sir.

Q You say "major case prints," what are those?

A Fingerprints and palm prints we collect from them at the time in case there is any latent evidence located or collected, and we can compare those fingerprints to the latent evidence if we need to.

Q And just to be clear, what is latent evidence?

A Latent is fingerprints that may be invisible to the eye or anything located on a piece of evidence.

Q So when you arrived at the hospital, had Mr. Bristow already expired?

A Yes. Yes.

Q And then you took prints?

A Yes.

Q I'll show you what is marked as State's 37. Do you recognize that?

A Yes those are the major case prints we collected.

Q When you collect these prints, do you actually -- later or that night or the next week or month -- are you the ones that are looking at the prints and trying to compare?

A No, sir, that is a latent examiner. We just collect them.

Q Are you the one who tests any of this? Do you -- back at the lab -- test the GSR, blood, any of that?

A No, sir.

Q So your job is collection at the scene?

A Correct, strictly at the crime scene.

Q All right. So when you complete your duties at the hospital, which include GSR and fingerprints, you go where?

A We went back to the club. At that time, our knowledge was investigators were still looking for a weapon across the street off of Stoneaway Road in a wooded area.

Q Okay. And so you are going back to look for a weapon?

A Yes, sir.

Q Who was assisting in looking for this weapon?

A It was myself, Agent Brown and several other deputies from Marlboro County Sheriff's Office.

Q Are you aware if the defendant was actually part of the search for the weapon?

A He was at the scene. I'm not sure if he -- he was in a vehicle. Whether he got out at any point, I

don't know, but I believe he was directing a location of where the gun might be located.

Q Okay. And pursuant to the search, did you actually find a gun?

A Yes, sir. We did.

Q I'll show you what has been marked, and has a lock, as State's 35; do you recognize that?

A Yes, sir. That is the gun located in the woods.

Q This is the gun located in the woods that you just testified was being -- you all were directed by the defendant, to your knowledge?

A Yes, sir. Yes, sir.

THE COURT: Ladies and gentlemen, it's obvious, but those who are not familiar with firearms, when it has a lock on it, it means that it is locked in such a way that the fire could not be fired even if you tried to fire the weapon and, of course, it is not loaded. I tell you that for your own information. You may proceed.

MR. DANIEL: Thank you, Judge.

Q (MR. DANIEL) Investigator, if you would, step down one more time please, very briefly.

A (Witness complied.)

Q Where you found the gun, did you take photos?

A Yes, sir.

Q I'll show you what is State's 30; can you identify this for the jury?

A That is the gun located at the base of a tree.

Q Would you point out the gun to me?

A Right here (indicates).

Q Of course, State's 31 --

A Yes, sir, that is the gun that I just pointed to.

Q At this point in the investigation you were under the impression, and still are, that this was the murder weapon?

A Yes, sir.

Q What else did you find in the woods?

A We found one pair of two gloves, black in color.

Q This is difficult to see, but State's 32?

A Yes, sir. That is one of the gloves laying in pine straw.

Q And State's 33?

A That is another photo -- it's hard to see, but on one of the limbs in that tree.

Q Did you review all of these photos before court today?

A Yes, sir, I did.

Q Okay. State's 46 is what I'll show you next. Can you identify that, please?

A Yes, that is one black glove that we located in the woods. And there is a second one, yes.

Q And I won't ask you to take those out.

So the defendant takes you to the gun and gloves, you photograph it, collect it and what happens next?

A At that point we went to the Marlboro County Sheriff's Office and we collected another gun that was collected by them prior to our arrival.

Q I'll show you then what is marked as State's 36. Of course this has the same precautions that the other gun has.

A Yes, sir. That is the gun from the sheriff's office.

Q Do you know where this gun came from?

A It was brought to the sheriff's office by a witness that was at the bar during the incident, to our knowledge.

Q Okay. Does that conclude the evidence that you collected in this case?

A Yes, it does.

Q Now, the way you packaged and sealed and everything else, all of this evidence, is that what

you normally do? Is that what you are taught to do?

A Yes, sir.

Q When you finish with all of the evidence, you go back to Columbia?

A Yes, to the lab.

Q And what do you do with all of this?

A It is all stored. We log it in, package, seal and send it off to the respective departments.

Q At that point, at some point, do you or your partner or both compile a report about all of your findings?

A Yes, sir.

Q I'll show you what is marked as State's 14. These are in evidence.

A Yes, sir. This is our total report with the scene summary, the few pages of the actual report.

MR. DANIEL: I have no further questions. If you would, answer any questions the defense may have.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. LEWIS:

Q Good morning. What time did you arrive at the scene?

A It was approximately -- Your Honor, is it okay if I refer to my notes?

THE COURT: Yeah, sure.

A Approximately 12:18 a.m.

Q (MR. LEWIS) And you got to Woody's. Could you describe the area? How dark was it?

A It was very dark. I believe there might have been only one streetlight outside the bar.

Q One streetlight. So there was no lamp posts or nothing out there?

A No, I'm sorry.

Q No lamp posts or any type of lights, just the one?

A If I remember correctly, just the streetlight.

Q And you said it was raining and windy outside?

A It had rained prior to. I think on our way there it was raining. We got there I believe it had stopped, but it was very windy and raining, yes.

Q Is it possible that the rain and the wind could have messed with some of the evidence or contaminated it?

A It is possible. Weather can affect evidence, yes.

Q And you said that you found numerous gun shell casings?

A Yes, sir.

Q All from the same gun?

A That would be a question for firearms.

Q I apologize.

A It's okay.

Q Let's talk about when you collected the GSR. You mentioned that you collected it from two people?

A Yes.

Q From Mr. Dixon and Mr. Bristow?

A Yes.

Q Do you normally collect GSRs from the victim, from a dead person?

A We do. We do. If it's a shooting incident, yes, we do.

Q Did you know the results of the GSR for the two individuals?

A Did I know the results? No.

MR. DANIEL: I would object right now. Obviously, this witness is qualified as an expert in crime scene investigation, and we'll cover the results later.

THE COURT: The answer was, no, she does not, so move to the next question.

MR. LEWIS: No further questions.

THE COURT: Redirect?

MR. DANIEL: There is not.

THE COURT: Ma'am, you are free to remain or free to leave.

DAWN CLAYCOMB - CROSS-EXAMINATION

MS. DAVID: Your Honor, may we approach?

THE COURT: You may.

(Whereupon, a bench conference was had.)

THE COURT: Ladies and gentlemen, of course we just had a break a few moments ago, but we're told the next witness may be as long as an hour in direct. Is there any juror that needs a break? Seeing none, call your next witness.

MS. DAVID: Investigator Jamie Seales.

(JAMIE SEALES, having been duly sworn, testified as follows:)

THE CLERK: State your name for the record.

WITNESS: Jamie Seales.

DIRECT-EXAMINATION

BY MS. DAVID:

Q Jamie, what is your current occupation?

A Currently the lieutenant of investigations for Marlboro County Sheriff's Office.

Q How long have you been employed there?

A At the sheriff's office, since 2007. I have approximately 16 years in law enforcement. I've worked for SLED crime scene unit, state law enforcement division, for a few years. I came back to the sheriff's office in October of 2007, so I've been in my current position since 2007.

Q As an investigator, did you have an opportunity to participate in the investigation against Mr. David Dixon?

A Yes, I did.

Q And what was your involvement?

A In my role at the sheriff's office, any time a call comes in or any kind of -- anything we respond to that requires an investigation, I'm called to determine if we need an investigator, how many we need. On this night I was called. With something as serious as this, all investigators come out. I called them, the sheriff and began trying to organize the roles for the investigation.

Q And how did you become involved? What was the first thing you did with this case?

A After the 911 call and calling the investigators, at some point shortly thereafter I called the state law enforcement division for the crime scene division. I went to the sheriff's office to begin to try to organize the investigation as far as which investigators play which roles. As I began to get information from them about what happened and the number of witnesses, I began to direct them to bring witnesses to the office. At that point, at the office, we began to help separate witnesses, set up

interviews, and then I began working on search warrants. Search warrants are needed for SLED crime scene to do their investigation at the club, Woody's, and that search warrant included vehicles that were in the parking lot.

Q Okay. Good. I'll show you what is marked as State's Exhibit No. 15; do you recognize this?

A Yes, ma'am, I do recognize it.

Q And can you tell me, what is it?

A A search warrant prepared by myself on 12/20/2012.

Q What is that for?

A For the business located -- you want me to read it?

Q Yeah.

A The business located at 1216 Stoneaway Road, Bennettsville, South Carolina. It further describes a one-story block building, white in color and has "Woody's" written on the right side of the door, brown shingled roof, has bars over the windows in the front and the front door also. Included in the search warrant was a black Mercedes E320 bearing South Carolina license plate number, and that is on here, the actual number, and a white Chevrolet Colorado, and that number.

Q Okay. Now, did you find anything as a result of that search warrant?

A I prepared the search warrant, and generally when you prepare the search warrant, another officer serves it. It was searched by -- it appears the signature is James Campbell, which is an investigator at our sheriff's office, but I did not perform the search.

Now, there are things on this return that were found, and it appears that maybe crime scene agents from SLED found them. Would you like me to read it?

Q Yes.

A The first item is camouflage jacket with Crown Royal bag containing 38 caliper ammo, Carolina Gamecock hat, two swabs from red stains on the floor.

Q Did you do anything further with this investigation after you had done the search warrants?

A Yes, several things. While there at the office, had interviews set up, and while I was preparing search warrants and meeting with the magistrate that came up to the office that night, the sheriff's office, I prepared an affidavit for the arrests warrant based on the information we gained from witnesses during the interviews prior to Mr. Dixon's capture. That was a murder affidavit for

a murder warrant for Mr. Dixon.

After getting that, we shortly, thereafter, got information that we may have somebody who knows where he was located at, which was not far from the crime scene. At that time, I was notified that he was taken into custody and that he was in route to the sheriff's office, and that he wanted to speak with Lieutenant Larry Turner. I knew from a previous time that he knew Larry because Larry -- his grandmother -- defendant's grandmother worked with Larry for several years, and I guess he felt comfortable talking with Larry.

He then at some point, I don't remember the exact time, he came to the office and Larry told me that he was very cold and very wet, and he appeared to be. Normally in that circumstance we try to make the defendant as comfortable as possible. I got him clothes from the jail, clean, dry socks, a jail outfit, a coat and I think we even got him chips and a drink, he was hungry. Shortly thereafter, we began an interview.

Q What was his misdemeanor like at this time?

A He was very aware, articulate, lucid. He did not appear intoxicated. He seemed to be very knowledgeable about what was going on. He knew

myself, he knew Larry. He seemed calm and he seemed a lot more comfortable once he got dry clothes on.

Q I'll show you what is marked as State's Exhibit No. 1; do you recognize it?

A Yes, I do.

Q Can you tell the Court what it is?

A This is a Miranda form. It just says at the top your rights, and it is filled out in my handwritten script. On the first block, upper right-hand corner, is a place and it has MCSO, Marlboro County Sheriff's Office, 12/21/12 and the time is 1:53 a.m. The next part is -- would you like me to read it?

Q Yeah.

A Your rights, and it says, Before we ask any questions, you must understand your rights. Number one, you have a right to remain silent. Two, anything you say will and can you be used against you in court. Three, you have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. If you cannot afford a lawyer, the court will appoint one for you before any questions, if you wish. Number five, if you decide to answer questions without a lawyer present, you still have the right to stop

answering at any time until you talk to a lawyer.

Beside each one of those, as I explained them to him, I asked him if he would initial each one saying he understood them. Below that, and he did, in his handwritten script there is a D-D beside each one.

Below that is Waiver of Rights. It says, I have read the Statement of My Rights. I understand what my rights are. I'm willing to make the statement and answer questions. I do not want a lawyer at this time. I understand and know what I'm doing. No promises or threats have been made to me, and no pressure or coercion of any kind has been used against me by anyone.

There is a place where it says "sign," and that is for the defender, the person given the rights to sign, and in his signature is "David Dixon." Below that are three witness blocks, two are filled out, one is my signature, James Seales, and the next signature is Lieutenant Larry Turner.

Below that is a small section, Officer must read the entire contents of the document and ask the subject if he understands what is read to him, and the officer must allow suspect to read this document. Then below that is David Eric Dixon's name in my

handwritten script, his cell phone, address, date of birth, height, weight, years of school completed and hair color and eye color.

Q Now, you've already told us that this is about 1:52, 1:53, roughly 10 minutes to 2:00 that morning. About how long do you talk with Mr. Dixon?

A Somewhere between 45 minutes and an hour.

Q Will you briefly tell us about this discussion?

A Yeah. We read him his Miranda rights. He agreed, he understood them. He agreed to talk with us. I just kind of let him tell his story, and you'll see the video. As he was talking, I was taking notes. I would stop him at times so I could catch up with him, because I usually take notes during the interview. He told us that -- this is just a summary of what I'm telling you, I don't have it in front of me, but that he works at the Huddle House. He worked third shift. He got up about 7 o'clock that night, from what I remember. He was at a friend's, Brian Wilson's house, in an apartment complex across from our detention center. Brian and his mother live there together.

David, I think, indicated that he spent the night there a few times, and they were good friends.

David said that he got up, decided he wanted to hang out that night and that him and Brian left and I think went to Food Lion and got beer. It was raining and raining and it was cold, and someone came up that would give them a ride. They went out to Woody's nightclub.

I then asked him did he usually go to nightclubs, and he said he only had been to one recently. He said that he had never been out there before, and he said when he got out there, he named a few other people that were there. He said he shot some pool. He left his beer outside, and he would go -- I think he took a beer in, but he said when he was inside, he had seen the deceased, the victim, Mr. Bristow. When I'm watching the video, I don't remember what he said, but they said something or did something inside. They walked outside, and while they were outside, a friend of Mr. Bristow's, I think Chris Sanchez, came outside, and he said that they began talking.

Mr. Dixon, the defendant, and the victim, Mr. Bristow, began talking. There was a -- in his words -- disagreement of some kind. The victim, Mr. Bristow, at some point -- the disagreement escalated, and he felt like he was reaching behind

him for a weapon, and he pulled his gun out and was turning. You'll see him describe it on the first part of his story on the interview. He was turning, and he'll hold his hand up, shooting. This was -- I took it as a self-defense mode that he was describing. He shot several rounds, that he had no idea that Mr. Garner had been hit and that he ran away from the business to a wooded area.

He then goes into -- about when he was in the woods. He came out after awhile. He was really cold and he was captured, and then I went into his story about -- I was trying to get the bottom of was there previous tension between him and Mr. Bristow, and he said no. I think there was some witness testimony in front of him, and he realized then that the story he was telling wasn't believable by me or --

Q What exactly do you say to him?

A Word for word, without watching the video, I'm not sure.

Q You can kind of --

A I told him, listen, I said, David, basically the self-defense isn't going to fly, he was shot in the back three times. Forensically, there was no possible way he could have been facing you, face-to-face, man-to-man and he gets shot in the back

three times. Bullets don't travel that way. I told him there were several witnesses who saw it. I told him that there was no gunshot residue on the victim. I told him that there were other witnesses that he did not see that saw it happen, and other witnesses that were there saw what happened.

I said, David, that story you told us -- and everything he told us in the first statement was true except for one part, and when I confronted him with all of the evidence, he basically -- I could see it, and through classes I've had, trained and interviews and taking statements, one of the things we've learned is to read body language. When I confronted him to the point where he feels like I may be right about some of the evidence and may know what I'm talking about, you see him lean back and cross his arms. I've been trained that when someone crosses their arms like that, it can be an indication that they are getting very defensive and that they are -- could be hiding something as covering their body up.

At that point -- it's not long after that, as you'll see on the video, he puts his hands on the table and drops his head. When he comes back up, he says you're right, basically. I mean, I don't have the script in front of me, but he says everything I

told you is right up to this point.

Q I have a question, and we'll continue on. I wanted to ask you why did you tell him those things? Why did you talk about the eyewitness testimony, the GSR or anything else you would have said, what was the purpose?

A It is an investigative technique to gain truth. Through my training and experience, and being a very seasoned investigator, when someone is shot in the back three times, a story of him facing him straight on, but to be shot in the back, that he was not truthful with us. Does that answer the question?

Q Yes. So what type of investigative techniques do you normally use, or in situations like that what would you do?

A I would attribute it to anyone on the jury that may have kids, it is something like if you have a child playing in another room and you are in another room, you can't see them. You come in and glass is broke and they are playing with a ball. You come in and you say, What happened, and they say, I don't know. You say, I was standing at the corner of the door and I saw you broke the glass. I'm sorry, I did. You didn't see them do that, but you have all intentions and you understand what happened.

We do that. I didn't have GSR results, and I knew that. I was a former SLED agent, I knew we didn't have results at that time. I felt that -- I told him that along with the gunshot wounds to the back, which was a fact, and eyewitness testimony, which was a fact, that that combined would help convince him that he needed to tell us the truth.

Q Thank you. Please continue telling about the statement.

A So he drops his head in the interview. Through my training and experience, again, that begins to indicate to me that at this point he's kind of giving up on the first story. He sits up and says, What I just told you earlier is everything I did tell you, Mr. Seales, and was the truth up to one point. He said that when they were outside, they were having this argument, that Mr. Bristow patted him down, and at that point Mr. Bristow grabbed his flag out of his pocket and threw it on the ground. When he did, he turned -- Mr. Bristow turned to walk off, and he pulled his gun out and shot him. And I said, So he was turned away from you when you shot him? He said, Yes. How many times did you shoot? He says it on the video. I would have to watch the video. And that he -- he went through the whole

story about going to the house.

After that, me and Lieutenant Turner talked to him a little more about why was it disrespectful and what the flag represented. He indicated to us that he was affiliated with the Crips, a criminal gang organization, and how he became affiliated with it and where he became affiliated with it and the things that this organization had done for him at different times of his life when he had nobody else to do things for him, and that he even recognized it in his heart as a religion. He felt that strongly about it. He even tried, I guess, to sympathize with me and Larry that if someone would talk about our religion, that we felt that strongly, we would do the same thing in a type of situation like that.

I then asked him if he was remorseful in any way, and he -- I don't remember the exact words, but somewhere along the lines that he knew he had done wrong, but, again, this was his religion, he disrespected the bandanna, which gang members call a flag or which is commonly referred to by some gang members as a flag. The blue represents Crip, as he confirmed in his own words in his explanation.

Q Based on your work with the Marlboro County Sheriff's Office as an investigator, do you know a

lot about this gang?

A I know about -- I'm not an expert in it. 2008 I worked a federal drug conspiracy investigation in Marlboro County. We arrested eight members of the Down West Boys, which affiliated themselves with the Crips organization. I learned a lot about it through that investigation. I had a couple of gang investigator classes. I can tell you that when it is a deep-rooted gang connection, that they do take it very seriously, that it entails --

MR. STEEN: Objection. The witness stated he was not an expert in gangs.

THE COURT: Your objection is to what, Counsel, what about the testimony?

MR. STEEN: He's testifying to his opinion on gangs, Your Honor.

THE COURT: I'll overrule your objection, because there was testimony from the witness as to what level of experience he has, the jury has heard that and they'll make a determination of credibility. You have cross-examination on these issues if you wish. Objection overruled.

Q (MS. DAVID) You may continue.

A Let me rephrase that by saying that the Down West Boys case that I worked, those defendants -- we

worked with FBI -- and they have a high level -- and this is factual basis -- high level of violence, numerous assaults, drug dealings, shootings. That whole investigation was -- started because of a homicide. Ironically enough, it was started because the victim in that case took one of the leaders of the Down West Boys gang to a Blood neighborhood in Bennettsville and made him take a Blood member home. That is how serious --

MR. STEEN: Objection, it's prejudicial.

THE COURT: Sustain. Ladies and gentlemen, these other criminal incidents that you are hearing about, of course the defendant is not involved in these matters, not charged with these matters, this is just from the investigator's general experience, but at this time I'll sustain. Please move on.

Q (MS. DAVID) Okay. Mr. Seales, are you familiar with a blue bandanna?

A Yes.

Q What does -- basically, in your experience, what does that mean to this particular Crip gang?

A That is the common color affiliated with the Crips, blue.

Q At this point, let's move forward for a moment. After you had this statement with the

defendant, what do you do next?

A I indicated that he would still need to help us find the firearm. Lieutenant Larry Turner told him in the interview that if it was in that wooded area, we just didn't want a child to find it and shooting themselves or shooting someone else. Mr. Dixon agreed to go with us. Him and Lieutenant Turner went back out to that area with more officers and began to look for it.

Q Were you there when the firearm was found?

A Yes. We had looked for it for awhile, and it was extremely cold. Me and Mr. Dixon and Mr. Turner walked around in that wooded area on that map for a good while. I had a flashlight and trying to help David not trip over limbs and things. He had leg irons on. We were struggling, and he was very articulate in helping find it. He had it in his mind a certain kind of tree that he laid the gun beside, and that is what he was looking for. He was telling me about the house and a fence. He said, I'm almost sure it is in front of this. We kept looking in the area and looking for this tree, and I honestly felt that he was really trying to help us find it.

After a good while, me and him were really cold, wet and we got in our van and cut the heat on.

SLED crime scene came back out, and one of the officers -- I told him to go back down in that area one more time. He kept describing a house with a fence. We were sitting in the car, and shortly thereafter they went back down and started looking in the same area again. We had looked in the general area and didn't see it, and they came upon it. Sure enough, it was just as he said he placed it and I guess the type of tree he laid it beside. We were notified it was found, and I looked back and told him they found it and I thanked him for the cooperation.

Q After the weapon is found, do you do anything further with the investigation?

A We took him back to the sheriff's office and processed him at the jail. Nothing very significant after that point. I don't think I've done anything else.

Q Okay. Really quick. Back all the way up to the very beginning when the defendant arrives at the sheriff's office, how does he appear? How is he dressed at that time?

A I don't remember. I don't remember what he had on when he first came in. I assume -- I think his clothes were wet and cold, so he changed his clothes, but I don't remember what clothes he had on,

what color or nothing like that.

Q Is it normal to collect the clothes of a suspect in a murder case?

A Yes, to contain evidence.

Q Did your agency collect these clothes?

A I think our agency did. Without looking at the evidence sheet, I don't know if they did or SLED did.

MS. DAVID: Beg the Court's indulgence.

(A brief pause in the proceedings.)

MS. DAVID: Beg the Court's indulgence one moment.

Q (MS. DAVID) I'll show you what is marked as State's Exhibit No. 16 -- I apologize for that. Would you tell the Court what that is?

A Marlboro County Sheriff's Office Consent to Search form.

Q Will you tell the Court a description of that property on that form?

A Description of the property is clothing during commission of a crime. Description of property seized, Timberland boots, 9 wide. South Pole blue jeans, light blue belt. United USA 4XL -- something XL black long sleeve. White front -- Fruit of the Loom T-shirt, extra large. Light blue and dark shorts. Royal blue KC hat, seven-and-a-quarter, and

a pair of black socks. It appears to be the handwritten script of Shawn Feldner.

Q So from this description of the property, the defendant had on a lot of blue and/or black; is that correct?

A Yes, a light blue belt, black long sleeve shirt, light blue and dark blue shorts, probably his undershorts, Royal blue hat.

Q And these clothes, you guys changed them off of him before he went into interrogation?

A That's correct.

MS. DAVID: Beg the Court's indulgence.

Q (MS. DAVID) Have you had the opportunity to review the statement that you and Investigator Larry Turner took of the defendant?

A The video statement? Yes.

Q Is it in the same condition as it was when you first --

A Yes.

Q -- took it? Okay.

MS. DAVID: At this point the State is going to move to publish that statement to the jury, and it about approximately 53 minutes long.

THE COURT: You may. Are you going to do it from that point?

MS. DAVID: Yes. I need to slide it around, and I would like the record to reflect -- based on pretrial motions we had yesterday -- Investigator Jamie Seales will be pausing -- or muting the video for maybe 10 to 15 seconds at certain points in time.

THE COURT: Let me explain this before we bring it back around. In a discussion between two individuals, or an interview such as you are getting ready to see, there are certain matters that are not relevant and not probative to this case. By agreement of counsel, those areas that are not relevant have been determined, and what is going to happen here is I believe Investigator Seales is simply going to turn down the volume at the premarked points in the tape so that the tape will continue to run, but the volume will go off and it will be a brief period at, I think, four points in the tape, if I remember correctly, that is why there are certain matters that are muted, simply because they are not relevant to this case and to this trial specifically. Go ahead, Counsel. Anything further?

MR. STEEN: I would like to renew my objection of pretrial motions with regard to the statement as a whole and with regard to the three individual redactions.

THE COURT: Very good. Your motion is noted and, again, denied for the reasons previously given.

(Whereupon, a video was published to the jury.)

THE COURT: Is there further direct examination?

MS. DAVID: No further questions, Your Honor.

THE COURT: Cross-examination?

MR. STEEN: Thank you, Your Honor.

THE COURT: How long are you going to be, Counsel?

MR. STEEN: One-and-a-half pages. I don't know --

THE COURT: Counsel, let's step up and let's talk about scheduling.

(Whereupon, a bench conference was had.)

THE COURT: Rather than what may be a lengthy cross-examination, I don't want to confine Counsel, but I don't want you to be in the room longer than necessary. You may need to take a break, and we're approaching lunch, so we'll stop now and we'll take an hour and five minutes. On the clock there it is 12:25, so we'll be back at 1:30, that is an hour and five minutes. Is that sufficient time? All right.

Now, Officer Seales, I'll ask you not to talk with either side of the case since you are a witness under direct testimony. Have a good lunch, and without speaking to anyone, we'll take up

BY THE COURT

cross-examination.

MR. SEALS: Yes, sir.

THE COURT: Everyone else, let's remain until the jury departs. We'll see you at 1:30.

(The jury exits at 12:25 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Is there anything further you would like to take put on the record about the objection concerning gang activity? If so, we'll let you put those on the record now.

MR. STEEN: Yes, Your Honor. I would say it was fairly prejudicial to Mr. Dixon to have the jury hear gang activity that's not related at all to him, and I believe it is not related to the issue at trial.

THE COURT: First of all, does the State want to respond about the testimony and for what reason it was elicited?

MS. DAVID: Your Honor, at the time when Mr. Jamie Seales was speaking, I was simply asking him about his experience with gang involvement to know if he was properly handling the issue, properly handling the questions, did he know what he needed to do to proceed in the investigation. This is gang related because the defendant just tells -- told us in the video that the whole thing was over a bandanna for

BY THE COURT

the Crips.

THE COURT: I'll put the Court's reasoning on the record so it is clear in an event that there is a review.

First of all, the gang affiliation -- this is an otherwise unexplained shooting, and perhaps there is a connection between the Crips and the shooting, and that is for the jury to determine. For the casual observer, it is unexplained. The defendant in his own interview brought up the fact and discussed the fact that he is affiliated with a gang, and the bandanna is a symbol of gang affiliation. The Court has no anticipation that the jury would be familiar with gangs, other than having heard about gangs, in any respect. So for the officer to be allowed to testify to some of his understanding how a gang affiliation could lead to something like this, the Court felt it was relevant and appropriate. The Court stopped it when it went into other areas with other criminal activity, gave a brief charge that the defendant is not involved in these other matters being discussed, and not charged with any of these other matters being discussed.

If you wish for me to give a further charge at the end of the case or when we return before you pick

BY THE COURT

up on cross-examination, I'll hear from you when we return to the courtroom, but the Court would decline to do anything further unless the defense feels that it is appropriate and necessary for the defense. Anything further before we close it for lunch?

MS. DAVID: No, sir.

THE COURT: Then we are in recess until 1:30.

(Whereupon, a lunch recess was taken from 12:31 p.m. to 1:29 p.m.)

THE COURT: Anything for the record before we bring in the jury? I'm told the jury just arrived, so please bring in the jury.

(The jury enters at 1:32 p.m., and the following is heard in the presence of the jury.)

THE COURT: Ladies and gentlemen, welcome back to the courtroom. I trust you had a nice lunch and, Investigator Seales, since we were last together, have you spoken with either side of the case or either attorneys in the case?

MR. SEALS: I have not.

THE COURT: Are you ready for cross-examination, then?

MR. SEALS: Yes.

CROSS-EXAMINATION

BY THE COURT

BY MR. STEEN:

Q How many investigations have you been involved in in your years as an investigator?

A I know when I was with SLED probably -- I think I responded to a couple hundred crime scenes at SLED just alone. I would say somewhere between 3- and 500. Hard to say.

Q On the same line, how many interrogations do you think you've done?

A 75 to a hundred maybe.

Q And you stated earlier you are trained in investigative techniques?

A Yes, sir. I take classes in interviewing and interrogation.

Q You would say that these techniques are routine in most suspect interrogations?

A The ones I use are.

Q And these techniques have proved to be successful in the past?

A They have.

Q Can you tell us the specific techniques used in Mr. Dixon's statement today?

A Specifically?

Q As much as possible.

A There was a mixture of -- I told him some

facts and some assumptions that I would assume were true. I didn't know if they were true or not, but it would be believable to him, enough to elicit the truth.

Q Do you agree that the techniques used on Mr. Dixon proved to be successful?

A They appeared so.

Q In your years as an investigator conducting suspect interviews, have you ever had a suspect confess to a crime in which he or she did not commit?

A I have.

Q Taking into account your years of experience as an investigator, what would you say are the reasons that that would happen?

A It could happen because the mental capacity of the defendant. If the defendant was extremely intoxicated or extremely inebriated in some form, it could happen, I guess. It's been my experience, I guess -- defendants could be coerced, threatened, and we certainly try to at all costs avoid any of that.

Q Thank you. Is it possible that certain investigative techniques could lead to a false confession?

A If they are handled improperly, they could.

Q Going back to Mr. Dixon's statement that we

watched earlier, what do you mean when you said in the statement, I'm not sure about Woody, I honestly believe you had no intention -- an assault charge of some kind, not attempted murder, no reason to do that?

A Part of that, I was being honest with him. At that point I had no idea what transpired as far as Mr. Garner getting hit and I didn't know what his statement was. I was assuming that he got hit by a random shot. I found later through the investigation that investigators interviewed him and his story was that the defendant apparently looked at him in the eye and shot at him. What was the first part of the question, I'm sorry, or does that answer it?

Q I was asking you what you meant by it, so thank you.

A Yeah.

Q Were you -- would you agree with your statement when you said to Mr. Dixon that this is not attempted murder?

A Would I agree with what I said -- do I agree with it now, what I said then?

Q I'll reword. What did you mean when you said that this is not an attempted murder?

A At the time, I didn't -- partially, I didn't

believe it was, because I didn't know the facts about what Mr. Garner was going to say. I was trying to keep the rapport, and to be brutally honestly, in the back of my mind, from the time we started the investigation, I'm thinking about the court proceedings and the things that need to be done and done correctly. I have a rapport, and he already confessed, so I certainly didn't want to hammer too hard about attempted murder whether I knew it was true or not, because I was trying to get him to help us find the murder weapon. But I didn't know what Mr. Garner said and I just assumed that through random shoots he just...

Q Thank you, Jamie. You also stated to Mr. Dixon that, no, you are not a cold-blooded murderer; would you agree with your statement? Sorry. What did you mean when you said that?

A Again, to be frankly honest, I was trying to build a rapport with him.

Q Going back to several investigative techniques and Mr. Dixon's statement, you stated in there that there was no gunshot residue found on the victim's hand. As the lead investigator, do you still hold that to be true? Is that a true part of the investigation outside of the interrogation?

A To be honest with you, I'll have to look at the trace report just to be sure. I think there was GSR found, but I don't know if it was found on the palm or back of the hand. I could look at the report.

Q I apologize.

A That's okay.

Q You stated that SLED would use a tripod to determine the trajectory of the bullet. As lead investigator, do you know if that analysis was done?

A I don't know if it was done or not. I haven't seen it, but I know they have capability, and that was a factual statement. They did have the capability.

Q Again, at one point during the discussions of the back, you stated there would be gunshot residue found on the victim's back. Do you know if gunshot residue was actually found on Mr. Bristow's back?

A I think it would be a good possibility if it was fired that closely, but I don't know without looking at the trace report.

Q Would you agree that Mr. Dixon was cooperative with you at the interrogation?

A Yes.

Q You say he did help -- to the best of his

ability he did help find the gun?

A I think he went beyond trying to help us find the gun.

MR. STEEN: One moment, Your Honor.

(A brief pause in the proceedings.)

Q (MR. STEEN) Would you agree that after the investigation that Chris Bristow followed David Dixon out the door?

A That Chris Bristow followed David out the door? Yes, I would agree with that. I would have to look back at the witness statements. I was involved more with what David said, and that is what David told us.

Q Have you heard from -- during this investigation, was any information ever presented to you that said Mr. Dixon laid his hands on Mr. Bristow first, to your knowledge?

A No.

Q Do you believe that Mr. Dixon did lose his temper based on the interrogation?

A Yes, based on the reason he gave us.

MR. STEEN: No more questions, thank you.

THE COURT: Any redirect?

REDIRECT-EXAMINATION

JAMIE SEALES - CROSS-EXAMINATION

BY MS. DAVID:

Q Investigator Seales, how long have you been with law enforcement?

A A little over 16 years.

Q And is it safe to say that most of the stuff or most of what you are saying in that video is to elicit the truth from the defendant, David Dixon?

A That is safe to say, yes, ma'am.

Q I would like to know from you, just so that we all heard it correctly, when you asked the defendant why did he do it, what did he tell you?

A He was disrespected by pulling the flag out of the pocket, which he later identified later as the gang flag.

MS. DAVID: Thank you. Nothing further.

THE COURT: You may step down or return to the State's desk.

MR. SEALS: Thank you.

MS. JOHNSON-LEE: Susan Erin Presnell.

(SUSAN ERIN PRESNELL, having been duly sworn, testified as follows:)

THE CLERK: State your name.

WITNESS: Susan Erin Presnell.

DIRECT EXAMINATION

JAMIE SEALES - REDIRECT EXAMINATION

BY MS. JOHNSON-LEE:

Q Where are you employed, Dr. Presnell?

A I work at Medical University of South Carolina down the road in Charleston.

Q What is your occupation there?

A Forensic pathologist.

Q Are you also a duly licensed surgeon and physician?

A I'm licensed to practice medicine in the State of South Carolina.

Q How long have you been licensed to practice?

A Oh, let's see, since 1995.

Q And that is what you do at the Medical University; is that correct?

A Yeah. I do forensic pathology at the Medical University.

Q What are the duties of a forensic pathologist in South Carolina?

A Well, if I could have a chance to back up a moment and I'll explain what a pathologist is, and then a forensic pathology is a subspecialty of that. So most pathologists -- or pathology is the study of disease. A pathologist diagnoses diseases. So, say, you going to your family doctor and have a skin biopsy or a surgeon does a breast biopsy or does a

surgery and tissue is taken out, that goes to the pathologist. They look at it, look at it under the microscope, and they diagnose you with cancer or no, infection, and that diagnosis is given back to your doctor.

So forensic pathologists are trained in pathology, but they have additional training in forensics where we're not just looking at a piece of tissue or a biopsy, we're looking at a whole, complete individual that has passed, and the process is, of course, called the autopsy. We are looking for diseases, but we also are trained to interpret trauma. Ultimately, our whole autopsy is generated into an autopsy report concluding with a determining cause and manner of death.

Q About how many autopsies have you performed?

A Oh, approximation of over 2,000.

Q And so is autopsy a specialized field of medicine?

A Well, there is medical autopsy, meaning a case that is not a potential court case or unexpected or unexplained death that a general pathologist can perform, but forensic pathology is a subspecialty of that.

Q Now, are you a member of any specialized

medical or scientific groups?

A Yes. I belong to several of the forensic -- national forensic groups, National Association of Medical Examiners, American Academy of Forensic Sciences, College of American Pathologists.

Q What is the American Board of Pathology?

A The American Board of Pathology is the certification group, the national group, that exists to certify pathologists. So when you say I'm board certified, this is the group that does that board certification.

Q Are you certified?

A Yes. I'm board certified in anatomic and clinical pathology, and, again, pathology which is the general, and also forensic.

Q Are there any special requirements for you to obtain that certification?

A Well, the requirements are to pass the examination, but that is after you've completed your training. Your training is college, medical school, the pathology residency, which at the time I did it, it was five years, and an additional year of forensic pathology.

Q That certification, is that a national level?

A Yes, it is national.

Q Now, again, about how many autopsies have you performed overall? Did you say about 2,000?

A Approximately 2,000.

Q And percentage wise, approximately how many of those have been deemed homicides?

A I think our overall, just for our whole office, it is about 10 percent that are homicides.

Q Thank you, Doctor.

MS. JOHNSON-LEE: Your Honor, at this time we move that Dr. Presnell be declared an expert in the field of forensic pathology.

THE COURT: Questions on expertise?

MR. STEEN: No questions, Your Honor.

THE COURT: Any objections?

MR. STEEN: No objections.

THE COURT: Having there been none, the witness is so qualified in the area of forensic pathology. You may proceed.

Q (MS. JOHNSON-LEE) Did you perform an autopsy on Christopher Bristow?

A Yes. Last year, December 22nd.

Q Was that the first time you had ever seen Mr. Christopher Bristow, the time of the autopsy?

A Yes. He was referred to us by the coroner of Marlboro County.

Q How long did the autopsy last?

A That's kind of an awkward question in that we do -- the whole autopsy spans to actual days to weeks. There is the actual initial part where we're doing the external exam, internal exam, documenting, photographs, diagrams, x-rays and we sample tissues when needed. And then after that, the results -- additional results come in, like if we sampled tissues or sent off something to toxicology, when that comes back we put the whole autopsy report together.

The initial part, I don't know -- I don't have a record when we started the initial part and when it was ended, but I could estimate probably around three hours or so.

Q Where did that autopsy take place at?

A In our autopsy room at MUSC.

Q In Charleston?

A Yes.

Q Now, can you describe what specifically took place during the autopsy of Mr. Bristow?

A I referred to it earlier where we do -- we document everything photographically, so when he arrives, we take photographs, make documentation of what he's wearing, we undress him, clean him, do more

photographs, document findings and then do an internal exam, correlate the internal findings with the external findings, and then that would be it.

Q Now, when you conclude an autopsy, you prepare a report; is that correct?

A Correct.

Q In your report, do you give what is called a "diagnosis"?

A Yes.

Q Explain what that means in relation to an autopsy.

A Just our findings.

Q What are your findings with respect to Mr. Bristow?

A Well, the major findings are that he had three gunshot wounds. They are all to the left back. There is one gunshot wound to the left, upper back by the armpit area. The bullet goes into the body and into the soft tissues of the armpit where we recovered the bullet. The other two entrance gunshot wounds are on the mid, left back. These two bullets enter, and the gunshots are pretty close to each other, so I kind of described the path as a joint path. But the bullets go in the left lung, spleen, the stomach. The other bullet hits the left lung,

the heart, and both come to rest right underneath the skin on the left, lower chest, which is where we recovered the bullets.

(State's Exhibit 52 & 53 marked.)

MS. JOHNSON-LEE: Your Honor, I have what is marked for identification as State's Exhibit 53 that was marked today. It is marked and not in evidence yet. I would like to show this to defense to see if they have any objection, and we'll make a foundation to put this in. While we're looking at that, we also marked today State's Exhibit 52, the evidence transfer sheet, which I'll also show to the defense.

MR. STEEN: Without objection, Your Honor.

Q (MS. JOHNSON-LEE) I'm showing you State's Exhibit 52 and 53. First, I would have you look at Exhibit 53. What is that document?

A The one document is the diagram that I -- copy of the diagram I prepared during -- at the time of the autopsy, and the other is the evidence transfer sheet where we listed all of the things we were going to give to the law enforcement that was attending the autopsy.

MS. JOHNSON-LEE: The State would move to have those put into evidence. I think the defense stipulated they had no objection.

THE COURT: All right. Without objection. Madam Court Reporter, 52 and 53 are in evidence without objection for the State.

(State's Exhibits 52 and 53 were admitted.)

MS. JOHNSON-LEE: I would like the Doctor to step down so she could show the jury on the diagram where the bullet holes are in Mr. Bristow.

THE COURT: Very good. And she'll use the exhibit you just entered in evidence?

MS. JOHNSON-LEE: Yes, Your Honor.

THE COURT: Doctor, if you would, face back this way so our court reporter can hear you, because you'll be off mic.

A I had a quick question. Can I put three marks so it can show up better, because it is kind of a faded copy?

MR. STEEN: I don't have any objection to that.

THE COURT: Yes, ma'am, you may do that.

A To show this side of the jury, I'll come back and do it again on that side. This is just the overall diagram. We have everything marked, including his tattoos and scars, et cetera.

His three entrance wounds that I was describing earlier, that's one -- we label them A, B,

C, by letters. So "A" is the one near the armpit, and then "B" and "C" are the two in the left to mid-back area. He does have a purple bruise right on the chest area, left chest area, right under there is where the two bullets are.

As I was saying earlier, the "A" is right there to the left of the armpit area, and "B" and "C" are to the left mid-back, and this is the left chest. Right here with that pink area is the bruise under which the two bullets from "B" and "C" are recovered?

Q (MS. JOHNSON-LEE) Were you able to make any determination as to trajectory of those bullets as they entered the body?

A Yes. Like I said -- let me back up. "A" went -- in general, all three pretty much went straight forward. In "A" there was a slight, slight upward angle, just a smidgen, and in "B" and "C" there was a slight downward angle; however, I hedge on that because after death and after we take organs out, the body isn't the same, so it might move the trajectory rod we put in up or down a little bit, but basically the general answer is straight forward.

Q So if a person is facing totally away (indicates), would that mean that the bullets pretty much went in straight in from the back as opposed to

a side angle?

A Right. They didn't enter from the side.

Q Thank you, Doctor. Now, was there any soot or stippling around any of the three bullet wounds?

A No. One of the things we look for are -- to help us determine the range of fire, meaning how far back the gun might have been -- are things that come at the end of the bullet -- excuse me, from the end of the muzzle, besides the bullet, which is certain gun particles, but we didn't see any evidence, which indicates that this is consistent with a distant range gunshot wound, meaning that -- in general, all guns, once they get back to about 36 inches, 1 yard, 36 to 42 inches, they are considered distant gunshot wounds.

Q Now, based on your autopsy of Christopher Bristow, within the scope of medical certainty, have you formed an expert opinion as to the cause of death of Mr. Bristow?

A Yes. He died from the gunshot that went through his heart and lung, so cardiac and pulmonary disruption due to the gunshot wounds to his back.

Q Have you formed an opinion as to the manner of death?

A The manner of death is homicide, meaning death

at the hands of another.

Q You did prepare a report; is that correct?

A Yes.

Q I'll show you what is already in evidence as State's Exhibit No. 8; is that your report, Dr. Presnell?

A Yes, this is my report.

Q Does that report reflect the findings concerning cause and manner of death, et cetera, as you have already testified to?

A Yes, it does.

Q And that report contains an electronic signature; is that your electronic signature?

A Yes, it is my electronic signature.

Q How are you able to determine that that was your electronic signature as opposed to someone else going in the computer and entering that?

A Well, you have -- when you sign or verify a case, you have to enter a password, and your password is linked to your name, so once your password is entered, your name appears.

Q With respect to the chain of custody form or the transfer of evidence form, what is the purpose of that document?

A I took the items we got at autopsy to transfer

over to law enforcement.

Q And among other items, were the three bullets you recovered from the body listed on that transfer sheet?

A Yes, they were.

Q Do they show they were transferred to someone with the Marlboro County Sheriff's Office?

A Yes.

Q What day were those turned over to the sheriff's office?

A The same day.

MS. JOHNSON-LEE: Answer any questions the defense has, and I'll hand the documents over to the jury for publishing, Your Honor.

THE COURT: You may.

CROSS-EXAMINATION

BY MR. STEEN:

Q Do you still have the report that you could look on?

A Yeah, I have a copy.

Q I know you answered it earlier for the Solicitor, but I think I missed it. What does "diagnosis" mean in this context?

A The findings at autopsy.

Q Okay. Does it take -- do all findings get

placed in "diagnosis"?

A No. Usually the ones that pertain most to the case.

Q One diagnosis refers to a blood THC 11.8, could you explain that diagnosis in layman's terms?

A As I mentioned earlier, we do toxicology on forensic autopsies, and we send the blood, hopefully -- we prefer blood -- off to get analyzed. We did that in this case, and the toxicology came back as THC, which is marijuana, as well as an alcohol level of .104.

Q Could you explain how those findings would have affected the cause of death or the manner of death?

A They don't.

Q Why would the trajectory of bullets "B" and "C" be slightly down, again?

A So during the autopsy, once the organs come out, we take a pole and we'll put it into the gunshot entrance wound and also through the exit wound, where it went through the ribcage, not necessarily through the skin, and we'll put the pole through and see what direction that is aiming.

In this case, it was forward and actually slightly downward the chest, and maybe I should let

you ask that, but I was going to explain the ribs go like this (indicates), so even though it is going in the back, it can still end up in the lower chest the way that it did.

Q Okay. So you can say with a medical certainty that the bullets came in as a straight shot?

A It came in, in general, as a straight shot. Like I said, there is some variability with the organs out. There is not blood pumping through the body, so there is some slight distortion, but certainly not 45 degrees, but maybe slightly up or down or to either side.

Q So by the time you get the body, things can move around a little bit?

A But the body structure anatomy collapses when we go in. Think of it this way, we know where the holes are on the body, they don't move. We know where that bruise is on the diagram, that doesn't move. So that is where it went in and where the bullets rested.

MR. STEEN: One moment, Your Honor.

Q (MR. STEEN) Dr. Presnell, in doing your autopsy, did you come across any, I guess, not bodily -- not injuries, but something that could have resulted from medical treatment at the scene? Did

you see any evidence --

A Just the medical gear. He had an endotracheal tube, they tubed him. What else? They did a deep compression catheter trying to decompress the chest, so there was a decompression catheter, as well as there was a puncture where they tried to do it twice. They had an IV in his arm, and two defibrillation pads and EKG pads.

Q Thank you, Doctor. We discussed this earlier, do you have the evidence transfer sheet?

A Yes, I do.

Q Could you please read for the Court the evidence found on Mr. Bristow?

A Well -- you mean go through the list?

Q Yes, ma'am.

A What we transferred to Officer Locklear were his blue jeans with brown belt, he had some blue and white plaid underwear, two black slippers, two black socks, from his pockets, his pants pockets, were a dollar bill, a quarter and two dimes. We also documented his white tank top, black T-shirt and black and gray jacket. From the jacket pocket there was a Good Times Cigarillos box that had a Cigarillos on the wrapper, also some green leafy material that was in a bag. Also that accompanied him from the

hospital was some of his personal effects in the sealed hospital bag, which we did not open, we just transferred that directly to law enforcement.

We did fingernail clippings, pulled head hair, a blood spot for DNA comparison, should it be necessary, and three bullets.

Q Thank you, Doctor. What would be the significance of the fingernail clippings?

A It is a standard that we do in all homicide cases, especially since we don't know the circumstances and scenario around it. The idea being that there was some altercation and the decedent, the deceased person, scratched the assailant or the person they were in an altercation with, there might be DNA recovery under the fingernails.

MR. STEEN: No more questions. Thank you.

THE COURT: Redirect?

REDIRECT-EXAMINATION

BY MS. JOHNSON-LEE:

Q Was everything that you did standard for every autopsy for a homicide case?

A For a gunshot wound case.

Q You referenced bullets. The only bullets found on or about his body, were those recovered from the interior of his body?

A Correct.

Q And in the personal items in his clothing or in the bag, did you see a weapon of any kind?

A Again, I didn't open his personal items, so I would leave that to the law enforcement who did.

Q And the other items you recovered from the pocket, there was no weapon or bullet in there?

A No, not from his pockets.

THE COURT: You are free to leave. Watch your step as you exit. Call your next witness.

MS. DAVID: May we approach, Your Honor?

THE COURT: You may.

(Whereupon, a bench conference was had.)

THE COURT: Call your next witness.

MR. DANIEL: The State calls Michelle Eichenmiller.

(MICHELLE EICHENMILLER, having been duly sworn, testified as follows:)

THE CLERK: State your name for the record.

WITNESS: Michelle Eichenmiller.

THE COURT: Would you spell your name for the court reporter?

WITNESS: E-I-C-H-E-N-M-I-L-L-E-R.

DIRECT-EXAMINATION

MICHELLE EICHENMILLER - DIRECT EXAMINATION

BY MR. DANIEL:

Q Good afternoon. Thank you for being here. Would you tell the ladies and gentlemen where you are employed?

A I'm employed at the South Carolina Law Enforcement Division at the forensic laboratory.

Q And is that in Columbia?

A Yes.

Q What is your role there?

A I'm a firearms examiner.

Q Have you had many years of experience in examining firearms?

A We have to go through a three- to five-year training program. I completed that, and I've been officially a firearms examiner since 2010, so I've been there seven years.

Q Have you been qualified in criminal courts in South Carolina before in the field of firearm examination?

A I have.

MR. DANIEL: Your honor, at this time I ask that Ms. Eichenmiller be qualified as an expert in the field of firearms examination.

THE COURT: Is there questions about expertise?

MR. STEEN: Just one.

MICHELLE EICHENMILLER - DIRECT EXAMINATION
VOIR DIRE

BY MR. STEEN:

Q How many criminal trials have you testified in, would you say?

A I believe this will be 18 or 19.

MR. STEEN: Nothing further, and no objection.

THE COURT: The witness is so qualified. You may proceed.

Q (MR. DANIEL) Thank you. If it pleases the Court, Ms. Eichenmiller, were you involved in lab number -- I know how you identify cases -- Lab No. L12, dash, 15909, that being the case here in Marlboro County involving a suspect of David Dixon?

A I was.

Q Now, when you get involved in a case, are you part of the team that goes to the scene and collects guns and bullets?

A No. In general, the evidence is brought to us by the crime scene team or local agency.

Q In this case were items brought to you?

A Yes, they were.

Q What items were brought to you to analyze in this case?

A Can I refer?

Q Certainly.

A I received two firearms, two fire cartridge cases, one fired shot shell, eight unfired cartridges and three bullets.

Q Okay. I'll show what is marked as State's 38 and already in evidence. There are a couple of different boxes. This is one of the boxes from State's 38. Do you recognize that as something you analyze in this case?

A Yes.

Q What is that? You can open it if you need to.

A It contained one of the fired cartridge cases.

Q And this one?

A This one was the other fired cartridge case. Whenever I get evidence or containers, I put my initials, item number and case number so everything is there that this is what I examined.

Q That is what you are looking for?

A Yes.

Q Okay. And one other box, do you recognize that box?

A Yes. This box contained the shot shell that I examined in this case.

Q And, finally, do you recognize this?

A I do. This is the bag that contained the unfired cartridges that I received in this case.

Q Okay. So let's separate -- so this and this is all part of State's 38. This was one of the fired -- the only fired shotgun shell that was found, and then those are fired and those -- so those are the three things that came from State's 38, right?

A Yes.

Q I'll leave those right there.

Now, you said you were also provided two guns. I'll show you State's 35. Is this one of the guns?

A Yes. This is the gun I examined.

Q And you said you examined one other gun, right?

A Yes.

Q State's 36?

A Whenever we get evidence, I mark the evidence with my initials, item number and case number, and they are here, so this is the gun I examined as well.

Q We'll talk about these again in a minute. Now, you said you were given one other thing, what was that?

A Fired bullets.

Q Fired bullets. Where did you get the fired bullets?

A From the packaging. It said they were from autopsy.

Q So to your knowledge, that would have come from, in this case, the victim, Christopher Bristow?

A Correct. It had his name on the packaging.

Q Great. When you get all of these items, what is it that you are trying to answer? What sorts of questions are you trying to answer?

A Firearms identification is primarily concerned with did that bullet or cartridge come from that firearm. So whenever we get evidence that has fired ammunition components and a firearm, I try to determine if those components came from that firearm.

Q So did these bullets come from this gun?

A That's the question.

Q Now, can you answer that if -- say you have a gun and you have the casing of a bullet that's been fired. So if I fire a gun, and obviously the bullet leaves the gun and goes somewhere, can you tell from whatever leaves the gun and goes somewhere, if that came from the gun that just fired it?

A Yes. That is what we're trained to do.

Q Now, if a -- if I fire a gun and the casing pops out and lands on the ground, can you tell from the casing if this gun fired that casing?

A Yes.

Q So in this case, that is what you did?

A Correct.

Q Okay. How is it that you were able to make that determination when you are analyzing a bullet and a gun?

A Whenever we get evidence in the lab, we take a bunch of documentation, pictures, and we write it up. We test fire it in a water tank. The water slows the bullet down so it doesn't get damage on it. I'll take that bullet and put it on my microscope. I have a comparison microscope, which is basically two stages. I can look through it like a pair of binoculars and see both sides at once. I'll put the test fire on one side and the evidence on the other. I look at the scratches on the bullet and attempt to see if they match.

Q So when you said you fired a gun into water, that is what we sometimes see on CSI and on the shows, and that is to preserve the bullet?

A Correct.

Q And then you look at your microscope?

A Right.

Q Now, in this particular case, were you able to match any of the casings or bullets you found to either of the guns?

A Yes, I was.

Q Let's talk about that. Let's first go with this gun, it is State's 36. Now, what were you able to match to State's 36?

A I was able to match the two fired cartridges that came from the scene to that firearm.

Q So this would have been what the gun ejected whenever it was fired?

A Correct.

Q And these were on the ground. So this goes with this gun. Now, State's 35, what were you able to match to State's 35?

A The fired bullet I received from autopsy.

Q Okay. So what you are telling the jury then is that this gun fired the bullets --

MR. STEEN: Objection, leading.

THE COURT: Overruled.

Q (MR. DANIEL) What you are telling the jury is this gun fired the bullets that ended up in Christopher Bristow's body?

A Correct. The bullets I received that said they were from Christopher Bristow were fired from that firearm.

Q Did you prepare a report when you do a case like this?

A Yes. Once we're done with our examinations,

we have a hundred percent micro verification, so someone came behind me to do their conclusion, agreed with me and we write a formal report.

Q I'll show you what is marked and introduced as State's 13. Do you recognize that?

A It is the report I prepared.

Q This report says bullets coming from the victim came from this gun?

A Correct.

MR. DANIEL: Nothing further.

CROSS-EXAMINATION

BY MR. STEEN:

Q Do you have your report in front of you?

A Yes.

Q Item 6, unfired .38 Smith and Weston cartridge came from the camo jacket --

A Yes.

Q Can you say with certainty that that -- those bullets matched the gun on Item 1, the Johnson model?

A I can't say that the eight unfired matched that gun. There is no way to tell that. There is no marks because they weren't fired. They are the correct caliper to use in that firearm.

Q What does this mean when the cylinder of Item 1 was loose as received?

A It just means that it wasn't as tight as it should have been, or as I was comfortable shooting it, so I had to tighten before I fired it.

Q Can you tell the Court what a cylinder is?

A The cylinder is like the old west. If you think of those old west days, they have many chambers that rotate around and the bullet comes out a different chamber every time you pull the trigger.

Q Would that being loose cause any issues with the gun?

A No, it wouldn't.

MR. STEEN: One moment.

Q (MR. STEEN) Did you tighten the cylinders before you test fired it?

A Can I refer to my notes?

Q Yes.

A I don't believe I tightened it. It was able to be test fired without being tightened.

MR. STEEN: Thank you.

REDIRECT EXAMINATION

BY MR. DANIEL:

Q There is a whole lot of questions about tightening and cylinders. This gun you analyzed with the bullets that came from the victim Chris Bristow's body, correct?

A Correct.

THE COURT: Don't lead, Counsel.

Q (MR. DANIEL) And did those bullets come from this gun?

A They did.

MR. DANIEL: Nothing further.

THE COURT: Ma'am, you are free to leave. Please watch your step as you exit. Call your next witness.

MS. DAVID: I said the wrong name, but the right person, Mr. Michael Moskal.

(MICHAEL MOSKAL, having been duly sworn, testified as follows:)

THE CLERK: State your name for the record.

WITNESS: Michael Moskal, M-O-S-K-A-L.

DIRECT EXAMINATION

BY MS. DAVID

Q Mr. Moskal, what is your current occupation?

A I'm with the South Carolina Law Enforcement Division, which is commonly known as SLED, and assigned to the trace evidence department.

Q How long have you been there with SLED?

A For seven-and-a-half years.

Q What do you do there?

A I work in the trace evidence where we analyze evidence that is too small or too sensitive to be

seen with the naked eyes, and I currently analyze gunshot residue, fiber, glass, explosives, paint and generally unknown and chemical analysis.

Q Does that include the examination of gunshot residue?

A Yes, ma'am.

Q Will you please describe gunshot residue for us?

A Yes, ma'am. Gunshot residue is everything that comes out of the opening of a weapon when it is fired. It can include things like burnt gun powder, unburnt gun powder, grease and oils that may be left from prior firings, but what we're specifically looking for are components out of the primer of the cartridge case when it's fired, and those components contain lead, barium, antimony.

Q What education and training have you had in this area?

A I have a BS in chemistry from the College of Charleston, and then when I was hired by SLED, I underwent about a six- to seven-month training program specifically for gunshot residue where I worked side-by-side with a court-qualified gunshot residue analyst. I worked cases with her, alongside of her, running things on the instrumentation, making

interpretations from the data.

At the end of the six-, seven-month period, I was given a mock case where it was assigned to me just like any other case would be. I received the evidence, analyzed the evidence and made a -- wrote a report and went through a mock trial. After successfully completing that, SLED deemed me qualified to analyze gunshot residue.

Q Are you now certified by SLED for trace and GSR residue?

A Yes, ma'am, to analyze gunshot residue.

Q How many GSR kits have you examined?

A The actual number I have analyzed, I don't have a record, but I would say in the thousands.

Q Have you ever been qualified in court as a GSR expert?

A Yes, ma'am.

Q How many times?

A 18 times for gunshot residue in both state and federal courts.

MS. DAVID: At this time the State would like to offer Mr. Michael Moskal as an expert in GSR.

THE COURT: Are there questions on the expertise?

MR. STEEN: No questions.

THE COURT: No objection?

MR. STEEN: No.

THE COURT: The witness is so qualified. You may proceed.

Q (MS. DAVID) Mr. Moskal, I know we talked about this because I just asked you, would you please explain to the Court again, what is GSR?

A Yes, ma'am. It is everything that comes out of a weapon when it is fired. It includes things that may be metal shavings from prior firings, dirt or grease left in the barrel, it can be particles of burnt and unburnt gun powder, but specifically what we're looking for to call technically GSR, or gunshot residue or particles that are composed of lead, barium and antimony, and those elements come out of the primer. When we get those three elements in a round shape, it is not known to come from any other sources other than a weapon being fired.

Q How long does GSR live on a human body?

A On a human body, a person who is alive, gunshot residue can last up to, but not more than, a six-hour period. It is a very fragile type of evidence. It is kind of similar if you are in the kitchen and you are baking and get flour on your hands. The more you move, the more your hands move, you're touching your clothes, hair. As time goes,

that material just gradually disappears. Gunshot residue is a lot like that, and it is known not to last longer than six hours.

Q And what about a person that has passed away?

A It is going to last indefinitely until it is removed by an outside force, like autopsy or something similar to that.

Q And how do you typically test for it?

A Gunshot residue? We provide kits to all of the agencies, or they can purchase them themselves from different scientific providers, but it is going to have four areas they test. We're looking to have the right palm, right back, left palm and the left back tested. The way we do that is there is an aluminum disk that has double-sided sticky tape. They dab that on each area until the stickiness of the double-sided sticky tape has worn off. Once they've dabbed that across the entire right palm, they seal it, put it in a bag and take another sticky tab, dab the back, and they do that for each of the four areas and submit it to us for analysis.

Q Relative to the case L12-15909, what was your involvement in this case?

A L12-15909, I performed a peer review of the report that was issued for this case.

Q And was the proper protocol followed here?

A Yes, ma'am.

Q I'll show you what has been marked for purposes of identification as State's Exhibit No. 12; do you recognize it?

A (Witness examines document.) This appears to be a copy of the report that was issued for L12, dash, 15909.

Q Okay. And let's go over the results on this examination. Who all tested here -- who and what was tested?

A The items that I received was a GSR kit from David E. Dixon, a GSR kit from Chris Bristow and two black gloves.

Q Let's talk about Mr. David Dixon. What parts of the body were tested?

A David Dixon, it would be the four areas of the hand, right palm, right back, left palm, left back.

Q So right palm, right back, left palm, left back. And what are the results on these for these tests for GSR?

A On David Dixon, each of those four areas, no gunshot residue was found.

Q Now, let's talk about Mr. Chris Bristow. What parts of his body were tested?

A Again, with Mr. Bristow the areas that were tested was right palm, right back, left palm, left back.

Q Okay. Right palm, right back, left palm, left back. What are the results for his test?

A For Chris Bristow, the right palm, right back and left back, no gunshot residue was found. On the left palm, round lead particles were found.

Q Please explain what are "round lead particles"?

A Round lead particles -- we mentioned earlier that when a weapon is fired, we're looking for a round particle that contains lead, barium and antimony, that is ideal gunshot residue particle. When a weapon is fired, we get some ideal particles, and we get some particles that aren't necessarily, quote, end quote, ideal. They may be exposed to one or two of those elements, meaning they may have lead barium or lead antimony, or one of those three. In this case, we found particles on the left palm that simply had round lead on them.

Q Now, about how close in proximity would you need to be to a gun in order to get round lead particles on your hand?

A In order to get particles from a weapon on

your hand, to get a good distance, we actually need to have the weapon that was fired and the ammunition that was used in the shooting, because each weapon is going to have different characteristics, but the general consensuses is it is about 5 to 10 feet away in order to get that on your hands.

Q I have another question. Is it possible to get round lead particles on the left hand if you touch the wound?

A Yes, ma'am. Gunshot residue and the components of gunshot residue are known to follow in the trail of a bullet when it is fired, and so oftentimes -- quite often around a bullet hole you'll find gunshot residue. So if someone were to touch that wound, there is a possibility that they could get gunshot residue or its component on their hands at that point.

Q Thank you. Let's move to the next set of results. You also tested two black gloves. What are the results of those gloves?

A Each one of the gloves had gunshot residue on them.

MS. DAVID: Beg the Court's indulgence for one moment.

(A brief pause in the proceedings.)

MS. DAVID: Thank you. No more questions.

CROSS-EXAMINATION

BY MR. STEEN:

Q Can you state with any certainty how round lead particles were found on Mr. Bristow's hand or left palm?

A Do you mind elaborating on that a little bit?

Q Do you know how the particles ended up on his hand?

A No, sir. What I can tell you about round lead particles is they are a component of gunshot residue and they can travel with the bullet. They can land on you directly from the bullet being fired. You could get it on you from secondary transfer in terms of touching something that has gunshot residue on it, and they also can be found in some other sources not associated with a gunshot at all.

Q Can you get gunshot residue on your hands from handling a weapon?

A Yes, sir. There are basically three ways of getting gunshot residue on your hands, and that is to fire a weapon directly to handle a weapon or to handle something that already has gunshot residue on it.

Q When you say GSR can stay on the body

indefinitely for a deceased person, does it matter when the GSR gets on the body either before or after death?

A No, sir.

Q If no GSR was found on the back and it was found on the hands, is that possible that you could have -- is it possible that GSR could have transferred from the back to the hands and be on the hands and not on the back?

A It is possible to have gunshot residue on one location, one of the four areas, up to all four areas.

MR. STEEN: No further questions.

THE COURT: Redirect?

MS. DAVID: Nothing further.

THE COURT: You may step down, and you are free to leave or free to remain if you wish.

(JENNIFER CLAYTON, having been duly sworn, testified as follows:)

THE CLERK: State your name for the record.

WITNESS: Jennifer Clayton, currently employed by the South Carolina Law Enforcement Division also known as SLED.

DIRECT-EXAMINATION

JENNIFER CLAYTON - DIRECT EXAMINATION

BY MS. DAVID:

Q How long have you been employed with SLED?

A Approximately 11 years.

Q And what do you do with SLED?

A I'm currently employed as a DNA analyst with the forensics department.

Q How long have you been employed by the DNA department?

A I've been employed by the DNA department for the entire time I've been at SLED. I was originally hired as a forensic technician and worked as a technician for two years before I became a DNA analyst.

Q What is a DNA analysis?

A A DNA analyst looks at evidence and attempts to develop profiles for evidence and known standards and then does a comparison to determine if there is a match between evidence and a known standard. A known standard is a sample taken directly from a particular individual, so the source of that sample is known.

Q What education and training have you had in the area of DNA and serology?

A I earned a bachelor's of science in biology from University of North Carolina, Chapel Hill, and I've taken classes and NC State and USC. My

coursework includes genetic molecular biology, biochemistry and statistics. I completed an internship with the North Carolina State Bureau of Investigations, molecular genetics department, that is equivalent of the SLED's DNA department. As I said, I originally hired as a forensic technician in the DNA department. I worked as a forensic department. I worked as a forensic technician for two years before being hired as a DNA analyst. Once I was hired, I completed a one-year training program under another qualified analyst and did casework under his supervision before I did casework on my own.

Q Are you certified by SLED now?

A Yes.

Q About how many DNA examinations or analyses have you done?

A On samples, or cases?

Q On cases.

A On cases? I'm not certain. I know it's been hundreds of cases at this point, but I don't know a number.

Q Have you been qualified as an expert in DNA in court before?

A Yes, I have.

Q How many times?

A Approximately 30 times.

MS. DAVID: At this time the State would like to offer Ms. Jennifer Clayton as a DNA expert.

THE COURT: Witness offered. What says the defense?

MR. STEEN: No questions, Your Honor.

THE COURT: Objection?

MR. STEEN: No objection.

THE COURT: Without objection, so awarded. You may proceed.

Q (MS. DAVID) Ms. Clayton, let's talk. What is DNA?

A DNA is essentially a long chain of chemicals found in every cell in the body with the exception of red blood cells. With the exception of identical siblings and rare cases involving bone marrow transplants, no two individuals have the same DNA profile, and this is what makes it useful in forensics. A known standard can be collected from an individual and a DNA profiled from that standard, and then if profiles are developed from evidence, a comparison can be made between the profile from the evidence and the profile from the standard to determine if there is a match or not.

Q Where is DNA typically found in humans?

A It is found in any cells, so skin cells that are on the body, from blood. They can be found in cells that sluff off, the saliva of an individual. They are in all of the organs and the brain, so essentially anywhere in the body DNA can be found.

Q Now, did you have the opportunity to work with this case, which would be Lab L12-15909, which is the case against David Dixon?

A Yes, I did.

Q I'm going to show you what is marked as State's Exhibit No. 11; do you recognize it?

A Yes. This is a copy of the DNA report that I issued in this case.

Q Now, will you please tell us which items were received for testing in this case?

A I received and tested a swab from a black knit glove, second swab from a black knit glove, swabs from a red trail, red stains on the interior bar floor, and swabs from a grip area of a revolver, as well as standards from a Woodrow Garner, David Dixon and a Chris Bristow.

Q So what do you mean by these standards?

A Standards are the known samples that are taken from an individual so that I can develop a profile

that is known to have originated with that individual, and I can compare it to profiles that are developed from evidence.

Q Let's walk through this evidence, and we're going to go in the opposite order from which you read it. So what were the results from the grip area of the revolver?

A The DNA profile from the grip of the revolver is a mixture of at least three individuals. No conclusive statement can be made regarding the inclusion or exclusion of David Dixon as possible contributor to this mixture. Chris Bristow and Woody Garner are excluded as possible contributors for this mixture. When a mixture is developed, that means that more than one individual contributed DNA to the item. When that -- in this particular case, unfortunately, it was not a very good quality sample. It is common for DNA samples not to yield a good profile. In this case, it was a mixture as well as showing some other issues, one of them being degradation, which is when the DNA starts to break apart, and that happens because DNA gets old and is typically sluffed off your hand is already old and exposed to sunlight and other chemicals and the environment that starts breaking down the DNA. As a

result, there was enough information that I was able to exclude Chris Bristow and Woodrow Garner, however, in the case of David Dixon, I was unable to determine if he contributed to the sample or not.

So based on the DNA results from Item 12, he either handled the gun or he did not handle the gun, there is no way to determine which is the case based on my results.

Q Okay. So for a little clarification, you have excluded Chris Bristow, excluded Woodrow Garner, and when it comes to David Dixon, you can't give us an exclusive statement, so it is inconclusive.

Would weathering have affected you being able to make a determination? If it was raining --

MR. STEEN: Objection, leading.

THE COURT: Sustained. Can't lead your witness. A leading question is one that has an answer contained, so rephrase.

Q (MS. DAVID) I'll simply ask, would weathering have affected the examination?

A Yes. Environmental conditions can definitely have an effect on DNA if it's humid. If the samples are exposed to sunlight, that can begin to break down the DNA. If it's a humid area, bacteria can begin to grow on the item and bacteria will break down DNA.

Rain can wash away the DNA on an item, so definitely the environment and the weather conditions can affect the results on a DNA item.

Q Okay. Thank you. For our next piece of evidence, that would be the drip trail. What were the results for that?

A The DNA profile developed from the swab from the drip trail of red stains on the interior bar floor matches the DNA profile of Woodrow Garner. The probability of randomly selecting an unrelated individual having DNA profile matching this item is 1 in 19 quadrillion. What that means is if I went out into the population and chose one person at random that was unrelated to the one that left the stain, the probability that they would, just by chance, happen to have a DNA profile matching the profile developed from the evidence is approximately 1 in 19 quadrillion.

Q Thank you. Our next two pieces of evidence are swabs from black knit gloves. Would you please explain those results to us?

A Okay. The DNA profile developed from one of the black knit gloves is a mixture of at least two individuals. The DNA profile developed from the major contributor matches the profile of David Dixon.

The probability of randomly selecting a non-related individual from the population having a DNA profile matching the major contributor is probably 1 in 3.4 quadrillion.

Chris Bristow and Woodrow Garner are excluded as possible contributors for this mixture. A mixture means more than one individual contributed DNA to the item. In some cases I can determine a major contributor, and that means that the contributor contributed more DNA than the other individuals. So in this case, the DNA profile of the major contributor matches the DNA profile of David Dixon.

Q If I understand you correctly, Chris Bristow, Woodrow Garner have been excluded, but David Dixon is a major contributor, what do you mean?

A It would be the individual that donated the most amount of DNA to the sample, mixture.

Q I have one last question for you when we are talking about black knit gloves; approximately how long would DNA stay on these items?

A There is no test to determine how long DNA has been on an item. Certain things can affect how long it lasts. If it is in a cool, dry environment, protected from ultraviolet light, such as the sun, it can last almost indefinitely. If it is outside and

exposed where it can be rained on or exposed to the sun, it's very damp where bacteria can grow, that is going to significantly shorten the amount of time that DNA can last on the item.

MS. DAVID: Beg the Court's indulgence. No more questions.

MR. STEEN: No questions from the defense.

MS. DAVID: May we approach, Your Honor?

THE COURT: You may.

(Whereupon, a bench conference was had.)

THE COURT: This is a good time to take a break. We'll take our afternoon break. If you wish to go outside to enjoy your break, we'll give you that opportunity. It is a nice day, so we'll be in recess 15, 20 minutes and remain where we are while you exit the courtroom. Have a nice break, ladies and gentlemen.

(The jury exits at 2:50 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Mr. Steen, before I have colloquy with your defendant, I would like you to speak with him first. We'll come back after the break and have that discussion. This court will be in recess approximately 15 minutes.

(Whereupon, a recess was taken.)

THE COURT: Before we bring the jury back in, I'm advised -- Mr. Steen and Mr. Lewis, you are here with us -- that the State has advised they may be getting ready to rest, and if that is the case, I would like to have a discussion with Mr. Dixon about his rights. Mr. Steen, have you had ample time with Mr. Dixon to discuss his rights with respect to whether he wishes to remain silent or whether he wishes to testify?

MR. STEEN: Yes, Your Honor.

THE COURT: And do you believe he understood the things you explained?

MR. STEEN: Yes, Your Honor.

THE COURT: Mr. Dixon, if you would please stand and accept the oath of a witness from the clerk.

(DAVID DIXON, having been duly sworn, testified as follows:)

EXAMINATION

BY THE COURT

Q Mr. Dixon, you have heard just a moment ago as I was talking to Mr. Steen that the State is most likely getting ready to rest their case against you; do you understand that?

A Yes, sir.

Q So at this point, then, it is up to the defense of whether or not you wish to put up a case

or put up a defense, and as part of that, whether you wish to testify; do you understand that?

A Yes, sir.

Q Now, have you had time to discuss with Mr. Steen and Mr. Lewis your right to remain silent as well as your right to testify in this case?

A Yes, sir.

Q And with respect to your right to remain silent, are you aware that you are not required to testify, you have no burden of proof in this case and if you decide to remain silent and not testify, the Court will tell the jury and the charge of the law that they may not hold that against you in any way because you have a Constitutional right to remain silent and they may not even mention it in the jury room; do you understand that?

A Yes, sir.

Q Is that the same thing that your lawyer told you about your right to remain silent?

A Yes, sir.

Q By the same token, you have the right to testify, which is you would be placed under oath in the presence of the jury, subject to direct examination by your own attorney, but also subject to cross-examination by the State's attorney. If you

have a prior record, the prior convictions you have may come into the record on the question of credibility or believability, not on the issue of guilt in this particular case. Do you understand that you have the right to testify?

A Yes, sir.

Q And is what I told you regarding your right to testify the same thing that your lawyer told you about your right to testify?

A Yes, sir.

Q Of course the jury is our finder of facts in the case, judges of the facts, and they may use your testimony for you or against you as they determined it to be; do you understand that, sir?

A Yes, sir.

Q Now, do you have any question about your right to remain silent as I've explained it to you as well as your right to testify?

A No, sir.

Q Have you understood the things that I have told you about those two rights?

A Yes, sir.

Q And, again, I ask you, are the things I told you the same thing that your lawyer told you about those two rights?

A Yes, sir.

Q All right. Now, have you made the decision of whether you intend to testify in this case?

A Yes, sir.

Q And what is that decision?

A I'll have my right to remain silent.

Q Is this your decision or someone else's?

A Mine.

Q Has anyone tried to force you one way or the other on this issue?

A No, sir.

Q So you are telling me that your decision not to testify is a decision that you have made yourself, and you have done that voluntarily; is that correct?

A Yes, sir.

Q Very good. I'll allow you to be seated at this point.

THE COURT: Mr. Steen, will there be other witnesses for the defense?

MR. STEEN: No, Your Honor.

THE COURT: Then what I would propose we do is call the jury back in, let the State rest, let the defense rest and we'll release the jury to come back for arguing and charge. We will -- of course after the jury departs -- have a charge conference in the

back. We've given you a copy of what we believe the format charge will be, and we will proceed in that fashion. Is there an objection from the State?

MS. DAVID: No objection.

THE COURT: Defense?

MR. STEEN: No objection.

THE COURT: Please bring in the jury.

(The jury enters at 3:12 p.m., and the following is heard in the presence of the jury.)

THE COURT: All right. Ladies and gentlemen, welcome back to the courtroom. You recall when we ended the first session of the afternoon we were in the State's case, and we remain there.

Madam Solicitor, call your next witness.

MS. DAVID: At this time, the State would like to rest its case.

THE COURT: The State rests, which means they have completed the presentation of their case, and we'll move to the defense's case.

Mr. Steen, are you prepared to go forward?

MR. STEEN: The defense also rests at this time, Your Honor.

THE COURT: Good. The defense rests as well. So, ladies and gentlemen, what that means is that we've reached the conclusion of the testimonial phase of

BY THE COURT TO THE JURY

this case. Given the hour of the afternoon, there really is no reason for us to go forward and have arguments and charging and then give the matter to you probably sometime after 5 o'clock, so we'll stop for the day. This is a good point, and we'll come back tomorrow morning for arguments and the charge on the law, and then allow you to begin your deliberations.

What I ask you to do is be back in the jury room tomorrow morning at 9:30. We'll begin at 9:30 tomorrow morning. Also, again, overnight, please -- and this is particularly important now -- do not discuss the facts or the allegations in the case with loved ones. I would say to you also keep an open mind, because not only have you not heard the arguments of counsel as to what the evidence in the case have shown, but you haven't heard the charge of the law. So come back tomorrow well rested, and we'll be ready to proceed to the final stage, which is your deliberations.

Now, tomorrow, Mr. Malachi, I'll ask you to serve as jury foreperson, so we'll seat you in the front seat tomorrow. I don't want to make you nervous, but I wanted to give that information, and I'll simply say to you that the best foreperson is

one that is a moderator of discussion, a facilitator of discussions, because ultimately the verdict in this case must be an unanimous verdict, and I thank you for your willingness to serve, assuming you are willing, I thank you for serving in that role, Mr. Malachi.

Ladies and gentlemen, you're out a little earlier. It is a beautiful afternoon. You have a nice afternoon, and we'll remain where we were out of respect for you and we'll see you at 9:30 in the morning.

(The jury exits at 3:16 p.m., and the following is heard out of the presence of the jury.)

THE COURT: The jury is clear of the courtroom. Before we close this record for the day, is there anything further from the State or defense we need to place on the record before we stand down for a charge conference? State?

MS. DAVID: Nothing from the State.

THE COURT: Defense?

MR. STEEN: Nothing for the defense.

THE COURT: This case is in recess until 9:30 tomorrow morning.

Defense tells me that they have certain motions at the close of the State's case, so I'll

hear from you, Mr. Steen.

MR. STEEN: Thank you, Your Honor. Your Honor, we would like to move for a directed verdict as to all three charges against Mr. Dixon. With regards to the charge of murder, we believe the State has not put forth any evidence of malice aforethought, expressed or implied, with regard to this case.

With respect to the charge of attempted murder, we would argue that the State has produced no evidence as to Mr. Dixon's intent with regard to shooting or attempting to kill Mr. Garner.

With regards to possession of a gun during the commission of a violent offense, Your Honor, since that is a secondary offense to the others, I direct a motion be directed on that one also.

THE COURT: All right. Without taking argument from the other side, I'm prepared to rule on your motions.

First of all, it is not for the Court at this point to weigh evidence. The question is whether there is sufficient evidence in this record that tends to prove the guilt of the accused. I find that there is sufficient evidence in this record, respectfully. Specifically with regard to Mr. Garner, he raised the issue there was no intent to

kill, of course Mr. Garner testified that the defendant looked him in the face and then shot him in the head. That would be using a deadly weapon, and that would be sufficient circumstantial evidence, if not direct evidence, of intent, and that would require that case to be submitted to the jury.

The Court also makes the same findings with regard to the possession of a weapon, as well as the murder charge, that there is ample evidence properly admitted that these matters should go to the jury. So I, again, deny all motions at the close.

Anything further from the defense?

MR. STEEN: Nothing further.

THE COURT: Now, ladies and gentlemen, we're adjourned until 9:30 in the morning.

(Whereupon, the proceedings concluded for October 30, 2013, and resumed at 9:31 a.m., October 31, 2013 where the following took place out of the presence of the jury.)

THE COURT: I have been informed that there is a question about the use of a deadly weapon and inferred malice in the charge. Mr. Steen, do you want to be heard?

MR. STEEN: Yes, sir. Relying on the language of State v. Belcher, Your Honor, the court ordered that

where evidence is presented that will reduce, mitigate, excuse or justify a homicide or an assault and battery with intent to kill caused by the use of a deadly weapon, jury shall not be charged that malice may be inferred from the use of a deadly weapon.

THE COURT: Let me hear from the State, if you have a position on this.

MS. JOHNSON-LEE: Your Honor, the Court clearly stated that the instruction is a correct statement of law where the only issue presented to the Court is whether the defendant committed murder or what today is attempted murder. The Court also emphasized --

THE COURT: I think out of an abundance of caution, the best route for the Court to take is to defer to defense's motion. I am going to remove on Page 15 -- you'll note I'm giving the charge -- beginning with the words "inferred malice may also arise," and then on Page 16 the very first paragraph which has to do with the use of a deadly weapon.

So I'm going to grant your request and remove that language. Anything further?

MR. STEEN: Nothing further, Your Honor.

THE COURT: Anything from the State?

MS. DAVID: Nothing, Your Honor.

THE COURT: Again, I would also agree that there is nothing in this that prevents the State from arguing these issues. It is just that it doesn't rise to the level of the charge.

MR. STEEN: Yes.

THE COURT: Okay. So I'm told the jury is all present, so please bring in the jury.

(The jury enters at 9:38 a.m., and the following is heard in the presence of the jury.)

THE COURT: Good morning, Mr. Foreman, ladies and gentlemen of the jury. Welcome back to the courtroom. I trust you had a nice evening. Let me ask if since we were last together has any member of the jury panel had a discussion with any other person concerning the facts or the allegations in this case; if you have, please raise your hand. Let the record reflect no one raised their hand. Thank you for complying with the Court's request in that regard.

You may recall that at the beginning of the case I told you that we would discuss the procedures and how we would go forward. At the end of the case the lawyers would come before you in closing arguments, and then I would give you the charge on the law. After talking with counsel, we have decided to reverse that order a little bit. I'm going to

give you the charge on the law first so that you'll have the benefit of that, and then the lawyers will argue.

Now, the way the final argument will be presented is the State will go first and then the defendant will go last. So the process is I'll give you the charge on the law, State will have closing argument and then defense will have closing argument. You may recall that what the lawyers tell you in closing arguments, they are allowed to. It is called an argument because it is a persuasive event where the lawyers tell you what they believe the evidence has or hasn't shown or what the law does or does not require. Please understand the lawyers' arguments are not evidence in and of itself, it is the comments on that.

Now, as you are aware, ladies and gentlemen, the State of South Carolina has charged the defendant, David Dixon, with one count of murder, one count of attempted murder and one count of the possession of a weapon during the commission of a violent crime.

Now, you remember the defendant entered a plea of not guilty to these allegations and denied the charges that were alleged against him. These charges

were based on indictments, you will recall that, which is, as I explained at the very beginning, and I don't want to sound like a broken record, but it is important, that the indictments are just allegations, they are not evidence. The evidence that you should consider is the testimony of the various witnesses who have appeared before the Court during the process of this trial, as well as the exhibits which have been introduced at trial during the course of this proceeding. You will have the exhibits with you when you retire back to the jury room to begin your deliberations of this case.

Now, you may recall that when we first gathered up on Monday morning, I mentioned to you that I was well aware that all of you had a busy life before you got your jury summons and ended up at the courthouse, and further ended up on this jury. I want to tell you that when you retire to deliberate in a few minutes, that I know you are in a good position to make the decision in this case, because every time I've looked up, just as I'm looking at you now, I've found you sitting there with close focus, what I call rapt attention, and paying attention to these proceedings. In other words, you set aside your busy life and the other demands of that busy

life to give your full focus to this case. I'm grateful for that, ladies and gentlemen, because I know when you retire, you are in a position to decide the case and do justice in the case, and I thank you for that level of commitment you have given to this important proceeding.

Now, as you know, the defendant comes in this courtroom clothed with the presumption of innocence, so even if the defendant hadn't entered a plea of not guilty, the defendant has no burden. The defendant is clothed with a presumption of innocence, and this presumption of innocence continues with the defendant throughout the case. It entitles the defendant to a verdict of not guilty on all counts unless that presumption is dispelled by evidence that satisfies you, the jury, beyond a reasonable doubt that the defendant is guilty of one or all of the offenses, which are alleged against him. In doing so, you must find that the State -- if you find the defendant guilty, you must find that the State proved each and every element of each of the alleged crimes beyond a reasonable doubt.

Now, as I told you at the beginning of this trial, under the Constitution and the laws of this state, you are the judges of the facts which, as we

discussed, means that you will listen to the testimony in the case, you will decide what the facts are, apply it to the law that I give you, and from that and working together, you will reach a verdict in this case.

You may also recall that I mentioned to you if you hear testimony that seems either maybe a little bit inconsistent or sometimes mutually exclusive, you'll have to decide which of the witnesses are more credible and believable in order to decide the facts. We talked about this in the opening of trial, and there is no need to be duplicative, but I would simply say to remember that this is something we do every day when we talk with individuals. You apply your commonsense here in the courtroom just like you do in the real world and make your determination based on every day factors that you use as to which of the witnesses are more credible and believable so you can determine the facts.

When you go to decide the facts of the case, you can believe as much or as little of any witness' testimony that you think is proper. You can believe one witness against a whole group of witnesses, or you can do just the opposite. You can believe part of what a witness says, and completely disbelieve the

rest. The fact that certain testimony is not directly controverted doesn't mean you have to accept it as true, because you have to gauge the credibility and believability from which that testimony is offered.

Keep in mind, ladies and gentlemen, throughout this process of determining the facts of the case that you have one objective, and that is to seek the truth regardless from what source or which witness that truth may come.

There are two types of evidence in cases such as these. There is direct evidence, and there is circumstantial evidence. I will tell you that direct evidence is testimony of a person who asserts or claims to have actual knowledge of the facts, such as an eyewitness who will testify what they saw or heard, that is direct evidence. Circumstantial evidence is indirect evidence. Circumstantial evidence is proof of a set or chain of facts that then indicate the existence of, yet, another fact. I will tell you that the law makes no distinction between the weight or value to be given either direct or circumstantial evidence, nor is there a greater degree of one required over the other. You should consider all of the evidence in the case, and after

you consider all of the evidence in the case, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty on the particular charge you are considering.

Now, of course, this requires you to weigh the evidence. I know you probably noticed that there is not a set of scales to weigh your evidence. That is an obvious fact, and that is because that weighing evidence is entirely a mental process. On that point, I would say to you that evidence that weighs with you is evidence that convinces you of truth regardless from which witness or from which side of the case that evidence may come.

Now, let's talk a moment again about expert witnesses, because we had individuals who came in and testified who were determined to be and performed to testify as an expert witness. The rules of evidence normally don't let someone -- or permit a witness to come in and testify about an opinion; however, because there is an exception to the rule, the expert witness rule, which allows the witness who by education or training or knowledge or experience has become expert in some art or science or profession, and that witness is allowed to come in and state an

opinion on relevant and material matters in which the witness claims to be an expert and may also state the reasons or basis given for those opinions.

You should consider any expert opinion as received in evidence in this case, and like any other evidence, give it the weight you think it is entitled to. If you decide that the opinion of the expert is not based on sufficient education or experience, or you don't conclude with the reasons given or the basis to support the opinion are not sound, or the opinions are outweighed by other evidence, you may disregard that opinion entirely. It is not given for the purpose of controlling your judgment, but assisting you in matters of fact that are within that expert's purview before you in this case. You are not bound by that evidence that is given to you by an expert testimony, and you are not required to accept the opinion. It is your decision to weigh and consider that evidence.

Now, also in the trial of this case an alleged statement -- well, a statement alleged to have been made by the defendant was admitted into evidence, and you saw it here by videotape. So while the Court made the determination that the statement was admissible, I instruct you that you make the ultimate

decision of whether or not the defendant, in fact, made that statement. If you find the defendant made the statement, then you must determine whether the statement was made by the defendant voluntarily and of his own free will. This means the statement was not caused by pressure or force or fear or threat or coercion, intimidation or by hope or promise of some leniency or reward of any kind. In determining whether or not a statement is voluntary, you should consider both the characteristics of the defendant and the details of the question.

Some of the factors you must consider are the age of the defendant, the defendant's education, or lack of it, the defendant's mental capacity, defendant's IQ or intelligence, defendant's background and environment, the place and length of the detention, the nature of the questioning, the advice or lack thereof to the defendant of his Constitutional rights including, but not limited to, the right to remain silent, that any statement could be used against him in a court of law, the right to have a lawyer present at questioning, and that if he could not afford a lawyer, a lawyer would be appointed to represent him without any cost, and that he could stop making a statement at any time. You

should carefully consider all of those circumstances before you give any weight to an alleged statement.

The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine that it was, then you may give the statement any further consideration you deem it proper, and you must decide what weight, if any, it should be given. If you determine the alleged statement was not the free and voluntary statement of the defendant, you should not consider that statement at all.

Now, the same Constitution that makes you the judge of the facts, makes the presiding officer, me, the judge of the law in this courtroom, as we discussed at the beginning. I will tell you that living in a small town, just like you do, we all do, that I know there is a lot of bad information out on the street about what the law is on any particular given topic, whatever that topic may be, so I'll ask you to disregard any preconceived notions or information that you may have on what the law is. Accept the law as I give it to you. We have researched this law carefully, and you may have noticed us working on the computer some while this case was in process, and one of the things we were

doing was working on this charge. We reviewed it with counsel, and we are giving you the correct statement of the law of South Carolina with regard to these criminal charges, so accept it as I've given it to you.

Put aside any notions of what you think it would be or a better idea or what I think might be a better idea, just accept the law as I give it to you and apply it to the facts as you find them, and if you do that, then you will reach a verdict that is just and fair in this case.

In a criminal prosecution of this type, as I've already stated to you, the prosecution is seated at the table closest to you and has the burden of proof. The defense has no burden of proof. The defendant is presumed innocent, and in this state, according to our Constitution, the prosecution must prove its case to the standard or proof we call beyond a reasonable doubt, that is the term, beyond a reasonable doubt, before a finding of guilt may occur.

If the State fails to meet this high burden, and it is a high burden, then the defendant is entitled to an acquittal. I'll start by telling you what it is not. It is not an imaginary or fanciful

doubt. It's a substantial doubt, a doubt for which you can give or assign a reason based on the testimony and evidence in this case. A reasonable doubt is not any sort of a doubt. I think you and I know from every day life experience that we may have some sort of a doubt about any kind of thing no matter how trivial it is, such as what pair of shoes to wear or tie to wear to some event, but that is not a reasonable doubt.

A reasonable doubt is a doubt that makes an honest, sincere, conscientious juror in search of the truth hesitate to ask is that proof beyond a reasonable doubt, and it is proof that leaves you firmly convinced of the defendant's guilt. If you have a doubt for which you can give or assign a reason as to the guilt of the defendant on a particular charge, then he's entitled to a verdict of not guilty on that charge.

Reasonable doubt may arise from the evidence in the case, or the lack or absence of evidence in the case. You, the jury, must make the determination whether or not reasonable doubt exists as to the guilt of the defendant with respect to these three charges. I will tell you that the very fact that the jury goes back and engages in a full and free

discussion on the issue of guilt or not guilt in these cases, the conversation of ebb and flow on those issues does not automatically mean that reasonable doubt exists in this case, or in any other case for that matter.

Now, I will tell you and charge you under South Carolina law that criminal intent is a necessary element of each crime that must be proved by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances that surrounds a situation. There is no way to prove intent with some mathematical certainty, and you know that obviously there is no way we can open up someone's brain and look in and determine what they had in mind at a particular time. So the law says that criminal intent may be inferred from the circumstances shown to have existed both before and after the fact, and this is how you, the jury, make a determination of whether or not the element requiring criminal intent is present.

Criminal intent is a state of mind that operates jointly with an act or omission in the commission of a crime. Criminal intent is a mental state of conscious wrongdoing, so it is up to you,

the jury, to determine whether the State has proved the element of criminal intent based on the circumstances shown to have existed. The state must prove criminal intent beyond a reasonable doubt, just as the State must prove every element beyond a reasonable doubt.

Now, on the issue of intent, if the defendant with malice aforethought kills or attempts to kill another person and by mistake injures or kills a different person, then the defendant still has the intent to kill. The intent to kill is merely transferred from the original person the defendant attempted to kill to the actual person who was killed or injured. Put another way, on the issue of transfer intent, because there can be transferred intent and just stating it differently, let's use a charge of robbery, for example. If an individual intends to rob a particular person, but somehow by mistake actually robs a different person, the defendant still has the intent to commit robbery.

The criminal intent is merely transferred from the original person the defendant desired to rob in the first place, to the individual that the individual actually robbed. In other words, it is not a defense to a crime that the wrong person was

robbed.

All right. Now, in this case you noted, I suspect, that the defendant did not testify, but I'll tell you this is not a factor to be considered by you in any way in your deliberations or in your consideration of the question of guilt or innocence of the defendant with regard to each of these charges. It shouldn't be considered by you in any manner, whatsoever. The defendant has the Constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations.

I repeat that under your oath you are to draw no conclusion, whatsoever, from the fact that the defendant did not testify in this case, and the fact that the defendant didn't testify shouldn't even be discussed in the jury room, because the burden of proof, as I stated from the very beginning, is always on the State and remains with the State. The defendant has no burden of proof, not required to prove his innocence, not required to put up a case, and certainly not required to testify. The burden of proof remains on the State at all times to prove the defendant guilty beyond a reasonable doubt.

Let's talk about the three charges which are

alleged here in these cases. First I want to define for you the charge of murder. The defendant is charged with the murder of Christopher Bristow. In order to prove this charge, the State must prove beyond a reasonable doubt that the defendant killed Mr. Bristow with malice aforethought. Malice is hatred, ill-will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with the intent to inflict an injury or on circumstances that the law will infer an evil intent.

Now, malice aforethought does not require that the malice exist for any particular time before the act is committed, but the malice must exist in the mind of the defendant just before and at the time the act is committed and, therefore, there must be a combination of evil intent and the act that occurred. Malice aforethought may be expressed or it may be inferred. Now, these terms, "expressed" and "inferred," don't mean different kinds of malice, but merely the manner in which malice may be shown to exist either by direct evidence or by inference from the facts that have been proved in the case.

Expressed malice is shown when a person speaks words which express hatred or ill-will to another

person, or when a person prepares beforehand to do some act which is later accomplished, for example, lying in wait for a person or any other act of preparation going to show that the deed was within the defendant's mind, that is expressed malice.

Malice may be inferred from conduct that shows a total disregard for human life. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, the inference would be simply an evidentiary fact to be considered by you, the jury, along with other evidence in the case, and you may give it the weight you decide it should receive. That is the charge of murder.

Ladies and gentlemen, many greater offenses, which murder is the greater offense here, we also have what we call "lesser included offenses." This means that a defendant who is indicted on a greater charge can be convicted by the jury on a lesser charge if the jury finds the facts proven fits that lesser charge, and the elements of the lesser charge have each been proven beyond a reasonable doubt. That sounds like it's a little bit complicated, but really it is not. What it means is that the greater charge includes an additional element that is not

required in the lesser charge. So in this case, if you find the State has not proven the defendant guilty of murder, then you must determine whether the State has proven the defendant is guilty of the lesser charge of voluntary manslaughter.

In order to prove voluntary manslaughter, the State must prove beyond a reasonable doubt that the defendant took the life of another in the sudden heat of passion based on sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter. The sudden heat of passion may for a time affect a person's self-control and temporarily disturb a person's reason. The sudden heat of passion must be the type that would make an ordinary person unable to coolly reflect on his action and then produce an uncontrollable impulse to do violence.

Sufficient legal provocation must be the type that would make a person of ordinary reason and caution to become enraged and lose control, that is to lose control temporarily. The provocation needed for voluntary manslaughter must come from some act of or related to the victim. Words alone, however vulgar they may be or insulting, are not enough to be

legal provocation.

Where death is caused by the use of a weapon, the words must be accompanied by some overt threatening act which would have produced the heat of passion. The exercise of a legal right, no matter how offensive it is to another, is never sufficient legal provocation for voluntary manslaughter. If the heat of passion had cooled, or if there was enough time between the provocation, if any, and the killing for the passion of a reasonable person to cool, the killing would not be voluntary manslaughter.

In deciding whether a reasonable person would have had enough time to cool off, you should consider all the circumstances surrounding the killing. You may consider the nature of the provocation, if any, the defendant's mental and physical state, and the circumstances and relationship between the parties.

If in your deliberations you find the defendant is guilty of homicide, that is the taking of a life of another human, but you have a reasonable doubt as to whether the State has proven all the elements of the greater charge of murder, then you must -- or the lesser charge of voluntary manslaughter, you must resolve that doubt in favor of the defendant and find him guilty only of the lesser

offense of voluntary manslaughter. Of course, you may not find the defendant guilty of any charge unless you find the State has proven all of the elements of that particular offense beyond a reasonable doubt.

The next charge is attempted murder. As you are aware, the defendant is charged with the attempted murder of Woodrow Garner. In order to prove this crime, the State must prove the defendant attempted to kill Mr. Garner with malice aforethought, either expressed or implied. The same information I previously provided with respect to malice required for murder, also applies to the malice required for attempted murder. Again, malice is hatred or ill-will or hostility towards another person, it's the intentional doing of a wrongful act without just cause or excuse with the intent to inflict an injury or under circumstances where the law will refer to an evil intent.

Remember that malice aforethought doesn't require the malice to exist for any particular time before an act is committed, but the malice must exist in the mind of the defendant just before and at the same time the act is committed, therefore, there must be a combination of that evil intent and the act

itself.

As in the murder charge, malice aforethought may be expressed or inferred as I have already just explained to you. I will tell you that if facts are proved beyond a reasonable doubt to raise an inference of malice to your satisfaction, it would simply be an evidentiary fact to be considered by you along with such other evidence in the case, and you may give it the weight it should receive.

I'll tell you that a specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury. "Intent" means intending the result that actually occurred, not accidentally or involuntary. Intent may be shown by acts or conduct of the defendant and other circumstances for which you may naturally and reasonably infer intent.

Evidence of the character of the act, the character of the instrument used, the manner in which it was used, the purpose to be accomplished and the resulting injury may be considered in determining the intent with which the act was committed. Intent may also be inferred when it is demonstrated that the defendant voluntarily and willfully committed the act, the natural tendency of which is to destroy

another's life.

Now, just as the murder charge had a lesser included offense, the attempted murder has a lesser included offense as well, and that lesser included offense of attempted murder is assault and battery of a high and aggravated nature. So as I explained to you earlier, many greater offenses have included lesser offenses, and included within the greater offense of attempted murder is assault and battery of a high and aggravated nature.

If you find the State has not proven the defendant guilty of attempted murder, then you must determine then whether the State has proven the defendant guilty of a lesser charge of assault and battery of a high and aggravated nature. In order to prove assault and battery of a high and aggravated nature, the State must prove beyond a reasonable doubt the defendant willfully and unlawfully injured another person, and that great bodily injury to another person resulted or the act was accomplished by means likely to produce death or great bodily injury.

Great bodily injury means bodily injury which causes substantial risk of death, or which causes serious permanent disfigurement or protracted loss or

impairment of the functions of a body member or organ.

If in your deliberations you find that the defendant is guilty of one of these charges, but you have a reasonable doubt as to whether or not the State has proven all of the elements of the greater charge of attempted murder, you must resolve that uncertainty in favor of the defendant, and you must find him guilty only of the lesser included offense. Of course, you may not find him guilty of any charge unless the State has proven all of the elements of the particular charge beyond a reasonable doubt.

Ladies and gentlemen, the last charge that we have here that I want to give you the law on is on possession of a weapon during the commission of a violent crime. As you are aware, the defendant is charged with possession of a weapon during the commission of or attempt to commit a violent crime. To prove this charge, the State must prove beyond a reasonable doubt that the defendant was in the possession of a firearm or visibly displayed what appeared to be a firearm during the commission of a violent crime. A firearm means any device or weapon which is designed to or may be readily converted to expel a projectile.

BY THE COURT - JURY CHARGE

In order to find the defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the defendant guilty of either committing a violent crime or attempting to commit a violent crime. I charge you that under South Carolina law the offenses of murder and attempted murder are violent crimes. In addition, the State must prove beyond a reasonable doubt that the weapon further advanced or helped in the commission of the crime.

Mere presence at the scene of some incident is insufficient to prove somebody guilty of a crime. The burden is upon the State to prove every element of a crime as charged. If you find after you review all of the evidence that the State only proved the defendant was present at the scene of the crime or at the scene of some incident and has not proved beyond a reasonable doubt any other participation in the crime, you must find the defendant not guilty. The law is that proof of mere presence at the scene is not sufficient to find someone guilty of a crime.

I further charge you that these charges, criminal charges, the three criminal charges, are separate and distinct. These indictments are separate and distinct, and they should be considered

and must be considered individually by you in your verdict. One does not necessarily control your verdict on the other.

Mr. Foreman and ladies and gentlemen, in a few minutes you are going to retire to begin your deliberations after you heard from counsel with their closing arguments. I'll say to you, I want to express to you that the hope, and I know that you are, that you're mindful of the importance of your responsibility. You may recall that we discussed on Monday that you cannot be required to serve as a juror more than one time in three calendar years in the same court, and there is a reason, because it is a difficult task and it requires you and I to reach the height of freeing our minds of all outside and improper influences because you and I are acting for the community here to see to it that every verdict is fair and every verdict is just.

Now, you've probably noticed that throughout the trial the presiding officer, me, is referred to as "Your Honor," and I know that you know that is a title that is assigned to the position that I'm privileged to hold, and that is because this Court is entrusted with the honor of this community, this county and this state and, indeed, this nation to see

that every trial here results in a fair and just verdict.

In a few minutes you'll take with you the protection of and possession of the honor of this community, state and nation. In the jury room when you decide these cases -- and, ladies and gentlemen, please understand, I'm not telling you how you should decide this case, that is not my point and that would not be appropriate even if I was attempting to do that, which I'm not, I'm simply saying as a presiding officer it is of vital importance to me and to this process that whatever verdict you reach will be the result of your going back in the jury room, confining your consideration in the evidence put forth in this courtroom, weighing that evidence fairly and impartially and applying it to the law that I have given you here in this charge and reaching a verdict which is just and fair. If you do that, you will reach a verdict just and fair.

I'll tell you that everyone in this case is entitled to justice on both sides. I have no support or sympathy to any part. I am of the firm opinion the verdict that you reach, if you follow the instructions, will represent truth and justice for all of the parties.

BY THE COURT - JURY CHARGE

In a few moments, after counsel has argued, I'll come back and discuss with you the verdict form, because the verdict form is set up in such a way that guides you through the decisions of whether there is a greater charge and then the lesser charge, so we'll talk about that a little bit further at that point, but not at this point.

That concludes the Court's charge, and at this time, the Court recognizes the prosecution for closing.

MS. DAVID: May I approach?

THE COURT: You may.

(Whereupon, a bench conference was had.)

THE COURT: We've been here almost 40 minutes. Is there anyone that needs a break? We anticipate that arguments of counsel will be roughly 30 minutes or so, and we'll see at the next one if we need a break. All right.

MS. DAVID: May it please the court?

THE COURT: Yes, ma'am.

MS. DAVID: Good morning. Ladies and gentlemen of the jury, I want to thank each of you for your patience this week. This is our third day here, and it's been a long week for all of us. If you're not tired right now, I know I am, but we've come to the

most important part of the trial, and here is where I need you to pay the most attention.

At this point the State spent the past two days presenting facts and evidence of eyewitness testimony, photos, items collected and videos to show the defendant's guilt. The judge now instructed you that the defendant is innocent until proven guilty, and it is the State's job to prove this guilt beyond a reasonable doubt.

Now, let's talk about beyond a reasonable doubt for a moment. Reasonable is simply what the average person would think. We're not talking about a genius professor at Harvard, and we're not talking about a man that sits on the corner with a box TV on his head. We're talking about average, reasonable people. He tells you beyond a reasonable doubt, not beyond all doubt and not with absolute certainty, but a reasonable doubt.

Now, doubt is just a feeling that something may not have happened a particular way, and when I say "beyond," it means we're going to go past that. So today we're going to go beyond a doubt that an average person might have that the defendant did not commit these crimes, and I'm going to assure you so that you feel firmly convinced when you go into that

jury room that the defendant is guilty of the crimes charged. We have murder, attempted murder and possession of a weapon during the commission of this violent crime. Let's get started for today.

First charge -- we're going to do it in the opposite order. The first charge, possession of a weapon during the commission of a violent crime. We have two elements here. Defendant must be guilty of a violent crime, and the weapon must have been used in furtherance of that crime.

Now, to do my job, I'm going to prove this to you, each and every element, and we're going to take that beyond a reasonable doubt. As for Element No. 1, the defendant has been indicted for murder and attempted murder, both which are listed by the South Carolina Statutory Code 16.160 as a violent crime. Even the lesser included of voluntary manslaughter and ABHAN, those two are still lesser included offenses, so it is a violent offense.

As to Element 2, the weapon must have been used in furtherance of that crime, that has been proven to you this week. We are going to do this in the form of five, four, three, two and one. Five of the seven witnesses to the crime told you that they saw the defendant with the weapon, that would be

Woodrow Garner, Chalupa, Dustin, Sonya and Brandi.

Four of the witnesses told you that they witnessed the defendant do the shooting, Woody, Sonya, Dustin and Brandi.

Three of the SLED agents tied together the fact that the defendant himself was the shooter, Michelle Eichenmiller with firearms testified that the bullets removed from the victim's body were, in fact, the bullets shot by this gun here (indicates). Michelle -- Michael Moskal with gunshot residue testified that the gloves recovered from the scene, which were found by the defendant himself, did, in fact, have gunshot residue on both of them. And although Jennifer Clayton with DNA wasn't able to give you conclusive evidence about the revolver, and let's keep in mind she said it could be based on the weathering, the rain could have watched it away or that the defendant had on gloves which prevented his DNA to get to the gun. She did tell you that Dixon was the major contributor to the gloves that were worn.

Two of the investigators, Larry Turner and Jamie Seales, both testified that the defendant took them to the gun. And, finally, which takes us beyond a reasonable doubt in this case, the defendant

himself tells you in the video as you watched it in both of his statements -- that we don't know if it is true or not -- he tells us both times that he pulled out the gun himself and shot him.

So we have possession of a weapon during the commission of a violent crime, as you have the bullets from the body that was shot by the gun, you have the gloves that were worn during the shooting with the GSR on them with the DNA of Mr. Dixon. Checkmark, we have that.

Next, we have attempted murder. Before we go into attempted murder, we need to address the lesser included offense of assault and battery of a high and aggravated nature. Now, I will agree all of the elements of this are met. It is unlawfully injuring another person causing great bodily injury or the act is accompanied by means likely to produce great bodily injury. I'm not sure if you can see this on the screen behind me. All of these elements are met, because as the judge described to you, it is a lesser included offense.

The greater offense is attempted murder, which has an additional element that applies to intent to kill. Now, let me kind of tell you the difference between ABHAN and an attempted murder is. An ABHAN,

you are just trying to hurt somebody, but you are not actually trying to kill them. A good example would be if I were to take a shovel and hit somebody with it, maybe I intend to injure them, maybe I intend to knock them down, but I don't exactly intend to kill that person to take their lives at my hand.

If I take a gun and I go across the top of someone's head, maybe I intend to hurt them, knock them out, but I didn't shoot them. I never intended to kill them, I just wanted them down. Now, in this case it an attempted murder because there is an intent to kill, but it becomes an attempt because it is an incomplete act. So let's walk through these elements.

You have murder, which is killing of another with malice aforethought. You have an intent to kill. What's my job? I'm going to prove to you each and every element, each and every element beyond a reasonable doubt so that you don't have any questions when you get to the back.

Let's go. Malice aforethought. For malice aforethought, we have three of the four elements required. We have intent to kill, intent to inflict grievously bodily injury and extreme reckless indifference to human life.

Now, felony murder is also a part of this, but it doesn't apply to this case. However, three of those four things that define malice do apply, and they apply all at the same time. We have the intent to kill, intent to cause grievous bodily injury and extreme reckless indifference for life at one time. As I just told you, when the defendant stands there and takes out a loaded revolver and points it at arm's length while other people are standing, that is an intent to kill. That is extreme indifference for the life of others, because he pulls this out and he doesn't care who is there.

The two main organs of the body are the heart and the brain. He's standing at 6'3" with a gun at arm's length. Now, if he doesn't intend to kill, I'm not sure what he's trying to do. If the defendant had taken this gun and pointed it down at the ground and shot, I might say, Oh, he intended to scare them. If he shot at their foot, I would have said, Oh, he intended to hurt them. If he had even shot in the air I might have said, He intended to scare them, maybe a bullet ricocheted or hit somebody, but that is not what the defendant does.

The defendant himself, along with several witnesses that were present, they tell you he pulls

out a weapon, a deadly weapon, arm's length level where other people are standing and just starts dumping. We call that shooting.

Now, he didn't intend to kill? He definitely wasn't trying to say happy birthday to anybody any time soon. Element No. 2, for the intent to kill, it is an incomplete act. In this case we have Woody Garner sitting right here with us, and he's alive. That is what makes the act incomplete. But don't take him sitting here to look at this as a lesser included offense. Don't look at the injury as being minor and so, oh, because, you know, he's not walking around with his head to the side that it should be a ABHAN. You look at the intent. Look at the intent on the crime, not the injury that results.

As Dr. Parekh tells you, it was serious because he had a hemorrhage to the brain that couldn't be treated. They had to immediately transfer him to Marlboro Park Hospital. The difference between Bristow and Woody, Bristow was shot in the back. He never stood a chance. Woody is looking at the defendant holding the gun. He tells you himself he sees the fire come from the gun, and at a moment, he's able to duck and save his life.

Now, while the defendant's religion is killing

people, maybe Woody has some religion we don't know about that's saving people's lives. Maybe I do know about that, I should not have said that.

Now, what simply took us beyond a reasonable doubt in that case was the fact that you have eyewitness testimony. He's alive, he survives it. You see the wound for yourself. What also takes you beyond a reasonable doubt is you know that there was an intent to kill, because if you think about the fact -- the defendant had pretty good aim. He tells you he shot five times. Three of the five shots goes to the middle back of Chris Bristow. He knew what he was aiming for, and he hit it. He was aiming for Woody's head, and had he not ducked, he would have hit that too. Only one bullet out of five goes astray.

Even if you still don't feel comfortable, the doctrine of transferred intent will take you a step further to find the defendant guilty of attempted murder. Let's talk about transferred intent. It is simply what is said. It is the -- it transfers the intent to kill or the attempt to kill to a third party. So let's say hypothetically speaking you have two people standing side-by-side to each other adjacent, or you have two people standing one in

front and one behind. If someone intends to shoot me, but I duck down, and instead there is a third person behind me, that intent to kill me or attempt to kill me transfers directly to the person behind me.

In this case, even if you don't think -- I don't see how you don't think when you unload the weapon and see people standing there, but if you don't think it, the doctrine of transferred intent applies because at this time he hit Woody (sic) in the back, so Woody (sic) drops to his knees. Coming out the door behind him -- he hits Bristow in the back, and coming out the door behind him is Woody, right across the head.

Now, before I get to what we came here for today, the attempted murder was important, but we have a serious issue with our voluntary manslaughter. I want to talk to you personally. When I opened this case, I started with, It's too cold. The State took the position that what I told you was true. You heard the testimony of Mr. Johnnie Roscoe when he said the defendant came to his house, he was cold and he was wet. He just wanted to come in out of the rain and sit and talk for awhile.

You heard both the investigators tell you that

he was cold, he was wet and that is why they changed his clothes at the sheriff's office. However, the State made a decision -- maybe based on some other influences -- to refrain from using that language in the courtroom. We did not want to lower or degrade ourselves, so I apologize, and that is why I did not go back to that theme in this case.

However I also need you to know that whether or not it was cold outside, that's not an element, even though we know it was. Murder, and that is what we came here for today, murder is as we've discussed, the killing of another with malice aforethought. Malice aforethought can be found at four possible mental states, intent to kill, intent to inflict grievous bodily injury, extreme reckless indifference and intent to commit felony murder. Malice does not require ill-will, meaning hate or anger, but it can, that is a part of it.

Aforethought does not have a set amount of time. It simply is a voluntary act, even if it happens a split second before something occurs where you make a decision to do it, not something you had to think about last week or last month, it's at that moment, if you make a decision to do something.

Now, the first element of murder. Let's get

this covered. Let's get it straight and out of the way. Killing of another. Bristow, Chris Bristow, is dead. He was killed. Dr. Presnell testified that the cause of death is homicide due to three gunshot wounds to the back. Dr. Parekh testified that when he arrived at the hospital, there was not a pulse at 10:22 that night. When I asked the witnesses why do they remember December 20, 2012, they all tell me they remember that day because that was the day that Christopher Bristow was killed.

We all heard Sonya Caulder scream and yell for her friend on that 911 call, as she says, Wake up, Bristow. Get up, Bristow. We know while we're listening to that call that either Bristow is dead or he's on his way there.

Let's move into malice aforethought. We're going to do this jointly with voluntary manslaughter. Malice aforethought can be defined as ill-will or hostility towards another person. It doesn't have to be, but it can be. It is the intentional doing of a wrongful act without just cause. It is the intent to cause grievous bodily injury, and it's acting with recklessness, which is nothing more than having a substantial disregard for life. We're going to do voluntary manslaughter. I just need you to stay with

me, we're going to get to it.

Voluntary manslaughter is the unlawful killing of another and the sudden heat of passion soon after legal provocation without malice aforethought. So murder, unlawful killing with malice aforethought; voluntary manslaughter, unlawful killing with sudden heat of passion and sufficient provocation, no malice aforethought required. Keep in mind on voluntary manslaughter you need sudden heat of passion and sufficient legal provocation.

In South Carolina the way our laws are set up, we have state legislators that we elect every year and they go down to Columbia and make statutory law. They create the elements for murder, elements for attempted murder, elements for ABHAN. Then we have case law, and how that comes about is you have certain cases that happen in different areas, and the judges rule on those cases based on the facts as they are applied to that law.

So our case law tells us that heat of passion renders the mind of an ordinary person incapable of cool reflection. The provocation must be that which naturally and instantly produces in the mind of a reasonable person. So you have a sudden heat of passion, meaning the person -- an ordinary person --

does not have time to cool off, and sufficient legal provocation means a problem or an issue that an ordinary person would recognize. Something that is reasonable.

So now let me give you a few examples. As you heard the judge tell you, words alone are not enough to amount to sufficient legal provocation of voluntary manslaughter. Sticks and stones may break my bones, but words will never hurt me. We know the two are having an argument or heated discussion. How do we know this? Everyone tells you that. The witnesses tell you that, and the defendant himself tells you that. He has told you that Bristow did not like him waving his arms around. All of the witnesses, I asked them on the stand, Did you hear any yelling? Did you hear any screaming? Was it loud? They all tell me, no. But they all do say, yeah, they are having an argument or discussion or talking about something, but the words alone are not enough.

Now, voluntary manslaughter with this heat of passion and sufficient legal provocation usually applies, not always, but usually applies to situations of adultery. What I mean by this is a man comes home and finds his wife in the bed with another

woman. We've all heard about situations like that. We hear the gossip. What is typically said? When that man find out, he's going to kill him. Because they are thinking when he walks in there, he's not going to have time to think, he'll act. But that is something that reasonable, ordinary, common people hear and see every day.

This applies to situations where there is fighting, where it starts out with the punch to a face and you are fighting back and forth, and before you know it, you grab something off the table and gone across somebody's head. That's sudden heat of passion and sufficient legal provocation where you've killed and then you didn't have time to cool off, and before you know it, it is done and too late to do anything about it.

It applies to situations where there is fear, but the fear has to be legally provoked to cause the defendant to lose control. In this case, I'm going to tell you, this defendant over here never had any fear that night. He was creating the fear. He comes into the bar dressed in dark colors, black shirt, dark jeans, blue bandanna hanging out of his pocket, gloves. He tells you himself he had two when he first got there, one by the time he gets to the

sheriff's office.

We know there is no fear. He goes in, talks to people, he shakes hands, shoots pool and he even buys Bristow, the one he kills later, a beer. How do we know this? Woody, the owner of the bar, served him, he told us, and Brandi Jones, who invited him there, she told us. We even know he has friends there. He talked to Brandi on the phone before he went there. He has his friend Brian there with him. He tells you this. Brandi told you this. He's not in fear of his life.

We further know he's the creator of the fear because we have eyewitness testimony telling us over and over again Bristow, the guy that gets killed, asked him to leave. We know that Bristow was uncomfortable with him waving his hands because he tells us in the video. Bristow is uncomfortable with him. Further, we know Bristow is patting him down for a weapon, here and here. He's not up here. He's here. He's looking for a weapon. He's nervous about this guy being in this spot.

Now, if the defendant did feel fear, this guy, Mr. Dixon, if he felt fear and he felt it was eminent danger of his life, if he felt bad in any way, guess what, he always had the decision to leave. He always

had the choice, because we always have a choice of life to walk away. Nobody had put their hands on him.

Instead, what he tells you in this video is that he felt the tension in the air, and what did he do, he puts on a second glove. Why is he putting on the second glove? He knows what he's about to do. At that moment, when you stop to think there is tension in the air, you could have stopped to think, I need to walk away and go home before something happens. No. He stopped to think, Let me go ahead and get ready for this, I'm about ready to show them.

We also know he didn't have fear because he is one of the only people out there with a loaded weapon. How do we know? He tells you. Investigator Seales asked him in the video, Do you normally carry a gun? No, he just had a funny feeling about that night.

So now here is where -- let me clarify that. Those two examples were examples showing the lack of sudden heat of passion. He had a choice to walk away. There was time for an ordinary person to cool off and walk away, because nobody was hitting him. There was not a threat for his life. He was not under fear. He put on a glove. When you stop then

and thought about it, you could have stopped and walked.

Here is where the other part of that voluntary manslaughter falls apart. You need sufficient legal provocation. It must be such that an ordinary, reasonable person would lose control. That is where our problem comes in. Problem comes in here (indicates), but I won't use that today. Let's walk through the night, through the events that took place.

Brian and his friend, David, show up at Woody's. They go in, and as I told you ten times already, they shake hands, talk to some people, drink beer, shoot pool. Dixon walks outside to get more beer. Shortly thereafter, Bristow goes outside. They are having a conversation. They are using hand gestures. How do you know? Travis Pruitt is looking out the window and he sees the gestures. The defendant himself tells you he's using hand gestures.

Defendant asked him to leave, he then pats him down, and then what does he do next? He has a bandanna hanging from his pocket. He takes it out of the pocket of the defendant and he waves it and he throws it to the ground based on the testimony from Chris Sanchez, a/k/a Chalupa.

Now, for the defendant, I want you to please know that as I took this bandanna out, it is not a bandanna, it is a white handkerchief, but I didn't mean any disrespect to you or your organization, because I love my life, let that be known. However, on the night that this occurred, Christopher Bristow didn't get that opportunity, because as he turned around after taking the bandanna from the pocket, he was shot three times in the back. Sonya Caulder testified he stiffened, and as testified to, that is probably how he got the GSR on his hands, as he grabbed his wound.

Ladies and gentlemen of the jury, because I refuse to touch this after knowing what it has done, this is not sufficient legal provocation (indicates). Ordinary people don't know that this (indicates) means death. You think to yourself, you think about life, think about common experience. Your Honor, the defendant even tells him himself at the end of the video -- and I would love it if you would watch the video so you can see that this stuff I'm telling you is true -- when asked by one of the investigators did he know you were in a gang, and he says (indicates).

So if he doesn't even know you are in a gang, how does he know this is going to take his life? He

doesn't. Ordinary reasonable people don't know. I'm not adding any disrespect. I don't mean any disrespect, but, to me, this is the same as that (indicates). To most people, this is the same as that (indicates). You don't know this means death.

Let's take it a step further. Once this act is done -- done -- once this is done, the defendant, he immediately runs, but then he begins to cover up, as most do. He's already had that GSR on the glove, he throws that in the woods, throws the gun in the woods. He eventually comes out. He asked to speak to Larry Turner. He wants to speak to Larry Turner because Larry Turner knew his grandmother. So he goes to the officer that might help him out.

You watch the video and he tells you a story. The first time, the victim, Christopher, has a gun. We know that is not true, but then he tells you this second story where he says I pulled a gun like this, say when he pulled the flag out of my pocket, that he pushed me. Say? What is that? Either he did it, or he didn't do it. They are not about to help you concoct something to present to the jury.

You hear him say, What is the least I can get charged with this? Voluntary manslaughter dropped down to murder? On this particular night that was

murder and not manslaughter, because the defendant intended to kill. There was malice aforethought as he became angry, created ill-will, hatred. The State doesn't have to prove motive, but that is his motive for killing. He created these things and decided to open fire with three people standing and unload a loaded weapon and referred to it as "dumping."

At this time, ladies and gentlemen of the jury, we have proved murder to you, the unlawful killing of another with malice aforethought. He even says to you when asked on that interview why he did it, he says he felt -- he said the victim disrespected his religion. Insufficient grounds to kill somebody, because they disrespected your religion.

What the defendant did that night is he enforced his law, his religion on somebody who didn't know anything about it. What I'm asking you all to do is to enforce our law, the law written by the State of South Carolina where we put in the elements for murder against him, for which he knows about. Bristow didn't know about his law, but he was well aware of our law, and that is one of the things you learned as a child, do not kill, do not steal.

At this time -- at this time -- the defendant

on that night planned out how he was going to get his job accomplished. He put that glove on to keep that DNA and print off the gun. He turned around, he opened fired with a loaded .38 revolver with three people, at least three people, standing there, shooting and aiming to the heart and the brain. He intended to kill. He left, and then he began working to get lower charges from that point forward. That is why he walked them through the woods to find the gun and find the gloves. He's working and asking about lower charges. He's trying to get lower charges.

Today it is my turn to do my job. I ask that you enforce the State of South Carolina, but I want to get my job done the way I want to get it done. I told you about this case. I've proven to you each and every element of the crimes charged beyond a reasonable doubt, and when you go in that jury room, I ask that you find the defendant guilty of murder, attempted murder and possession of a weapon during the commission of a violent crime.

Before I sit down, I want you to listen to the chaos, listen to who had the fear that night when this murder occurred. We're going to hear the 911 tape again. At that point, at that moment, Chris

Bristow is laying on the ground dead. His friend, Sonya, is calling to him, Wake up. Wake up. Her boyfriend is going crazy. He doesn't know what to do. He's shooting shots because his girlfriend is screaming that his best friend is dead. His other friend ran after the murderer, and then turned around and ran back. There is complete chaos. All of these people are in fear because of him -- him. If they wanted to hurt him -- they told you several times, we're all friends. We hang out there every weakened, Thursday, Friday, Saturday, Sunday. If they wanted to hurt him, they could have punched him in the face, jumped on him, but they chose not to. They did not want to. They wanted him to leave, but he made a choice to take their life.

Listen to this video.

(Whereupon, the 911 take is played.)

MS. DAVID: Please remember as you deliberate, voluntary intoxication is not a defense. Self-defense does not apply in this case. As you talk about it, we have three shots to the back. What is worse than getting stabbed in the back, getting shot in the back. Please find this defendant guilty of murder.

THE COURT: Ladies and gentlemen, let's take a

morning break before we go to our final argument, and we'll be in recess approximately 10, 15 minutes, so please don't discuss the case. If you want to go outside we'll give you that opportunity.

(The jury exits at 10:48 a.m., the following is heard out of the presence of the jury.)

THE COURT: Court is in recess for approximately 10, 15 minutes.

(Whereupon, a recess was taken.)

THE COURT: The verdict is satisfactory to the defense and the State, I just wanted to confirm?

MR. STEEN: Satisfactory to the defense.

MS. DAVID: Yes, Your Honor.

THE COURT: Thank you. Please bring in the jury.

(The jury enters at 11:04 a.m., and the following is heard in the presence of the jury.)

THE COURT: Welcome back. You all recall that we concluded the closing argument of the State, and we now move to the defense. Court recognizes the closing for the defense.

MR. STEEN: Thank you, Your Honor. I'm going to jump right in. I'll start with the attempted murder charge. The State told you the law, I'm going to tell you the law also. The State must firmly convince all of you that Mr. Dixon did attempt to

kill Mr. Garner and that he did attempt to seriously injury Woody Garner, and that he did also have hatred or hostility towards Mr. Garner. The State failed to do all of these things. Mr. Dixon, he doesn't know Mr. Garner. You heard that through the evidence this week. He had no evidence (sic) to hurt him. You heard Mr. Garner's testimony, a little bit different than everyone else's. He's the only one that saw Mr. Bristow go out the door first with Mr. Dixon following him. He's the only one who saw Mr. Bristow only get shot two times.

He stated there was upwards of 30 people there that night. You all heard from 90 percent of the people that were there, 15 people total. The facts are a little off. He is the only one who tells this court that David Dixon looked him in the eye and shot him. No one else sees David Dixon point or even shoot at Woody Garner. As you heard earlier, Woody Garner was able to take himself to the hospital. He took himself. He left Christopher Bristow laying on the ground in the parking lot. He got to the hospital 10 full minutes before Chris Bristow. The State says he had no pulse when he arrived, and sometimes 10 minutes makes a big difference.

You heard Investigator Seales talk about Mr.

Garner's injuries, as he said the bullet grazed the top of his head, wasn't life-threatening. I don't think it is serious. I honestly believe you had no intention -- an assault charge of some kind no attempted murder, no reason to do that, this is not attempted murder. All comments made by the lead investigator in this case, but no one seen the shot, no proof, whatsoever, of any malice aforethought from Mr. Dixon towards Mr. Garner. The State failed to show that David Dixon attempted to murder Woody Garner.

The State spent a lot of time this weak trying to convince you all that David Dixon shot Chris Bristow. I told you that in my opening that we weren't going to contest that -- not going to. He shot him. The reason we're here is because me and the State disagree on whether malice aforethought and whether David attempted to kill Mr. Bristow. That day, you heard it, David Dixon called Ms. Brandi Jones saying, hey, there is a pool tournament at this bar called Lucy's that night. Woody's wasn't even on his mind. She told him, no, she didn't know. Coincidence, I guess later they showed up at the same bar. You know Dixon arrived at Woody's. You heard the testimony, no one wanted him there. I don't want

him here. This is our spot. You need to leave. He had done nothing, you heard no testimony of him insulting anyone, looking at anyone the wrong way, anything. There was no evidence, whatsoever, of any ill-will, hatred, anything between Mr. Dixon and anyone else in that bar.

He bought the victim a beer. The State made that seem like a bad thing. I thought it was friendly. He shook everyone's hands, bought a beer. David was in a place by himself with people that didn't like him. He was trying to make it better. He was doing nothing to bring on the situation that happened later. You heard it, as soon as he got there, the victim called Chris Sanchez and said, hey, come up here, David's up here. Nothing had happened at that point. David had just walked in. Victim calls one of his best friends to come up there because David got there. I'll let you figure out what that entails. Ten minutes later, there was Christopher Sanchez. Not long after that, according to everyone, is when this incident went down.

David was there, he was playing pool. He was there talking to Ms. Jones. He showed her his tattoos. He was not thinking that he was going to kill anyone. First time he had been to Woody's, just

there to have a good time. Next thing you know, David went outside, he left. He went outside. As you heard, Brian was 17, he couldn't drink in Woody's. Beer was outside, they went outside so Brian could get a beer. The testimony is about two minutes later is when Mr. Bristow came outside. Not long after that, Ms. Sanchez came outside. David didn't say, hey, you all come outside, didn't make threatening motions to come outside. He went outside with his friend so his friend could get a beer, 17 years old, he couldn't drink inside.

For some reason, Chris Bristow and Christopher Sanchez went outside to tell him to leave. Again, he had done nothing up to this point. He went outside to tell him to leave. David was outside. It would have been better if they would have separated the same way. Still, no problems between the two and no evidence of problems between the two. You heard it, no one here disagrees with the fact that Bristow started touching, feeling on David Dixon first. I think someone this week made a comment that patting someone down is not offensive. I beg to differ. If someone touches you all over at a bar without you asking them to, you're going to get offended. He's not a cop. He's not security at the bar. He is not

a friend of his. Why was he touching him? The State made it sound like it was okay to touch people. It is not okay. He is patting you all the way, and that is offensive no matter what state said. Pulling on David's pocket, threw his bandanna on the ground. Bristow pushed him. At that point, you heard Sanchez say this is what we do, they said that to David.

A few things that David was without fault. He was out there having a good time, got followed outside, got offensively touched, got offensively touched again. Surrounded by people you don't know, he snapped. He told you what happened on the video, he snapped. Again, something else, there is another gun on the scene. Someone fired at David with the sole purpose of saying I got a gun, come back. I want you to know in case you want to come back, I have a gun waiting for you. This is the type of place we're at. Apparently guns are just there.

Mr. Locklear stated he fired -- it was a .22, fired in the air. Cartridges were found right there (indicates), straight up in the air, fell right down where he was standing. He said the only shell casings found on this scene was Dustin Locklear's. Again, Mr. David Dixon's gun was a five-shot revolver, it held five bullets. That is the most

bullets that could have come out of his gun that night. When it was found. It was empty, and no one disputes the fact no bullets are found anywhere else -- no bullet casings were found, actually. There was several testimony -- one person said seven, eight shots, one person said six shots, one person said seven to ten shots. That is a lot of additional shots after five. No one seems to know exactly what happens with the rest of the shooting that night.

Another thing, there was gunshot residue on the victim's palm. The State tells you that he could have touched his wound. That's odd, because the forensic pathologist told you there was no gunshot residue due on his back. Could it have gotten on his hands from the outburst from David's gun? Again, Mr. Bristow was shot in the back. Did the gunshot residue go around the body and get on one hand?

The State has reasons why three gunshot wounds to the back. Jamie Seales said if he shot him in the back there probably will believe gunshot residue. No gunshot residue was found, and no one mentioned it -- actually, the forensic pathologist was asked and she said there was no GSR found. On the same note, you also heard that GSR can stay on the body indefinitely leading up to autopsy, and at autopsy it wasn't

there.

You met a lot of law enforcement this week and worked really hard on this case, you can tell. They did a good job. Every one of them said only good things about David. There was no evidence of problems with anyone. Seales said I know you are not a cold blooded murderer. You felt the heat of a moment, sounds kind of familiar, doesn't it? Again, he was cooperative. He talked with law enforcement to give them the gun, and he went beyond and above helping them, just in case a kid found it, and he agreed with it. He doesn't want anyone to end up in the life he's had. They got the gun.

Based on all of that, the State is telling you there is no heat of passion, no provocation. David Dixon did it all on his own. He instigated it from the beginning, and we all know that is not true. There is no evidence to the contrary that he did nothing to until the point where he felt threatened. No evidence, whatsoever.

The State tells you that there is no way he was scared, that he had no fear. I beg to differ. Again, he was out of place. Obviously people do not want him there. They let him know they don't want him there. He goes outside in a dark parking lot and

people, two big guys, follow him out there. They discuss, have conversations. It was described different ways, verbal disagreements, heated discussion, arguments. They were talking about nothing was happening until Chris Bristow decided to get physically involved with David Dixon. The Solicitor tells you that David Dixon should have walked away. He did walk away. He went outside. There was a wall, door, between them.

I don't even know if David was planning on going back inside the way things were going in there. He said people just did not want him there. The Solicitor states that he put on his second glove as, I guess, cause of tension, but at that point he went outside. You heard a lot of testimony. It was cold and rainy that night. He put on the glove because he went outside in the cold and in the rain. I don't see how that is him premeditating anything with the situation. Solicitor states that Mr. Bristow -- Mr. David Dixon was one of the only people out there with a gun. There is plenty of evidence with guns. Dustin Locklear was shooting it back saying if you come back, I'll shoot you. Victim with gunshot residue on the hand, the victim's best friend with a pending gun charge. Guns are a way of life around

there, unfortunately.

The Solicitor tells you that pulling the bandanna out of his pocket was not respectful, was not -- pretty much everything David Dixon said it was. Madam Solicitor had a different lifestyle than David Dixon. Comparing her life situation with his is not fair. They do not have the same families or same upbringing. David wishes he had the upbringing Mia had, but that's why we are here today.

It's been a hard case, I know this. Me and the Solicitor have been working for a long time. It's been very hard on this family and very hard on Mr. Dixon's family. But today is your time. I want you all to think about everything seriously. This is a very, very serious offense. David Dixon did not attempt to murder Woody Garner, did not know him. David Dixon did not murder Mr. Bristow. There was reasons behind that. He did not just say, Um, I don't like you, bang. Not the case. He did nothing to bring it on himself. Based on that, I implore you to go through the evidence, deliberate amongst yourself, and after you do, I know that you'll find that David Dixon did not intend -- he did not go to Woody's that night expecting anyone's lives would change. Thank you.

THE COURT: All right. Ladies and gentlemen, you heard the arguments of counsel. Let me explain to you -- let's talk briefly, Mr. Foreman and ladies and gentlemen, about the verdict form so we'll have an understanding. You cannot see it because it is a little distant, but you'll have it with you in the jury room. What we have done is we've designed the verdict form to ask you to first consider the greater offense, and if there is a lesser included offense, then the lesser offense. The way we do this is there are three questions on this verdict form because there are three charges here.

Questions 1 and 2 involve murder and attempted murder. Question 3 involves the possession of a weapon during the commission of a violent crime. Let's talk about Question 1, because Question 1 is about the murder charge. It says, As to the charge of murder of Christopher Bristow, we, the jury, unanimously find the defendant, David E. Dixon, beyond a reasonable doubt -- and let me say to you, ladies and gentlemen, I have two choices to give you. I can't give them to you at the same place, one has to come in front of the other, but there is not a priority, just that one is written before the other one. The first choice is not guilty. If you find

the defendant not guilty of murder, then it tells you to consider Question 1A. If you choose not guilty, you go to the lesser included offense. However, if you choose next option, which is guilty, it says do not consider the lesser included offense because you found the defendant guilty of the greater offense.

So every time you make a choice, it will direct you as to how to proceed to the next question and which to go to. It has the same questions to the charge of attempted murder. The first question, which is possession of a weapon during a violent crime, does not have a lesser included offense, so it's a straight-up question with regard to guilt or innocence with regard to that question.

Mr. Malichi, at the bottom of the form, Page 2, is a signature block for you to write under the words, I certify this verdict is the unanimous decision of the jury.

So in the jury room you might have some standing by the wall, some seated at the table, but if someone wants to be heard, make sure they have that opportunity so that not only is your verdict a consensus, but indeed it will be a unanimous verdict, because when you sign, you confirm that it is, indeed, a unanimous verdict.

Let me speak to our two alternates. I want to say, Ms. English, as well as to Mr. Douglas, thank you for your service as alternates. Many times when we are at this point in this case and the alternates do not retire to deliberate they say, My goodness, I wasted my time. But you have not, because under our system we must have 12 jurors in a criminal case in South Carolina in the circuit court, and if we didn't have an alternate, and even if one of the jurors got sick or had an emergency and had to leave, we would be down to 11 and I would have to declare a mistrial and it would have to be tried at some point in the future. Your presence has prevented that, and I'm grateful for the your presence and I want to thank you for your service in front of your colleagues. So we'll let you all go back to the jury room together, including the alternates, and say goodbyes or speak to them for a moment while we go over the evidence, won't take us long because we've done this, in part, to make sure we have all of the exhibits in evidence and bring them back to you along with a verdict form. When we do that, then you may begin your deliberations. Just like you have been here and waiting on our schedule the last three days, it reverses and we wait on your schedule. There is no

hurry, no demand for a certain amount of time. You proceed at what speed you need to.

If you need a break during the course of the proceedings, knock on the door, someone will be there listening and we'll respond, and if you need a break, we'll let you, or if you need to good outside and get fresh air. Please, if we do that, when you separate into groups, stop deliberating so you don't reach inconsistent decisions among different groups, that would make it almost impossible or difficult to reach a unanimous verdict. So when you get back together, you may resume your deliberations. If you have a question, please write that question down and present it to the bailiff by knocking on the door and we'll respond to it in writing as well so that communication will be preserved for the record.

When you reach a verdict, if you'll knock on the door, we'll be prepared to respond to that. Please go back, take a break, speak to your colleagues, alternates, for a moment or two and when we see the evidence, we'll send in the verdict forms and bring the alternates out. We'll remain as you depart the courtroom. Thank you.

(The jury exits at 11:30 a.m., and the following is heard out of the presence of the jury.)

BY THE COURT

THE COURT: Counsel, we are correcting a typo that was discovered on the verdict form. We'll let you look at it, so if you will step forward we'll print it and let you review it. Meet with our court reporter to make sure everything is in order. We'll call the alternates back in the courtroom in just a moment. While we're printing it, will you talk to the court reporter and make sure we have all of the evidence in order?

(Whereupon a recess was taken.)

THE COURT: The evidence appears to be in order. Is there objection to the evidence from the State?

MS. JOHNSON-LEE: None, Your Honor.

MR. STEEN: Without objection.

THE COURT: The new verdict form where we corrected the typo on No. 2, is there any amendments or --

MS. JOHNSON-LEE: No, Your Honor.

MR. STEEN: No, Your Honor.

THE COURT: Mr. Brown, we are ready for the evidence to go into the jury, and if you would, please, take that in along with the jury form and bring back our two alternate jurors. Thank you.

(Whereupon, the jury begins deliberations at 11:39 a.m., and the following is had out of the

presence of the jury with the two alternates.)

THE COURT: Ms. English and Mr. Douglas, I want to thank you again for your service. I'm pleased to tell you that in a few days around the middle of next week you'll receive a check from the county, which is not enough to retire on, but it is the county's expression of gratitude, but I'm going to shake your hand as a job well done. We don't know how long the jury will be out, so you are welcome to remain with us or you are welcome to go. We are done for the week and you have no further responsibilities as a juror, so we'll give you a choice if you want to stay or remain, but I thank you for your service.

(A brief pause in the proceedings.)

THE COURT: We have administrative business, but we'll stand down for a moment and take matters not related to this case. We are in recess on this case until we have further call from the jury. Court is now in recess.

(Whereupon, Court was in recess at 11:40 a.m. until 2:15 p.m. where the following took place out of the presence of the jury.)

THE COURT: Counsel, we have some questions from the jury, if you will approach.

(Whereupon, a bench conference was had, and

BY THE COURT

Court's Exhibits 1, 2 and 3, notes from the jury, are marked.)

(A recess was taken.)

THE COURT: We been advised that the jury reached a verdict, and so we'll be at ease for a moment or two before we bring in the jury and receive the verdict.

(A brief pause in the proceedings.)

THE COURT: Obviously, ladies and gentlemen, this case has some very difficult issues for everyone involved here. We have people on both sides of the case that are present in the courtroom. I would simply say to you out of the respect for the jury, if you think about it, they are summons here and they have no involvement in this case other than being randomly summoned as jurors and picked to serve. Out of respect, let's have no reaction to whatever the jury verdict may be, and I would ask you to maintain the decorum of this courtroom, again, out of the respect for them. So, Mr. Clerk, please bring in the jury.

(The jury enters at 2:19 p.m., and the following is heard in the presence of the jury.)

THE CLERK: Mr. Foreman, have you reached a verdict?

FOREPERSON: Yes, we have.

THE COURT: Thank you. Let the record reflect that the verdict form is appropriately filled out as to all charges and signed by the foreperson. Will the defendant please rise. Clerk, please.

THE CLERK: State of South Carolina versus David E. Dixon, defendant. As to the charge of murder of Christopher Bristow, we the jury unanimously find the defendant, David E. Dixon, beyond a reasonable doubt guilty.

As to the charge of attempted murder of Woodrow Garner, we the jury unanimously find the defendant, David E. Dixon, beyond a reasonable doubt guilty.

As to the charge of possession of a weapon during a commission of a violent crime, we the jury unanimously find the defendant, David E. Dixon, beyond a reasonable doubt guilty.

I certify that this verdict is the unanimous decision of the jury. Foreman, Randall S. Malichi, October 31, 2013.

Is this your all's verdict, say it all by raising your right hand.

THE COURT: Thank you. Let the record reflect that the jury has each responded -- each and every

one raised their right hand.

While we are in the presence of the jury, are their motions for which a jury response would be necessary from the defense?

MR. STEEN: Yes, Your Honor. I would like to move for the jury to be polled as to all charges.

THE COURT: We are going to let you be seated, and let me explain this procedure to the jury. Each party after the receipt of a verdict as a right for the jury to be polled, and the way we poll the jury is as follows. Our clerk will call your name, and when your name is called, stand individually and you'll be asked two questions. The questions will be something like this, Was this your verdict, and you'll answer yes or no, and then, Is it still your verdict, and you'll answer yes or no. We'll go through the jury and poll each of you individually as to this verdict. Mr. Clerk, you may proceed.

THE CLERK: Thank you, Your Honor. Randall Malichi, was this your verdict?

MR. MALICHI: Yes.

THE CLERK: Is it your verdict now?

MR. MALICHI: Yes.

THE CLERK: Whitney Odom, was this your verdict?

MS. ODOM: Yes.

THE CLERK: Is it your verdict now?

MS. ODOM: Yes.

THE CLERK: Olivia Rowe, was this your verdict?

MS. ROWE: Yes.

THE CLERK: Is it your verdict now?

MS. ROWE: Yes.

THE CLERK: Wayne Easterling, was this your verdict?

MR. EASTERLING: Yes.

THE CLERK: Is it your verdict now?

MR. EASTERLING: Yes.

THE CLERK: Marc A. Moore, was this your verdict?

MR. MOORE: Yes.

THE CLERK: Is this your verdict now?

MR. MOORE: Yes.

THE CLERK: Kathy Manning, was this your verdict?

MS. MANNING: Yes.

THE CLERK: Is it your verdict now?

MS. MANNING: Yes, sir.

THE CLERK: Ashley R. Perhealth, was this your verdict?

MS. PERHEALTH: Yes.

THE CLERK: Is it your verdict now?

MS. PERHEALTH: Yes.

THE CLERK: Stacey Mcneil, was this your verdict?

MS. MCNEIL: Yes.

THE CLERK: Is it your verdict now?

MS. MCNEIL: Yes.

THE CLERK: Hazel Mclain, was this your verdict?

MS. MCLAIN: Yes.

THE CLERK: Is it your verdict now?

MS. MCLAIN: Yes.

THE CLERK: Luther Lynch, was this your verdict?

MR. LYNCH: yes.

THE CLERK: Is it your verdict now?

MR. LYNCH: Yes.

THE CLERK: Dennis Watson, was this your verdict?

MR. WATSON: Yes.

THE CLERK: Is it your verdict now?

MR. WATSON: Yes.

THE CLERK: Charles Tevepaugh, was this your verdict?

MR. TEVEPAUGH: Yes.

THE CLERK: Is it your verdict now?

MR. TEVEPAUGH: Yes.

THE COURT: That completes it. Was there any juror whose name was not called? If your name was not called, please raise your hand.

All of the jurors have been polled and the response is affirmative as to all questions, therefore -- now, are there any motions for which an jury response would be necessary from the defense?

MR. STEEN: Nothing further.

THE COURT: Anything from the State?

MS. DAVID: Nothing further, Your Honor.

THE COURT: All right. Ladies and gentlemen, what we're going to do now, and we'll move immediately into it, is a sentencing proceeding. In the proceeding, the State, as well as representatives of the victim's family, as well as the victim who is present, the defense will be given an opportunity to speak to the Court on the issue of sentencing. What I would like to do is invite you, if you wish, to remain with us, but we certainly do not demand it, nor do we require it, because your role as judge of facts has concluded. If you would like to join us, I would like to come down and thank you as you leave

BY THE COURT

the jury box, and we'll wait and give you an opportunity to go back and collect anything you have from the jury room and be seated out in the audience, that way you are able to leave at any time, and that way, also, if you wish to just leave immediately, then you are given the opportunity to do that.

Let me say to you that in our system we divide the responsibilities, and it is only in the case of a death penalty, which this, of course, is not, that the jury makes the decision on guilt as well as the sentence. In all other cases, the Court is charged with the responsibility for the sentence. I say that to you to say that you should feel no responsibility for the sentence whether you believe it to be light or heavy or somewhere in between, because of that division of our responsibilities, the Court is more familiar than the jurors who, of course, their business and their daily lives are outside of the courthouse. The Court is more familiar with statutory minimums and maximums as well as service requirements and other things of that nature. So I don't want you to leave here feeling any responsibility for whatever sentence may occur, because, again, that is solely the Court's responsibility.

BY THE COURT

I want to thank you for a job this Court perceived to be well done, consistent with the facts in the case and for a verdict which is just and true and represents justice for all of these parties. So let me come down and thank you personally. In a few days, and it probably will be sometime mid-week, you'll receive a check from the county, not enough to retire on or even take a vacation, but it simply is the county's expression of gratitude for your service for your per diem, mileage. I'll come down and extend my hand shake to you out of gratitude for a job well done, and I'm pleased to tell you you are through for the week, free to go if you wish.

Mr. Foreman, I'm going to step back so I can call your attention. We'll wait a moment for any jurors that would like to return as well as any response for sentencing, so we'll be at ease momentarily.

(A brief pause in the proceedings.)

THE COURT: Now, at the close of all the evidence and receipt of the jury verdict, are there motions from the defense with regards that requires a Court response, not a jury response?

MR. STEEN: Yes, Your Honor. We would like to move for a new trial as to all charges with regards

to the charge of murder. The defense does not believe the State presented sufficient evidence to warrant a unanimous verdict regarding malice aforethought. With the charge for attempted murder, we do not believe that the State presented sufficient evidence regarding malice aforethought to warrant a unanimous verdict. And with regard to possession of a firearm during the commission of a violent crime, we do not believe the State provided sufficient evidence, Your Honor.

THE COURT: Any further motions?

MR. STEEN: No further motions, Your Honor.

THE COURT: Does the State wish to reply?

MS. JOHNSON-LEE: There is more sufficient evidence presented and the jury has spoken to get past the directed verdict stage. We feel based on everything that the Court heard this far, it does not need to be repeated and that the verdict stands, and we ask the jury verdict stand, Your Honor.

THE COURT: All right. Mr. Steen, as you know, the Court gives great deference to the jury who, of course, are members and citizens of Marlboro County just randomly selected to be pooled into this and serve as finders of fact. The question is whether or not this would be inconsistent with the evidence, but

I find the verdict rendered by the jury was perfectly consistent with the evidence, and that there is ample appropriately admitted evidence in this record that supports the verdict of the jury, and for these reasons I'll respectively deny all of the post-trial motions and will confirm the verdicts which were returned.

Now, the questioning is sentencing. What I would like to do is give you an opportunity to speak on behalf of your client as well as give your client an opportunity to speak, if he wishes. I don't require it, but if he wishes, he can be given that opportunity. I also would like to give that same opportunity to the State as well as to Mr. Garner as well as to a representative of the victim, Mr. Bristow's family.

Now, Mr. Steen, do you wish to be heard first?

MR. STEEN: Yes, Your Honor, thank you.

THE COURT: Speak up so we can all hear you.

MR. STEEN: Thank you, Your Honor. We ask this Court for leniency here today. We would ask the Court for a 30-year sentence. Mr. Dixon is 22 years old. He does have a long -- hopefully a long -- life ahead of him. No excuse for what happened last December in Marlboro County. Mr. Dixon's family is

here. Your Honor, he had prior instances with the law before. Nothing further, Your Honor.

THE COURT: Mr. Dixon, do you wish to say something? Remember, you remain under oath from your discussion with the Court yesterday. If you have something you wish to say, we'll hear from you.

MR. DIXON: I would like to apologize to the family.

THE COURT: I'll let you turn and don't address that to me.

MR. DIXON: I'm sorry for everything.

THE COURT: Do you have anything further you wish to say?

MR. DIXON: I ask for leniency.

THE COURT: All right. Thank you, you may be seated.

Let's hear from the State. I would like to hear what record Mr. Dixon has as well as what the position of the State is with regard to sentencing. Before you tell me any prior record, let me speak to the members of the jury who are present in the courtroom.

The defendant does have some prior record. That was not admitted into the evidence of this case, and I will tell you that that is one of our rules,

that the prior record of the defendant only comes into evidence on limited circumstances. One of which is if the defendant takes the stand to testify, then the prior record of the defendant is admitted into evidence on the issue of whether the defendant is a credible or believable witness, not on whether or not he did the crime for which he is presently being prosecuted.

The general belief from our appellant courts and general assembly is that to automatically put into evidence any prior record that the defendant has would be so prejudicial that it would overwhelm the question of whether or not the defendant did the -- committed the crime which he is presently being prosecuted, because the jury might have the belief that because he's committed other crimes in the past, he would certainly have committed these for which he is under prosecution, that is the rationale for the reason.

So tell us what is the prior record of Mr. Dixon, and what was the age of Mr. Dixon at the time this occurred Dixon?

MS. DAVID: At the time this occurred, the defendant was 22. He is 23 as of today, he's having a birthday.

THE COURT: Very good. What was his prior record at the age of 22?

MS. DAVID: At the age of 22, from October 31st of 2008, he has a burglary second conviction, a drug manufacturing distribution of cocaine, financial transaction card theft and financial transaction card fraud. From January 31st of 2011 he has a DUI offense. From March 15 of 2011 he has a parole revocation to a YOA sentence. January 13th of 2012, it shows that he is on -- his custody status is probation. On July 24th of 2012, he has a child passenger restraint violation and a driving under suspension and operating a vehicle which is not registered to him.

THE COURT: And when this event occurred, was his status either on parole or probation; is that the State's position?

MS. DAVID: It is my belief that he was on probation.

THE COURT: Very good. Do you have a recommendation or comment you wish to make as to sentencing?

MS. DAVID: Your Honor, I think the State takes the position that we would just like to see the defendant receive as much time as possible. I think

Officer Jamie Seales has comments he would like to make, and we have a spokesperson from the family.

THE COURT: Is Mr. Garner also present in the courtroom?

MS. DAVID: He is present, but I don't know if he wants to speak. We did not previously discuss it.

THE COURT: Very good. Let's hear first from Investigator Seales, and then we'll proceed to the family.

MR. SEALS: If it pleases the Court, just to be brief, on the part of the sheriff's office, we don't have a whole lot of gang violence here in the county, and there is no doubt this was the underlining cause of this, probably not at the beginning of the situation, but at the end there was no doubt it was gang violence. We just want to be sure that the sentence deters this in the future, you know. Mr. Dixon was cooperative, he was cooperative after it happened on several different ways, his interview to some extent, looking for the weapon, but he has a prior record, as you just heard, and there is no excuse for what happened. There is no excuse. It took a lot of manpower and work, and there is no excuse for that. That is what we do, but we just want to make sure on behalf of the sheriff's office

that this sentence is a strong deterrent to a homicide in particular, but more so specifically gang violence. That is all we have.

THE COURT: All right. Thank you, Officer Seales. Thank you for what you do and being called out at all hours of the night any given day of the week. The security you proved to the community and what you attempt to do is to avoid situations like this as well as to respond when they do occur. Thank you for your public service, sir, and those of the men that work with you.

This was a well carried out and executed investigation that took place immediately and it was able to be resolved immediately, and in great part that is due to your professionalism, so thank you for what you do.

Mr. Garner, do you wish to speak, sir? I don't demand it, but if you wish -- all right, sir. We respect the fact you do not.

Is there someone that wishes to speak on behalf of the Bristow family? We'll hear from you. Please come forward, if you would. As all other witnesses, will you accept the oath of a witness from our clerk?

(BECKY TALBERT, having been duly sworn,

testified as follows:)

MS. TALBERT: My name is Becky Talbert. Chris Bristow was my nephew, my sister's only son. He worked with me for the last ten years. I run a scrapyard that he worked with me. Very loyal employee, hard worker. He had his home paid for at 27 years old when his life was taken away. He owned his own home. He owned his own car. He worked hard. He provided for his family. He was married, just got married in February of 2012, and his life was taken in December of 2012. I would like to show you, he has two remaining children that are still living, of course. This is one, she is seven years old now and this picture was taken on his wedding day, as you can see how he is dressed. This is his youngest child, she is three right now. They were both Daddy's girls. He was in their life every day. They lived in the same home. That home now does not exist the same because he's not there.

Christmastime is supposed to be a joyous time when you gather with your family and friends, and we gathered with our family and friends, but it was at the funeral home and the graveyard, that is how we spent our Christmas this past year. Everyone thinks of Christmas as a joyous time of the year, and this,

I mean, this has obviously changed that for our family. We will find joy again one day, but my sister will never hear her son say, I love you, Mom. His children will never hear his voice again, never. Never is a long time. We will never be able to touch him or hug him ever again (crying). He will forever be in our hearts, but never, never again will we see him.

We have so many memories because he was a wonderful person. He was a wonderful person. He was more like my brother than my nephew. Because of absolute and blatant disregard for human life, he is not here with us anymore, and that is not a choice that any of us made. That is not a choice that Bristow made. That choice was made for all of us.

He was a daddy to two girls. He was the only son. He was a brother, a nephew, a grandson and a cousin and a friend to a lot of people. We all have big holes left in our hearts because he meant so much to so many people. We have inscribed on his tombstone -- this is where we spent our Christmas and this is where we'll see him for his birthdays and holidays (indicates). What we inscribed was, If love could have saved you, you never would have died, and that was the truth. If our love could have saved

him, nothing could have mattered. Of course, that doesn't matter. I just ask you to consider the void left in our lives from a choice that none of us made, and Bristow didn't choose to leave us. Thank you.

THE COURT: Thank you. One moment, please.

(A brief pause in the proceedings.)

THE COURT: Mr. Dixon, please rise. Mr. Dixon, after a full trial before a jury of your peers, which you have been afforded every Constitutional right which you are entitled, sir, you have been convicted. You've been convicted on evidence that was overwhelming, it is unfortunate that this crime appears to this Court just to be a senseless, foolish and inexplicable act of a young and immature person who not only now has ruined your life, but even more importantly, the lives of many others not related to this incident in any way other than to be related to the deceased, and certainly ended the life of the deceased who you heard has a family, who has others who love him, all of whose lives had been changed dramatically because of your actions, sir.

I'm concerned that at your young age you have already had several convictions on your record. Rather than sentence you to life in prison, which is what this could carry for murder, the Court is going

to give you an opportunity to see that at some point in your life if you may turn it around and come back to be a good citizen, if you survive a sufficient number of years and are able to be released to the community, but that will be many years away, sir.

Murder requires a day-for-day service. There is no parole, there is no reduction in sentence. On the charge of murder, I sentence you to 35 years in the department of corrections. On the charge of attempted murder, I sentence you to 30 years, and that will be a concurrent sentence, and then consecutive, that is in addition, I sentence you to five years for the possession of a weapon during a commission of a violent crime, which is a total of 40 years. That is the sentence of the Court.

Good luck to you, sir, and we will remand you now to the Department of Connections.

Ladies and gentlemen of the jury, let me say particularly to the members of the Bristow family who are present that it is an easy thing to do to sentence someone to life in prison, just send them out that door forever. The Court has a belief -- and this in no way is to disrespect the deceased -- that given the young age of the defendant, he should have an opportunity to prove himself. If after 35 --

actually 40 years, if he's able to come back and be a productive citizen, that would be not only to his benefit, but to yours as well in a way that would be difficult to anticipate something this many years in advance, but that is why the Court did not sentence him to life imprisonment.

I want to commend you for the way you conducted yourselves throughout the trial. There is nothing greater, nor more pivotal and core than the loss of a life of a loved one in a way like this. You have come in here and in great part showed that Mr. Bristow was a good person just by the way his family conducted themselves here. I wish you well as you leave this courtroom and perhaps turn a page and move forward, and maybe not to forget, but perhaps to move to a time when this is less wounding for you. I wish you well to that end. Mr. Garner, you as well, sir.

That concludes this case, and this court is now adjourned.

(Whereupon, the trial of David E. Dixon concluded at 2:53 p.m., on October 31, 2013.)

(Court's Exhibit 4, jury charge, is marked.)

CERTIFICATE OF REPORTER

State of South Carolina)
County of Marlboro)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Marlboro County, South Carolina, on the 28th through the 31st days of October, 2013.

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

November 30, 2013.

Natalie Dahl

Natalie Dahl, RPR
Court Reporter

WITNESSES

Jamie Seals S

Marlboro County Sheriff

Law Enforcement Case #: 2012-007225

112

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

_____

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

_____

_____

Defendant

ARREST WARRANT NUMBER
2012A3410100337

ARRESTED ON: 2012-12-28

ACTION OF GRAND JURY

True Bill

Terrance Bight

Grand Jury Foreperson

Date 2/26/13

VERDICT

_____

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-34-0086

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
FEBRUARY 2013

THE STATE

vs.

David Eric Dixon

INDICTMENT FOR

MURDER

§16-03-0010; 16-03-0020

CDR Code: 0116

A CERTIFIED TRUE COPY
William B. Rogers
CLERK OF COURT
MARLBORO COUNTY

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF MARLBORO	)	MURDER
		§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on FEBRUARY 26, 2013, the Grand Jurors of Marlboro County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That David Eric Dixon did in Marlboro County, on or about December 20, 2012, willfully, feloniously, and intentionally kill the victim, Christopher Bristow, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about December 20, 2012, in Marlboro County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

A CERTIFIED TRUE COPY
William B. [illegible]
CLERK OF COURT
MARLBORO COUNTY

A CERTIFI
TRUE COP
CLERK OF CC
MARLBORO CC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers

WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

James Campbell 3

Marlboro County Sheriff

Law Enforcement Case #: 2012-007225

112

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

_____

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

_____

_____

Defendant

ARREST WARRANT NUMBER
2012A3410100339

ARRESTED ON: 2012-12-28

ACTION OF GRAND JURY

True Bill

Terrance Bigelow
Grand Jury Foreperson

Date 2/26/13

VERDICT

_____

_____

_____

_____
Petit Jury Foreperson

_____
Date

DOCKET NUMBER:
2013-GS-34-0087

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
FEBRUARY 2013

THE STATE

vs.

David Eric Dixon

INDICTMENT FOR

ATTEMPTED MURDER

§16-03-0029

CDR Code: 3410

A CERTIFIED TRUE COPY
William B. Sanderlin
CLERK OF COURT
MARLBORO COUNTY

William B. Rogers, Jr, Solicitor

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF MARLBORO	)	ATTEMPTED MURDER
		§16-03-0029

At a Court of General Sessions, convened on FEBRUARY 26, 2013, the Grand Jurors of Marlboro County present upon their oath:

ATTEMPTED MURDER

CDR: 3410, 16-3-29

That David Eric Dixon did in Marlboro County on or about December 20, 2012, with specific intent to kill, shoot and attempt to kill Woodrow Garner with malice aforethought, either expressed or implied, in violation of Section 16-3-29 of S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

S

James Campbell

Marlboro County Sheriff

Law Enforcement Case #: 2012-007225

James Campbell 112

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2012A3410100340

ARRESTED ON: 2012-12-28

ACTION OF GRAND JURY

True Bill

Terrence Bright

Grand Jury Foreperson

Date 2/26/13

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-34-0088

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
FEBRUARY 2013

THE STATE

vs.

David Eric Dixon

INDICTMENT FOR

POSSESSION OF A WEAPON DURING COMMISSION OF A VIOLENT CRIME

§16-23-0490

CDR Code: 0549

A CERTIFIED TRUE COPY

William B. Rogers

CLERK OF COURT MARLBORO COUNTY

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

INDICTMENT FOR

POSSESSION OF A WEAPON DURING COMMISSION OF A VIOLENT CRIME

§16-23-0490

At a Court of General Sessions, convened on FEBRUARY 26, 2013, the Grand Jurors of Marlboro County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That David Eric Dixon did in Marlboro County, on or about December 20, 2012, possess a firearm, or visibly display what appeared to be a firearm, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

A CERTIFIED TRUE COPY
William E. Gunderson
CLERK OF COURT
MARLBORO COUNTY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers

WILLIAM B. ROGERS, JR.
SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 7, 2014

Lara M. Caudy

Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT