

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable D. Craig Brown, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MUTTAQIN FATIR ABDULLAH,

APPELLANT

APPELLATE CASE NO 2016-002217

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER } COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
16-GS-43-0566

v.)

MUTTAQIN F. ABDULLAH,)

DEFENDANT.)

October 17 -21, 2016
Sumter, South Carolina

BEFORE :

THE HONORABLE D. CRAIG BROWN, JUDGE;
AND JURY

APPEARANCES:

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Solicitor

MUTTAQIN F. ABDULLAH
Pro se Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

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1 THE COURT: I've been informed that the
2 jury panel, or a jury panel, was sent over to Judge
3 Stillwell's courtroom for him to pick a jury first.
4 I wanted to come in here to see if there are any
5 matters we need to take up before the panel is sent
6 up to this courtroom. It is 20 to 12. I guess
7 depending on how many or how long it takes Judge
8 Stillwell to pick a jury, whether or not we have to
9 come back after lunch or what. I guess we'll just
10 kind of wait and see at this point. Are there any
11 pretrial matters from the State we need to take up,
12 Mr. Finney?

13 MR. FINNEY: Yes, Your Honor. Good
14 morning, Your Honor. This is the case of State
15 versus Muttaqin Abdullah, indictment number
16 2016-GS-43-0566, true bill indictment from the
17 Sumter County grand jury. Mr. Abdullah is charged
18 with murder, assault and battery with intent to
19 kill, possession of a pistol by a person convicted
20 of a crime of violence and possession of a weapon
21 during the commission of a violent crime. We have
22 elected, Your Honor, because -- if you don't mind
23 I'll give you some background.

24 THE COURT: Yes, sir.

25 MR. FINNEY: Mr. Abdullah was charged in

1 2004 with murder and assault and battery with intent
2 to kill. As a result of his status at that time the
3 case was taken to federal court, and he was tried
4 before the Honorable Margaret Seymour in 2005 of a
5 felon in possession of a firearm and ammunition.
6 Under the federal statute he was, because of his
7 status at that time he was convicted and Judge
8 Seymour sentenced him to life in prison. Because of
9 that situation he was in federal court for the last
10 10 or 12 -- in federal prison for the last 10 or 12
11 years, and we have elected to give up our
12 prosecution of him under the count three of the
13 indictment which is possession of a pistol by a
14 person convicted of a crime of violence. We did
15 that because we do not want the record to be in any
16 way tinge with the fact that he has already been in
17 federal prison, already been found guilty of that.
18 We do want to go forward with the final count, count
19 four, which is possession of a weapon during the
20 commission of a violent crime under the theory that
21 if the jury finds him guilty of either the murder or
22 the assault and battery with intent to kill, they
23 could also find him guilty of having a handgun at
24 that time to commit that crime. I wanted that on
25 the record. I wanted Mr. Abdullah to be aware of

1 that.

2 The only other matter that I think the
3 Court should help us with is, because it has been a
4 long period of time, 10 or 12 years since the crime,
5 we do not know, we don't know what Mr. Abdullah
6 wants to do about telling the jury what's been going
7 on for the last ten years. We can act like it
8 didn't happen, but if any doors are opened, I just
9 want the Court to be aware we need to be able to
10 respond to it.

11 THE COURT: Okay. Sir, if you'd stand
12 please.

13 MR. ABDULLAH: Yes, sir.

14 THE COURT: How are you doing this
15 morning, sir?

16 MR. ABDULLAH: I'm doing fine, sir.

17 THE COURT: I'm gonna place you under
18 oath. I know you're representing yourself.

19 MR. ABDULLAH: Yes, sir.2.

20 THE COURT: I don't have to do that with
21 lawyers 'cause they're officers of the court, okay?

22 MR. ABDULLAH: Yes, sir, Judge.

23 THE COURT: But I want you to understand
24 because you stand here representing yourself today
25 I'm gonna place you under oath. If you'll raise

1 your right hand.

2 WHEREUPON,

3 **MUTTAQIN ABDULLAH,**

4 having been duly sworn by the Court, testified as
5 follows:

6 MR. ABDULLAH: Yes, sir.

7 THE COURT: And you're -- and help me if I
8 pronounce this incorrectly, sir. Muttaqin Fatir---

9 MR. ABDULLAH: Fatir.

10 THE COURT: Muttaqin Fatir Abdullah?

11 MR. ABDULLAH: Yes, sir.

12 THE COURT: Do you understand what
13 Mr. Finney has said here this morning?

14 MR. ABDULLAH: Yes, sir, I do understand,
15 but I have objections to that.

16 THE COURT: Tell me what's your
17 objections, sir.

18 MR. ABDULLAH: Yeah, this is the problem,
19 right. On behalf of the charges ---

20 THE COURT: Yes, sir.

21 MR. ABDULLAH: I'm motioning in court of
22 statute of limitation on an ABIK, possession of a
23 gun, and carrying a gun into property. I've already
24 been convicted for that in federal court.

25 THE COURT: Well, he's not going forward

1 on the possession of a weapon by a convicted felon,
2 at least that's my understanding. You understand
3 that?

4 MR. ABDULLAH: Okay. But I understand
5 that, but I'm still, I'm still being tried for the
6 same weapon. That's, I want to make sure we got,
7 understand with the Court I'm still being tried for
8 the same weapon if that go through. It's the exact
9 same gun.

10 THE COURT: Okay. And that's your
11 objection?

12 MR. ABDULLAH: Yes, I'm saying 'cause
13 also, the Court need to understand is that in the
14 trial the Court sentenced me to a cross reference to
15 murder in the federal trial. I received a 8 point
16 enhancement in a cross reference to murder that
17 increase my criminal points to 1143 and put me in
18 the category to six and ---

19 THE COURT: Right.

20 MR. ABDULLAH: ---the conduct, the conduct
21 of this have already been addressed in federal
22 court; and if this case go to trial with the State,
23 that's part of my defense to the jury that they need
24 to understand this. I also have the right under
25 United States versus Madison, United States versus

1 Rodman (ph), a fourth circuit case, that the jury
2 cannot make a decision without knowing all proper
3 details of the case. So if this go to trial the
4 jury need to be very educated of all elements. I
5 have been incarcerated for the last twelve years and
6 seven months with this case, and I filed a motion to
7 argue double jeopardy but under dual sovereignty
8 that supposed to have been done away with under dual
9 sovereignty.

10 Also, on behalf of the murder, the murder
11 charge, right, if I have been — if there have been
12 a cross reference to murder and I have been
13 sentenced to this under federal court, that's not
14 considered a double jeopardy in state court if I'm
15 being charged for the same conduct twice? This was
16 going on. I'm being charged twice for the same
17 conduct. The life sentence was vacated March 21st
18 this year.

19 THE COURT: All right.

20 MR. ABDULLAH: So since the life sentence
21 has been vacated here from the State right back with
22 the same charges again for the second time.

23 THE COURT: Well, were you tried for
24 murder in federal court?

25 MR. FINNEY: No, I was not actually tried

1 for murder, but the problem is that they went into
2 the elements of it.

3 THE COURT: Well, I did a lot of federal
4 criminal defense work when I practiced law, and I'm
5 certainly aware of the fact of how the guidelines
6 work.

7 MR. ABDULLAH: Yes, sir.

8 THE COURT: It went from a mandatory, used
9 to be mandatory guidelines, and then they went to
10 advisory guidelines. Probably when you were
11 convicted they were mandatory if I had to guess.

12 MR. ABDULLAH: They were.

13 THE COURT: Okay. But those have since
14 changed. Again, it's advisory now. And the federal
15 government, in preparing those presentence
16 investigations can look at other conduct. It
17 doesn't have to be a conviction for them to use it
18 to enhance individuals for conduct, alleged conduct,
19 okay. But I certainly note your objection for the
20 record, okay. I note your objection for the record.

21 MR. ABDULLAH: To be clear, if it go to
22 trial, this go to trial with the State, I have a
23 right to address that to the jury as my defense of
24 what took place. They have to be educated what's
25 going on; that's part of my defense.

1 THE COURT: Mr. Finney.

2 MR. FINNEY: Well, certainly, Your Honor,
3 there's gonna be consequences if he opens the door.
4 I do not think that the Court should allow him to
5 present the fact that he was found guilty by federal
6 jury and sentenced under the gun possession statute
7 as a defense to them finding him guilty or not
8 guilty on the State charges. I don't think he
9 should be allowed to do that. If he wants to tell
10 the jury that he went through a federal trial, that
11 he was found guilty of the gun, I think he's opening
12 the door to some other issues and that is his right
13 if he wants to; but I don't think as a matter of law
14 he has a right to have you charge the jury that they
15 can consider that as a defense and that he will be
16 found guilty or not guilty by this jury based on the
17 evidence that's presented in this court against him.

18 THE COURT: All right. Let me ask you
19 this, Mr. Abdullah, and I -- it was conveyed to me
20 earlier. But you stand here in court today
21 representing yourself.

22 MR. ABDULLAH: Yes, sir.

23 THE COURT: And I was advised that you
24 came before Judge Young I believe.

25 MR. ABDULLAH: Yes, sir, Jefferey Young.

1 THE COURT: Last month?

2 MR. ABDULLAH: Yes, sir.

3 THE COURT: Is that correct? And at that
4 time Judge Young relieved your public defender ---

5 MR. ABDULLAH: Yes, sir.

6 THE COURT: ---of representing you any
7 further. Is that ---

8 MR. ABDULLAH: August 29th.

9 THE COURT: Okay. And I'm sure I don't
10 have the luxury of having a copy of the transcript
11 from that hearing. Mr. Finney, you may can
12 enlighten me as well a little bit here. But I'm
13 sure that Judge Young went through ad nauseum your
14 rights to have a lawyer represent you and went
15 through with you the dangers of self-representation.

16 MR. ABDULLAH: Uh-huh.

17 THE COURT: And made a conclusion or
18 concluded based upon the matter being before him
19 that you freely, voluntarily, knowingly, and
20 intelligently waived your right to counsel, a
21 lawyer.

22 MR. ABDULLAH: Yes, sir.

23 THE COURT: And that you freely,
24 voluntarily, knowingly, and intelligently had
25 decided to represent yourself here in court. Is

1 that correct?

2 MR. ABDULLAH: Yes, sir.

3 THE COURT: Is that right, Mr. Finney?

4 MR. FINNEY: That is correct.

5 THE COURT: And so that's, as we're here
6 today as you stand here today, Mr. Abdullah and
7 Mr. Finney, that's, there's no issue pertaining to
8 you representing yourself; is that correct?

9 MR. ABDULLAH: Yes, sir.

10 THE COURT: Is that -- that is correct?

11 MR. ABDULLAH: Yes, sir.

12 THE COURT: Okay. Now you understand, I'm
13 sure Mr. Abdullah, that Judge Young advised you that
14 there are certain rules that we have to abide by
15 that you, if you represent yourself, likewise with
16 Mr. Finney as a lawyer, the rules of evidence that
17 he has to abide by.

18 MR. ABDULLAH: Yes, sir.

19 THE COURT: My job as a judge is kind of,
20 I kind of make an analogy with sports for instance.
21 I'm a big sports fan, okay. And you know, in a
22 baseball game you got umpires. In football games
23 and basketball games you have referees. And as a
24 judge, it's my job to make sure that Mr. Finney
25 plays by the rules that have been established in

1 this state and, likewise, it's my job to make sure
2 you play by the rules even though you're not a
3 lawyer. You're held in the same standard as lawyers
4 are that come in and out of the courtroom when you
5 decide to represent yourself. You understand that?

6 MR. ABDULLAH: Yes, sir.

7 THE COURT: And I'm sure that Judge Young
8 advised you the dangers of self-representation. And
9 what Mr. Finney is bringing up here -- it's not a
10 defense, it's not a defense. One, jeopardy has not
11 attached to these charges, okay. Jeopardy does not
12 attach till a jury is picked in this state and sworn
13 in that jury box, okay; that's when jeopardy
14 attaches according to law. Furthermore, it's not a
15 defense under South Carolina law or anywhere that I
16 know of, I'm held to look at what the law is in this
17 State.

18 (Mr. Abdullah raises his hand.)

19 THE COURT: I'll give you a chance to
20 talk. I'm held to look at the law in this State.

21 (Mr. Abdullah raises his hand.)

22 THE COURT: But I think -- and I'm not
23 allowed to give you legal advice, but certainly
24 you're making this motion before we even pick a jury
25 on the double jeopardy issue, okay.

1 MR. ABDULLAH: Yes, sir.

2 THE COURT: And according to the rules I
3 think you're doing it exactly the way you're
4 supposed to. You're making that objection, asking
5 me as a judge to rule upon it; and when I rule upon
6 it as to the jeopardy issue, then that's not a
7 defense to argue before the jury. You understand
8 that?

9 MR. ABDULLAH: Yes, sir.

10 THE COURT: Now, if I'm wrong in making
11 the ruling on the jeopardy issue, you have the right
12 to appeal that issue just like your federal case was
13 appealed and that was, that sentence was vacated or
14 reversed. If I'm wrong on the jeopardy issue here,
15 then you have a right to appeal that to the Court of
16 Appeals, Supreme Court if they decide to look at it,
17 okay. But to argue to the jury the issue of double
18 jeopardy, that's not proper in the courtroom. And
19 You're making that motion to me now and I'm ruling
20 upon that, okay. But if you want to go into these
21 issues on your federal stuff -- and Mr. Finney has
22 properly and correctly addressed this -- you run the
23 risk of opening the door to a lot of issues here
24 that very well could come before a jury; and under
25 ordinary circumstances if you didn't open the door,

1 I wouldn't allow it to go in front of a jury in an
2 effort to make sure that you, that you in no way
3 shape or form are prejudiced at all. You understand
4 that?

5 (No verbal response by defendant.)

6 THE COURT: I see you nodding your head
7 yes, but I need a verbal response.

8 MR. ABDULLAH: Yes, sir. Yes, sir, I
9 understand.

10 THE COURT: Okay. So, I just want you to
11 understand it's my job, just like in baseball,
12 football, basketball game, as a referee and an
13 umpire, it's my job to make sure that everybody is
14 playing by the rules. It's my job to further
15 insure, make sure that you, that you have a fair
16 trial and that nothing in any way, shape, or form
17 comes in that would prejudice this jury towards you
18 and have them make a decision on an improper basis.
19 You understand that?

20 MR. ABDULLAH: Yes, sir.

21 THE COURT: Okay. Now you raised your
22 hand like you wanted to say something a minute ago
23 and I told you I'd give you a chance to talk to me.
24 I'll be happy to hear from you now, sir.

25 MR. ABDULLAH: Yes. Thank you, sir.

1 Thank you, Your Honor. Here's the issue, it's not
2 so much as a defense, but I will have to open the
3 door because the jury need to understand the details
4 of what happened. It don't have to be a defense in
5 that respect, but they need to be addressed. So if
6 it's gonna be open the door, open the door to what
7 have, I mean, what I'm trying to say, if I open the
8 door what can you do that haven't already been done
9 so what an I opening the door to do?

10 THE COURT: Well, I can't, I told you a
11 minute ago I can't give you legal advice on -- I
12 don't know what Mr. Finney may try to go into based
13 upon you opening this door so to speak; and as he
14 does, I mean, if he tries to go down a road so to
15 speak and you make an objection, then I'm gonna have
16 to rule on it.

17 MR. ABDULLAH: Well ---

18 THE COURT: Okay?

19 MR. ABDULLAH: I want to open the door to
20 it because I want the jury to be educated what took
21 place in the federal trial because it all related to
22 the same case.

23 THE COURT: Okay.

24 MR. ABDULLAH: My question is, when the
25 State had this case first why couldn't you prosecute

1 it then if you had -- you had it twelve years ago,
2 held me ten months. You held me ten months with no
3 indictment in the Sumter County Detention Center so
4 you had me first. You had the opportunity to
5 prosecute me, nothing has changed. From the
6 conviction of the federal government there's no new
7 evidence or nothing. Nothing has changed over the
8 years so why couldn't you prosecute it then.
9 Another problem that I have with this and that, one
10 of the witnesses that I had Huspot (ph) Mohammed in
11 my defense was killed, and that's part of my defense
12 where I need the witness for me. So out of all
13 these years this, this, it fragmentized my defense.

14 THE COURT: Has there ever been any speedy
15 trial motions in this case?

16 MR. ABDULLAH: Yes, excuse me, may I
17 respond to that? May I respond to that first?

18 THE COURT: Yes.

19 MR. ABDULLAH: Yes, this is the second
20 speedy trial. My attorney, the first attorney,
21 Arthur Wilder, filed a fast speedy trial. That fast
22 speedy trial was violated because they held me ten
23 months with no indictment in Sumter County Detention
24 Center, which violated the fast speedy trial. So
25 the Federal government comes in and takes over.

1 They call and got them involved, got me indicted by
2 the federal government so I was convicted. So the
3 federal government went into the elements of all of
4 the murder so by them going into the -- claiming I
5 opened the door for them, go into the elements of
6 it, okay, fine. I went -- we both went into the
7 elements of it. So if you found me guilty based on
8 a cross reference or preponderance of the evidence,
9 then, and I get the case, the life sentence vacated,
10 then how you gonna come back with the same murder
11 charge and charge me twice. This is the problem
12 again. This is why I will have to open the door for
13 whatever because the jury have to understand this
14 and they don't know this and they can't make a
15 proper decision without knowing what I'm going
16 through. They need to understand why I've been
17 incarcerated for the last 12 years and 7 months and
18 I'm just being indicted for murder in over 12 years.
19 I just got indicted for this murder.

20 THE COURT: Well, I understand -- again,
21 if you want to go into that you do so at your own
22 ---

23 MR. ABDULLAH: Yes, sir, I definitely want
24 to go into that.

25 THE COURT: ---detriment and danger. And

1 there will be -- now let me explain this to you,
2 okay. As -- did you represent yourself in federal
3 court?

4 MR. ABDULLAH: No, sir.

5 THE COURT: Okay. Since you're
6 representing yourself, ---

7 MR. ABDULLAH: Yes, sir.

8 THE COURT: ---okay, one thing that I will
9 not -- let me emphasize this to you -- that you are
10 not allowed to do, all right, as the State calls its
11 witnesses and puts them on this stand over here to
12 testify, you have a right and you will have every
13 right, to cross-examine them on relevant issues in
14 this case, okay. What I will not allow you to do
15 and which is highly improper, is to allow you in
16 questioning these witnesses to testify in essence.
17 You understand that?

18 MR. ABDULLAH: Excuse me ---

19 THE COURT: You can't testify as you're
20 asking questions of these witnesses.

21 MR. ABDULLAH: Yes, sir.

22 THE COURT: Because that would be
23 improper. For you to talk about your case and I'll,
24 we'll get to the point where I advise you that you
25 have the right to take the stand. And if you decide

1 to take the stand you can state, you can testify
2 from the stand at that point in your own defense,
3 okay. But then the State is gonna have an
4 opportunity to cross-examine you and ask you
5 questions about testimony that you -- if you decide
6 to testify, they'll have a right to cross-examine
7 you on any relevant issues to this case and any
8 possible doors that you may open as it relates to
9 your federal stuff. You understand what I'm saying?

10 MR. ABDULLAH: Yes, sir. Okay, now, with
11 the witnesses, right.

12 THE COURT: Yes, sir.

13 MR. ABDULLAH: Okay. Cross-examining
14 witnesses, you mean, if I want to cross-examine
15 witness about what took place in the federal trial I
16 have that right to, right, because ---

17 THE COURT: It's gonna be up to you
18 whether or not there are any objections made. They
19 may or may not have any information on the federal
20 case.

21 MR. ABDULLAH: Okay, well, these witnesses
22 testified before a federal grand jury about the
23 murder of David Way and they took -- and this is on
24 the gun trial, but this is their testimony to a
25 federal grand jury. I studied, I studied the motion

1 myself.

2 THE COURT: You got a copy of your grand
3 jury notes?

4 MR. ABDULLAH: Yes, I studied all of it.

5 THE COURT: Okay.

6 MR. ABDULLAH: So they testified about the
7 murder of David Way. All the witnesses testified to
8 the federal grand jury said that the defendant shot
9 and killed David Way so---

10 THE COURT: The defendant being you?

11 MR. ABDULLAH: Yes, sir.

12 THE COURT: Okay.

13 MR. ABDULLAH: So if they testified to
14 this, I would like to cross-examine them about their
15 testimony before the federal grand jury. Also, one
16 of the government's, one of the State witnesses
17 refused to cooperate which was Gregory Edwards. He
18 refused to cooperate. So since he refused to
19 cooperate when they needed him to testify before a
20 federal grand jury, I need to know if this
21 individual is going to testify for the State because
22 if he's gonna testify with the State, what is his
23 motive to testify with the State when he refused to
24 cooperate with the federal government when they
25 needed him to testify before the federal grand jury

1 when I was indicted.

2 THE COURT: Well, we'll see if they call
3 him as a witness. Just because he's on this list
4 doesn't mean he's gonna be called.

5 MR. ABDULLAH: Okay. Another issue---

6 THE COURT: Yes, sir.

7 MR. ABDULLAH: If Thurston Lane, who's
8 also a witness, I never received, if he's gonna
9 testify I never received his criminal history. He
10 has a very prominent criminal history, and I don't
11 have that.

12 THE COURT: Okay.

13 MR. ABDULLAH: I also want to address
14 again as well, I studied the case in law how an
15 attorney use a victim's prior history as a defense
16 in a defense trial that anyone could have killed
17 this victim so I do have the right to use the
18 criminal history of the victim as a form of
19 educating, enlightening to the jury in my closing
20 argument. Do I have that right?

21 THE COURT: Mr. Finney?

22 MR. FINNEY: Your Honor, I would just
23 respond for the record, the victim Mr. David Way,
24 was a patron at the night club that night and was
25 shot in the parking lot as he was trying to get in

1 or near a car. We would strongly object to any
2 reference to Mr. Way having a criminal record unless
3 his activity or his actions that night was relevant
4 somehow toward this defendant. My understanding is
5 this defendant didn't know Mr. Way and that is, it
6 was testified to by this defendant at his federal
7 trial, and so there wouldn't be any relevant need
8 for the jury to know the criminal history of Mr. Way
9 since he wasn't someone who was known to this
10 defendant.

11 THE COURT: I mean, I think you've got to
12 go look, Mr. Abdullah, at rule 404 which addresses
13 the very issue which you're asking about here.

14 MR. ABDULLAH: Is it okay if I respond or
15 do I need ---

16 THE COURT: Yes, sir, I'll be happy to
17 hear from you.

18 MR. ABDULLAH: I want to address this to
19 you. The reason it's relevant because I'm being
20 charged with, I'm being actually charged and accused
21 with the murder so it's relevant. It's also
22 relevant because the victim was found with crack in
23 his pants. In his criminal history the victim has
24 multiple crack charges. The victim has a history of
25 armed robbery so because of these things, anyone

1 could have killed this man. If you listen to the
2 testimony if it go to trial, when you listen to the
3 testimony of the witnesses, the witnesses is gonna
4 demonstrate that there was no actually, there was no
5 actually motive for me to do anything. If their
6 testimony would sound like I was just crazy, went
7 insane and opened fire. I'm not insane, and I'm
8 gonna prove I'm not insane by representing myself.
9 So I can't be crazy, I can't be insane, there have
10 to be motivation to this. So what is the motive?
11 There's no motive for me to kill this man so I have
12 to be able to use this and that should be my right,
13 his criminal history, because that can be, that's
14 something that the jury need to understand because,
15 like I say, if there were several people shooting
16 that night -- and you're gonna hear this in
17 testimony if this go to trial, there were several
18 people shooting that night. And out of all these
19 people shooting that night anyone could have killed
20 this man.

21 Now the detective also spoke on behalf of
22 the victim, that the victim was involved with an
23 armed robbery of one of the owners of the nightclub,
24 Scott Knight. The victim supposedly and another
25 friend of his supposedly robbed the owner on his way

1 to the bank making a deposit.

2 THE COURT: That night?

3 MR. ABDULLAH: This comes from the State.

4 THE COURT: Okay.

5 MR. ABDULLAH: So ---

6 THE COURT: Well, I don't, based upon what
7 I'm hearing right now, Mr. Abdullah, what I'm gonna,
8 I'm gonna see how the testimony, how things evolve
9 here, okay; but the fact that he -- right now I
10 don't see the relevance of it under rule 404. I
11 mean, if you look at rule 404 it says evidence of a
12 person's character or a trait of character is not
13 admissible for the purpose of proving action in
14 conformity therewith on a particular occasion except
15 character of victim, evidence of a pertinent trait
16 of character of the victim of the crime offered by
17 an accused or by the prosecution to rebut the same
18 or evidence of character trait and peacefulness of
19 the victim offered by the prosecution in a homicide
20 case to rebut evidence that the victim was the first
21 aggressor. 404(b), other crimes, wrongs, or acts.
22 Evidence of other crimes, wrongs, or acts is not
23 admissible, is not admissible to prove the character
24 of a person in order to show action and conformity
25 therewith. It may, however, be admissible to show

1 motive, identity, the existence of common scheme or
2 plan, the absence of mistake or accident or intent.
3 So based upon what I'm hearing here today I do not
4 believe that it's admissible under rule 404; but
5 your objection is so noted for the record, okay?

6 MR. ABDULLAH: All right. The Defense
7 filed a motion to squash [sic] the indictment. To
8 my understanding this indictment is insufficient at
9 this time because a preliminary hearing was
10 scheduled for May the 5th of this year. That
11 preliminary hearing never took place; and because of
12 that, the prosecutor Kelly Jackson was the hearing
13 judge of that case. Kelly Jackson was a former
14 prosecutor who actually nol proded these charges
15 2004 so he was not allowed to hear the case and
16 that's why the case was postponed. While the case
17 was being postponed to be rescheduled the
18 prosecution moved for, moved the case to a grand
19 jury and had me indicted. That indictment was never
20 supposed to took place till the preliminary hearing
21 took place.

22 THE COURT: All right.

23 Mr. Finney.

24 MR. FINNEY: That in general terms is what
25 happened, Your Honor. After he was, after we were

1 notified that the federal charge had changed ---

2 THE COURT: When were you notified of
3 that?

4 MR. FINNEY: It looks like around February
5 or March of 2016.

6 THE COURT: Okay. All right, anything
7 else?

8 MR. FINNEY: And at that time because of
9 the change in his status with the Bureau of Prisons
10 we made the decision to draw warrants, re-file
11 warrants on him for the four charges that were later
12 presented to the grand jury and the grand jury
13 returned an indictment on those four charges.
14 Between the time of the warrants being served and
15 the grand jury hearing the case, I believe his
16 public defender did request a preliminary hearing,
17 which he's correct, had to be postponed 'cause the
18 judge had a conflict. And as the process moved
19 forward, before the case was rescheduled for a
20 preliminary hearing the grand jury had indicted the
21 case.

22 THE COURT: Okay. All right, anything
23 else?

24 MR. ABDULLAH: Yes, sir. So if that's
25 true exactly what he said, so if that's true, then

1 the indictment should be insufficient at this time
2 because we still ---

3 THE COURT: Can I see the indictment
4 please, Mr. Finney?

5 SOLICITOR FINNEY: Yes, sir.

6 MR. ABDULLAH: Do you need to see the
7 motion, Your Honor, to quash the indictment?

8 (Document tendered to the Court.)

9 THE COURT: All right, anything else on
10 that issue from the State or Defendant?

11 SOLICITOR FINNEY: If you would, just
12 allow the State to say for the record that as the
13 Court is well aware, even if a preliminary hearing
14 had been held and the court at that point, summary
15 court dismissed the charges for lack of probable
16 cause, the prosecutor has the final authority to go
17 to the grand jury, present the case, and if a true
18 bill is returned the case would move forward as it
19 has in this case so there's no prejudice to Mr.
20 Abdullah because we would have presented the case to
21 the grand jury regardless of what the summary court
22 preliminary hearing finding was.

23 THE COURT: All right, based upon my
24 review of the indictment which is a notice document
25 to place the defendant on notice what he has to

1 defend against -- Mr. Abdullah, do you understand
2 what Mr. Finney is saying here?

3 MR. ABDULLAH: Yes, but I thought ---

4 THE COURT: Okay. And I'll let you talk
5 again in a minute, okay. I want you to understand
6 that there's no constitutional right to a
7 preliminary hearing, okay. And even if, even if
8 your case were presented at a preliminary hearing
9 and even if the magistrate were to dismiss your
10 charge in the preliminary hearing, okay, under the
11 law the State can still take your case before the
12 grand jury and present the case to the grand jury
13 and let them make the determinations as to whether
14 or not to indict you, okay, by virtue of in essence
15 a direct indictment, okay.

16 MR. ABDULLAH: Yes, sir.

17 THE COURT: At a preliminary hearing a
18 magistrate would simply hear testimony or evidence
19 and make a decision as to whether or not to bind it
20 over or bound it over to general sessions court, but
21 their say-so is not final, okay. And so even if he
22 had dismissed the charge, the State would have had a
23 right under the law to still take the case before
24 the grand jury and let the grand jury make a
25 decision as to whether or not to indict you. But

1 your objection on that issue is so noted as well,
2 okay?

3 MR. ABDULLAH: Yes, sir.

4 THE COURT: Yes, sir.

5 MR. ABDULLAH: Just to respond to that,
6 Sir, as the Defense would still request by law to go
7 through the preliminary hearing because that was my
8 right so I ---

9 THE COURT: Well, what I just ---

10 MR. ABDULLAH: You just ruled on it.

11 THE COURT: Yes, sir.

12 MR. ABDULLAH: Okay, okay. Well,
13 understood. Another issue I would like to deal
14 with, if the case go to trial one of the things that
15 the Defense would have to prove is that ---

16 THE COURT: Well, let me stop you right
17 there real quick, okay, and then I'll let you speak.
18 As a defendant you do not have to prove anything.

19 MR. ABDULLAH: Exactly.

20 THE COURT: Well, you just said that the
21 Defense is gonna have to prove. I want to correct
22 you on that because I don't want you to think for
23 one minute that there's anything that you got to
24 prove in this courtroom.

25 MR. ABDULLAH: Exactly, I understand that.

1 THE COURT: I'm sorry, and you may
2 continue.

3 MR. ABDULLAH: Yes. I just wanted to
4 address this as a motion to the Court.

5 THE COURT: Okay.

6 MR. ABDULLAH: That upon evidence for the
7 Court, right, the prosecution would have to prove
8 that this weapon is a murder weapon.

9 THE COURT: They will, you're right.

10 MR. ABDULLAH: And to my understanding of
11 the law that would be impossible based on the
12 evidence of what took place. Now based on the
13 motion from what I read, this victim was shot in the
14 back of the head and the bullet exit his head, come
15 out his forehead so there's no ballistics in the
16 case. If there's no ballistics in the case what
17 evidence would he be able to present to say this
18 weapon is a murder weapon?

19 THE COURT: Well, let me explain this to
20 you, okay? As a judge, my job as a judge is to sit
21 up here -- I've kind of given you an idea what I'm
22 gonna be doing anyway, kind of make sure everybody
23 plays by the rules. There are certain elements to
24 each charge that they have indicted you for: the
25 Murder, the assault and battery with intent to kill,

1 as well as possession of a weapon during the
2 commission of a violent crime, okay.

3 MR. ABDULLAH: Yes, sir.

4 THE COURT: There are certain elements to
5 each of those offenses, okay?

6 MR. ABDULLAH: Yes, sir.

7 THE COURT: And the State's got to present
8 evidence to satisfy those elements, okay? And if
9 they don't do so, at the conclusion of their case
10 that they put up against you, if you make the motion
11 for directed verdict ---

12 MR. ABDULLAH: Yes, sir.

13 THE COURT: ---and they hadn't put up
14 sufficient evidence that I believe under the law
15 warrants the case going to the jury, then it'll be
16 my job as the judge to dismiss the charge.

17 MR. ABDULLAH: Yes, sir.

18 THE COURT: Okay? So I'm gonna listen
19 very carefully to the evidence that's presented by
20 the State in your case and I'll make that decision
21 at the appropriate time, okay?

22 MR. ABDULLAH: Yes, sir. There was
23 another issue I wanted to address with you, Sir.
24 Just give me one second, Sir.

25 THE COURT: All right.

1 MR. ABDULLAH: One second. Oh, yes, one
2 of the witnesses, Corey Scott, Sir.

3 THE COURT: Yes, sir.

4 MR. ABDULLAH: He purchased February 28,
5 1997, Corey Scott which is one of the witnesses who
6 is also a bouncer, purchased a .45 Magnum Rooks
7 Firearm. That's something that I will be
8 cross-examining him on, and that's evidence that was
9 in the file in the record.

10 THE COURT: Okay. Mr. Finney, you think
11 that's fair game?

12 SOLICITOR FINNEY: Yes, sir.

13 THE COURT: Some allegations about, you
14 know, I don't know what, I haven't -- I have no idea
15 what the State is going to present from this witness
16 stand. I don't know anything about this case, Mr.
17 Abdullah, till they start trying the case other than
18 what I've seen in essence in this indictment; but I,
19 based upon what I hear, Mr. Finney's in essence
20 acknowledged that that's legitimate
21 cross-examination by you.

22 MR. ABDULLAH: Yes, sir.

23 THE COURT: Okay?

24 MR. ABDULLAH: Once again, if Thurston
25 Lane is gonna testify I haven't received --

1 THE COURT: Who? Mr. Lane, I'm sorry.

2 MR. ABDULLAH: Yes. If Thurston Lane is
3 gonna testify I haven't received his prior
4 convictions.

5 THE COURT: Mr. Finney?

6 SOLICITOR FINNEY: We'll get that to him
7 right away.

8 THE COURT: Make sure you get that,
9 provide that to this young, to Mr. Abdullah.

10 And we'll address, Mr. Abdullah, as to
11 what under the rules, what's admissible possibly and
12 what may not be admissible off of his prior record,
13 okay.

14 Any witnesses, you need to get that to
15 him.

16 SOLICITOR FINNEY: Yes, sir.

17 THE COURT: All right, anything else?

18 MR. ABDULLAH: One second. Yes, well, for
19 the four correc-- Sheriff Department, Sergeant Ray
20 Mackessy, Captain Tommy Barron, Lieutenant James
21 Atkinson, Corporal Lee Monahan, will all these
22 witnesses be available?

23 THE COURT: They all under subpoena?

24 MR. FINNEY: Yes, sir. Two of them are in
25 the courtroom now, and the other two will be in the

1 courtroom tomorrow.

2 THE COURT: Okay, all right.

3 MR. ABDULLAH: So when will we be picking
4 a jury?

5 SOLICITOR FINNEY: In about five minutes I
6 hope.

7 THE COURT: Yeah, in about five minutes.

8 MR. ABDULLAH: So we'll be going to trial
9 today?

10 THE COURT: We're going to start the trial
11 this afternoon hopefully. What time is it? 12:20.
12 I'd like to pick the jury and then once the jury is
13 picked, break for lunch, and then we'll start it
14 hopefully this afternoon.

15 MR. ABDULLAH: Thank you, sir.

16 THE COURT: About 2:30. Okay?

17 MR. ABDULLAH: Thank you, sir.

18 THE COURT: Now on the strikes, five and
19 ten on the strikes.

20 SOLICITOR FINNEY: Yes, sir.

21 THE COURT: Mr. Abdullah, you'll get five,
22 excuse me, ten strikes, peremptory strikes. The
23 State will get five in the selection of this jury.
24 All right?

25 MR. ABDULLAH: Yes, sir.

1 THE COURT: Anything from the State?

2 SOLICITOR FINNEY: I just wanted to
3 reiterate that, I guess I really wanted to know what
4 Mr. Abdullah thought about the -- I think he's
5 already said that he wants to talk about the last
6 twelve years; and if he intends to open the door,
7 then there's no reason why we can't talk about the
8 fact that there was a federal trial. But I just
9 want that understanding on the record because at
10 some point we need to decide whether we're gonna let
11 the jury know that after this 2004 death there was a
12 long period of time. And in case they want to know
13 what's been going on -- they don't have a legal
14 right to know, but I wanted to just address that to
15 the Court and give Mr. Abdullah a chance to weigh in
16 on it. If he wants to open the door, then that's
17 fine with me, we'll talk about all the facts; but
18 then that will bring anything he said at the federal
19 trial and anything he did at the federal trial. As
20 far as he did testify in his defense at the federal
21 trial, he was the only defense witness, and all the
22 statements he made under oath at that trial will
23 then be subject to being brought out in this case.

24 THE COURT: All right, possibly.

25 SOLICITOR FINNEY: Yes.

1 THE COURT: Possibly.

2 Mr. Abdullah.

3 MR. ABDULLAH: Well, I would not object to
4 that because I plan on opening the door to what took
5 place in federal trial so I can't, I'm not gonna
6 object to that, he has that right, and we'll take it
7 from there.

8 THE COURT: Okay.

9 MR. ABDULLAH: It's fair play.

10 THE COURT: All right.

11 MR. ABDULLAH: Now another thing, the
12 Government allowed me due to the fact that the
13 victim was found, the victim was found with crack in
14 his possession; and at autopsy his body, a chapstick
15 found in his pants. Am I allowed to make any
16 mention to the jury of any of his prior convictions
17 for armed robbery and distribution of crack cocaine?

18 SOLICITOR FINNEY: First of all, let me
19 say that we have the record of Mr. Way and he has
20 never been convicted of armed robbery. I think he's
21 got it confused. He's never been charged or
22 convicted of armed robbery. He's got that confused
23 with Mr. Edwards. And secondly, any reference to
24 the character of Mr. David Way has been ruled on by
25 this Court under 404.

1 THE COURT: I'm not gonna allow that,
2 okay.

3 MR. ABDULLAH: Okay.

4 THE COURT: But I certainly note your
5 objection, okay.

6 MR. ABDULLAH: Thank you, sir.

7 THE COURT: All right, anything before I
8 bring the jury panel up?

9 SOLICITOR FINNEY: I just need to get my
10 victims in here.

11 THE COURT: All right, it's my
12 understanding that they're in the process of hearing
13 a Batson motion in the other case which may
14 necessitate the panel having to come back up. Y'all
15 want to break for lunch now?

16 SOLICITOR FINNEY: Yes, sir, that will be
17 fine.

18 THE COURT: And come back at 2?

19 SOLICITOR FINNEY: 2:00.

20 THE COURT: 2 or 2:30? And I realize it's
21 only 12:25, but say they do have to pick another
22 jury which may not get them out of here until 1,
23 1:15 maybe.

24 SOLICITOR FINNEY: Yes, sir.

25 THE COURT: So, Mr. Abdullah, let me ask

1 you something real quick, okay.

2 MR. ABDULLAH: Yes, sir.

3 THE COURT: You heard me tell Mr. Finney
4 that they're in the process of having what's called
5 a Batson hearing next door or the other courtroom
6 because it's alleged that one of the parties -- not
7 sure which one -- improperly struck certain jurors,
8 okay. That's a plain way of putting it to you. I
9 want you to understand under the law and, that you
10 can't strike people on a jury simply because of
11 their race or sex. You understand that?

12 MR. ABDULLAH: Yes, sir.

13 THE COURT: All right. I'm not sure --
14 you said you had representation in federal court,
15 but I'm not sure if you ever represented yourself in
16 any court before.

17 MR. ABDULLAH: No, sir.

18 THE COURT: But I just want to make that
19 clear to you. The law does not allow you to strike
20 jurors, a potential juror, simply because of race or
21 gender.

22 MR. ABDULLAH: Yes, sir.

23 THE COURT: You understand that?

24 MR. ABDULLAH: Yes, sir.

25 THE COURT: Okay. All right, anything

1 else, Mr. Finney?

2 SOLICITOR FINNEY: No, Your Honor.

3 THE COURT: Let's say 2:30.

4 SOLICITOR FINNEY: Yes, sir.

5 THE COURT: Just to be on the safe side.

6 SOLICITOR FINNEY: All right.

7 THE COURT: And we'll get a panel up here
8 at 2:30, and we'll pick a jury and we'll go from
9 there.

10 SOLICITOR FINNEY: All right, sir.

11 THE COURT: Hold on, well, hold on just a
12 second.

13 (Pause.)

14 MR. ABDULLAH: Your Honor, is there
15 something I can address ---

16 THE COURT: Hold on, I'll give you a
17 chance. Give me just a second, okay, Mr. Abdullah?

18 (Pause.)

19 THE COURT: Yes, sir, Mr. Abdullah.

20 MR. ABDULLAH: Yes, sir. To make the
21 Court aware, right, there's a civil action filed in
22 this case. I filed a motion over a month ago of
23 having the prosecutor recused in this case because I
24 have a civil action against him and the detective
25 James Turner, and my argument is that this will be a

1 vindictive prosecution. He's been served with this.
2 This case is pending in court of the U.S. Court,
3 excuse me, U.S. Court of Appeals in Richmond,
4 Virginia.

5 THE COURT: Mr. Finney.

6 SOLICITOR FINNEY: I'm not sure that I was
7 ever served, Your Honor. I was, I am aware that an
8 action was filed. We found out about it by talking
9 to the U.S. Attorney's Office. They weren't even
10 aware of it, that it had been filed. My
11 understanding of the action is Mr. Abdullah has sued
12 us for 30 million dollars; and the court, I believe,
13 has dismissed the case and Mr. Abdullah has filed an
14 appeal to Richmond, Virginia, appealing the
15 dismissal of the case. So while there might be some
16 type of action going on, it is not an action that is
17 alive so to speak in the sense that the Complaint
18 that he brought -- which I don't believe I've even
19 read the Complaint; I don't think I've ever even
20 seen it. That Complaint has been dismissed by the
21 District Court.

22 I don't ever remember being served with a
23 motion that the prosecutor needed to be removed from
24 the case so this is my first learning of that
25 motion, and I would just ask the Court to find out

1 what is the basis of the motion 'cause I'm not aware
2 of it.

3) THE COURT: Mr. Abdullah.

4 MR. ABDULLAH: Yes, sir. I did file the
5 motion and I just served him and Mr. Turner a copy
6 where I appealed it. They both, I sent it out a few
7 weeks ago so they should have received it.

8 THE COURT: Okay. Well, let me ask you
9 this. What Mr. Finney is asking for or asking me to
10 inquire of you is the basis simply, are you saying
11 that simply because of the fact that you filed a
12 civil action against them that he should be removed
13 as the prosecutor?

14 MR. ABDULLAH: Yes, sir.

15 THE COURT: Okay. Mr. Finney, anything
16 else?

17 SOLICITOR FINNEY: No, Your Honor, other
18 than we do not show, we do not see, we do not see
19 that there is a basis for the motion to go forward
20 and we would ask the Court to dismiss the motion.

21 THE COURT: All right, I'm gonna
22 respectfully deny your request on that, Mr.
23 Abdullah, but your objection is so noted for the
24 record, okay.

25 MR. ABDULLAH: Yes, sir.

1 THE COURT: All right, we'll stand down
2 till 2:30, 2:30. Thank you.

3 (Whereupon, a lunch break was taken.)

4 THE COURT: All right, Mr. Solicitor, you
5 ready to proceed?

6 MR. FINNEY: I am, Your Honor.

7 THE COURT: Mr. Abdullah, you ready to
8 proceed, sir?

9 MR. ABDULLAH: Yes, sir, Your Honor.

10 THE COURT: All right. Call your case
11 please, sir, Mr. Solicitor.

12 SOLICITOR FINNEY: Thank you, Your Honor.
13 On behalf of the State of South Carolina we call
14 docket number 2016-GS-43-0566, the State versus
15 Muttaqin Fatir Abdullah charged with murder, assault
16 and battery with intent to kill, possession of a
17 weapon during the commission of a violent crime,
18 true bill indictment by the Sumter County grand
19 jury, Your Honor.

20 THE COURT: All right. Mr. Abdullah --
21 hold on a minute. Can you approach please, sir.

22 (WHEREUPON, Solicitor Finney and Mr.

23 Abdullah approached the Bench for an
24 off-the-record discussion.)

25 THE COURT: All right, ladies and

1 gentlemen, the State has called the case of the
2 State of South Carolina versus Muttaqin Fatir
3 Abdullah. Mr. Abdullah is charged by indictment
4 with the offense of murder, count one, count two of
5 assault and battery with intent to kill, and final
6 count being possession of a weapon during the
7 commission of a violent crime. The indictment,
8 ladies and gentlemen, reads as follows. That Mr.
9 Abdullah did in Sumter County on or about March
10 14th, 2004, willfully, feloniously, and
11 intentionally kill the victim David Way with malice
12 aforethought either expressed or implied by means of
13 shooting the victim and the victim did die as a
14 proximate result thereof on or about March 14, 2004,
15 in Sumter County in violation of Section 16-3-0010,
16 the South Carolina Code of Laws.

17 The second count being assault and battery
18 with intent to kill. It alleges that Mr. Abdullah
19 did in Sumter County on or about March 14th, 2004,
20 commit an unlawful act of violent injury with malice
21 aforethought either expressed or implied by shooting
22 one Marell McBride in the leg, thus committing the
23 crime of assault and battery with intent to kill in
24 violation of Section 16-3-620 of the South Carolina
25 Code of Laws.

1 The final count, ladies and gentlemen,
2 alleges that Mr. Abdullah, which is a possession of
3 a weapon during the commission of a violent crime,
4 alleges that Mr. Abdullah did in Sumter County on or
5 about March 14, 2004, possess a firearm or visibly
6 displayed what appeared to be a firearm or visibly
7 displayed a knife during the commission of or
8 attempted commission of a violent crime in violation
9 of Section 16-23-490 of the South Carolina Code of
10 Laws.

11 Now ladies and gentlemen, the indictment
12 that I hold in my hand is simply the charging
13 document which brings this case into this court. It
14 is in no sense evidence in this case. To these
15 charges the defendant has pled not guilty;
16 therefore, the State of South Carolina bears the
17 burden of proving his guilt beyond a reasonable
18 doubt. Now before we move forward in selecting a
19 jury in this case, ladies and gentlemen, there are
20 some questions that I have to ask of you to
21 determine your qualifications to serve as jurors in
22 this case.

23 One preliminary instruction or statement I
24 want to make to you, you will notice that Mr.
25 Abdullah sits at the defense table by himself.

1 Mr. Abdullah has chosen to represent himself as it
2 relates to these charges. He has a constitutional
3 right to represent himself. Prior to me coming in
4 here this week to preside over the trial of this
5 case it was determined that Mr. Abdullah had, was
6 knowingly, freely, voluntarily, and intelligently
7 choosing to represent himself in this case and under
8 our constitution he has every right to represent
9 himself.

10 Now, please listen very carefully, ladies
11 and gentlemen, to the questions that I have of you.
12 Is there any member of the jury panel that has ever
13 been related by blood, connected by marriage, had a
14 close, personal relationship or business
15 relationship with Mr. Abdullah, David Way, or Marell
16 McBride, if so please stand.

17 Tell me your name for the record please,
18 sir, first.

19 POTENTIAL JUROR: Quintel Darnell Drayton,
20 sir.

21 THE COURT: Hold on, hold on, hold on.
22 Tell me your name.

23 POTENTIAL JUROR: Quintel Darnell Drayton,
24 number 55.

25 THE COURT: And your juror number?

1 POTENTIAL JUROR: 55, sir. I went to
2 school with Marell McBride.

3 THE COURT: How long ago was that, sir?

4 POTENTIAL JUROR: That's been in middle
5 school, middle school.

6 THE COURT: Well, I hate to ask you this,
7 but how old are you, sir?

8 POTENTIAL JUROR: 33.

9 THE COURT: All right. Do you have any
10 dealings or any kind of relationship whatsoever with
11 Mr. McBride?

12 POTENTIAL JUROR: I know his whole family.

13 THE COURT: I understand that. My
14 question is, do you engage in social activities with
15 him on a regular basis other than, I mean, I know a
16 lot of people like I'm sure everyone else does. But
17 my question is whether or not you regularly engage
18 in social activities with Mr. McBride?

19 POTENTIAL JUROR: I see him in the
20 streets. I haven't seen him in a minute but...

21 THE COURT: If you were selected as a
22 juror in this case do you believe you could be fair
23 and impartial to both the State and the Defense?

24 POTENTIAL JUROR: I might as well take
25 this one out, Sir.

1 THE COURT: All right, I'm gonna set you
2 aside for the trial of this case. Thank you. You
3 may be seated.

4 All right. The following, ladies and
5 gentlemen, is a list of potential witnesses in this
6 case. There are a total of 16 potential witnesses
7 in this case. I'm going to break them down into
8 more than one grouping so listen, please listen very
9 carefully. Captain Jamie Burnish of the Sumter
10 County Sheriff's Office; Sergeant Ray MacKessy,
11 Sumter County Sheriff's Office; Captain Tommy
12 Barron, Sumter County Sheriff's Office; Investigator
13 James Atkinson, Sumter County Sheriff's Office;
14 Lieutenant Lee Monahan, Sumter County Sheriff's
15 Office; Cindy Pierson, Sumter County Sheriff's
16 Office; Cindy Pierson, Sumter County Sheriff's
17 Office; Dianne Bodie with SLED, South Carolina Law
18 Enforcement Division; and Velo Paavel, South
19 Carolina Law Enforcement Division, also known as
20 SLED. Is there any member of the jury panel that
21 has ever been related by blood, connected by
22 marriage, had a close personal, business, or social
23 relationship with any of those potential witnesses,
24 if so, please stand.

25 (There was no response.)

1 THE COURT: All right. The next group of
2 witnesses, ladies and gentlemen, potential
3 witnesses: Ila Simmons, South Carolina Law
4 Enforcement Division; Doctor Janice Lage, L-A-G-E;
5 Vangeline Parker-Wells; Thurston Lane; Tommy Boyd;
6 Coral Scott, Gregory Edwards, or Marell McBride. Is
7 there any member of the jury panel that has ever
8 been related by blood, connected by marriage, had a
9 close personal, business, or social relationship
10 with any of those potential witnesses, if so, please
11 stand.

12 (There was no response.)

13 THE COURT: Sir, I've already set you
14 aside for the trial of this case, thank you. 55.
15 Juror number 55 raised his hand. I've already set
16 him aside for the trial of this case.

17 All right. At this time, Mr. Finney, if
18 you would stand and introduce yourself, followed by
19 you, Mr. Abdullah.

20 SOLICITOR FINNEY: Good afternoon, ladies
21 and gentlemen, my name is Ernest Finney. They call
22 me Chip. I'm the elected Solicitor for the Third
23 Circuit Judicial Circuit. I'm honored to try the
24 case today with these fine people.

25 THE COURT: Mr. Abdullah, you may

1 introduce yourself to the jury please, sir.

2 MR. ABDULLAH: How y'all doing? I'm
3 Muttaqin Abdullah. I will be representing myself in
4 this case.

5 THE COURT: Thank you, sir. You may be
6 seated.

7 All right. Ladies and gentlemen, any
8 member of the jury panel has ever been related by
9 blood, connected by marriage, had a close personal,
10 business, or social relationship with Mr. Finney or
11 Mr. Abdullah, if so, please stand.

12 (There was no response.)

13 THE COURT: All right. Has any member of
14 the jury panel formed or expressed an opinion about
15 any issue or matter involved in this case, if so,
16 please stand.

17 (There was no response.)

18 THE COURT: Is any member of the jury
19 panel aware of any bias or prejudice toward either
20 the State or the Defendant in this case, if so,
21 please stand.

22 (There was no response.)

23 THE COURT: Is there any member of the
24 jury panel that knows of any reason, any reason
25 whatsoever why he or she should not serve as a juror

1 in this case, with particular emphasis being placed
2 upon your ability to be fair and impartial to both
3 the State and the Defendant, if so, please stand.

4 POTENTIAL JUROR: Zach Morris, 135.

5 THE COURT: All right, can you approach
6 please, sir. Mr. Abdullah, you may approach, sir,
7 as well.

8 (Potential juror approached the Bench for an off-
9 the-record discussion.)

10 THE COURT: All right, I'm gonna set you
11 aside in this case. 135, juror number 135 has been
12 set aside for the trial of this case.

13 Any further requested voir dire from the
14 State?

15 SOLICITOR FINNEY: None, Your Honor.

16 THE COURT: Defendant, any further
17 questions?

18 MR. ABDULLAH: No, sir.

19 THE COURT: All right. Except for those
20 two jurors we struck -- I remind the parties the
21 State has five peremptory strikes, Defendant has
22 ten. We will, one alternate sufficient, Mr. Finney?

23 SOLICITOR FINNEY: If we can get two, Your
24 Honor, it might be better.

25 THE COURT: We'll go with two alternates.

1 Is that satisfactory to you, Mr. Abdullah?

2 MR. ABDULLAH: Yes, sir.

3 THE COURT: We'll strike two alternates as
4 well, all right. Two and one on the strikes with
5 regards to the alternate. On the first twelve, five
6 and ten. All right, let's proceed with striking of
7 the jury.

8 (Pause.)

9 THE CLERK: Ladies and gentlemen of the
10 jury, when I call your name, please come up and
11 stand in front of the podium. Place your back to
12 the courtroom please and bring with you any personal
13 belongings that you may have.

14 Juror number 154, Marion Reed (black
15 male). What saith the State?

16 SOLICITOR FINNEY: Please accept the
17 juror.

18 THE CLERK: What saith the Defendant?

19 MR. ABDULLAH: Accept him.

20 THE CLERK: Have a seat in the jury box
21 please, sir.

22 Juror number 145, Rhonda Pack (white
23 female). What saith the State?

24 SOLICITOR FINNEY: Please accept the
25 juror.

1 THE CLERK: What saith the Defendant?

2 MR. ABDULLAH: Strike.

3 THE CLERK: Have a seat back in the panel.

4 You've been excused from this case, please, ma'am.

5 Juror number 186, Taylor Welsh (white
6 male). What saith the State?

7 SOLICITOR FINNEY: Please accept the
8 juror.

9 THE CLERK: What saith the Defendant?

10 MR. ABDULLAH: Accept him.

11 THE CLERK: Have a seat in the jury box
12 please, sir.

13 Juror number 143, Philip Pace (white
14 male). What saith the State?

15 SOLICITOR FINNEY: Please swear the juror.

16 THE CLERK: What saith the Defendant?

17 MR. ABDULLAH: Strike.

18 THE CLERK: Have a seat back in the panel.

19 You've been excused ---

20 THE COURT: No, sir, hold on a minute.

21 What was your response, Mr. Abdullah?

22 MR. ABDULLAH: Strike, sir.

23 THE COURT: Strike?

24 MR. ABDULLAH: Yes, sir.

25 THE COURT: Okay, thank you. I'm sorry, I

1 misunderstood.

2 I'm sorry, sir.

3 THE CLERK: No problem. Juror number 177,
4 Cecile Townsend (black female). What saith the
5 State?

6 SOLICITOR FINNEY: Please swear the juror.

7 THE CLERK: What saith the Defendant?

8 MR. ABDULLAH: Accepted.

9 THE CLERK: Have a seat in the jury box
10 please, ma'am.

11 Juror number 170, William Stallings (white
12 male). What saith the State?

13 SOLICITOR FINNEY: Please swear the juror.

14 THE CLERK: What saith the Defendant?

15 MR. ABDULLAH: Accepted.

16 THE CLERK: Have a seat in the jury box
17 please, sir.

18 Juror number 158, Laura Rider (white
19 female). What saith the State?

20 SOLICITOR FINNEY: Please swear the juror.

21 THE CLERK: What saith the Defendant?

22 MR. ABDULLAH: Accepted.

23 THE CLERK: Have a seat in the jury box
24 please, ma'am.

25 Juror number 36, Lashira Cobia (black

1 female). What saith the State?
2 SOLICITOR FINNEY: Please accept the
3 juror.
4 THE CLERK: What saith the Defendant?
5 MR. ABDULLAH: Strike.
6 THE CLERK: Have a seat back in the panel.
7 You've been excused from this trial, please, ma'am.
8 Juror number 31, Rose Cato (black female).
9 What saith the State?
10 SOLICITOR FINNEY: Please accept the
11 juror.
12 THE CLERK: What saith the Defendant?
13 MR. ABDULLAH: Strike.
14 THE CLERK: Have a seat back in the panel.
15 You've been excused from this trial, please, ma'am.
16 Juror number 144, Mary Pack (black
17 female). What saith the State?
18 SOLICITOR FINNEY: Please accept the
19 juror.
20 THE CLERK: What saith the Defendant?
21 MR. ABDULLAH: Strike.
22 THE CLERK: Have a seat back in the panel.
23 You've been excused from this trial, please, ma'am.
24 Juror number 139, Krystal Newman (white
25 female). What saith the State?

1 SOLICITOR FINNEY: Please accept the
2 juror.
3 THE CLERK: What saith the Defendant?
4 MR. ABDULLAH: Accepted.
5 THE CLERK: Have a seat in the jury box,
6 please, ma'am.
7 Juror number 75, Rosa Graham-Holiday
8 (black female). What saith the State?
9 SOLICITOR FINNEY: Please swear the juror.
10 THE CLERK: What saith the Defendant?
11 MR. ABDULLAH: Accepted.
12 THE CLERK: Have a seat in the jury box
13 please, ma'am.
14 Juror number 26, Laverne Brown (black
15 male). What saith the State?
16 SOLICITOR FINNEY: Please accept the
17 juror.
18 THE CLERK: What saith the Defendant?
19 MR. ABDULLAH: Strike.
20 THE CLERK: Have a seat back in the panel.
21 You've been excused from this trial, please, sir.
22 Juror number 79, Sue Haxton (white
23 female). What saith the State?
24 SOLICITOR FINNEY: Please accept the
25 juror.

1 THE CLERK: What saith the Defendant?

2 MR. ABDULLAH: Accepted.

3 THE CLERK: Have a seat in the jury box
4 please, ma'am.

5 Juror number 100, Denise Kelly (black
6 female). What saith the State?

7 SOLICITOR FINNEY: Please accept the
8 juror.

9 THE CLERK: What saith the Defendant?

10 MR. ABDULLAH: Accepted.

11 THE CLERK: Have a seat in the jury box
12 please, ma'am.

13 Juror number 166, Amanda Small (white
14 female). What saith the State?

15 SOLICITOR FINNEY: Please accept the
16 juror.

17 THE CLERK: What saith the Defendant?

18 MR. ABDULLAH: Accepted.

19 THE CLERK: Have a seat in the jury box
20 please, ma'am.

21 Juror number 43, Sharon Daniels (white
22 female). What saith the State?

23 SOLICITOR FINNEY: Please accept the
24 juror.

25 THE CLERK: What saith the Defendant?

1 MR. ABDULLAH: I strike.

2 THE CLERK: Have a seat back in the panel.
3 You've been excused from this trial, please, ma'am.

4 Juror number 62, Dean Evans (white male).
5 What saith the State?

6 SOLICITOR FINNEY: Please accept the
7 juror.

8 THE CLERK: What saith the Defendant?

9 MR. ABDULLAH: Accepted.

10 THE CLERK: Have a seat in the jury box
11 please, sir.

12 Juror number 114, Shawana McBride (black
13 female). What saith the State?

14 SOLICITOR FINNEY: Please excuse the juror
15 from this trial.

16 THE CLERK: Have a seat back with the
17 panel. You've been excused from this trial, please,
18 ma'am.

19 Juror number 66, Martha Ford (black
20 female). What saith the State?

21 SOLICITOR FINNEY: Please accept the
22 juror.

23 THE CLERK: What saith the Defendant?

24 MR. ABDULLAH: Accepted.

25 THE CLERK: Have a seat in the jury box

1 please, ma'am.

2 Alternate juror, juror number 80, Douglas
3 Hebert (white male). What saith the State?

4 SOLICITOR FINNEY: Please accept the
5 juror.

6 THE CLERK: What saith the Defendant?

7 MR. ABDULLAH: Strike.

8 THE CLERK: Have a seat back in the panel.
9 You've been excused from this trial please, sir.

10 Juror number 70, Angela Geddings (white
11 female). What saith the State?

12 SOLICITOR FINNEY: Please accept the
13 juror.

14 THE CLERK: What saith the Defendant?

15 MR. ABDULLAH: Accepted.

16 THE CLERK: Have a seat in the jury box
17 please, ma'am.

18 Juror number 179, Stephanie Valcourt
19 (white female). What saith the State?

20 SOLICITOR FINNEY: Please accept the
21 juror.

22 THE CLERK: What saith the Defendant?

23 MR. ABDULLAH: Strike.

24 THE CLERK: Have a seat back in the panel.
25 You've been excused from this trial, please, ma'am.

1 Juror number 48, James Dimitriadis (white
2 male). What saith the State?

3 SOLICITOR FINNEY: Accept the juror.

4 THE CLERK: What saith the Defendant?

5 MR. ABDULLAH: Accepted.

6 THE CLERK: Have a seat in the jury box
7 please, sir.

8 THE COURT: All right, any matters of law
9 we need to take up with regards to jury selection
10 from the State?

11 SOLICITOR FINNEY: None, Your Honor.

12 THE COURT: Defendant?

13 MR. ABDULLAH: No, sir, Your Honor.

14 THE COURT: Ladies and gentlemen, you all
15 have been selected as fair and impartial jurors in
16 this case. What I'm going to do is let you step to
17 the jury room just a minute, and I'm gonna bring you
18 back out. Listen to me very carefully, you will get
19 tired of hearing me this say, this, okay, but do
20 not, do not discuss this case at all with anyone,
21 including your fellow jurors. You don't know, you
22 know very little about this case at this point, no
23 more than what I've already told you. You are not
24 to discuss this case with anyone at any time until
25 you're instructed to do so by this Court, okay. I'm

1 gonna ask that you step into the jury room, take a
2 quick break, then I'm gonna get you back out here
3 and we're gonna start the trial of this case, okay.
4 Please step to the jury room. Everybody else remain
5 seated while the jury exits the courtroom.

6 (WHEREUPON, the jury was removed from the
7 courtroom at 2:56 p.m.)

8 THE COURT: All right, I'm gonna stand
9 down just a minute and we'll come back, get the jury
10 back in here and start the trial.

11 Yes, sir.

12 SOLICITOR FINNEY: If it please the Court,
13 if the Court would allow me based on what we're
14 looking at now it's 3:00 in the afternoon, I would
15 like to see if the Court would allow us to go
16 through opening arguments this afternoon and the
17 call of two short witnesses and then rest for the
18 day.

19 THE COURT: That's fine.

20 MR. FINNEY: In order to facilitate that I
21 have some documents that I think we need to mark so
22 that we can talk about them in opening.

23 THE COURT: Have you talked with the
24 Defendant?

25 SOLICITOR FINNEY: One of them is a

1 document from the South Carolina Department of
2 Corrections that was signed by the defendant upon
3 his release from prison in 2000. It was a document
4 which showed that he was advised he was not to have
5 a firearm or possess ammunition.

6 THE COURT: Well, hold on a minute now.
7 All right, go ahead, go ahead.

8 SOLICITOR FINNEY: And I just want that
9 document in case, I want him to know that we have
10 the document and I want the Court to mark it as a
11 Court's Exhibit.

12 THE COURT: For identification purposes
13 only.

14 SOLICITOR FINNEY: Only, just so you ---

15 THE COURT: For going, going forward on
16 count three.

17 SOLICITOR FINNEY: That's correct. But
18 the fact of the matter is, if we have him testify at
19 this trial that he was inside the nightclub and
20 never fired a weapon that night and we have people
21 who will testify differently, I want him to know
22 that he may be opening doors about that issue of
23 having a firearm in his possession when he was told
24 by the South Carolina Department of Corrections
25 legally, he was unable legally to possess a firearm

1 after January of 2000.

2 THE COURT: Mr. Abdullah, anything?

3 MR. ABDULLAH: No objections, Your Honor.

4 THE COURT: Sir?

5 MR. ABDULLAH: No objections from the
6 State -- I mean, from Defense.

7 THE COURT: Without objection. How about
8 the other two documents?

9 SOLICITOR FINNEY: The other document is a
10 picture of the victim Mr. Way, David Way.

11 THE COURT: Okay.

12 SOLICITOR FINNEY: I'm gonna call his mom
13 as the first witness to introduce just the picture
14 and ---

15 THE COURT: Have you seen this, Mr.
16 Abdullah?

17 Make sure you show this to Mr. Abdullah
18 please, sir.

19 (Pause while document is shown to defendant.)

20 THE COURT: Any objection, Mr. Abdullah?

21 MR. ABDULLAH: No, sir.

22 THE COURT: Okay. What's the last -- show
23 it to him before you come up here to me now. You
24 got one more?

25 MR. FINNEY: No, right here. We have a

1 diagram made by law enforcement. I may want to
2 refer to it in opening. I'd like to have it marked
3 as ---

4 THE COURT: Let him see it please.

5 MR. ABDULLAH: No objection from, no
6 objection, Your Honor.

7 THE COURT: All right, without objection.

8 SOLICITOR FINNEY: If we could, Your Honor

9 ---

10 THE COURT: Now with regards to the
11 document signed by him from the Department of
12 Corrections, that's a Court's exhibit at this point.
13 Anything else, Mr. Abdullah?

14 MR. ABDULLAH: No, sir, nothing from the
15 Defense, Your Honor.

16 THE COURT: All right, we'll stand down
17 for just a couple of minutes and we'll come back in
18 here and start the trial.

19 (WHEREUPON, State Exhibit Nos. 1 and 2
20 were marked for identification only and
21 No. 2 was admitted into evidence.)

22 Court's Exhibit Number 1 was marked and
23 made a part of the record.)

24 (WHEREUPON, a recess was taken from the
25 proceedings.)

1 THE COURT: Anything from the State before
2 I bring the jury back out?

3 SOLICITOR FINNEY: Your Honor please,
4 there are three color paragraphs that may need to
5 come in from one of the witnesses this afternoon.
6 This shows the front of the nightclub that was
7 photographed by the police that night, and I want to
8 ask Mr. McBride a couple of questions about where he
9 was located and so it would be helpful if we go
10 ahead and put these in as State's Exhibits. I think
11 we have 1 and 2 so this will be 3, 4 and 5. Any
12 objection, sir?

13 MR. ABDULLAH: No objection from Defense.

14 THE COURT: No objection.

15 (WHEREUPON, State Exhibits Nos. 3, 4 and
16 5 were marked for identification and
17 admitted into evidence.)

18 THE COURT: Anything else before I bring
19 the jury back in?

20 MR. FINNEY: That's it, Your Honor.

21 THE COURT: Mr. Abdullah?

22 MR. ABDULLAH: No, Your Honor.

23 THE COURT: If you'd bring me the jury.

24 (WHEREUPON, the jury was returned to the
25 courtroom at approximately 3:09 p.m., and

1 the following proceedings commenced in
2 open court.)

3 THE COURT: Ms. Geddings and
4 Mr. Demetriadis, if y'all will be out last. I want
5 the alternates on the back row. All right,
6 Ms. Geddings, Mr. Demetriadis, when you come in and
7 out the courtroom during the course of this trial,
8 if you all would please sit in one of those two
9 seats I would appreciate it. Everyone else seated
10 on the jury, if you all come in and out of the
11 courtroom you all may sit wherever you so desire,
12 okay. At some point during the course of this trial
13 a foreperson will be selected and they will sit
14 where this young man is seated on the front row in
15 the blue shirt. Those are the only people that have
16 assigned seating as we go forward with this trial as
17 you all come in and out of the courtroom, okay.

18 If you all, -- Mr. Clerk, if you will
19 swear the jury for me please.

20 THE CLERK: Yes, sir, Your Honor.

21 Please stand and raise your right hand to
22 be sworn.

23 (WHEREUPON, the jury was sworn.)

24 THE CLERK: You may have a seat.

25 THE COURT: All right, ladies and

1 gentlemen, we're about to try the case of the State
2 of South Carolina versus Muttahiqin Fatir Abdullah.
3 Before we begin the trial of this case, ladies and
4 gentlemen, I want to tell you that this trial will
5 probably be different from what you might expect.
6 Many people do not have a chance to attend actual
7 court sessions as you're doing now. You may think
8 from watching television or movies or reading books
9 that trials are always full of high drama, intense
10 action, and rivetting circumstances. Now while all
11 of these things may be true at times, this trial is
12 not for entertainment. It is a fundamental part of
13 our democracy, a search for the truth in an effort
14 to make sure that justice is done between the
15 parties.

16 Searching for the truth and making sure
17 that justice is done is often slow, deliberate, and
18 repetitive, the opposite of what you may have seen
19 on television or in movies or read in books. This
20 courtroom is a place of honor dedicated to the
21 protection and preservation of citizens' rights
22 through what many have called the greatest justice
23 system ever created. The parties appearing before
24 you, ladies and gentlemen, are advocates for the
25 parties that they represent. First and foremost,

1 they are officers of the court sworn to uphold the
2 integrity and fairness of our judicial system and to
3 help you in the search for the truth. You should
4 expect them to be professional, competent, and
5 ethical in the representation of their client's
6 interest.

7 Now what I'll now say to you, ladies and
8 gentlemen, is intended to serve as an introduction
9 to the trial of this case. These remarks are not a
10 charge on the law in this case. I will instruct you
11 on the law applicable to this case at the end of the
12 trial before you retire to consider your verdict.
13 This is merely an explanation of the procedure that
14 we will follow in the trial of this case so that you
15 may better understand what may be happening.

16 The defendant in this case, ladies and
17 gentlemen, is charged by an indictment filed in this
18 court with the crimes of murder, assault and battery
19 with intent to kill, and possession of a weapon
20 during the commission of a violent crime, the
21 elements of which will be explained to you later.
22 The indictment, ladies and gentlemen, is simply the
23 charging document by which this case is brought into
24 this court, and it is not in any sense evidence in
25 this case. The defendant, ladies and gentlemen, has

1 pled not guilty to this indictment; therefore, the
2 State of South Carolina bears the burden of proving
3 each of the elements of the indictment beyond a
4 reasonable doubt. It will be your duty, ladies and
5 gentlemen, to decide whether the State has met that
6 burden.

7 Your purpose as jurors is to find and
8 determine the facts. You, ladies and gentlemen, are
9 the sole judge of the facts. If at any time I make
10 any comment regarding the facts, you must disregard
11 it. You are to determine the facts from the
12 testimony that you hear and the other evidence
13 introduced here in this courtroom. It is up to you
14 to determine the inferences which you feel may
15 properly be drawn from the evidence. It is
16 especially important, ladies and gentlemen, that you
17 perform your duty of determining the facts
18 diligently and consciously because ordinarily there
19 is no way to correct an erroneous determination of
20 the facts by a jury. On the other hand and with
21 equal emphasis, the same law that makes you the
22 judge of the facts makes me the judge of the law.
23 The law as given by the Court is the only law that
24 you may consider. You must accept and follow the
25 law that I give you even though you may disagree

1 with it. I cannot tell you what the facts are in
2 this case, ladies and gentlemen, and you cannot
3 disagree with me about what the law is.

4 Your job is to take the law as I give it
5 to you and apply it to the facts as you find them
6 from the testimony of the witnesses and any other
7 evidence that is introduced. After doing that you
8 will render your verdict a true and just verdict
9 under the solemn oath that you just took as jurors.
10 Now until I tell you to begin your deliberations you
11 must not, you must not discuss this case with
12 anyone, including your fellow jurors, friends,
13 family members, and anyone involved in the case.
14 The attorneys and parties in this case have been
15 advised that they are not to talk to you at all so
16 if you see anyone involved in the case and they do
17 not speak to you, they're not being unfriendly,
18 they're simply following this Court's instructions.

19 Now during your deliberations you may only
20 discuss the case in the jury room with your fellow
21 jurors because they have seen, heard, the same
22 evidence that you have. You must not discuss the
23 case with anyone other than your fellow jurors until
24 you have returned a verdict and the case is at an
25 end. I remind you that you must decide this case

1 based solely on the evidence presented here in this
2 courtroom. This means that during the trial you
3 must not conduct any independent research about the
4 case, the facts of the case, the evidence presented
5 in the case, or the people or organizations involved
6 in any way in the case. Please do not try to find
7 out information from any source outside of this
8 courtroom. In other words, you must not look at
9 dictionaries or other reference materials, search
10 the internet, websites, or blogs, or use any other
11 electronic tools to get information about this case
12 to help you decide the case. You may not use
13 computers, telephones, cell phones, smart phones,
14 tablets, internet, or other tools of technology with
15 communication capabilities at any time while you are
16 in the courtroom or during your deliberations.

17 Now during your breaks from meals or
18 overnight, if necessary you may use these devices;
19 however, you must not use them to communicate with
20 anyone about the case until the case is over. This
21 means you must not use phone calls, emails, text
22 messaging, instant messages, Twitter, or any blog,
23 chat room, or web site including Facebook, Google
24 Plus, Myspace, LinkedIn, YouTube, or any social
25 media websites to send or receive information about

1 this case. This includes information about a party,
2 a witness, an attorney, or a court officer, news
3 accounts about the case, research on topics raised,
4 any topics you may think would be helpful in
5 deciding the case, or any testimony presented by any
6 witness. During the trial do not read, listen to,
7 or watch any news reports about the case if there
8 are any. This includes anything that may be in the
9 newspapers or on the internet, radio, or television.
10 You must not, ladies and gentlemen, consider
11 anything that you may have read or heard about the
12 case outside of this courtroom whether before or
13 during the trial. Information on television, the
14 radio, internet or from other sources might be wrong
15 or incomplete. In our judicial system it is
16 important that you are not influenced by anything or
17 anyone outside of this courtroom. If you become
18 aware of another juror's violations of these
19 instructions, please, ladies and gentlemen, inform
20 the Court immediately.

21 It is important that you keep an open mind
22 and not decide any issue in the case until all of
23 the evidence has been presented, the parties have
24 made their closing arguments, and I have instructed
25 you on the law applicable to this case. It is your

1 solemn responsibility, ladies and gentlemen, to
2 determine the guilt or innocence of the defendant
3 and your verdict must be based solely on the
4 evidence as it is presented to you in this trial and
5 on the law as I instruct you during and at the close
6 of the trial.

7 Now in just a moment, ladies and
8 gentlemen, the solicitor will make what is called an
9 opening statement in which the Solicitor will
10 explain to you the issues in this case or at least
11 what the Solicitor thinks the issues are in this
12 case. The defendant, ladies and gentlemen, may also
13 make an opening statement, although he is not
14 required to do so. What they tell you during their
15 opening statements, ladies and gentlemen, is not
16 evidence in this case; it is only their contention
17 as to what the issues are. The evidence in this
18 case will be presented to you by the testimony of
19 sworn witnesses from the witness stand and/or by
20 exhibits that may be introduced into evidence during
21 the course of this trial.

22 Now from time to time during the trial you
23 may hear the Solicitor or the Defendant say
24 something like, Your Honor, I believe we have a
25 question of law or a matter of law to discuss with

1 you; or Your Honor, may we approach the Bench. Or
2 sometimes I myself might find it necessary to excuse
3 you all from the courtroom for a short while so the
4 attorneys — so that I, along with the prosecutor
5 and the Defendant, may discuss a matter of law. The
6 reason for this, ladies and gentlemen, is because
7 you are the judge of the facts in this case and
8 sometimes it may be necessary for me to make some
9 comment as to the facts in connection with ruling
10 whether or not a particular law applies. I am not
11 supposed to tell you all what I think the facts are
12 so I will excuse you from the courtroom while these
13 discussions take place so that in no way, so that in
14 no way will you be influenced by anything I might
15 say or do in connection with the facts.

16 Now, in determining, ladies and gentlemen,
17 what the true facts are in this case you must decide
18 whether or not the testimony of the witness is
19 believable. It will be my responsibility to rule as
20 a matter of law as to whether certain testimony is
21 admissible or not; but once the testimony is
22 admitted, whether or not you believe it is solely
23 for you to determine. Now in deciding whether to
24 believe a witness you have the right to consider the
25 interest of any witness, the bias of any witness,

1 the prejudice of any witness, the opportunity for
2 the witness to have seen the matters and things
3 about which the witness may testify and the way the
4 witness acts on the witness stand. You have the
5 right to consider anything that is in the record
6 that will help you evaluate the testimony of the
7 witnesses. That means, ladies and gentlemen, that
8 it is your duty to pay close attention to these
9 witnesses, to observe the witnesses, to listen to
10 the witnesses, and to pay close attention to the
11 attorneys and to the Court. Please don't let your
12 thoughts wander, but give strict attention to the
13 testimony in this case so that at the end of all the
14 testimony, after the arguments of counsel and the
15 charge on the law by the Court, you will then be in
16 a position to determine what the true facts are and
17 to apply the law to those facts and, thus, render a
18 true and just verdict.

19 Now later in this case, ladies and
20 gentlemen, a foreperson will be selected to preside
21 over deliberations in the jury room. It will be the
22 foreperson's added responsibility to be the jury
23 spokesperson here in court. It will also be the
24 foreperson's duty to write the verdict, but I will
25 give the foreperson further instructions about that

1 at the conclusion of the case. Now in order to
2 preserve everyone's rights I will give the parties
3 an opportunity to object to anything that I have
4 said to the jury.

5 Any exception or objection to anything
6 that I have said to the jury by the State?

7 SOLICITOR FINNEY: None from the State.

8 THE COURT: By the Defendant?

9 MR. ABDULLAH: None from the Defense, sir.

10 THE COURT: All right. Ladies and
11 gentlemen, we will now begin the trial of this case.

12 Mr. Finney, you're so recognized for
13 opening statement.

14 SOLICITOR FINNEY: Thank you, Your Honor,
15 may it please the Court.

16 THE COURT: Yes, sir.

17 SOLICITOR FINNEY: Good afternoon, ladies
18 and gentlemen. Why are we here? Well, there's a
19 lot of ways to answer that question, but the judge
20 told it to you in his opening statements. We're
21 here because we are looking for the truth. We are
22 in a search for the truth. My name is Chip Finney.
23 I've been your elected solicitor about
24 five-and-a-half years now and I'm honored to serve
25 in that position. The reason I'm honored to serve

1 in that position because for the first 25 years of
2 my life I was a private lawyer and a public
3 defender. I was a municipal court judge. I had a
4 lot of dealings with the system, the criminal
5 justice system, but usually I sat on the other side
6 of the courtroom. Now I sit as a chief prosecutor
7 for Sumter County, and I get to work with officers
8 like Jamie Turner. I get to work with mothers like
9 Vangie Parker. I get to work with victims like
10 Marell McBride. People who were minding their
11 business, living their life, enjoying Sumter County,
12 and all of a sudden something happened.

13 Back in 2004 at a nightclub in Sumter
14 County called the Lion's Pit, it's located off North
15 Main Street as you go out of Sumter, pass McLaughlin
16 Ford, pass the new Sheriff's Department, pass where
17 I live, about two miles out of town. It's on the
18 left-hand side of the road; it's a nightclub. Back
19 in 2004 it was operating as the Lion's Pit. It's
20 been a lot of different names.

21 It was about 3:30 in the morning.
22 Saturday had turned into Sunday so we're talking
23 early Sunday morning, March the 14th. Marell
24 McBride and David Way were out there at the club
25 having a good time enjoying some cold beers, minding

1 their own business. It was about time, the evidence
2 will show you, for the Club to turn out because they
3 stopped serving, they stopped the music, they get
4 everybody out the club. And inside the club there
5 were several people working as bouncers, inside
6 security keeping the order, keeping the peace. The
7 evidence will show you that Mr. Abdullah, the
8 defendant in this case, was working as a inside
9 bouncer that evening. Outside in the parking lot
10 area the evidence will show you that there were
11 security guards who were hired by the owner of the
12 club to keep the peace and to keep things straight.
13 Some of the security guards had weapons. They were
14 bonded, licensed, certified security guards; the
15 bouncers were not. They were hired by somebody
16 else, the promotor, to keep things straight in the
17 club.

18 We believe the evidence will show that
19 around 3:30 that morning or a little after that, Mr.
20 Abdullah decided for whatever reason to arm himself
21 with a gun and he began firing that weapon. The
22 evidence will show you that he emptied the clip in
23 that semiautomatic .45 caliber handgun. Seven shots
24 fired. One of those shots took the life of that
25 lady's son, David Way. He died in the parking lot

1 of the club that night. One of the shots struck
2 Marell McBride in the left hip. He had to be taken
3 to the hospital by his cousins. Other shots were
4 fired into automobiles. You'll see what the
5 investigators were able to bring together. You will
6 hear throughout the next two days testimony of
7 eyewitnesses who saw Abdullah fire that weapon
8 randomly that night causing the death and the injury
9 of these two people.

10 You will see photographs that were taken
11 by the investigators that were brought in within a
12 few minutes. You will hear from Investigator
13 Atkinson who was able to find in talking to people,
14 not only find Mr. Abdullah and get him under
15 control, but find the handgun that was used in the
16 shooting that was hidden in the bathroom ceiling of
17 that nightclub. You will find also from the
18 testimony of witnesses, both investigative witnesses
19 and what we call expert witnesses, you will hear
20 from the pathologist about the injury that David Way
21 sustained and his death resulting from it. You will
22 hear from fingerprint experts. We intend to show
23 you that the fingerprint of Mr. Abdullah was located
24 on the cartridge, on the clip of that .45 caliber
25 gun.

1 We also intend to show you that there were
2 lab tests done, things called gunshot residue, GSR,
3 gunshot residue test on the hands of Mr. McBride and
4 Mr. Way and also Mr. Abdullah. All of these things
5 together are gonna get us to the end of the case.
6 And at the end of the case you're going to know the
7 truth, you're gonna know who did it. You're gonna
8 know how he did it. You're gonna know how it went
9 down as far as what other people saw and did. But
10 ladies and gentlemen, there's gonna be one thing
11 that I'm not gonna be able to answer for you, and
12 that's why; there is no answer for that. Why did
13 this man lose his temper, lose his control, lose his
14 ability to be rational and reasonable about all
15 kinds of people. You're gonna hear numbers of
16 people out there that night enjoying themselves. I
17 can't answer that, and under the law I don't have
18 to. What I have to do is prove who did it and how
19 he did it and show you the elements of murder had
20 been met because he unlawfully took the life of
21 another individual by using a handgun which in South
22 Carolina gives us the right to say that he inferred
23 by the use of this handgun, he inferred the malice
24 that the law requires to prove murder. This wasn't
25 an accident. He fired the gun until it was empty.

1 He took the life of one person and nearly took the
2 life of another.

3 We ask you to listen to the evidence. He
4 doesn't have to say a thing because the law in this
5 beautiful state and beautiful country is that we
6 have rules, we have regulations, and he has the
7 benefit of each and every one and that's why Judge
8 Brown is here. We have the responsibility of
9 bringing the witnesses, proving the evidence, and
10 building a case. We accepted that when we filed
11 this indictment. When I signed my name on that
12 indictment I said I will take this case to court, I
13 will prove that he's guilty of murder for David Way,
14 taking the life of David Way. He's guilty of
15 assault and battery with intent to kill because he
16 shot and injured Marell McBride, and he's guilty of
17 possession of a weapon during the commission of a
18 violent crime because he had a weapon, a .45 caliber
19 semiautomatic fully loaded, ready to go, and he used
20 it until he didn't have any bullets left. Listen to
21 the evidence, listen to the evidence carefully. You
22 will hear the story that's gonna take you to the
23 search for truth. Thank you.

24 THE COURT: Mr. Abdullah.

25 MR. ABDULLAH: Yes, sir. May I address

1 them?

2 THE COURT: Yes, sir, go ahead.

3 MR. ABDULLAH: Hey, how are you doing? My
4 name is Muttagin Abdullah. I'm originally from
5 Columbia, South Carolina, and I've been a club
6 bouncer off and on throughout my life, probably
7 about 10 or 12 years. This is something I do as a
8 hobby, you know, spare time, extra money. But on
9 the night of March 2004, I was arrested based on a
10 big shootout that took place at the club. I was
11 charged with murder, assault and battery with intent
12 to kill, possession of a gun and carrying a gun on
13 ABC property. In 24 hours all these charges were
14 actually nol prossed, dismissed by the State. A new
15 sovereignty took over called the federal government,
16 took over these charges. I was actually convicted
17 in a federal court. And after serving ten years on
18 a life sentence from the elements of this conduct,
19 in ten years the whole life sentence was vacated so
20 after it's been vacated, I'm being charged twice for
21 the same conduct all over again. So if you, the
22 jury -- and this is the reason I'm representing
23 myself -- you're the jury, and you will see that
24 under the Fifth Amendment of the Constitution that
25 no one can be charged twice for the same conduct,

1 and I'm being charged for the same conduct which
2 violates my Fifth Amendment right. So you want to
3 listen to all the evidence of this case and you're
4 gonna be the judge as far as your decision. You're
5 gonna hear a lot of contradictory statements.
6 You're gonna hear statements as if I was somewhat
7 insane and went off and shot two people, killed an
8 innocent man, shot another innocent man in the hip,
9 and you're gonna want to know what is the motive
10 behind this. If a man did this, there would have to
11 be some type of motive so what would be the motive.
12 This is what you want to hear, what would be the
13 motive behind this. You're gonna listen to this
14 right here. I'm thinking for myself, where's the
15 motive because in their testimony it's gonna sound
16 like, man, I'm insane or crazy. So I'm gonna
17 represent myself so you know I'm not insane, I'm not
18 crazy. So there would have to be a motive to
19 justify this so we're gonna get to the bottom of
20 this in this court of law today. Thank you.

21 THE COURT: Mr. Finney, call your first
22 witness.

23 MR. FINNEY: May it please the Court, Your
24 Honor, we call Vangelina Parker Wells.

25 THE CLERK: Place your left hand on the

SW - V. WELLS - DIRECT

1 Bible, raise your right hand. State your name
2 please.

3 THE WITNESS: Vangeline Parker-Wells.

4 WHEREUPON,

5 **VANGELINE PARKER-WELLS,**

6 having been duly sworn by the Clerk, testified
7 as follows:

8 THE CLERK: Have a seat up here please.
9 Please state your full name, spell your last name
10 for the record.

11 THE WITNESS: Vangeline Parker-Wells,
12 W-E-L-L-S.

13 **DIRECT EXAMINATION**

14 BY SOLICITOR FINNEY:

15 Q Ms. Parker-Wells, where do you reside, what
16 county?

17 A Sumter County.

18 Q How long have you lived here?

19 A Twenty-seven years.

20 Q And what is your occupation?

21 A I am a licensed insurance agent, notary public
22 for Nationwide Insurance Agency.

23 Q All right. And do you have a family? You have
24 children?

25 A Yes.

SW - V. WELLS - DIRECT

1 Q How many children?

2 A Four.

3 Q And David Way was one of your children?

4 A Yes, he was my oldest.

5 Q Your oldest?

6 A Uh-huh.

7 Q Son?

8 A Oldest son.

9 Q All right. Have I asked you today to bring a
10 photograph of your son David Way to this court?

11 A Yes, you did.

12 Q I want you to look at what has been marked as
13 State's Exhibit Number 1 and tell us, what is that?

14 A That's my son David's picture.

15 Q All right.

16 MR. FINNEY: Move to introduce, Your
17 Honor, State's Number 1.

18 THE COURT: Any objection?

19 MR. ABDULLAH: None from Defense, Your
20 Honor.

21 THE COURT: Thank you, so admitted,
22 State's Exhibit Number 1 without objection.

23 (WHEREUPON, State Exhibit No. 1 was
24 admitted into evidence.)

25 BY SOLICITOR FINNEY:

SW - V. WELLS - DIRECT

- 1 Q How old was David when he was, his life was
2 taken?
- 3 A 27.
- 4 Q And did he live in Sumter County?
- 5 A Yes, he did.
- 6 Q And what was his occupation?
- 7 A He worked in maintenance.
- 8 Q For a company?
- 9 A Goldkist, yes.
- 10 Q And how before, how long before his death was
11 this picture taken?
- 12 A Three years before.
- 13 Q All right. And so he was how old when he died?
- 14 A 27.
- 15 Q He would have been about 24 years old ---
- 16 A Yes.
- 17 Q ---when this picture was taken?
- 18 A Yes.
- 19 Q All right. And did he live in Sumter?
- 20 A Yes, he did.
- 21 Q All right. And did he live with you?
- 22 A Sometimes he lived with me, yes.
- 23 Q All right. And when he was killed in March of
24 2004, was he working at that time?
- 25 A Yes, he was.

SW - V. WELLS - CROSS

1 Q Okay. Thank you for coming. Answer any
2 questions Mr. Abdullah has.

3 THE COURT: Cross-examination, sir.

4 MR. ABDULLAH: Thank you, sir, Your Honor.

5 **CROSS-EXAMINATION**

6 BY MR. ABDULLAH:

7 Q How are you doing, Ms. Parker?

8 A Fine.

9 Q Yes. What kind of work did your son do, ma'am?

10 A He worked in maintenance at Goldkist.

11 Q Maintenance. Are you aware that your son from
12 the motion of evidence possessed ---

13 MR. FINNEY: I object to the question.

14 THE COURT: Hold on a minute. Can y'all
15 approach please.

16 (WHEREUPON, Solicitor Finney and Mr.
17 Abdullah approached the Bench for an
18 off-the-record discussion.)

19 THE COURT: Objection sustained.

20 MR. ABDULLAH: Excuse the Court.

21 BY MR. ABDULLAH:

22 Q Yes. How long have your son been employed,
23 Ms. Parker?

24 A For quite a few years with Goldkist.

25 Q Yes, ma'am. Did you raise him yourself?

SW - M. MCBRIDE - DIRECT

1 A Yes, we did.

2 Q Thank you very much. No more questions.

3 THE COURT: Any further, Mr. Finney?

4 SOLICITOR FINNEY: No re-cross. Thank
5 you, you may come down.

6 THE COURT: You mean redirect?

7 SOLICITOR FINNEY: Redirect, yes, sir. We
8 call Marell McBride to the stand.

9 THE CLERK: Raise your right hand please.
10 State your name.

11 THE WITNESS: Marell McBride.

12 WHEREUPON,

13 **MARELL MCBRIDE,**

14 having been duly sworn by the Clerk, testified
15 as follows:

16 THE CLERK: Have a seat up here please.
17 Please state your name and spell your last name for
18 the record.

19 THE WITNESS: Marell McBride,
20 M-C-B-R-I-D-E.

21 MR. FINNEY: Bed the Court's indulgence,
22 we're just looking for a document, Your Honor.

23 THE COURT: Okay.

24 **DIRECT EXAMINATION**

25 BY MR. FINNEY:

SW - M. MCBRIDE - DIRECT

- 1 Q Good afternoon, Mr. McBride.
- 2 A Good afternoon, sir.
- 3 Q Tell the ladies and gentlemen of the jury where
- 4 do you live, sir? What county?
- 5 A Sumter County, Sumter, South Carolina.
- 6 Q Okay. How long have you lived in Sumter?
- 7 A All my life.
- 8 Q And how old are you?
- 9 A 33.
- 10 Q All right, sir. What do you do for a living?
- 11 A Packing sanitation.
- 12 Q And how long have you done that kind of work?
- 13 A Eight years now.
- 14 Q You got family?
- 15 A Yes, sir.
- 16 Q You got a wife?
- 17 A Yes, sir.
- 18 Q And how many children?
- 19 A Five.
- 20 Q All right. And now you say you worked all your
- 21 life in Sumter. Did you go to school in Sumter?
- 22 A Yes, sir.
- 23 Q Where at?
- 24 A Sumter High.
- 25 Q All right. Now did you have the occasion to go

SW - M. MCBRIDE - DIRECT

1 to the Lion's Pit nightclub in Sumter County back in
2 2004?

3 A Yes, sir.

4 Q And did you go there often or how often? Tell
5 the jury.

6 A Every once in a while.

7 Q All right. So you've been there more than once?

8 A Yes, sir.

9 Q And did you have the occasion to go there on
10 March the 14th, 2004, the night of a shooting?

11 A Yes, sir.

12 Q All right. And were you, in fact, shot that
13 night while you were at the club?

14 A Yes, sir.

15 Q All right. So let's start at the beginning and
16 just go through it step by step.

17 A Yes, sir.

18 Q How did you arrive at going to the club that
19 night?

20 A With one of my cousins.

21 Q All right. And who drove?

22 A My cousin.

23 Q All right. And when you all got to the club
24 about what time was it?

25 A About 12:30, 1:00.

SW - M. MCBRIDE - DIRECT

1 Q In the morning?

2 A In the morning.

3 Q Now you would have left the house around, it
4 would have been Saturday morning going into Sunday?

5 A Yes, sir. Yes, sir.

6 Q And what was, was anything special going on that
7 night, any special purpose for you to go to the club
8 that night?

9 A I think it was a rapper out there, Gangsta Boo,
10 something like that.

11 Q Tell me that again.

12 A I think it was a performance by a rapper called
13 Gangsta Boo.

14 Q So it was like a live performance?

15 A Yes, sir.

16 Q You and your cousin get in a car and go out
17 there?

18 A Yes, sir.

19 Q And when you get there do you have to go through
20 security or anything to get in the club?

21 A Yes, sir.

22 Q Tell the jury about that.

23 A You got to, when you first get to the club they
24 pack you down and hit you with the metal detector,
25 make sure you ain't got no guns or weapons on you.

SW - M. MCBRIDE - DIRECT

1 Q All right. And so do you have to pay to get in
2 the club?

3 A Yes, sir.

4 Q All right. So once you get in do you and your
5 cousin sit down and enjoy yourselves?

6 A Yes, sir.

7 Q And how long would you say you were there that
8 night before you left the club?

9 A I'd say about an hour-and-a-half or two.

10 Q All right. Maybe more?

11 A Maybe more.

12 Q All right. Now at some point in the evening do
13 they shut down the club and cut the lights on and
14 say, everybody, that's it, you got to go home?

15 A Yes, sir.

16 Q Were you still there at the club when they cut
17 the lights on and told everybody to come on,---

18 A Yes, sir.

19 Q ---go home?

20 A Yes, sir.

21 Q All right. What were you doing in the club for
22 the two or three hours you were there?

23 A I was just in there talking, talking to people I
24 know.

25 Q Did you know a lot of people there?

SW - M. MCBRIDE - DIRECT

1 A I know a good little bit of people.

2 Q And where did you know these people from?

3 A From the surrounding areas and high school.

4 Q You mean people you went to high school with?

5 A Yeah, people I went to high school with.

6 Q Now inside the club was there a lot of fighting
7 going on that night?

8 A No, not that I know of, not that I can remember.

9 Q You don't remember any disruptions or any kind of
10 problems going on inside the club?

11 A I think there was a commotion that got the club
12 shut down that night.

13 Q All right, so you think something broke out ---

14 A Yeah.

15 Q ---at the end of the evening ---

16 A At the end of evening.

17 Q ---and based on that commotion they shut the club
18 down?

19 A Yes, sir.

20 Q All right. And what were you doing when they
21 said you got to go, everybody got to leave?

22 A I was talking to a female.

23 Q All right. And what happened after that?

24 A And it went wrong from there.

25 Q Okay, but tell us in specifics.

SW - M. MCBRIDE - DIRECT

- 1 A All right.
- 2 Q Did you walk the female out of the club?
- 3 A We walked out.
- 4 Q Where were you going to take her?
- 5 A I was -- well, I was going to take her to my
- 6 house but I ain't had a chance to take her. I ain't
- 7 had the chance to make it that far.
- 8 Q So you and a female walked, left the club
- 9 together?
- 10 A No, we ain't left the club together. We was
- 11 walking.
- 12 Q That's what I'm saying, you walked out the door?
- 13 A Yeah, yeah. Yes, sir.
- 14 Q And when you walked out the door you were still
- 15 with this young lady?
- 16 A Yes, sir.
- 17 Q Where were you going? Her car? Your car? Where
- 18 were you going?
- 19 A We was going to my cousin car.
- 20 Q All right. And in the process of going to your
- 21 cousin's car, would you say you knew what time it
- 22 was at that point?
- 23 A No, sir.
- 24 Q All right. And let me ask you this, had you had
- 25 anything to drink that night?

SW - M. MCBRIDE - DIRECT

- 1 A Yes, sir.
- 2 Q What were you drinking?
- 3 A Natural Light, Bud Lite.
- 4 Q Beer?
- 5 A Yes, sir.
- 6 Q And how many would you say you had?
- 7 A Four or five.
- 8 Q All right. Were you driving?
- 9 A No, sir.
- 10 Q All right. And so you had some drinks in the
- 11 club. And did you enjoy yourself?
- 12 A Yes, sir.
- 13 Q All right. So you were leaving, walking this
- 14 young lady out?
- 15 A Yes, sir.
- 16 Q And going to, towards the car?
- 17 A Yes, sir.
- 18 Q Did you hear anything outside once you got
- 19 outside the club, did you hear any shooting?
- 20 A No, sir.
- 21 Q Did you see anybody fighting or being upset?
- 22 A No, sir, I heard a commotion.
- 23 Q What kind of commotion did you hear?
- 24 A People talking.
- 25 Q People that were -- people, what kind of people?

SW - M. MCBRIDE - DIRECT

1 A I just heard people talking, people who I went
2 out, people who I was out there with and...

3 Q All right. Did you see a bouncer that night by
4 the name of, Abdullah?

5 A Yes, sir.

6 Q And how did you know him that night?

7 A I seen him in, seen him in the club prior.

8 Q On prior occasions?

9 A Yeah, prior occasions.

10 Q How many times would you say you've seen him
11 before that night, March of 2004?

12 A About two, three.

13 Q All right. Did you ever have any beef with him
14 or any, ---

15 A No, sir.

16 Q ---any exchanges with him?

17 A No, sir.

18 Q All right. And so did you see him when you left,
19 Mr. Abdullah, did you see him that night when you
20 left the club?

21 A Yes, sir.

22 Q Now describe for the jury how Mr. Abdullah looked
23 that night to you at the club?

24 A Dark skin, bald head, had a little weight on him,
25 but he ain't got no weight on him, he ain't got the

SW - M. MCBRIDE - DIRECT

1 weight on he got on him now.

2 Q And you knew him that night 'cause you had seen
3 him before at the club?

4 A Yes, sir.

5 Q That night did you have the occasion to hear him
6 say anything?

7 A Yes, sir.

8 Q Was he talking to you or other people?

9 A Talking to other people.

10 Q All right. Now the man that was talking that
11 night, was he -- describe for the jury what kind of
12 tone he was using.

13 A He was saying all kind of bad profanity [sic] as
14 far as he gonna kill them F.

15 Q MF? He used the MF word?

16 A Yeah. MF word and all other kind of bad things.

17 Q And where was he when you heard him say this?

18 A He was, like, right there in front of the club.

19 Q All right. And when you heard him say this did
20 other people hear him say it as well?

21 A Yes, sir.

22 Q Now the man who said these things, you said he
23 threatened to kill somebody?

24 A Yes, sir.

25 Q And he used derogatory, he used profanity?

SW - M. MCBRIDE - DIRECT

- 1 A Yes, sir.
- 2 Q He used the MF word?
- 3 A Yes, sir.
- 4 Q Is the man who used that term in court today?
- 5 A Yes, sir.
- 6 Q Would you point him out.
- 7 A (Indicating), right there. I'll never forget
- 8 that face.
- 9 Q That's defendant Mr. Abdullah?
- 10 A Yes, sir.
- 11 Q Now when you first heard these remarks, this
- 12 profanity, would you say he was teasing, he was
- 13 happy, or he was angry?
- 14 A He was very angry.
- 15 Q All right. How do you know he was angry?
- 16 A You can tell by a person voice they're angry.
- 17 Q And once you heard him say that, did that make
- 18 you stop, did you talk to him?
- 19 A No, I ain't talked to him. I tried to stay my
- 20 distance.
- 21 Q And what did you do after that, after you heard
- 22 this?
- 23 A And then after all that, then all the commotion
- 24 went on, all the shooting.
- 25 Q Were you in a position of being near? How far

SW - M. MCBRIDE - DIRECT

1 were you from the man who was making the talk, Mr.

2 Abdullah, how far were you from him?

3 A From where I'm at from where you're at right now.

4 Q The difference between the two of us?

5 A Yes, sir.

6 Q And this was outside?

7 A Yes, sir.

8 Q In front of the Lion's Pit?

9 A Yes, sir.

10 Q Now what county is the Lion's Pit in?

11 A I want to say Sumter County.

12 Q It's in Sumter County.

13 A Uh-huh.

14 Q And you've been there before?

15 A Yes, sir.

16 Q All right. Now I want to show you what's marked
17 as State's Exhibit Number 2.

18 MR. FINNEY: I believe it's already been
19 put in without objection.

20 THE COURT: Yes, sir, correct.

21 BY MR. FINNEY:

22 Q Have you seen this map before?

23 A Yes, sir.

24 Q All right. And tell us what you see in this map
25 that, this diagram.

SW - M. MCBRIDE - DIRECT

1 A I see the club. I see the front entrance. I see
2 the exit.

3 Q And which club are you talking about?

4 A The Lion's Pit.

5 Q Okay. Now I'm gonna give you this pointer here,
6 sir, and I'm gonna ask you, yes, sir, if you would,
7 tell the ladies and gentlemen, where is Highway 15
8 North in relation to this club on this map? Where
9 would the highway be?

10 A Right here.

11 Q On that side? And it runs north and south?

12 A Yes, sir.

13 Q All right. Just like this line right here?

14 A Yes, sir.

15 Q That would be out, up?

16 A Yes, sir.

17 Q That would be where the Highway 15 is?

18 A Yes, sir.

19 Q And where's the front door to this club? Right
20 there?

21 A Yes, sir.

22 Q All right. So now when you went in the club that
23 night, that's the door you went in?

24 A Yes, sir.

25 Q And can you tell us what's inside the club once

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- 1 you come inside?
- 2 A You got the bar---
- 3 Q Tell us where the bar is.
- 4 A You got the bar. You got the VIP. The bar right
- 5 here.
- 6 Q They have a bar section here?
- 7 A Yes, sir. They got the VIP right here.
- 8 Q The VIP section here.
- 9 A They got the stage and the ---
- 10 Q Where was the music being played? If they had a
- 11 band or a DJ where was music being played at?
- 12 A Right here.
- 13 Q In that area there? Now how about the bathrooms,
- 14 did they have bathrooms in that?
- 15 A That part of the bar I never used.
- 16 Q Never used them? All right. Now once you left
- 17 the club that night did you go out the same door you
- 18 came in?
- 19 A No, sir.
- 20 Q You went out a different door?
- 21 A I mean, I -- yeah, I came out, well, we went, we
- 22 came out the side entrance door.
- 23 Q Would this be the door here you're referring to?
- 24 A Yes, sir.
- 25 Q All right. And when you came outside, this, all

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- 1 of this is, this area here would be outside?
- 2 A Yes, sir.
- 3 Q All right. Do you know where your car was, the
- 4 cousin's car that you came in, where it was parked?
- 5 A It was parked on the inside of this.
- 6 Q Down this way?
- 7 A Yes, sir.
- 8 Q All right. And when you came outside the club
- 9 and you heard Mr. Abdullah talking loud, talking
- 10 angry, where on this map was he?
- 11 A Like in front of right here somewhere.
- 12 Q Right in that area?
- 13 A Somewhere in that area.
- 14 Q And you were standing as far as you say just ---
- 15 A I'm going ---
- 16 Q So you were also in this main area here?
- 17 A Yes, sir.
- 18 Q When you said that you didn't want to hear him
- 19 anymore ---
- 20 A Yes, sir.
- 21 Q ---you left?
- 22 A Yes, sir.
- 23 Q Which way did you go?
- 24 A Right.
- 25 Q To the right?

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- 1 A Yes, sir.
- 2 Q And that would have been where? Point it out on
- 3 the map.
- 4 A (Indicates.)
- 5 Q Down this way?
- 6 A Yes, sir.
- 7 Q Once you got to this area did you hear anything?
- 8 A No, sir.
- 9 Q All right. Tell the ladies and gentlemen -- go
- 10 ahead and sit down. Tell the ladies and gentlemen
- 11 of the jury what happened to you next.
- 12 A I heard ---
- 13 Q While you were on the way to the car.
- 14 A All right. I was on the way to the car. I heard
- 15 gunshots. I fell. Once I fell, I got back up. I
- 16 realized I was shot. And one of my cousins realized
- 17 I was shot too and he came and picked me up and took
- 18 me to the car.
- 19 Q Once you got put in the car by your cousin what
- 20 happened to you?
- 21 A I went to the hospital.
- 22 Q All right. And you were treated by the doctors
- 23 there?
- 24 A Yes, sir.
- 25 Q How long did you have to stay in the hospital?

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- 1 A Two days.
- 2 Q All right. Now once you got shot you never went
- 3 back in the club?
- 4 A No, sir.
- 5 Q Did you see who was shooting or who shot you?
- 6 A Yes, sir, I got back up and I looked back.
- 7 Q So once you got shot you went down to the ground?
- 8 A Uh-huh.
- 9 Q Where was the shot that you got?
- 10 A I can show?
- 11 Q Yes, sir.
- 12 A (Indicating) right there. Y'all can see it?
- 13 Q Can you put your hand on it? Is that where --
- 14 that's your left hip?
- 15 A Yes, sir, right here.
- 16 Q And that's where the bullet went in?
- 17 A Yes, sir.
- 18 Q Is that bullet still inside of you?
- 19 A Yes, sir. A couple of more inches it would have
- 20 took my life.
- 21 Q How come they didn't get to take it out?
- 22 A 'Cause it too risky at that time.
- 23 Q So for the last 12 years you've had the bullet in
- 24 you?
- 25 A I have a little pain from the bullet, on and off.

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- 1 Q Once you got hit with the bullet that night you
2 went down to the ground.
- 3 A I went down.
- 4 Q Did you know what had happened to you?
- 5 A I didn't know what happened.
- 6 Q All right. You say you were able to get up?
- 7 A I was -- yeah, I was able.
- 8 Q And once you got up what did you do, what did you
9 look for?
- 10 A I mean, I was looking for my cousin. Well, I was
11 looking to see what really going on.
- 12 Q Okay. Where were you looking? Which area did
13 you look at?
- 14 A I was looking back towards who was shooting.
- 15 Q All right. Did you see who was shooting?
- 16 A Yes, sir.
- 17 Q And who did you see shooting the guns?
- 18 A Abdullah.
- 19 Q Abdullah?
- 20 A Yes, sir.
- 21 Q And how do you know it was him?
- 22 A Okay, I knew it was him.
- 23 Q How do you know?
- 24 A I seen his face.
- 25 Q All right. Did you see a weapon in his hands?

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- 1 A Yes, sir.
- 2 Q And how many shots did you hear ring out that
3 night?
- 4 A About from five to six to seven shots.
- 5 Q All right. To your knowledge when you saw
6 Abdullah with the gun shooting, was the gun -- how
7 was the gun being held, how was he shooting?
- 8 A (Indicating) like this.
- 9 Q Was he standing on the ground?
- 10 A Yeah, he was standing, standing on the ground, on
11 the ground.
- 12 Q How long did it take once you knew you got hit,
13 how long did it take before your cousin got you in
14 the car on way to the hospital?
- 15 A I say about three or four minutes.
- 16 Q All right. And then you went to the hospital and
17 you spent two days?
- 18 A Yes, sir.
- 19 Q And you didn't talk to the police that night?
- 20 A I ain't talked to nobody.
- 21 Q You just talked to doctors that night?
- 22 A Yes, sir.
- 23 Q Eventually did you go to or have a meeting with
24 the officers and tell the officers what happened?
- 25 A Yes, sir.

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1 Q And did you get called as a witness in this trial
2 that Mr. Abdullah talking about a minute ago, did
3 you get to testify at that trial in Columbia?

4 A Yes, sir.

5 Q All right. And did you tell the jury in Columbia
6 that you saw Mr. Abdullah pointing a firearm that
7 night at the club?

8 A I can't even, I can't remember.

9 Q Okay. But you did testify?

10 A Yes, sir.

11 Q They asked you questions about what happened to
12 you that night?

13 A Yes, sir.

14 Q All right. Now is there any doubt in your mind
15 who the man was that you heard angrily talking when
16 you came out of the club, that night, before you got
17 shot? When you came out of the club you ran into a
18 man who was angry and talking and cussing.

19 A Yes, sir.

20 Q Was he angry at you?

21 A No, sir.

22 Q Was he angry at anybody that you could see in
23 particular? Do you know why he was angry?

24 A Yeah, I don't know why he was angry?

25 Q You don't know why he was angry?

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- 1 A No, sir.
- 2 Q When you came out of the club ---
- 3 A Yes, sir.
- 4 Q ---and you heard him talking ---
- 5 A Yes, sir.
- 6 Q ---did he have a gun at that time ---
- 7 A No, sir.
- 8 Q ---that you could see?
- 9 A No, sir, not that I could see.
- 10 Q All right. And so you left where he was?
- 11 A Yes, sir.
- 12 Q He didn't say anything directly to you?
- 13 A He didn't say nothing directly to me.
- 14 Q And you went over to the car?
- 15 A I went over to the car.
- 16 Q Once you got shot you were able to see who had
- 17 shot you?
- 18 A Yes, sir.
- 19 Q And was the man who did the angry talking the
- 20 same man that shot you?
- 21 A Yes, sir.
- 22 Q All right. And then you got taken to the doctor?
- 23 A Yes, sir.
- 24 Q How has this injury changed you in terms of what
- 25 you've had to deal with?

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1 A I mean, it changed me all type of ways. I mean,
2 my son love to play sports. I can't even bend down,
3 bend all the way down, all kinds. I'm embarrassed,
4 ashamed, to let him know that sometimes daddy can't,
5 I mean, it just changed my life all the way around.

6 Q And this, and you have the bullet still inside
7 you now?

8 A Yes, sir, it ain't going nowhere. I got to live
9 with that for the rest of my life, man. Ain't no
10 disrespect or nothing like that, I could be dying
11 now because, you know, that can lead to cancer from
12 what I was told.

13 Q Did you have a weapon that night?

14 A No, sir.

15 Q Did you say anything angrily or threatening to
16 anybody that night at the club?

17 A No, sir.

18 Q How far away would you say you were from the
19 front door of the club when you got shot? Can you
20 look at this and tell us, if you can, give us an
21 estimate of the distance from the front door of the
22 club right here to where you got shot out here. Was
23 it as far as from you to the back doors of this
24 courtroom or was it further?

25 A Probably about that, about that, about that

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- 1 distance.
- 2 Q And once you got shot and got up, you looked back
- 3 towards the nightclub?
- 4 A Uh-huh, I looked.
- 5 Q And you saw what?
- 6 A Abdullah.
- 7 Q Did he still have the gun?
- 8 A He had the gun.
- 9 Q Was he still pointing the gun?
- 10 A Yeah, he still shooting.
- 11 Q All right. Let me ask you to look at what's been
- 12 identified as State's Exhibits Number 3, 4, and 5.
- 13 3, 4, and 5. Look at those and tell me if you can
- 14 identify what those are.
- 15 A Look like bullet shells. It look like ---
- 16 Q Well, what's in the picture?
- 17 A I see a car and I see a club.
- 18 Q Okay, do you recognize the club?
- 19 A Yes, sir.
- 20 Q What do you recognize that as? Let's start with
- 21 ---
- 22 A Lion's Pit.
- 23 Q Okay, let's start with number three. Do you
- 24 recognize that?
- 25 A Yes, sir.

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1 Q What is that?

2 A That's a club.

3 Q Is that the club you were at? Is that the Lion's
4 Pit?

5 A Yeah, that's the Lion's Pit.

6 Q And in that club, in this picture of the club, is
7 that the way the club looked the night after the
8 shooting?

9 A Yes, sir.

10 Q All right. As far as this State's Exhibit Number
11 4 is concerned, this is another color photograph.
12 And do you see the front door area of the club?

13 A Yes, sir.

14 Q Now I want you to tell the ladies and gentlemen
15 what you see when you see this picture. Tell us
16 about the lighting outside the front door area of
17 the club. Is it ---

18 A It bright, very bright.

19 Q All right. Tell us, do you see lights on?

20 A I see, yes, sir.

21 Q What kind of lights do you see on there?

22 A I ain't know the name of the light but...

23 Q And those lights were on when you came out of the
24 club that night?

25 A Yes, sir.

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1 Q Now in State's Exhibit Number 4 you see a picture
2 of the front door area of the Lion's Club, Lion's
3 Pit?

4 A Yes, sir.

5 Q Is this the area where you were hearing
6 Mr. Abdullah making the threatening ---

7 A Yes, sir.

8 Q Can you point to it on this picture?

9 A (Indicating.)

10 Q That's a concrete area right there?

11 A That area right there.

12 Q And that's the area -- could you stand up and,
13 let's go out here a minute.

14 A (Steps off the witness stand.)

15 Q As to State's Exhibit Number 4, point to the area
16 where you were standing when you heard Mr. Abdullah
17 making the threatening remarks.

18 A I was about right here.

19 Q All right. And where was he?

20 A He was about right there.

21 Q He was kind of back on the concrete?

22 A Back on the concrete ---

23 Q And when you got to this area and you heard this,
24 these threatening, you know, you looked at him and
25 you heard him say these things?

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1 A Yes, sir.
2 Q All right.
3 A Yes, sir.
4 Q Now this is State's Exhibit Number 5. Look at it
5 please. What do you see in that picture?
6 A I see a door.
7 Q Is that the front door of the club?
8 A The front door.
9 Q The door you came out of?
10 A The front door.
11 Q All right. And when you step out of the front
12 door of the club---
13 THE COURT REPORTER: He needs to speak up.
14 BY MR. FINNEY:
15 Q ---of the club, do you step on the ground or is
16 that concrete?
17 A Concrete.
18 Q All right.
19 THE COURT: Hold on a minute, Mr. Finney.
20 Can you hear okay?
21 THE COURT REPORTER: He needs to speak up
22 a little bit.
23 THE COURT: I need you to speak up a
24 little bit, sir, make sure my court reporter can
25 hear you, okay?

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1 MR. FINNEY: I'll let you stand on that
2 side so she can hear you talk.
3 BY MR. FINNEY:
4 Q Now when you come out of the door do step down on
5 concrete?
6 A Yes, sir.
7 Q Now when you came out the door that night, as far
8 as State's Exhibit Number 5 is concerned, which way
9 did you go?
10 A I was going right.
11 Q To the right?
12 A Yeah.
13 Q Show that on that picture.
14 A (Indicating) right.
15 Q And back in that area is it concrete or is it a
16 field?
17 A A field.
18 Q It's a field?
19 A Yes, sir.
20 Q And what was out there that you were going to?
21 A A car.
22 Q Your car? Your cousin's car?
23 A Cousin's car.
24 Q All right. And you, did you make it to your
25 cousin's car?

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- 1 A No, sir.
- 2 Q All right. Once you got hit and fell on the
- 3 ground you were able to get up?
- 4 A Yes, sir.
- 5 Q Did you come back to the club?
- 6 A No, sir.
- 7 Q That's when your cousin got you and took you to
- 8 hospital?
- 9 A He got me and took me to the hospital.
- 10 Q All right. Come on back and have a seat.
- 11 A (Witness complies.)
- 12 Q Have you ever been shot before?
- 13 A No, sir.
- 14 Q Have you ever had to spend two or three days in
- 15 the hospital before?
- 16 A No, sir.
- 17 Q And are you sure the man that caused your injury,
- 18 your bullet wound to your hip, is in this courtroom
- 19 today?
- 20 A Yes, sir.
- 21 Q And would you point him out again?
- 22 A (Indicating.) Right there.
- 23 Q Mr. Abdullah?
- 24 A Yes, sir.
- 25 Q Nothing further. Answer any questions he has.

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1 THE COURT: Mr. Abdullah?

2 MR. ABDULLAH: Yes, sir, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. ABDULLAH:

5 Q How are you, Mr. McBride?

6 A I'm doing okay. I'm doing okay..

7 Q Yes. The night of this incident, sir, when you
8 was somewhat injured, you stated that Mr. Abdullah
9 made threatening comments.

10 A Yes, sir.

11 Q What was those threatening comments made to? Who
12 was he making those comments to?

13 A I don't know who he was making those comments to.
14 All I know he said he was going to kill MF.

15 Q Said the defendant said he was going to kill
16 somebody?

17 A Yes, sir.

18 Q And you don't know who that individual was?

19 A I knew it was you.

20 Q I'm talking about, excuse me. The individual you
21 said Mr. Abdullah was gonna kill, you don't know who
22 ---

23 A I ain't know he want to kill. I ain't know who
24 he was talking about.

25 Q Now was there any ---

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1 THE COURT: Hold on a minute.

2 Mr. McBride, let him finish his question first,
3 okay?

4 THE WITNESS: Okay, okay.

5 THE COURT: Go ahead, sir.

6 BY MR. ABDULLAH:

7 Q Now, was there any conflict between you and Mr.
8 Abdullah?

9 A No, sir.

10 Q Do you know Mr. Abdullah prior to this incident?

11 A No, sir.

12 Q Have you ever seen him before prior to this
13 incident?

14 A Yes, sir.

15 Q Okay. So there was no conflict between me and
16 you?

17 A There was no conflict.

18 Q And is it also true that you testified that you
19 was intoxicated; is that right?

20 A Yes, sir.

21 Q And when you was injured -- and you say you
22 turned around, you looked, you saw Mr. Abdullah with
23 a gun?

24 A Yes, sir.

25 Q And there's no reason whatsoever as far as you're

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1 concerned, or any motive for Mr. Abdullah to shoot
2 you?

3 A No, sir.

4 Q All right. No further questions. Excuse me one
5 second.

6 THE COURT: Any redirect?

7 MR. ABDULLAH: Excuse me.

8 THE COURT: Yes, sir. Hold on a minute.

9 Can y'all approach please. Mr. Finney.

10 (WHEREUPON, Mr. Finney and Mr. Abdullah

11 approached the Bench for an

12 off-the-record discussion.)

13 THE COURT: Go ahead, Mr. Abdullah, I'm
14 sorry.

15 MR. ABDULLAH: Thank you.

16 BY MR. ABDULLAH:

17 Q Now Mr. McBride, have you ever been incarcerated
18 before, sir?

19 A Yes, sir.

20 Q Was you arrested for grand theft auto, offense
21 December 7, 2000?

22 A Yes, sir.

23 Q Was you arrested again for reckless driving?

24 A Yes, sir.

25 Q Offense dated December 7, 2000?

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1 A Yes, sir.

2 Q And was you also arrested, no driver's license,
3 offense date December 7, 2000?

4 A Yes, sir.

5 Q Was you arrested public offender [sic] disorder
6 conduct offense date April 21st, 2002?

7 A Yes, sir.

8 Q Resisting arrest charge, public disorder conduct?

9 A Yes, sir.

10 Q Convicted 30 days, suspended 30 days?

11 A Yes, sir.

12 Q Court charge resisting arrest?

13 A Yes, sir.

14 Q Arrest court, convicted one year, five hundred
15 dollars suspended to one hundred dollars eighteen
16 months served?

17 A Yes, sir.

18 Q Probation, fine, also court date April 16, 2003?

19 A Yes, sir.

20 Q Arrest charge of contributing to a delinquency of
21 a minor, May 27th, 2002; is that right?

22 A That was me. That was me, that was me drinking.

23 THE COURT: Hold on.

24 THE WITNESS: That was me.

25 THE COURT: Hold on, hold on. What's your

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1 objection?

2 MR. FINNEY: There's no conviction for
3 that.

4 THE COURT: All right, objection is
5 sustained.

6 BY MR. ABDULLAH:

7 Q Yes. Court charge, entering premises after
8 warning, convicted, public service?

9 A Yes, sir.

10 Q Yes, sir. October 27th, 2002, arrest charge,
11 criminal domestic violence first offense?

12 A Yes, sir.

13 Q Arrest charge, possession of license, crack, ice
14 cocaine,---

15 A Nah.

16 Q ---offense date February 15th, 2009?

17 A It ain't no ice. Possession of crack cocaine.

18 Q Crack cocaine?

19 A Yeah, not no ice.

20 Q All right. Well, it said ice here so. All
21 right. Arrest charge, simple possession, 28-grams
22 and that's marijuana. 10-grams less hash, first
23 offense date February 15th, 2003; is that right?

24 A Yes, sir.

25 Q Court charge, possession less than 1-gram, crack

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1 cocaine, convicted, possession of crack two years,
2 two hundred dollars, suspended two hundred, 18
3 months probation, A&D counseling, testing, 40 hours,
4 obtain GED, court April 16, 2003?

5 A Yes, sir.

6 Q Arrest charge, possession less than 1-gram crack,
7 offense date August 23rd, 2003, photograph
8 available.

9 A (No response.)

10 Q Now Mr. Way -- oh, excuse me. Once again, did
11 you -- when you were somewhat shot, right, did you
12 acknowledge your friend being shot as well?

13 A No, I didn't even know he was shot.

14 Q And as far as your memory concerned, you know,
15 you was intoxicated as you, ---

16 A Yes.

17 Q ---as you be a witness to?

18 A Four beers, four beers ain't do nothing to me.

19 Q All right. Now did you testify at a federal
20 court, federal grand jury?

21 A Yes, sir.

22 Q And what did you testify concerning federal grand
23 jury?

24 A I can't really remember.

25 Q You don't remember what you testified to?

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1 A Yeah, I testified all the charges you just called
2 out to me just now.

3 Q Did you testify anything pertaining to Mr.
4 Abdullah, the defendant, sir?

5 A I can't, I can't remember at this moment.

6 Q You can't remember?

7 A Not at this moment.

8 Q Okay. No further questions further, no
9 questions.

10 THE COURT: Any redirect?

11 SOLICITOR FINNEY: No, Your Honor.

12 THE COURT: Sir, you may step down. Thank
13 you.

14 SOLICITOR FINNEY: Your Honor, please, if
15 it suit the Court we have law enforcement agents
16 ready to testify in the morning. We'd like to take
17 an early recess today and start back in the morning.

18 THE COURT: 9 or 9:30?

19 SOLICITOR FINNEY: 9:30.

20 THE COURT: All right. Ladies and
21 gentlemen, I am, we're going to stop here for the
22 day and let you go home for the balance of the
23 evening. I'm gonna ask that you be back here
24 tomorrow morning in your jury room by 9:30. We will
25 start as promptly at that time as possible. As I

1 told you from the outset, do not, do not discuss
2 this case with anyone. Do not do any independent
3 investigation. You are to decide this case based
4 solely on the evidence and testimony that's
5 presented in this courtroom and nowhere else. I
6 hope you all have a nice evening, look forward to
7 seeing you all back here tomorrow morning.

8 Everyone else remain seated while the jury
9 exits the courtroom please.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 4:14 p.m.)

12 THE COURT: All right, anything from the
13 State before we break for the balance of the
14 evening?

15 SOLICITOR FINNEY: No, Your Honor.

16 THE COURT: Anything from defendant?

17 MR. ABDULLAH: No, sir.

18 THE COURT: All right. I would ask you
19 all to be back here 9:00 in the morning in case
20 there are matters we need to take up before the jury
21 comes back out. Please have the defendant here at 9
22 in the morning please.

23 (WHEREUPON, the proceedings were concluded
24 for the day to be reconvened on
25 October 18, 2016.)

1 THE COURT: Anything from the State?

2 SOLICITOR FINNEY: If Your Honor please,
3 yesterday the defendant made a request for the prior
4 record of one of the witnesses who will be
5 testifying this morning. The name is Thurston Lane.

6 THE COURT: Okay.

7 SOLICITOR FINNEY: I have now provided the
8 prior record to the defendant. I would just ask
9 that we instruct the defendant that the proper way
10 to impeach a witness on prior record is only by
11 convictions, not by everything that appears on the
12 record. I can hand up this gentleman's record for
13 you to review. It appears to me ---

14 THE COURT: Well, why don't you look at
15 that with Mr. Abdullah. If you all can agree on it
16 and then advise me on it. If he has any objection
17 to it, then I'll address it.

18 (Solicitor Finney and Mr. Abdullah confer.)

19 THE COURT: Y'all on the same page?

20 SOLICITOR FINNEY: In my opinion there are
21 three convictions. Well, two of them are traffic
22 related. I don't think they are eligible to be
23 asked about. There is one conviction from federal
24 prison for a cocaine charge.

25 THE COURT: Okay. So you boiled it down

1 one in your opinion?

2 SOLICITOR FINNEY: Yes, sir.

3 THE COURT: All right, Mr. Abdullah.

4 MR. ABDULLAH: Yes, Your Honor. I would
5 like to impeach him on that anyway because it
6 affects the credibility.

7 THE COURT: Pursuant to rule 609 of South
8 Carolina Rules of Evidence I'll allow you to impeach
9 him on the drug charge, the drug conviction, but
10 that's it.

11 MR. ABDULLAH: Okay.

12 THE COURT: Unless -- let me, can I see it
13 now, Mr. Finney, for the record please.

14 MR. ABDULLAH: Your Honor, he ---

15 THE COURT: Hold on just a minute, okay?
16 Hold on just a minute, Mr. Abdullah.

17 (Pause.)

18 THE COURT: All right, yes, sir, Mr.
19 Abdullah, anything else you want to tell me?

20 MR. ABDULLAH: Yes. Number two he got
21 where habitual traffic offender.

22 THE COURT: Yes, sir.

23 MR. ABDULLAH: Convicted for 90 days.
24 Would that be allowed?

25 THE COURT: No, sir. The only thing I'm

1 gonna allow you to impeach him on is the drug
2 conviction I think on the next to the last page.

3 MR. ABDULLAH: He was marking it. That's
4 why I was going over it for sure.

5 THE COURT: Okay.

6 SOLICITOR FINNEY: Yes, sir.

7 MR. ABDULLAH: What about, okay. The
8 marijuana charge, possession 28-grams less,
9 convicted, that's drugs.

10 THE COURT: Mr. Finney.

11 SOLICITOR FINNEY: The marijuana and the
12 habitual traffic offender, both were done at the
13 same time, Your Honor, and both of them carry less
14 than a year. I think the marijuana is basically
15 simple possession of marijuana; I don't think that's
16 impeachable.

17 THE COURT: Hold on a minute. Possession
18 of marijuana are second or subsequent offense?

19 SOLICITOR FINNEY: Let me look at it, Your
20 Honor.

21 THE COURT: On page two. Am I reading
22 that correctly?

23 SOLICITOR FINNEY: Yes, sir, it says, it
24 says second or subsequent.

25 THE COURT: Correct.

1 SOLICITOR FINNEY: The problem is that
2 there is no record of the first marijuana conviction
3 showing up so that's why I did not trust that to be
4 a ---

5 THE COURT: Well, I'm gonna allow him to
6 ask that with regard to the second, and I can't help
7 it if the record doesn't show he's got a first. I
8 mean, it could have been, I don't know.

9 SOLICITOR FINNEY: All right, sir.
10 (Mr. Finney and Mr. Abdullah confer.)

11 THE COURT: All right, we're clear on
12 that?

13 SOLICITOR FINNEY: Yes, sir.

14 THE COURT: Let me ask this question, and
15 then I kind of, I mean, I've asked it but I just
16 want to make sure. I woke up at 3:30 thinking about
17 it this morning. I feel like I was practicing law
18 again, wake up in the middle of the night, did I get
19 this filed or did I do this. And I asked Mr.
20 Abdullah this yesterday and you had told me this,
21 Mr. Finney, about Judge Young relieving his counsel
22 last month I believe?

23 MR. ABDULLAH: August 29th.

24 THE COURT: Okay. And I just want to make
25 sure that all the questions were asked of Mr.

1 Abdullah, the determination was made by the Court at
2 that time that he was freely and voluntarily,
3 knowingly and intelligently giving up his right to
4 counsel. Is that correct, Mr. Finney?

5 SOLICITOR FINNEY: That is my
6 understanding. I was present for the hearing, Your
7 Honor. I do believe, I don't remember every
8 question the judge asked, but he ---

9 THE COURT: I mean, he certainly warned
10 Mr. Abdullah of the dangers of self-representation?

11 SOLICITOR FINNEY: He did. He advised him
12 that the public defender was a very good lawyer and
13 would help him present the case.

14 THE COURT: And -- is that correct, Mr.
15 Abdullah?

16 MR. ABDULLAH: Yes, sir, Your Honor.

17 THE COURT: All right. Does the State
18 wish for me to go over any of that again, or is the
19 State satisfied with that? I just want to make
20 sure. Is the State satisfied with that?

21 SOLICITOR FINNEY: Yes, sir, we're
22 satisfied.

23 THE COURT: Okay. Anything else?

24 SOLICITOR FINNEY: No, Your Honor.

25 THE COURT: Let me ask this question too,

1 with regards to the pathologist, what's the deal
2 with that now?

3 SOLICITOR FINNEY: The pathologist is
4 Doctor Janice Lage. She now, she was at the Medical
5 University in Charleston. She is now at the
6 University Medical Center in Jackson, Mississippi.
7 And in order to have her be able to come this week,
8 we needed to do it by Skype so that she will be at
9 the court reporter's office on Wednesday at 1:30,
10 her time, so that she can be Skyped in on the
11 computer here at 2:30 our time, and she will be
12 asked several questions about the autopsy report
13 which will be live and she would be under oath.

14 THE COURT: Where is she going to be piped
15 in?

16 SOLICITOR FINNEY: She'll be on these big
17 screens, as well as on the screens that the jury
18 will be able to see.

19 THE COURT: And that's at 2:30?

20 SOLICITOR FINNEY: Yes, sir, 2:30
21 Wednesday.

22 THE COURT: All right, any objection to
23 that Mr. ---

24 MR. ABDULLAH: She's not gonna be here
25 live.

1 THE COURT: No, sir, she's gonna be on the
2 screen and you'll be able to see her and question
3 her just like you would in here.

4 MR. ABDULLAH: Yes, sir. And just to make
5 the Court aware, I understand we had a ruling on
6 yesterday; but in the autopsy of the victim's body
7 she stated that there was a high level of marijuana.
8 Can she be impeached on what she wrote in this
9 autopsy?

10 THE COURT: That's not -- I don't think it
11 will be an impeachment issue. I think you certainly
12 can ask her about it.

13 MR. ABDULLAH: Okay. I just want to make
14 sure so there won't be no objection to it.

15 SOLICITOR FINNEY: I have not seen that in
16 the autopsy. I was gonna limit my questioning to
17 the cause of death. Obviously if the young man was
18 shot in the back of the head, whether he had
19 marijuana in his system is not relevant.

20 THE COURT: I understand. I think that
21 goes to the weight, not to the admissibility.

22 MR. FINNEY: Right.

23 THE COURT: So I mean, y'all need to look
24 at that report and see. Y'all want me to look at
25 the report? Now the report is not going to be

1 admitted into evidence.

2 MR. ABDULLAH: Okay. I'm just saying only
3 for impeachment purpose when I cross-examine her,
4 that that's what she wrote. I mean, anything that
5 she wrote ---

6 THE COURT: You can ask her about.

7 MR. ABDULLAH: ---I got a right to
8 question her, that's what I'm saying, but it's not
9 ---

10 THE COURT: I think so.

11 MR. ABDULLAH: ---evidence.

12 SOLICITOR FINNEY: Before we leave that
13 issue, as an experienced trial attorney I'm pretty
14 sure the pathologist did not run a drug test.
15 That's somebody else may have written that report,
16 but Doctor Lage did not do any toxicology.

17 THE COURT: Well, you need to look at that
18 and see and whether -- if she didn't, it's not in
19 her report then, you know.

20 MR. ABDULLAH: Okay. Well, let me clarify
21 something.

22 THE COURT: Okay.

23 MR. ABDULLAH: The federal government had
24 the original transcript so they put a seal on it and
25 they never gave it to me. They let me study it, but

1 they would never let me take possession of it like I
2 got possession of my motion discovery, right. So
3 it's in the report so maybe he ---

4 THE COURT: Hold on. What report, Mr.
5 Abdullah?

6 MR. ABDULLAH: Of the autopsy report of
7 the pathologist. She did a autopsy report on the
8 victim's body.

9 THE COURT: Well, you ought to have a
10 copy. Pursuant to Rule 5 and Brady, you ought to
11 have a copy of the pathology report.

12 MR. ABDULLAH: I have a copy of it, sir,
13 but that was not presented in there so I'm just
14 clarifying to the Court that maybe what the
15 Government has, they didn't give all of it up
16 because they put a seal on it.

17 THE COURT: Let me tell you this, in the
18 federal system they, there's a standing order -- at
19 least when I practiced law -- that lawyers were
20 forbidden from giving clients copies of discovery.

21 MR. ABDULLAH: Giving copies of what?

22 THE COURT: Discovery. You can sit down
23 and go over it with them, but they were not allowed
24 to retain a copy of discovery; and I don't think
25 that that's changed. But again, I hadn't practiced

1 ---

2 MR. ABDULLAH: Well, that's what it was,
3 it was an order, court order. I just want to make
4 sure that when I cross-examine her, if I make
5 mention of it there won't be no objection to it,
6 that that's what she put in her report.

7 THE COURT: Mr. Finney?

8 SOLICITOR FINNEY: I'll let you look at
9 the last page of the report. And Doctor Lage signed
10 the autopsy report, and she says that there were
11 some findings from the autopsy from the urine. It
12 says toxicologic analysis performed by William E.
13 Brewer, Ph.d. So I would not object to him asking
14 if the Court allows him to ask -- I think it's
15 irrelevant what's in his blood because there's no
16 testimony he was doing anything to cause his death.

17 (Mr. Finney presents document to Mr. Abdullah.)

18 THE COURT: Can I see the report?

19 SOLICITOR FINNEY: That's the last page,
20 that last paragraph, toxicologic.

21 THE COURT: Okay. Well, I'll think about
22 this and I'll make a decision on it. It's not
23 something I can make a decision on right now.

24 SOLICITOR FINNEY: And Your Honor, please,
25 we can probably have an in-camera with her to see if

1 she -- I mean, it's in the report, but I don't know
2 that she did the analysis.

3 THE COURT: Well, the relevancy of it may
4 be determined by testimony that's elicited over
5 today and tomorrow depending upon what the testimony
6 is and whether or not I think it may be relevant,
7 okay, so I'll cross that bridge maybe even after
8 today's testimony and from there.

9 Yes, sir.

10 MR. ABDULLAH: What if I asked her when I
11 cross-examine her, when she did autopsy did his body
12 test, what did his body test positive of, if I ask
13 it like that, and let her -- when, if she make
14 mention of it, then they be like, that I won't say
15 nothing about drugs particular.

16 THE COURT: Listen, what I just said is
17 this, I may let you ask her that, but it's going, it
18 may depend upon what testimony comes from the stand
19 today, okay. And so I'm not gonna to make a
20 conclusive ruling right now as to what you can or
21 cannot do on your cross-examine at this stage, okay?
22 I may let you, but I want to hear the testimony as
23 it comes out today. There may be some testimony
24 that comes out today that makes it relevant, you
25 know, more so than what it may be right now, okay,

1 so I'll let you know what my ruling is before you,
2 before she is questioned more by the Solicitor and
3 before you cross-examine her, okay?

4 MR. ABDULLAH: Yes, sir. Just to say one
5 other thing, that's might be irrelevant to the
6 Court; but in the federal trial, for example, the
7 prosecution allowed certain things to come up based
8 on a drug conflict that had supposedly took place
9 between the victims, the victim and the owner of the
10 club previously before this incident took place, a
11 drug conflict. And because of that drug conflict,
12 the prosecution allowed evidence to be revealed that
13 the victim possessed crack cocaine in his possession
14 and so based on ---

15 THE COURT: Well ---

16 MR. ABDULLAH: ---testimony. So like you
17 say, if say based on testimony, I'm just letting you
18 know how it was ruled.

19 THE COURT: Okay. Well, like I said, I'll
20 make ruling based upon the testimony that's elicited
21 from the stand and kind of go from there, okay?

22 All right, anything else?

23 MR. FINNEY: Just one more thing. The IT
24 technology that we're getting ready to use to show
25 pictures, I have my lawyer here Mr. Brown, he has,

1 set it up with a big screen; but I need to know if
2 your screen and the jury's screen and the witness
3 screen are on.

4 (Pause.)

5 THE COURT: Are we ready?

6 MR. FINNEY: Yes, sir, we're ready now.

7 THE COURT: All right, let's bring them
8 in.

9 (WHEREUPON, the jury was returned to the
10 courtroom at approximately 9:37 a.m, and
11 the following proceedings commenced in
12 open court.)

13 THE COURT: Good morning, ladies and
14 gentlemen, hope you had a nice, restful evening last
15 night and ready to proceed here today. At this time
16 I'm gonna recognize the State.

17 Call your next witness please.

18 SOLICITOR FINNEY: Good morning, Your
19 Honor.

20 Good morning, ladies and gentlemen. The
21 State would call Thurston Lane to the stand.

22 THE CLERK: Place your left hand on the
23 Bible, raise your right hand. State your name.

24 THE WITNESS: Thurston Lane.

25 WHEREUPON,

SW - T. LANE - DIRECT

1 **THURSTON LANE,**
2 having been duly sworn by the Clerk, testified
3 as follows:

4 THE CLERK: Thank you, sir, have a seat up
5 there please. Please stand your full name and spell
6 your last name for the record.

7 THE WITNESS: My name is Thurston Lane,
8 L-A-N-E.

9 **DIRECT EXAMINATION**

10 BY SOLICITOR FINNEY:

11 Q Mr. Lane, good morning.

12 A Good morning.

13 Q Tell the ladies and gentlemen of the jury where
14 do you live?

15 A I presently live in Columbia, South Carolina.

16 Q Have you lived over there for a while?

17 A Yes, sir.

18 Q All right. Tell us what is your profession,
19 career, what do you do for a living?

20 A I promote parties.

21 Q All right. And how long have you been doing
22 that?

23 A Seventeen years.

24 Q Tell us a little bit about how you promote
25 parties. You, how do you go about doing that?

SW - T. LANE - DIRECT

1 A I find venues that allow me to come in and do
2 parties. I contact the owner of the buildings and I
3 put together events.

4 Q And have you -- you say you've been doing it 17
5 years. Are you still doing that now?

6 A Oh, yes, sir.

7 Q All right. Now when you do promotional events
8 are you in charge of the entertainment, who's going
9 to perform?

10 A Yes, sir.

11 Q Are you in charge of security?

12 A In some fashion.

13 Q All right. And what about food, drink,
14 advertisement?

15 A Pretty much anything that's involved with the
16 event, like I pretty much put my hands on in some
17 form.

18 Q All right. You go to different clubs around
19 South Carolina?

20 A I go to different clubs around the world. Like,
21 I've done parties in Europe, Jamaica, Bahamas. I do
22 parties everywhere. I got a cruise that I'm doing
23 real soon, Mexico, so...

24 Q And do you usually attend these events when you

25 ---

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- 1 A Oh, every event I do I'm definitely there.
- 2 Q All right. Why is that?
- 3 A To oversee the process of the entire night.
- 4 Like, I'm the first in the building and the last to
- 5 leave.
- 6 Q Very good. Now Mr. Lane, you had a opportunity
- 7 to do a promotion at the Lion's Pit in Sumter County
- 8 back in March of 2004?
- 9 A Yes, sir.
- 10 Q All right. And did you, you knew, you contacted
- 11 the owner of the nightclub the Lion's Pit?
- 12 A Yes, sir.
- 13 Q What was his name?
- 14 A Benny Perry.
- 15 Q And have you worked with him on several
- 16 occasions?
- 17 A Yes, sir.
- 18 Q Back in 2004 how often would you do an event at
- 19 the Lion's Pit, if you can remember?
- 20 A Periodically, like I don't, I don't do events at
- 21 the same venue that often to keep whatever I'm doing
- 22 fresh. So like, if I'm doing an event in Sumter
- 23 I'll do an event in Sumter and I won't be here again
- 24 maybe two months.
- 25 Q All right.

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1 A So I did three or four events a year out there.

2 Q All right. And let me ask you this, when you're
3 booking a place like the Lion's Pit, is it because
4 you're bringing a particular entertainer? Are you
5 kind of bringing a certain DJ or certain band when
6 you come?

7 A Well, I bring the same DJ to every event that I
8 do, and I bring different entertainers, but I use
9 the same DJ all the time.

10 Q All right. Now taking you to the events at the
11 Lion's Pit, you were there that night. What time
12 would you say you arrived for the show that night?

13 A Maybe 8:30.

14 Q All right. And would that have been a Saturday
15 night?

16 A I believe that was a Saturday.

17 Q And does the event, is it usually over at
18 midnight or does it last longer?

19 A We lasted till the sun come up.

20 Q And is that usual?

21 A Yes, sir.

22 Q All right. So now you had been to this Lion's
23 Pit before this, before this night, you had been
24 there before?

25 A Yes, sir.

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- 1 Q You had run events before?
- 2 A Yes, sir.
- 3 Q Let me ask you a little bit about the security
4 that was set up. Did you have inside bouncers and
5 outside security?
- 6 A Yes, sir.
- 7 Q Who is in charge of selecting the inside
8 bouncers?
- 9 A Pretty much me and the club.
- 10 Q And did you select the inside bouncers that
11 night?
- 12 A For the most part, yes, sir.
- 13 Q Did you know a man by the name of Muttagin
14 Abdullah?
- 15 A No, sir.
- 16 Q Had you met him before or dealt with him before?
- 17 A No, sir.
- 18 Q Did you hire him to come on and work that night
19 in security for the club?
- 20 A No, sir.
- 21 Q All right. Now when you arrived at the club you
22 say you usually the first one to get there. You set
23 up and do what you have to do. Did you pick the
24 bouncers that were gonna be working inside?
- 25 A I picked a few of them that night, yes, sir.

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1 Q And what do they do?

2 A Pretty much secure the inside of the club. If we
3 have any problems they, you know, they attempt to
4 quell the problems. Like if it's a situation where
5 there's a altercation in a club we have to remove
6 people, the bouncers from the inside will take them
7 to the outside 'cause the outside security have
8 weapons so they're the escort to get the people off
9 the property so.

10 Q All right.

11 A For the inside bouncers, they just pretty much
12 take them to the outside.

13 Q Do the inside bouncers have weapons?

14 A No, sir.

15 Q Is there a security door that everybody has to
16 come through?

17 A I mean, there's only one, there's one entrance
18 into the door, into the club.

19 Q And what happens at that door for me to come in
20 and see the show?

21 A We do a thorough pat down of everybody coming
22 through the club to insure that no one has any
23 weapons.

24 Q Now in the course of the evening as the evening
25 went on, did you all have some type of occasion

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1 where there was a commotion inside the club and the
2 club had to be shut down?

3 A No, sir, we, that was pretty much towards the end
4 of the night. We were, the incident occurred when
5 we was getting ready to close anyway so we just
6 turned the lights off.

7 Q So the lights went on?

8 A Yes, sir.

9 Q People were asked to go ahead and pack up and go
10 home?

11 A Yes, sir.

12 Q And you were in the process of shutting things
13 down?

14 A Yes, sir.

15 Q Tell us in your own words what do you remember
16 happening that evening as far as the incident that
17 led to the shooting.

18 A God bless the dead, I was taking my brother
19 outside 'cause my brother's, like he don't like to
20 be in the club when we closing so I was escorting
21 him to his vehicle. While I was outside there was a
22 little commotion inside of the club, and one of the
23 inside securities was escorting a guy out and there
24 was a verbal exchange between the security, Coral
25 Scott and the guy that he was arguing with.

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- 1 Q All right.
- 2 A And my attempts to quell the confusion with them
- 3 two, you know, I was telling Rock to go ahead
- 4 inside.
- 5 Q Who is Rock?
- 6 A Coral Scott, excuse me.
- 7 Q Coral Scott was a bouncer?
- 8 A Yes, sir.
- 9 Q He worked inside?
- 10 A Yes, sir.
- 11 Q Did you hire him?
- 12 A Yes, sir.
- 13 Q All right. And you knew him from before?
- 14 A I've known him about 18 years.
- 15 Q All right. So you and Coral were talking to each
- 16 other about calming this -- he was a patron, this
- 17 guy that was upset was a patron?
- 18 A Yes, sir.
- 19 Q All right. Did he want to fight Coral?
- 20 A Yes, sir, him and Coral definitely had an inc---
- 21 Q All right. Did you and Coral go outside the club
- 22 with this guy who wanted to fight?
- 23 A No, I was already outside. Coral brought him
- 24 outside.
- 25 Q All right. And they was still arguing and ---

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1 A Yes, sir.

2 Q ---and an altercation of some kind?

3 A Yes, sir.

4 Q All right. Did you -- what happened after you
5 and Coral were talking to this guy who was upset?

6 A I heard some shooting.

7 Q All right. Where were you -- if you don't mind,
8 let me show what's been marked as State's Exhibit
9 Number 2, and I'm gonna ask you to look at this
10 first just to get oriented to this diagram. Do you
11 recognize this diagram?

12 A Yes, sir.

13 Q What is it?

14 A Picture of the front of the club.

15 Q All right, sir. Now I'm gonna give you a pointer
16 and I'm gonna ask, if you can point to the door that
17 you came out of when you say you came out of the
18 club that night.

19 A The door is right here.

20 Q All right. And when you came out of the door on
21 State's Exhibit Number 2, is this an, this is a
22 outside area?

23 A Yes, sir.

24 Q Is it well lit?

25 A Oh, we got lights all across here and directly in

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1 the front door and along the side.

2 Q All right. And you, do you have something to do
3 with making sure it's a well lit area?

4 A I have absolutely nothing to do with the
5 lighting; but you know, we don't do venues that
6 don't offer that ---

7 Q All right.

8 A ---as a security measure.

9 Q Now you said a minute ago that you had escorted
10 your brother out of the club and put him in his car?

11 A Yes, sir.

12 Q And can you show us where his car would have been
13 parked?

14 A Right there.

15 Q Okay. And had he left the club by the time the
16 shooting started?

17 A Without question.

18 Q That's a yes?

19 A Yes, sir.

20 Q Okay. So you were outside, still outside from
21 having walked your brother to his car?

22 A Yes, sir.

23 Q He had driven off?

24 A Yes, sir.

25 Q What did you say -- when Coral came out did you

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1 have a conversation with Coral and the other fella?

2 A Yes, sir.

3 Q And where were you at when you had that
4 conversation?

5 A Somewhere in this area right here.

6 Q All right. And while you were having the
7 conversation you say you heard shooting?

8 A Yes, sir.

9 Q Where was the shooting coming from?

10 A The shooting was coming from right in this area
11 here.

12 Q And did you see who was doing the shooting?

13 A Yes, sir.

14 Q All right. Describe the man who was doing the
15 shooting and tell us what you remember about that.

16 A I know he was like, I don't know, he just seemed
17 disturbed for a minute but. It was a dark skinned
18 guy about 5'9, 5'10, medium build, and he just, he
19 was acting like he was nervous.

20 Q Did you see him earlier that evening?

21 A Yes, sir.

22 Q And what was he doing earlier that evening?

23 A He was working around the front of the door.

24 Q Working in as what?

25 A Outside security.

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1 Q Did he have a weapon when you saw him earlier?

2 A I never seen a weapon, but all outside security
3 supposed to have weapons.

4 Q All right. And if he was working as outside
5 security, were you in charge of hiring him or his
6 crew to work outside?

7 A No, sir.

8 Q All right. Who would have been in charge of
9 hiring him to be there that night?

10 A Benny Perry.

11 Q That's the owner of the club?

12 A Yes, sir.

13 Q Now when you heard the shooting describe for the
14 jury how did it sound.

15 A It was loud.

16 Q Well, tell us how many shots you heard.

17 A Like, it was like seven to nine shots.

18 Q All right. And was the shooting going on very
19 close to where you were?

20 A Yes.

21 Q Would you describe for the jury how far the
22 shooter was away from you as you saw and heard the
23 shots.

24 A Maybe 25 feet.

25 Q All right. Let me walk over here. You tell me

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1 to stop when I get to where the shooter was.

2 A About right there.

3 Q All right. You were near the front door?

4 A Exactly.

5 Q Is that right?

6 A Yes, sir.

7 Q Where was the shooter when you saw him shooting?

8 A In close proximity of the front door, but more to
9 the middle of the walkway.

10 Q All right. I'm gonna show you what's been marked
11 as State's Exhibit Number 3. Is your screen on?

12 A Yes, sir.

13 Q State's Exhibit Number 3, do you know what that
14 is?

15 A Yes, sir.

16 Q What is that?

17 A That's the front area of the club.

18 Q All right. Now in this picture can you see some
19 yellow tape that's been strung?

20 A Yes, sir.

21 Q Was the yellow ---

22 THE COURT: Hold on a minute. You said
23 State's Exhibit 3 or 2? There's two on the screen.

24 MR. FINNEY: It has a 2 on the front.

25 THE COURT: Right. Okay, very well. 3 is

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1 on the back, okay. I'm sorry, I just want to make
2 it clear for the record.

3 BY MR. FINNEY:

4 Q Was the yellow tape there before the shooting?

5 A No, sir.

6 Q Is that something that the officer put up after
7 the shooting?

8 A I didn't see who put it up, but I believe
9 somebody put it up.

10 Q All right. And does that picture accurately
11 represent the way the club was lit that night? Do
12 you see lights on in this picture?

13 A Oh, without question.

14 Q All right. Can you identify in State's Number 3
15 where you were standing? Does this picture show an
16 area where you were standing when the gunshots rang?

17 A Oh, yes, sir.

18 Q All right. Tell us where.

19 A I was standing in close proximity of that
20 flowerpot in the picture.

21 Q All right.

22 A So I was more ---

23 Q If you don't mind, I'm gonna have to point out on
24 my pointer 'cause this is the camera here. Is it
25 this flowerpot?

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- 1 A Yeah, more by that white pole.
- 2 Q Right in here?
- 3 A Somewhere right there, yes, sir.
- 4 Q All right. So this is the area where you were
- 5 in?
- 6 A Yes, sir.
- 7 Q Can you tell us looking at this picture what was
- 8 the area that the shooter was in?
- 9 A Maybe right in this area right here like---
- 10 Q You see where you touched the screen just now?
- 11 A Yes, sir.
- 12 Q You made a mark. The computer made a mark on
- 13 your screen with your finger. Is that where the
- 14 shooter was?
- 15 A Yes, sir.
- 16 Q All right. Right there where that blue dot is.
- 17 Is that right?
- 18 A Yes, sir.
- 19 Q All right. Did you have any trouble seeing the
- 20 shooter?
- 21 A Oh, no, sir, not at all.
- 22 Q And was he shooting -- what type of weapon was he
- 23 using to shoot?
- 24 A Nine millimeter.
- 25 Q All right. And how do you know that?

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1 A I seen the gun.

2 Q All right. And did the gun -- it wasn't, it
3 wasn't a rifle type gun?

4 A No, sir.

5 Q What would you describe it as?

6 A A handgun.

7 Q A handgun. And you said he fired the handgun
8 several times?

9 A Yes, sir.

10 Q Can you describe the direction that the handgun
11 was shot and also how it was being shot.

12 A It was shot at -- he definitely shot in two
13 directions, and it was leveled at eye level.

14 Q All right. Could you stand up and show us how
15 the shooter appeared when he was firing the weapon
16 that night?

17 A Yeah, he -- like, he again, I said, like, he was
18 acting kind of nervous so, like, he took and turned
19 the gun this way and it was straight like this, arm
20 level, shot a few times and he turned the other way
21 and shot a few times.

22 Q All right. And while you're standing, if you
23 don't mind, let me ask you to point out on this
24 State's Exhibit Number 2, the diagram. Show the
25 ladies and gentlemen of the jury what direction he

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- 1 fired the weapon in.
- 2 A I believe he was somewhere in this area.
- 3 Q Yes, sir.
- 4 A He fired this way towards 15 first (indicating)
- 5 and then fired in this direction towards the side of
- 6 the club.
- 7 Q All right. And you say you heard as many as
- 8 seven, eight, nine shots, you don't know?
- 9 A Definitely at least seven.
- 10 Q All right. Now, go ahead and sit down, sir.
- 11 Were you able to identify that night the man who was
- 12 shooting with the handgun?
- 13 A Yes, sir.
- 14 Q Do you see that man in court today?
- 15 A Yes, sir.
- 16 Q Would you point him out for the jury.
- 17 A Yes, sir (indicating). That young man sitting at
- 18 the defense table.
- 19 Q Are you sure that's him?
- 20 A Without question.
- 21 Q All right. Once the man fired the gun did you do
- 22 anything or say anything to him?
- 23 A I said nothing to him, but I definitely did
- 24 something.
- 25 Q What did you do?

SW - T. LANE - DIRECT

1 A I followed him back into the club.

2 Q All right. And did you go through that main door
3 that you had just come out with your brother?

4 A Yes, sir.

5 Q Once you followed him into the club did he still
6 have the weapon?

7 A Yes, sir.

8 Q And what did you see him do?

9 A He went in the bathroom, and I definitely ain't
10 following him into the bathroom, but I followed him
11 to the bathroom.

12 Q All right. And let me ask you again to take the
13 pointer, and can you point out the area where the
14 bathroom is in the club?

15 A Not from that picture, sir.

16 Q I mean, it may not be drawn on here but could you
17 show us the area once you go in the door ---

18 A Okay. If you come in the door this the front
19 door.

20 Q Yes, sir.

21 A That's a, you got a little hallway right here
22 where you come in.

23 Q Yes, sir.

24 A You would have to cut this way.

25 Q Yes, sir.

SW - T. LANE - DIRECT

1 A And the bathroom would be somewhere in this area.

2 Q All right. And did you follow him all the way to
3 the bathroom?

4 A Yes, sir.

5 Q Once he went in the bathroom was anybody else in
6 the bathroom with him?

7 A No, sir.

8 Q How long would you say he stayed in the bathroom?

9 A Maybe three minutes.

10 Q And when he -- what happened after that?

11 A Like, when he came out the bathroom, like, we had
12 the rest of the security sitting in the area in the
13 club because, again, I ain't paid nobody. Like, we
14 had all the confusion going on so we was trying to
15 get the security together and he sat down amongst
16 the security.

17 Q All right. Now, you saw him shoot the gun. You
18 saw him leave the outside area and go into the men's
19 room?

20 A Yes, sir.

21 Q You saw him come out of the men's room?

22 A Yes, sir.

23 Q When he came out of the men's room did he have
24 the weapon?

25 A No, sir.

SW - T. LANE - DIRECT

- 1 Q And what did he do then?
- 2 A Again, he just went and sat amongst everybody
- 3 else that was already sitting.
- 4 Q Did you go back outside to check and see what was
- 5 going on outside?
- 6 A No, sir.
- 7 Q All right. Why not?
- 8 A I was secure inside. Like, everybody that I
- 9 needed to be inside was inside, and I knew the
- 10 police was on the way so, like, I just stayed there.
- 11 Q All right. When the police arrived ---
- 12 A Yes, sir.
- 13 Q ---did you have a conversation with one of the
- 14 police officers?
- 15 A Oh, yes, sir.
- 16 Q And what did you tell the police officer when
- 17 they arrived?
- 18 A I told them I knew where the gun was.
- 19 Q All right. And where did you tell them the gun
- 20 was?
- 21 A In the bathroom.
- 22 Q Was there anybody else in the bathroom?
- 23 A No, sir.
- 24 Q All right. And did the police go and check the
- 25 bathroom?

SW - T. LANE - DIRECT

- 1 A Yes, sir.
- 2 Q And did you then tell the police anything else
- 3 about the gun or who had had the gun?
- 4 A Yes, sir.
- 5 Q What did you tell them?
- 6 A I told them that Mr. Abdullah had been in the
- 7 bathroom, put the gun in the bathroom somewhere.
- 8 Again, I didn't go in the bathroom, but definitely
- 9 the gun was in there.
- 10 Q Did you know Mr. Abdullah by name at that time?
- 11 A No, sir.
- 12 Q So you told the officer -- you had to point him
- 13 out?
- 14 A Yes, sir.
- 15 Q And he was still there?
- 16 A Yes, sir.
- 17 Q All right. Did you learn after the police
- 18 arrived that somebody had been hit out in the
- 19 parking area?
- 20 A Yes, sir.
- 21 Q In fact, two people had been hit.
- 22 A Well, I seen one. I definitely seen one get hit.
- 23 Q All right. You saw one get hit?
- 24 A Yes, sir.
- 25 Q In the process of the shooting?

SW - T. LANE - DIRECT

1 A Yes, sir.

2 Q All right. Can you describe that man who got
3 hit?

4 A Again, I didn't know who it was at the time.
5 It's like, the initial shooting, you know, my
6 statement was the guy got to be shooting blanks
7 'cause nobody, nobody got shot, and he leveled the
8 gun off. And the second round of shooting I seen
9 somebody fall. You know, after I seen them fall
10 that's when the shooting stopped and I followed
11 Mr. Abdullah into the club.

12 Q All right. When you said he was shooting blanks,
13 when you thought that to yourself ---

14 A Yes, sir.

15 Q ---was that because there were -- tell us why you
16 said that.

17 A It was just, you know, like my events is like a
18 sardine can.

19 Q Right.

20 A So like, people are packed in the club, and to
21 fire into a crowd of that nature leaving the club
22 and nobody get shot, like you got to be shooting
23 something that ain't real.

24 Q So that's why you thought the blanks were being
25 fired?

SW - T. LANE - DIRECT

1 A Yes, sir.

2 Q Now when you're saying it was point blank range,
3 did he, the man who had the weapon that shot the
4 weapon, did he ever fire the gun up in the air?

5 A No, sir.

6 Q Did anybody in the crowd ever threaten the man
7 who had the gun, Mr. Abdullah, or say anything to
8 him or threaten him in any way?

9 A No, sir.

10 Q And so here's a man that you don't know?

11 A At all.

12 Q You seen him fire a weapon you thought was
13 blanks?

14 A Yes, sir.

15 Q And it turns out later that the, there were
16 people injured outside?

17 A Yes, sir.

18 Q All right. Once you talked to the police
19 officers, did you stay around to see what they
20 discovered in the bathroom?

21 A Yes, sir.

22 Q And what did you see?

23 A I seen them coming out with a gun.

24 Q All right. And did the gun look like the same
25 gun that you saw that the shooter with?

SW - T. LANE - DIRECT

1 A Yes, sir.

2 Q All right. Did you see the police do anything
3 with Mr. Abdullah?

4 A Oh, yeah, definitely. I definitely pointed him
5 out to the police and they took him; and I don't
6 know what happened after that, but I definitely
7 pointed him out.

8 Q All right. And as a matter of wrapping up that
9 evening, the ambulance came and took away the
10 injured?

11 A Well, they took me to the police station too so,
12 like, I can't tell you what happened at the actual
13 venue or after that.

14 Q And why did you go to the police station?

15 A To give a statement.

16 Q And did you give a statement that night to the
17 police officers?

18 A Yes, sir.

19 Q All right.

20 MR. FINNEY: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 BY MR. FINNEY:

23 Q When you were at the nightclub walking your
24 brother to the car and after your brother had left,
25 was there anybody else shooting a gun except the man

SW - T. LANE - DIRECT

1 that you said was firing at point blank range at the
2 crowd?

3 A Yes, sir.

4 Q All right. What do you mean when you say that?

5 A There was people out in the parking lot.

6 Q Okay.

7 A And there were guns fired. It was shots fired in
8 the parking lot.

9 Q All right, tell us about that. Is this a usual
10 occurrence?

11 A It's a -- it's usual, like, and anybody that
12 comes to something know it. It's like in the
13 parking lot of the club, when the clubs let out the
14 different neighborhoods they, you know, like, it is
15 what it is. Like, they want to show who got the
16 biggest guns in their car and they ain't shooting to
17 hurt nobody, they're shooting in the air like ---

18 Q And how can you tell they're shooting in the air?

19 A I mean, like, I do these events all time, and
20 when the shooting occurs I'm always outside.

21 Q All right. Is it always at the end of the night
22 when people are ---

23 A Always at the end of the night.

24 Q And it's people who have guns in their cars, they
25 don't have them in the club, do they?

SW - T. LANE - DIRECT

- 1 A No weapons ever in the club.
- 2 Q So these people go back to their cars at the end
- 3 of the night and you say sometimes it's a
- 4 neighborhood thing?
- 5 A Yes, it's definitely a neighborhood thing.
- 6 Q How does that work?
- 7 A I mean, like, it just depends on who's at the
- 8 club. Like, south side might shoot a 45, west side
- 9 might shoot a shotgun, like, and they just letting
- 10 you know that they got theirs too.
- 11 Q And then what happens after they shoot?
- 12 A They leave.
- 13 Q All right. And is that a usual occurrence?
- 14 A Yes, sir. It's a usual occurrence at that
- 15 building, no matter what name it's been.
- 16 Q And at that building that night ---
- 17 A Yes, sir.
- 18 Q ---did you hear any shooting going on in the
- 19 parking lot?
- 20 A Yes, sir.
- 21 Q All right. Was there shooting going on when you
- 22 walked your brother to the car?
- 23 A No, sir, it probably started like right around
- 24 that time.
- 25 Q All right. And when you say "that time," you

SW - T. LANE - DIRECT

1 mean the time when the man was firing the handgun?

2 A Yes, sir.

3 Q All right. Now the shooting that occurred out in
4 the parking lot, these were people who were leaving
5 the club?

6 A Yes, sir.

7 Q And you say that this happened before?

8 A Yes, sir.

9 Q It is -- it's shooting up in the air. It's, is
10 it any time that there are shots toward the
11 building?

12 A No, sir.

13 Q All right. Was there anybody else in the parking
14 lot area or in the area of the front door of the
15 club shooting a gun that night that would have
16 caused the injuries that ---

17 A No, sir.

18 Q ---that took place?

19 A No, sir, absolutely not.

20 Q Do you, do you know whether or not any vehicles
21 were struck with bullets that night?

22 A I only know one. He was working security and his
23 vehicle was shot, and it was ---

24 Q Do you know him?

25 A Yes, sir.

SW - T. LANE - DIRECT

1 Q And did you see his vehicle?

2 A Yes, sir.

3 Q All right. Where was it parked?

4 A Right at the front door.

5 Q All right. I'm gonna show you what's been
6 marked, I believe it's already up there. That's
7 State Exhibit Number 3. The vehicle that was struck
8 with the bullet, do you see it in State's Exhibit
9 Number 3?

10 A The only reason I can tell that that's his car is
11 because of the white ragtop he had on it.

12 Q All right. Well, let me show you a different
13 picture. I'm gonna show you State's Exhibit 5 and
14 ask you can you identify, can you see that on your
15 screen?

16 A Yes, sir.

17 Q Do you know if that is the car that got struck
18 with the bullet?

19 A Yes, sir.

20 Q All right. And where was that car located in
21 terms of where the shooter, the handgun shooter was,
22 Mr. Abdullah?

23 A I mean, it was directly in his line of fire.

24 Q All right, sir. And do you see in State's
25 Exhibit Number 5, the front door that you would have

SW - T. LANE - DIRECT

1 come out of?

2 A Yes, sir.

3 Q All right. It's just, do you see on the ground
4 two yellow markers that are on the concrete pad?

5 A Yes, sir.

6 Q And is -- can you tell us where Mr. Abdullah
7 would have been in terms of him shooting the gun
8 that night and being in that picture?

9 A Again, I would have been ---

10 Q If you touch the screen you may put a mark --
11 touch the screen and tell us where you think Mr.
12 Abdullah was standing when he fired the weapon.

13 A Like, pretty much right there.

14 Q All right. Put, make it a little bigger so the
15 jury can see it. Right in that area there?

16 A Yes, sir.

17 Q And was Mr. Abdullah firing the weapon towards
18 that car?

19 A Yes, sir.

20 Q And were there a lot of people out in that area
21 at the time he was firing?

22 A Yes, sir.

23 MR. FINNEY: Beg the Court's indulgence.

24 THE COURT: All right.

25 BY SOLICITOR FINNEY:

SW - T. LANE - DIRECT

1 Q Mr. Lane, I'm getting ready to finish with you,
2 but I want to ask you one more question. You
3 testified you were outside in this area of the club
4 as shown on State's Exhibit Number 5, and you saw
5 Mr. Abdullah firing the weapon several times. When
6 you saw the weapon being fired did you see one of
7 the patrons go down?

8 A Yes, sir.

9 Q All right. And can you point out on the map here
10 the area where you think the patron went down, where
11 you saw the patron fall down?

12 A It was somewhere beyond the car.

13 Q All right.

14 A It was definitely beyond the car because as I was
15 looking, again, I can't tell who it was. I didn't
16 know who it was at the time.

17 Q Right.

18 A But I just seen a body go down. That's when I
19 realized we wasn't shooting blanks.

20 Q And the timing of the body going down was the
21 same time that you saw Abdullah firing a weapon?

22 A Yes, sir.

23 Q Thank you. Nothing further. Answer any
24 questions Defense may have.

25 THE COURT: Mr. Abdullah.

SW - T. LANE - CROSS

1 MR. ABDULLAH: Yes, sir.

2 **CROSS-EXAMINATION**

3 BY MR. ABDULLAH:

4 Q How are you doing, Mr. Lane?

5 A Great.

6 Q Yes, Mr. Lane, you testified that Mr. Abdullah
7 possessed a 9-millimeter; is that right?

8 A Yes, sir.

9 Q And you testified that Mr. Abdullah discharged
10 that 9-millimeter; is that right?

11 A Yes, sir.

12 Q And are you telling the Court and the jury that
13 Mr. Abdullah killed someone or injured someone with
14 that 9-millimeter?

15 A No, sir.

16 MR. ABDULLAH: I have no further questions
17 on that issue, Your Honor.

18 THE COURT: Go ahead.

19 BY MR. ABDULLAH:

20 Q I want to question one more thing to you. Were
21 you convicted, sir, possession of marijuana second
22 offense April 2nd, 2006?

23 A Yes, sir.

24 Q And were you convicted again for a cocaine,
25 distribution of cocaine, excess of five kilos

SW - T. LANE - CROSS

1 February 3rd, '91?

2 A That was the first conviction, and I actually had
3 nine kilos of cocaine, and yes, I was convicted.

4 Q And did you do any time for that, sir?

5 A I did nine-and-a-half years in the federal
6 penitentiary. I did five years of federal probation
7 which I completed. Yes, sir.

8 Q Okay. Now there were also, as you testified,
9 there were several individuals out in the parking
10 lot discharging guns; is that right, sir?

11 A I heard, I didn't say how many individuals, but I
12 did hear gunshots, yes, sir.

13 Q There were people that were firing?

14 A Yes, sir.

15 Q Now did you know where these individuals was
16 shooting at?

17 A Yes, sir.

18 Q Where were they shooting?

19 A They were shooting in the air.

20 Q They were shooting in the air?

21 A Yes, sir.

22 Q Okay. Now is it dark, is it lights out there in
23 the parking lot?

24 A Yes, sir, very well lit?

25 Q Okay.

SW - T. LANE - CROSS

1 A The whole parking lot, it's like a stadium.

2 Q How long would you say the shooting took place,
3 how long in estimation?

4 A Maybe three minutes, two minutes, few shots.

5 Q Okay. So just so Mr. Finney asked you a
6 question, let's just for example, right, as this
7 shooting taking place is there, is there a
8 possibility -- I'm not saying it happened -- just
9 saying there's any possibility that someone out in
10 that field aimed that gun at the club and discharged
11 the gun and you had no knowledge who they were? Is
12 that a possibility that could have happened?

13 A That's possible I guess, yes, sir.

14 Q Possible.

15 MR. ABDULLAH: No further questions for
16 the Defense, sir.

17 THE COURT: All right. Any redirect?

18 SOLICITOR FINNEY: Just a few questions,
19 Your Honor.

20 **REDIRECT EXAMINATION**

21 BY SOLICITOR FINNEY:

22 Q Mr. Lane, you testified today that you saw Mr.
23 Abdullah shooting a 9-millimeter?

24 A Yes, sir.

25 Q Why do you say it a was 9-millimeter?

SW - T. LANE - CROSS

1 A I mean, I know what a 9-millimeter look like.

2 Q All right.

3 A And I was standing, you know, close enough to him
4 to see the entire gun.

5 Q All right. Does a 9-millimeter eject shell
6 casings after it fires a bullet?

7 A Yes, sir.

8 Q And is that because it's a semi-automatic weapon?

9 A Yes, sir.

10 Q All right. And did you notice, did yourself
11 notice shell casings on the ground around the club
12 after the shooting?

13 A Only through pictures, like, again, I didn't come
14 back outside till I was escorted to the police
15 station so only through pictures I noticed shell
16 casing lying around.

17 Q I'm gonna show you what's been marked as State's
18 Exhibit Number 4 and ask if you can see the detail
19 in that picture. Can you see the area of the front
20 door of the Lion's Pit in that picture?

21 A Yes, sir.

22 Q And do you see those yellow markers that are put
23 on the ground in the picture?

24 A Yes, sir.

25 Q Were those yellow markers on the ground when you

SW - T. LANE - CROSS

1 left the club with the police that night?

2 A I can't recall.

3 Q All right. And you're not telling this jury that
4 you're a firearms expert?

5 A I'm not a expert at all.

6 Q Tell the ladies and gentlemen of the jury what's
7 the difference between a 9-millimeter and a
8 .40 caliber semiautomatic handgun.

9 A I think the .40 caliber is a little bigger.

10 Q And what's the difference between a 9-millimeter
11 and a .45 caliber?

12 A The .45 keeps the shells in the -- I don't know,
13 I can't tell you.

14 Q You don't know?

15 A No, sir.

16 Q So I guess what I'm getting at is, are you in a
17 position to say with certainty that the gun you saw
18 that night at the club was a 9-millimeter, .40 cal,
19 .45 cal? Can you say with ---

20 A Oh, I definitely can distinguish what gun is what
21 gun.

22 Q All right.

23 A Without question.

24 Q And you think the gun you saw was a 9-millimeter?

25 A No, sir, I know the gun I seen was a

SW - T. LANE - CROSS

1 9-millimeter.

2 Q All right. Now you didn't look at the shell
3 casings that were left on the ground?

4 A No, sir.

5 Q And you never handled the gun?

6 A No, sir.

7 Q All right. And do you know anything else about
8 the gun that you saw being fired that night? Do you
9 know what brand was made of?

10 A No, sir.

11 Q You know what kind of bullets were in it?

12 A No, sir.

13 Q But you told the officers that night where the
14 gun was?

15 A Yes, sir.

16 Q And they found it?

17 A Yes, sir.

18 Q And you told the officers that you had seen the
19 man who shot it?

20 A Yes, sir.

21 Q Nothing further. Thank you.

22 THE COURT: Anything further, Mr.
23 Abdullah?

24 MR. ABDULLAH: No, thank you, sir.

25 THE COURT: Sir, you may step down.

SW - C. SCOTT - DIRECT

1 Thank you.

2 SOLICITOR FINNEY: I ask that the witness
3 be excused.

4 THE COURT: Any objection to him being
5 excused, Mr. Abdullah?

6 MR. ABDULLAH: No, sir, nothing from
7 Defense, sir.

8 THE COURT: Sir, you may be excused.
9 You're free to go. You have no further
10 responsibility under your subpoena. Have a nice
11 day.

12 THE WITNESS: Thank you.

13 THE COURT: Call your next witness please.

14 SOLICITOR FINNEY: Mr. Coral Scott.

15 THE CLERK: Place your left hand on the
16 Bible, raise your right hand. State your full name
17 please.

18 THE WITNESS: Coral Scott.

19 WHEREUPON,

20 **CORAL SCOTT,**
21 having been duly sworn by the Clerk, testified
22 as follows:

23 THE CLERK: Thank you. Have a seat up
24 here please. Please state your full name, spell
25 your last name for the record.

SW - C. SCOTT - DIRECT

1 THE WITNESS: Coral Eric Scott.

2 S-C-O-T-T.

3 **DIRECT EXAMINATION**

4 BY MR. FINNEY:

5 Q Good morning, Mr. Scott.

6 A How are you doing?

7 Q Fine, sir. I would like for you to introduce
8 yourself to the jury. Tell the ladies and gentlemen
9 where you live.

10 A Now I live in Greenville, South Carolina. I'm
11 from Sumter.

12 Q And did you go to highway school in Sumter?

13 A Hillcrest High School.

14 Q All right, sir. And after high school did you
15 work in this area or?

16 A Yes, sir. I did a little truck driving, security
17 in the clubs.

18 Q And what do you do now up in Greenville?

19 A I'm an executive protection specialist. I'm a
20 bodyguard for different celebrities.

21 Q And does that keep you busy seven days a week?

22 A Pretty much.

23 Q All right, sir. Now you live in Greenville now?

24 A Yes, sir.

25 Q And I want to thank you for coming down for the

SW - C. SCOTT - DIRECT

- 1 trial today. I want to take you back to the events
2 of March 2004 at the Lion's Pit nightclub. You met
3 going out the door just now, do you know Mr.
4 Thurston Lane?
- 5 A Yes, sir, about ---
- 6 Q How long have you known him?
- 7 A Shoot, about 15, 20 years.
- 8 Q All right. And how did you know him? What did
9 y'all, how did y'all get to know each other?
- 10 A We met at Traces Nightclub years ago when we
11 first, you know, when I first started.
- 12 Q And when you met him what was he doing?
- 13 A He was, I think he was a promoter. He was
14 promoting shows and stuff like that.
- 15 Q And what were you doing?
- 16 A I was a bouncer.
- 17 Q Inside the club security?
- 18 A Yes, sir.
- 19 Q So back in March of 2004 did you have the
20 occasion to work with Mr. Thurston Lane at the
21 Lion's Pit?
- 22 A Oh, yes, sir.
- 23 Q And had you done that on a few occasions?
- 24 A All the time.
- 25 Q How often would you work at the Lion Pit?

SW - C. SCOTT - DIRECT

1 A It's usually every week, sometime twice a week.

2 Q And did Mr. Lane always promote the shows that
3 you were working?

4 A At the Lion Pit, yes, sir.

5 Q So what kind of shows were they, I mean, were
6 they always live music or was it some DJs or mixed?

7 A Sometimes it's, you know, artists come in.

8 Sometimes it's DJs, you know, they have, ---

9 Q Just something to make money basically?

10 A Yeah.

11 Q All right. Did you have occasion to work the
12 Lion's Pit on a Saturday, March 14th in 2004, where
13 there was a shooting at the nightclub?

14 A Yes, sir.

15 Q All right. And tell us if you remember, what
16 time did you get to work that night?

17 A I'm not sure, but you know, normally we have to
18 be there around 830, 9:00, you know, to get
19 acquainted with all the bouncers who you're working
20 with.

21 Q And did you have a crew from that you were
22 familiar with that was working with you?

23 A Yes, sir. I was on a crew in Sumter.

24 Q The Sumter crew?

25 A Yes, sir.

SW - C. SCOTT - DIRECT

1 Q And did you all work inside or outside?

2 A Inside.

3 Q And you stayed inside the whole night?

4 A Yeah, till you start throwing people out.

5 Q Okay. And is that at the end of the night? I
6 mean ---

7 A It's usually at the end.

8 Q ---the club is open till 3 or 4 in the morning?

9 A Yeah, around 3 or 4, yeah.

10 Q All right. Did you have occasion that night to
11 have a confrontation with some fella in the club at
12 the closing time and you had to try to take him out
13 the club?

14 A Yes, sir.

15 Q And could you tell the ladies and gentlemen a
16 little bit about that.

17 A Usually at any African American club, usually
18 about the same time, 2:30, we usually say, okay,
19 everybody knuckle up, 'cause they'll party till that
20 time. And it's like, we have this side of town
21 against this side of town, blah, blah, blah. So we
22 got to that point and a big fight broke out and we
23 was throwing people out and after throwing people
24 out we just ---

25 Q Were you on your way outside the club?

SW - C. SCOTT - DIRECT

1 A Well, no, you actually, when you're throwing
2 people out you don't really want to go outside
3 'cause you leave other people, you know, unattended.

4 Q Right.

5 A So you just quickly just throw them out the door,
6 close the door, whatever door is closer.

7 Q Right. Now when you work the security for the
8 club, do you have an inside team and an outside
9 team?

10 A Yeah, the armed security is outside.

11 Q All right, they're armed with weapons?

12 A Yeah, outside.

13 Q Do you and your guys inside have weapons?

14 A No, we cannot do that.

15 Q Very good. Do you know or did you know that
16 night a man named Muttagin Abdullah?

17 A I didn't know the name, you know.

18 Q Did you know him when you saw him?

19 A Huh-uh. That night, that was my first time
20 meeting him.

21 Q So you never worked with him before?

22 A Never.

23 Q Did he work inside or outside that night?

24 A Inside.

25 Q He worked inside?

SW - C. SCOTT - DIRECT

1 A Yes, sir.

2 Q Where at?

3 A You basically roam around. You get assigned a
4 spot, and when I've seen him it was mostly walking.
5 I, I don't want to guess where he was because being
6 in Sumter, Sumter people hold the door so I would
7 say he would be walking around 'cause he not from
8 Sumter.

9 Q You knew he was not from Sumter?

10 A Yeah, I knew he wasn't from Sumter.

11 Q Okay. Did you have on any special shirt?

12 A Yeah, we have a shirt that say staff.

13 Q Staff?

14 A Lion Pit staff.

15 Q Did Mr. Abdullah have on a shirt like that?

16 A He didn't have Lion Pit staff. He had something,
17 whatever their group have on, I'm not sure what it
18 was.

19 Q So he wasn't with the Sumter crew?

20 A No, no.

21 Q How many guys work with you in the Sumter crew?

22 A Oh, God. At that particular club?

23 Q At that club that night, if you can remember?

24 A I can't remember. I know it was a lot because
25 usually it's a real big show.

SW - C. SCOTT - DIRECT

1 Q And tell us about the crowd that night inside the
2 club, was it a big crowd?

3 A Oh, yes, Lion Pit always packed. It's wall ---

4 Q And what kind of numbers are we talking?

5 Estimate how many people would have been in the
6 club.

7 A Maybe about 6, 700.

8 Q All right. Now at this time you say there's an
9 outside crew and an inside crew, but you also said
10 inside there was a Sumter crew. Where was the other
11 crew from?

12 A Columbia.

13 Q All right. And how many guys would you say came
14 from Columbia that night to work, if you remember?

15 A They came in one vehicle so I would, you know,
16 say about six, seven something like that.

17 Q All right. Now when you said there was an
18 altercation, did you all cut all the lights, say
19 everybody go home?

20 A Yeah. When there's a big altercation then, like,
21 lights go on, doors go mobile, everybody just walk
22 out and exit.

23 Q Now tell the ladies and gentlemen when the
24 altercation case happened, you were taking somebody
25 out, did you have occasion to see Thurston outside

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1 of the club that night?

2 A Yeah.

3 Q And what were you and Thurston doing?

4 A Well, when -- how I end up being outside is,
5 after I threw the first guy out his friend
6 approached me so we had, you know, I had to handle
7 him in such a way. So once we got outside, that's
8 when I saw, I call him Ish. Ish with another buddy
9 of ours.

10 Q Tell the jury who Ish is.

11 A Thurston, I always call him Ish.

12 Q Okay, you call him Ish.

13 A So, you know, I saw him and we was bickering. Me
14 and the other guy are bickering back and forth and
15 so he's like, this guy, threw out this guy, this the
16 bouncer who threw you out? So right then, you know,
17 you pretty much got to look around, and it was like,
18 it was about 25 people, 30 people. So you know,
19 with my safety it's me. And I knew Ish would help
20 me out, you know, so I go between the vehicles to
21 keep from getting, you know, mobbed by so many
22 people.

23 Q Right.

24 A So that's when he was like, you know, let's just
25 go inside, da, da, da, you know, he -- it's like

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1 little routines that we, the bouncers know, ---

2 Q Right.

3 A ---you know, nobody else too much know. So it's
4 like he's interrupting the confusion, you know what
5 I'm saying to try to get me out.

6 Q Right.

7 A That's basically how it works.

8 Q And that's what he was trying to do?

9 A Yeah.

10 Q That was Thurston's job?

11 A Right.

12 Q Did you and Thurston leave the parking area
13 outside to go back inside the club?

14 A No.

15 Q Why not?

16 A 'Cause that's when the young man came out
17 shooting.

18 Q All right. Who is the young man you described as
19 shooting? Can you describe what he looked like that
20 night?

21 A He was, he was about 5'10", dark skin. He had
22 facial hair. You know, rough looking dude, just,
23 you know.

24 Q Had you seen him before that moment outside, had
25 you seen him in the club?

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- 1 A Yeah, I saw him walking around.
- 2 Q He was walking around?
- 3 A Yeah.
- 4 Q Was he working?
- 5 A He was working, yeah.
- 6 Q And did he have a gun inside?
- 7 A Not that I know of.
- 8 Q All right. When you saw him outside the club how
- 9 far away were you from him?
- 10 A About 2-feet.
- 11 Q 2-feet. So as close as me and you are right now?
- 12 A Maybe a little closer.
- 13 Q And were you outside?
- 14 A Outside, yes, sir.
- 15 Q Now look on that picture on your screen right
- 16 there, sir. That's what's been identified as
- 17 State's Exhibit Number 5, excuse me, State's Exhibit
- 18 number 4. Can you look at that picture and see
- 19 what's in it? Does it represent anything to you?
- 20 A Yeah, that's the front of the club. Well, it's
- 21 not pointing at the door but.
- 22 Q All right. Let me show you a picture of what I
- 23 have marked as State's Exhibit number 5.
- 24 A That's the front door.
- 25 Q Does that picture reflect anything to you?

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1 A Oh, yeah, that's the front of the club.

2 Q And is that the Lion's Pit?

3 A That's the Lion's Pit.

4 Q Is that where you were working the night the
5 shooting took place?

6 A Yes, sir.

7 Q All right. Did you come out of that door, get in
8 this fella---

9 A Negative. It was a door on the side. There was
10 another door on the side of the bidding.

11 Q All right. Can I show you what's been marked as
12 State's Exhibit Number 2. Look at this and see if
13 you can get familiar with this diagram.

14 A This the front of the club. That's the front
15 door.

16 Q Yes, sir. There's a stick right there.

17 A There's a door right here.

18 Q All right.

19 A And that's the door I was throwing people out of.

20 Q All right. So there was a door and what's been
21 called wall one?

22 A Yes, that's a door right here.

23 Q And when you walked those people out of that
24 door, where were you and Thurston standing?

25 A It might have been -- the first parking lot.

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- 1 Q Right.
- 2 A Directly in front of that door.
- 3 Q All right. Right in that area?
- 4 A Uh-huh.
- 5 Q There would have been cars parked there?
- 6 A There was.
- 7 Q All right.
- 8 A As a matter of fact, —
- 9 Q And you say you got between some of the vehicles
- 10 to get away from this guy who was bothering you?
- 11 A Yes. It was a red Chevy S-10 and a white
- 12 Escalade truck.
- 13 Q All right. And where were those vehicles you
- 14 just described? Where were they on this map?
- 15 A They were pretty much directly in front of that
- 16 wall, parking lot, I mean, the first parking lot.
- 17 Q When you saw the young man that come out that you
- 18 described, the young man with the gun, where was he
- 19 standing on this diagram, State's Exhibit Number 2?
- 20 A Well, he was standing right beside me. He came
- 21 out of this door.
- 22 Q He came out of the main door?
- 23 A Right.
- 24 Q And he would have been, you say in this area
- 25 where you were in the vehicle?

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1 A He was right beside me.

2 Q All right. Tell the ladies and gentlemen, what
3 is the lighting like in that area when you come
4 outside that main ---

5 A Oh, it's bright, real bright.

6 Q Do you see the lights in State's Exhibit Number
7 5, do you see the lights on the front of that
8 building?

9 A Uh-huh.

10 Q In that picture?

11 A Uh-huh.

12 Q Were those lights ---

13 THE COURT: Hold on a minute. Is that a
14 yes or no?

15 THE WITNESS: Yes.

16 THE COURT: Thank you.

17 THE WITNESS: Oh, it was bright. The
18 front door, I mean, that's part of one of our, --
19 that's when we work at the club we pretty much want
20 the front bright as we can get it, yeah.

21 BY MR. FINNEY:

22 Q All right. And did you have occasion to be able
23 to see the man with the gun clearly?

24 A Yeah, oh sure, yes.

25 Q Were there other people out there in that area?

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- 1 A Oh, the club was over, yeah.
- 2 Q So the people that were inside the club were
- 3 outside?
- 4 A They were coming outside.
- 5 Q How many people would you say were outside in
- 6 that immediate area?
- 7 A In that concrete area right there?
- 8 Q Yes, sir.
- 9 A There was none actually. Everybody was in the
- 10 parking lot in the front of the parking spaces that
- 11 were there.
- 12 Q All right. And was there a lot of people?
- 13 A Yeah, it was a lot of people.
- 14 Q When you saw the young man come out of the club
- 15 that you described, did he have a long gun or a
- 16 handgun?
- 17 A No, he had a handgun.
- 18 Q Can you describe the handgun?
- 19 A It was a black Hi-point. I don't know what
- 20 caliber, but it was a black Hi-point.
- 21 Q All right. And how do you know that?
- 22 A 'Cause I seen it.
- 23 Q You were that close?
- 24 A I was that close.
- 25 Q What did he do with the black Hi-point after he

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1 came out of the club?

2 A He, when the guys were coming in at me he just --
3 when Ish (ph) pushed me to the side he just opened
4 fire.

5 Q All right. How many times would you say he fired
6 weapon?

7 A Seven times.

8 Q Seven?

9 A Seven.

10 Q And did he stop firing after he got to seven?

11 A Yeah, he was empty.

12 Q He was empty?

13 A Yeah.

14 Q Tell us who that man was that was shooting that
15 gun. Do you see him in the court today?

16 A I. When I seen him he had a bunch of hair on his
17 face so I, from the last time I seen him.

18 Q Well, look around and tell us if you see the man
19 in the courtroom today.

20 A I guess that's him right there.

21 Q All right. Well, I need you to ---

22 A I mean, he look familiar but he just had a lot of
23 hair last time I seen him, hair all this and
24 everything.

25 Q All right. And when you say this gentleman here,

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1 you're talking about the defendant?

2 A Yeah, the one who was shooting right then.

3 Q Was he the one, the man you saw shooting the
4 Hi-point?

5 A Yeah, he look real familiar, yeah.

6 Q All right. Now you didn't know the man before
7 that night?

8 A No, I didn't know him, I just saw him.

9 Q All right. When the man finished shooting and
10 emptied the gun what did he do?

11 A He turn around, went back in the club.

12 Q All right. Could you tell at that point whether
13 or not anybody had been hit with the bullets?

14 A No.

15 Q What did you do after the shooting stopped and he
16 went back in the club?

17 A Well, when he was shooting I was like kind of
18 getting out the way so I actually stood behind him.
19 That's how I know I seen the gun.

20 Q All right.

21 A And then I was like, well, he shooting, they may
22 start shooting back so I started backing up to go
23 through that side door. So once I got in the side
24 door, well, he moved. I was on the side door and
25 then I kept hearing somebody got shot, somebody, you

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1 know, they start hollering.

2 Q Now do you know who called the police?

3 A I don't know who called.

4 Q How long was it before the police got there?

5 A About 40 minutes.

6 Q All right. And after police got there did they
7 take over the investigation?

8 A Well, I really wasn't paying attention to the
9 cops. I really was paying attention more to the
10 ambulance.

11 Q Okay. When you say that the man who was shooting
12 the gun went back inside, you also went back inside.
13 Did you see him again?

14 A I didn't see him no more until they came out with
15 him in handcuffs.

16 Q All right. And after they arrested him did you
17 go and make a statement to police officers?

18 A Yeah, they -- I can't remember the name. It was
19 a big investigator. I know him when I see him; I
20 just don't know his name. And he questioned me and
21 he was like, you need to follow me.

22 Q So you followed him downtown?

23 A Downtown.

24 Q Did you give a statement at that time?

25 A Yes, sir.

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1 Q During the course of your statement did you tell
2 the law enforcement officers that you had heard the
3 man with the gun say anything before he started
4 shooting?

5 A No, I didn't.

6 Q All right. Was there any time where you saw the
7 man with the gun being threatened by anybody or
8 harmed in any way or doing anything to cause him to
9 shoot the gun?

10 A No, no.

11 Q And once he started shooting the gun he shot it
12 until it was empty?

13 A Right.

14 Q How was he shooting? Can you describe to the
15 jury how he -- was he firing in the air?

16 A No, he wasn't firing in the air.

17 Q Tell us how he was firing the gun.

18 A He was firing into the crowd.

19 Q All right. And there was still a lot of people
20 out there?

21 A Yeah, there was a lot of people in front of him.
22 I mean, I would like to add something to it. I
23 don't believe that man came out to kill anybody, but
24 I do believe he came to protect me, you understand
25 what I'm saying, 'cause it's -- when them clubs are

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1 over with, it's a miracle that none of the staff is
2 shot, I'm telling you, it's just that bad. So, I
3 don't know what made him do it, but I believe he
4 came to protect me.

5 Q All right. And when you go outside, you do this
6 a lot of times, at the end of the night you all know
7 that there's gonna be a chance that there's gonna be
8 a fight or an altercation outside the club?

9 A Yeah. We usually go outside to keep people from
10 running inside 'cause if they start shooting,
11 everybody runs inside. I mean, it's just everybody
12 go rampant.

13 Q All right. Did you hear any other gun fire that
14 night except from the Hi-point?

15 A Yeah, there's always shooting.

16 Q Okay. What kind of shooting is going on?

17 A People shoot in the air when they're leaving the
18 club.

19 Q All right. Most of these are young people?

20 A Nah, people, whoever come to the club they just
21 shoot in the air.

22 Q And sometimes you say they shoot in the air when
23 they leave the club?

24 A Right.

25 Q Has that ever been a problem for you? You don't,

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1 you didn't get a gun to protect yourself when you
2 went outside that night?

3 A No, huh-uh.

4 Q Did you had ever, at any time that night did you
5 feel threatened in such a way that you needed
6 protection?

7 A No.

8 Q And this fella that you say was shooting, maybe
9 he was shooting to protect you. You didn't ask him
10 to do that?

11 A No, I didn't.

12 Q And you weren't being threatened with any bodily
13 harm at the time he started shooting?

14 A Well, I was getting ready to get jumped.

15 Q And that's why Thurston came out there with you?

16 A No, he was already out there.

17 Q All right. And so you and Thurston had a way of
18 handling the situation?

19 A Right. He got between, you know, between the
20 crowd and me.

21 Q All right. And at the time that you saw this man
22 come out with the gun and start firing, did he start
23 firing at the fella who was bothering you?

24 A Oh, yeah, it was a group.

25 Q It was a group?

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1 A Uh-huh.

2 Q And those people started running?

3 A Start running.

4 Q And he kept on firing?

5 A Kept firing.

6 MR. FINNEY: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 BY SOLICITOR FINNEY:

9 Q So you believe that the man that had the gun, the
10 high point that shot off seven shots, came outside
11 as a result of him seeing you being in contact with
12 this mad person?

13 A Uh-huh.

14 Q All right. But he never said anything to you?

15 A Huh-uh.

16 THE COURT: I need yes or no please.

17 THE WITNESS: Oh, I'm sorry. No, he
18 didn't say anything.

19 BY MR. FINNEY:

20 Q All right. And after he shot the gun seven times
21 he went back inside?

22 A He walked back inside.

23 Q But you were scared enough of him that you went
24 in a different building 'cause you didn't want to be
25 shot yourself?

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1 A Right. I didn't, I wasn't scared of him. I was
2 scared they may shoot back at him.

3 Q I see. But you didn't know him?

4 A The young man?

5 Q The man who was shooting?

6 A No, I met him that night.

7 Q Never knew him before?

8 A Never knew him before.

9 Q Didn't know he was armed?

10 A Didn't know he was armed.

11 Q Didn't know he was going to shoot?

12 A Didn't know he was going to shoot.

13 Q Didn't know what he was going to do after he
14 emptied the gun?

15 A Didn't know.

16 Q And you didn't talk to him afterwards?

17 A Didn't say one word to him.

18 Q Thank you. Nothing further.

19 THE COURT: Cross-examination.

20 MR. ABDULLAH: Yes, sir.

21 **CROSS-EXAMINATION**

22 BY MR. ABDULLAH:

23 Q How are you doing, Mr. Scott?

24 A How are you doing?

25 Q Yes, Mr. Scott, you testified that you saw Mr.

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1 Abdullah discharging a firearm; is that right?

2 A Yeah, yes, sir.

3 Q And are you saying that Mr. Abdullah shot
4 someone, or are you saying he just discharged a
5 firearm?

6 A Well, yeah, I said he shot, he shot somebody. I
7 knew he shot one person.

8 Q And who was that one person there that you say
9 Mr. Abdullah shot?

10 A It was a young man that I seen. I didn't know
11 him until afterwards. Where he was standing, a
12 young lady was talking to him. When he fired the
13 last shot which you can see -- believe it or not you
14 can see the bullet hit the top of a car and it
15 bounced and ricocheted and hit the fella in the back
16 of the head.

17 Q And who was that person that you say was hit in
18 the back of the head? Can you tell that to the
19 jury.

20 A I didn't know the name until after everything and
21 it was like Buddha or somebody like that, Boo or
22 something like that. I didn't know. They didn't
23 say his name; it was like a nickname.

24 Q Now was there any other shooting going on that
25 night?

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1 A Oh, yeah, there's always shooting at a club.

2 Q And could you tell the jury who was the other
3 people shooting?

4 A I, just random people.

5 Q Do you know what location they were shooting at?

6 A Yeah, close to the highway.

7 Q Close to the highway. Were they aiming the gun
8 or shooting in the air?

9 A Shooting in the air.

10 Q Shooting in the air? At any point by any chance,
11 right, is it possible that from these different
12 individuals that shooting that you don't know, is it
13 possible that anyone could have aimed that gun in
14 direction of the club and discharged it without you
15 knowing who it was?

16 A It's possible.

17 Q Okay. Now isn't it also true you got into a
18 physical altercation, a fight that night; is that
19 right?

20 A No, I did not get in a fight.

21 Q You didn't get in a fight?

22 A No.

23 Q What was the physical altercation about then?

24 A That's when, you don't fight, you break it up.
25 You break up fights.

SW - C. SCOTT - CROSS

1 Q I'm saying in particular you.

2 A Oh, oh, no, not me fighting. We break up fights.

3 Q Okay. Did you have a physical altercation
4 yourself?

5 A No, huh-uh.

6 Q With an individual?

7 A No.

8 Q Okay. Now is it also true that you possess a .45
9 February 28, 1997 from Rooks firearm?

10 A A who?

11 Q A .45 magnum. You?

12 A No, I got a Glock.

13 Q Got a Glock?

14 A Yeah. It's a .40.

15 Q That's what you purchased?

16 A That's what I bought from Sumter.

17 Q And when did you purchase this gun?

18 A Oh, God, it's been years, I'm not sure.

19 Q Was it 1997?

20 A I'm not sure. I don't think it was that soon,
21 no.

22 Q Was it from Rooks Firearm, sir?

23 A No, it was from, I don't know the name of the
24 store, but it's off of -- it's by the Lincoln, the
25 Lincoln dealership, whatever store that is right

SW - C. SCOTT - REDIRECT

1 there.

2 Q Okay. Did anybody else get shot?

3 A It had to be after '98.

4 Q '98?

5 A Yeah. It was after '98 because I got a record.

6 Q So you're not authorized to own a gun?

7 A No.

8 Q But you have one?

9 A I got one.

10 Q Now was anybody else shot that night, sir?

11 A Yeah, after everything was over. I heard
12 somebody got shot in the butt or something like
13 that.

14 Q And who shot that person?

15 A I, you know, the word of mouth they said you did.

16 Q Word of mouth, okay. Word of mouth. All right,
17 no further questions, sir.

18 THE COURT: Any redirect?

19 SOLICITOR FINNEY: Please, Your Honor.

20 **REDIRECT EXAMINATION**

21 BY MR. ABDULLAH:

22 Q Mr. Scott, is that the man who was shooting ---

23 A He, yeah.

24 Q ---the Hi-point that night?

25 A Yes, sir.

SW - C. SCOTT - REDIRECT

1 Q You saw him walk around, you saw his size?

2 A Uh-huh.

3 Q Is that him?

4 A That's him.

5 Q All right.

6 A Yeah.

7 Q The person that you said was shot in the head,
8 was he bothering you?

9 A No.

10 Q Was he bothering the man with the gun?

11 A Huh-uh.

12 Q What was he doing?

13 A Talking to a young lady. And I know, I seen him,
14 I seen him and a young lady talking.

15 Q And when he got shot in the head he went down?

16 A He went flat to his face.

17 Q All right. I want you to look at the picture
18 that's on the screen there. There is a car in that
19 picture. Do you see that car?

20 A Uh-huh.

21 Q Sir, ---

22 THE COURT: Hold a minute.

23 THE WITNESS: Yes, sir.

24 THE COURT: I need a yes or no. I
25 understand what you're saying, but for purposes of

SW - C. SCOTT - REDIRECT

1 making a record clear I need a yes or no please,
2 sir. Thank you.

3 THE WITNESS: Sorry about that.

4 BY SOLICITOR FINNEY:

5 Q You testified that a car got struck with a bullet
6 and it ricocheted off the car and hit the man ---

7 A Yes, sir.

8 Q ---in the head?

9 A He was standing on the other side of that car.

10 Q Was that the car that got hit with the bullet?

11 A That's the car right there.

12 Q And who fired the shot that hit that car?

13 A That young man right there.

14 Q And who -- and you say that shot, one of the
15 shots that he fired hit that car in that picture
16 right there?

17 A Yes, sir.

18 Q And then went and hit the man ---

19 A Yes, sir, that was his last ---

20 Q ---who's talking to the female?

21 A That right there was his last shot.

22 Q Thank you, sir. Nothing further.

23 THE COURT: Any re-cross, sir?

24 MR. ABDULLAH: No, sir.

25 THE COURT: Okay. Sir, you may step down.

1 Thank you.

2 SOLICITOR FINNEY: I'd ask that the
3 witness be excused.

4 THE COURT: Any objection?

5 MR. ABDULLAH: No, sir, from the Defense,
6 sir.

7 THE COURT: All right. Sir, you may be
8 excused. You have no further responsibilities under
9 your subpoena. You're free to go. Have a nice day.

10 THE WITNESS: Yes, sir, thank y'all.

11 SOLICITOR FINNEY: Your Honor, may we take
12 a morning break?

13 THE COURT: Yes, sir.

14 All right, ladies and gentlemen, we're
15 gonna take break at this point. I ask you to step
16 to the jury room. Do not, do not discuss the case
17 at all. I'll get you back out here in a few
18 minutes. I'm gonna ask that you do this while you
19 all are back there. If — I'm gonna ask that while
20 are all are back there that you all select a
21 foreperson for the jury. I will tell you that
22 Ms. Geddings and Mr. Dimitriadis, those two
23 individuals cannot be your foreperson, okay. If you
24 all will select a foreperson while you're taking
25 this morning break, write it down on a piece of

1 paper, provide it to the bailiff. When you come
2 back in, he'll provide it to me. I would ask that
3 whoever you all select as the foreperson, that they
4 sit in this chair closest to me on the front row
5 where this young man is seated with the blue shirt
6 on, okay. You all step to the jury room. Do not
7 discuss the case. I'll get you back out here as
8 quickly as possible.

9 (WHEREUPON, the jury was removed from the
10 courtroom at 10:42 a.m.)

11 THE COURT: We'll stand down for a few.

12 (WHEREUPON, a recess was taken from the
13 proceedings and State Exhibits Nos. 6
14 through 13 were marked for identification
15 only.)

16 THE COURT: Anything from the State before
17 I bring the jury back in?

18 MR. FINNEY: No, sir, we're ready.

19 THE COURT: Anything from Defense?

20 MR. ABDULLAH: Nothing from Defense, sir.

21 THE COURT: If you will bring me the jury
22 please..

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 11:08 a.m.,
25 and the following proceedings commenced

1 in open court.)

2 THE COURT: Looks like Stallings, juror,
3 number 170, has been selected as the foreperson of
4 this jury. Mr. Stallings, that will be your
5 assigned seat throughout the remainder of this
6 trial, sir.

7 THE FOREMAN: Yes, Your Honor.

8 THE COURT: All right, we are going to
9 proceed at this time.

10 Mr. Finney, you're so recognized. Call
11 your next witness please.

12 SOLICITOR FINNEY: Thank you, Your Honor.
13 If it please the Court, we call Lieutenant Lee
14 Monahan.

15 THE CLERK: Place your left hand on the
16 Bible, raise your right hand. State your name
17 please.

18 THE WITNESS: John Lee Monahan.

19 WHEREUPON,

20 **JOHN MONAHAN,**
21 having been duly sworn by the Clerk, testified
22 as follows:

23 THE CLERK: Thank you. Have a seat up
24 here please. Please state your full name, spell
25 your last name for the record.

SW - J. MONAHAN - DIRECT

1 THE WITNESS: John Lee Monahan,
2 M-O-N-A-H-A-N.

3 **DIRECT EXAMINATION**

4 BY SOLICITOR FINNEY:

5 Q Lieutenant, good morning.

6 A Good morning, sir.

7 Q Tell us where you are employed.

8 A Sumter County Sheriff's Office.

9 Q And how long have you been there?

10 A I've been there full time since 1996.

11 Q All right, sir. And you are a lieutenant?

12 A Yes, sir.

13 Q And what division are you assigned to?

14 A Right now I'm in commissary position.

15 Q All right, sir. And previously back in 2004 what
16 type of position did you hold with the Sheriff's
17 Office?

18 A I was in the patrol division.

19 Q So tell us a little bit what a patrol officer
20 does.

21 A In patrol division we're all the first
22 responders. We're the first ones that are out on a
23 regular basis taking calls, riding around checking
24 property, responding to any needs, looking for
25 anything that we need to do, problem we need to

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1 address or anything else, enforcing traffic laws.

2 It's more the lower end work; but again, our primary
3 thing would be to be the first responders.

4 Q So being a first responder, when a call comes out
5 for help you respond to the call and you get the
6 situation under control?

7 A Yes, sir.

8 Q All right, sir. I want to show you what's been
9 handed to me as a county incident report. Look at
10 that please and tell me if you can identify that.

11 A Yes, sir. This is the report from the, from this
12 incident on March 14th, and I wrote it.

13 Q All right. You wrote it?

14 A Yes, sir.

15 Q And your signature is on the bottom of it?

16 A That's my name and my badge number, yes, sir.

17 Q All right. And is it part of your duties that
18 after you respond to a call you would write up an
19 incident report and put in what happened?

20 A Yes, sir.

21 Q All right. Do you remember March 14th, 2004?

22 A Yes, sir.

23 Q And were you one of the first responders to the
24 nightclub that night?

25 A Yes, sir.

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1 Q All right, sir. Tell us where the nightclub is.

2 A It's on Highway 15 north just, or almost at the
3 intersection of Brewington Road. It's just past
4 Brewington when you're heading to Bishopville.

5 Q Is that in Sumter County?

6 A Yes, sir.

7 Q All right, sir. And have you been there before?

8 A Plenty of times, yes, sir.

9 Q Is it unusual for the police to be called out
10 there in the early morning hours of a weekend like
11 Sunday morning when the club is being disbursed?

12 A No, it's not. If they're open, usually by
13 closing time usually we're gonna get calls, yes,
14 sir.

15 Q And did, in fact, you get a call -- what time
16 does the report say the call came in?

17 A Dispatch time on here was at 3:50 in the morning.

18 Q 3:50?

19 A Yes, sir.

20 Q So it's almost 4:00 in the morning?

21 A Yes, sir.

22 Q And were you on call, did you have to get out of
23 bed, or were you already on patrol?

24 A I was on patrol.

25 Q All right. And did you respond with other

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1 officers that night?

2 A Yes, sir.

3 Q Who was the supervisor of the team that collected
4 there at the club that night?

5 A The shift lieutenant at the time was Lieutenant
6 Jim Atkinson.

7 Q And is he in the courtroom today?

8 A Yes, sir.

9 Q All right. So was he there when you got there?

10 A We all got there pretty much at the same time.

11 Q Because Lieutenant Atkinson was the shift
12 supervisor, what did you do as far as getting with
13 him?

14 A We immediately started pouring in efforts.
15 Usually any time we have a busy scene or especially
16 somewhere chaotic, the first thing we're looking for
17 is safety. We want to make sure there's still no
18 shooting going on. We want to make sure that the
19 scene is safe for not for only for us, but also so
20 we can bring EMS in. We started getting, you know,
21 getting word immediately somebody had been shot so
22 we -- our primary thing is first and foremost try
23 and make it safe as possible to get EMS in so they
24 can go ahead and try to administer ---

25 MR. ABDULLAH: Objection, Your Honor.

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1 THE COURT: What's your -- state your
2 grounds for your objection.

3 MR. ABDULLAH: Yes. Can we approach the
4 Bench, sir?

5 THE COURT: Yes.

6 (WHEREUPON, Mr. Abdullah and Solicitor
7 Finney approached the Bench for an
8 off-the-record discussion.)

9 SOLICITOR FINNEY: Lieutenant Monahan ---

10 THE COURT: Hold on. Objection overruled.
11 Go ahead.

12 BY SOLICITOR FINNEY:

13 Q Lieutenant Monahan, if you would look at your
14 screen, is it on a, you see a picture on your
15 screen?

16 A Yes, sir.

17 Q We have identified that as State's Exhibit Number
18 5. Can you describe that scene on the picture.

19 A Yes. That is the frontage going to the club.

20 Q And did the club look like that image in State's
21 Exhibit Number 5 that night?

22 A Yes, sir.

23 Q Tell the ladies and gentlemen of the jury about
24 the area that you see in that picture. Tell us
25 about the lighting there.

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1 A The lighting right in front of the club usually
2 right by the door were, was usually pretty well lit.
3 The rest of the area, the parking lot and other
4 place an, everything was just kind of low; but right
5 here in the immediate area where, usually where
6 security and everything was at, they usually have
7 that pretty well lit at the entrance. And that's
8 where checking people and taking money and that sort
9 of thing is. That was usually pretty...

10 Q Did you, do you see a door in that picture that's
11 on the screen?

12 A Yes, sir.

13 Q Is that the main door to the club?

14 A Yes, sir.

15 Q And did you enter into that door that night?

16 A Yes, sir.

17 Q All right. Tell us what happened once you got to
18 the club and you got informed about what was going
19 on.

20 A When we initially got on scene it was very
21 chaotic. There was still a lot of cars pulling out.
22 It was very common for these type clubs to be very,
23 very overpacked. So we're trying to get there,
24 trying to get through the crowd, trying to make it
25 inside there. We start getting word that somebody

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1 had been shot. We're trying to find the victim.
2 We're also trying to insure, again, for our safety
3 and for the others that are coming we're trying to
4 stabilize the situation as much as possible before
5 we go in there.

6 We immediately start seeing the other
7 people -- we see the person laying on the ground,
8 the victim. We did confirm to dispatch on the radio
9 to, you know, have EMS ready, come on in. And we
10 got other units arriving. There was, again, like I
11 said, we're trying to make the scene as safe as
12 possible, you know, trying to get everything calmed
13 down, keep 'em separated, keep people out of the
14 initial area where we knew for sure someone had been
15 shot at, just trying to preserve the scene, but
16 we're also trying to first and foremost was
17 everyone's safety trying to, so we can bring other
18 people in.

19 Q At some point did you find out information from
20 some people at the club that there had been a
21 firearm on scene that was used that night?

22 A Yes. We got information from, we had several
23 people approach us that there had been a shooting.
24 Someone had mentioned Mr. Abdullah by name. Others
25 just said one of the security guards, were able to

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1 point him out. And we had one person that told us
2 that they'd actually followed, after the shooting
3 they followed him inside the club to a bathroom and
4 they followed him there. And that's when me and
5 Lieutenant Atkinson, we walked inside of the
6 bathroom, go in there and checked the bathroom.

7 Q And can you remember, I know it's been quite a
8 while, but there's a, State's Exhibit Number 2 is a
9 diagram of the nightclub. Can you remember when you
10 went into the front door of the nightclub where you
11 went to get to the bathroom area?

12 A I know we, when we come back in I remember it was
13 on the door you see in the picture where you come
14 back in.

15 Q That would be this main door?

16 A Yes, sir. It was back over on the opposite side,
17 kind of like over on the other side.

18 Q In this area of the nightclub?

19 A Yes, sir. It was like directly across on the
20 other side of the dance floor.

21 Q All right.

22 A As far as where exactly, I don't know exactly the
23 layout.

24 Q And if you don't mind, can you describe to the
25 jury the condition of the bathroom when you went in

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1 there that night?

2 A It was very dark, not much lighting inside there,
3 kind of dirty. Went through there, but we did see
4 some -- we noticed a hole in the ceiling and there's
5 some debris on the ground like some piece of
6 sheetrock or something had crumbled that -- so
7 that's what we're going to try to look at what
8 appeared on the ground but. But it did appear there
9 was a fresh hole in the ceiling.

10 Q I'm gonna show you two photographs and ask if you
11 can identify what's in the photographs.

12 A Yes, sir. This is the bathroom. We went inside.
13 And picture number 8 is the bathroom inside and the
14 other photo is depicting the, what appeared to be a
15 fresh hole in the ceiling where the sheetrock had
16 been ripped off.

17 Q And did you see those items, see the bathroom
18 that night, was it in that condition that you see in
19 the photographs?

20 A Yes, sir.

21 Q All right.

22 MR. FINNEY: Your Honor, at this time I
23 would like to mark these photographs for exhibits,
24 State Exhibits 14 and 15.

25 MR. ABDULLAH: No objection from Defense.

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1 THE COURT: Without objection they're so
2 admitted, State's 14 and 15.

3 (WHEREUPON, State Exhibits Nos. 14 and 15
4 were marked for identification and
5 admitted into evidence.)

6 BY MR. FINNEY:

7 Q Mr. Monahan, who did you go in the bathroom with
8 that night?

9 A Lieutenant Atkinson.

10 Q All right. And on the screen now do you see a
11 color photograph that's marked State's Exhibit
12 Number 14?

13 A Yes, sir.

14 Q All right. Is that the condition you found the
15 bathroom in that night? /

16 A Yes, sir.

17 Q And would you tell the ladies and gentlemen of
18 the jury what's shown in the photograph?

19 A This is from the doorway looking into the
20 bathroom where we went in at. Again, it's very dark
21 there. You know, we had flashlights, we always have
22 flashlights with us. This is where we're looking at
23 going back inside there. We can see a busted toilet
24 which you could see debris all over the ground and
25 that's where we proceed in.

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1 Q All right. So the toilet is located in the
2 second part of the bathroom as you look at this
3 picture?

4 A Yes, sir.

5 Q And what's located in the first part of the
6 picture?

7 A Just a counter with a sink.

8 Q A counter and a sink?

9 A Yes, sir.

10 Q All right, sir. Let me show you what's in
11 Exhibit Number 15 and ask if you can identify what
12 this picture shows.

13 A That was the hole in the ceiling we found and
14 down below on the floor where we seen all the
15 debris, the crumbles and everything, pieces of
16 sheetrock and stuff.

17 Q So did it appear to you about the hole, did you
18 make a conclusion or did you have an opinion about
19 that hole when you saw it?

20 A It appeared fresh, and we also -- not only did it
21 look fresh as far as this pistol hanging and
22 everything; but also we, assuming the, you know, the
23 volume of people who were there on a regular basis
24 that were there that night, with the amount of dust
25 and everything that's on the floor it had to have

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1 been fresh.

2 Q All right. And you say that the hole itself, the
3 ceiling material, you saw bits and pieces of it on
4 the floor?

5 A Yes, sir.

6 Q And where else, if at all?

7 A It was back on there and also on top of that
8 broken toilet.

9 Q All right. Now when you saw this hole was it
10 investigated?

11 A Yes, it was.

12 Q All right. Now did you have information that led
13 you to go into the bathroom to say that there was
14 something connected with the shooting that was in
15 the bathroom?

16 A Yes, sir. We had one person approach us that
17 again stated that they had followed Mr. Abdullah.
18 After the shooting they followed him to the
19 bathroom. They saw him go inside there. So we went
20 in there to, wanted to go through and check and
21 that's when we discovered the hole, discovered,
22 looked back in there. I'm kind of a short fella and
23 Lieutenant Atkinson is a fair bit taller than me so
24 he's able to get a little bit higher with his
25 flashlight and shine up inside there.

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1 Q All right. As a result of checking the bathroom
2 were you able to find a handgun in the ceiling in
3 that hole?

4 A Yes, sir. When Lieutenant Atkinson shined the
5 light back up there you could see, you could see
6 part of the handle of the gun ---

7 Q As a result of finding the gun did you or
8 Lieutenant Atkinson take the gun out of the ceiling
9 at that point?

10 A No, sir. Usually with standard protocol for us,
11 when we come across a weapon, if it's not in
12 immediate danger of either being destroyed or if
13 it's not in immediate area where somebody can have
14 access to it, then we try and leave it alone. We
15 don't disturb it, we don't touch it. We don't do
16 anything at all to it just so it can be photographed
17 and be taken by crime scene so that way we never
18 touch it.

19 Q All right, sir. And now what happened with
20 information about Mr. Abdullah? How did you come to
21 learn about him?

22 A Like I said, we had several people approach us
23 inside and outside, different officers. We had
24 several different people approach us that either
25 identified him by name or point him out to us.

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1 Q All right. And did you, in fact, see Mr.

2 Abdullah in the club that night?

3 A Yes, sir.

4 Q Can you tell us about his appearance, anything
5 about him that you remember that night?

6 A I remember he had dark colored clothing. I just
7 remember him being a pretty sizable fella, a lot of
8 facial hair; but other than, I mean, nothing really.

9 Q And did you happen to -- do you see him in the
10 courtroom today?

11 A Yes, sir.

12 Q Can you point him out?

13 A Yes, sir (indicating).

14 Q He's sitting at Defense table?

15 A Yes, sir.

16 Q And that's the man that was pointed out to you
17 that night who was pointed out by people at the club
18 as being responsible for the shooting?

19 A Yes, sir.

20 Q Did you arrest Mr. Abdullah?

21 A A little while later we did have, with standard
22 protocol we call our criminal investigators in case
23 like this. Investigators came. We did go through,
24 interview some more people, and at that point it was
25 determined that we were going to go ahead and place

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1 him, place him under arrest.

2 Q Did you place him under arrest?

3 A There was three of us standing there, but yeah, I
4 was one of the ones that were, that actually placed
5 him under arrest, yes, sir.

6 Q All right, sir. And you placed him under arrest.
7 Would you have handcuffed him at that time?

8 A Yes, sir.

9 Q All right, sir. And what else would you have
10 done at that time?

11 A Any time you arrest somebody, nobody what the
12 case is we always do what we call a pat-down search,
13 we do a cursory search. We want to make sure they
14 don't have any other weapons on them, won't have
15 anything sharp that's gonna stick us or anything
16 that can be used as a weapon or anything that can be
17 used to, you know, try and aid in their escape or
18 anything else so it's always standard for us to do
19 initial pat-down just to make sure there's nothing,
20 no kind of weapons or anything we can feel from the
21 outside. But then we'll also empty, empty pockets,
22 check inside waistbands and that sort of thing,
23 check inside of socks and everything else before we
24 transport them because not only we're looking out
25 for our safety, we're looking for evidence, but we

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1 also want to make sure that nothing actually goes
2 with that person to the jail. So we usually do all
3 search and everything on scene when we make an
4 arrest.

5 Q And once you arrested Mr. Abdullah did you search
6 his pockets?

7 A Yes, sir. Myself and Captain Barron were patting
8 him down, checking his pockets and everything. I
9 was checking one side. Captain Barron was checking,
10 checking the other pockets. And I saw Captain
11 Barron, when he pulled up, out of one of his pockets
12 he pulled a bullet out of his pocket.

13 Q He pulled a bullet out?

14 A Yes, sir.

15 Q All right. And was that bullet then taken into
16 evidence?

17 A Yes, sir.

18 Q All right. And it was placed into the evidence
19 log of this case?

20 A Yes, sir.

21 Q All right. And when the evidence log was written
22 up did you write it up or did you turn that over to
23 the investigator?

24 A At that point the investigators were handling the
25 evidence log.

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1 Q And if I were to show you, would you be able to
2 recognize what the bullet looked like? Could you
3 tell the jury what the bullet looked like?

4 A I remember it was a handgun bullet. I remember
5 it was, I think it was a .45-caliber but I,
6 identifying the exact bullet I'm ---

7 Q You didn't put your initials on it or anything
8 like that?

9 A No.

10 (Exhibit was shown to Mr. Abdullah.)

11 BY SOLICITOR FINNEY:

12 Q I'm gonna show you what's been put in an evidence
13 bag and marked as State's Exhibit Number 7. I'm
14 gonna ask if you can identify what's in that bag.

15 A That's a handgun bullet. It does appear to be a
16 .45 caliber.

17 Q All right. Can you tell from the bottom of the,
18 what kind of, who made that bullet?

19 A The manufacturer is Federal.

20 Q Federal?

21 A Yes, sir.

22 Q Do they make ammunition, Federal company?

23 A Yes, sir.

24 Q All right. And does that appear to be the bullet
25 that you took out of Mr. Abdullah's pocket when he

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1 was arrested at the club?

2 A Like I said, Captain Barron pulled it out but it
3 does appear.

4 Q And Captain Barron would have shown it to you at
5 that time?

6 A Yes, sir, he showed it to me, said we were kind
7 of to the back of them. We go through there and we
8 pull it out. He just showed it to me, and we nodded
9 to each other in acknowledgment, but he did have a
10 bullet and...

11 MR. FINNEY: At this time, Your Honor,
12 it's been marked as State's Exhibit Number 7.
13 Subject to the SLED analysis I would move it in into
14 evidence.

15 THE COURT: Any objection?

16 MR. ABDULLAH: No objection from the
17 Defense.

18 THE COURT: Without objection, so
19 admitted.

20 (WHEREUPON, State Exhibit No. 7 was
21 admitted into evidence.)

22 BY SOLICITOR FINNEY:

23 Q Mr. Monahan, once he was arrested did you
24 transport Mr. Abdullah downtown to the law
25 enforcement center?

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- 1 A No, sir, one of the investigators did.
- 2 Q All right, sir. And did you read him his Miranda
- 3 rights at that time?
- 4 A I did not, no, sir.
- 5 Q Do you know who did?
- 6 A I believe it was Lieutenant Atkinson.
- 7 Q All right, sir. And once he arrested he was
- 8 placed in the car and taken downtown?
- 9 A Yes, sir.
- 10 Q Did you remain at the club?
- 11 A I remained at the scene, yes, sir.
- 12 Q All right, sir. And you watched people do their
- 13 work, investigators were called out, and crime scene
- 14 investigators, pictures were taken, things like
- 15 that?
- 16 A Yes, sir.
- 17 Q You didn't have anything do with the crime scene
- 18 investigation itself?
- 19 A No, sir.
- 20 Q All right, sir. Nothing further. Answer any
- 21 questions Defense may have.
- 22 A Yes, sir.
- 23 THE COURT: Cross-examination.
- 24 **CROSS-EXAMINATION**
- 25 BY MR. ABDULLAH:

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1 Q How you doing, Mr. Monahan?

2 A Good morning, sir.

3 Q Yes. When you went into the bathroom and you
4 acknowledged that hole in the ceiling, through your
5 investigation do that determine how long that hole
6 been there?

7 A No, sir.

8 Q It doesn't?

9 A No, sir.

10 Q No further questions.

11 THE COURT: Mr. Finney, anything?

12 MR. FINNEY: No, sir, nothing else.

13 THE COURT: Sir, you may step down. Thank
14 you.

15 SOLICITOR FINNEY: Please excuse the
16 witness.

17 THE COURT: Any objection? Mr. Abdullah,
18 any objection?

19 MR. ABDULLAH: (No verbal response.)

20 MR. FINNEY: We call Lieutenant Atkinson
21 to the stand please.

22 THE COURT: Mr. Monahan, you're free to
23 go. You're released from further responsibilities
24 here. Have a nice day.

25 THE CLERK: Place your left hand on the

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1 Bible, raise your right hand. State your name
2 please.

3 THE WITNESS: James Atkinson.

4 WHEREUPON,

5 **JAMES ATKINSON,**

6 having been duly sworn by the Clerk, testified
7 as follows:

8 THE CLERK: Please state your full name,
9 spell your last name for the record.

10 THE WITNESS: James W. Atkinson,
11 A-T-K-I-N-S-O-N.

12 **DIRECT EXAMINATION**

13 BY SOLICITOR FINNEY:

14 Q Lieutenant Atkinson, good morning, sir.

15 A Good morning, sir.

16 Q You were the supervisor of the officers who
17 responded to the Lion's Pit Nightclub the night of
18 the shooting back in 2004?

19 A Yes, sir, I was a shift lieutenant.

20 Q And as the shift lieutenant what was your
21 responsibility once you got on the scene there at
22 the club?

23 A I want to make sure they've done what they're
24 supposed to, make sure nothing got worse, security
25 in place and it was safe, and that's what we did.

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1 Q All right. Would you tell us, if you can
2 remember, roughly how many officers would have
3 responded out to the nightclub after the call came
4 in?

5 A We had at least four that I can remember. It's
6 hard to get that particular coming on 15 when
7 something bad goes down. They'll actually come out
8 of the club in both lanes. I mean, if you get to
9 actually pull off the side of the road and let
10 people out so it took a few minutes longer than it
11 should have.

12 Q Right. And so once the crowd disbursed you and
13 your guys were able to pull in and start the crime
14 investigation?

15 A It's not empty, but it's still pretty wild and
16 they were still screaming and several young ladies
17 were hysterical.

18 Q All right, sir. Lieutenant, you've been to the
19 Lion's Pit Nightclub before?

20 A On many times.

21 Q All right, sir. And on the occasion that you
22 went there that night, let me ask you to look at
23 this monitor there of State's Exhibit Number 5. The
24 exterior of the club, is that the front door area of
25 the club?

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1 A Yes, sir.

2 Q And does State Number 5 accurately represent the
3 way the club looked that night when you got there?

4 A No ---

5 Q Except for the people?

6 A Except for the people, yes, sir.

7 Q All right, sir. In that picture there's a
8 vehicle with markers on top of it. Can we talk a
9 little bit about that vehicle. It looks like a
10 black vehicle with a white top. Do you remember
11 seeing that?

12 A Yes, sir, it was there when -- I believe it was
13 struck on the top by a bullet I believe.

14 Q Let me ask you so you can tell the jury, did you
15 have any duties in terms of taking pictures that
16 night?

17 A No, no, sir.

18 Q Did you have any duties in terms of putting the
19 yellow markers down on the ground that you see in
20 State's Exhibit Number 5?

21 A No, sir, not that many.

22 Q And who would have done that?

23 A The investigator that came in after us. Usually
24 the first couple of people at the scene will do
25 that, but it was still so chaotic there and we just

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1 couldn't -- we didn't have enough people to do it.

2 You have to have somebody there to watch that scene.

3 And nobody is gonna be there to actually log them in

4 and out so we were not able to do it. I believe the

5 investigators did it when they got there.

6 Q All right, sir. Now when you got there you did

7 talk to some of people at the nightclub?

8 A Yes, sir.

9 Q As a result of the conversations with them were

10 you able to generate some information about what had

11 happened?

12 A Yes, sir, they said security shot him.

13 Q And so you started checking to find out what they

14 meant by that?

15 A Yes, sir. And we went inside and talked to

16 Mr. Lane. He was up here earlier, I believe.

17 Q Mr. Lane, Thurston Lane?

18 A And he said he knew whose bullet it was. He

19 pointed out that it was Mr. Abdullah.

20 Q All right. You didn't know Mr. Lane before that?

21 A I had seen him before in there 'cause we'd been

22 there numerous times but I ---

23 Q All right. You'd seen him before?

24 A Yes, sir.

25 Q Had you ever seen Mr. Abdullah before?

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1 A No.

2 Q All right. Did Mr. Lane direct you to a
3 particular area of the building that night?

4 A Well, he said Abdullah went back to the bathroom
5 point towards the back, or along the side. He said
6 that's where the bathroom was. He said he went in
7 and he came out.

8 Q Did you and Lieutenant Monahan go to the
9 bathroom?

10 A Yes, we did.

11 Q All right, sir. And what's been marked as
12 State's Exhibit Number 14, is that picture an
13 accurate representation of the bathroom area that
14 you went into that night?

15 A Yes, sir. The toilet was destroyed. It looked
16 like someone had stood on it to me.

17 Q All right, sir. And that's how it looked when
18 you got there?

19 A Yes, sir.

20 Q And what else did you see in that area when you
21 checked the bathroom area?

22 A There was a hole in the ceiling.

23 Q And where was that hole?

24 A Above the toilet maybe.

25 Q Right above the toilet?

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1 A Yes, sir.

2 Q All right, sir. And this is State's Exhibit
3 Number 15, I want to show you a picture. Does that
4 accurately look like the hole that you saw that
5 night?

6 A Yes, sir.

7 Q All right. Could you tell anything about the
8 hole?

9 A Well, it looked to be pretty fresh because you
10 could still see dry plaster. The floor was wet.

11 Q Right.

12 A But the plaster on top was dry so it came down
13 after that.

14 Q All right.

15 A If you backed up to a corner away from it you can
16 see a little bit of something was up in black.

17 Q All right. Something where?

18 A In the ceiling, the hole in the ceiling.

19 Q Up in the ceiling?

20 A Yes, sir. I took my flashlight. It looked like
21 the handle possibly of a gun.

22 Q Right. And did you investigate that further?

23 A Well, I didn't bother it. We left it there. But
24 we went outside and we, you can only see the
25 bathroom door where he was at, but we know no one

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1 was coming in and out of there.

2 Q Right. Did you have occasion to go over and talk
3 to Mr. Abdullah?

4 A I did. I went over. I told him, I need to talk
5 to you about something for a minute. I said, I need
6 to read you something first. I read him his Miranda
7 rights..

8 Q All right. Tell the ladies and gentlemen what
9 the Miranda rights are.

10 A I can actually read them.

11 Q All right. You have a card?

12 A Yes, sir.

13 Q Did you have a card with you that night?

14 A Oh, we always kept it in our pocket right up
15 here. This is probably the same card.

16 Q Very good. Tell us what you told him about his
17 Miranda rights.

18 A "You have the right to remain silent. Anything
19 you say can and will be used against you in a court
20 of law. You have a right to counsel or attorney if
21 you had one -- I'm sorry, if you cannot afford one.
22 You understand these rights?" He said, yes. I
23 said, you can talk to us now. He said, okay. I
24 asked him about the shooting. He said, well, I
25 heard about it, I heard some shots, but he said, I

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1 didn't do anything.

2 Q All right. So that was the end of the
3 conversation between you and Mr. Abdullah?

4 A Well, that when I told him I need to pat him
5 down.

6 Q Right.

7 A When I pat him down I noticed he was very wet.

8 Q All right. Now tell us about that. When you
9 were patting him down where were you located, where
10 was he located?

11 A Probably about the middle of the club.

12 Q Right.

13 A Standing up.

14 Q Were the lights on?

15 A Dim, dimly, yeah. You could see what was going
16 on, yeah.

17 Q And you say you had to pat him down?

18 A Yes, sir.

19 Q Was that, why was that done?

20 A Well, make sure he didn't have another weapon on
21 him.

22 Q All right. In the process of your patting him
23 down you discovered he ---

24 A He was very wet and I'm, I believe he was
25 standing on the toilet and fell off of it.

SW - J. ATKINSON - DIRECT

1 MR. ABDULLAH: Objection.

2 THE COURT: Objection sustained.

3 MR. ABDULLAH: Objection.

4 MR. FINNEY: All right.

5 BY SOLICITOR FINNEY:

6 Q Let me back up and ask you this. When you say he
7 was very wet, where was he, where do you remember
8 him being wet at?

9 A Mostly his top part, all the way from his pockets
10 on up where I was patting him down.

11 Q All right. And you patted him down from the
12 shoulders down?

13 A Yes.

14 Q All the way to the ankles?

15 A Yes, sir.

16 Q All right, sir. Now once he was patted down did
17 you go in any of his pockets?

18 A I did not, no.

19 Q All right. And did you take off any of his
20 clothing?

21 A No, sir.

22 Q Once he was patted down and he didn't have any
23 weapons on him, what did you do with him then?

24 A I had Jackson Thompson who was a deputy there
25 watch him.

SW - J. ATKINSON - CROSS

1 Q All right. And what did you do ---

2 A Took him off to the side so he could watch him.

3 Q What did you do then?

4 A I believe I went out and talked to the
5 investigator too but. We made sure for -- for one,
6 we tried to keep people out of the club. They were
7 still trying to get in and get a hold of him. Still
8 very excited, very angry, they wanted him, and we
9 had to make sure it was still secure.

10 Q All right. When did you learn if there had been
11 injuries outside the club?

12 A Actually when we first pulled up.

13 Q All right. So you knew that going before you
14 went inside the club?

15 A Oh, yes, sir.

16 Q And when you got to the club and you saw that
17 they were injured outside, did you -- were the
18 ambulance people there already, or you were waiting
19 ---

20 A Not there, but I believe we were told they were
21 on the way.

22 Q All right, very good. Did you have anything to
23 do with the location or the finding of evidence
24 outside the nightclub?

25 A No, sir.

SW - J. ATKINSON - REDIRECT

1 Q And pretty much after you got Mr. Abdullah handed
2 off to the other deputy, did you have any direct
3 responsibility with the investigation?

4 A No, sir.

5 Q All right, very good. Thank you, sir. Answer
6 any questions.

7 THE COURT: Cross-examination, Mr.
8 Abdullah.

9 **CROSS-EXAMINATION**

10 BY MR. ABDULLAH:

11 Q How you doing, Mr. Atkinson?

12 A Pretty good, sir.

13 Q Yes. You testified that you said Mr. Abdullah
14 was wet; is that right?

15 A Damp, yes, sir.

16 Q Now when you were searching Mr. Abdullah and you
17 said that you acknowledge he was wet, did you ever
18 ask Mr. Abdullah what was on him, why he was wet?

19 A I asked him why he was wet. He said there was a
20 leak in the bathroom.

21 Q A leak. A leak from where?

22 A That's what I heard, just a leak.

23 Q Okay, a leak. Now when you was doing your
24 investigation did any of the witness that you talked
25 ever told you there was shooting in the area?

SW - C. PIERSON - DIRECT

1 A No.

2 Q You was never told ---

3 A I was never told anyone else was shooting, no,
4 sir.

5 Q No one shooting?

6 A No, sir.

7 Q No further questions.

8 THE COURT: Any redirect?

9 SOLICITOR FINNEY: Yes, sir.

10 **REDIRECT EXAMINATION**

11 BY SOLICITOR FINNEY:

12 Q After you -- no, sir, I won't ask the question.

13 MR. FINNEY: I'm fine, thank you. Nothing
14 further.

15 THE COURT: Sir, you may step down. Thank
16 you.

17 SOLICITOR FINNEY: We call Ms. Cindy
18 Pierson to the stand please.

19 THE COURT: Ma'am, if you'd come around to
20 be sworn please.

21 THE CLERK: Place your left hand on the
22 Bible, raise your right hand. State your name
23 please.

24 THE WITNESS: Cindy C. Pierson.

25 WHEREUPON,

SW - C. PIERSON - DIRECT

1 **CINDY PIERSON,**
2 having been duly sworn by the Clerk, testified
3 as follows:

4 THE CLERK: Have a seat up here please.
5 Please state your full name, spell your last name
6 for the record.

7 THE WITNESS: Cindy C. Pierson,
8 P-I-E-R-S-O-N.

9 (Exhibit shown to Mr. Abdullah by Mr. Finney.)

10 **DIRECT EXAMINATION**

11 BY SOLICITOR FINNEY:

12 Q Good morning, Ms. Pierson.

13 A Good morning.

14 Q Tell the ladies and gentlemen of the jury what
15 you do for a living.

16 A I groom dogs now.

17 Q All right. And how long have you been doing
18 that?

19 A Since 2010.

20 Q And what were you doing before 2010?

21 A I worked for the Sheriff's Department as crime
22 scene evidence technician.

23 Q And what did your duties entail as working as a
24 crime scene evidence technician?

25 A For crime scenes I would go out to someone, I was

SW - C. PIERSON - DIRECT

1 called evidence technician. I would pretty much --
2 all the officers that brought the evidence in I
3 would log it in, place it into the evidence room;
4 and say, if it needs to go to SLED I would transport
5 it to SLED. It would stay in my custody unless it
6 was signed out. I stored all the evidence until
7 court.

8 Q All right. I want to show you what's been given
9 to me as a SLED laboratory services request and ask
10 you to look at it.

11 A Okay.

12 Q Do you recognize that document?

13 A Yes, sir, I do.

14 Q Does it have your name at the bottom of it?

15 A Yes, sir, it does.

16 Q And what date is on, did you fill that document
17 out?

18 A This document was actually filled out by
19 Investigator Turner or Captain Turner, excuse me,
20 and I delivered it to SLED.

21 Q When did you deliver the evidence to SLED?

22 A It looks like August or, excuse me, April of 06,
23 2004.

24 Q April 6 of 2004?

25 A Correct.

SW - C. PIERSON - DIRECT

1 Q All right. Now this is evidence that was
2 collected under a case number; is that right?

3 A Yes, sir.

4 Q Tell the ladies and gentlemen about how you give
5 every case a case number.

6 A Every case is assigned a case number by dispatch,
7 and then I actually give it a number as it was put
8 into evidence so. Each piece of evidence that come
9 into the evidence room I could, if they would give
10 me the case number I can go and look it up and it
11 would tell me exactly what the number was. I think
12 I had, or I had this one as '04 meaning which the
13 year of when it was actually occurred. And then as
14 each piece come in, it would be numbered and given a
15 specific number so I could always go back to it.

16 Q And so can you give us, you're saying that Sumter
17 County Sheriff's Department had a case number?

18 A Correct.

19 Q And the evidence room had a case number?

20 A We actually had a, what we called an inventory
21 number.

22 Q Right. Which is different than the Sumter County
23 case number?

24 A Right.

25 Q All right.

SW - C. PIERSON - DIRECT

1 A Correct.

2 Q What was the Sumter County case number that was
3 given to this case?

4 A 04026955.

5 Q And can you tell us from looking at that
6 inventory sheet what items you took to SLED in April
7 of 2004?

8 A Yes, sir.

9 Q Tell us what you have on your inventory list.

10 A It was a GSR kit bearing name Marell McBride, a
11 GSR kit bearing name David Way, a GSR kit bearing
12 name -- I can't pronounce that name.

13 Q Abdullah?

14 A Abdullah.

15 Q All right.

16 A One Hi-point .45 caliber pistol, serial number
17 33-- I'm sorry, I don't have my glasses, 66.

18 Q Try this.

19 A Thank you.

20 Q And you wrote down the serial number of the
21 weapon that was involved?

22 A Yes, sir.

23 Q All right. And what else did you write down?

24 A There was a magazine containing some unfired
25 Federal .45 caliber cartridges, fired Federal

SW - C. PIERSON - CROSS

1 .45 calibers casings, and one fired bullet out of
2 left rear door, the 1985 Buick.

3 Q And those items were taken by you to SLED to be
4 what?

5 A To be analyzed by SLED.

6 Q And SLED has a laboratory that does analysis for
7 Sumter County law enforcement?

8 A Yes, sir.

9 Q All right. Would you have had to go back and
10 pick up any of those items later on?

11 A Yes, sir. Once SLED completed their analysis
12 they would let us know. We would go and pick these
13 items back up, bring them back to the evidence room
14 and store them.

15 Q And when you bring them back to the evidence room
16 who would you turn them over to then?

17 A I would keep them and log them. In lob them.

18 Q Okay. And you were the ---

19 A ---log them back.

20 Q ---evidence tech at that time?

21 A Yes, sir.

22 Q Do you know who replaced your when you retired?

23 A Jim Mackessy I believe.

24 Q And I believe you just heard him testify.

25 A Correct.

SW - R. MACKESSY - DIRECT

1 Q All right. And those items are stored in the
2 Sumter County Sheriff's Department evidence room
3 until we bring them to trial?

4 A Correct.

5 Q All right. Thank you, ma'am. Nothing further.

6 THE COURT: Cross-examination.

7 **CROSS-EXAMINATION**

8 BY MR. ABDULLAH:

9 Q How you doing, Ms. Pierson?

10 A Good, how are you, sir?

11 Q Yes. Did you do a gunshot residue on the
12 handprints?

13 A No, sir, I did not do that. All I done was took
14 the evidence to SLED. It was already done and given
15 to me.

16 Q Okay. No further questions.

17 THE COURT: Anything further, Mr. Finney?

18 MR. FINNEY: Nothing further, Your Honor.

19 Ma'am, you may step down, thank you.

20 SOLICITOR FINNEY: May we approach, Your
21 Honor.

22 THE COURT: Yes, sir.

23 Without objection, ma'am, you're free to
24 go. You have no further responsibilities under your
25 subpoena. Have a nice day.

SW - R. MACKESSY - DIRECT

1 (WHEREUPON, counsel approached the
2 Bench for an off-the-record discussion.)

3 SOLICITOR FINNEY: We call Ray Mackessy to
4 the stand.

5 THE CLERK: Place your left hand on the
6 Bible, raise your right hand. State your name
7 please.

8 WHEREUPON,

9 **RAYMOND MACKESSY,**
10 having been duly sworn by the Clerk, testified
11 as follows:

12 THE WITNESS: Raymond Mackessy, spelled
13 M-A-C-K-E-S-S-Y.

14 BY SOLICITOR FINNEY:

15 Q Investigator Mackessy, good morning.

16 A Good morning.

17 Q Tell the ladies and gentlemen of the jury a
18 little bit about your law enforcement background.
19 Where did you start your law enforcement career?

20 A I started with the Baltimore City Police
21 Department in 1971.

22 Q And how long did you stay in Baltimore before
23 coming to South Carolina?

24 A I stayed there till about the end of 1985,
25 November of '85.

SW - R. MACKESSY - DIRECT

1 Q And you ---

2 A And then I came, moved to South Carolina, my wife
3 is from here. And I was hired by the Sheriff's
4 Department in January of 1986, and I retired from
5 the Sheriff's Office in May, on May 1st, 2009.

6 Q And during those years that you were with the
7 Sheriff's Department did you attain the rank of
8 criminal investigator?

9 A Yes, sir.

10 Q And is that how you ended your career as a senior
11 criminal investigator?

12 A Yes, sir, I was a sergeant in criminal
13 investigation division.

14 Q What does a criminal investigator do as a part of
15 your job?

16 A As part of my job is I was in charge of crime
17 scene unit, and it's my job to respond to the
18 various crime scenes when asked for and to locate
19 evidence, photograph that evidence, sketch it,
20 collect the evidence, and turn it in to the, turn it
21 over to the evidence custodian. I also take
22 evidence and in some cases I actually process that
23 evidence for latent fingerprints, for blood, hair,
24 other items like that. And in some cases I don't
25 process the evidence at all, I let the State Law

SW - R. MACKESSY - DIRECT

1 Enforcement Division lab do that, as was done in
2 this case.

3 Q All right, sir. So your basic job is to collect
4 the evidence and get it sorted up so that whatever
5 needs to be analyzed can be sent to the lab in
6 Columbia?

7 A Yes, sir. I package the evidence and turn it
8 over to the evidence custodian or, in some cases I
9 actually will put it in the evidence room 'cause I'm
10 also designated as an evidence custodian.

11 Q All right, sir. And there are some items that
12 don't have to go to the lab; is that correct?

13 A That's correct.

14 Q And you might find certain things at a crime
15 scene that you don't feel like needs to be sent to
16 the lab so you can just put them directly in the
17 evidence room?

18 A Well, I put them in the evidence room but I talk
19 to the investigator that was assigned to the case
20 that's actually working the case, and find out what
21 that investigator would like sent to SLED.

22 Q Very good. Now, that brings up a point. You
23 responded as the crime scene investigator, but this
24 case actually had a investigator in charge?

25 A Yes.

SW - R. MACKESSY - DIRECT

1 Q Who is that?

2 A That'd be Captain Turner. At the time it was
3 sergeant, Investigator Sergeant Turner.

4 Q And he's a captain now?

5 A He's a captain.

6 Q All right, sir. So once you got to the scene
7 that night, can you remember about what time you
8 responded to the nightclub?

9 A I got there -- let me refer to my records here.
10 I got, I probably got to the club about somewhere
11 around 4:30 a.m.

12 Q All right, sir. And when you got to the club
13 what do you remember seeing there?

14 A When I got to the club I was shown some evidence
15 that was on the ground.

16 Q Do you remember what that evidence was?

17 A It was fired .45 caliber cartridge casings.

18 Q All right, sir. And were, do you remember how
19 many there were?

20 A There were seven of them.

21 Q Seven, all right. And as a part of your
22 investigation can you look at a photograph that's
23 been marked as State's Exhibit Number 5 and tell us
24 did you take this picture?

25 A Yes, sir.

SW - R. MACKESSY - DIRECT

1 Q And tell us what you see in the picture.

2 A There's two numbered evidence markers.

3 Q What do the evidence markers look like?

4 A They're yellow. I call them tint markers.

5 They're like this and they have a number on each
6 side and...

7 Q And what were they, did you actually place those
8 markers on the ground?

9 A Yes, sir.

10 Q And what was the reason you placed the markers on
11 the ground?

12 A That was where the fired .45 caliber casings were
13 located.

14 Q All right, sir. Do you notice the area of the
15 door there at the nightclub in this picture?

16 A Yes, sir.

17 Q And tell us about the lighting that you found
18 there that night.

19 A Lighting was adequate, it was good lighting. You
20 could see.

21 Q All right, sir. It was a well lit area at the
22 front of the nightclub?

23 A Yes, sir.

24 Q All right, sir. In the background of the picture
25 you see an automobile. Did that automobile also

SW - R. MACKESSY - DIRECT

1 have evidentiary value?

2 A Yes, sir, it did.

3 Q All right, tell us about that.

4 A It had a, it had a bullet hole in the, it had a
5 bullet hole in the left rear door. It was a 1985
6 Buick.

7 Q All right, sir. And I want to show you, we have
8 a series of photographs you took that night; is that
9 right?

10 A Yes, sir.

11 Q Probably 20, 25 all together?

12 A Yes, sir.

13 Q And some of them have already been introduced
14 into evidence as you have seen.

15 A That's correct.

16 Q Would you look at these two -- as a matter of
17 fact, we can probably just go ahead -- Judge,
18 Mr. Abdullah has seen these photographs.

19 THE COURT: How many photographs are
20 there?

21 MR. FINNEY: There are 18 photographs in
22 all.

23 THE COURT: Mr. Abdullah, have you seen
24 those, sir?

25 MR. ABDULLAH: Yes, sir. No objection

SW - R. MACKESSY - DIRECT

1 from -- no objection.

2 THE COURT: Without objection, Madam Court
3 Reporter.

4 (WHEREUPON, State Exhibits Nos. 16 through
5 33 were marked for identification and
6 admitted into evidence.)

7 BY SOLICITOR FINNEY:

8 Q Investigator Mackessy, in addition to the
9 photograph that is on the screen now in State's
10 Exhibit Number 5, can you -- it may not be the best
11 picture. Can you see how many markers those yellow
12 tint markers you have in that picture? Can you see,
13 can you give us a number on those?

14 A I believe there are six markers in that scene.

15 Q All right, sir. Let me show you what's been
16 marked as State's Exhibit Number 33 and ask if you
17 can identify that.

18 A Yes, sir, I can identify.

19 Q And also State's Exhibit Number 32. What do you
20 see in those two pictures?

21 A In State's Exhibit 32 -- or I'll start with
22 State's Exhibit 33 first. It's a photograph of a
23 1985 Buick, and it has a tint marker, evidence
24 marker on the roof of the vehicle, marked number
25 ten.

SW - R. MACKESSY - DIRECT

1 THE COURT: And that's State's Exhibit
2 what, sir?

3 THE WITNESS: State's Exhibit Number 33.

4 THE COURT: Thank you.

5 BY SOLICITOR FINNEY:

6 Q Let me put that on the screen please, sir. Was
7 that vehicle there at the side of the club when you
8 got there?

9 A Yes, sir, it was.

10 Q All right, sir. And as a result of checking that
11 vehicle what did you find out there?

12 A I found a bullet hole in the left rear door frame
13 and also a bullet hole at both entrance and exit on
14 the white, I guess vinyl roof, of that vehicle.

15 Q All right. And did you mark those separately?

16 A Yes, I did. I marked, the bullet hole was number
17 9.

18 Q All right.

19 A The entrance and exit bullet hole on the roof is
20 number 10.

21 Q All right, sir. I'm gonna put this on the
22 screen. This is State's Exhibit Number 32. Now
23 there seems to be something red right by number ten
24 on the top of the roof. What is that red item?

25 A That is a ballistic trajectory rod.

SW - R. MACKESSY - DIRECT

1 Q All right. Is that something you brought from
2 your office?

3 A Yes, sir.

4 Q And what was the purpose of putting it in this
5 picture?

6 A That shows the trajectory or the way the bullet
7 was going.

8 Q All right. And number 10 you said was a marker
9 indicating an entrance hole and an exit hole on a
10 bullet.

11 A Yes, sir.

12 Q So that bullet went straight through the white
13 roof and kept on going?

14 A Yes, sir.

15 Q On number 9, which is lower on the side of the
16 door, that bullet stayed in the vehicle?

17 A Yes, it did.

18 Q And were you able to retrieve it?

19 A Yes, sir.

20 Q Did you take a picture of it?

21 A Yes, sir, I did.

22 MR. FINNEY: One moment please, Your
23 Honor.

24 THE COURT: Yes, sir.
25

SW - R. MACKESSY - DIRECT

1 BY SOLICITOR FINNEY:

2 Q I want to show you what's been marked as State's
3 Exhibit Number 22 and Number 18 and ask if you can
4 identify what's in those two color photographs.

5 A Yes, sir. In State's Exhibit 18 is a closeup
6 view of a bullet that I removed from the vehicle.
7 And State's Exhibit 22 is a closeup view of a bullet
8 hole and the bullet that was in the left rear door
9 frame.

10 Q All right, sir. I'm showing the jury State's
11 Exhibit Number 18. Where did you get that bullet
12 that was located in that photograph?

13 A From the left rear door, upper frame of the door.

14 Q All right. And showing the jury State's Exhibit
15 Number 22, what is that a picture of?

16 A That's a picture of the bullet hole and the
17 bullet that's laying in that frame.

18 Q All right. And did you actually get the bullet
19 out of that hole to put it into evidence?

20 A Yes, sir.

21 Q All right, sir. Now that vehicle was parked near
22 the doorway, the main doorway of the club?

23 A Yeah.

24 Q And it remained there until after you took your
25 photographs?

SW - R. MACKESSY - DIRECT

1 A Yes, sir.

2 Q All right, sir. As a part of your duties that
3 night did you also put down yellow tint markers
4 every place you found a fired bullet casing?

5 A Yes, sir.

6 Q All right, sir. I'm gonna show you, show the
7 jury what's been marked as State's Exhibit Number
8 30. What is that in State's Exhibit Number 30?

9 A That's a fired .45 caliber cartridge casing.

10 Q All right, sir. Now it has a marker by it with a
11 number on it. What number is that?

12 A That's marker number one.

13 Q Does that mean that it was the first bullet
14 fired?

15 A No.

16 Q Is there any way for you to determine what bullet
17 casing got kicked out of that gun ---

18 A No.

19 Q ---at first?

20 A I don't know that, no.

21 Q All right, sir. So you marked it with a one
22 because that was where you started?

23 A Yes, sir.

24 Q And did you mark the next one as a two?

25 A Yes, sir.

SW - R. MACKESSY - DIRECT

- 1 Q All right, sir. And that's in State's Exhibit
2 number 24?
3 A Yes, sir.
4 Q That bullet casing is on the ground there. Is
5 that in the area of the club?
6 A Yes, sir, it was.
7 Q All right, sir. The next one is State's Exhibit
8 Number 28. What do you see in that picture?
9 A That's a fired .45 caliber cartridge casing.
10 Q And it matches up with the marker number 3?
11 A Number 3 marker, yeah.
12 Q And that was also on the ground?
13 A Yes, sir.
14 Q State's Number 27, what do you see in that
15 picture?
16 A Marker, crime scene marker number 4. It's a
17 fired .45 caliber cartridge casing on the ground.
18 Q All right, sir. Is it on the ground?
19 A Yes, sir, it's on the concrete.
20 Q On the concrete. State's Exhibit Number 26.
21 A Crime scene marker number 5 is a fired .45
22 caliber cartridge casing. That was found in the, on
23 the ground concrete by the, I call it the flowerbed
24 wall.
25 Q All right, sir. And the next one is State's

SW - R. MACKESSY - DIRECT

1 Exhibit Number 25.

2 A Yes, sir. That's crime scene marker number 6, a
3 fired .45 caliber cartridge casing, and that was
4 found inside the flowerbed on the ground.

5 Q All right, sir. And the final one, State's
6 Exhibit 24.

7 A Crime scene marker number 7, fired .45 caliber
8 cartridge casing, and that was found inside, in the
9 flowerbed in the dirt in the grass.

10 Q All right, sir. Let me at this time ask you to
11 tell the ladies and gentlemen of the jury, are you
12 familiar with State's Exhibit Number 2?

13 A Yes, sir..

14 Q And does it have your name on the bottom of the
15 diagram?

16 A Yes, it does.

17 Q And did you prepare this diagram for court?

18 A Yes, sir.

19 Q At some point did you take measurements out at
20 the Lion's Pit Nightclub to draw this diagram?

21 A Yes, sir..

22 Q And I see you marked on here that it's not drawn
23 to scale. In other words, you didn't measure the
24 building and the walls of the building?

25 A No, sir, I didn't.

SW - R. MACKESSY - DIRECT

1 Q Did you take any measurements relative to the
2 seven markers that you just described?

3 A Yes, sir, I did.

4 Q And what do those measurements refer to?

5 A They refer to, they refer to its relationship to
6 what I designated as wall one, front of the club,
7 how far away they were to wall one. I also drew
8 like, it's an imaginary line, but it comes up to the
9 wall where the front door is located. I also
10 measured from the cartridge casing to that imaginary
11 line. It's in line with this wall.

12 Q And you prepared a report that have those
13 measurements inside of it?

14 A Yes, sir.

15 Q All right, sir. So now the seven red circles
16 that you see on this diagram, State's Exhibit Number
17 2, what do they refer to?

18 A The one through seven refers to the fired
19 cartridge casings that I found.

20 Q Those are the pictures that we just looked at?

21 A Yes, sir.

22 Q All right, sir. And that was the location that
23 you found the fired casings in?

24 A Yes, sir.

25 Q All right, sir. And number 9 and number 10, did

SW - R. MACKESSY - DIRECT

1 we just show the jury a picture of number 9 and
2 number 10, that '85 Buick?

3 A Yes, sir.

4 Q And number 9 was the bullet in the Buick?

5 A That was where the bullet was.

6 Q And number 10 was the shot through the roof of
7 the bullet?

8 A Yes, sir.

9 Q All right, sir. Tell the ladies and gentlemen
10 what number 8 is.

11 A Number 8 was a, number 8 was a vehicle parked not
12 too far from this Buick.

13 Q Yes, sir.

14 A Number 8 was the blood on the ground.

15 Q All right, sir. Did you take a picture of the
16 blood on the ground?

17 A Yes.

18 Q Were you able to identify whose blood that was?

19 A No, sir, not, I haven't, no.

20 Q Did you put a yellow cone marker by the blood on
21 the ground in number 8?

22 A Yes, sir.

23 Q And do you see that in front of you as an exhibit
24 now?

25 A Yes, sir, I do.

SW - R. MACKESSY - DIRECT

1 Q What exhibit number is it?

2 A It's Exhibit Number 23.

3 Q All right, sir. Also I want you to look at
4 Exhibit Number 31, ask if you can identify that
5 picture.

6 A Yes, sir.

7 Q What is that picture?

8 A That's a vehicle that was parked a short distance
9 from the Buick that had the bullet hole in it, and
10 that's -- next to that is where the blood.

11 Q All right. So this picture in State's Exhibit
12 Number 31 was located near the Buick that you talked
13 about a few minutes ago.

14 A Yes, sir.

15 Q Which side of this picture 31 do you have the
16 yellow marker?

17 A The yellow marker is on the right side.

18 Q And is it on the ground?

19 A It's on the ground, yes.

20 Q And the yellow marker that's in the ground
21 identifies the blood that you located in State's
22 Exhibit 23?

23 A Yes, sir.

24 MR. FINNEY: I'm showing the jury State's
25 Exhibit Number 23, Your Honor.

SW - R. MACKESSY - DIRECT

- 1 BY MR. FINNEY:
- 2 Q And the location of marker number 8 was right, to
- 3 the right side of that car that's on the screen for
- 4 the jury to see?
- 5 A Yes, sir.
- 6 Q All right. Now Investigator Mackessy, did you
- 7 also happen to locate a firearm inside the Lion's
- 8 Pit that night?
- 9 A I was shown where a firearm was.
- 10 Q And who retrieved the firearm?
- 11 A I retrieved it.
- 12 Q And where did you retrieve it from?
- 13 A It was from the bathroom, a hole in the bathroom
- 14 ceiling.
- 15 Q All right, sir.
- 16 A Retrieved the firearm from inside there.
- 17 Q I'm gonna show you what's been marked previously
- 18 as State's Exhibit Number 15. Can you describe
- 19 what's in that picture?
- 20 A Yes, sir. That's the hole in the ceiling of the
- 21 bathroom inside the club.
- 22 Q And where was that hole located?
- 23 A It was located above the toilet that was broken.
- 24 Q All right, sir. And showing you State's Exhibit
- 25 Number 14, is that the picture of the bathroom and

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1 the toilet in that bathroom?

2 A Yes, sir, it is.

3 Q And did you take these pictures?

4 A Yes, sir.

5 Q All right, sir. Now once you went up into the
6 ceiling what were you able to locate there?

7 A I located a Hi-point .45 caliber semiautomatic
8 pistol.

9 Q And did you take a picture of it when you pulled
10 it out of the ceiling?

11 A Yes, sir.

12 Q All right, sir. I'm gonna show you what's been
13 marked as State's Exhibit 21 and ask if that
14 photograph represents the gun you found at the
15 Lion's Club?

16 A Yes, sir.

17 Q All right, sir. That gun is a -- what kind of
18 gun?

19 A It's a Hi-point .45 caliber.

20 Q All right, sir. And ---

21 A And it has a serial number of 336674.

22 Q All right, sir. And that weapon was found by you
23 in the ceiling of the nightclub?

24 A It wasn't found by me. It was ---

25 Q It was found by other officers?

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- 1 A It was found by other officers; I retrieved it.
- 2 Q You retrieved the gun?
- 3 A Yeah.
- 4 Q Once it was in your possession did you check it
- 5 to see if it had ammunition in it?
- 6 A Yes, sir.
- 7 Q And did it have ammunition in it?
- 8 A Yes, sir, magazine containing six cartridges, .45
- 9 caliber cartridges.
- 10 Q Can you show the ladies and gentlemen of the jury
- 11 -- and if you touch your screen it may work. Can
- 12 you show them where in that picture that we have on
- 13 the screen where the magazine is? Make it an X.
- 14 Make it an X.
- 15 A (Complies.)
- 16 Q That right there is the magazine?
- 17 A Yes, sir.
- 18 Q What does the magazine do?
- 19 A The magazine contains the cartridges. That fits
- 20 in the handle of the weapon.
- 21 Q And just put a straight line on the handle where
- 22 it go, where the magazine goes in to the weapon.
- 23 A (Complies.)
- 24 Q Right in that area?
- 25 A Yes, sir.

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1 Q All right. How many unfired bullets did you find
2 in the magazine in that gun?

3 A Six.

4 Q And did you take a picture of those?

5 A Yes, sir.

6 Q And the's all in that one exhibit. There's the
7 gun, the six bullets, and the magazine was all
8 retrieved by you?

9 A Yes, sir.

10 Q Now let me show you what's been marked as State's
11 Exhibit Number 20. Is that another picture you took
12 that evening?

13 A Yes, sir.

14 Q And what does it show?

15 A That shows the markings on the gun. It shows
16 it's a Hi-point firearms. It's a .45 caliber
17 semiautomatic pistol.

18 Q All right, sir. Let me show you what's in
19 State's Exhibit Number 17. You took a picture of
20 the -- what is that?

21 A That's the serial number on the weapon.

22 Q All right, sir. And the serial number on that
23 gun, it makes it kind of one of a kind. It gives it
24 a ---

25 A Yes, sir.

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1 Q Not every gun has that serial number?

2 A That's correct.

3 Q All right, sir, very good. Now once you located
4 the firearm and you -- did you have to take, let me
5 go back to State's Exhibit 21. When you found the
6 firearm, were the bullets and the magazine in that
7 condition as you see in there all separated?

8 A No, sir.

9 Q All right. Tell the ladies and gentlemen what
10 you had to do to get that picture.

11 A I removed the magazine from the weapon and also
12 the unfired cartridges and then laid them out there
13 for photographic purposes.

14 Q All right, sir. Now as a result of that, did you
15 take into your possession and put into evidence a
16 .45 caliber Hi-point weapon?

17 A Yes, sir.

18 Q And I'm gonna show you what's been marked as
19 State's Exhibit Number 6, ask you if you can
20 identify that.

21 A Yes, sir.

22 Q Is that the same weapon that you showing, that's
23 showing in the photograph that you took that night?

24 A Yes, sir.

25 Q And where was this weapon found?

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1 A It was found in the ceiling, inside the ceiling
2 in the bathroom.

3 (Exhibit shown to Mr. Abdullah.)

4 SOLICITOR FINNEY: Your Honor, I believe
5 it's been marked as number 6. Any objection?

6 MR. ABDULLAH: No objection from the
7 Defense, Your Honor.

8 THE COURT: Without objection so admitted.

9 (WHEREUPON, State Exhibit No. 6 was
10 admitted into evidence.)

11 BY SOLICITOR FINNEY:

12 Q This is the weapon that was taken out of the
13 ceiling of the bathroom, State's Exhibit Number 6?
14 Is that right, Mr. Mackessy?

15 A Yes, sir.

16 Q And once it has been taken into custody, is it
17 your job or the evidence custodian's job to put it
18 in a box and put a lock in the barrel and get it
19 where it won't work anymore?

20 A We put it in a box to protect it so it can be
21 fingerprinted.

22 Q All right, sir. Now let's talk about
23 fingerprints in a minute. Do you normally test the
24 weapons that you find to see if you can locate
25 fingerprints on them?

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1 A Some I do in some cases, some I send directly to
2 SLED.

3 Q In this case what did you do with the gun as far
4 as having it checked for fingerprints?

5 A That was sent to SLED.

6 Q All right, sir. Now in the picture that we
7 talked about a minute ago you said that you had a
8 magazine. Can you recognize what I'm showing you
9 now in this evidence bag?

10 A Yes, sir, that's a magazine.

11 Q All right, sir. And you showed the ladies and
12 gentlemen a little bit ago with the computer diagram
13 but, just if you would, show them where the magazine
14 that's in State's Exhibit Number 13, where does it
15 go in State's Exhibit Number 6 which is the gun?

16 A This magazine fits right here in the handle. It
17 goes up into the handle of the weapon.

18 Q And does the magazine contain anything usually?

19 A Yes, sir.

20 Q What would it contain?

21 A It will contain unfired cartridges.

22 MR. FINNEY: I want to show the defendant
23 State's Exhibit Number 13, a gun magazine.

24 (Exhibit 13 was shown to Mr. Abdullah.)

25 THE COURT: Any objection?

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1 MR. ABDULLAH: No objection from Defense,
2 Your Honor.

3 (WHEREUPON, State Exhibit No. 13 was
4 admitted into evidence.)

5 BY SOLICITOR FINNEY:

6 Q This magazine that's been marked State's Exhibit
7 Number 13, this magazine was sent to SLED as well?

8 A Yes, sir.

9 Q Now why did you send the magazine and the gun to
10 SLED?

11 A The magazine and the gun were sent to SLED, one,
12 for latent fingerprint processing so we could draw
13 -- or, see if SLED could develop fingerprints on
14 these items, and it was also sent for ballistic
15 testing.

16 Q All right. And as far as the ballistic testing
17 was concerned, did you send SLED all of the bullet
18 casings, 1 through 7, that you identified outside
19 the club in the pictures that you and I have talked
20 about already?

21 A Yes, sir.

22 Q Once you marked the bullet casings that were on
23 the ground, did you take pictures of it?

24 A I took pictures at the scene of the casings.

25 Q At the scene. And we have those. We've already

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1 shown those to the jury.

2 A Yes, sir.

3 Q What did you do then with the bullet casings once
4 you photographed them?

5 A They were later after measurements were taken to
6 the scene. They were packaged by me and placed in
7 the evidence room.

8 Q And what did you package them in?

9 A Box of white, ballistic boxes.

10 (Item shown to Mr. Abdullah.)

11 BY MR. FINNEY:

12 Q Can you identify what's been marked in this
13 yellow envelope as State's Exhibit Number 12? Can
14 you identify what's inside the yellow envelope?

15 A Okay, inside this envelope are the boxes,
16 ballistic boxes, that I placed these fired cartridge
17 casings in.

18 Q And how many white ballistic boxes do you have in
19 front of you?

20 A Seven.

21 Q And how many shell casings do you have in front
22 of you?

23 A Seven.

24 Q All right. And were those shell casings placed
25 in each individual box and sent to SLED for

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1 analysis?

2 A Yes, sir.

3 Q And once SLED analyzed those items did they,
4 those items come back to Sumter County evidence?

5 A Yes, sir. Cindy Pierson would bring them back
6 from SLED.

7 Q And they remained in the evidence room until the
8 trial today?

9 A Yes, sir.

10 Q All right. Now do you have any markings or
11 numbers on the white boxes at the time you load the
12 boxes with the empty cartridges?

13 A Yes, sir, I have the case number and the date
14 that I, the date that I seized the evidence.

15 Q All right, sir.

16 A And I also have a marker or have a label on there
17 where it shows the marker number at the scene and
18 then tells what's in the box.

19 Q So the box that's in your hand right now, what
20 marker number did you have?

21 A This is marker four at scene, fired .45 caliber
22 casing.

23 Q Let me ask you this, the .45 caliber casing that
24 you have in your hand, there are seven of them?

25 A Yes, sir.

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1 Q And they were collected outside the front door
2 area of the club?

3 A That's correct.

4 Q And what brand, what company made those
5 .45 caliber shell casings?

6 A CBC.

7 Q CBC?

8 A I don't know what the lettering stands for but
9 it's CBC.

10 Q And those shell casings were sent to Columbia to
11 be analyzed?

12 A Yes, sir.

13 Q All right, sir. Now when you filled out the
14 evidence sheet, did you send another type of
15 firearm -- or excuse me. Did you send another type
16 of -- did you send some other bullets, unfired
17 bullets, to SLED as well?

18 A I believe the six out of the magazine were sent
19 to SLED, yes, sir.

20 Q The six out of the magazine that are on this
21 picture that's on the jury screen now?

22 A Yes, sir.

23 Q All right. Now those six, those were unfired?

24 A They were unfired.

25 Q Those are what we call live rounds?

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1 A Yes, sir.

2 Q And do you see those live rounds, six live
3 rounds, in this evidence bag that's been marked
4 State's Exhibit Number 8?

5 A Yes, sir.

6 Q All right, sir. Tell the ladies and gentlemen of
7 the jury what company manufactured those six rounds
8 that you found in the gun?

9 A The manufacturer, it's name is Federal.

10 Q Federal is a different company than the ones you
11 put in the yellow bags here?

12 A Yes, sir.

13 Q All right, sir.

14 MR. FINNEY: Now I would move the six
15 unfired rounds found in the gun into evidence,
16 State's Exhibit Number 8.

17 (State's Exhibit Number 8 was shown to Mr.
18 Abdullah.)

19 THE COURT: Any objection?

20 MR. ABDULLAH: No objection from Defense,
21 Your Honor.

22 THE COURT: Without objection, so
23 admitted.

24 (WHEREUPON, State Exhibit No. 8 was
25 admitted into evidence.)

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1 BY MR. FINNEY:

2 Q So just to be clear, we had seven rounds fired
3 outside, empty shell casings collected by you and
4 sent to SLED?

5 A Yes, sir.

6 Q Those seven shell casings were all made by a
7 company called CBC?

8 A That's correct.

9 Q The six unfired bullets, projectiles, were
10 collected from inside the gun and they were also
11 sent to SLED?)

12 A Yes, sir.

13 Q They were made by Federal?

14 A That's correct.

15 Q Did it happen that you sent evidence or made the
16 evidence card to go with those bullets?

17 A Yes, sir.

18 (Item shown to Mr. Abdullah.)

19 BY MR. FINNEY:

20 Q And did you -- let me let you look at these
21 sheets. These evidence cards are signed by you I
22 believe?

23 A Yes.

24 Q Showing what was collected and what was put in
25 the evidence room?

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1 A Yes, sir.

2 Q Did you mark these unfired casings as being
3 Federal bullets instead of CBC bullets?

4 A Yes, sir, I would correctly have marked them as
5 Federal, not CBC.

6 Q And did you mark the Federal bullets also into
7 evidence as being six unfired Federal bullets?

8 A Yes, sir, I marked those as six Federal.

9 Q And when they left Sumter they were all marked as
10 Federal bullets?

11 A They were all marked as Federal.

12 Q How did you come to find out that you had
13 misnamed some of the evidence?

14 A The ballistics examiner at SLED let us know that
15 on the return sheet that the seven fired cartridge
16 casings found at the scene were CBC and not Federal.

17 Q All right, sir. And so when the SLED report came
18 back to you that's when you realized that ---

19 A That's right. That's when I realized the mistake
20 I had made, yes, sir.

21 Q Now once you packaged them and sent them to SLED
22 they stayed sealed up through that process?

23 A Yes, sir, they do.

24 Q Did SLED have to take them out of the boxes to
25 analyze them?

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1 A Yes, sir.

2 Q And then they wrote you back and told you what
3 they had found?

4 A Yes, sir.

5 Q All right, sir. And then all of the evidence
6 came back to Sumter County after they had done their
7 analysis?

8 A That's correct.

9 Q All right, sir. I'm gonna also show you an
10 evidence sheet. Is that your signature?

11 A Yes, sir, it is.

12 Q What is the piece of evidence that that evidence
13 sheet talks about?

14 A This is a, this was evidence turned in by Captain
15 Tommy Barron. It's a one live or unfired cartridge
16 .45 caliber automatic that he removed from the left
17 coat pocket of Mr. Abdullah.

18 Q And is that the bullet that you see in this
19 evidence envelope marked State's Exhibit Number 7?

20 A Yes, sir.

21 Q All right, sir. And who is that bullet made by?

22 A This bullet is, let's see. It looks like
23 Federal.

24 Q Federal? All right, sir. So the six bullets
25 that were taken out of the gun in the ceiling in

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1 evidence Exhibit Number 8, the unfired six bullets
2 were made by who?

3 A Federal.

4 Q And the one bullet that was in Mr. Abdullah's
5 pocket in State's Exhibit Number 7 was made by?

6 A Federal.

7 Q And tell the ladies and gentlemen of the jury if
8 you can, are they, what type of bullets are they?

9 A They're .45 caliber.

10 Q All seven?

11 A All seven.

12 Q All right, sir. Let me ask you a question,
13 you've examined what's been marked as State's
14 Exhibit Number 13, the magazine?

15 A Yes, sir.

16 Q Can you tell ladies and gentlemen of the jury how
17 many bullets that magazine will hold, if you know.

18 A I was looking for markings on the magazine that
19 might tell me that, but I don't know for sure.

20 Q All right, we'll ask somebody. Let me ask you
21 this, did you also have occasion to send three GSR
22 kits to SLED for analysis?

23 A There's three GSRs submitted by investigator. I
24 didn't, I didn't do the GSRs.

25 Q All right, sir. Did you have anything to do with

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1 putting the GSR kits into the evidence room? Let me
2 see if I have the card. I can find out.

3 A I have the answer to that, Mr. Finney.

4 Q All right, go right ahead.

5 A Okay. They were turned in by investigators and
6 accepted by Cindy Pierson and placed it---

7 Q All right, sir. Cindy Pierson---

8 A Cindy Pierson put them in the evidence room.

9 Q All right. And these were then sent to SLED?

10 A Yes, sir, she took them to SLED.

11 Q And SLED would have done the analysis on the GSR
12 kits?

13 A That's correct.

14 Q All right, sir.

15 MR. FINNEY: Based on the testimony of
16 Ms. Pierson and of this witness I would ask that the
17 three GSR kits be placed into evidence.

18 THE COURT: What are their numbers?

19 MR. FINNEY: They don't have numbers on
20 them yet. These are prior numbers.

21 THE COURT: Okay, any objection?

22 MR. ABDULLAH: No objection from the
23 Defense.

24 THE COURT: Without objection, so
25 admitted.

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1 (WHEREUPON, State Exhibits Nos. 34, 35,
2 and 36 were marked for identification and
3 admitted into evidence.)

4 BY SOLICITOR FINNEY:

5 Q State's Exhibit 34, 35, 36 will be three GSR kits
6 that were performed on -- number 34 was performed on
7 David Way. Number 35 was performed on Marell
8 McBride. And number 36 was performed on Muttagin
9 Abdullah.

10 THE COURT: All right.

11 BY SOLICITOR FINNEY:

12 Q Is it standard procedure for an investigator for
13 a GSR kit to be performed on people who may be
14 involved in handling firearms?

15 A Yes, sir, it is.

16 Q All right, sir. And Mr. Way and Mr. McBride were
17 victims in this crime. They were shot as a matter
18 of fact.

19 A Yes, sir.

20 Q Why do you do GSR kits on people who are shot?

21 A To see if they themselves fired a weapon.

22 Q All right, sir. And then you did a GSR kit also
23 on Mr -- not you, but a GSR kit was done on
24 Mr. Abdullah. Who performed the test on Mr.
25 Abdullah?

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1 A That would be Sergeant Turner, Captain Turner
2 now.

3 Q Captain Turner now. All right. And these kits
4 were collected by Cindy Pierson after the test and
5 sent to SLED for analysis?

6 A Yes, sir.

7 Q All right, sir, very good. I have one more
8 picture I wanted to show you, Investigator. It is a
9 picture, color picture. Do you remember taking a
10 picture of that?

11 A Yes, sir.

12 Q All right, tell us what do you -- this is State's
13 Exhibit Number 19. Tell us what you see in State's
14 Exhibit 19.

15 A That's the stamping of an unfired bullet
16 cartridge that was taken from the clip of the weapon
17 here.

18 Q All right. So you just took this picture to show
19 who made that ammunition?

20 A Yes, sir.

21 Q So what did that stamp on the -- this is State's
22 Exhibit 19. What did it say?

23 A It says made by Federal.

24 Q All right, sir. And that was one of the six
25 bullets that was taken out of the magazine of the

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1 gun?

2 A That's correct.

3 Q All right, sir.

4 MR. FINNEY: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 BY MR. FINNEY:

7 Q Investigator Mackessy, once you took your
8 pictures with the markers down, took the pictures,
9 did the measurements, you didn't draw that graph,
10 that diagram that night; you did that later on?

11 A That was completed later on. I had a rough
12 diagram of what it was, but it's, that's the
13 completed version.

14 Q All right, sir. And the diagram that you
15 prepared, it was a smaller version. We've blown it
16 up for court; is that right?

17 A That's correct.

18 Q Did you collect all the evidence and submitted
19 the evidence to the evidence room?

20 A Yes, sir.

21 Q Then you had a meeting with Captain Turner to
22 talk about what evidence he wanted to send over to
23 SLED?

24 A Yes.

25 Q Did you have any further involvement in the

1 collection of evidence in this case?

2 A No, sir.

3 Q Thank you for answering any questions. Answer
4 any questions the Defense may have.

5 THE COURT: Before we begin, ladies and
6 gentlemen, we've been going about an
7 hour-and-a-half. Everyone on the jury okay? Anyone
8 need a break?

9 (No response.)

10 THE COURT: Okay. Can you all approach
11 just a minute please.

12 (WHEREUPON, counsel approached the
13 Bench for an on-the-record discussion.)

14 THE COURT: Do you want to come back and
15 do cross after lunch? I don't know how long cross
16 may last, but.

17 MR. ABDULLAH: Mine is short, not long,
18 it's short.

19 (End of Bench conference.)

20 THE COURT: All right, what we'll do,
21 we'll break at this time and go ahead and break for
22 lunch. I'm gonna send you back there now. It'll
23 probably be about 15 minutes before we come back.
24 We'll break for lunch at this point. Do not, do not
25 discuss the case at all. Please come back to the

1 jury room at 2:15. 2:15 sufficient?

2 MR. FINNEY: Yes, sir.

3 THE COURT: 2:15. Please be back at 2:15
4 and we'll resume the trial of this case promptly at
5 that time as possible. You all are free to go.

6 Sir, if you will remain seated right there
7 for me.

8 (WHEREUPON, the jury was removed from the
9 courtroom at 12:33 p.m.)

10 THE COURT: Officer Mackessy, you may step
11 down for lunch, but you're not to discuss your
12 testimony with anyone, with anyone.

13 Let the jury exit please before you step
14 down. All right, sir, you may step down. Thank
15 you.

16 We'll break for lunch. I'd ask you be
17 back here at 2:00. Anything from the State before
18 we stand down?

19 MR. FINNEY: Nothing, Your Honor.

20 THE COURT: Defendant?

21 MR. ABDULLAH: No, Your Honor.

22 THE COURT: All right, be back at 2:00.

23 (Whereupon, a lunch break was taken.)

24 THE COURT: Anything before we bring them
25 back in?

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1 SOLICITOR FINNEY: May it please the
2 Court, we have been able to contact our witnesses
3 for tomorrow. We've also been able to move Doctor
4 Lage up to, I believe he said 10:30 or 11, 11:00 I
5 believe our time, which will be 10:00 her time, so
6 we should be able to rest at 12:00 tomorrow.

7 THE COURT: Okay. All right, well, let's
8 move forward. And how many more witnesses do you
9 have this afternoon?

10 SOLICITOR FINNEY: Three short ones.
11 Well, maybe two this afternoon, Your Honor, and
12 three in the morning.

13 THE COURT: Okay. All right. Mr.
14 Abdullah, anything before I bring the jury back out?

15 MR. ABDULLAH: No, sir, Your Honor.

16 THE COURT: All right, before we broke for
17 lunch I instructed the witness Mr. Mackessy not to
18 discuss his testimony with anyone. Did you abide by
19 the Court's instructions, sir?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right, thank you.

22 Bring me the jury please, sir.

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 2:15 p.m., and
25 the following proceedings commenced in

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1 open court.)

2 THE COURT: Ladies and gentlemen, I hope
3 you had a nice lunch. We are going to continue the
4 trial of the case at this point. I am going to
5 recognize Mr. Abdullah for cross-examination.

6 Mr. Abdullah, you're so recognized, sir.

7 **CROSS-EXAMINATION**

8 BY MR. ABDULLAH:

9 Q How are you doing, Mr. Mackessy?

10 A All right, sir.

11 Q Yes, sir. In your reports do you have an
12 incident report you'd written up about bullet holes
13 being in houses that was behind the club?

14 A Yes, sir.

15 Q Could you go into those exhibits which you have
16 what you discovered for the jury please, sir?

17 A Okay. This is at number ■ Lilly Drive.

18 Q Uh-huh.

19 A There was a bullet hole in the garage door and
20 there was -- what I did is put a trajectory rod in
21 the bullet hole to show angle, and it went through
22 the garage door and into the ceiling. So it appears
23 that the house is about a tenth of a mile behind the
24 Lion's Pit, the Lion's Pit.

25 Q Yes.

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1 A And it's in, the house is in line with the club,
2 and it appears that the bullet ricocheted off the
3 driveway surface and entered the garage door at 3
4 feet 10 inches off the ground at a 90 degree upward
5 angle and to the left. The bullet exited the
6 interior of the garage door and continued its upward
7 trajectory where it entered the ceiling inside the
8 garage. The bullet was not removed from there due
9 to the damage it would have caused so we did not --
10 that was at the owner's request. So we didn't
11 remove it.

12 Q So if you did have removed those bullets, because
13 of the damage of the bullet you wouldn't be able to
14 tell which gun that that bullet come from, would it?

15 A It could be possible. I don't know what the
16 bullet looks like so it could go either way.

17 Q Okay. You also have some exhibits that you
18 discovered from the car.

19 A The bullet from the car, yeah.

20 Q The bullet that, these bullets that was fired
21 from this, right?

22 A Uh-huh.

23 Q Now could you determine what gun those bullets
24 come from?

25 A It could be determined if the bullet was in

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1 condition to be examined that way. I'm not a
2 ballistic examiner. That bullet went to SLED.

3 Q Now on behalf of the hole in the ceiling of the
4 bathroom, could you determine how long that hole was
5 in that ceiling?

6 A I, all I can say is when I looked on the floor
7 below the hole there was fresh insulation on the
8 bathroom floor.

9 Q From the ceiling?

10 A From the ceiling. So in my determination, no,
11 the hole had just been made there.

12 Q Okay. What about the toilet that was
13 malfunctioning that was below the hole, could you
14 determine how long that toilet was malfunctioned,
15 broken?

16 A No. Water was on the floor so I'm assuming that
17 it wasn't a long time.

18 Q Yeah.

19 A You know, that that toilet had been broken.

20 Q Okay. Now on the fingerprints, did you discover
21 fingerprints on the magazine of that gun that you,
22 that was discovered out the ceiling?

23 A All evidence in this case for fingerprinting was
24 sent to SLED. I do not, I didn't do the
25 fingerprinting.

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1 Q But I mean, do you have any knowledge of it?

2 A I didn't, I don't get the results. The lead
3 investigator gets the results.

4 Q Okay. What about the GSR, did you have anything
5 to do with the ---

6 A No, I had nothing to do with the GSR.

7 Q ---GSR. And the bullets that you discovered from
8 the car, right, would that be considered a
9 ballistic?

10 A That's ballistic, yeah.

11 Q Yes. Okay. Now is there any ballistics in this
12 case that as far as would be determined that come
13 from the gun that the State has as evidence that 45,
14 that that was the bullet that was actually fired
15 that was discovered? Would it be determined that it
16 come from that gun the State has?

17 A It could be. I don't know the results of the
18 ballistics. Like I say, I didn't get any results
19 from this case. That doesn't come to me. That
20 comes to, the results on any evidence processing is
21 given to the lead investigator in this case which
22 would be Captain Turner.

23 Q Okay, another question. Is there any way
24 possible to determine what gun injured the victims
25 that's in this case?

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1 A What gun?

2 Q What gun that actually injured the victims that
3 was shot in this case. There was two victims.

4 A Right.

5 Q It was one victim David Way who was shot in the
6 back of the head.

7 A Right.

8 Q And there was another victim, Marell McBride, who
9 was shot in the hip. Is there any way to determine
10 which gun injured these victims?

11 A If there was a bullet recovered from Mr. Way or
12 from Mr. McBride, those bullets could then be
13 compared to the weapon---

14 Q Yes.

15 A ---to that weapon that we recovered; and if they
16 were in condition, good condition for
17 identification, yes, the bullets' tests would have
18 been done. But I don't know if a bullet was
19 obtained, you know, from Mr. Way or Mr. McBride, I
20 don't know.

21 Q All right. So if there was not a bullet, if
22 there was not a bullet discovered from the victim's
23 body, then would you agree there would be no way to
24 determine which actually, the gun actually struck
25 the victim if there was no bullet?

SW - R. MACKESSY - REDIRECT

1 A It could be -- because the victim was in the line
2 of fire, the cartridge casing, fired cartridge
3 casings found at the scene can be compared to this
4 weapon.

5 Q Okay, let me reverse the question. For the
6 record, the victim David Way who was killed,
7 according to the evidence the victim was shot in the
8 back of the head and the bullet exit his forehead so
9 without any ballistics there would be no way to
10 determine to the jury what gun actually killed this
11 victim; is that right?

12 A Without the bullet from the victim ---

13 Q Right.

14 A ---we wouldn't be able to compare that bullet.
15 If we don't have a bullet we can't do the
16 comparison.

17 Q Exactly. Now, there's another victim who was
18 shot, another victim named Marell McBride who was
19 shot in the hip. The bullet is still in the victim.
20 So if there's a bullet still in the victim there
21 would be no way to determine which gun actually shot
22 him; is that right?

23 A Without the bullet, no, no way to do the
24 comparison.

25 Q Thank you very much for your assistance. No

SW - R. MACKESSY - REDIRECT

1 further questions.

2 THE COURT: Any redirect?

3 SOLICITOR FINNEY: Please the Court.

4 THE COURT: Yes.

5 **REDIRECT EXAMINATION**

6 BY SOLICITOR FINNEY:

7 Q Mr. Mackessy, the crime scene investigators put
8 together the case using all of the tools that are
9 available to them; is that correct?

10 A That's correct.

11 Q And one of the tools that you have available to
12 you is, if you have missing bullets you can still
13 look at evidence of line of fire to determine who
14 was in the vicinity shooting at the time the bullets
15 were shot; is that correct?

16 A That's correct.

17 Q And that's the reason State's Exhibit Number 2 is
18 important because you sketched out all of the
19 dimensions in that crime scene?

20 A Yes.

21 Q Did you find a line of fire that matched up with
22 what the statements of the witnesses were that you
23 talked to in this case?

24 A Yes, sir.

25 Q And did you hear from witnesses that there was a

SW - R. MACKESSY - REDIRECT

1 line of fire from the front door area of the club to
2 the left and to the right of the front door area?

3 A Yes, sir.

4 Q And did you find evidence consistent with that
5 testimony on the ground when you went out there and
6 looked at evidence?

7 A Yes, sir.

8 Q The house that Mr. Abdullah asked you about, ■■■
9 Lilly Drive, where was it located in reference to
10 State's Exhibit Number 2, the map you prepared?

11 A Okay. The house was a tenth of a mile this way.

12 Q And would you say it was or was not in the line
13 of fire of the other shots that you saw out there
14 that night?

15 A It was in the line of fire.

16 Q All right. Now you don't know what kind of
17 bullet struck that door and went up in the ceiling
18 of that house?

19 A That's correct, I don't know.

20 Q But it was on the same line of fire as the other
21 bullets that you were out there that night that you
22 recovered?

23 A That's right.

24 Q You recovered one bullet in this number 9 area of
25 a Buick automobile?

SW - R. MACKESSY - RECROSS

1 A Yes, sir.

2 Q And that bullet was taken and put into evidence?

3 A Yes, sir.

4 Q Did you recover any other bullets, fired bullets
5 that night?

6 A No, not fired bullets, no.

7 Q So if somebody had been firing from out in the
8 field, out in the highway towards the nightclub, if
9 there had been bullets fired from other guns toward
10 the nightclub and you found them, you would have
11 picked them up?

12 A Oh, yes, sir.

13 Q Did you find any?

14 A No, I didn't.

15 Q Did you find any fired shell casings in the
16 vicinity of the club or the field or anywhere else
17 besides the seven fired shell casings you found
18 right here at the front door?

19 A No, sir.

20 Q Did you talk to anybody in this case at any time
21 that said they saw somebody else firing a weapon
22 that night besides Mr. Abdullah?

23 A No, sir.

24 Q Nothing further.

25 THE COURT: Any recross?

SW - R. MACKESSY - RECROSS

RECROSS-EXAMINATION

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BY MR. ABDULLAH:

Q Once again, Mr. Mackessy, now are you aware or were you told by any of the witnesses that there were several people shooting that night, that there was other cars involved?

A I heard from testimony here, yeah. I didn't hear it that night.

Q Okay. So by any chance if anybody was in those areas shooting and they had revolvers and they were shooting that same area, there would be no ballistics on the ground as far as shell casings on the ground if they were shooting revolvers; is that right?

A If they were shooting revolvers, yeah.

Q Revolvers. So none of defense or any of us know who these other people were. We just acknowledge according to the witness testimony that there were several people shooting that night. So we don't know who these people were, so if they were shooting revolvers, we can't determine where ---

A All I can say is that the ballistic evidence found at the scene was consistent with the trajectory and everything towards the victims, and that's how I determined that .45 caliber fired

SW - V. PAAVEL - DIRECT

1 cartridge casing, that weapon was fired from that
2 point in the direction of the two victims.

3 Q Okay. Now, so by any chance, right, if shots
4 were shot in that area of the victims with a
5 revolver there would be, we agree that there would
6 be no shells on the ground at the same time?

7 A No..

8 Q All right. Now the bullet holes that the bullets
9 that you discover in the houses, that from that
10 area, if somebody was shooting that area with a
11 revolver there would be no way to determine also
12 where those bullets come from; would you agree?

13 A There would be no ballistic evidence regarding a
14 revolver because the cartridge case, fired cartridge
15 casings stay within the cylinder of the revolver.

16 Q Exactly.

17 A But if they fired in that direction there may be
18 some fired bullets that could have been recovered,
19 and I didn't find any.

20 Q Thank you, sir.

21 THE COURT: All right, sir, you may step
22 down. Thank you.

23 SOLICITOR FINNEY: If Your Honor please,
24 we call Mr. Velo Paavel.

25 THE CLERK: Place your left hand on the

SW - V. PAAVEL - DIRECT

1 Bible, raise your right hand. State your full name
2 please.

3 THE WITNESS: My name is Velo Paavel.

4 THE CLERK: Please state your full name
5 and spell your last name for the record.

6 THE WITNESS: I'm Velo Paavel, last name
7 is spelled P-A-A-V-E-L.

8 **DIRECT EXAMINATION**

9 BY MR. FINNEY:

10 Q Good afternoon.

11 A Good afternoon, sir.

12 Q Would you tell the ladies and gentlemen what you
13 do for a living, sir.

14 A Well, sir, I am a retired SLED examiner who went
15 back to work at SLED in the firearms department.

16 Q And how long did you work at SLED before you
17 retired?

18 A I worked there from 1987 until 2010, and then I
19 retired. And then in late 2013 I went back to work
20 at SLED in the firearms department in the
21 laboratory.

22 Q And did you have occasion during your years of
23 service to become certified as a firearms examiner?

24 A Not certified, sir. I'm qualified, I'm a court
25 qualified firearms examiner. I've testified over

SW - V. PAAVEL - DIRECT

1 three hundred times as an expert in firearm and tool
2 mark identification.

3 Q And have you been qualified as an expert in tool
4 making and firearms examination?

5 A Tool mark identification and firearms
6 identification, yes, sir.

7 Q All right, sir. And did you have to study
8 annually to keep up your certification and
9 qualifications in that field?

10 A Yes, sir. What we had to do is take annual
11 proficiency tests and we also maintain, keep up with
12 recent developments in firearm and tool mark
13 identification. When we had funds available we
14 would go to annual conferences at AFTE, the
15 Association of Firearm and Tool Mark Examiners. We
16 would try to go to armor schools and other classes
17 and the FBI school on specialized techniques and
18 firearms identification.

19 Q And throughout the years you testified not only
20 in court, state court and federal court?

21 A That's correct.

22 Q And you were qualified as an expert?

23 A Yes, sir.

24 MR. FINNEY: And I would ask the Court to
25 allow this witness to be qualified as an expert in

SW - V. PAAVEL - DIRECT

1 tool mark and firearms examination.

2 THE WITNESS: Firearms examination.

3 THE COURT: Any objection?

4 MR. ABDULLAH: No objection from the
5 Defense, sir.

6 THE COURT: All right. Ladies and
7 gentlemen, let me give you a charge real quick.
8 Ordinarily a person cannot give opinion testimony.
9 Normally when a person testifies they must testify
10 as to what they either saw, heard, or sensed by
11 smell or something of that nature. However, there
12 is an exception when someone is qualified because of
13 education or experience. They are permitted to give
14 opinion testimony in certain areas if the Court
15 qualifies them to do so. This witness, ladies and
16 gentlemen, is being qualified as an expert in the
17 field of tool mark identification and firearms
18 examination to give opinion testimony in that area.
19 That does not mean that you must accept the opinion,
20 but it is evidence for you to use in any way that
21 you see fit and give it the weight and credibility
22 that you believe is appropriate.

23 Mr. Finney, you may continue.

24 SOLICITOR FINNEY: Thank you, Your Honor.

25 BY SOLICITOR FINNEY:

SW - V. PAAVEL - DIRECT

1 Q Mr. Paavel, you are now hired, contracted at SLED
2 as a criminalist?

3 A Yes, sir, I'm a retired senior criminalist in the
4 firearms department in the forensic services
5 laboratory.

6 Q Back in 2004 you were an active agent with SLED?

7 A Yes, sir, I was an active agent in 2004 working
8 in the firearms department conducting firearms
9 examinations and tool mark examinations.

10 Q Did you have occasion in May of 2005 to write a
11 report concerning some firearms and ballistic type
12 evidence that was submitted to SLED in regard to a
13 case -- and I don't know, this is SLED's case
14 number, L0403529?

15 A Yes, sir, I did.

16 Q Was that a Sumter County case involving a man
17 named Abdullah, a man named Way, and a man named
18 McBride?

19 A Yes, sir, that's correct.

20 Q All right, sir. Can you tell us what items you
21 received from Sumter County that you were going to
22 test?

23 A Yes, sir. What I ultimately received was a
24 Hi-point model JH semiautomatic pistol.

25 Q All right. Agent, let me show you a box here

SW - V. PAAVEL - DIRECT

1 that's been marked as State's Exhibit Number 6 and
2 ask if that box contains the firearm that you
3 examined?

4 A Sir, we've got it tied to the box. Bear with me
5 a moment because the serial number and everything is
6 on the other side of the box. Let me get a
7 flashlight here for a moment, sir.

8 Q All right.

9 A Let me see if I can find this a different way.
10 Yes, sir, this is the pistol that I examined. I
11 actually see my case number, item number, and my
12 initials that I placed on the firearm when I
13 conducted the examination.

14 Q All right, sir. And again, that's a Hi-point
15 model .45 caliber semiautomatic pistol?

16 A It's a model JH and it's in 45 automatic caliber,
17 yes, sir.

18 Q All right, sir. Tell us what you did once you
19 received that pistol.

20 A In the normal course of an examination what I
21 will do is document its condition, get the
22 particulars of the firearm meaning what's the make,
23 model, caliber, serial number, is it loaded, is it
24 unloaded, or is there any ammunition with it, is
25 there any trace material obvious on it such as blood

SW - V. PAAVEL - DIRECT

1 or any other materials. We have several work sheets
2 that are filled out documenting this information. I
3 would probably snap a photograph or two of it for
4 documentation purposes. Once I, I would also then
5 mark the firearm, and I would mark it in a place
6 that wouldn't damage any of the markings that I need
7 to look at later on in my examinations. In this
8 particular case on the inside of the magazine well I
9 actually engraved the case number, the item number,
10 and my initials.

11 Then I will test fire the firearm in our
12 bullet, using our bullet recovery tank, and that is
13 a very large tank. It's a cylindrical tank full of
14 water which sits on the second floor, the mouth of
15 it does rather. The base of the tank sits on the
16 first floor, and there's about 12 feet of water in
17 that tank. I shoot into the tank. The bullets hit
18 the water. The water slows the bullets down, and it
19 doesn't add any markings to the bullet or damage any
20 markings that may be present on the bullet. They
21 fall to the bottom of the tank. And the bottom of
22 the tank looks like a big cone, and in the bottom of
23 that cone is a little steel cup and that cup has a
24 chain attached to it. Once I'm through shooting, I
25 pull up that chain and that cup and I have my

SW - V. PAAVEL - DIRECT

1 bullets.

2 Now the fired cartridge cases that are
3 ejected out of the firearm, I capture those by using
4 a paper bag or a cardboard box. Then what I will do
5 is mark those specimens as tests and then I will do
6 microscopic comparisons of the tests to each other
7 and then I will do microscopic comparisons of these
8 tests to any other fired ammunition components that
9 I may have to examine.

10 Q All right, sir. Now in this particular case on
11 this type of firearm, I wanted to show you a picture
12 of the firearm marked as State's Exhibit Number 21.
13 This was taken by our investigator here in Sumter.
14 Does that appear to be the same Hi-point gun that
15 you examined at your lab?

16 A Yes, sir, it appears to be. I see, I can almost
17 make it -- hang on one second. The serial number is
18 on this side. The photo is a little bit washed out
19 but, ladies and gentlemen, bear with me a moment.

20 (Pause.)

21 THE WITNESS: Yes, sir, I can make out the
22 serial number. This is the same pistol.

23 BY MR. FINNEY:

24 Q All right, sir. This picture, State's Number 21,
25 shows the pistol, six unfired cartridges, and a

SW - V. PAAVEL - DIRECT

1 magazine; is that correct?

2 A That's correct, sir.

3 Q All right. And did you receive all of those
4 items from Sumter?

5 A Yes, sir. Actually, they were submitted to the
6 SLED laboratory by Sumter, and they were routed
7 through our evidence system. These items apparently
8 went to another department and came to me.

9 Q All right. And looking at State's Exhibit Number
10 13, does that appear to be the magazine that was
11 submitted to SLED for examination?

12 A Yes, sir. This is the magazine.

13 Q All right. The six unfired cartridges or
14 projectile live rounds that were submitted, do they
15 appear to be in this evidence bag marked State's
16 Exhibit Number 8?

17 A Yes, sir. There are actually, currently there
18 are five unfired cartridges and one unfired
19 cartridge that I disassembled to examine the
20 components. These are the ones.

21 Q All right, sir. So now just to stay on that, you
22 disassembled one of the unfired cartridges that were
23 submitted to you so that you can examine it and look
24 at it?

25 A Yes, sir, I wanted to see what the base of the

SW - V. PAAVEL - DIRECT

1 projectile or bullet looked like in order to verify
2 something else that I suspected in relation to
3 another item of evidence, that was submitted.

4 Q All right. Now the six unfired cartridges that
5 you received from Sumter, where did you, where were
6 you told those items were located?

7 A Those are actually with the firearm.

8 Q All right. At the time the firearm was
9 discovered they were inside the firearm?

10 A Apparently so, sir. When I received it the
11 magazine was not in the gun.

12 Q All right.

13 A And the cartridges were not in the magazine
14 itself. It was unloaded, but they were all in the
15 same container.

16 Q All right.

17 A They were submitted in the same container.

18 Q All right. Now, if you don't mind, tell the
19 ladies and gentlemen a little bit about how this
20 firearm in State's Exhibit Number 6, how does it
21 work when it is fired?

22 A Yes, sir. Ladies and gentlemen, this is a
23 semiautomatic pistol. It differs from a revolver in
24 that this pistol uses a magazine, and a magazine is
25 a, in this case a metal box that will hold the

SW - V. PAAVEL - DIRECT

1 cartridges. The cartridge ---

2 Q What's in this envelope here?

3 A That's correct.

4 Q All right.

5 A And that magazine you have to load by placing
6 cartridges into the magazine on top of each other.

7 There's a large spring inside this magazine and a
8 little piece called a follower, and the cartridges
9 are placed on top of the follower and pressed down.

10 And after you get one cartridge in there you're
11 actually pressing cartridges on top of each other.

12 This particular magazine has the capacity of seven
13 cartridges. You can get up to seven cartridges in
14 here. Once you have this magazine loaded you place
15 it into the base of the grip or butt of the grip as
16 it's called, into the magazine well.

17 Q Where is that located?

18 A That's right here, sir, where my finger is. This
19 is the magazine well, and you place the magazine
20 into the magazine well and lock it into place. Then
21 you pull the slide back and the slide is this part
22 up top, and this slide moves back and forth. It's
23 spring loaded, and it moves back and forth. When
24 you pull the slide back far enough, it allows it to
25 in essence pick up a cartridge and push it forward

SW - V. PAAVEL - DIRECT

1 under spring tension and pushes the cartridge into
2 the back of the barrel or into the chamber, as it's
3 called, and now the pistol is ready to fire. If you
4 decide not to fire it you can engage the safety
5 which is on the other side. But once you chamber
6 this particular firearm with a live cartridge, it's
7 ready to fire. If you pull the trigger, which is
8 here, it fires. The slide moves to the rear very,
9 very rapidly, and it moves to the rear due to the
10 pressure and recoil that's created by the burning of
11 the gunpowder that's inside that cartridge case.
12 There's a tremendous amount of pressure created and
13 it tries to get out. When it pushes the bullet out
14 the front, goes down the barrel, and it pushes the
15 slide to the rear. When the slide comes back far
16 enough the cartridge case is ejected or kicked out
17 of the firearm out of this port, which is the
18 ejection port. And one part of this gun lock
19 actually is in the ejection port, you can see where
20 it's sticking out. So the cartridge case gets
21 ejected out of the right side of the firearm if the
22 firearm is being held straight up properly.
23 Q All right. Agent, that's very important because
24 on the diagram that we've been showing the jury
25 there is a, State's Exhibit Number 2, there are

SW - V. PAAVEL - DIRECT

1 casings, fired shell casings, that were found in the
2 vicinity of the front door of the club, State's
3 Exhibit Number 2. There were seven casings found on
4 the ground. Now since you weren't there that night
5 you can say that those casings came out of the right
6 side of the gun; is that correct?

7 A If you're holding the firearm -- it comes out of
8 the right side of the firearm, yes, sir.

9 Q Right.

10 A But depending on how you're holding it, if you
11 turn it some they will actually come up.

12 Q All right.

13 A If you were to point it down more they would go
14 down toward the rear, and if you're moving around
15 there's no telling where they would potentially end
16 up.

17 Q All right. But if there were casings kicked out
18 of the gun they would be kicked out of the right
19 side of the gun?

20 A Yes, sir.

21 Q If the gun was being held in a normal fashion.

22 A That's correct.

23 Q All right, sir. Now once you tested the gun did
24 you find it to be working properly?

25 A Yes, sir, it was capable of firing and it did

SW - V. PAAVEL - DIRECT

1 work properly when I shot ammunition into the bullet
2 recovery tank.

3 Q All right, sir.

4 A Now one other, one thing I did find, the magazine

5 ---

6 Q Right here?

7 A ---the very bottom of the magazine is bent. This
8 little base on the bottom, the piece of metal is
9 bent out. It doesn't prevent the magazine from
10 actually being loaded into the firearm or firing,
11 but it was bent.

12 Q All right, sir. Did you receive from Sumter
13 County a fired bullet to be examined or to be
14 processed in your lab?

15 A Yes, sir, I did.

16 Q And I want to show you what's been marked as
17 State's Exhibit Number 18. Does that appear to be
18 similar or the same as the fired bullet that you
19 examined?

20 A Bear with me a moment, sir. It appears to be the
21 same. It's the same shape as the projectile that I
22 examined; but again, without actually being there
23 and looking at it, I don't know for certain that it
24 is.

25 Q And does it say, does it tell you where the fired

SW - V. PAAVEL - DIRECT

1 bullet was retrieved from, as far as your notes are
2 concerned?

3 A The information that I had indicated it came from
4 marker 9.

5 Q All right, sir.

6 A And let me look and see if there's any additional
7 information that was on the packaging. Bear with me
8 'cause I may have that. Yes, sir, the little -- the
9 bullet was submitted in a very small pace-board box,
10 a little tiny itty bitty like this, a box similar to
11 this. And on the top of that box was a label, and
12 it has some information that looks like Sumter case
13 number, date; and it says marker 9 at scene, fired
14 bullet from vehicle.

15 Q All right, sir. And that bullet was examined by
16 your office. Were any results obtained from looking
17 at that bullet?

18 A Yes, sir.

19 Q Tell us what you found.

20 A What I found was that that particular bullet ---

21 Q On State's Exhibit Number 18?

22 A Yes, sir. If that is the bullet that I examined,
23 that particular bullet was fired by the Hi-point
24 pistol. And the way I determine that is by, again,
25 you remember I was talking about the test bullets?

SW - V. PAAVEL - DIRECT

1 When I test fired the actual firearm into that
2 recovery tank and I recovered those test bullets,
3 I'll take the test bullets and use a comparison
4 microscope which is a microscope that has, in
5 essence, two stages which means I can put one item
6 on one side, another item on the other side; and
7 it's connected by a bridge, an ocular bridge, and I
8 can look through a binocular eyepiece and I can see
9 both of those items at the same time. And then what
10 I can do is move these items around as I need them
11 to superimpose the images of them. And what I'm
12 looking for are microscopic marks that are left on
13 that bullet as a result of it traveling through a
14 firearm barrel.

15 The inside of a firearm barrel is rifled.
16 It has a series of helical grooves and between those
17 grooves are items known as lands, or raised
18 portions. So when the bullet travels down the
19 barrel, those lands and grooves grab the bullet and
20 rifle or engrave the outside of that bullet. In
21 essence, it's scratching the bullet; it creates
22 striated marks. And then what I do is I compare
23 those marks from an evidence bullet to test bullets
24 to determine whether or not that bullet was fired by
25 a particular firearm barrel.

SW - V. PAAVEL - DIRECT

- 1 Q All right, sir. Now just for the jury's
2 instruction so that I can understand, when you
3 received the six unfired cartridges, unfired live
4 rounds ---
5 A Right.
6 Q ---from Sumter, did you pull or did you test fire
7 one of those rounds in the gun?
8 A No, sir, I didn't test fire one of those. I
9 simply took one of those cartridges apart.
10 Q All right.
11 A But I test fired laboratory ammunition in that
12 particular firearm to obtain tests, yes, sir.
13 Q And the laboratory ammunition that you compared
14 to the fired bullet ---
15 A Yes.
16 Q ---gave you a microscopic reading that you were
17 able to interpret as whether it came from the same
18 gun or not?
19 A That's correct, in essence.
20 Q All right, sir. So you did fire this weapon?
21 A Yes, sir.
22 Q And you compared the fired bullet to the bullet
23 that was turned in from Sumter?
24 A Correct.
25 Q And they came from the same gun?

SW - V. PAAVEL - DIRECT

1 A Yes, I determined -- in my opinion that
2 particular bullet was fired by this particular
3 Hi-point.

4 Q And that bullet, according to your notes, was at
5 marker number 9 in the crime scene at Sumter County?

6 A Yes, sir. According to the container that the
7 bullet was in, yes, sir.

8 Q All right. Now you didn't receive any fired
9 bullets other than that one that we just talked
10 about?

11 A Only one fired bullet projectile. And again,
12 let's make sure we're clear on that. When we're
13 taking about the bullet I'm talking about the
14 projectile 'cause a lot of times people will call a
15 piece of ammunition a live round a bullet. I call
16 that a cartridge. And a cartridge has a cartridge
17 case, gunpowder, and a bullet or a projectile and a
18 primer so I actually examined a fired bullet.
19 That's the part that will go down the barrel and
20 toward the target.

21 Q All right, sir. Now, as it concerns the fired
22 shell casings, there were seven fired shell casings
23 turned in to you from Sumter County from the crime
24 scene?

25 A Yes, sir.

SW - V. PAAVEL - DIRECT

1 Q And they are ---

2 A Somewhere.

3 Q They are right here, State's Exhibit Number 12.

4 A Yes, sir. These are the seven fired cartridge
5 cases that I examined.

6 Q And tell the ladies and gentlemen of the jury who
7 manufactured these cartridge cases.

8 A These cartridge cases have a head stamp CBC which
9 is a Brazilian company. They also market ammunition
10 under the name of Magtech.

11 Q Magtech?

12 A Magtech.

13 Q All right. And is that some kind of company that
14 produces ammunition on a regular basis? You can go
15 and buy CBC bullets or cartridges?

16 A You can. It's become fairly popular now, yes.
17 They ship ammunition and sell ammunition worldwide.

18 Q What size cartridge cases are these?

19 A Those are .45 automatic caliber.

20 Q All right, sir. And did you examine these seven
21 shell casings to determine whether or not they were
22 fired by that handgun?

23 A Yes, sir, I did.

24 Q What were your results?

25 A I determined that these particular cartridge

SW - V. PAAVEL - DIRECT

1 cases were fired by this Hi-point pistol.

2 Q All of them?

3 A Yes, sir.

4 Q Tell the ladies and gentlemen of the jury without
5 going into astrophysics, why you were able to
6 determine these cases came out of that gun?

7 A Again, taking the test cartridge cases that I
8 recovered when I shot the pistol into that bullet
9 recovery tank, I'll take those test cartridge cases,
10 obviously mark them as being tests, and then I will
11 compare those to each other just like I do the
12 bullets to see if they're marking consistently. And
13 what I'm looking for are microscopic marks that are
14 created by the firing pin or the breech face, and
15 that's the part of that slide that holds the head of
16 the cartridge in the chamber. There may be a
17 possibility of an extractor mark, and there may be a
18 possibility of a chamber mark. And if I find
19 sufficient agreement in these marks, I can determine
20 whether or not it was fired by that particular
21 firearm.

22 And in this particular case, there were
23 excellent breech face markings, and I determined and
24 concluded that these seven cartridge cases were
25 fired by the Hi-point pistol

SW - V. PAAVEL - DIRECT

1 Q All right, sir. Now, did you also determine that
2 Sumter County had misidentified these seven cases?

3 A Yes, sir. They had indicated on their notes and
4 on the sheet where the evidence was submitted to
5 SLED that those are actually Federal cartridge
6 cases; and they're not Federal, they're CBC. The
7 unfired cartridges that came with the pistol are
8 Federal cases. Those are Federal .45 auto caliber
9 cartridge cases.

10 Q And those would be the six cartridge cases that
11 you received from Sumter marked as State's Exhibit
12 Number 8?

13 A Yes, sir, the cartridges, unfired cartridges,
14 yes.

15 Q These have not been fired?

16 A That's correct.

17 Q And because they have not been fired you would
18 not be able to run any examinations to determine
19 where they were sitting when they were found?

20 A No, I have no way of determining anything about
21 them. I assumed and based on the information that
22 they were with the actual firearm.

23 Q All right, one more question. The fired bullet
24 that you received and tested, could you determine
25 whether or not it was one of the bullets that came

SW - V. PAAVEL - DIRECT

1 out of the CBC cases?

2 A I could not tell whether it came from the CBC.

3 They were not the same as the bullets that were

4 loaded into the Federal cartridges. That's why I

5 had to take that Federal apart. I wanted to see

6 what the base of that bullet looked like, and they

7 were different than the Federal bullets. Now I

8 didn't have at the time any CBC ammunition to

9 compare it to, but they were different from the

10 Federal ammunition.

11 Q All right. And the reason you didn't have any

12 CBC ammunition to compare this bullet to was because

13 what?

14 A Well, I had fired cartridge cases.

15 Q But no bullets?

16 A I didn't have any unfired ammunition or bullets,

17 yeah.

18 Q So in other words, all of the cartridge cases

19 that were turned in to you were empty, the bullets

20 had already been fired out.

21 A That's correct.

22 Q And you didn't have anything to compare this one

23 to?

24 A That's correct.

25 Q But you can't say whether or not for sure it came

SW - V. PAAVEL - DIRECT

1 out of a CBC case, but you can say it came out of
2 that gun?

3 A Yes, sir, I can say that it was fired by this
4 particular pistol. However, since I didn't have any
5 unfired CBCs with the gun or from the scene, I
6 couldn't reliably tell you that it came out of a CBC
7 cartridge, and I didn't have access to any CBC
8 ammunition of that type in the laboratory at the
9 time.

10 Q All right, sir. Now do you look at the gun
11 itself under the microscope when you receive it?

12 A What I do normally is use some sort of low power
13 magnification like a stereoscope or even a hand
14 magnifier to look for any sort of trace material,
15 damage that might be obvious like cracks or things
16 like that, or blood or hair or any type of material
17 similar to that.

18 Q Did you locate any material on the gun that you
19 noted in your report?

20 A Yes, sir. There was some sort of white color
21 granular material was on the pistol. I took a
22 sample of that, I saved it, stored it with the
23 pistol, and in the report notified the customer that
24 this material was available.

25 Q All right. And that granular material, would it

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1 be something that you could see with the naked eye?

2 A Yes, sir, let me see in my picture what -- I

3 mean, I was able to see it, that's why it was

4 noticeable. Let me see if my picture has that.

5 Also my notes may have that. Yes, sir, in the

6 Polaroid pictures I took of the firearm I can see

7 it.

8 Q All right. And where was it located on the

9 Polaroid pictures that you took?

10 A If you'll hold that up, there's some of it right

11 here still present where my finger is pointing at

12 the rear ---

13 Q That would be the rear ---

14 A ---of the slide.

15 Q Right side of the slide?

16 A Yes, sir. And you can't see it on this side but

17 there is some material on the other side of the

18 slide opposite from the ejection port. There is

19 also in the front of the frame on the left side

20 where we can't see it here, it's tied in the box.

21 And there was a little bit of it right up here where

22 your thumb is located at the front of the slide and

23 frame intersection.

24 Q All right, sir. And you describe that material

25 that you saw as being what?

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1 A I had it listed as a white granular material, and
2 in my notes I had dry wall, question mark.

3 Q All right, very good. Agent, answer me a
4 question please. If you say that firearm has a
5 magazine and it contains or will hold seven
6 rounds ---

7 A Correct.

8 Q ---if I shoot that gun seven times, is it then
9 empty?

10 A Yes, sir, it is empty.

11 Q Once it's empty, how would I go about putting new
12 ammunition in that gun?

13 A The best way to do it would be have another
14 magazine that's already loaded and stick it, remove
15 that magazine, the empty one, and put a loaded
16 magazine into the magazine well, pull the slide back
17 and continue shooting. That's the fastest way and
18 easiest way. Otherwise, you got to take that empty
19 magazine out, get your cartridges, and then one at a
20 time put cartridges back into the magazine and then
21 insert the magazine into the magazine well and pull
22 the slide back and you're ready to go.

23 Q How long would it take an ordinary person to load
24 a magazine with six cartridges of that size?

25 A It would depend on your skill level and stress

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1 level going on, but it would certainly take many,
2 many seconds.
3 Q All right. Could it be done in two or three
4 minutes?
5 A Oh, yes, I would think so, yes, sir.
6 Q Did you receive a unfired Federal .45 caliber
7 bullet that was associated with the defendant Mr.
8 Abdullah, one single bullet outside of the bullets
9 that were submitted with the firearm?
10 A A fired bullet or unfired?
11 Q Unfired.
12 A Unfired cartridge? No, sir. What I received was
13 the pistol and six .45 auto caliber cartridges that
14 are Federal. I received seven .45 auto caliber
15 cartridge cases fired, and those are the CBCs, and
16 I've received one fired bullet that was indicated as
17 being removed from a vehicle.
18 Q All right, sir.
19 A And that's all that I received.
20 Q Would you have opportunity to look at State's
21 Exhibit Number 7 which is one single .45 caliber
22 bullet submitted by Sumter County into evidence and
23 tell us, does that bullet look like, match, or is it
24 made by the same people as the ammunition in State's
25 Exhibit Number 8, the bullets that came out of the

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1 Hi-point when it was submitted to SLED?

2 A Well, yes, sir. This is an unfired cartridge,
3 okay. This is the whole piece of ammunition, okay.
4 And this particular -- let's make sure. See through
5 all this plastic. Let me see the other, sir. Yes,
6 sir, they're the same brand and the same caliber and
7 they had the same head stamp; and that head stamp is
8 the identifying markings that are placed on to the
9 head or base of the cartridge by the manufacturer.
10 In this case it says Federal and it's 45 auto.

11 Q I want to show you what's shown in State's
12 Exhibit 19?

13 A Yes, sir.

14 Q Is that the head stamp that you're talking about?

15 A Yes, that's the head of the cartridge showing the
16 head stamp which is the Federal .45 auto, and that
17 silver colored little circular object you see is the
18 primer. That's the part that the firing pin
19 actually strikes and that causes the gun powder
20 inside the cartridge to be ignited.

21 Q All right. Did you ever take the unfired Federal
22 cartridges and take them apart to examine?

23 A Only one.

24 Q You did, you did open up one?

25 A Yes, sir, I did take one apart.

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1 Q All right, very good. Finally, Agent Paavel,
2 would you in the normal course of your business at
3 SLED examine projectiles, fired bullets, that have
4 been taken out of bodies at autopsies?

5 A Yes, sir, I would.

6 Q And when you examine them are they always able to
7 give you results that you can match with a firearm?

8 A No, sir, not always, not always.

9 Q Tell us why that would be the case.

10 A It depends on what type of damage. First of all,
11 it depends on what type of projectile it is, what's
12 the composition of that projectile. Some bullets
13 are made out of a lead alloy which means they're
14 still really, really soft. Although they are metal,
15 they're fairly soft; and if they strike bone or,
16 heavy muscle areas they can be damaged enough that I
17 may not be able to identify that bullet as being
18 fired from a particular firearm because those
19 microscopic marks that are left on the bullet can be
20 damaged. If it's a heavily constructed jacketed
21 bullet, if it's more likely to have markings on it
22 that I may be able to identify. The other issue
23 with looking at bullets out of a body is did it
24 ricochet off of somebody, is there any previous
25 damage, did it hit anything else first before it

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1 enters the body so. We can't always predict whether
2 or not a bullet is gonna be identifiable when it
3 comes out of a body.

4 Q Is it unusual for bullets of this caliber to
5 enter a body and leave the body and not be found?

6 A Again, depending on what part of the body it
7 hits, the size of the person, you know, a bigger
8 person has more stuff to go through which slows down
9 the bullet, the bullet may be more likely to stay in
10 the body; but it's not unusual for a bullet like
11 this to go through somebody and not be found.

12 Q And is this caliber, .45 caliber, is it
13 considered small, medium, or large in firearm?

14 A In the handguns this is a large caliber
15 cartridge. In fact, the .45 auto caliber was a U.S.
16 military caliber from roughly 1911, 1912, until the
17 1980's when the 9-millimeter Beretta replaced it.

18 Q Now you brought up the 9-millimeter, and I wanted
19 to ask you about that. This is a .45 caliber
20 handgun. How does it compare in size and shape to a
21 9-millimeter handgun?

22 A Again, depending on the manufacturer of the
23 handgun, you can have a handgun that's similar in
24 size and shape.

25 Q The 9-millimeter, is that considered a bigger

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1 velocity gun than this?

2 A Well, let's talk about, you're saying bigger
3 velocity. Velocity refers to the speed of the
4 bullet. The 9-millimeter typically, yes, does have
5 a higher velocity bullet; but the 9-millimeter has a
6 smaller diameter bullet. The 9-millimeter bullet is
7 approximately -- we'll round it up -- .36 inches in
8 diameter. The 45 auto bullet is .45 inches in
9 diameter. This is approximation, not a, you know,
10 the three decimal places.

11 Q All right. But as far as the frame of the gun
12 itself, if somebody was outside of a nightclub and
13 saw somebody using a handgun like this .45 that's in
14 State Exhibit Number 6, they could, they could say
15 that it was a semiautomatic, correct?

16 A They may be able to see by its shape, yes. It
17 doesn't have a cylinder, right.

18 Q All right. And they could say that it was a
19 9-millimeter or a .45 caliber, or a .45 because of
20 the size of the gun?

21 A I don't know that you could do so. There's a
22 pistol actually made by a company called Stallard
23 Arms. It's very close to this firearm in size and
24 shape. I couldn't tell the difference at a
25 distance.

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1 Q And that particular gun you're talking about, is
2 that a 9-millimeter?

3 A That's a 9-millimeter, yes, sir.

4 Q All right, sir. Would the 9-millimeter hold as
5 many bullets as this one, the .45 does?

6 A The 9-millimeter probably may hold two or three
7 more, yes, sir.

8 Q All right.

9 MR. FINNEY: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 BY SOLICITOR FINNEY:

12 Q Agent Paavel, thank you very much for coming
13 today. Answer any questions the Defense may have.

14 A Yes, sir.

15 THE COURT: Cross-examination, sir.

16 MR. ABDULLAH: Yes, sir.

17 **CROSS-EXAMINATION**

18 BY MR. ABDULLAH:

19 Q How are you doing, Mr. Paavel?

20 A I'm doing well, and you, sir?

21 Q I'm blessed.

22 A Yes, sir.

23 Q Yes, Mr. Paavel, I was listening to your expert
24 when you was talking about the damage of different
25 bullets, right?

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1 A Yes, sir.

2 Q So that firearm that the State has as an exhibit
3 here, if that bullet is damaged into a car or it
4 damaged into a house, right, and it's recovered, if
5 the bullet is seriously damaged you couldn't quite
6 tell exactly if it came from that gun or not, could
7 you?

8 A It depends. As I said, I can't predict that. It
9 would depend on how badly damaged it is. A bullet
10 such as this has a fairly heavy thick jacket on it
11 and is a round nose. It's relatively slow; and
12 depending on what type of target it hits, you know,
13 let's say it just hits sheet metal in a car, it may
14 not be badly damaged and I'll be able to identify
15 it. On the other hand, it may hit a heavy structure
16 on a car and it may flatten and cause those
17 microscopic markings to be deformed; and as a result
18 to that, I may not be able to identify it.

19 Q Okay, now, you also mentioned about the .45
20 revolver and also a .45 semiautomatic. What's the
21 difference between those two once again for the
22 jury?

23 A Again, with the semiautomatic pistol like this
24 Hi-point, it uses a magazine. The magazine holds
25 cartridges and they're held in the handle of the

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1 gun, we'll call in the grip portion. It has a slide
2 that reciprocates or moves back and forth so every
3 time you shoot, and if the pistol works properly, a
4 bullet goes out the barrel toward a target and a
5 cartridge case gets ejected or kicked out of the
6 right side of the firearm. It has an ejection port
7 on the right side. And then it literally
8 automatically loads another cartridge into the
9 barrel. You release the trigger, pull it again, and
10 it will shoot again. It's not a machine gun. You
11 can't just hold a trigger and it fires. You have to
12 pull the trigger to release it, pull it, release it.
13 But as fast as you can do that, if you're holding on
14 to the firearm it will shoot. So if you shot five
15 cartridges you should have five bullets going down
16 range and somewhere you should have five fired
17 cartridge cases, okay.

18 With the revolver, a revolver is a
19 handgun. It has a cylinder that holds the
20 ammunition, and I'm sure y'all have seen a revolver
21 somewhere. But you have a frame that holds the
22 cylinder, has a handle attached to it or a grip, and
23 it has a barrel. Now, you put cartridges into that
24 cylinder. That cylinder has chambers or holes
25 drilled into it. Depending on the caliber you can

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1 have anywhere from five up to twelve cartridges into
2 a cylinder that's commonly found. Now every time
3 you shoot, a bullet comes out the barrel but the
4 cartridge case stays in the cylinder, and that
5 cylinder rotates. Every time you pull the trigger
6 or if you cock the hammer and pull the trigger, it
7 rotates and a new cartridge is placed in a line with
8 the barrel, you fire it, and you have to do that for
9 each shot. Then when you're through shooting or you
10 run out of ammunition, you have to open the cylinder
11 or in some cases remove the cylinder, remove those
12 fired cartridge cases and then put new ammunition
13 into the cylinder and then close the cylinder or
14 install it back into the firearm and you're ready to
15 shoot again.

16 Q Now if the revolver .45 and the semiautomatic
17 .45, right, if both of these weapons are fired and
18 they're somewhat damaged into the car or house or
19 whatever, and both bullets are recovered from two
20 different guns, could you determine the differences
21 or would you, you couldn't tell? Could you tell
22 which one came from a revolver, which one come from
23 a .45?

24 A It, well, there's a couple of things you have to
25 ---

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1 Q I mean, semiautomatic, which one's a revolver?

2 A Since they're both the same caliber obviously

3 it'd be difficult to tell from that point of view.

4 However, you have to look at the class

5 characteristics of each one of those firearms; and

6 by class characteristics I'm talking about the

7 number of lands and grooves that are in that barrel

8 and the direction of twist. I may be able to tell

9 simply by that. For instance, a .45 automatic

10 military pistol has six lands and grooves with

11 left-hand twist, which means as the bullet goes down

12 the barrel it's rotating counterclockwise. A Smith

13 and Wesson .45 automatic caliber revolver has five

14 lands and grooves with right twists. So if I have

15 two bullets, one fired from each one of those and

16 they're badly damaged, I may be able to see that has

17 six lands and grooves, that has five lands and

18 grooves, so from that point of view I can eliminate

19 one or more of those guns.

20 Now if the bullets are so badly damaged

21 that I can't tell anything about them as a matter of

22 viewing the class characteristics, I can't really

23 tell.

24 Q Okay. Now, in other words, if we don't have a

25 bullet there's no ballistics to actually do a

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1 matchup; is that right?

2 A That's correct. If I don't have a fired evidence
3 bullet that needs to be compared and if I don't have
4 test bullets, then I can't tell you whether a
5 particular bullet was fired by a particular firearm.

6 Q Now 44, there's guns called 44; is that right?

7 A Yes, sir, there are some .44 caliber revolvers
8 and pistols actually are .44 caliber.

9 Q Okay now, what is the difference between a
10 .44 caliber and a .45? Is there any difference to
11 that?

12 A Yes, sir. It would depend on which 44 you're
13 talking about.

14 Q Revolver, let's say.

15 A Yes, sir. Now when you say .44 revolver there
16 are different actually .44 calibers. For instance,
17 a .44 Magnum is the Clint Eastwood -- you know, if
18 you remember from the Clint Eastwood movie from way
19 back, he had a Smith and Wesson .44 Magnum revolver.
20 That is a very powerful revolver. It has a so
21 called .44 caliber bullet, but the bullet diameter
22 is actually -- and again, I'm rounding this up just
23 a fraction -- to .43-inches in diameter; that's its
24 diameter. A .45 has a bullet diameter of .45
25 inches. So the .45 bullet is actually slightly

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1 larger in diameter. Now there are other 44s. You
2 have a .44 Special which is actually a shorter and
3 less powerful version of a .44 Magnum. You have a
4 .44 Russian, which is even smaller. Then you have a
5 .44 40s. There are quite a few different
6 .44 calibers.

7 Q Yes, sir. Now on behalf of 9-millimeters or
8 9-millimeters, 10-millimeters, 380s, is there a
9 difference in the impact of those guns when they are
10 fired?

11 A Are you talking about impact on the target or
12 recoil back to---

13 Q Impact on the target and impact even in hand when
14 it's being held.

15 A Right. Let's talk about impact on a target and
16 recoil into your hand.

17 Q Your hand.

18 A Obviously recoil and, is determined by the size
19 or weight of the bullet times its velocity. So the
20 heavier the bullet and the faster it goes, you get
21 more recoil for the same weight of firearm. You can
22 make the firearm smaller and lighter and that can
23 give you more recoil, okay. Now you're talking
24 about these different calibers. Typically a 380 of
25 the ones you were talking about is probably, has the

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1 lesser amount of recoil, the smallest amount of
2 recoil depending on the size of the firearm. You
3 got 9-millimeters. And then you get into your .40s
4 and .45s. They go up approximately like that as a
5 matter of amount of recoil that you get.

6 Now impact or what affect does it have
7 on a target? There are so many different types of
8 bullet weights in these different calibers that it's
9 hard to tell what actual damage or impact you're
10 gonna have on a target. And they're varied, so many
11 different sizes of bullets and the velocities. But
12 typically, the faster the bullet goes and the
13 heavier it is, or if it's constructed in a way that
14 it's frangible or it comes apart or is a hollow
15 point, the more damage you may have on a target.

16 Q Yes, one more question. Is there any such thing
17 as a Hi-point 40 cab?

18 A There's a Hi-point .40 caliber.

19 Q Caliber?

20 A Yes, sir, there's a Hi-point pistol in
21 .40 caliber, yes, sir.

22 Q Okay. You ever heard of a Hi-point .45?

23 A Hi-point .45? Yes, sir, there is a Hi-point .45.

24 Q Okay, Hi-point .45. And that's what you have
25 that you ---

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1 A Yes, sir, we have a Hi-point brand model JH
2 pistol that's in .45 auto caliber.

3 Q And Hi-point .40 cal?

4 A Yeah. Hi-point .40 caliber is made by Hi-point
5 and it's chambered for a .40 Smith and Wesson
6 caliber cartridge. It gets confusing, but that's
7 how that works.

8 Q Thank you very much, sir. No further questions.

9 A All right, thank you.

10 THE COURT: Any redirect?

11 SOLICITOR FINNEY: No, Your Honor, thank
12 you.

13 THE COURT: Sir, you may step down. Mr.
14 Paavel, you may step down.

15 SOLICITOR FINNEY: We ask the witness be
16 excused.

17 THE COURT: Any objection?

18 MR. ABDULLAH: No, sir, nothing from
19 Defense, sir.

20 THE COURT: Sir, you may be excused. You
21 have no further responsibility under your subpoena.
22 You're free to go have a nice day.

23 THE WITNESS: Thank you, sir.

24 MR. FINNEY: Captain Jamie Turner.

25 WHEREUPON,

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1 **JAMES R. TURNER,**

2 having been duly sworn by the Clerk, testified
3 as follows:

4 THE CLERK: Have a seat. State your name
5 for the record and spell your last name.

6 THE WITNESS: James R. Turner,
7 T-U-R-N-E-R.

8 **DIRECT EXAMINATION**

9 BY SOLICITOR FINNEY:

10 Q Good afternoon, Captain Turner.

11 A How are you doing?

12 Q Fine, sir. Captain Turner, tell us where you
13 work and how long you been there?

14 A I work for Sumter County Sheriff's Office. I've
15 been there 26-and-a-half years.

16 Q And are you a crime scene specialist, or do you
17 have a title right now?

18 A I'm commander of professional standard division.
19 At one time I was commander of the investigations
20 division.

21 Q All right, sir. Were you commander of the
22 investigation division in 2004?

23 A I ranked a sergeant at that time.

24 Q All right. And as sergeant were you in charge of
25 investigations when you had situations like we had

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1 at the nightclub that night where someone was
2 killed?

3 A What happens when we have -- primarily at that
4 time I worked a lot of homicides or death
5 investigations. What happened on this night was I
6 was called to respond to a shooting incident. I
7 then called the commander at the time which is
8 Captain Tommy Barron, to get a feel on where I need
9 to go. Several investigators were called out. So
10 at this time I was told to go to office because we
11 had witnesses and also had a suspect come into the
12 office so I went to the office.

13 Q All right, sir. And so when you responded to the
14 office did you have occasion to take statements from
15 witnesses?

16 A When I got to the office I seen what we had up
17 there, and there was also the lieutenant at the time
18 was up there. We made sure that the investigators
19 available were dealing with those couple of
20 witnesses, that the witnesses were -- we'd gotten
21 statements from the witnesses. Mr. Abdullah was
22 brought up there and I spoke to him briefly,
23 basically asked him about did he wish to make any
24 statements. He told me he wanted a lawyer so at
25 that time the only other thing that I knew that had

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1 to be done dealing with him was a GSR kit.

2 Q All right, sir. Tell the ladies and gentlemen of
3 the jury what a GSR kit is.

4 A Called a, a GSR is a kit that has, for gunshot
5 residue.

6 Q And that's what GSR stands for, gunshot residue?

7 A That's right.

8 Q All right.

9 A Now what it is, it's a, it comes in a bag and
10 it's sealed. It has four vials that have a top that
11 you pull off. It has sticky side tape on it. It
12 also has, I believe it's six vials, look like little
13 test tubes that the top comes off and a container
14 with it looks like Q-tips and there's a small bottle
15 of nitric acid. All this comes in a kit. Also have
16 a pair of disposable gloves which comes in this
17 package, and we open the package up and proceed to
18 do a GSR on a person who we think has fired a
19 firearm.

20 Q I want to show you what's been marked as State's
21 Exhibit Number 36 and ask if you can identify what
22 that is.

23 A It's a gunshot residue kit that I did on Mr.
24 Abdullah.

25 Q All right. And did you do it within a few hours

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1 after the call went out to come to the club and do
2 the investigation at the club?

3 A I did. It appears it was done, this was done
4 6:05 in the morning. We tried to get -- well, the
5 recommended time period is no more than six hours so
6 the sooner you can do it after the shooting incident
7 the better off you are. This is within like two
8 hours.

9 Q Within two hours of the call coming out you had
10 Mr. Abdullah in your office and you were doing the
11 GSR kit?

12 A Yes, sir.

13 Q Now do you do the GSR kit, you put the sodium ---

14 A First thing you do is -- it's not open but -- the
15 first thing you do is the vials that have the sticky
16 side tape, there's four of them. One says right
17 rear, which is the back of the hand, right palm,
18 left rear and left palm. And you take that tape and
19 you start from the wrist down and if it's a -- left
20 rear, you go basically all the way to the end of the
21 finger, back up, you just keep dabbing (indicating).
22 Once you complete it you put, settle it back
23 together and put it in the kit. You do that for all
24 four of those vials.

25 Q So that would be the front of both hands and the

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1 back of both hands?

2 A Yes, sir. From the ---

3 Q You're testing trying to collect what?

4 A You're trying to -- well the sticky side tape
5 it's trying to pick up, you know, gun powder has
6 metals in it, and it's trying to pick up unburnt gun
7 powder and some of the metals that may be left over
8 from the burn of the powder.

9 Q All right. And then you take the Q-tips and do
10 what with the Q-tips?

11 A The Q-tips, it's the same procedure, but you have
12 two other vials in that. One vial is marked control
13 which is usually -- well, let me go back. You have
14 a right back, right front, same thing as the other,
15 and you take nitric acid. And the Q-tips are, are
16 in a little Ziploc bag facing down. The heads of
17 them are down so you take them and push them up,
18 catch them by the stem of 'em, put a couple of drops
19 of nitric acid, and you just swab the back of the
20 hand, the left hand. You put it in the vial, mark
21 left hand and left palm. You do that.

22 And there's also another vial that says
23 control, and all that is, is you take a set of
24 Q-tips. I usually use two. You can use one, but I
25 usually use two per test. And you just swab

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1 somewhere like on the leg or something, and it just
2 gives a control. So whoever is doing the test would
3 be able to say, okay, that's, there may be some
4 chemical that causes some kind of little reaction
5 that may be a false positive. It's just a control
6 mechanism. But anyway, and the other one is a
7 cartridge case which we never use that. You don't
8 actually swab a cartridge case that's been fired. I
9 don't know why it's put in there, but it's put in
10 the kit but we don't never use that.

11 Q All right. Once you took the test from Mr.
12 Abdullah did you seal up the evidence envelope?

13 A Yes, sir. There's a form that's filled out and
14 put inside, and it gives you all the basic
15 information about the time of the shooting incident,
16 information on the victims. And that is filled out,
17 put inside, and then the outside that package is
18 then filled out and there's a -- you can see it.
19 There's a sealing tape that goes across it and you
20 seal it up.

21 Q And what do you do with the kit once it's
22 collected and sealed?

23 A I do evidence card and turn it in to evidence.

24 Q And once you send it to the evidence room do you
25 direct them to send it on to SLED?

SW - J. TURNER - DIRECT

1 A What happens next is, what happens next in this
2 case is we try to determine who is going to be kind
3 of the lead investigator, the person who is gonna
4 collect the paperwork. That was determined sometime
5 that morning that I was going to be the, you know,
6 responsible for building the case file. Then myself
7 and -- I go back through and talk to the other
8 investigators and find out what has been done and
9 anything else. We talked, do we need to do anything
10 else. We'll do a cursory search meaning we go back
11 out to the scene during the daylight, try to do a
12 walk through and make sure that we didn't miss
13 anything. Sometimes, you know -- there was a crowd
14 of people. Sometimes shell casings might get mashed
15 in the ground, maybe we didn't see them 'cause we go
16 out there with a flashlight. We do a cursory search
17 and then we go back, myself and Sergeant Mackessy.
18 When I am, at some point in time I am in training
19 crime scene was actually worked with Sergeant
20 Mackessy for quite a few years in crime scene, doing
21 crime scene. So we get together and try to
22 determine what kind of evidence needs to go to SLED.
23 SLED had a policy and I don't know if it's
24 still their policy 'cause I'm not, but it's called
25 best evidence. They want to look at the best

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1 evidence that you're testing on first. In other
2 words, you wouldn't -- a gunshot victim, you
3 wouldn't want to send their clothes, the victim's
4 clothes over there and tie them up doing all kind of
5 tests on clothes when you may, like we've talked
6 about, bullet. You may have a bullet from the
7 victim. You would want the bullet and to go over
8 there to compare to the gun, not the clothes, 'cause
9 the clothes is not gonna tell you anything. So you
10 talk about what's the best evidence to send to SLED.
11 So we'll send that, we'll write up the forms and
12 send that information to SLED and that material to
13 SLED. And sometimes they'll ask, okay, you have
14 this, and we'll also send additional pieces of
15 evidence; but in this case we did not send any
16 additional evidence.

17 Q All right. Captain Turner, I'm gonna show you, I
18 believe you've probably seen this document. Were
19 you apprized of all the evidence that was collected
20 and given to Cindy Pierson, an evidence technician
21 at the time?

22 A Yes, sir.

23 Q And did you make a determination based on what
24 was collected that you were going to send certain
25 items to SLED for testing?

SW - J. TURNER - DIRECT

1 A Myself and Sergeant Mackessy.

2 Q You and Mackessy made that decision?

3 A Yes, sir.

4 Q All right. Did you decide to send the firearm to
5 SLED and the magazine and the unfired bullets?

6 A Yes, sir.

7 Q And what was your hoping in sending it to the
8 SLED lab to be analyzed, the firearms, the magazine,
9 and the unfired bullets?

10 A What I'm looking for and I'm hoping to find is
11 that the shell casings recovered belong to that gun.
12 We're also looking for, we'll ask for trace evidence
13 to look at it. We're looking for, if it's -- well,
14 we're looking for possibility of blood being on it,
15 fingerprints. We can fingerprint here, but since
16 SLED has it in their lab we allow SLED to do it or
17 we ask that SLED do the fingerprints so they'll --
18 we asking them to look at the firearm for any
19 fingerprint evidence that may be on there. We also
20 want them to check to see if the cartridge casings
21 that we found at the scene belong to that gun, any
22 bullets, do they match that gun.

23 Q Did you happen to know when the fired bullet was
24 taken out of the Buick automobile that was at the
25 scene of the nightclub that night, was it recovered

SW - J. TURNER - DIRECT

1 that night or the next day?

2 A I believe Sergeant Mackessy got it that night.

3 Q All right. And that fired bullet was important
4 because it was part of the crime scene that night;
5 is that correct?

6 A Yeah.

7 Q You sent it to SLED?

8 A Uh-huh.

9 Q And you also sent three GSR kits. You sent the
10 one kit that you did on Mr. Abdullah; is that
11 correct?

12 A Yes, sir.

13 Q And you sent one from Mr. McBride and one from
14 Mr. Way?

15 A Yeah.

16 Q Why did you have GSR done on those two
17 individuals?

18 A We do them, any victim that's involved in gunshot
19 we always do GSR to make sure that we can eliminate
20 the victim, that the victim wasn't firing a gun, or
21 it wasn't self-inflicted wound.

22 Q And as a result of your investigation did you ask
23 Mr. Mackessy to -- was he already in the process of
24 taking pictures and putting down markers before you
25 got involved in the case?

SW - J. TURNER - DIRECT

1 A Yeah, I never went to the scene that night. I
2 went later that morning. He does -- it's protocol.
3 He does crime scene.

4 Q All right.

5 A That's -- what we do is, and you'll see in the
6 pictures, those little orange arrows. Any time we
7 find a piece of evidence we'll put one of those
8 arrows down. That's just so we identify a piece of
9 evidence. And then you'll see the markers which is
10 the one with the numbers on 'em. We go back and
11 mark everything so we can later identify by
12 measurements and stuff what item one through
13 whatever is. So that's why you see a little orange
14 arrow where somebody said, oh, there's a piece of
15 evidence, and they put the arrow down where we can
16 go back and easily find it later.

17 Q When you went back after the sun came up on
18 Sunday morning to the nightclub and walked around,
19 did you discover any additional evidence, bullets,
20 casings, guns, anything that wasn't already mapped
21 out and sketched out by the investigator?

22 A Nope.

23 Q Now at some point Mr. Abdullah has asked the
24 question about a house that was a tenth of a mile
25 down the road from the club. Do you know when the

SW - J. TURNER - CROSS

1 information came in that that house, that garage
2 door had been struck by a bullet?

3 A I'd have to look at the report to see what day it
4 was called in. I know it was called in separate
5 because I believe -- it may have been that morning
6 'cause she went out in her garage and saw the hole
7 in it.

8 Q You say the homeowner went out in the garage?

9 A It's gonna be in that other type book. We
10 received that report on the 16th.

11 Q 16th of?

12 A Two days later.

13 Q Two days after the shooting?

14 A Yeah. The shooting occurred on the 14th, and
15 this call came in on, around 12:00 on the 16th.

16 Q And the homeowner asked you all to come
17 investigate something she discovered in her garage
18 door?

19 A That's what it states. She states that she found
20 the bullet hole in the garage door.

21 Q So you all went up there, talked to the
22 homeowner, and took some photographs?

23 A Yes, sir.

24 Q Captain Turner, is there anything else that we
25 haven't covered that you might mention as far as the

SW - J. TURNER - CROSS

1 investigation of this case, getting it ready for the
2 jury today?

3 A I don't believe so.

4 Q Thank you very much. Answer any questions
5 Defense may have.

6 THE COURT: Cross-examination.

7 **CROSS-EXAMINATION**

8 BY MR. ABDULLAH:

9 Q How are you doing, Mr. Turner?

10 A I'm good.

11 Q Yes, Mr. Turner, you stated that you did a
12 gunshot residue on Mr. Abdullah, the defendant; is
13 that right?

14 A On you, yes, sir.

15 Q Yes. And what was the results?

16 A You'd have to talk to the technician that done
17 the examination. If you want me to tell what she
18 wrote back to me I can, but.

19 Q What'd she say? What was the result?

20 A There was nothing found.

21 Q There was no gun powder residue, right?

22 A No, sir.

23 Q Okay. Now throughout this investigation, sir,
24 did you ever do a gunshot residue on the clothes of
25 any of the victims or Mr. Abdullah, the defendant?

SW - J. TURNER - REDIRECT

1 A No, sir.

2 Q And why not?

3 A Because the best evidence, the GSR on the hands
4 is your best evidence.

5 Q Uh-huh. So if it's negative then, there is no
6 evidence; is that right?

7 A Not necessarily. There's a lot of reasons why it
8 could be a negative result.

9 Q I mean, that would be, okay. And that would be
10 speculation other than actual fact; is that right?
11 I mean, if you're gonna say, you're gonna make that
12 statement it would have to be actual fact to say.

13 A Well, I know that you were wet and so it's very
14 possible that you either washed your hands or the
15 water washed it away.

16 Q Okay.

17 A You could have wiped your hands. You were in the
18 bathroom, I don't know. I know that that could
19 cause why we don't have a positive result.

20 Q Okay now, for the jury, on the night I was
21 arrested did you arrest me?

22 A No, sir, I did not.

23 Q How did you know I was wet?

24 A 'Cause you were wet when you come to the office.

25 Q Did you test the clothes? I asked you did you

SW - J. TURNER - REDIRECT

1 test the clothes?

2 A I did not test the clothes. I done a GSR kit on
3 you.

4 Q No further questions.

5 THE COURT: Any redirect?

6 SOLICITOR FINNEY: Just a few questions.

7 **REDIRECT EXAMINATION**

8 BY SOLICITOR FINNEY:

9 Q Did you do a GSR kit on Mr. McBride and Mr. Way?

10 A One was done, not done by me.

11 Q You didn't do it?

12 A No, sir.

13 Q By the same token, the test results were sent
14 back to you?

15 A Uh-huh.

16 Q Did Mr. Way ---

17 THE COURT: Is that a yes?

18 THE WITNESS: Yes.

19 BY MR. FINNEY:

20 Q Did Mr. Way or Mr. McBride have GSR?

21 A No, sir.

22 Q On their hands?

23 A No, sir.

24 Q So you had three tests that were sent to SLED?

25 A That's right.

SW - J. TURNER - RECROSS

1 Q And the report came back that there was no
2 indication of GSR on any of the three hands?

3 A No, sir.

4 Q On any of the three people that were tested?

5 A That's right.

6 Q Now, as you said to Mr. Abdullah, is there a
7 possibility that GSR could be knocked off or taken
8 off the hands of somebody who shot a gun?

9 A Yes. It can be wiped off, it can be washed off.
10 .22 caliber pistol, it's, you know, I've been told
11 in my training don't even, if it's a .22 caliber
12 pistol don't even do it because it's not, there's
13 usually no GSR even going to come so.

14 Q All right. And do you know who the testing
15 examiner was on the GSR kits at SLED?

16 A What's on her report I do.

17 Q What is her name?

18 A I think it's Ila Simmons.

19 Q And Ila Simmons is the expert on GSR testing and
20 results and can be called to court to testify about
21 what she found?

22 A Yes, sir.

23 Q All right, very good. Thank you. Nothing
24 further.

25 THE COURT: Anything -- yes, sir, go

SW - J. TURNER - RECROSS

1 ahead, Mr. Abdullah.

2 **RECROSS-EXAMINATION**

3 BY MR. ABDULLAH:

4 Q Once again, Mr. Turner, yes, did anybody ever
5 testify, tell you that Mr. Abdullah washed his
6 hands, sir?

7 A Sir, I'm just going by what I was told. You were
8 in a bathroom and when you got to the office your
9 clothes were wet. As a crime scene investigator, my
10 training, that sends up a flag to me that there's a
11 possibility there may not be nothing there.

12 Q Okay, thank you, sir.

13 A We tried.

14 THE COURT: Sir, you may step down. Thank
15 you.

16 Can you all approach please.

17 (WHEREUPON, Solicitor Finney and Mr.

18 Abdullah approached the Bench for an
19 off-the-record discussion.)

20 THE COURT: All right, ladies and
21 gentlemen, what we're going to do, we're going to
22 stop for the day, for the balance of the day. I'm
23 gonna let you go home. I'm gonna ask you to be back
24 here tomorrow morning at 9:30. At 9:30 we will
25 resume at that time the trial of this case. Do not,

1 do not discuss the case at all. Do not do any
2 independent investigation on your own. You're to
3 decide this case as I told you from the outset based
4 solely, solely upon the testimony and evidence as
5 presented in this courtroom and no where else. You
6 all are free to go. Look forward to seeing you back
7 tomorrow morning.

8 THE JUROR: May God bless you.

9 (WHEREUPON, the jury was removed from the
10 courtroom at 3:44 p.m.)

11 THE COURT: All right, anything from the
12 State before we break?

13 SOLICITOR FINNEY: Nothing, Your Honor.

14 THE COURT: Anything, Mr. ---

15 MR. ABDULLAH: Nothing from Defense, sir,
16 Your Honor.

17 THE COURT: Let me go ahead and -- I'm not
18 gonna fully advise you, Mr. Abdullah, of your
19 constitutional rights, but I want you certainly to
20 be thinking about whether or not you wish to testify
21 in the trial of your case. Once the State rests
22 tomorrow I would further advise you of that, but I
23 just want you to think about it, okay.

24 MR. ABDULLAH: Well, that's my option if I
25 want to now.

1 THE COURT: Absolutely, but I'm gonna
2 certainly give you your, advise you of your rights
3 under that, under the Fifth Amendment, and certainly
4 advise you of the right. And if you do testify,
5 that you'll be subject to cross-examination by the
6 State. And if you have a prior record and this
7 Court determines that the probative value is
8 outweighed by prejudicial effect, they may
9 cross-examine you on your prior criminal record.
10 Furthermore, I will tell you again tomorrow that if
11 you decide not to testify, if you decide not to
12 testify, that I will instruct that jury that they
13 cannot, they can't hold it against you, and they
14 can't even discuss the fact that you didn't testify
15 in the jury room, okay. But I want you to, I'm just
16 kind of giving you a heads up and I want you to be
17 thinking about whether or not you're going to
18 testify and understanding that you're not required
19 to testify, that you don't have to testify, that you
20 have pled guilty -- not guilty, excuse me -- that
21 you have pled not guilty in this case which means
22 that the burden of proof rests entirely upon the
23 State to prove your guilt beyond a reasonable doubt,
24 okay.

25 MR. ABDULLAH: Yes, sir.

1 THE COURT: But I just want to be thinking
2 about that and understanding, you know, if you do
3 testify, the State will certainly have an
4 opportunity to cross-examine you on any and all
5 relevant issues that the Court deems appropriate for
6 them to question you about, okay.

7 MR. ABDULLAH: Well, I can just -- closing
8 argument.

9 THE COURT: I will ask you those questions
10 tomorrow about whether or not you want to testify,
11 but I'm not -- in closing arguments, let me tell you
12 this since you brought it up, okay. In closing
13 arguments the only, the rules require that your
14 closing arguments be limited to what's in evidence,
15 to what's in evidence, and the reasonable inferences
16 from that which is in evidence. In other words, you
17 can't, you're not allowed to get up in closing
18 argument and testify or state facts that aren't
19 already in the record. You understand that? You
20 understand? I see you shaking your head yes, but I
21 want you to understand I want a verbal response on
22 that.

23 MR. ABDULLAH: Yes, sir.

24 THE COURT: You understand that?

25 MR. ABDULLAH: Only what's in record.

1 THE COURT: Only what's in the record and
2 the reasonable inferences from that. That's what
3 the law says.

4 MR. ABDULLAH: Okay.

5 THE COURT: You understand that?

6 MR. ABDULLAH: Yes, sir.

7 THE COURT: Okay, all right. Anything
8 further?

9 SOLICITOR FINNEY: Judge, just for the
10 sake of the record, we expect that we will stop
11 court tomorrow about noon and we'll have the
12 afternoon off and be back ---

13 THE COURT: Well, we're gonna see. It
14 depends on what the defendant does, and that's why
15 I'm kind of advising him of his right now so he can
16 be thinking about whether or not he so desires to
17 testify tomorrow; and if he does, you know, that
18 could move us in a little bit. It depends on what
19 he intends to put up, if anything.

20 SOLICITOR FINNEY: Well, just for the
21 record, the State has no objection to taking the
22 afternoon off tomorrow and we can do the defense
23 witnesses and closing on Thursday.

24 THE COURT: Okay.

25 SOLICITOR FINNEY: Whatever you decide to

1 do.

2 THE COURT: Okay, all right. We'll see
3 you tomorrow, okay. Thank you. 9:30 in the
4 morning.

5 (WHEREUPON, the proceedings were concluded
6 for the day to be reconvened on
7 October 19, 2016.)

8 THE COURT: Anything from the State before
9 we begin the trial?

10 SOLICITOR FINNEY: Good morning, Your
11 Honor. Yes, sir. Our first witness is Ms. Dianne
12 Bodie from SLED, she's a fingerprint expert. She's
13 gonna be testifying about fingerprints that were
14 processed in the lab to SLED, and we have marked two
15 items for her to refer to. One is a fingerprint
16 card, State's Exhibit Number 10, it's been marked,
17 and also State's Exhibit Number 9, which is a
18 photograph; he's seen them. The magazine that was
19 submitted to her from the firearm from Sumter
20 County, she was able to lift a latent print off the
21 magazine and identify it from, to the fingerprint
22 card and connect it to the defendant. And the only
23 thing I'm asking the Court to know about and maybe
24 rule on is the fact that on the fingerprint card it
25 does use his name Clayton Montre Pinckney.

1 MR. ABDULLAH: Yes, sir.

2 MR. FINNEY: And that so she will refer to
3 him as that, and the jury doesn't know about that
4 name so I don't know how Mr. Abdullah feels about
5 it, but we should have a discussion about it.

6 THE COURT: Mr. Abdullah.

7 MR. ABDULLAH: My name was legally changed
8 21 years ago so we will just let them know so they
9 will understand.

10 SOLICITOR FINNEY: All right.

11 THE COURT: We can enter a stipulation.

12 SOLICITOR FINNEY: Could we stipulate?
13 Could we stipulate ---

14 THE COURT: Agree. He's agreed on the
15 record. A stipulation is simply an agreement by you
16 and Mr. Finney as to that issue, okay. You
17 understand that?

18 MR. ABDULLAH: Yes, sir.

19 THE COURT: Do you want to do a written
20 stipulation or?

21 SOLICITOR FINNEY: No, sir.

22 THE COURT: You said 21 years ago?

23 MR. ABDULLAH: Yeah, 1995, same month,
24 October '95.

25 THE COURT: Okay. All right. I'll just

1 advise the jury that -- let me see the card please.
2 You said 1995?

3 MR. ABDULLAH: Yes, October.

4 THE COURT: They've already been marked as
5 exhibits?

6 SOLICITOR FINNEY: They have been marked,
7 but they haven't been introduced.

8 THE COURT: Subject to proper foundation
9 being laid, are there any objections to these
10 exhibits, Mr. Abdullah?

11 MR. ABDULLAH: No, I have no objection,
12 Your Honor.

13 THE COURT: To either one of them?

14 MR. ABDULLAH: None of them.

15 THE COURT: Okay, very good.

16 SOLICITOR FINNEY: Very good.

17 THE COURT: I'm gonna just -- well, what
18 you can do is when you question, before you start
19 questioning her you can give me that card and I will
20 advise the jury on that stipulation. How about
21 that?

22 SOLICITOR FINNEY: That will be fine, but
23 I'll just leave the card ---

24 THE COURT: She's gonna be your first
25 witness?

1 SOLICITOR FINNEY: Yes, sir.

2 THE COURT: Okay. Anything else,
3 Mr. Finney?

4 SOLICITOR FINNEY: No, sir.

5 THE COURT: Mr. Abdullah, anything before
6 I bring the jury out, sir?

7 MR. ABDULLAH: No, sir, Your Honor.

8 THE COURT: All right, let's rock and roll
9 please, sir.

10 (WHEREUPON, the jury was returned to the
11 courtroom at approximately 9:33 a.m., and
12 the following proceedings commenced in
13 open court.)

14 THE COURT: Good morning, ladies and
15 gentlemen. I hope you all had a nice, restful
16 evening yesterday and ready to proceed here today.
17 I'm going to advise you of something real quick. We
18 are going to probably stop around noon today for the
19 balance of the day, and I apologize for that. I
20 have a funeral that I have to go to. I told you all
21 that I went to Citadel. I have a Citadel class mate
22 of mine that passed away over the weekend, and it's
23 something I feel like I need to go to so that's on
24 me, okay, and it's in North Carolina. When I
25 practiced law I had a lot more flexibility in my

1 schedule from the standpoint of if I didn't have to
2 be in court I can do pretty much what I wanted to
3 do. Now in the position I'm in, when I'm scheduled
4 to be in court it really hinders my ability with my
5 schedule to do things sometimes that I need to do.
6 I feel like this is something that I need to do
7 today, and I hope that doesn't mess you all up in
8 any way, shape, or form. We wanted to fully advise
9 you of what was going on, why you're not gonna be
10 here this afternoon, and I appreciate it. We, as
11 the court, try to work with individuals during the
12 week when they have jury duty. For instance, if one
13 of you during the qualification process said Monday,
14 judge, I have a doctor's appointment Thursday, and I
15 looked at my clerk and said give that individual
16 protection for Thursday so they can go to the
17 doctor's appointment if necessary; but I wanted to
18 advise you of that before we started here this
19 morning.

20 Mr. Finney and Mr. Abdullah, do you want
21 me to go ahead and advise the jury on this matter?

22 SOLICITOR FINNEY: Yes, sir.

23 MR. ABDULLAH: Yes, Your Honor.

24 THE COURT: Okay. It's my understanding
25 also, ladies and gentlemen, that the first witness

1 that the State intends to call this morning is a
2 fingerprint individual analysis expert from SLED.
3 The document, the piece of paper that I hold in my
4 hand has been marked as State's Exhibit Number 10,
5 which is a fingerprint card. On this fingerprint
6 card, the name of the individual on here is Clayton
7 Montre Pinckney. I want to advise you all that
8 Mr. Finney as well as Mr. Abdullah, stipulate to
9 this issue; and that is, that Mr. Abdullah, his name
10 used to be Mr. Clayton Montre Pinckney and his name
11 was officially changed back in October 1995 to
12 Muttaqin Fatir Abdullah. So they stipulate that
13 this is, in fact, a fingerprint card of Mr.
14 Abdullah, but it's listed in his previous name of
15 Mr. Clayton Montre Pinckney, okay?

16 All right, Mr. Finney, call your first
17 witness please, sir.

18 SOLICITOR FINNEY: Thank you, Your Honor,
19 good morning. Good morning, ladies and gentlemen.

20 THE COURT: Before I -- hold on a minute.
21 Before I go any further, any exceptions or objection
22 to what I instructed the jury as relates to these
23 exhibits, Mr. Finney?

24 SOLICITOR FINNEY: Not from the State,
25 Your Honor.

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1 THE COURT: Mr. Abdullah?

2 MR. ABDULLAH: Not from Defense, Your
3 Honor.

4 THE COURT: Very well, call your witness
5 please, sir.

6 MR. FINNEY: We call Dianne Bodie.

7 THE CLERK: Place your left hand on the
8 Bible, raise your right hand. State your name.

9 THE WITNESS: Dianne Bodie.
10 WHEREUPON,

11 **DIANNE BODIE,**
12 having been duly sworn by the Clerk, testified
13 as follows:

14 THE CLERK: Have a seat up here please.
15 Please state your full name and spell your last name
16 for the record.

17 THE WITNESS: Dianne Watts Bodie,
18 B-O-D-I-E.

19 **DIRECT EXAMINATION**

20 BY SOLICITOR FINNEY:

21 Q Welcome to Sumter, Ms. Bodie.

22 A Thank you.

23 Q Tell us a little bit about your background
24 please. Where are you employed now?

25 A I'm currently employed with the Richland County

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1 Sheriff's Department in the crime scene latent print
2 unit as a latent print analyst.

3 Q And latent print analysts work with fingerprints
4 on a regular basis?

5 A Yes, sir.

6 Q All right. Tell us your background, if you
7 would, starting out when you first got out of
8 college what did you do?

9 A Well, actually when I graduated from high school
10 the next day I left and went to the FBI in
11 Washington, D.C., where I began my career. I often
12 make people laugh, I tell them Jay Edgar Hoover was
13 my first boss. I enrolled in a science fingerprint
14 course there at the FBI in DC in August of 1971, and
15 I have been examining fingerprints for 45 years
16 approximately. I stayed at FBI for a little over
17 six years and applied at the State Law Enforcement
18 Division in South Carolina, commonly known as SLED,
19 where I worked for a little over 30 years. My last
20 assignment was in the crime scene latent unit where
21 I was, retired as a senior agent in crime scene
22 latent print unit. I was responsible responding all
23 over the state as it related to crime scenes where I
24 did examinations in latent prints, crime scene, and
25 footwear.

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1 Q And were you a certified examiner of
2 fingerprints?

3 A Yes. I took a International Association for
4 Identification certification test which is
5 approximately an eight hour exam where we answer
6 questions. There's a written exam as well as a
7 comparison where we're given prints to compare to
8 identify or not identify so I'm certified with the
9 IAI.

10 Q Now in order for you to be a Richland County
11 Sheriff's Department examiner now, do you still have
12 to go to classes and be certified?

13 A We still have ongoing training all the time. We
14 take proficiency tests every year which are tests
15 that are -- they give us known prints and unknown
16 prints and we have to compare. People over all the
17 country and all over the world, their examiners take
18 proficiency tests. We're an accredited lab so that
19 is a requirement that we pass the proficiency test
20 every year, as well as every examination that I
21 conduct is also looked at. Another person will look
22 at whatever my results are and make sure that we
23 both come to the same result. So nothing goes out
24 of -- during my time at SLED it was always a hundred
25 percent verified, and my time at Richland County we

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1 verify everything so I not only look at it, but
2 another examiner will verify my results before I
3 issue a report saying something is identified or not
4 identified.

5 Q In 2004 were you a latents print examiner at
6 SLED?

7 A Yes, sir.

8 Q And did you receive certain evidence from Sumter
9 County regarding a case where the SLED case number
10 was L0403529 in regard to a Muttagin Fatir Abdullah
11 being a suspect?

12 A Yes, sir.

13 Q At that time at SLED was it your normal procedure
14 to examine items that had been sent to you from a
15 law enforcement agency to see if latent prints or
16 fingerprints could be found on those items?

17 A Yes, sir, as well as responding to scenes all
18 over the state and collecting evidence and doing
19 exams on impression evidence, we also receive agency
20 submitted evidence to our lab and we would receive
21 those cases on a rotation type basis and I received
22 this particular case to process the items that were
23 submitted.

24 Q Was it your normal duty in 2004 and continuing on
25 to be able to come to court and testify about the

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1 findings that you found at the lab?

2 A Yes, sir, that is one of our responsibilities.

3 Q And have you been qualified as an expert in
4 latent print analysis on prior occasions?

5 A Yes, sir.

6 Q Approximately how many times?

7 A Approximately 30 plus times, yes, sir.

8 Q All right. And just for the jury's education,
9 when you, do you always testify that you found a
10 print or that you've identified a fingerprint, or
11 sometimes you testify you couldn't find anything?

12 A I've testified to both. Sometimes, sometimes
13 there may be ridge detail on an item that I can't
14 identify it to anyone, may be of no value. And
15 sometimes I may identify, not be able to identify
16 anyone to that ridge detail, and then sometimes I'm
17 able to identify.

18 Q All right.

19 MR. FINNEY: Your Honor, at this time I
20 would offer the witness as an expert in fingerprint
21 latent print analysis.

22 THE COURT: Any objection?

23 MR. ABDULLAH: No objection from ---

24 THE COURT: All right. Ladies and
25 gentlemen, this individual is being qualified, has

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1 been qualified as an expert in the field of latent
2 fingerprint analysis to give testimony, opinion
3 testimony as to that issue. My previous instruction
4 to you with regards to experts apply here as well.
5 Just because they're being qualified as an expert
6 does not mean, does not mean that you must accept
7 the opinion but it is evidence for you to use in any
8 way that you see fit and give it the weight and
9 credibility that you believe is appropriate.

10 You may continue, sir.

11 SOLICITOR FINNEY: Thank you, Your Honor.

12 BY MR. FINNEY:

13 Q Ms. Bodie, first of all, I think you should tell
14 the jury a little bit about fingerprint analysis,
15 latent print analysis. What is a latent print?

16 A The term latent means hidden. In other words,
17 you don't necessarily see a print such as you can
18 walk by your ledge right there and all of you touch
19 it. You might not see it right away. I could
20 possibly add a light source to it to develop that
21 print where you visually could see it. Such as you
22 remember how you used to see fingerprints on a
23 refrigerator or on a mirror, those would be what we
24 call visible prints and you can see those; but
25 oftentimes, the prints that we have are latent where

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1 you don't see them until they're processed either
2 with chemicals or powders or photographs and light
3 sources. So latent is a term that's generally
4 referred to as prints, also that are collected at a
5 crime scene referred to as latent prints.

6 Q Would you tell the ladies and gentlemen of the
7 jury how a fingerprint is made.

8 A On your bottom of your hands and bottom of your
9 feet, all of the palm of your hands and the tips of
10 your fingers contain ridge detail. This ridge
11 detail is a raised surface and then there's a, what
12 we call hills and burrows. The ridge detail, the
13 raised surface, when you touch an item the residue
14 on that raised surface leaves that impression of
15 your fingerprint. Your body secretes through pores.
16 Your body secretes inorganic and organic materials.
17 99 percent of that material is generally water.

18 And everyone's different. We secrete
19 amino acids through our pores as well as salt,
20 things like that. But also, in just regular events
21 of the day, you know, like if I put lotion on my dry
22 hands and I touch something, of course I've really
23 created a oily type impression of my print. So that
24 99 percent water, if that's the only thing I'm
25 leaving on a surface it could evaporate and a print

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1 not be there. But more likely, my lotioned hand in
2 sitting on the surface, I have a better chance to
3 leave that print. Now I'm up there in age somewhat
4 now too and my prints are a lot worse than they used
5 to be at 18 so my age could factor into whether or
6 not I leave a print and the condition of my hand.
7 The surface of this counter could affect it. This
8 surface might not be as good as just a plain clear
9 piece of glass. You know, that would be really easy
10 because there's nothing to break up that ridge
11 detail formation to get that fingerprint.

12 So the only thing I can say about whether
13 you get a print or don't get a print is you'll never
14 get a print if it's not processed or if it's not
15 looked at, evaluated, and that's part of our job is
16 we will get the item of evidence that's submitted.
17 We will evaluate it, look at that item, determine is
18 it a porous item or nonporous. If it's a piece of
19 paper, as this paper is porous, if I touch this
20 piece of paper that residue from my fingerprint
21 ridge detail is going to absorb into this paper so I
22 can fold this piece of paper and I'm probably not
23 gonna damage that residue because it's in the fiber
24 of the paper. Whereas, I touch this counter, it's
25 just sitting on the surface unprotected so you can

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1 walk behind me and smear it; but you may not smear
2 it, but I'll never know until I process this counter
3 to see if I have ridge detail on it. So it's just,
4 we have ways of processing different items and
5 condition of a item, the texture of the item. As I
6 said earlier, wood grain or even something like this
7 is a little more difficult than just something very
8 like a mirror, just very flat and smooth surface.
9 So we have to take all those factors in. And you
10 know, unless I process it, I can't tell you if you
11 get a fingerprint or not.

12 Even items that have been wet, if they've
13 been wet I can possibly get a fingerprint, or I may
14 not. I may not get a print on a beautiful clean
15 mirror that you touch. The only way I know is to
16 process it and determine ridge detail.

17 Q As part of the analysis that you did for Sumter
18 County back in 2004, did you receive a Hi-point .45
19 caliber pistol, serial number 336674 with a empty
20 magazine and six unfired Federal .45 auto
21 cartridges?

22 A Yes, sir.

23 Q All right. And I don't know if you can remember
24 what it looked like but, is there any way for you to
25 identify what's been marked as State's Exhibit 6 as

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1 that firearm?

2 A It's hooked up, and I guess if this is that
3 serial number, then yes, it is. I can't see the
4 serial number on it.

5 Q All right. The serial number is on the other
6 side of the gun?

7 A Yes, sir.

8 Q All right. Does that appear to be a Hi-point
9 .45 caliber?

10 A It appears to look like it.

11 Q Let me ask you this, just from your looking at
12 this gun -- and you did examine this gun in your
13 laboratory or ---

14 A Yes, sir.

15 Q ---or the gun that was sent to you from Sumter?

16 A Uh-huh.

17 Q Can you tell the ladies and gentlemen of the jury
18 some of the particulars about this gun that might
19 make it difficult for a fingerprint to be left on
20 it?

21 A Well, there's several surfaces that -- the entire
22 gun could make it difficult just because the surface
23 of the gun; but then you see the ridge detail here,
24 the surface here where, the gripper of the gun, that
25 would make it more difficult. I'm not saying that

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1 it couldn't happen that you would get a fingerprint
2 on there, but it would make it more difficult. It
3 could explain why you might not get ridge detail.
4 And then just the surface itself is, in the movement
5 of the gun you're removing what you just touched
6 basically and gripping of the gun, etc, so.

7 Q And did you examine the gun that was sent to you
8 from Sumter to develop any latent prints?

9 A Yes, sir. I processed the gun as well as the
10 other items, the magazine, and the cartridges.

11 Q Were you able to develop any fingerprints from
12 the gun?

13 A I did not develop fingerprints on the gun or the
14 cartridges, and but I did develop prints on the
15 magazine.

16 Q All right. Now let me show you what's been
17 marked as State's Exhibit Number 13. Do you
18 recognize what's in the evidence bag?

19 A Yes, sir. This is the magazine that was
20 submitted, and it has an inch ruler marker that is
21 on the gun where I marked the evidence of the latent
22 print that was developed and it shows the SLED lab
23 number L43529 with my initials.

24 Q All right. Now when you processed that magazine
25 was it pretty much in the condition that it is in

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1 today?

2 A It appears to be the same condition 'cause it
3 still has my sticker on there.

4 Q All right. And you would have placed the sticker
5 on there before the examination or after the
6 examination?

7 A I place the sticker on there for it to be
8 photographed.

9 Q All right. And did you take a photograph of the
10 magazine in your lab?

11 A Well, the photography department did.

12 Q All right. I want to show you what's been marked
13 as State's Exhibit Number 9. Did you bring this
14 photograph to court today?

15 A Did I bring this today?

16 Q Is that the photograph ---

17 A Yes.

18 Q ---that you got from the SLED photo lab?

19 A Yes, this would be the photograph. It has my
20 inch ruler on there as well ---

21 Q All right.

22 A ---marking the evidence.

23 Q And is that the same inch ruler that's on the
24 magazine that's in court today in State's Exhibit
25 Number 13?

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1 A Yes, sir.

2 Q All right.

3 MR. FINNEY: Move to introduce State's
4 Exhibit Number 9.

5 MR. ABDULLAH: No objection from Defense,
6 Your Honor.

7 THE COURT: Without objection so admitted.
8 (WHEREUPON, State Exhibit No. 9 was
9 admitted into evidence.)

10 BY MR. FINNEY:

11 Q So the photograph that you took or you had taken
12 at the SLED lab is the same item that's in State's
13 Exhibit Number 13, which is the magazine from the
14 gun?

15 A Yes, sir.

16 Q All right. Now were you able to find latent
17 prints on the magazine that was submitted to you?

18 A Yes, sir. I developed a latent print on the
19 magazine and marked it. It's -- let me use my
20 glass. It's directly underneath the inch ruler
21 here.

22 Q On that photograph?

23 A There's a latent print right here.

24 Q All right. And tell us what you then did to find
25 out whose print that was on the magazine.

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1 A Well, we, we were given a name to print out a
2 card, a fingerprint card, so that I could compare
3 ---

4 Q All right.

5 A ---that fingerprint with that card.

6 Q And the fingerprint card that you downloaded or
7 received, was it in a automatic computer system?

8 A Yes, sir. I retrieved the card from the
9 Automated Fingerprint Identification System and
10 printed it out.

11 Q All right. I want to show you what's been marked
12 as State's Exhibit Number 10 and see if you can
13 identify what that is.

14 A Yes, sir. I created item 14 with this copy of a
15 fingerprint card. It states at the top right corner
16 item 14, our lab number, and my initials.

17 Q And based on that fingerprint card, whose
18 fingerprints were printed or reflected on that card?

19 A Based on this fingerprint card I did a compare--
20 I examined the print from the magazine, did the
21 fingerprints on the card, and identified the number
22 6 which is the left thumb of Clayton Montre
23 Pinckney.

24 Q All right.

25 MR. FINNEY: I would move into evidence

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1 State's Exhibit Number 10, the fingerprint card.

2 MR. ABDULLAH: No objection from Defense,
3 Your Honor.

4 THE COURT: Without objection so admitted.
5 (WHEREUPON, State Exhibit No. 10 was
6 admitted into evidence.)

7 BY SOLICITOR FINNEY:

8 Q Now Ms. Bodie, you say that the magazine had a
9 latent print on it that matched which finger of
10 Mr. Pinckney, Mr. Abdullah?

11 A It's the left thumb.

12 Q The left thumb. And could you tell the jury what
13 was the orientation of that fingerprint on the
14 magazine as you found it in your laboratory? And
15 you can use what's in State's Exhibit Number 13,
16 which is the actual magazine. Would you like to
17 remove it?

18 A Yes, please. I'm gonna look and see if it's
19 still on there (examines magazine). Okay. The
20 fingerprint is right here on the magazine.

21 Q And where, if you can tell us ---

22 A So---

23 Q Yes, ma'am.

24 A This would be the left thumb and it was touching
25 just like that.

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1 Q All right. And the top of the magazine where you
2 load the bullets in is where?

3 A Here (indicating).

4 Q And the bottom of the magazine where it goes in,
5 where it rests on the bottom of the gun would be at
6 the bottom?

7 A At the bottom.

8 Q All right. So the orientation of the left thumb
9 was up on the side?

10 A Up right here. It's exactly how my left thumb is
11 hitting is right over the left thumb and oriented in
12 the same way.

13 Q Very good. And was that the only latent print
14 you were able to develop in the lab at that time?

15 A Yes, sir.

16 Q All right. And after you took the picture of the
17 magazine with your identifying sticker on it and you
18 made a finding of the print, did you then send a
19 report to Sumter County, let them know that you had
20 found a print on the magazine?

21 A Yes, sir.

22 Q And then the report was sent and then the item
23 that you had in your lab the magazine was actually
24 sent back to Sumter, put back in evidence?

25 A Well, what I do is when I'm finished with my

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1 examination my report is written. I return the
2 evidence to downstairs in the SLED lab and call it
3 lab return, which is latents return box. So I would
4 return it there and at some -- whenever it returned
5 to Sumter I have no idea.

6 Q Very good. I'm gonna put this back in the
7 evidence bag. And did you have any other items that
8 you examined that had any evidence value as far as
9 this case is concerned?

10 A No, sir.

11 Q Thank you very much for coming. Answer any
12 questions the Defense may have.

13 A Thank you.

14 THE COURT: Cross-examination, sir.

15 MR. ABDULLAH: Yes, sir.

16 **CROSS-EXAMINATION**

17 BY MR. ABDULLAH:

18 Q How are doing, Ms. Bodie?

19 A I'm fine, thank you.

20 Q Yes, ma'am. When you received this evidence and
21 you tested for fingerprints, did you ever find
22 fingerprints on the gun or the bullets, ma'am?

23 A No, sir, I did not.

24 Q And did you test it for it?

25 A Yes, sir, I did.

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1 Q Now were the bullets still in the clip when you
2 received it or were they already lose?

3 A I received item four which was all of that, the
4 gun, the bullets, and the magazine. It was received
5 from the evidence room on 4/7/04 in a sealed brown
6 box. The gun was suspended on a wooden dowel rod.
7 The cartridges were further contained in a small
8 white box, and the magazine was empty and further
9 contained in a small Manila envelope.

10 Q Okay. So, the clip that you have, right, is it
11 okay if I touch that clip, Your Honor?

12 THE COURT: Is it in the bag sealed?

13 MR. FINNEY: Yes, sir.

14 THE COURT REPORTER: Yes, sir.

15 MR. ABDULLAH: Is it okay if I touch it?

16 THE COURT REPORTER: It's in the bag, but
17 he cut the bag open so he can take it out.

18 THE COURT: Leave it in the bag, if you
19 would.

20 MR. ABDULLAH: I want to make a
21 demonstration for her if I could---

22 THE COURT: Let me see the exhibit, Madam
23 Court Reporter.

24 Any objection to me taking it out?

25 SOLICITOR FINNEY: No, Your Honor.

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1 MR. ABDULLAH: Thank you, sir.

2 THE COURT: Yes, sir. And that's State's
3 Exhibit Number 13.

4 BY MR. ABDULLAH:

5 Q And where exactly, you said my left thumb print
6 is on the clip is right...

7 A Yes, your left thumb and you might can see it.
8 Can you see ridge detail right there?

9 Q Uh-huh. Right here?

10 A That's ---

11 Q My left thumb?

12 A Yes, sir.

13 Q Okay, left thumb, right?

14 A Yes, sir.

15 Q Now if I'm holding this clip, right?

16 A Yes, sir.

17 Q And I'm putting bullets in it, right?

18 A Yes, sir.

19 Q Then my fingerprint should be on the bullets too,
20 would you agree, if I tested it?

21 A No, I won't know until I process it.

22 Q Process it. But you did test the bullets, right?

23 A I processed the bullet, yes, sir.

24 Q But now, well, my left thumb print being on this
25 clip, do this prove that I possessed a gun or do

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1 this prove that at some point my thumb may have
2 touched the clip?

3 A It proves that your thumb touched that magazine.

4 Q Thank you very much. No further questions.

5 THE COURT: Okay. Any redirect?

6 SOLICITOR FINNEY: No, Your Honor.

7 Ma'am, you may step down.

8 THE WITNESS: Thank you.

9 SOLICITOR FINNEY: Ask that the witness be
10 excused, Your Honor.

11 THE COURT: Any objection, sir, Mr.
12 Abdullah?

13 MR. ABDULLAH: No objection from Defense,
14 ma'am.

15 THE WITNESS: Thank you.

16 THE COURT: Ma'am, you're free to go. You
17 have no further responsibility under your subpoena.
18 Have a nice day.

19 MR. FINNEY: We'd call Miss Ila Simmons to
20 the stand.

21 THE CLERK: State your name please.

22 THE WITNESS: Ila Simmons.

23 WHEREUPON,

24 **ILA SIMMONS,**

25 having been duly sworn by the Clerk, testified

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1 as follows:

2 THE CLERK: Thank you. Have a seat up
3 here please. Please state your full name, spell
4 your last name for the record.

5 THE WITNESS: My name is Ila Simmons. My
6 last name is spelled S-I-M-M-O-N-S.

7 **DIRECT EXAMINATION**

8 BY SOLICITOR FINNEY:

9 Q Good morning, Ms. Simmons.

10 A Good morning.

11 Q Ms. Simmons, tell us a little bit about yourself.
12 Where do you work now please?

13 A I'm employed at the South Carolina Law
14 Enforcement Division, also known as SLED, in the
15 forensic services laboratory, trace evidence
16 department.

17 Q And how long have you been connected with the
18 trace evidence department?

19 A 15 years.

20 Q All right. And tell the ladies and gentlemen of
21 the jury what you do at the trace evidence
22 department.

23 A Trace evidence encompasses several areas of
24 forensics. We analyze gunshot residue, gun powder
25 residues. We also compare fibers, paints, glass, as

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1 well as analyzing post-blast explosives and arson
2 residue.

3 Q All right. And normally are you examining items
4 or things that are sent to the SLED lab?

5 A Yes, sir.

6 Q All right. Did you work at SLED in 2004 when a
7 certain case from Sumter County sent evidence to the
8 SLED trace lab?

9 A Yes, sir, I was working there then.

10 Q All right. And did you test certain gunshot
11 residue kits for Sumter County as a result of that
12 submission?

13 A Yes, I did.

14 Q All right. Now let's talk a little bit about
15 your background. Tell us where you went to college
16 and something about your professional
17 certifications.

18 A I went to Columbia College. I received a
19 bachelors of science in chemistry, a bachelors of
20 arts and biology and associate's degree in
21 mathematics. After completing that I went to work
22 at SLED where for the first three years I worked
23 with a court qualified, SLED certified trace
24 evidence examiner. During that time I had to take
25 written and practical examinations and complete them

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1 with one hundred percent efficiency. During that
2 time I was also a member of the FBI's gunshot
3 residue symposium where they invited the top gunshot
4 residue analysts from around the world to come to
5 Quantico and establish guidelines for everyone in
6 the world that would use and analyze gunshot
7 residue. I've been working at SLED for about 15
8 years, and each year I have to take proficiency
9 tests passing with one hundred percent efficiency in
10 all areas of trace evidence.

11 Q And I wanted to ask you because Miss Bodie said
12 this, when you do a analysis on evidence is it
13 screened or supervised so that there's a second
14 opinion given as to your findings?

15 A Yes, sir. We have a one hundred percent
16 technical peer review process at the laboratory.
17 I'll perform analysis on the evidence. I will give
18 that to another analyst that is also qualified and
19 certified in that area, and they will have to come
20 to the exact same conclusion that I came to before
21 the report would go out.

22 Q Understood. Now you say you've been working in
23 this 15 years. Have you been qualified as an expert
24 previously and testified in court?

25 A Yes, I have.

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1 Q And would you give us an estimate of how much
2 times you've been qualified?

3 A Approximately 300 times.

4 Q All right.

5 MR. FINNEY: At this point, Your Honor, I
6 would offer Ila Simmons as an expert in the trace
7 evidence analysis.

8 THE COURT: Any objection?

9 MR. ABDULLAH: No objection from the
10 Defense, Your Honor.

11 THE COURT: All right, ladies and
12 gentlemen, this individual is being offered as an
13 expert in the field of trace evidence analysis. The
14 same charge applies to you with regards to this
15 individual as it relates to expert testimony.

16 You may continue, sir.

17 SOLICITOR FINNEY: Thank you, Your Honor.

18 BY MR. FINNEY:

19 Q Ms. Simmons, in SLED case number L0403529 what
20 items did you receive from Sumter County?

21 A I received three gunshot residue collection kits.

22 Q All right. And do these -- I'm gonna show you
23 what's been marked as State's Exhibit 34, 35, and 36
24 and ask you to examine them and tell us if you
25 recognize them.

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1 A Yes, sir, I do. I recognize all three.

2 Q And tell us a little bit about how the kits are
3 set up, what's in the kit, and how it gets to you
4 from Sumter County so to speak.

5 A Yeah. This particular kit is made by a company
6 called Tri-Tech. Tri-Tech sends us samples from
7 every lot that they produce of these kits so that we
8 can analyze them and make sure there's no
9 possibility for any outside contamination so they're
10 one hundred percent clean. They're purchased by
11 each individual agency, and we also provide them at
12 SLED to any agencies who can't buy their own kits.
13 And after Sumter, in this case, would receive these
14 kits they would have been clean, they would have
15 been opened. They would have opened the kits on the
16 day that they wanted to analyze, wanted the kit to
17 be administered, and it would administer on each
18 person.

19 This kit contains two parts. It contains a
20 double sided sticky tape with a handle on it so that
21 the hand of the person collecting the kit never
22 touches the sticky tape that I analyze. The only
23 thing that touches that sticky tape would be the
24 hand of the person from whom the kit is being
25 collected. In this case it would have been all

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1 three individuals. And there are also cotton swabs
2 in the GSR kit. And a small amount of nitric acid
3 is placed on the cotton swabs, and it is also dabbed
4 over the areas of a person's hands. A sample is
5 taken from the right palm, another sample from the
6 back of the right hand, a sample from the left palm,
7 a sample from the back of the left hand. That would
8 have all been placed back into this GSR kit
9 envelope, and it would be sealed with evidence tape
10 that is tamper resistant. If anyone had opened this
11 after it was sealed we would have been able to
12 determine that.

13 Q All right. Now once that kit is taken at the
14 local agency it is sent through the channels to SLED
15 to your lab?

16 A That's correct.

17 Q When you open the envelope what are you looking
18 for?

19 A We are looking for the presence of gunshot
20 residue. Gunshot residue is a mixture of
21 microscopic chemicals that come out of a gun when
22 it's discharged. It can get on anything within
23 close proximity to that gun, including the hands of
24 the person that discharged the gun; or if someone
25 sustained a gunshot wound, they can also get gunshot

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1 residue on their hands that way.

2 Q All right. Now is it your understanding that one
3 of the kits was for, and I believe it's number 36.

4 Can you tell us which kit has State Exhibit 36?

5 What's the name on it?

6 A It is from Mr. Abdullah.

7 Q All right. And did you analyze that kit to
8 determine whether or not you could find the presence
9 of gun powder residue?

10 A Yes, sir, I did.

11 Q All right. Did you find it?

12 A No, sir, I did not.

13 Q All right. Now tell the ladies and gentlemen of
14 the jury what your laboratory findings are based on
15 in terms of is there a necessary amount or quantity
16 that has to be found for you to say, yes, it's
17 present?

18 A Yes, sir. Gunshot residue consists primarily of
19 lead, barium, and antimony, and that's what we're
20 looking for on these samples that are submitted to
21 us. It has, we have to find a certain threshold
22 level of each metal before we can say that gunshot
23 residue is present.

24 Q And the threshold, is it measured in quantitative
25 amounts like 10 percent, 20 percent?

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1 A It's measured in parts per million and parts per
2 billion so you have to understand that the gunshot
3 residue we're looking for, you can fit a hundred of
4 those gunshot residue particles across the typical
5 pen, so it's very small, so it would be a very small
6 amount that could be detected.

7 Q All right. And in order for you to say there is
8 gunshot residue present or there's not, there has to
9 be enough to meet that threshold?

10 A That's correct.

11 Q So in this particular case you did not find
12 enough of any kind of evidence to say that it was
13 over the threshold that you were looking for, and so
14 you had to say officially there was no gunshot
15 residue on Mr. Abdullah's hands?

16 A That's correct.

17 Q All right. Did you find any gunshot residue on
18 the other two kits that were submitted?

19 A No, sir, I did not.

20 Q And would you give the jury the names on those
21 other two?

22 A Yes. On State's Exhibit 35 it is Marell McBride
23 and on State's Exhibit 34 it is David Way.

24 Q All right. Now, let's go back to item 36 which
25 is Mr. Abdullah's kit. Can you explain to the jury

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1 why if it was believed that Mr. Abdullah fired a
2 weapon and his hands were tested, would there have
3 been a time limit when SLED protocol requires the
4 test to be done within a certain amount of time?

5 A Yes. On a living individual gunshot residue will
6 not remain longer than six hours, and that's the
7 farthest window. Gunshot residue has a consistency
8 of baby powder so if you were to get gunshot residue
9 on your hands and wash your hands, it'll be gone.
10 If you were to shower it would be gone. If you were
11 to put your hands in and out of your pockets, it
12 could be wiped off. If you were to start sweating
13 or if you hold a glass that has condensation on it,
14 all of these things can remove gunshot residue.

15 Q All right. Now if Mr. Abdullah fired a weapon
16 and was tested within, let's say, two hours, that
17 window of time would have allowed gunshot residue to
18 remain in most cases?

19 A In some cases, yes, sir, depending upon the
20 activity of the person.

21 Q All right. And if he was alive and doing well,
22 he had an opportunity to do some of the things you
23 mentioned, wash his hands, put his hands in his
24 pockets ---

25 MR. ABDULLAH: Objection.

SW - I. SIMMONS - DIRECT

1 THE COURT: Let him finish his question
2 first please. Go ahead and finish your question.

3 BY SOLICITOR FINNEY:

4 Q If he had an opportunity to wash his hands, put
5 his hands in, out of his pockets, wipe his hands
6 down with a towel or something, would that have
7 affected your ability to find gunshot residue on his
8 hands.

9 THE COURT: Now stop, don't answer the
10 question.

11 Now do you have an objection, sir?

12 MR. ABDULLAH: Yes, I have ---

13 THE COURT: State your grounds for your
14 objection, no argument as to the objection. State
15 your grounds for it pursuant to the rules.

16 MR. ABDULLAH: Yes, insinuation by...

17 THE COURT: Okay, objection overruled.
18 You may answer the question, ma'am.

19 THE WITNESS: Yes, sir. If those things
20 took place within that time period it can remove
21 gunshot residue.

22 BY MR. FINNEY:

23 Q Now you say that the gunshot residue is a product
24 of the firing of the bullet out of the gun?

25 A Yes, sir.

SW - I. SIMMONS - DIRECT

1 Q Tell the ladies and gentlemen of the jury where
2 the gunpowder residue would mostly come from in the
3 process of firing, especially are you aware of a gun
4 like this Hi-point?

5 A Yes, sir.

6 Q .45 semiautomatic?

7 A Yes, sir. 98 percent of the gunshot residue is
8 gonna come out of the muzzle of the gun where the
9 bullet exits the gun, and it is gonna go forward
10 toward a target.

11 Q Let's just show them that just so we'll be clear.
12 This is State's Exhibit Number 6. Where is the
13 muzzle of the gun?

14 A It would be this end here where the bullet exits
15 from the gun.

16 Q All right. And so 98 percent of the expended
17 gunpowder residue would go out toward the bullet,
18 with the bullet?

19 A Correct.

20 Q And what about the other 2 percent?

21 A It would come out of the ejector port and also
22 around where the trigger is. The ejector port is
23 where the shell casing is extracted from the gun.

24 Q And is that on the right side of this gun?

25 A Yes, sir, it appears to be.

SW - I. SIMMONS - CROSS

1 Q All right. And does that type of weapon, a
2 semiautomatic weapon like that, would you find more
3 gunpowder residue coming out as compared to a
4 revolver?

5 A No, sir. It would produce less gunshot residue
6 because it's such a tight system they have, it has
7 to keep its gases inside of the weapon so that it
8 can extract the cartridge case as well as load
9 another cartridge so less gases are gonna escape
10 from this gun than would a revolver.

11 Q And so, therefore, less evidence would be on the
12 shooter's hands by using that gun as compared to a
13 revolver?

14 A Yes, sir, that's correct.

15 Q All right.

16 MR. FINNEY: If you would, give me a
17 moment please, Your Honor.

18 (Pause.)

19 MR. FINNEY: Ms. Simmons, thank you for
20 answering our questions. Answer any questions the
21 Defense may have.

22 THE COURT: Cross-examination, sir.

23 **CROSS-EXAMINATION**

24 BY MR. ABDULLAH:

25 Q How are you doing, Ms. Bodie?

SW - I. SIMMONS - CROSS

1 A Good, thank you.

2 Q What was your name again?

3 A Simmons.

4 Q Simmons, I'm sorry. Yes, Ms. Simmons, you stated
5 that you did a gunshot residue on both of the
6 victims, David Way and Marell McBride; is that
7 right.

8 A That's correct.

9 Q And you also did one on the defendant Mr.
10 Abdullah, me?

11 A Yes, sir.

12 Q And on your analysis all three of these tests
13 negative, right?

14 A That's correct.

15 Q Okay. No further questions.

16 THE COURT: Any redirect?

17 SOLICITOR FINNEY: No, I thank the witness
18 for coming and ask that she be excused.

19 THE COURT: Any objection, Mr. Abdullah?

20 MR. ABDULLAH: No, sir.

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

22 You're free to go and have no further
23 responsibilities from your subpoena.

24 SOLICITOR FINNEY: Your Honor, could we
25 approach.

1 THE COURT: Yes.

2 (WHEREUPON, counsel approached the
3 Bench for an off-the-record discussion.)

4 THE COURT: All right, ladies and
5 gentlemen, the next witness that is going to testify
6 is Doctor Janice Lage.

7 SOLICITOR FINNEY: Yes, sir.

8 THE COURT: I think I pronounced that
9 correct, who is the pathologist, and she is in the
10 State of Mississippi, all right, and they're going
11 to Skype her and you'll see her on a video here of
12 her testimony. But it's going to take, she is
13 scheduled to be prepared to go forward at 11:00 our
14 time, okay, which is 10:00 her time, okay. So the
15 Solicitor informed me that it's gonna take about 30
16 minutes to get the technology where they need it to
17 be to be prepared to do that at 11:00. What we're
18 gonna do is, I'm gonna let you stand down or go to
19 the jury room. I don't like you having to sit back
20 there for this elongated long period of time. If
21 you wish to leave I will allow you to do that, but
22 make sure you're back here by 11:00, by 11:00. We
23 will continue at that time. Do not, don't discuss
24 the case, don't do any independent investigation on
25 your own. But I'll let you stand down.

1 If you will take them to the jury room,
2 sir. And if any of them wish to leave you're free
3 to do so. Make sure you're back here at 11:00.

4 (WHEREUPON, the jury was removed from the
5 courtroom at 10:19 a.m.)

6 THE COURT: All right, we'll stand down.
7 I'll be back in here about 5 till 11.

8 (WHEREUPON, a recess was taken from the
9 proceedings.)

10 (Doctor Janice Lage is presented using Skype.)

11 MR. FINNEY: Doctor, is it Lage of Laj?

12 THE COURT: Doctor Lage, can you hear me?

13 THE WITNESS: Yes.

14 THE COURT: I am Judge Brown.

15 THE WITNESS: Yes, sir.

16 THE COURT: Also, if you would, on any
17 questions that are asked of you that warrant a yes
18 or no response, I need a yes or no as opposed to an
19 uh-huh or huh-uh, okay, so that the record is clear
20 on that issue, okay.

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. What we're going
23 to do, the jury is not in the courtroom right now.
24 There's an issue that came up that was discussed
25 pretrial by Mr. Abdullah about some questioning that

1 he wanted to, or questions he wanted to ask of you
2 concerning, I guess, a toxicology of the victim in
3 this case. And what I am going to do right now, I
4 am going to rule -- I do not believe that that's
5 admissible based upon the testimony that has been
6 elicited during the course of this trial -- but in
7 an effort to protect Mr. Abdullah's rights on this
8 issue, I'm gonna allow him before I bring the jury
9 in here to stand up and question you on those issues
10 so that the record is protected for him, okay?

11 THE WITNESS: Yes, sir.

12 THE COURT: And so, Mr. Abdullah, if
13 you'll stand up, come up to that podium, and go
14 ahead and put that microphone on. I'm gonna allow
15 you to ask her questions that you wanted to ask of
16 her pertaining to the toxicology, okay, to the
17 marijuana that was allegedly based upon that report
18 the marijuana that I think was found in his system,
19 okay. So ask whatever questions you want to ask on
20 that issue if you would. Has she been -- she's not
21 been sworn? All right.

22 MR. FINNEY: No, she has not.

23 THE CLERK: Good morning, Doctor Lage.

24 THE WITNESS: Good morning.

25 THE CLERK: State your name please.

1 THE WITNESS: Janice Marie Lage, L-A-G-E.
2 WHEREUPON,

3 **JANICE LAGE,**
4 having been duly sworn by the Clerk, testified
5 as follows:

6 THE CLERK: Thank you, ma'am.

7 MR. FINNEY: Would you just maybe for the
8 record say that she's in Jackson, Mississippi, and
9 she's been ---

10 THE COURT: You've already said it but,
11 I'll say it as well. Dr. Lage is in Jackson,
12 Mississippi, testifying in this trial via Skype
13 without objection by either party, and at this time
14 I'm gonna allow the defendant Mr. Abdullah to
15 proffer some testimony of Doctor Lage concerning
16 issues relating to the report prepared by Doctor
17 Lage in her examination of the victim.

18 Mr. Abdullah, you may ask her, proceed at
19 this time asking her questions relating to that
20 issue, sir.

21 **P R O F F E R E X A M I N A T I O N**

22 BY MR. ABDULLAH:

23 Q How are you doing, Ms. Lage?

24 A Good morning, I'm fine.

25 Q Yes, ma'am. I would just like to know from your

1 toxicology report was there any intoxicants or
2 alcoholic beverages found on the victim's body that
3 you diagnosed?

4 A So we diagnosed alcohol in his blood and there
5 was a small amount of alcohol, 0.3 percent.

6 Q Okay. And I had read in your report from the
7 federal government back in 2005 that you stated he
8 had a high level of marijuana in his system. Is
9 that true what you wrote in your report that you
10 recall?

11 A I don't see that in this report. The report was
12 2004.

13 THE COURT: If -- Mr. Abdullah, if you
14 would direct her to what page of that report so she
15 can look at that.

16 MR. ABDULLAH: Okay. Well, I don't
17 actually have the report available because the
18 government have that report under seal. The federal
19 government don't let us keep it. They just let me
20 study it. I'm just going off my memory of what she
21 wrote.

22 THE COURT: Well, let me ask, let me
23 interject here. What was handed up to me pretrial,
24 what was that from, Mr. Finney?

25 MR. FINNEY: That's Doctor Lage's forensic

1 autopsy report.

2 THE COURT: Does the defendant have a copy
3 of that?

4 SOLICITOR FINNEY: He does.

5 THE COURT: Okay. What page is it of her
6 forensic autopsy report that refers to the THC in
7 the system?

8 SOLICITOR FINNEY: Page 8.

9 MR. ABDULLAH: Page 8.

10 THE COURT: If you'd look at page 8,
11 Doctor.

12 THE WITNESS: Yes. So, what we do is we
13 send the forensic testing to the National Medical
14 Services, and we had sent blood which came back at
15 0.3 percent alcohol, and we sent urine that had 0.7
16 nanograms per ML of Delta 9 THC, marijuana.

17 THE COURT: Okay.

18 MR. ABDULLAH: That's marijuana.

19 THE COURT: Yes, sir.

20 BY MR. ABDULLAH:

21 Q And what's the name of, what was that again, the
22 marijuana? You said cannibore [sic]?

23 SOLICITOR FINNEY: THC.

24 BY MR. ABDULLAH:

25 Q Or THC. So the THC represents marijuana, right?

1 A Correct.

2 Q Thank you very much, ma'am. No further
3 questions.

4 THE COURT: All right. Now let me ask
5 this question. I don't know if it was something
6 that was, it hadn't come -- was there an issue
7 pertaining to crack cocaine being on the victim or
8 was that ---

9 SOLICITOR FINNEY: There was evidence he
10 was carrying it.

11 THE COURT: Okay. None of that has come
12 out during the course of the trial. Is that
13 something that would have been in her report?

14 SOLICITOR FINNEY: No, sir.

15 MR. ABDULLAH: Yes, it was in her report.

16 THE WITNESS: It is in the report. It's
17 in the page history at the last paragraph.

18 THE COURT: Okay.

19 BY MR. ABDULLAH:

20 Q And would you mind iterating what you found?

21 A We didn't find anything on the body when we
22 performed the autopsy; but as you can see, the case
23 history demonstrated that conversation with the
24 coroner revealed a report by medical personnel who
25 found two vials of crack cocaine, one in the

1 decedent's rectum and one in his possession in a
2 chapstick container.

3 MR. ABDULLAH: Thank you very much, ma'am.

4 THE COURT: And I, I'm not -- I allowed
5 you to proffer that as well. I'm not gonna allow
6 that to come out even based upon the testimony that
7 I've heard. And just by way of example for you, Mr.
8 Abdullah, had for instance they had found crack
9 cocaine on you at the time of the arrest I wouldn't
10 have allowed it in your case either, okay?

11 MR. ABDULLAH: Yes, sir.

12 THE COURT: 'Cause I don't think it's
13 relevant to the issues that we're here for in your
14 trial this week, okay?

15 MR. ABDULLAH: Yes, sir.

16 THE COURT: But your -- I allowed you to
17 proffer that testimony. I think the appellate
18 courts are clear when I do not allow certain
19 testimony you need to proffer it to make sure your
20 rights are protected on that issue, okay.

21 Anything else before we bring the jury
22 back in, Mr. Finney?

23 SOLICITOR FINNEY: No, Your Honor.

24 THE COURT: Mr. Abdullah?

25 MR. ABDULLAH: Yes, sir. Okay, so, he's

1 gonna speak on behalf, you don't want that to be in
2 front of the jury?

3 THE COURT: Correct, that's why we're
4 doing it right now.

5 MR. ABDULLAH: Okay. All right.

6 THE COURT: So it's gonna be the same
7 order that we've done throughout the trial.
8 Mr. Finney will question her first, followed by you
9 on cross-examination, okay?

10 MR. ABDULLAH: Okay.

11 THE COURT: Okay. Anything else before I
12 bring the jury in?

13 SOLICITOR FINNEY: Nothing from the State.

14 THE COURT: Anything else, Mr. Abdullah,
15 before I bring the jury back?

16 MR. ABDULLAH: Nothing from Defense, Your
17 Honor.

18 THE COURT: All right, if you'll bring me
19 the jury please, sir.

20 Doctor, when the jury comes back they're
21 gonna swear you in again.

22 THE WITNESS: Okay.

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 10:57 a.m.,
25 and the following proceedings commenced

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1 in open court.)

2 THE COURT: If you'd swear the witness
3 please, sir.

4 THE CLERK: Yes, sir, Your Honor.

5 State your name please.

6 THE WITNESS: Janice Marie Lage, L-A-G-E.

7 WHEREUPON,

8 **JANICE LAGE,**

9 having been duly sworn by the Clerk, testified
10 as follows:

11 THE CLERK: Thank you, ma'am.

12 **DIRECT EXAMINATION**

13 BY SOLICITOR FINNEY:

14 Q Good morning, Dr. Lage.

15 A Good morning, Mr. Finney.

16 Q Would you tell the ladies and gentlemen of the
17 jury where you are this morning.

18 A I am in Jackson, Mississippi.

19 Q And tell us what you do in Jackson.

20 A I'm a pathologist and I work for the University
21 of Mississippi Medical Center.

22 Q And how long have you been at the University of
23 Mississippi?

24 A It will be four years in February.

25 Q All right. And before you moved to Mississippi

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1 were you a member of the pathology department at the
2 Medical University of South Carolina in Charleston,
3 South Carolina?

4 A Yes.

5 Q And did you have the occasion to perform
6 autopsies in 2004, specifically March of 2004, for
7 law enforcement agencies and coroners who requested
8 your assistance?

9 A Yes.

10 Q In March of 2004 did you have the occasion to
11 examine the body of one Mr. David Way from Sumter
12 County?

13 A Yes.

14 Q All right. And he was brought to you,
15 Charleston, by the Sumter County coroner's office?

16 A Yes.

17 Q All right. Could you tell the ladies and
18 gentlemen of the jury what you do as a pathologist
19 when you are preparing yourself for an autopsy.

20 A So what we do is we speak with the coroner and
21 try and get some medical information and to
22 understand about the scene of the crime. We then
23 examine the body externally to identify any
24 penetrations, marks, abrasions, or scratches. We
25 take x-rays of any area where there might be a

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1 bullet or other projectiles to see if the projectile
2 is present in the patient. We then open the body in
3 the midline and examine all the organs, and we open
4 the head and examine the brain. We send blood and
5 urine for toxicology and send tissues for future
6 toxicology studies.

7 Q Now Doctor Lage, how long had you been doing this
8 kind of work in 2004 when you saw Mr. Way?

9 A So I've been a pathologist probably 25 years or
10 so at that point in time. I did autopsies from time
11 to time.

12 Q And in order to testify in court have you been
13 qualified as an expert in pathology before?

14 A Yes.

15 Q And how many times would you estimate?

16 A A number of times.

17 Q All right. And was that in South Carolina?

18 A Yes.

19 Q And was that in state and federal court?

20 A Yes.

21 Q Now let me back up just a little bit. Your
22 professional career started right after school.
23 Where did you go to college?

24 A San Jose State in California.

25 Q And tell us a little bit about what happened.

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1 You got a degree in what?

2 A My degree was in nursing, and then I went back
3 and took additional premedical courses and went to
4 Medical School at Washington University in Saint
5 Louis.

6 Q In Saint Louis. And once you were, earned your
7 medical degree, did you have to specialize with
8 further training to become a pathologist?

9 A Yes. I did four years of training in pathology.
10 One of those years was a clinical year of OBGYN. At
11 that time I sat for my board certification and was
12 certified in 1985.

13 Q Tell the ladies ---

14 A I took my first job out of training in Boston at
15 the Brady Women's Hospital.

16 Q Tell the ladies and gentlemen a little bit about
17 what the field of study of pathology involves.

18 A Pathology looks at diseases and how they manifest
19 themselves in the body's tissues.

20 Q And do you study as part of that what causes the
21 body to shut down and become death?

22 A Yes.

23 Q All right. And you said that at the time you saw
24 and examined Mr. Way you had been a pathologist
25 approximately 25 years?

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1 A So I graduated in, from residency in 1984, and
2 this was in 2004 so I had been out '84, '94, 20
3 years.

4 Q Yes, ma'am. And during that time how many
5 autopsies would you say you performed or assisted
6 in?

7 A Oh, I've done hundreds of autopsies.

8 Q All right.

9 MR. FINNEY: At this point I would ask
10 that the Court find that Doctor Lage is an expert in
11 the field of pathology.

12 THE COURT: Any objection, Mr. Abdullah?

13 MR. ABDULLAH: No objection from the
14 Defense, Your Honor.

15 THE COURT: Without objection she is so
16 qualified as an expert in the field of pathology.
17 What I charged you with regards to expert witness
18 applies here as well.

19 You may continue, Mr. Finney.

20 SOLICITOR FINNEY: Thank you, Your Honor.

21 BY MR. FINNEY:

22 Q Doctor Lage, the findings that you first noticed
23 and put in your -- did you prepare a written report
24 at the end of every autopsy?

25 A So this is the written report of the autopsy.

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1 Q And do you prepare one in every case?

2 A Yes.

3 Q And then you send the report, the findings of the
4 report, back to the coroner that submitted the body
5 to you?

6 A Correct.

7 Q All right. Can you tell us, I believe on page 2
8 of your autopsy report there was some external
9 examination findings. How much did this adult male
10 weigh and what was his approximate length and years
11 of age?

12 A He weighed 219-pounds. He was 73.5 inches tall
13 and he appeared compatible with the age of 27 years.

14 Q All right. And what did you find as a result of
15 the autopsies that would be in line with his cause
16 of death?

17 A We found a single penetrating gunshot wound to
18 the head.

19 Q All right. And would you tell us a little bit
20 about the gunshot injury to the head? Did you find
21 an entrance wound in the head area on Mr. Way?

22 A Yes.

23 Q And where was that entrance wound located?

24 A The entrance wound was located in the right
25 posterior head, was 4.9 inches from the top of the

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1 head and 1.5 inch the right of the middle of the
2 head.

3 Q All right. Would you point with your finger,
4 ma'am -- I believe the jury can see you -- the
5 approximate area where the bullet entered Mr. Way's
6 head.

7 A (Indicating.)

8 Q All right. That would be, and that would be the
9 right side?

10 A Correct.

11 Q Behind the ear?

12 A Correct.

13 Q All right. Approximately four-and-a-half inches
14 from the top of the head?

15 A 4.9 inches, yes.

16 Q All right. And did that bullet stay in the body
17 or did it exit the body?

18 A It exited the body.

19 Q And tell us where the exit wound was located.

20 A The exit wound is in the left front towards the
21 top of the head.

22 Q All right. And the bullet that caused that
23 injury was not turned over to you, or you did not
24 recover it or see it as part of your examination; is
25 that correct?

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1 A That's correct.

2 Q All right. As a matter of course, did the bullet
3 travel on a straight line or upward line? Can you
4 tell us anything about the angle of the shot.

5 A So we can say that it went from back to front,
6 from right to left, and slightly upward.

7 Q All right. Can you tell us anything about the
8 caliber or type of ammunition that would have been
9 needed to cause this type of injury to Mr. Way?

10 A I cannot. I can only tell you the size of the
11 entrance wound which was 0.38 by 0.32 inches.

12 Q And that is the entrance wound?

13 A Yes.

14 Q And what about the exit wound?

15 A The exit wound is larger and is 0.6 by 0.18
16 inches.

17 Q Would you be able to give a conclusion or opinion
18 to a medical degree of certainty that the projectile
19 that was used would have been of a small, medium, or
20 large caliber to create that type of entrance wound
21 size?

22 A No, I cannot give you that.

23 Q All right. Can you tell us with a degree of
24 medical certainty whether or not the gunshot wound
25 suffered by Mr. Way was close range or a longer

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1 range in terms of the injury that he sustained?

2 A It appears to be longer range because we didn't
3 have soot or stippling on the entrance wound.

4 Q And would you explain that to the jury please.
5 If you were looking for soot or stippling what would
6 you be looking for?

7 A So soot is a dark brownish black powdery
8 material, and we see that with a contact where the
9 gun barrel contacts the skin and then that's a close
10 range shot. If it's intermediate, between contact
11 and 3-feet, we see what's called stippling which are
12 superficial kinds of scratch markings on the skin
13 and we did not see either one of those.

14 Q And based on the absence of the soot and the
15 absence of the stippling, your opinion is that the
16 gunshot was a distant gunshot that caused the
17 injury?

18 A Yes, it's -- yes, that's correct.

19 Q All right. Would Mr. Way have died immediately
20 or within a few minutes, or can you tell us based on
21 the injuries you saw did he have any longevity after
22 that injury was sustained?

23 A No, that injury was gonna be fatal.

24 Q All right. Doctor Lage, I believe that's all the
25 questions I have. Would you please answer any

1 questions the defendant may have.

2 A Yes, sir.

3 MR. ABDULLAH: For the record, I have no
4 further questions for you, ma'am. Thank you.

5 THE WITNESS: Yes, sir.

6 SOLICITOR FINNEY: Doctor Lage, thank you
7 very much and we'll contact you soon.

8 THE WITNESS: Yes, sir.

9 THE COURT: Mr. Finney, anything?

10 SOLICITOR FINNEY: Your Honor, that will
11 be the extent of the State's case at this point. We
12 believe the State will rest.

13 THE COURT: All right. Ladies and
14 gentlemen, the State has rested its case at this
15 point. There are some matters of law that I need to
16 take up with regards to the case. When I told you
17 that I was going to let you go early I thought it
18 would be closer to noon, but it's gonna be earlier
19 than that. We're going to handle some legal
20 matters. At this time I'm gonna go ahead and cut
21 you loose for the balance of today. Please be back
22 here tomorrow morning at 9:30. You will get this
23 case tomorrow, okay. You'll get this case tomorrow.
24 Do not discuss the case. Do not discuss the case at
25 all. Do not do any independent investigation. As

1 I've told you from the outset, you're to decide this
2 case based solely on the testimony and evidence
3 that's presented in this courtroom, in this
4 courtroom, and nowhere else. Thank you, all. I
5 will see you tomorrow morning at 9:30.

6 (WHEREUPON, the jury was removed from the
7 Courtroom at 11 a.m.)

8 THE COURT: Anything from the Defendant at
9 this time?

10 MR. ABDULLAH: Yes, sir. Just for the
11 record, what happened to Captain Tommy Barron, sir?

12 THE COURT: The State evidently decided
13 not to call that individual as a witness. Just
14 because they're on this list, and you heard me when
15 I qualified the jury, I mean, I tell them they're
16 potential witnesses. That doesn't mean that they,
17 that they're all going to be called.

18 MR. ABDULLAH: Okay. Thank you.

19 THE COURT: All right. Anything from the
20 Defendant at this time?

21 (Mr. Finney and Mr. Abdullah confer.)

22 MR. ABDULLAH: Yes, Your Honor, I make a
23 motion for not guilty on the charge of indictment by
24 any chance the defendant is found guilty.

25 THE COURT: All right. I am going to take

1 that as a motion for a directed verdict. That's the
2 appropriate motion under our rules, Mr. Abdullah,
3 okay. I'm gonna take your motion for not guilty as
4 a motion for directed verdict. Based upon the law,
5 based upon the law the trial court is concerned with
6 the existence or nonexistence of evidence and not
7 its weight. It's pursuant to State v. Williams, 303
8 SC 274. The Court must view, according to the law,
9 must view the evidence in a light most favorable to
10 the State. That's what the law requires. If there
11 is any direct evidence or substantial circumstantial
12 evidence reasonably, reasonably tending to prove the
13 guilt of the accused, then the Court is required to
14 submit the case to the jury.

15 Based upon the testimony as elicited from
16 this witness stand during the course of the trial,
17 testimony from Mr. Thurston Lane as well as
18 Mr. Coral Scott, Mr. Thurston Lane testified that
19 the defendant came out of the club, that he was
20 shooting a firearm. Furthermore, Mr. Coral Scott
21 testified that the defendant was shooting a firearm,
22 identified the firearm as a Hi-point firearm,
23 handgun. There's further testimony by Mr. Scott
24 that, if I recall correctly, he saw the bullet, from
25 his recollection, ricochet off the top of the

1 automobile and strike the victim. That it was also
2 seen Mr. McBride go down during the time that Mr.
3 Abdullah was firing his weapon. There's testimony
4 from Ms. Dianne Bodie and further testimony of
5 Mr. Lane that the defendant went into the bathroom
6 after the alleged incident, that the firearm, that a
7 firearm was found in the bathroom by law enforcement
8 in the ceiling, that that firearm was taken into
9 custody, that pursuant to the SLED analysis that it
10 was a working firearm, that the cartridges on the
11 cement where the defendant was allegedly shooting
12 the firearm were cartridges that were expelled from
13 this gun, that the defendant's fingerprint was on
14 the magazine of the firearm.

15 Furthermore, the pathologist has testified
16 as to the cause of death which was a single gunshot
17 wound to the head, which based upon those facts as
18 I've stated in addition to anything that I may have
19 left out; but based upon the testimony that is in
20 the record, I do believe that it would be
21 appropriate to deny the defendant's directed verdict
22 motion as to each of the counts under the indictment
23 for which he's currently on trial. But your
24 objection is so noted and your motion is so noted
25 for the record, okay?

1 MR. ABDULLAH: Yes. May I respond ---

2 THE COURT: Yes, sir.

3 MR. ABDULLAH: ---for the record. As to
4 the matter, Thurston Lane never said that I shot
5 anyone, and he also stated that the defendant
6 possessed a 9-millimeter that he sworn to under
7 oath. Coral Scott swore that the defendant had a
8 Hi-point .40 cab. Based on these statements from
9 the government, from the State witnesses, their
10 testimony is of evidence that's not in coincide with
11 evidence of the State.

12 THE COURT: I understand those are, Mr.
13 Abdullah, the court -- those are issues of fact for
14 a jury to make a determination on. Those are
15 arguments that you certainly may make to the jury in
16 your closing arguments, okay?

17 MR. ABDULLAH: Thank you, sir.

18 THE COURT: All right. Now what I'm going
19 to do, and I told you, spoke to you, Mr. Abdullah,
20 about this yesterday -- and I'll remind you, you've
21 been sworn previously. I'll remind you that you're
22 still under oath, okay. Will you stand for me
23 please, sir. At this time I'm going to explain to
24 you -- and I went over some of this yesterday with
25 you, but I'm gonna do it a little bit more formally

1 at this point. I'm going to explain to you certain
2 of your rights. If you do not understand anything
3 that I say to you, please let me know. If you want
4 me to explain anything in more detail, please let me
5 know as well, you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: We have now reached the stage
8 of the trial where you may present your defense.
9 You have the right, you have the right to claim
10 protections given to you by the Fifth Amendment of
11 the United States Constitution which states in part
12 that no person, no person can be compelled in any
13 criminal case to be a witness against himself. This
14 means that you cannot be required to testify in this
15 case. You have the right to testify on your own
16 behalf; however, no one can make you testify. This
17 is a personal right, and no one can waive this right
18 except you. If you decide to testify you will be
19 subject to the same rules that govern other
20 witnesses, and you may be examined and
21 cross-examined on any relevant issues in this case.

22 In addition, if you have any convictions
23 involving dishonesty or false statement or for
24 crimes punishable by imprisonment for more than a
25 year and this Court determines that the probative

1 value of admitting this evidence outweighs its
2 prejudicial effect to you, the prosecutor will be
3 able to introduce your record to attack your
4 credibility.

5 If you decide to testify, this decision on
6 your part must be freely, voluntarily, and
7 intelligently made with the knowledge of the
8 protections given to you by the Fifth Amendment and
9 the consequences of your decision to testify. If
10 you decide not to testify I will instruct the jurors
11 that they cannot, that they cannot give the fact
12 that you did not testify any consideration
13 whatsoever and that there is to be absolutely no
14 prejudice to you because you did not testify.

15 Now it is left entirely up to you whether
16 or not you testify. You may talk with your family,
17 your friends, or anyone else; but the final decision
18 of whether or not you testify is left entirely up to
19 you. Do you understand, Mr. Abdullah, what I have
20 explained to you here today, sir?

21 MR. ABDULLAH: Yes, sir, Your Honor.

22 THE COURT: Do you have any questions
23 about what I have explained to you?

24 MR. ABDULLAH: No, sir, Your Honor.

25 THE COURT: Do you need anymore time to

1 consider whether or not you wish to testify in this
2 case?

3 MR. ABDULLAH: No, sir, Your Honor.

4 THE COURT: All right. Do you wish to
5 testify in your case?

6 MR. ABDULLAH: No, sir, Your Honor.

7 THE COURT: Okay. Well, listen, I'm gonna
8 do this as well, okay. I told you all yesterday we
9 were gonna stand down this afternoon. You've told
10 me right now that you do not wish to testify, but
11 I'm gonna give you this afternoon and tonight to
12 think about that as well and I'll ask you again in
13 the morning whether or not you wish to testify in
14 your case. Again, I'm just giving you time to
15 consider that, okay?

16 MR. ABDULLAH: Yes, sir.

17 THE COURT: All right. Anything else from
18 the State at this time?

19 SOLICITOR FINNEY: Just, Your Honor, for
20 the record, and I don't know if we could do it by
21 exhibit, but I would like put in as a court exhibit
22 Mr. Abdullah's prior record, his NCIC report, not
23 for the jury, just for the Court so that we'll have
24 the document showing that you did have a prior
25 record and what your record was.

1 THE COURT: I mean, what's that got to do
2 with anything in the case as far as me taking it as
3 a court exhibit? I mean, if ---

4 SOLICITOR FINNEY: Well, Your Honor, it
5 will be part of the record and then that will
6 support any claims later on that he gave up his
7 right to testify. For some other reason I would
8 want a court exhibit to be part of the record to
9 show that he has a substantial prior record which
10 would have been used against him if he had elected
11 to testify and take the stand.

12 THE COURT: You understand what he's
13 asking, Mr. Abdullah?

14 MR. ABDULLAH: Yes, but I object to that,
15 due to the fact that I'm not testifying so that
16 should be irrelevant. I object to that.

17 THE COURT: Well, I, here's what I think.
18 I don't think you need to do that at this point,
19 Mr. Finney. If, for whatever reason, if he is
20 convicted you'll have an opportunity to read his
21 record into the record.

22 SOLICITOR FINNEY: All right, sir.

23 THE COURT: Okay? Because I mean, that's
24 something that the Court can take into consideration
25 at time of sentencing, okay?

1 SOLICITOR FINNEY: Yes, sir.

2 MR. ABDULLAH: Thank you, Your Honor.

3 THE COURT: All right. So I'm gonna
4 sustain his objection. I'm gonna sustain Mr.
5 Abdullah's objection at this time.

6 SOLICITOR FINNEY: Your Honor please,
7 yesterday I asked my staff to look up a case that I
8 thought I knew something about, and this is
9 something I want the Court to think about overnight
10 as we are preparing for tomorrow. It would appear
11 that we're going to argue and charge to the jury in
12 the morning at 9:30. I have a motion to ask the
13 Court to charge the depraved heart and malice charge
14 based on the case of State versus Mouzon from 231
15 South Carolina 655. It's a Clarendon County case.
16 I have a motion and a copy of the case that I'd like
17 to have the Court address or review this evening and
18 let us know tomorrow if you're ---

19 THE COURT: I'll look at it and see how it
20 compares to my current charge on malice and make a
21 decision as to whether or not I think that's
22 appropriate under the circumstances.

23 SOLICITOR FINNEY: Thank you, sir, and
24 I'll make sure ---

25 THE COURT: Make sure you give Mr.

1 Abdullah a copy of what you're asking me to consider
2 please ---

3 SOLICITOR FINNEY: I'll do that right now.

4 THE COURT: ---so that he'll know what
5 you're asking me to consider please. All right,
6 anything else?

7 SOLICITOR FINNEY: That's it, Your Honor.

8 THE COURT: Mr. Abdullah, anything
9 further?

10 MR. ABDULLAH: No objection, Your Honor.

11 THE COURT: I'm not asking you whether or
12 not you got any objections at this time. Is there
13 anything else you want to tell me before we break
14 for the day?

15 MR. ABDULLAH: No, sir.

16 THE COURT: Okay, very well.

17 (WHEREUPON, the proceedings were concluded
18 for the day to be reconvened on October
19 20, 2016) .

20 THE COURT: Mr. Abdullah, would you stand
21 please, sir. I'll remind you, sir, that you are
22 still under oath, okay?

23 MR. ABDULLAH: Yes, sir.

24 THE COURT: When we broke yesterday I had
25 advised you of your constitutional rights concerning

1 your right to testify. I told you that I would --
2 you indicated to me yesterday that it was not your
3 intent to testify; however, I told you that I would
4 give you the overnight, or overnight, to further
5 consider whether or not you wish to testify in the
6 trial of your case. Therefore, I will ask you at
7 this time after having further considered your right
8 to testify do you wish to testify in the trial of
9 your case?

10 MR. ABDULLAH: No, sir, Your Honor.

11 THE COURT: Okay. Do you intend to put up
12 any evidence in defense of your case?

13 MR. ABDULLAH: Not really, just my verbal,
14 the evidence that was already presented in court.

15 THE COURT: Okay. I mean, that would be
16 in closing argument, I'm assuming, ---

17 MR. ABDULLAH: Yes.

18 THE COURT: ---is that correct? Do you
19 intend to call any witnesses I guess what I'm
20 getting at.

21 MR. ABDULLAH: Well, I had told you that
22 one of the witnesses that I had used today was
23 killed.

24 THE COURT: Okay.

25 MR. ABDULLAH: I told you that in the

1 motion, I think.

2 THE COURT: All right. The procedure that
3 we will follow from here is, once I bring the jury
4 back out I'll recognize you, and you, as a matter of
5 formality all you need to say is that the Defense
6 rests, okay? And I would advise you at that time to
7 also state that you would renew all prior motions
8 previously made by yourself. You understand that?

9 MR. ABDULLAH: Yes, sir.

10 THE COURT: And I'm telling you to say
11 that for purposes of protecting your record for you,
12 okay?

13 MR. ABDULLAH: Yes, sir. What was the
14 word again for the records?

15 THE COURT: Sir?

16 MR. ABDULLAH: What was the record again
17 you said use? Preserving the record to say what?

18 THE COURT: Just state that you preserve
19 or that you renew all of your prior motions and
20 objections, okay?

21 (Paper tendered to defendant by Mr. Finney.)

22 THE COURT: And then we will move into
23 closing arguments. The State will go first. You
24 will get final argument under the law since you are
25 not putting any evidence up, okay. Also, I have

1 gone through and I'm trying to finalize this charge.
2 Now with regards to, with regards to the State's
3 request to charge and malice, bear with me just a
4 second. This is what I'm going to do. It's define
5 -- defendant's charged with murder. The State must
6 prove beyond a reasonable doubt that the defendant
7 killed another person with malice aforethought.

8 Mr. Abdullah, you may sit down at this
9 time.

10 Malice is hatred, ill will, or hostility
11 towards another person. It is the intentional doing
12 of a wrongful act without just cause or excuse and
13 with an intent to inflict an injury or under
14 circumstances that the law will infer evil intent.
15 Malice aforethought does not require that malice
16 exist for any particular time before the act is
17 committed, but malice must exist in the mind of a
18 defendant just before and at the time the act is
19 committed; therefore, there must be a combination of
20 previous evil intent in the act. Malice
21 aforethought maybe expressed or inferred. These
22 terms expressed and inferred do not mean different
23 kinds of malice, but merely the manner in which
24 malice may be shown to exist as either by direct
25 evidence or by inference from the facts and

1 circumstances which are proved. Expressed malice is
2 shown when a person speaks words which express
3 hatred or ill will for another, or when the person
4 prepared beforehand to do the act which was later
5 accomplished. For example, lying in wait for a
6 person or any other acts or preparation, of
7 preparation, going to show that the deed was within
8 the defendant's mind would be expressed malice.
9 Malice may be inferred from conduct showing a total
10 disregard for human life. That will be my murder
11 charge. Inferred malice will stop there. I'm not
12 going into examples of inferred malice of being
13 careful of running afoul of possibly making a
14 comment on the facts of the case.

15 I do not, for the record, Mr. Finney, I do
16 not believe that what you submitted in any way runs
17 afoul of the law on charge of malice; but I think as
18 a matter of precaution what I propose charging here
19 more than sufficiently covers the malice issue or
20 the malice requirement of the murder charge.

21 Now with regards to the assault and
22 battery with intent to kill charge, the standard
23 assault and battery with intent to kill charge that
24 will be charged, my question is to the State, with
25 regards to a lesser included offense of ABHAN. What

1 says the State? You know, the difference is the
2 malice.

3 SOLICITOR FINNEY: Your Honor, the State
4 would take the position that the same malice that
5 was shown toward Mr. McBride was shown toward
6 Mr. Way; we just had a different result. We don't
7 feel that there's any significant evidence that's
8 been introduced to show that there was a difference
9 in the actions that the defendant took towards one
10 as opposed to the other so we would oppose the
11 lesser included.

12 THE COURT: Well, this is what -- let me
13 read this to you. Assault and battery of a high and
14 aggravated nature is an unlawful act of violent
15 injury to the person of another accompanied by
16 circumstances of aggravation, okay. And I'm gonna
17 skip over back to -- and this is what kind of hangs
18 me up on this if you want to say it like that.
19 Circumstances of aggravation include use of a deadly
20 weapon, the intent to commit a felony, the
21 infliction of serious bodily injury. A great
22 example here, great disparity between the ages,
23 physical condition of the parties. The rest of this
24 isn't really applicable here. But the use of a
25 deadly weapon and the infliction of serious bodily

1 injury are certainly what we have here.

2 SOLICITOR FINNEY: Yes, sir.

3 THE COURT: You see where I'm coming from?

4 SOLICITOR FINNEY: Yes, sir.

5 THE COURT: Mr. Abdullah, you have
6 anything you want to say?

7 MR. ABDULLAH: Yes, sir, Your Honor. Do
8 this fall under statute of limitation for the other
9 charges ---

10 THE COURT: No, sir. No, sir.

11 MR. ABDULLAH: ---of murder, okay. I have
12 nothing further.

13 THE COURT: Well, the other side of it
14 which kind of, I think, weighs against the charge on
15 assault and battery of a high and aggravated nature
16 is the charge as it relates to the inferred malice
17 which is total disregard for human life. Anything
18 further from the State?

19 SOLICITOR FINNEY: Nothing, Your Honor.

20 THE COURT: Anything further, Mr.
21 Abdullah?

22 MR. ABDULLAH: No, sir, for the Defense,
23 Your Honor.

24 THE COURT: All right. I am not going to
25 charge assault and battery of a high and aggravated

1 nature. I believe the testimony that's within the
2 record, if the jury believes it, is more in line
3 with malice, inferred malice, because of the
4 testimony of the total disregard for human life. So
5 it will be murder, straight guilty or not guilty;
6 assault and battery with intent to kill, guilty or
7 not guilty, and the possession of a weapon charge,
8 all right. How long does the State intend to argue?

9 SOLICITOR FINNEY: Thirty minutes, Your
10 Honor.

11 THE COURT: How long Mr. Abdullah do you
12 intend to, for closing arguments, sir?

13 MR. ABDULLAH: Well, actually, Your Honor,
14 I can't really say, I'm just, I can't say. It
15 shouldn't be long.

16 THE COURT: Okay.

17 MR. ABDULLAH: I don't take long to do
18 what I need to. The burden of proof is not on me so
19 I think he's gonna be longer than me.

20 THE COURT: You're correct in the fact
21 that the burden of proof is not on you. And I don't
22 limit closing arguments. I don't know in the
23 six-and-a-half years I've been on the Bench that
24 I've ever said, all right, you got twenty minutes or
25 whatever it may be and I don't know that I've ever

1 really had to interject. But I do say this, and I
2 say it every time to attorneys, I'll say it to you
3 all, I am not gonna sit up here and listen to either
4 one of you repeat the same thing over and over and
5 over, okay. If you start doing that and I'll call
6 you, both of you up here as a bench conference first
7 and warn you about it; and if it continues to occur,
8 then I'll call you down and we're gonna move on.

9 Anything else before I bring the jury out,
10 Mr. Finney?

11 SOLICITOR FINNEY: Not from the State,
12 Your Honor.

13 THE COURT: Defense, defendant?

14 MR. ABDULLAH: Nothing from Defense, Your
15 Honor.

16 THE COURT: Okay, bring me the jury
17 please, sir.

18 (WHEREUPON, the jury was returned to the
19 courtroom at approximately 9:51 a.m., and
20 the following proceedings commenced in
21 open court.)

22 THE COURT: Good morning, ladies and
23 gentlemen, I hope you all had a nice afternoon and
24 nice evening. We are going to continue the trial of
25 the case at this time.

1 Mr. Abdullah, you are so recognized, sir.

2 MR. ABDULLAH: Excuse me, to go first?

3 THE COURT: No, sir.

4 MR. ABDULLAH: Oh.

5 THE COURT: Can y'all approach a minute
6 please.

7 (WHEREUPON, Solicitor Finney and Mr.
8 Abdullah approached the Bench for an
9 off-the-record discussion.)

10 THE COURT: All right, Mr. Abdullah.

11 MR. ABDULLAH: Yes, the Defense rests,
12 Your Honor.

13 THE COURT: Okay. Ladies and gentlemen,
14 you have heard all the evidence and testimony that
15 you are going to hear in this case. That which
16 remains is closing arguments by the State followed,
17 by the Defendant's closing arguments, and I'm gonna
18 give you the charge on the law that's applicable to
19 this case.

20 Before I do that though, for the record
21 Mr. Abdullah, I'll note for the record that you have
22 renewed all prior objections and exceptions and
23 motions to the Court. For the record those are so
24 noted. And the Court's rulings on each of those
25 remain the same.

1 At this time, ladies and gentlemen, the
2 State will go first followed by the Defendant. And
3 I'll remind you, what the parties say in their
4 closing arguments is not evidence in this case, is
5 not evidence in this case.

6 Mr. Finney, you're so recognized for
7 closing argument.

8 SOLICITOR FINNEY: Thank you, Your Honor.
9 May it please the Court.

10 THE COURT: Yes, sir.

11 SOLICITOR FINNEY: Good morning, ladies
12 and gentlemen. On Monday I had a little outline of
13 what I was going to talk to you about, and I spoke
14 to you about how we were going to be spending the
15 next few days, Monday, Tuesday, Wednesday, Thursday,
16 in a search for the truth, and we've done that. One
17 of the things I didn't do on Monday, I think, was
18 thank you for allowing us to have you for the week
19 to serve as jurors. Most of the people in this
20 community don't get a chance to serve on a jury,
21 civil or criminal; and therefore, there's not a lot
22 of talk about it. It's something that people know
23 they have to do. Once they turn 18 they're probably
24 gonna get called sometimes for the jury. And as you
25 know on Monday, we had an unusual thing, a husband

1 and wife being called together. But a lot of people
2 don't really realize from inside the system, the
3 judges, the court reporter, the officers, the
4 lawyers, how important it is because we can't get
5 our job done without you.

6 When somebody is charged with a crime they
7 are immediately given certain rights, certain things
8 start to happen, lawyers are gotten, set court,
9 dates are scheduled, police officers have to turn in
10 files; but all of that really doesn't work until we
11 get to the courtroom, and we can't do anything
12 because the system that we have in this country says
13 you have a right to a trial by jury. You have a
14 right to a trial by people in the community who know
15 what goes on in the community and who -- they don't
16 have to know you, but they've got something special
17 that they bring. And that special thing doesn't
18 mean you have to go to law school or college, it's
19 called common sense. Each of you have brought your
20 common sense and your experience in life to this
21 courtroom this week, and that's what we count on
22 when we present the case to you so that you can know
23 that we have done our job to prove each and every
24 element of the crime. We could not do what we want
25 to do to help these families if we didn't have you,

1 so thank you.

2 On Monday I told you that there was one
3 thing that I wasn't gonna be able to do, and that's
4 tell you why this young man fired that weapon at
5 that nightclub and took the lives and changed the
6 lives of so many people. Today is Thursday. We
7 have called 11 witnesses who either saw what
8 happened, were there very shortly after they
9 processed the scene, took pictures, eleven witnesses
10 who've explained the whole picture to you, and that
11 question has still not been answered. There's only
12 one person who can answer that question. That's the
13 young man, Mr. Abdullah, sitting at that table.

14 What my job has been with the help of
15 these officers and these witnesses is to show you
16 that the State of South Carolina has proved that
17 every element of the crime of murder, assault and
18 battery with intent to kill, and possession of a
19 weapon during a violent crime has been proven. Let
20 me just talk to you a little bit about -- and the
21 judge is gonna clarify all of this and you listen
22 carefully to him. The indictment charges three
23 charges: Murder of David Way, shot in the back of
24 the head at the nightclub as he was talking to a
25 female; assault and battery of intent to kill of

1 Marell McBride who was shot in the hip running away
2 from the shooter trying to get away from the
3 trouble; possession of a weapon during a violent
4 crime. Those are the three charges that we've
5 charged.

6 Here's what the law says. And I think --
7 you listen to the judge, as he just told you I am an
8 advocate for my side. I'm telling you what I think
9 the law says; the judge is gonna tell you what the
10 law is. Murder is the unlawful killing of another
11 human being with malice aforethought, unlawful
12 killing. There's no testimony, no evidence that
13 this was a lawful killing. Mr. David Way wasn't
14 doing anything wrong when his life was taken away
15 from him.

16 Malice aforethought. Did the shooter have
17 an evil spirit, an evil heart? Did he have a total
18 disregard for human life out there that night? If
19 he did, if the evidence shows that, that's the
20 second element of murder. The final element of
21 murder is that it must be the malice, malice
22 aforethought. The total disregard for human safety
23 and human life must have been either expressed or
24 inferred from the actions that you heard that took
25 place. If it was expressed, then you would have

1 heard a witness like Mr. McBride say that before the
2 shooting start Abdullah came out and started using
3 cursing, profanity, and he said, made threats, I'm
4 gonna kill some MF. That's what McBride told you.
5 That's expressed malice. That lets you know what's
6 in the shooter's heart before he fires the first
7 bullet. But you don't have to stop there because we
8 also have inferred malice. You can infer malice
9 from the fact that he unloaded the weapon in a
10 crowded outside area. He didn't stop shooting,
11 ladies and gentlemen, till he ran out of bullets.
12 Inferred, inferred malice. Use of a deadly weapon,
13 total disregard for human safety. That's malice.
14 That's murder. That's what we have proven in this
15 courtroom this week.

16 The same malice is required for the other
17 charge against Mr. McBride where he was the victim,
18 he was shot. Thankfully he can walk, he can talk.
19 Thankfully he's here today in court with us. It
20 could have been two murders. The same malice was
21 possessed by the shooter. The same gun was used by
22 the shooter. It's just that the bullet hit
23 Mr. McBride in a place where he may not be the same,
24 but thankfully he's here.

25 Assault and battery with intent to kill is

1 an unlawful act, unlawful. He didn't have any right
2 to shoot Mr. McBride. A violent injury.
3 Mr. McBride was taken to the hospital by his
4 cousins, stayed there while the doctors patched him
5 up; and he's still having repercussions today from
6 that injury, a serious injury, a violent injury.
7 Malice aforethought. Same malice. Disregard for
8 the safety of others by the shooter emptying the
9 gun, using a firearm.

10 The last one is possession of a weapon
11 during a violent crime. All it requires is you
12 possess or display. We got both of those. He
13 possessed the gun. He was seen with the gun by
14 several witnesses. He displayed the gun. He used
15 the gun during the commission of a violent crime.
16 In this case we have two violent crimes, the assault
17 and battery with intent to kill against Mr. McBride
18 and the murder of Mr. Way. All of the elements of
19 those crimes have been proved by the testimony, the
20 evidence, the witnesses.

21 Now Mr. Abdullah told you in opening
22 statement that he had been in federal court, he had
23 been sentenced to federal time arising out of this
24 same nightclub activity. That has no impact on this
25 case. The fact of the matter is, he has never been

1 charged with murder in federal court. He has never
2 been charged with assault and battery with intent to
3 kill in federal court. He is here facing the
4 consequences of his action for his activity in
5 Sumter County in March of 2014. That's why we're
6 here. If we prove the elements of those three
7 crimes you are free to find him guilty. He has
8 never been charged with those in federal court.
9 That is, that was a different, that was a different
10 charge.

11 Ladies and gentlemen, Mr. Abdullah has
12 rights, but David Way has rights and Marell McBride
13 has rights. And part of the responsibility of us
14 being citizens is that we follow the law. The law
15 has rules and regulations. The law applies in this
16 courtroom today to you all because you all have to
17 follow what the judge tells you the law is. Let me
18 tell you what one of the responsibilities of
19 citizens is. First of all, you have to act in
20 accordance with your neighbors. You can't play your
21 stereo wide open in your house just because you like
22 loud music if it's gonna disturb your neighbor.
23 That's why we have a law that says disturbing the
24 peace. It's against the law to disturb the peace if
25 the neighbor asked you to cut it down.

1 We have rules and responsibilities about
2 firearms. You don't take a firearm to a nightclub
3 and shoot it seven times at point blank range. Not
4 one time did he, did any witness say that Mr.
5 Abdullah came out of that club and fired a gun in
6 the air as a warning shot, not one time. Not one
7 time did he check on what he had done after he
8 emptied that gun, not one time. He went in the
9 bathroom, ladies and gentlemen, and reloaded the
10 gun. How do we know that? Well, we first of all
11 know that because when the officers got there, they
12 looked on the ground and they saw all of the
13 markings of fired shell casings. State Exhibit
14 Number 4, there's seven marker, there's seven shell
15 casings on the ground outside the front of the club.
16 Well, that didn't — they didn't know if that was
17 one gun or two guns or three guns; they had to pick
18 it up and check it. Well, what did they find when
19 they checked it? All seven of the fired casings
20 came from one gun. So what do they do next?
21 They're now keeping the area safe and talking to
22 witnesses. They're finding out what's going on.
23 They were told that the man who did the shooting
24 went in the bathroom as soon as the shooting took
25 place so they go in the bathroom. What do they see

1 when they get in the bathroom? Well, they see the
2 busted toilet in State Exhibit Number 14. Looks
3 like somebody was trying to do something in there.
4 And then they happen to look up and see what's in
5 State's Exhibit 15, the hole in the ceiling. And
6 it's kind of unusual because apparently the ceiling
7 tile had leaked down on the floor. It was on top of
8 the wet floor. It wasn't like it was wet. So they
9 looked up in the hole and low and behold, there was
10 a .45 automatic, semi-automatic Hi-point handgun.
11 What did they do with the gun? They take it and
12 they pull out the magazine. And what's in the
13 magazine? Six live rounds. Somebody has done
14 reloaded the gun because they got seven outside; the
15 gun won't hold but seven. Somebody's put six
16 bullets back in there. They're Federal bullets.
17 They're not the same kind of bullets as that were
18 shot outside.

19 Thanks to good police work we now know
20 that Mr. Abdullah, after he emptied the gun outside,
21 went in the bathroom, reloaded the gun, and then put
22 the gun in the ceiling. Evidence of hiding, hiding
23 evidence. He left his fingerprint on the magazine
24 of the gun. That was discovered when the magazine
25 was sent to SLED. His fingerprint on the magazine

1 in the gun in the ceiling, loaded again, after he
2 has fired all of the bullets outside.

3 You have heard from eleven witnesses who
4 did their job. Each one of them took pictures, made
5 measurements, talked to witnesses, put the case
6 together for you so that there wouldn't be any
7 doubt, no room for doubt, because under the law any
8 reasonable doubt that you ladies and gentlemen have,
9 has to be given to the defendant. But if you have
10 no reasonable doubt, that means the State of South
11 Carolina and the witnesses and the evidence has
12 provided you with enough of assurance that you can
13 sign your name to a paper saying Mr. Abdullah
14 committed murder on March 14, 2004, by taking the
15 life of David Way. Mr. Abdullah committed assault
16 and battery with intent to kill on March 14, 2004,
17 by shooting and injuring Mr. Marell McBride. And
18 Mr. Abdullah is guilty on the same date of
19 possession of a weapon during a violent crime
20 because he took a handgun and shot those people who
21 weren't doing anything wrong. That's the job that I
22 have been asked to, with your help today. I need
23 you to go back in that jury room, consider the oath
24 that you took to be honest and fair, to look at the
25 evidence, to use the common sense that God gave you

1 to work together to resolve this matter; and if you
2 decide that the evidence meets that test that we
3 have proved to you all the elements, then you have
4 an easy job. You sign the paper saying Mr. Abdullah
5 is guilty of murder, he's guilty of assault and
6 battery with intent to kill, and he's guilty of
7 possession of a weapon during a violent crime.

8 I'm not gonna stay long. I think we've
9 done a great job of presenting this case over the
10 last three days. You don't know how hard it is to
11 get eleven witnesses at the same place at the same
12 time to come in and do what was done this week; it's
13 hard. But every now and then for good reasons, it
14 works out because people know this is important.
15 Let me say this, I don't get a chance to speak to
16 you anymore; I have to sit down. It's gonna be
17 Mr. Abdullah's turn. I don't know what he's gonna
18 tell you. If he says something about the fact that
19 there's no bullet that we found that injured and
20 killed David Way and he can't match it to that
21 Hi-point gun that has his fingerprint on it, that's
22 true. There's direct evidence and there's
23 circumstantial evidence. In this case on the murder
24 charge you have both. The circumstantial evidence
25 is there was only one person firing a handgun in the

1 front of that nightclub at the crowd, and that
2 circumstantial evidence led to the fact that there
3 was nobody else firing a .45 caliber that caused the
4 injury to McBride and Mr. Way. The circumstances,
5 every piece of the circumstance must fit; that's why
6 it's important that the gun was found. That's why
7 it's important that the shell casings match the gun,
8 and it's certainly important that his fingerprint is
9 on the gun.

10 Now, the other side of that is direct
11 evidence. You heard from the witness Mr. Scott who
12 was a bouncer at the nightclub who came outside to
13 try to calm things down. He told you, direct
14 evidence from his eyes through his mouth to your
15 ears, I saw the last shot that Abdullah fired out of
16 that gun, it hit the car that was parked in the
17 parking lot. State's Exhibit Number 32. That last
18 shot hit the top of that car, reflected off, bounced
19 off, and I saw -- Mr. Coral Scott said, I saw that
20 bullet hit David Way in the back of head and he went
21 down to the ground. That's direct evidence. That's
22 not circumstantial evidence. That's not, you don't
23 have the bullets so we can't find him guilty.
24 That's what you need to find him guilty. That
25 witness saw it and he told you he saw it. And every

1 fact in this case supports that conclusion that that
2 man fired that weapon. He had total disregard for
3 the safety of the other people out there that night,
4 and he took a life and he changed a life forever. I
5 ask you to convict him on all three charges
6 contained in the indictment, and I thank you very
7 much for your services.

8 THE COURT: Mr. Abdullah.

9 MR. ABDULLAH: Yes, sir. Good afternoon,
10 I mean, good morning. Yes, I would like to say real
11 quick for the last 12 years and 7 months I've been
12 going through trials and tribulations behind this
13 incident, and it reminds me of a story of a man
14 named Job from the Bible who was going through his
15 trial, and God was telling the devil, he said, Job
16 was one of my faithful servants. And the Devil told
17 him, he said, he said, well, God, if you take away
18 his riches, he said, he'll curse you. So to make a
19 long story short, God took all his riches from him,
20 all his livestock, allowed him to be inflicted with
21 different illnesses, diseases. So Job wife became
22 so discouraged about him she told Job, said, why
23 don't you curse God, but Job never cursed God. He
24 kept fighting, kept fighting, kept fighting, and he
25 -- and God give it all back to him, his health back,

1 livestock back, and everything back to him.

2 Now on the night of March 14th, 2004, a
3 big shootout took out, took place at this nightclub.
4 A man named David Way was killed, another man was
5 shot and wounded in the buttocks. Monday, the first
6 witness of this case was a victim. His name was
7 Marell McBride. He took the stand and he testified
8 and he told the Court that Mr. Abdullah shot him.
9 And I listened to his testimony and he pointed me
10 out in court that I shot him. So when it was my
11 turn to come out and I cross-examined Mr. Marell
12 McBride and I asked Mr. McBride, I said, was there
13 any conflict between me and you at the club? He
14 said, no. Did you know me? No. No conflicts. But
15 this man expect you to believe just out of the blue
16 that I came outside and shot him for no apparent
17 reason as if I was crazy or insane or something so I
18 know I'm not crazy, insane, because if I was, I
19 wouldn't be here representing myself; that's why I'm
20 my own lawyer. So you will see a whole new side,
21 you'll see the real me. You'll get to know a chance
22 to know me. So I questioned McBride. He expect you
23 to believe at 3:45 in the morning, this man who is
24 intoxicated, he expect you to believe that just out
25 of the blue I shot him for no apparent reason.

1 Now, the second witness take the stand.
2 His name was Thurston Lane. He took the stand and
3 he told you, he said Mr. Abdullah possessed a
4 9-millimeter. He also stood up in the court and he
5 demonstrated. He said Mr. Abdullah turned to the
6 left and discharged a 9-millimeter. He also said
7 Mr. Abdullah promoted to the right and discharged a
8 9-millimeter. So, it's my chance to get up to
9 impeach and cross-examine Mr. Thurston Lane, I asked
10 Mr. Lane, I said, Mr. Lane, are you telling the jury
11 that I shot somebody? And Mr. Lane said, no. He
12 never told you I shot nobody, he never told you
13 that. So basically I was finished with my questions
14 right there. All I did was read out his criminal
15 record and that was that. I was through with him
16 real quick.

17 The third witness take the stand,
18 Mr. Coral Scott. Mr. Coral Scott took the stand and
19 he told you, he said, Mr. Abdullah possessed a
20 Hi-point .40 caliber. So the prosecutor said, do
21 you see the defendant in the courtroom? And he
22 looked around in the courtroom about 10, 15 seconds,
23 and he said, no. He didn't see the defendant in the
24 courtroom. So, the prosecutor said, is that him
25 over there? So he looked over there and he said,

1 looked at me, he stared, he said, it look like him.
2 You heard what he said, he said, it look like him.
3 So he look again. He said, yeah, I think that's
4 him. He said, he used to wear facial hair. He
5 said, yeah, that's him, that's him, look like it.
6 So I get my chance to cross-examine Mr. Scott so I
7 ask Mr. Scott when I get on the stand, I said,
8 Mr. Scott, are you telling the jury that I shot
9 somebody? And Mr. Scott said, yeah. So I said,
10 tell the jury who I shot. Mr. Scott said, he said,
11 he call him something, some name, some nickname he
12 gave, I don't even know the name myself, some
13 nickname, some street name. He said they call him
14 something. So I said, yeah. So I said, well what
15 have I done to the guy Marell McBride, who shot him?
16 He said, I don't know. He said, word of mouth, they
17 say you did. And these are your witnesses; that's
18 what he said. You heard what he said. That's
19 exactly what he said. Word of mouth said you did,
20 okay.

21 Now, the evidence that's in prosecution,
22 the prosecution has a .45 Magnum in evidence..
23 That's what he has in evidence. So, we got two
24 State witnesses. One of the witnesses is putting a
25 9-millimeter in my hand. Another witness putting a

1 .40 caliber in my hand. The prosecution putting a
2 .45 in my hand. If you putting all three of these
3 guns in my hand, which one of those guns killed
4 David Way? Which one of these guns shot Marell
5 McBride in the buttocks? In order to prove that
6 there would have to be a bullet or ballistics.

7 Now to go into more details, this is gonna
8 be a little more interesting. There's a lady named
9 Doctor Janice Lage, the pathologist who did the
10 autopsy, who did the autopsy of the victim's body.
11 That was her on the screen yesterday. She was the
12 last witness to testify. She demonstrated that
13 Mr. Way who was shot in the back of his head, the
14 bullet went through his head and come out, and exit
15 his forehead. So the prosecutor questioned her. He
16 said, could you tell us what type of weapon that
17 would be in compliance with that wound. She said,
18 I'm not talking about no weapon. He said, well,
19 could you tell what is the difference there. I'm
20 not talking about no size, no gun, no weapon. You
21 know why? Because she know without that bullet you
22 have no case because he got to convict you, he got
23 to prove to you that that weapon is a murder weapon,
24 and he can't prove that. You cannot prove that is a
25 murder weapon without ballistics. When you listen

1 to the evidence of all the enforcement that came in
2 here, when I impeached them, several of them I said,
3 if there is no bullet, is there any way to determine
4 which gun entered injured this victim? The bullet,
5 the evidence to match the gun, you can't prove it.

6 Now if the government, if these State
7 witnesses is giving you guns, you putting all three
8 of these guns in my hand, the prosecution will have
9 to convince you which one is the murder weapon. And
10 out of all three of them you can't convince nobody,
11 you can't prove which one is the murder weapon. The
12 bullet exited David Way's head. The other bullet
13 went in Marell McBride's buttocks, and it's still
14 there, so where's the bullet?

15 Now I questioned Way -- excuse me,
16 Mr. Lane and Corey Scott and I asked them, I said,
17 now out all of this shooting that was going on that
18 night out in the field, I said, is there any way
19 possible that one of those guys in an open field
20 could have leveled that gun off toward the club and
21 discharged it? Is that possible? And both of them
22 said yes, that's possible. So the expert witness
23 testified and said about the difference of guns,
24 revolvers, and semiautomatics. When they went out
25 into the fields you didn't find no bullets because,

1 evidently, these other individuals who were shooting
2 must have been shooting revolvers because they left
3 no shells. But there were several people shooting
4 that night and the expert witness testified to that.
5 One of the -- I don't remember the lady name, but
6 she the one that present, that I cross-examined
7 about the fingerprints on the gun. I pick up the
8 clip and I stood in front of the jury and I held it
9 out and I asked her, I said, you see this clip and
10 she say, my left thumbprint is on? I said, do this
11 fingerprint prove that I possessed that gun, or do
12 it prove at some point that my thumb may have
13 touched the clip. She said it prove that your thumb
14 touched the clip. I said, no further questions.
15 That don't prove I possessed a gun. In order to
16 have a case you've got to prove which gun killed
17 David Way. You got to prove which gun shot Maréll
18 McBride, and if you don't have ballistics you can't
19 prove that. And if the State can't prove that, a
20 jury have an obligation to find me not guilty.
21 Because if there's any reasonable doubt, by law you
22 have to find me not guilty. I'm gonna show you
23 reasonable doubt. If I can't show you reasonable
24 doubt I ask you to find me guilty. Now I don't
25 think that these witnesses that you listened to is

1 too convincing to you because if the State's
2 witnesses is saying one thing versus the evidence
3 that the State has, it would be impossible for you
4 to find me guilty. These are their witnesses, not
5 my witness. I don't have a witness. That's why I'm
6 defending myself; I'm my own attorney today. For
7 the last couple of days I'm my own attorney. Their
8 weapon, their evidence, and their testimony don't
9 coincide with what he got. So if it don't coincide
10 with the State, how could you find me guilty. It
11 would be impossible. You got to prove these
12 elements. That's why the case so old. This man
13 trying to make a name for hisself. No prosecutor
14 wanted to take the case. I told you that when I
15 talked to you Monday. No -- that's why it's so old.
16 This is 12 years ago and seven months. No
17 prosecutor wanted the case because they know, they
18 don't want to waste taxpayer's money trying to fight
19 a case that you can't win. You got to present this
20 evidence.

21 Where is the ballistics? Where is the
22 ballistics to prove which gun killed David Way? You
23 have none. Where's the ballistics to prove which
24 gun or bullet entered Marell McBride? You have
25 none. So if you're gonna convict me, you got to

1 prove it. If you can't prove it, then you can't
2 convict me by law. I'm showing you reasonable
3 doubt.

4 Agent Simmons, she took the stand. This
5 woman tested gunshot residue on the victims and me.
6 Everything come back negative. That man right
7 there, Detective James Turner, also tested my hands
8 for gunshot residue. It come back negative shortly
9 after the incident. No witnesses ever took the
10 stand and said that they saw Mr. Abdullah wash his
11 hands. Nobody ever said I washed my hands or did
12 anything wrong. So out of all due respect, since
13 you're on the jury and my life is in your hands
14 today, because this is serious, this is a murder
15 charge. We're talking about murder and assault with
16 intent to kill. Then I trust you to make the proper
17 decision of finding me not guilty because, not
18 guilty by reasonable doubt because the State has not
19 presented enough evidence to convict me for murder.
20 So since you got the opportunity to make that
21 decision, I think I've presented enough evidence and
22 covered all my grounds because I don't want to be
23 repeating myself and repeating the same thing
24 because the judge ordered us he don't want to hear
25 us repeat the same thing over and over. I don't

1 need to repeat nothing to you people I'm talking
2 about. I just want to make sure I cover all these
3 grounds before I sit down, and as of now, I think I
4 have.

5 So, in your deliberation I trust that you
6 make the right decision because I have been doing a
7 lot of studying and present my own case to you and
8 my own defense to you so I trust that you will have
9 the right verdict by finding me not guilty by
10 reasonable doubt. Thank you for your attention.

11 THE COURT: All right. Ladies and
12 gentlemen, it is now my duty as the trial judge
13 under the constitution of this State to charge and
14 instruct you on the applicable law in this case. It
15 is your duty as jurors to accept and apply the law
16 as I will now state it to you. Furthermore, it is
17 your duty, your exclusive duty, to decide all of the
18 issues of fact in this case and to determine the
19 effect, value, weight, and truth of the evidence.
20 Both the State and the Defendant have a right to
21 expect that you will carefully consider and evaluate
22 the evidence and apply the law of this case to it so
23 that in the end both the State of South Carolina and
24 the Defendant will receive a fair and impartial
25 trial. I want you to understand that when I use the

1 word defendant I refer to Mr. Muttagin Fatir
2 Abdullah.

3 The charges alleged in the indictment are
4 murder, assault and battery with intent to kill, and
5 possession of a weapon during the commission of a
6 violent crime. To these charges the defendant has
7 entered a plea of not guilty. This plea of not
8 guilty places the burden of proof on the State to
9 prove the guilt of the defendant to you, the jury,
10 beyond a reasonable doubt. I remind you, ladies and
11 gentlemen, that the fact the defendant was arrested,
12 charged, and indicted in this case is not evidence
13 in this case and cannot be considered by you as
14 evidence of guilt in this case, nor does it create
15 any presumption or inference of guilt. The
16 indictment, ladies and gentlemen, is simply the
17 formal written instrument which contains the charges
18 made against the defendant. It is the formal
19 document by which this case is brought into this
20 court.

21 As I mentioned above, the indictment in
22 this case alleges three separate and distinct
23 offenses against the defendant. You must decide
24 each charge separately on the evidence and the law
25 applicable to it uninfluenced by your decision as to

1 any other charge. The defendant may be convicted or
2 acquitted on any or all of the offenses charged.

3 As stated previously you will be asked to
4 write a separate verdict of guilty or not guilty for
5 each charge alleged in the indictment. Ladies and
6 gentlemen, it is vital, it is vital that you
7 understand that the defendant is presumed under the
8 law to be innocent of these charges. The defendant,
9 has no obligation to prove his innocence. It is a
10 fundamental rule of our law that a defendant,
11 irrespective of the seriousness of the charges
12 against him, is always presumed innocent of the
13 crimes for which he is charged unless and until his
14 guilt has been proven by evidence that satisfies
15 you, the jury, beyond a reasonable doubt.

16 The presumption of innocence is not a mere
17 legal theory or a legal phrase. The presumption of
18 innocence is very important, and you need to
19 understand that this presumption accompanies the
20 defendant from the time of his arrest and appearance
21 in this court and continues with the defendant even
22 after you retire to the jury room to deliberate. In
23 other words, the defendant receives the benefit of
24 the presumption of innocence until the very end of
25 this trial when you, the jury, will deliberate upon

1 the evidence and decide whether the State has proven
2 his guilt beyond a reasonable doubt.

3 Now what is a reasonable doubt in the law?
4 A reasonable doubt is the kind of doubt that would
5 cause a reasonable person to hesitate to act. Proof
6 beyond a reasonable doubt is proof that leaves you
7 firmly convinced of the defendant's guilt. Now
8 there are very few things in this world that we know
9 with absolute certainty so even in criminal cases
10 the law does not require proof that overcomes every
11 possible doubt. However, if based on your
12 consideration of the evidence you are firmly
13 convinced that the defendant is guilty of the crimes
14 charged you must find him guilty. If on the other
15 hand, you think there is a real possibility that he
16 is not guilty, you must give him the benefit of the
17 doubt and find him not guilty. Jurors, please
18 understand that reasonable doubt may arise from
19 evidence which has been presented in the case or
20 from the lack of evidence in the case. It is your
21 responsibility to determine whether or not
22 reasonable doubt exists as to the guilt of this
23 defendant. I charge you that the defendant is
24 entitled to every reasonable doubt arising in the
25 whole case. If upon any issues of fact essential to

1 conviction and a verdict of guilty you have a
2 reasonable doubt as to how that issue should be
3 resolved, it would be your duty to resolve that
4 reasonable doubt in favor of the defendant.

5 Now during this trial you and I have had
6 separate duties to perform. As the trial judge it
7 is my responsibility to preside over this trial, and
8 I also have the duty to rule upon the admissibility
9 of the evidence offered during the process of this
10 trial. In that regard, you are to consider only the
11 competent evidence before you and you are to
12 disregard from your mind any testimony ordered
13 stricken from the record of the case during the
14 progress of the trial, if there was any. And you
15 are to consider only the testimony which has been
16 presented from this witness stand together with any
17 exhibits admitted into the record of this case and
18 any stipulations of counsel made into the record, if
19 there were any.

20 Furthermore, I have the additional duty to
21 charge you on the applicable law of this case, and
22 in that regard I am the sole judge of the law in
23 this case. It is your duty to accept and apply the
24 law as I state it to you. If you have any
25 preconceived ideas as to what the law is or what the

1 law ought to be and it does not agree with what I
2 tell you the law is, you are obligated under your
3 oath to abandon these preconceptions because you are
4 sworn to accept the law precisely as I state it to
5 you.

6 In this trial, ladies and gentlemen, you,
7 you ladies and gentlemen, are the sole and exclusive
8 judge of the facts and I am the judge of the law.
9 Do not infer that I have any opinion about the facts
10 in this case from anything that I have said during
11 the course of this trial in ruling upon the
12 admissibility of evidence or otherwise, or from
13 anything that I say during the course of this charge
14 to you. In this regard, the law simply does not
15 permit me to have an opinion about the facts. As
16 jurors it is your duty alone to determine the
17 effect, value, weight, and truth of the evidence
18 presented during the course of this trial.

19 Now in determining what the facts in this
20 case are, you must judge the credibility which
21 simply means the believability of the witnesses and
22 the value of weight to be given to their testimony.
23 You, alone, must decide the force, effect, and truth
24 of the testimony. In making this decision there are
25 many things that you may and should take into

1 consideration such as the appearance and manner of
2 the witness on the stand, a characteristic often
3 referred to as the demeanor of the witness, was the
4 witness forthright or hesitant, was the witness'
5 testimony consistent or did it contain
6 discrepancies, what was the ability of the witness
7 to know the facts about which he or she testified,
8 did the witness have a cause or reason to be biased
9 and prejudiced in favor of the testimony that he or
10 she gave, was the testimony of the witness
11 corroborated or made stronger by other testimony and
12 evidence, or was it made weaker or impeached by such
13 other testimony and evidence. As jurors, please
14 understand that you have the right to believe a
15 small portion of a witness' testimony and discard
16 the larger portion, or vice versa. You may believe
17 all of a witness' testimony, or none. You may
18 believe the testimony of a single witness against
19 that of many witnesses, or the other way around.

20 In exercising your mental processes and
21 attempting to decide the truth, the law simply
22 requires that you exercise your good judgment, your
23 common sense, your sense of logic and reason, and
24 your experiences in life. You then apply these
25 attributes to the evidence and apply the law as I

1 state it to you and, thus, arrive at a verdict.

2 Now ladies and gentlemen, there are two
3 types of evidence which are generally presented
4 during the course of a trial, direct evidence and
5 circumstantial evidence. Direct evidence directly
6 proves the existence of a fact and does not require
7 deduction. Circumstantial evidence is proof of a
8 chain of facts and circumstances indicating the
9 existence of a fact. Crimes may be proven by
10 circumstantial evidence. The law makes absolutely
11 no distinction between the weight or value to be
12 given to either direct or circumstantial evidence.
13 However, to the extent the State relies on
14 circumstantial evidence, all of the circumstances
15 must be consistent with each other and when taken
16 together, point conclusively to the guilt of the
17 accused beyond a reasonable doubt. If these
18 circumstances merely portray the defendant,
19 defendant's behavior as suspicious, the proof has
20 failed.

21 The State has the burden of proving the
22 defendant guilty beyond a reasonable doubt. The
23 burden rests with the State regardless of whether
24 the State relies on direct evidence, circumstantial
25 evidence, or a combination of the two.

1 Now during the course of the trial, ladies
2 and gentlemen, you heard testimony from individuals
3 who had a past or prior criminal record. A person
4 who has a past criminal record is competent to
5 testify during a trial. A past record does not
6 affect the ability of that witness to testify. The
7 past record may only be considered by you, if at
8 all, in determining the witness' believability.
9 Remember, you're the sole judges of the facts in
10 this case and of the believability of any and all of
11 the witnesses.

12 In this case you also heard the testimony
13 of individuals that were qualified as expert
14 witnesses. I previously gave you a charge on that,
15 and I'm gonna give you this charge again. The rules
16 of evidence ordinarily do not permit witnesses to
17 testify to opinions or conclusions. An exception to
18 this rule exists for witnesses that we call expert
19 witnesses. A witness who by education and
20 experience has become an expert in some art,
21 science, profession, or calling may state an opinion
22 as to a relevant and material matter in which the
23 witness claims to be an expert and may also state
24 the reasons for the opinion. You, ladies and
25 gentlemen, should consider any expert opinion

1 received in evidence in the case, and like any other
2 evidence, give it the weight that you think it
3 deserves. If you decide that the opinion of an
4 expert witness is not based on sufficient education
5 and experience, or if you conclude that the reasons
6 given in support of the opinion are not sound or
7 that the opinion is outweighed by other evidence,
8 you may disregard the opinion entirely.

9 Furthermore, an expert witness' testimony is to be
10 given no greater weight than that of other witnesses
11 simply because the witness is an expert. Further,
12 you are not required to accept an expert's opinion
13 even though it is not contradicted.

14 Now, ladies and gentlemen, I instruct you
15 and I emphasize to you, that the fact that the
16 defendant in this case did not testify is not to be
17 considered by you in any way in your deliberation
18 and your consideration on the question of the guilt
19 or innocence of the defendant. It must not be
20 considered by you in any manner whatsoever. A
21 defendant has the constitutional right to remain
22 silent and the assertion of this right must not be
23 considered by you in your deliberations. I repeat,
24 under your oath you are to draw no conclusions. You
25 are no draw no conclusions whatsoever from the fact

1 that the defendant in this case did not testify.
2 The fact that the defendant did not testify should
3 not even be discussed in the jury room. The burden
4 of proof, as I have stated to you, is on the State.
5 The defendant is not required to prove his
6 innocence. The burden of proof remains on the State
7 to prove guilt beyond a reasonable doubt.

8 Now an issue in this case, ladies and
9 gentlemen, is the identification of the defendant as
10 the person who committed the crime charged, crimes
11 charged. The State has the burden of proving
12 identity beyond a reasonable doubt. You must be
13 satisfied beyond a reasonable doubt of the accuracy
14 of the identification of the defendant before you
15 may convict the defendant. Identification testimony
16 is an expression of belief or impression by a
17 witness. You must determine the accuracy of the
18 identification of the defendant. You must consider
19 the believability of each identification witness in
20 the same way as any other witness. You may consider
21 whether the witness had an adequate opportunity to
22 observe the offender at the time of the offense.
23 This will be affected by things like how long or
24 short a time was available, how far or close the
25 witness was, the lighting conditions, and whether

1 the witness had the chance to see or know the person
2 in the past. Once again, I instruct you that the
3 burden of proof is on the State and it extends to
4 every element of the crime charged, and this
5 specifically includes the burden of proving beyond a
6 reasonable doubt the identity of the defendant as
7 the person who committed the crime. If after
8 examining the testimony you have a reasonable doubt
9 as to the accuracy of the identification, you must
10 find the defendant not guilty.

11 Now in order to establish criminal
12 liability, criminal intent is required. For
13 example, the mental state required to be proven by
14 the State for a particular crime might be purpose,
15 intent, knowledge, recklessness, or criminal
16 negligence. Criminal intent must be proven by the
17 State beyond a reasonable doubt. Criminal intent is
18 always a matter that must be determined by the jury
19 from the circumstances surrounding the situation.
20 There is no way to prove intent to a mathematical
21 certainty. There is no way that medical science can
22 dissect a person's brain and determine what the
23 person had in mind so the law says that criminal
24 intent may be inferred from the circumstances shown
25 to have existed. This is how you make a

1 determination of whether or not the element
2 requiring intent was present. It is not necessary
3 to establish intent by direct and positive evidence,
4 but intent may be established by inference in the
5 same way as any other fact by taking into
6 consideration the acts of the parties and all the
7 facts and circumstances of the case.

8 Criminal intent is a mental state, a
9 conscious wrongdoing. It is up to you to determine
10 what the defendant intended to do based on the
11 circumstances shown to have existed. Criminal
12 intent can arise from action or a failure to act.
13 It may arise from negligence, recklessness, or an
14 indifference to duty or consequences that is
15 considered by the law to be the equivalent of
16 criminal intent.

17 Now the defendant, ladies and gentlemen,
18 is charged with the murder of David Way. The State
19 must prove beyond a reasonable doubt that the
20 defendant killed David Way with malice aforethought.
21 Malice is hatred, ill will, or hostility towards
22 another person. It is the intentional doing of a
23 wrongful act without just cause or excuse and with
24 an intent to inflict an injury or under
25 circumstances that the law will infer an evil

1 intent. Malice aforethought does not require that
2 malice exist for any particular time before the act
3 is committed, but malice must exist in the mind of
4 the defendant just before and at the time the act is
5 committed. Therefore, there must be a combination
6 of the previous evil intent and the act.

7 Malice aforethought may be expressed or
8 inferred. These terms, expressed and inferred, do
9 not mean different kinds of malice, but merely the
10 manner in which malice may be shown to exist. That
11 is either by direct evidence or by inference from
12 the facts and circumstances which are proved.

13 Expressed malice is shown when a person speaks words
14 which express hatred or ill will for another, or
15 when the person prepared beforehand to do the act
16 which was later accomplished, for example, lying in
17 wait for a person or any other, or any other acts of
18 preparation going to show that the deed was within
19 the defendant's mind would be expressed malice.

20 Malice may be inferred from conduct showing a total
21 disregard for human life.

22 The defendant is also charged with assault
23 and battery with intent to kill. In order to prove
24 assault and battery with intent to kill the State
25 must prove beyond a reasonable doubt that the

1 defendant committed an unlawful act of a violent
2 nature to the person of another with malice
3 aforethought. An assault occurs when a person
4 unlawfully attempts or offers to commit a violent
5 injury upon another person and had the present
6 ability to complete the attempted injury. An
7 assault is the intentional creation of a reasonable
8 fear of immediate bodily harm. It is not necessary
9 that the attempted injury or harm actually take
10 place. For example, if I walk up to you and we are
11 within arms reach, I draw back to hit you, that is
12 an assault. A battery is the unlawful touching of
13 another person by a person who has committed the
14 assault. An unlawful touching can be caused by a
15 part of the accused' body or by any object the
16 accused puts in motion. A battery is the completion
17 of the assault by using or applying force to another
18 person, however slight, in a rude, angry, or
19 resentful manner without legal justification for
20 doing so.

21 Using my earlier example, if I carry
22 through the assault by hitting you, then the battery
23 has occurred. Malice under this charge is defined
24 the same as it was under the previous charge. A
25 specific intent to kill, ladies and gentlemen, is

1 not an element of assault and battery with intent to
2 kill. Intent is further defined in the same manner
3 as previously defined in this charge.

4 Possession of a weapon during the
5 commission of a violent crime. The defendant is
6 also charged with this offense. The State, ladies
7 and gentlemen, must prove beyond a reasonable doubt
8 that the defendant was in possession of a firearm or
9 visibly displayed what appeared to be a firearm
10 during the commission of a violent crime. A firearm
11 means any machine gun, automatic rifle, revolver,
12 pistol, or any weapon which will, is designed to, or
13 may be readily converted to expel a projectile. In
14 order to find the defendant guilty of possession of
15 a weapon during the commission of a violent crime,
16 you must first find the defendant guilty of either
17 committing a violent crime or attempting to commit a
18 violent crime. Murder and assault and battery with
19 intent to kill are both violent crimes. The State
20 must prove beyond a reasonable doubt that the weapon
21 further advanced or helped in the commission of the
22 crime.

23 Now ladies and gentlemen, I am now
24 drawing near the end of my charge and I want you to
25 clearly understand that you are not partisans or

1 advocates for the State of South Carolina or the
2 Defendant. It is your duty by your joint
3 deliberations to determine the truth in this case
4 giving to the defendant the benefit of every
5 reasonable doubt on each and every issue. Then to
6 the facts which you determine to be true, you should
7 take and apply the law which has been given to you
8 by this Court and, thus, arrive at a verdict which
9 speaks the truth in this case. In fact, the word
10 verdict, which has a Latin derivative, means a true
11 saying. Thus, when you have accomplished these
12 responsibilities you will have satisfied your oath
13 as jurors and you will have discharged your duty to
14 this court.

15 Once you retire to the jury room the
16 bailiff will give the verdict form to the foreman,
17 to you, Mr. Foreman. When you, the jury, arrive at
18 a verdict as to the offense charge, offenses charged
19 in this case, you Mr. Foreman, will select the
20 verdict as to the charge on the verdict form. If
21 the State has failed to prove the guilt of the
22 defendant beyond a reasonable doubt, your verdict
23 will be not guilty. Likewise, if the State has
24 proven the guilt of the defendant beyond a
25 reasonable doubt, your verdict will be guilty. Now

1 once a decision has been made, the foreman will
2 check whichever choice is the verdict of the jury as
3 to each charge. The verdict, ladies and gentlemen,
4 that you render in this case must be, must be the
5 verdict of each and every juror. It must be your
6 unanimous verdict. All twelve jurors must agree on
7 the verdict which you authorize the foreman to write
8 for the jury.

9 Now ladies and gentlemen, I want you to
10 further understand that the order in which the
11 choices of verdict appear on the verdict form are
12 not suggestive of any verdict on the part of this
13 court. The verdict in this case is to be determined
14 by you, the jury, not the Court. Furthermore,
15 ladies and gentlemen, please understand that even
16 though I will give the verdict form to the foreman,
17 it is not his verdict alone; it is the verdict of
18 all twelve of you. And I emphasize, again, that it
19 must be unanimous. I'm also going to give you a
20 copy of these instructions in written form. During
21 your deliberations you may refer to the instructions
22 to guide your decision making. You must consider
23 the instructions as a whole and not follow some and
24 ignore others. Please, Mr. Foreman, return these
25 instructions to the Court at the time that a verdict

1 is rendered.

2 Now I am, at this time I am going to ask
3 that you all step to the jury room, but do not begin
4 your deliberations until you're told to do so. The
5 law, the law requires that I consult with the
6 parties to insure that I have not left anything out
7 of these instructions. After I have consulted with
8 the parties, the bailiff will bring in a copy of
9 these instructions along with a verdict form and the
10 items of evidence and instruct you at that time to
11 begin your deliberations.

12 During your deliberations should you
13 have any questions, Mr. Foreman, it'll be your
14 responsibility to reduce such question to writing,
15 signing, and dating whatever the question may be,
16 knock on the door, let the bailiff know that you
17 have a question. They will get that question to me,
18 and I will answer it however the Court deems
19 appropriate to answer it. The bailiff will be
20 outside the jury room. And likewise, when you the
21 jury, have reached a unanimous verdict, once you
22 have completed the verdict form, signed, and dated
23 the verdict form which must be the unanimous verdict
24 of the jury, if you'll knock on the door and let the
25 bailiff know that you've reached a verdict, he will

1 get you all in the courtroom back in here as quickly
2 as possible.

3 Does everyone on the jury feel okay,
4 anyone not feeling well?

5 (There was no response.)

6 THE COURT: Anything from the State before
7 I ask the jury to step to the jury room?

8 SOLICITOR FINNEY: No, Your Honor.

9 THE COURT: Mr. Abdullah?

10 MR. ABDULLAH: Nothing from Defense, Your
11 Honor.

12 THE COURT: I'm gonna ask you step to the
13 jury room but do not, do not begin your
14 deliberations until you're instructed to do so.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 10:58 a.m.)

17 THE COURT: All right, any objection or
18 exception to the charge I've given the jury by the
19 State?

20 MR. FINNEY: None, Your Honor.

21 THE COURT: Defendant?

22 MR. ABDULLAH: None from Defense, Your
23 Honor.

24 THE COURT: All right. Do you all, you
25 want to come up here and make sure all the items of

1 evidence are in order. Go ahead and look at t his
2 verdict form, Mr. Abdullah, Mr. Finney.

3 (WHEREUPON, counsel approached the
4 Bench and reviewed verdict form.)

5 SOLICITOR FINNEY: Yes, sir, no objection.

6 THE COURT: Any objection?

7 MR. ABDULLAH: Do each one have to sign a
8 check?

9 THE COURT: No. If it's -- my
10 instructions were they have to consider each one of
11 these charges: Murder, assault and battery with
12 intent to kill, possession of a weapon. If they
13 find you not guilty or guilty on this, they check
14 the appropriate box beside guilty or not guilty.
15 Once they've gone through here the foreman will sign
16 and date the verdict form.

17 MR. ABDULLAH: That's mine?

18 THE COURT: No, that's, that is, that's
19 going back to the jury.

20 (Mr. Finney and Mr. Abdullah review exhibits.)

21 THE COURT: I'm gonna release the
22 alternates in the hall back here so they won't have
23 to come back in the courtroom.

24 Mr. Abdullah, we selected two alternates
25 that were seated on the back row on this side down

1 here. The law does not permit those alternates to
2 remain in the jury room once the case goes to the
3 jury for them to begin deliberations so I am going
4 to have the bailiff pull them out, those two
5 individuals, which were Ms. Geddings, Angela
6 Geddings, and Mr. James Christo Dimitriadis. I'm
7 gonna release them, free to go. That's why I asked
8 the jury before I sent all of them back there, I
9 asked them if they were feeling okay, okay. If
10 anyone ever says I'm not feeling well, then that
11 creates an issue of one of the alternates possibly
12 going in there, okay?

13 Any exception or anything further from the
14 State before I ---

15 SOLICITOR FINNEY: Nothing from the State.

16 THE COURT: Defendant?

17 MR. ABDULLAH: No, sir.

18 THE COURT: All right, we'll stand down at
19 this time.

20 (Jury began deliberations at 11:06 a.m.)

21 (Court's Exhibit Number 1 was marked
22 and made a part of the record.)

23 THE COURT: All right, the Defendant is
24 back in the courtroom, along with the Solicitor. I
25 got a note from the foreman of the jury requesting a

1 transcript of testimony of all the witnesses. I'm
2 gonna bring the jury back out and tell them that is
3 impossible. If they want to hear any and all
4 testimony we will key it, I'll have the court
5 reporter key it up, we can listen to the entire
6 trial in its entirety if they so desire. Then we'll
7 go from there. Bring me the jury please, sir.

8 (WHEREUPON, the jury was returned to the
9 courtroom at approximately 11:48 a.m.,
10 and the following proceedings commenced
11 in open court.)

12 THE COURT: All right, Mr. Foreman, ladies
13 and gentlemen of the jury, I have received your note
14 requesting the transcripts of testimony of all
15 witnesses, which has been marked as a court exhibit.
16 We do not have the ability to produce real-time
17 transcripts. That's not something that's done in
18 this courtroom, anywhere in this state, in very few
19 states throughout the country, okay. Now, having
20 said that, if there are specific witnesses'
21 testimony that you want to hear, I can have my court
22 reporter key that up and possibly play that
23 testimony back for you. Or if you want to hear the
24 entire trial in its entirety again, we can start it
25 back over and let you listen as much as you want to

1 listen to; but we do not have the ability to
2 reproduce transcripts. I told you when I qualified
3 you on Monday this is a court of record, and what I
4 say in my qualification at that time is for you to
5 speak loud and clear when we go through that
6 qualification process so that a transcript can be
7 reproduced at a later time if need be, okay. And I
8 tell you that, I tell every jury that when I qualify
9 so; but we do not, can't reproduce -- it's not like
10 I have real-time transcripts popping up here and
11 that my court reporter can just hit a button and
12 print them out like that. It doesn't work like
13 that, okay.

14 So, if Mr. Foreman, if you all, if there's
15 any specific testimony that you wish to re-hear, if
16 you'll reduce that to writing. We will bring you
17 back here, bring you all back in here after you
18 consult with the remainder of the jury panel. If
19 you want to consult with them if there's specific
20 testimony you want to hear, let me know by virtue of
21 a note just like you did on the last and we'll get
22 you back in here and get it as soon as we can. It
23 will take her a while to get it keyed up, whatever
24 testimony you want to hear.

25 THE FOREMAN: Yes, Your Honor.

1 THE COURT: We'll get it keyed up and
2 we'll go from there, okay? Thank you.

3 (WHEREUPON, the jury was removed from the
4 courtroom at 11:52 a.m.)

5 THE COURT: All right, any exception or
6 objection to anything I said to the jury from the
7 State?

8 SOLICITOR FINNEY: None from the State.

9 THE COURT: Defense?

10 MR. ABDULLAH: None from the Defendant,
11 Your Honor.

12 THE COURT: All right, we'll stand back at
13 ease. I'll see if they come up with a note,
14 otherwise, kind of go from there.

15 (WHEREUPON, a recess was taken from the
16 proceedings.)

17 THE COURT: They also wanted a list of the
18 names of all the witnesses. Mr. Bradley provided me
19 with this list, a total of 13 witnesses. Any
20 objection to ---

21 SOLICITOR FINNEY: Just by my notes I only
22 had 11. Ms. Parker Wells, Angelina Parker Wells,
23 Marell McBride, Thurston Lane, Coral Scott,
24 Lieutenant Monahan, Investigator James Atkinson,
25 Cindy Pierson, Sergeant Raymond Mackessy, Ila

1 Paavel, Captain James Turner, number 10. Dianne
2 Bodie 11, Ila Simmons, 12, Doctor Janice Lage, 13.
3 All right, you're right. I left Ms. Pierson off my
4 list.

5 THE COURT: Obviously left somebody else.

6 SOLICITOR FINNEY: Somebody else after
7 Pierson, you said Mackessy. Then Paavel. Turner.

8 THE COURT: Correct. 11, Bodie.

9 MR. FINNEY: Correct. 12, Simmons.

10 THE COURT: And 13 was Doctor Lage.

11 SOLICITOR FINNEY: All right, I just, I
12 didn't miscount, I apologize.

13 THE COURT: You got them all?

14 SOLICITOR FINNEY: Yes, sir.

15 THE COURT: Any objection to me handing
16 this back, let them see the names of witnesses?

17 MR. ABDULLAH: I have no objection. Do
18 they see -- what they want to see, the whole
19 transcript of those or what?

20 THE COURT: My court reporter is gonna
21 play back testimony of Mr. McBride and Mr. Scott.
22 I'm gonna give them this list of witnesses because
23 there may be something else they want to listen to.

24 MR. ABDULLAH: No objection from the
25 State.

1 THE COURT: If you will bring me the jury.
2 (WHEREUPON, the jury was returned to the
3 courtroom at approximately 1:05 p.m., and
4 the following proceedings commenced in
5 open court.)

6 THE COURT: It's my understanding your
7 lunch is here. I'm gonna let you step back to the
8 jury room, eat lunch while my court reporter gets
9 Mr. Scott's testimony ready. I'm also going to ask
10 that the bailiff, Mr. Bradley, provide to you all
11 this list of witnesses that you requested. If there
12 are any other witnesses that you so desire to hear,
13 please let me know by virtue of writing it down,
14 okay?

15 (WHEREUPON, the jury was removed from the
16 courtroom at 1:08 p.m. and a lunch break
17 was taken.)

18 (Court's Exhibit Numbers 2 and 3 were
19 marked and made a part of the record.)

20 THE COURT: Bring me the jury please.

21 (WHEREUPON, the jury was returned to the
22 courtroom at approximately 1:58 p.m., and
23 the following proceedings commenced in
24 open court.)

25 (Testimony of Marell McBride and Coral Scott were

1 played for the jury.)

2 THE COURT: Mr. Foreman, ladies and
3 gentlemen of the jury, was there any other testimony
4 I gave y'all from that list? You may need to
5 discuss that, but I would ask you return to the jury
6 room, continue your deliberations. If there's any
7 other testimony that you would like to hear, if
8 you'd let me know in the same manner that you did
9 beforehand, okay.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 2:26 p.m.)

12 THE COURT: We'll stand down.

13 (WHEREUPON, a recess was taken from the
14 proceedings.)

15 THE COURT: I've gotten two notes. One is
16 they want to hear the testimony of Mr. Lane. I also
17 got another note. "One of our members had oral
18 surgery last week and had sutures removed yesterday.
19 She's currently in intense pain." She's asking if
20 there's any way she can be replaced. She's not
21 taking her medication for pain due to side effects.
22 I would -- Mr. Finney, anything? What I was going
23 to do is release them for the balance of the day so
24 she can, whoever this individual, who it is -- it
25 doesn't identify who the juror is -- can go home and

1 deal with whatever they need to deal with concerning
2 her pain and have them return at 9:30 in the
3 morning. Any objection?

4 SOLICITOR FINNEY: The State would have no
5 objection to that.

6 THE COURT: Any objection?

7 MR. ABDULLAH: No, sir, I have no
8 objections to that.

9 THE COURT: All right. And we can just
10 let them hear the testimony in the morning.

11 SOLICITOR FINNEY: Very good.

12 THE COURT: Bring me the jury please.

13 (WHEREUPON, the jury was returned to the
14 courtroom and the following proceedings
15 commenced in open court.)

16 THE COURT: Mr. Foreman, ladies and
17 gentlemen, I received both notes here. I'll address
18 each of them one at a time. With regards to the
19 individual that had oral surgery, the alternates,
20 have already been released. That's why I asked if
21 everybody was okay before I sent the case back to
22 the jury room. So what I'm going to do is I am
23 going to release you for the balance of the day.
24 I'm gonna release you for the balance of the day.
25 I'm gonna ask you be back here 9:30 in the morning

1 so that individual can address whatever issue they
2 may have pursuant to the surgery they had last week.
3 With regards to the testimony of Mr. Lane, when you
4 all return at 9:30 tomorrow morning that testimony
5 will be cued up and ready to be played at that time,
6 all right?

7 So anything further from the State before
8 I release this jury?

9 SOLICITOR FINNEY: Nothing from the State.

10 THE COURT: Defendant?

11 MR. ABDULLAH: Nothing from Defense, Your
12 Honor.

13 THE COURT: Do not, do not discuss this
14 case with anyone, with anyone. When you return
15 tomorrow morning you are not to discuss this case in
16 the jury room until all twelve of you are back in
17 the jury room, all right. I will see you tomorrow
18 morning at 9:30. Thank you..

19 SOLICITOR FINNEY: Judge ---

20 THE COURT: Ladies and gentlemen, do not
21 do any independent investigation. Don't read the
22 paper, don't look on the internet, internet search.
23 You're to decide this case as I told you from the
24 outset solely, solely upon the evidence and
25 testimony that's in this courtroom and nowhere else.

1 Y'all have a good evening. Thank you.

2 (WHEREUPON, the jury was returned to the
3 courtroom at approximately 3:00 p.m., and
4 the following proceedings commenced in
5 open court.)

6 THE COURT: All right, anything from the
7 State?

8 SOLICITOR FINNEY: Nothing, Your Honor.

9 THE COURT: Defendant?

10 MR. ABDULLAH: No, sir, Your Honor.

11 THE COURT: All right, 9:30 tomorrow
12 morning.

13 Madam court reporter, if you'll make those
14 court exhibits please.

15 (Court's Exhibit Numbers 4 and 5 were
16 marked and made a part of the record.)

17 (WHEREUPON, the proceedings were concluded
18 for the day to be reconvened on October
19 21, 2016.)

20 THE COURT: All right. We've got all the
21 jurors here. It's my understanding what we're going
22 to do is I'm gonna have the jury brought back in, go
23 ahead and listen to this testimony of Mr. Lane that
24 they requested, and I'll send them back, they can
25 continue deliberating. Anything from the State

1 before I bring the jury in?

2 MR. FINNEY: Nothing from the State.

3 THE COURT: Defendant?

4 MR. ABDULLAH: Nothing from the Defense,
5 Your Honor.

6 THE COURT: Bring me the jury please, sir.

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 9:30 a.m., and
9 the following proceedings commenced in
10 open court.)

11 THE COURT: All right. Mr. Foreman,
12 ladies and gentlemen of the jury, hope you had a
13 good evening last night. We're ready to proceed
14 here today. I have requested the court reporter
15 have cued up the testimony of Mr. Lane. It's ready
16 to go and listen to it at this time.

17 (Testimony of Thurston Lane was played for the
18 jury.)

19 THE COURT: Ladies and gentlemen of the
20 jury, that concludes the testimony of Mr. Lane that
21 you requested to re-hear. I'm gonna ask you return
22 to the jury room and continue your deliberations at
23 this time.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 10:06 a.m.)

1 THE COURT: Anything from the State before
2 we stand back down?

3 SOLICITOR FINNEY: Nothing from the State.

4 THE COURT: Defendant?

5 MR. ABDULLAH: Nothing from Defense, Your
6 Honor.

7 THE COURT: All right, very well, we'll
8 stand down.

9 (WHEREUPON, a recess was taken from the
10 proceedings.)

11 THE COURT: All right, it's my
12 understanding that the jury has reached a verdict. I
13 will say this and I say this in all trials at least
14 in front of me with regards to a jury, I will tell
15 you that to keep your emotions in check, whatever
16 the verdict may be; failure to do so could result in
17 you being held in contempt of court by virtue of a
18 fine and/or incarceration. Anything from the State
19 before I bring the jury out?

20 SOLICITOR FINNEY: Nothing from the State.

21 THE COURT: Anything from the Defendant?

22 MR. ABDULLAH: Nothing from the Defense,
23 Your Honor.

24 THE COURT: All right, if you'll bring me
25 the jury please.

1 (WHEREUPON, the jury was returned to the
2 courtroom at approximately 11:47 a.m.,
3 and the following proceedings commenced
4 in open court.)

5 THE COURT: All right, Mr. Foreman, ladies
6 and gentlemen of the jury, it's my understanding
7 that you all have reached a verdict?

8 THE FOREMAN: Yes, sir, we have.

9 THE COURT: If you'll give that to my
10 bailiff here please.

11 (Verdict form was tendered to the Court.)

12 THE COURT: All right, Mr. Bradley, if
13 you'd publish the verdict please.

14 THE CLERK: Yes, sir, Your Honor. For the
15 State of South Carolina, County of Sumter,
16 indictment number 2016-GS-43-0566, the State of
17 South Carolina versus Muttaqin Fatir Abdullah,
18 defendant. Question number one, as to the charge of
19 murder: We, the jury, unanimously find the
20 defendant Muttaqin Fatir Abdullah guilty. Question
21 number two, as to the charge of assault and battery
22 with intent to kill: We, the jury, unanimously find
23 the defendant Muttaqin Fatir Abdullah guilty.
24 Question number three, as to charge of possession of
25 a weapon during the commission of a violent crime:

1 We, the jury, unanimously find the defendant
2 Muttaqin Fatir Abdullah guilty. Signed William L.
3 Stallings, foreperson, dated October 21st, 2016.

4 Ladies and gentlemen of the jury, is this
5 your verdict, so say you all by raising your right
6 hand please.

7 (All jurors complied by raising their hand.)

8 THE COURT: Thank you. All right, Mr.
9 Foreman, -- well, let me ask this, anything from the
10 State at this time?

11 SOLICITOR FINNEY: No, nothing from the
12 State.

13 THE COURT: Anything from Defendant?

14 MR. ABDULLAH: Not at this time, Your
15 Honor.

16 THE COURT: Okay. Ladies and gentlemen,
17 at this time I want to thank you for your service
18 this week. I know that jury service never ever
19 comes at a convenient time, but our system can't
20 function without you. I hope you realized, or
21 realize how important your service is, not only to
22 this community, but to this state and to this
23 country. I mean, I can't tell you how important
24 that your service is. It's the only remaining
25 service that citizens in this country still have.

1 It's not a situation where you get to trapped in the
2 military and have to go away for a couple of years.
3 This gives you an opportunity to serve. I can
4 promise you, if you were a litigant in this
5 courthouse in some way, shape, or form, whether it
6 be with civil side or criminal side or whatever, you
7 would want people such as yourselves serving as
8 jurors up here. You would not want me or some other
9 judge walking into the courtroom on Monday morning
10 and telling law enforcement go find me the first
11 twelve people you can find, bring them in here and
12 try this case. Nor, would you want me or say a
13 panel of judges sitting up here and deciding cases.
14 This gives you all an opportunity to make decisions
15 on what goes on.

16 Now what will happen is the sentencing
17 process, all right. You all are free to stay and
18 watch sentencing, or you are free to go at this time
19 if you so desire. I will leave that entirely up to
20 you. All right, if you wish to leave you may do so
21 at this time.

22 Otherwise, Mr. Finney, you have sentencing
23 sheets?

24 SOLICITOR FINNEY: I do, Your Honor.

25 THE COURT: Mr. Finney, anything from you

1 at this time?

2 SOLICITOR FINNEY: If Your Honor please, I
3 would like to have the opportunity to have any
4 members of the family of Mr. Way or Mr. McBride make
5 a short statement to the Court before sentencing,
6 and I also would want to put on the record that we
7 believe Mr. Abdullah has a prior record of assault
8 and battery of a high and aggravated nature from
9 2001. He has a disorderly conduct in 1993. He has
10 assault and battery with intent to kill from 1995
11 for which he received, we believe, a six year
12 sentence; and he had a distribution of crack cocaine
13 from 1995 for, he also received a concurrent six
14 year sentence. In addition, as you are, have been
15 informed, in 2004 federal district court found him
16 guilty of violation of federal gun law. 2006, he
17 was found guilty of violation of federal gun law and
18 sentenced to a life sentence which was changed last
19 year, excuse me, last year or earlier this year,
20 based on the one of the three prior strikes which
21 was the drug offense being declassified, and
22 therefore, his life sentence was downward, changed
23 downward, to a 10 or 12 year sentence and at that
24 point he was on the verge of being released from
25 federal custody when we were notified and we

1 re-issued the warrants, re-indicted him and brought
2 him to trial here this week.

3 THE COURT: Okay.

4 SOLICITOR FINNEY: Your Honor, please,
5 would you hear from Mr. Marell McBride?

6 THE COURT: Please direct any comments to
7 me, okay, to the Court.

8 MR. FINNEY: Tell the judge your name.

9 THE VICTIM: Marell McBride.

10 THE COURT: Yes, sir, Mr. McBride.

11 THE VICTIM: I'd like to thank y'all for
12 doing the right thing today. As far as me, my
13 friend, I will never see him again. Thank you, Your
14 Honor.

15 SOLICITOR FINNEY: Your Honor, this is
16 Vangie Parker Wells, the mother of David Way.

17 MS. WELLS: I am Vangie Way Parker Wells,
18 David's mother and we were a happy, normal family.
19 My life revolved around my children, three boys and
20 one girl, their personal interest hopes of their
21 future. On March the 14th, 2004 our lives changed
22 forever. My oldest child David Way was gunned down.
23 You see, when a mother gives birth she has an
24 immediate need to nurture and protect her children.
25 I will give anything to change places with my son to

1 take away the pain he suffered from the hands of a
2 careless person shooting into a crowd. I feel
3 guilty that I wasn't there when he needed me the
4 most. He died alone with strangers. I feel as
5 though Muttaqin Fatir Abdullah ripped out my heart
6 and stomped on it. David was a peace, loving young
7 man. The pain never leaves me. I'm taking
8 medication for post-traumatic stress disorder due to
9 this crime. David's sister and brothers have not
10 been the same since this person shot and killed my
11 son.

12 David should be here. A parent should
13 never outlive their children. We are filled with
14 guilt and despair. I worry that if he is released
15 that he will hurt or kill someone else's child,
16 someone will suffer the same fate as this, my family
17 and David. The murderer has dominated our lives
18 daily. He walked uninvited into our lives and
19 destroyed David and pursued his own angry ways.
20 Abdullah has wrecked our family. David will never
21 get the chance to be married or ever have children
22 of his own. This sense of loss is so heartbreaking
23 and will always remain so. David's short life
24 enriched the lives of many people. He will never be
25 forgotten. And thank you.

1 THE COURT: Okay.

2 SOLICITOR FINNEY: Your Honor, that would
3 be our presentation from the State.

4 THE COURT: What's the code section for
5 assault and battery with intent to kill? Just under
6 the common law for that? ABHAN was under the, that
7 was the old. What's this, 'cause I'm pulling up
8 16-3-620 which is cited on the sentence sheet and
9 it's not coming up. If you want to look at
10 something in the statute.

11 SOLICITOR FINNEY: Yes, sir, I believe
12 back in 2004 at the time of the crime it would have
13 been under common law, Your Honor.

14 THE COURT: Was that up to 20 or 30 years
15 at the time? Hold on, I want to say it was up to
16 20.

17 SOLICITOR FINNEY: I believe it was 20.

18 THE COURT: 'Cause ABHAN was always 10.

19 SOLICITOR FINNEY: That's right.

20 THE COURT: The old ABHAN.

21 SOLICITOR FINNEY: That's correct.

22 THE COURT: Okay. All right, anything
23 else from the State?

24 SOLICITOR FINNEY: No, sir, Your Honor.

25 THE COURT: All right. Mr. Abdullāh, is

1 there anything that you wish to tell me, sir? You
2 don't -- I don't want you to say something that
3 could affect your appellate rights, but will
4 certainly give you an opportunity to say something
5 if you wish to.

6 THE DEFENDANT: Yes, fast direct appeal on
7 all my objections.

8 THE COURT: Sir?

9 MR. ABDULLAH: A fast and direct appeal on
10 all my objections.

11 THE COURT: You're gonna have to file an
12 appeal, okay. You got a certain time period to do
13 that, and you'll need to file an appeal in this,
14 okay.

15 MR. ABDULLAH: And what's the time limit?

16 THE COURT: Ten days; isn't it, Mr.
17 Finney?

18 SOLICITOR FINNEY: Yes, sir.

19 THE COURT: Ten days from today to make
20 sure your filings are done.

21 MR. ABDULLAH: In general sessions?

22 THE COURT: Yes, sir, through the clerk of
23 court general sessions and to the appellate court.

24 MR. ABDULLAH: This the appellate court in
25 South Carolina?

1 THE COURT: Yes, sir, South Carolina Court
2 of Appeals, South Carolina Supreme Court.

3 SOLICITOR FINNEY: Yes, sir.

4 MR. ABDULLAH: That's in Columbia, South
5 Carolina, right?

6 THE COURT: Yes, sir.

7 MR. ABDULLAH: Can he give me the address
8 before I leave?

9 THE COURT: I would ask that.

10 SOLICITOR FINNEY: I'll make sure he gets
11 it, Your Honor.

12 THE COURT: He has some limited resources
13 in what he can do, Mr. Abdullah, so if you'll make
14 sure he gets the address of where he needs to send
15 it. Okay?

16 SOLICITOR FINNEY: Yes, sir.

17 THE COURT: Okay, Mr. Abdullah? All
18 right, on indictment 2016-GS-43-0566, on possession
19 of a weapon during the commission of a violent
20 crime the defendant is hereby sentenced to the State
21 Department of Corrections for a period of five
22 years. As it relates to the assault and battery
23 with intent to kill, defendant is hereby committed
24 to State Department of Corrections for a period of
25 20 years. In the offense of murder the defendant is

1 hereby sentenced to the State Department of
2 Corrections for the balance of his natural life.
3 They're to run concurrent. Good luck to you, sir.

4
5 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 2nd day of April, 2018.

Frances B. Ray

FRANCES B. RAY, RPR

7/7

11-30-2017

10:27:28 a.m.

WITNESSES

J. Turner Sumter County Sheriff

ARREST WARRANT NUMBER

2016A4310200130 2016A4310200131
2016A4310200132 2016A4310200133

ACTION OF GRAND JURY

Robert K. Gallom
Foreperson of Grand Jury
Date: 5/12/16

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-43-0566

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MAY TERM 2016

THE STATE

vs.

MUTTAQIN FATIR ABDULLAH

Indictment for

Murder

Assault and Battery with Intent to Kill

**Possession of a Pistol by a Person Convicted of a Crime
of Violence**

**Possession of a Weapon During the Commission of a
Violent Crime**

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

8034362223
496

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

INDICTMENT FOR

Murder

Assault and Battery with Intent to Kill

Possession of a Pistol by a Person Convicted of a Crime of
ViolencePossession of a Weapon During the Commission of a Violent
Crime

At a Court of General Sessions, convened on May 12, 2016 the Grand Jurors of

SUMTER County present upon their oath:

COUNT ONE**MURDER**

That **Muttaqin Fatir Abdullah** did in Sumter County, on or about March 14, 2004, willfully, feloniously, and intentionally kill the victim, **David Way**, with malice aforethought, either express or implied, by means of shooting the victim, and the victim did die as a proximate result thereof on or about March 14, 2004 in Sumter County, in violation of Section 16-03-0010, S.C. Code of Laws, 1976, as amended.

COUNT TWO**ASSAULT AND BATTERY WITH INTENT TO KILL**

That **Muttaqin Fatir Abdullah** did in Sumter County on or about March 14, 2004, commit an unlawful act of violent injury with malice aforethought, either express or implied by shooting one **Marrell McBride** in the leg, thus committing the crime of Assault and Battery with Intent to Kill, in violation of Section 16-03-0620, S.C. Code of Laws, 1976, as amended.

COUNT THREE**POSSESSION OF A PISTOL BY A PERSON CONVICTED OF A CRIME OF
VIOLENCE**

That **Muttaqin Fatir Abdullah** did in Sumter County on or about March 14, 2004 knowingly possess or acquire a pistol after having been convicted of a crime of violence defined in Section 16-23-10, S. C. Code of Laws, 2003, as amended, in violation of Section 16-23-0030(B), S. C. Code of Laws, 1976, as amended.

498

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR
2016-GS-43-0566 WITH THE AFORESAID NAME OF MUTTAQIN FATIR ABDULLAH
SHOWN THEREON:

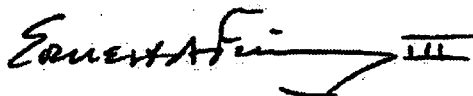
COUNT FOUR

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Muttaqin Fatir Abdullah did in Sumter County, on or about March 14, 2004, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, 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.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Sumter
 STATE VS.
Muttaqin Fatir Abdullah
 AKA: _____
 Race: Black Sex: M Age: 44
 DOB: 1972 SS#: 1
 Address: Waites Road
 City, State, Zip: Columbia, SC 29204
 DL#: 1 SID#: _____

INDICTMENT/CASE#: 2016-GS-43-0566
 A/W#: 2016A4310200130
 Date of Offense: 3/14/2004
 S.C. Code §: 16-03-0010
 CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Ernest A. Finney III 2019
 Finney, III, Ernest A SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Convictions of 10-21-16
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40, to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
 § 14-1-206 (Assessments 107.5 %) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 61.6 (Public Def/Probation) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk James C. Campbell
 Court Reporter: Frances B. Ray
 SCCA/217 (07/2016)

_____ days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

☐ Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge D. [Signature]
 Judge Code: 2180
 Sentence Date: 10-21-16

COUNTY OF
STATE

Sumter

VS.

Muttaqin Fatir Abdullah

AKA:

Race: Black Sex: M Age: 44

DOB: 1972 SS#

Address: Waiters Road

City, State, Zip: Columbia, SC 29204

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault / Assault and battery with Intent to Kill (ABWIK)

INDICTMENT/CASE#: 2016-GS-43-0566

A/W#: 2016A4310200131

Date of Offense: 3/14/2004

S.C. Code §: 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST
Finney, III, Ernest A

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Convictions 07 10-21-16☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)		\$375

TOTAL

\$12875

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Sumter

VS.

Muttaqin Fatir Abdullah

AKA:

Race: Black Sex: M Age: 44

DOB: 1972 SS#: [REDACTED]

Address: Waiters Road

City, State, Zip: Columbia, SC 29204

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

INDICTMENT/CASE#: 2016-GS-43-0566

A/W#: 2016A4310200133

Date of Offense: 3/14/2004

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Finney, III, Ernest A

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Corrections 10-21-16
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3.25

TOTAL

\$128.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning _____

\$ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

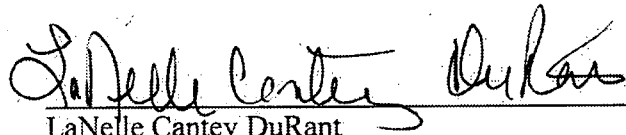
Sentence Date:

10-21-16

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."

Respectfully Submitted,



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

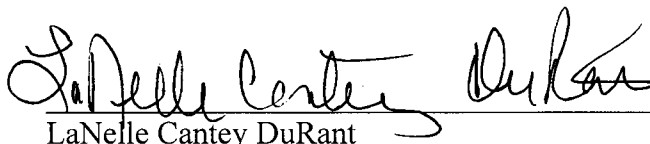
ATTORNEY FOR APPELLANT

This 5th day of October, 2018.

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."

Respectfully Submitted,


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of October, 2018.

RECEIVED
OCT 05 2018
SC Court of Appeals