

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Beaufort County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2019-001776

THE STATE,

Petitioner,

vs.

JOSEPH BOWERS,

Respondent.

APPENDIX

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APR 19 2017

SC Court of Appeals

Appeal from Beaufort County

Honorable R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH BOWERS

APPELLANT

APPELLATE CASE NO. 2014-002176

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #39 (CALL CD)
STATE'S EXHIBIT #40 (SCENE SKETCH)

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In the Court of General Sessions for the
State of South Carolina, County of Beaufort

Case No.: 2012GS0701419.

State of South Carolina

Plaintiff(s),

vs.

Transcript of Record

Joseph Bowers,

Defendant(s).

September 29, 2014

Beaufort, South Carolina

BEFORE:

The Honorable R. Markley Dennis, Jr.

JURY SELECTION

1 that, as I say, brings us here.

2 I need to share with you what's alleged. It's not
3 evidence, so I can ask you some questions. So, I'm
4 going to tell you now that it's alleged that the
5 Defendant, Mr. Bowers, did on or about June 21st, 2012,
6 with malice aforethought, kill and murder Michael
7 Morgan by means of shooting, and that Michael Morgan
8 died in Beaufort County as a proximate result on
9 June 21st, 2012, creating the charge of murder.

10 It's also alleged that he did at that time and
11 place, in Beaufort County, kill and murder Dante
12 Bailey, by shooting, and that Mr. Bailey died as a
13 proximate result on June 21st, 2012, again, creating
14 the offense of murder.

15 He's also accused of attempted murder in that he
16 did, while engaged in an ongoing gun battle, an
17 inherently dangerous felony, with malice aforethought
18 did attempt to kill and murder Richard Green by
19 shooting. That is alleged to have occurred, again, on
20 June 21st in Beaufort County.

21 He's also alleged to have committed the offense of
22 attempted murder by -- while engaged in an ongoing gun
23 battle, an inherently dangerous felony, with malice
24 aforethought, did attempt to kill and murder Robert
25 Goodwine by means of shooting.

JURY SELECTION

1 And it's further alleged that on that time and
2 place in Beaufort County, he did possess a weapon or
3 visibly display what appeared to be a weapon during the
4 commission or attempted commission of murder, a violent
5 crime.

6 I share that with you, first of all, to find out
7 if any member of the jury panel has heard anything,
8 read anything, you have any prior knowledge of this
9 dispute. If so, please stand.

10 All right. I'll ask you to come forward, and you
11 may approach.

12 THE BAILIFF: Go around this way, please. Line
13 up.

14 THE BAILIFF: Juror No. 316, Your Honor:

15 THE COURT: Good morning. How are you? Can you
16 tell me what you --

17 JUROR NO. 316: I just remember reading about it
18 in the paper, and seeing the Defendant's picture in the
19 paper for the crimes alleged against him.

20 THE COURT: Okay. Would that influence you?

21 JUROR NO. 316: No -- no, sir.

22 THE COURT: Would you be able to set that aside
23 and decide this case based solely on the evidence that
24 you hear in the trial?

25 JUROR NO. 316: Yes, sir.

APP'X 7

COLLOQUY

1 jury is faced with quite a confusing situation with
2 both the State's original theory and then the advanced
3 theory later on.

4 THE COURT: Okay. First of all, with respect to
5 the jury having problems, well, the jury is not going
6 to have these. They are not evidence, so that's not a
7 problem. What's constant is the language that
8 Mr. Bowers did kill or murder Dante Bailey, the second
9 indictment. That means the shooting and he died as a
10 proximate result of, it cites murder, and then has the
11 language of malice aforethought.

12 The extra language, it is just that, it is extra
13 language. I don't think that it's necessarily
14 confusing. I think that the indictments as drafted
15 meet the requirements, therefore, I deny the motion to
16 quash them.

17 Okay. Do you want to deal with judicial estoppel?
18 That is two.

19 MS. CAMPBELL: Yes, that is the second that I have
20 for Mr. Bowers. I have briefed Your Honor and attached
21 the transcript portions for Your Honor of the Lucas
22 Morgan trial. For the record, the Beaufort County
23 General Sessions court held September 15th, Lucas
24 Morgan was put on trial in the same matter. Lucas
25 Morgan was found not guilty on his indictment. And by

COLLOQUY

1 that not guilty finding by that jury on those four
2 indictments, two murder indictments, two other
3 indictments, the Defendant, Mr. Bowers, asserts that
4 that was a final decision. A jury's final decision on
5 the State's theory of the co-felon, mutual combatant
6 theory that they advance in the case against
7 Mr. Bowers. As I stated for Your Honor and not to
8 belabor the point for the record, Your Honor is
9 familiar with the elements of judicial estoppel, I
10 don't need to delineate that for Your Honor.

11 THE COURT: One of the elements has to be the same
12 parties.

13 MS. CAMPBELL: These are all of the same parties,
14 Your Honor.

15 THE COURT: Well, yes or no, there is a collateral
16 estoppel, that is a different ball game. But at first
17 reading my action was, well, that is interesting, that
18 may well create an issue. The problem that we have is
19 that they don't believe that the person that was tried
20 did anything, so that doesn't estop anything or
21 anything else. I don't know why they found him not
22 guilty, but we can't conclude that they found him not
23 guilty because they said, well, it wasn't mutual combat
24 or concluded that he didn't do anything.

25 So, the problem would be any time that you have

COLLOQUY

1 severed co-defendants and a trial comes out in favor of
2 one, that doesn't preclude the trial going forward as
3 to others. Because, if one was not guilty, doesn't mean
4 that the other is not. I don't see how that could ever
5 be the case.

6 MS. CAMPBELL: I do understand Your Honor's
7 rationale and thought process, that is why I liken it
8 to the cases of a conspiracy case. And because, when
9 we are left with a sole conspirator and a final
10 determination has been made on other conspirators,
11 there's no case on the single man.

12 THE COURT: I agree. But conspiracy in a crime of
13 itself requires communication. Murder accomplices --
14 everybody could be on scene, but only one person would
15 be the perpetrator of the murder.

16 MS. CAMPBELL: But under the State's theory of
17 mutual combatant and co-conspiracy.

18 THE COURT: We don't have --

19 MS. CAMPBELL: Yes. But, hand of one hand of all.
20 But the parties agreed to enter into this violent gun
21 battle.

22 THE COURT: I agree wholeheartedly, from the
23 standpoint -- I don't think that it is -- there's
24 judicial estoppel. It would be if we had the same
25 parties, for instance, if they tried and won -- we

COLLOQUY

1 couldn't do that in this country anyway. But the
2 bottom line, it has to be the same parties. For
3 instance, I'm going to try him on murder and then I'm
4 going to try him on mutual combat, well, you can't do
5 that. That would be unfair. Or I'm not going to raise
6 mutual combat with the co-defendant, or I'm going to
7 try you on mutual combat, that would create a problem.
8 Because, you have a different philosophy, theory,
9 totally. But they tried him on that.

10 The bottom line, and this is a catch, and this is
11 what I finally realized, when I charge hand of one, I
12 charge with mere presence. It doesn't make a person
13 responsible. They have to prove some involvement, some
14 connection. Therein lies what the jury -- it is a jury
15 issue as to whether or not the State, the fact that
16 they proved or failed to prove that this Defendant
17 either was the shooter or was involved in it doesn't
18 necessarily mean that Mr. Bowers couldn't. And so, I
19 hear you, I understand it, it's protected -- you are
20 protected if, certainly, it is an interesting and
21 well-reasoned philosophy, but I just can't agree with
22 you at this point. Thank you very much. Motion is
23 denied. But a very very good legal question,
24 Ms. Campbell. Thank you.

25 All right. Motion to Sequester, we agree, the

COLLOQUY

1 State will have the chief investigating officer and
2 Lieutenant Purdy, I think will be allowed to remain in
3 the courtroom. All other witnesses will be
4 sequestered.

5 MS. CAMPBELL: Thank you, Your Honor. The next
6 motion that I have on the list, if Your Honor chooses
7 to take that up, the motion to disallow any and all
8 statements made by Michael Morgan against my client.
9 In essence the dying declaration motion. And having
10 detailed this in detail for Your Honor, it is our
11 interpretation of the facts as we understand, he was
12 awake, oriented, he was under questioning by Detective
13 Fraser when he made an assertion that Joseph Bowers
14 made -- an assertion that Opie shot him. We would take
15 the medical records, Dr. REhman's testimony in Morgan's
16 trial. When he presented, he presented with a benign
17 injury, which was a shot gun shot to the buttock,
18 exiting iliac fold. One gun shot wound. Also in the
19 records from the hospital it indicates that Michael
20 spoke with them. And he indicated that he had been
21 shot before. So, it's not as if Mr. Morgan had this
22 required understanding that he was dying or that he had
23 some fear that he was about to expire and that what he
24 would say would need to, you know, have the truth and
25 veracity of a man about to meet his maker.

COLLOQUY

1 So, we would submit to the Court that the State
2 has the burden of showing that Mr. Morgan was under the
3 belief that he was dying when that statement was made.
4 And we would assert that he was not.

5 THE COURT: Thank you. Solicitor.

6 MS. CAMPBELL: Thank you, Your Honor. We have
7 talked about what is required in order to meet the
8 elements of a dying declaration under Rule 804B(2),
9 under South Carolina law, the death must be imminent,
10 the victim must be fully aware thereof, and the
11 circumstances of the death were the subject of the
12 declaration. That being said, Your Honor, while there
13 is not a suppressed statement from the victim, Michael
14 Morgan in this case, I'm dying, Opie shot me, pursuant
15 to State V McHohey -- and I will pass a copy of that up
16 to you. I believe that I provided it to Your Honor
17 last week. But, I would just briefly Judge, like to
18 read from --

19 THE COURT: You don't need to read from it. You
20 can just argue it.

21 MS. SWANSON: Okay.

22 THE COURT: I mean, I have been reading about
23 dying -- first of all, it's interesting that we have,
24 and this is one of the more recent ones, but it's an
25 interesting principle of law. Most of the decisions

COLLOQUY

1 are in the 1800s and 1926. It's not something that we
2 have had a lot of dealing, apparently, over the recent
3 times. But please continue Solicitor.

4 MS. CAMPBELL: Thank you. The State's point is
5 that under current State law Mr. Morgan's awareness of
6 his condition does not have to be expressly stated.

7 THE COURT: Well, you don't have to convince me of
8 that. I agree with you. It has to be, but there's no
9 question -- there is no question in my mind, at least
10 in reading the number of cases. And that is the number
11 one -- I mean, they all list that. We agree that all
12 of these are necessary for that to -- for it to work,
13 for it to apply. But the death must be imminent at the
14 time declarations are made and the declarant must be
15 fully aware that that as -- this is quoting from a 1926
16 case, has to be without any hope of life. Again, there
17 has to be -- while he doesn't have to say, I'm dying, I
18 need to tell you this, there has to be some urgency,
19 some compelling, compulsion on the part to disclose
20 this. And the fact that this is it, I'm not going to
21 have another chance. Otherwise it loses its
22 reliability I think.

23 I mean, that is what the 804 rules all deal with
24 that. Because we have to have some degree to balance
25 that. But I hear you, I don't have -- that I agree

COLLOQUY

1 with you, he doesn't have to say, I'm dying, this is
2 what I want to say. I agree with you. I can look at
3 all of the circumstances. The problem that I have, and
4 maybe you can address it is really from the time line
5 that you provided. He was shot at 1:30, gets to the ER
6 at 2:30, that was an hour. And then he is talking to
7 people and goes in and he has all of -- he has
8 something -- another problem that we have is what
9 happened, where did all of this happen? That is
10 another real issue here. I mean, he is -- according to
11 you, he's bleeding out. He's bleeding to death.

12 MS. SWANSON: He is hemorrhaging internally.

13 THE COURT: That is right. But suddenly they find
14 this when they go in for surgery. At what point was
15 this done? At what point did it suddenly start
16 doing that? I don't know, but I'll tell you this, we
17 don't have any evidence -- we don't have any concern of
18 the ER personnel. We are talking about somebody that
19 is dying out and bleeding out and until 2:30 they don't
20 bother to do anything. That doesn't make sense. So,
21 again, for me as a lay person, I go to the ER, I have a
22 gun shot wound and they leave me and I'm sitting there
23 on a table. I'm going to assume, you know, I must be
24 okay.

25 MS. SWANSON: Just by way of background, Shayna

COLLOQUY

1 Orson, an EMT that arrived at the actual scene, the Poot
2 Shop actually called for a life flight for Michael
3 Morgan, however her supervisor turned her down.

4 A I appreciate that. Somebody made a decision, and then that
5 was confirmed because they didn't bother to do anything for two hours,
6 on getting him on a plane, on a flight out. I mean, 4:30 is when he
7 left, wasn't it? It was after 4:00.

8 MS. SWANSON: At 4:01 he was noted to be in
9 critical condition.

10 THE COURT: I mean, that is a long time from the
11 gun shot wound.

12 MS. SWANSON: Yes, sir.

13 THE COURT: I mean, really, we are talking about
14 two and a half to three hours.

15 MS. SWANSON: Your Honor, I would ask the Court,
16 and I realize that there are Crawford issues here,
17 however, just that the Court consider allowing the
18 testimony under 803(2), excited utterance when Michael
19 Morgan was under the stress of the gun shot that was
20 inflicted upon him or 803 (3) describing who shot him
21 as a then-existing physical condition.

22 Investigator Fraser was sent to the ER to assess
23 an emergency situation. At that point in time three
24 gun shot patients had been admitted to the Beaufort
25 Memorial Hospital, which is in Beaufort a very rare

COLLOQUY

1 occurrence. This was an emergency situation. At the
2 scene they weren't sure if they still had an active gun
3 man. I would just ask the Court to consider allowing
4 that.

5 THE COURT: All right.

6 MS. CAMPBELL: And Your Honor, if I could, just
7 one second please, Your Honor.

8 THE COURT: I will let you respond, but anything
9 else Solicitor? And thank you for the thoroughness of
10 your brief, I appreciate that.

11 MS. SWANSON: Yes, sir, just pursuant to the
12 Michigan V Bryant, that it was an assessment of ongoing
13 emergency situation. Thank you.

14 THE COURT: I understand.

15 MS. CAMPBELL: And Your Honor, just to add a
16 further layer of questionability about the reliability
17 or the question about the reliability about what
18 exactly was said is that the call and in the CAD
19 reports and in the 911 reports, the call actually goes
20 out that the possible second shooter is a fellow by the
21 name of Joey Chaplin, and of course my client is Joseph
22 Bowers. And so we would, for the Court's edification
23 and for the record, that is the call that went out, not
24 even naming Joseph Bowers, but a Joey Chaplin.

25 THE COURT: You know, all of that really and truly

COLLOQUY

1 may or may not have a bearing. The problem that I have
2 with this one is that I just do not think that it meets
3 the test for the 804 dying declaration. It's just not
4 there. The other means of trying to -- to avoid the
5 hearsay, frankly, if that's the case, we wouldn't even
6 ever need a dying declaration if we have an excited
7 utterance. There would be no reason for it.
8 Obviously, somebody is shot, there's no question that
9 it could be acceptable to consider that, but the courts
10 have not allowed that and I understand that as well.
11 We talked about time for reflection, we talked about
12 all sorts of things that move against that. I'm going
13 to deny it.

14 I think that that even if I tried to come in, my
15 word, the back door to get this in, the prejudice
16 outweighs any probative value from that respect. So,
17 I'm going to grant the motion to suppress that
18 testimony.

19 MS. CAMPBELL: Thank you, Your Honor. . .

20 THE COURT: Okay.

21 MS. CAMPBELL: The next matter on Defendant's
22 pretrial motions would be the motion to disallow the
23 State's use of any gang or similar type language. In
24 the trial of this case, as I briefed fully for Your
25 Honor, in order for the State to talk about gangs or

1 that person occupy the end chair on the first row. But
2 until that individual has been identified, you agree to
3 occupy that chair, anyone.

4 The -- there are no unusual qualities or
5 requirements for a presiding juror. Over the years
6 it's been my observation, not having sat in a jury, but
7 just from what I perceive it to be, I see the presiding
8 juror, foreperson, to be a facilitator of the
9 discussion. And some persons have a better skill than
10 others at that, and you may select that person or any
11 person you wish and just -- at some point, if you would
12 do that.

13 Now, if you will give your attention to the clerk
14 as she administers your oath.

15 THE CLERK: Please stand. And raise your
16 right-hand.

17 (The Jury was sworn.)

18 THE JURORS: I do.

19 THE CLERK: Thank you. You may be seated.

20 THE COURT: Thank you very much, ladies and
21 gentlemen. And now, you've become that judge that I
22 mentioned yesterday when we qualified you to serve,
23 that you and I now will work together to resolve this
24 dispute.

25 We each have very well defined functions and roles

1 in this process. As I told you, once you have been
2 impaneled and now sworn, I have no responsibility with
3 respect to the facts in this case. That's your job and
4 your job alone.

5 When you came into this room this morning, you
6 brought with you everything you're going to need. In
7 fact, as I told you, there's no one more qualified than
8 you are to perform the task that you just accepted. So
9 rest comfortable with that.

10 And what are those tools? Well, you brought your
11 common sense, sense of logic and reason. You brought
12 your knowledge. And you are expected to apply that in
13 making your decision. And I know that you will.

14 And you will apply that at the appropriate time.
15 Because one of the parts of the oath that you just took
16 is that you will become the judge of the facts, and you
17 will allow me to be the judge of the law. As I told
18 you, we live in an information society, and we all have
19 the ability to do research and learn about laws, and we
20 should, as citizens of this country. But what you
21 promised today to the Court, to the State, and to
22 Mr. Bowers, is that you will take the law as I give it
23 to you and apply that law fairly and impartially to
24 those facts. And that means set aside your personal
25 beliefs about what you believe the law to be or what

1 you think it should be. There's a time and a place for
2 that, but it's not today.

3 Today, you will observe those divisions,
4 separations of our responsibilities in performing the
5 task that we each have undertaken. And that is to
6 fairly and impartially resolve this dispute.

7 You also brought something else. And you said
8 this in not so many words, because you heard me ask,
9 and you probably got very tired of me asking and saying
10 will you base your decision on the evidence and the
11 law, and will it be fair to both sides? But you've
12 heard me ask that. Some persons you saw me excuse, and
13 the reason was, there wasn't anything wrong with them.
14 It wasn't anything improper. But they indicated, no,
15 there was something about this case that would cause
16 them problems in being fair and impartial. That they
17 had some -- some catch, something that would prevent
18 them from being totally open.

19 Another way of saying it is, what each of you
20 said, because if you answer the question, you simply
21 nod, you would be able to apply that knowledge fairly,
22 impartially based on the evidence and the law, and be
23 fair to both sides. So what you said was, I have an
24 open mind. And you brought that open mind with you.

25 Maintain that. That's important. And that cannot

1 change at any point until I give you the instruction to
2 begin your deliberation. And quite frankly, the last
3 instruction that I will give to you, and the charge
4 that I will give at the end -- at the conclusion of
5 this case is when you may commence that deliberation.

6 So until that point, please remember the
7 commitment that you just made is that you, each, will
8 keep that open mind throughout this entire process.

9 And maybe just sitting here today, you say, you
10 know, that -- sure. I don't know you personally. I
11 know I live with a person who's a detail person. And I
12 know that I'm not. I'm kind of a person that is a
13 bottom line person. Get me to the bottom, and then
14 I'll work my way back and add what I need to add to it
15 because I want to get through it.

16 On the other hand, the detail person says tell me
17 what you got to tell me. Let me ask you the questions,
18 and then I want to think about it, and then I'll make
19 the decision. That's what you're going to do. I think
20 that's the model you will have as a juror. You can
21 only - the unusual thing about it is, two things
22 unusual.

23 I saw something years ago. It was set up in -- it
24 was -- this, what we're doing right now, but the
25 setting was a classroom, and I was the teacher. And

1 they said, you know, you're going to have to do this,
2 you're going to have to keep this open mind, and you're
3 not going to be able to ask any questions. You're not
4 going to be able to talk to each other. You're not
5 going to be able to do anything, you got to just sit
6 there and keep these things in your head. And then at
7 the end I'll give you the law. And at the end, truly.
8 But you don't hear the law until the last thing.

9 Then you go in and now you make your decision.
10 That seems to be somewhat convoluted, but that's the
11 way it works, and it's worked that way for a little
12 while. Okay? Since this country began.

13 So it does work. And you will perform that task,
14 and I know that you'll honor the oath that you have
15 taken. So please remember that as we go through the
16 process.

17 When we start, this process really has four parts.
18 In just a moment the attorneys for each side will have
19 an opportunity to speak to you and give you what we
20 call an opening statement. And that really is
21 basically an overview of the dispute. They may discuss
22 some of the law, they may discuss some of the evidence
23 that they expect that you will hear.

24 I'm confident that you will find those remarks
25 helpful as we move through the trial. It gives you

1 kind of a roadmap of the trial, what you're expected to
2 hear and how it's going to unfold.

3 They speak to you twice. Once before you hear the
4 evidence, and then after you hear the evidence. Then
5 the closing arguments, the difference between the two
6 is quite obvious. You will have heard the evidence and
7 now it's proper for them to discuss that evidence with
8 you and suggest reasonable inferences that you may draw
9 from that evidence.

10 Please give them your attention when they speak to
11 you. Because as I stated yesterday, they have a --
12 they're officers of this Court with a very important
13 responsibility. And that is to present the evidence
14 and the law in a fashion that will assist us in making
15 the decisions we're called upon to make.

16 So while their remarks are extremely important and
17 very beneficial, please remember something else. Their
18 remarks, just as my remarks, should never be considered
19 evidence because the evidence will come through the
20 testimony of the witnesses. And it's that evidence
21 that you ultimately will analyze to begin your final
22 deliberations and decide what you find to be credible
23 and believable. And that's what your decision is
24 about.

25 And please understand something. I notice that

1 you all had note pads, and that's fine. Some judges
2 have a debate about whether jurors should or should not
3 take notes. I believe they should take notes if they
4 want to take notes. That's up to you.

5 Let me add two caveats to that, if I may. Number
6 one, please remember something else. Mona, our court
7 reporter, has a responsibility of keeping the record.
8 And while it doesn't happen all the time, when a jury
9 begins its deliberations, it's not uncommon for a jury
10 to have a difference of opinion sometimes, what a
11 witness said or didn't say. We have the ability to
12 replay that for you, if that becomes an issue.

13 So please remember that notes that you take are
14 just your notes, and they are for your benefit, they
15 are not the record. They're not to supplant the
16 record, and they should never be considered that in
17 your deliberations. But they are helpful for each of
18 you, because they are for your purposes.

19 The other part of the note taking is this. And
20 some are better note takers than others. Like I say, I
21 don't know you, and I'm not going to judge that.
22 That's up to you. But you and I both know that it's
23 not only what somebody says that we think about that
24 causes us to say -- sometimes that doesn't make any
25 sense, or that's not consistent, or that's not logical.

1 But there are many times, I know this, when I'm doing
2 my job, sometimes in the various parts, I've learned,
3 both as a lawyer and as a judge, I watch the people, I
4 watch their faces, because body language speaks really
5 loudly. And that's the part that sometimes, if you're
6 writing something, you may miss that very important
7 aspect of that testimony that would cause you -- and,
8 again, you are expected to make those notes, those --
9 those notes, your notes -- well, wait a minute. That
10 didn't -- that didn't ring true, or that doesn't sound
11 proper.

12 But please understand something. While it's
13 important to think that, do not go to the ultimate
14 until you're given instruction to begin your
15 deliberations. What do I mean? Don't say, well, I
16 don't believe that.

17 Why? Because when you get your -- when you begin
18 your deliberations, one of your jurors, one of your
19 fellow jurors may be able to give you a logical
20 explanation to that, that allays that concern that you
21 may have had about that particular testimony.

22 But certainly, make your own personal note, be it
23 on the note pads or in your head, whichever one,
24 because ultimately that is what you will have to
25 decide.

1 So with that precaution, please feel free to take
2 your notes.

3 I would also ask that you put your name on the top
4 of the first page, because at the end of the day they
5 have to remain here. We'll give them to the bailiff,
6 and they will distribute them to you the next day until
7 we resolve the case.

8 But, please, again, feel free to take notes if you
9 so desire.

10 When we go through the evidentiary portion, this
11 is another very important part of this process.
12 There's a trial taking place, I think two doors down.
13 It's a civil trial. And in that trial the format is
14 the same. And the judge is doing what I'm doing today,
15 speaking to the jury -- they may have done it yesterday
16 and then the attorneys will come and speak just as we
17 do here. And then we will go through the evidentiary
18 portion.

19 There are two major distinctions, however, between
20 the two. First of all, any party that makes a claim,
21 be it in civil court or criminal court, has the
22 responsibility of the burden of proof. We call it to
23 prove its case. Or -- and in this case, the State of
24 South Carolina has accused Mr. Bowers of a number of
25 criminal offenses.

1 The State, and the State alone, and that's the
2 distinction, the State alone. In a civil trial, there
3 are limited situations, where a person who -- against
4 whom a claim is made may have a burden of proof. But
5 not in this case.

6 In this case, the only party that has any burden
7 of proof is the State, who makes the claim. The State,
8 because it has the burden of proof, goes first, and
9 they have to prove this case. And the standard that
10 you will apply, and that's the other distinction.
11 Typically in a civil proceeding, the burden of proof is
12 called the preponderance or greater weight of the
13 evidence. Simply stated, it's a probability standard.
14 Meaning, is it more likely so than not?

15 In a criminal case, it's much greater than that.
16 It's the standard, and I'll define it for you when I
17 give you the charge, but it's beyond a reasonable
18 doubt. And I will tell you that a reasonable doubt is
19 certainly greater than a probability. Substantially
20 greater. It's a doubt that would make an honest,
21 sincere, conscientious juror who's searching for the
22 truth in the case to hesitate to act or take some
23 action. And then we'll go into more detail.

24 But that's the standard that you will apply. And
25 what do I mean, You will apply?

1 Basically, at the conclusion of this case I will
2 give you the elements of each of the crimes that have
3 been raised in this matter, and for which Mr. Bowers
4 has been accused. You will then take each crime and
5 analyze the evidence and decide for yourself whether or
6 not the State has met its burden and established each
7 of those elements to that standard, beyond a reasonable
8 doubt.

9 If they have, and you have in your analysis, if
10 you conclude, yes, each of those elements have been
11 established, then the State has met its burden of proof
12 and is entitled to a verdict of guilty as to that
13 particular crime.

14 On the other hand, if you have a reasonable doubt
15 as to one element, because if they fail on one, then
16 they fail. It doesn't have to be -- it's not a
17 percentage, it's not a majority, they have to prove
18 each element to that standard. Because if -- and if
19 they fail, then the verdict must be not guilty. And
20 that's what a verdict means in a criminal dispute.

21 Guilty simply meant that that jury analyzed the
22 evidence and decided the State had met its burden of
23 proof beyond a reasonable doubt. Not guilty means the
24 State failed in one or more element.

25 In making that decision, please remember

1 something. Not only does the Defendant not have to
2 prove or disprove anything, and he certainly doesn't
3 have to prove his innocence, he doesn't have to present
4 anything. He doesn't have to present any evidence at
5 all, and you cannot consider that whatsoever. And the
6 reason for that is simply this, the burden rests solely
7 on the State of South Carolina. So you will never look
8 to the Defendant to prove or disprove anything at all.

9 Now, the State having the burden of proof goes
10 first, and then at the conclusion of the State's case,
11 the Defendant, and although he has no responsibility to
12 prove or disprove anything, he still has the right to
13 present testimony for your consideration.

14 Another very logical reason you don't want to make
15 any decisions, because you need to hear all the
16 evidence before you make any decision. But more
17 importantly, you have to go through all of the process
18 before you can begin the process. And to be consistent
19 with the law, you can't start that process until I tell
20 you to do so.

21 Now, at the conclusion, as I told you, the
22 State will -- both sides will come up again and speak
23 to you, and at that time they will discuss the evidence
24 and suggest reasonable inferences that you may draw
25 from that evidence.

1 I'm confident that you will find those remarks
2 again helpful when you begin the process of analyzing
3 this case. And then following that, I will give you
4 the law. But at that time, we'll talk about each of
5 the elements, and I will give you the various elements
6 and list them for you. And then the last thing will
7 be, you will retire and be instructed to decide this
8 case.

9 It's an honor and a privilege to serve with you as
10 a judge, and I thank you very much for your attention
11 to my remarks. I ask you to give that same attention
12 now to the attorneys as they give their opening
13 statements on behalf of their clients.

14 Solicitor.

15 MS. SWANSON: Thank you, Your Honor.

16 THE COURT: Yes, ma'am.

17 MS. SWANSON: May it please the Court?

18 THE COURT: Yes, ma'am.

19 STATE'S OPENING

20 MS. SWANSON: Good morning. I'm going to go
21 ahead and cut to the chase.

22 This is actually quite a simple case. What
23 you are going to hear about is a gunfight at the Midnight
24 Soul Patrol. It's a local nightclub on St. Helena Island.

25 We've got two primary shooters. We've got

STATE'S OPENING

1 Lucas Morgan over here, armed with a Glock. We've got Joseph

2 Bowers over here, armed with a Glock.

3 You're going to come to know Joseph Bowers as

4 Opie, or Joey. Both unload their clips into crowds of

5 people. This is a melee. This is chaos. This is a gun

6 battle.

7 You're going to hear from witnesses in the

8 community. Those witnesses saw different things. They were

9 in different places, ducking and dodging the bullets. This

10 was chaos.

11 But what's going to be clear is that they were

12 all witnesses to an act of senseless violence, senseless

13 violence that left four people, four victims, in its wake.

14 It's also going to be clear that Joseph Bowers

15 was one of the gunmen. In fact, he tells us he's one of the

16 gunmen in a phone call to his girlfriend.

17 At the end of this case, I'm going to ask you

18 to speak the truth, follow the law, and hold Joseph Bowers

19 responsible for the choices that he made that night. I'm

20 going to ask you to return guilty verdicts on all charges.

21 Thank you.

22 THE COURT: Ms. Campbell.

23 MS. CAMPBELL: May it please the Court?

24 THE COURT: Yes.

25 DEFENDANT'S OPENING

DEFENDANT'S OPENING

1 MS. CAMPBELL: Thank you.

2 Good morning. I introduced myself to you
3 yesterday. And I'm Trasi Campbell. I represent Joseph
4 Bowers.

5 You know, as long as I can remember, from the time
6 I was a little girl until the day my dad died, he
7 watched a show on TV called the Andy Griffith Show, and
8 there were some primary characters in that show. There
9 was the dad, Andy Taylor, and then the little Opie
10 Taylor. Aunt Bee, and Barney Fife. And that show was
11 always on.

12 And if I take you back here to St. Helena to 30
13 years ago, when little Joseph Bowers was born -- his
14 mama is here with him, his family is here with him.
15 His mama has been sick his whole life.

16 MS. SWANSON: Objection, Your Honor. These are
17 not facts that are going to be in evidence.

18 THE COURT: I appreciate it. I've already told
19 the jury that your statements and Ms. Campbell's
20 statements are not evidence. Thank you very much.

21 Overruled.

22 MS. SWANSON: Thank you.

23 MS. CAMPBELL: If you go out on St. Helena, some
24 of you may have been there, there's a lot of dirt
25 roads. There's a lot of trailers. And down one

DEFENDANT'S OPENING

1 particular dirt road, in one particular trailer is
2 where little Opie Bowers grew up.

3 You know, if you look at that Andy Griffith show
4 at the end, they're walking down that dirt road. And
5 for this little boy, take him out of here in his place
6 you put the people and friends that he met and made on
7 that dirt road.

8 And one of those friends is Dante Bailey. You may
9 hear him called Cole or Corleon. He was a little older
10 than Opie, nicknamed him Opie. If you take a daddy and
11 a best friend and a big brother and you roll them all
12 into one, that's what Dante Bailey was to our Opie. To
13 this Opie.

14 Now, you know, that's some hard ground out there,
15 but this tree, where it was planted, it grew. Opie
16 grew up. He is in love, getting ready to get married.
17 Starting a family. And on 30 years forward, June 21st,
18 2012, he went out with his friends, Dante Bailey being
19 one of them. You may hear from some of those other
20 friends that he was there with that night.

21 It was a summer night. It was hot. You know, if
22 you've been on St. Helena, the breeze comes in off the
23 sound. The boys had been out cracking crabs at the
24 Crab Shack, drinking beer, and then they decided to go
25 down to a place called the Midnight Soul Patrol. It's

DEFENDANT'S OPENING

1 the only place to go out there.

2 There's a little old lady who runs it, Ms. Thelma
3 Wilson. And I've been told, and I think the evidence,
4 some of the witnesses has said, if you knock just right
5 on the back door you might get a shot of gin, too,
6 along with the fried chicken. Which is supposed to be
7 the best fried chicken in the county.

8 Now, when the boys went out there that night,
9 young men, friends, drinking beer, eating fried
10 chicken, they were out there in their summer clothes.
11 They hadn't come there for some gun battle.

12 One of the witnesses said something like this --
13 I'm not sure if we'll hear from him or not, from the
14 State -- you know, you don't -- who wears flip flops to
15 a gun battle? You don't do that. It doesn't happen.
16 They were relaxed. It was summertime in St. Helena.

17 But I will tell you what you will hear, if he's
18 called to testify from the State. The first officer on
19 the scene, Beaufort County sheriff's officer Will Black
20 will tell you when he gets there he's hearing the
21 Morgan boys are spraying the parking lot with gunfire.
22 And that would be Michael Morgan, who would be standing
23 about over here, and Lucas Morgan, his brother,
24 standing right back here, catty-corner to him.
25 Gunfire, across the parking lot. And who is across the

DEFENDANT'S OPENING

1 parking lot? Opie and Dante Bailey.

2 Now, black as night. There's no lights. If I cut
3 the lights off in here, you might have somebody smoke a
4 cigarette, have a little bit of light from that. Maybe
5 a dim street light. And in that pitch darkness, I want
6 you to imagine what happened. Michael Morgan, one of
7 the individuals who was killed that night, fires off
8 from his hand a flare gun across the parking lot into
9 the air. And immediately upon him firing off this
10 flare gun, his brother, Lucas Morgan, opens fire on the
11 parking lot.

12 And when he does so, he hits and kills Dante
13 Bailey. I don't think there's going to be any question
14 about that. Dante Bailey died from Lucas Morgan's
15 gunshot.

16 Now, Joe Pope, you may hear from him, old Joe Pope
17 out there on St. Helena, I think -- I'm going to say
18 he's in his 60s or 70s. Been there a long time. He
19 knows everybody. And I believe he'll tell you that
20 when that happened, a hush fell. Cries in the night.
21 Women screaming, Oh, my God, Cole is dead.

22 And then he sees four men run across the parking
23 lot towards the shooters with a rifle, shooting at
24 them. Not little Opie Bowers, he's not one of them.
25 Never saw him shooting a gun.

DEFENDANT'S OPENING

1 Now, forensics, keep this in mind. The location
2 of where Michael Morgan is, Lucas Morgan, the parking
3 lot way over there, and when the ballistics -- I hope
4 they bring the ballistics expert from SLED that they
5 used to analyze the shell casings that were found.
6 You'll find that there's three shooters over here.
7 Somebody shooting out the doorway, Lucas Morgan
8 shooting from here, and there's another shooter by the
9 tree line. Two, possibly three people, are behind
10 Michael Morgan.

11 Why would that be significant? Because Michael
12 Morgan is shot in the rear. One shot exiting the iliac
13 fold through and through. And where is Joey Bowers?
14 Across the parking lot in front -- not behind.

15 The other piece of forensic evidence I believe
16 you'll hear is that Lucas Morgan's gun that they found,
17 and they got from him, from his hands, when SLED
18 analyzed it from him, it misfires four out of six
19 times. So he might be aiming and hit Dante with one,
20 but a side shot to Michael, because there are some
21 witnesses, Stan Blackman being one of them, who, when
22 the cops get there, Oh, my God, Lucas Morgan killed his
23 own brother.

24 Now, His Honor, I won't repeat what he told you.
25 He did such a beautiful job of explaining the burden of

DEFENDANT'S OPENING

1 proof and presumption of innocence. And I'll close by
2 saying two things to you. Each one of you is picked by
3 Joseph Bowers for a reason. There was something about
4 you during the jury selection process that promised to
5 him the hope and faith that each one of you will remain
6 true to your individuality, to your own one mind, as
7 you go through this process.

8 And remember this, and I'm sure His Honor will
9 tell you, no man must give up a firmly held belief just
10 to reach an agreement.

11 I will ask you to remember that as we proceed
12 through this trial that Joey Bowers' life is in your
13 hands, that in this courtroom, which is a long way from
14 those solitary dirt roads in St. Helena, but on those
15 dirt roads, as he grew up from a young man to where he
16 is today in this courtroom, out there he found friends,
17 he found love, he found good times. And what I'm
18 asking you to remember today is that we ask you, as His
19 Honor did, to listen to the evidence. And when I talk
20 to you again, I'm firmly convinced that I will ask you,
21 and you will find that Joey Bowers is not guilty. That
22 the State will not present you with the evidence
23 necessary to prove that he's guilty of five
24 indictments. Two murders.

25 The murder for Dante Bailey, which we already hear

DEFENDANT'S OPENING

1 from the State, he didn't shoot. And two attempted
2 murders, Richard Green and Robert Goodwine.

3 Thank you.

4 THE COURT: Thank you, Ms. Campbell.

5 MS. CAMPBELL: Thank you, Your Honor.

6 THE COURT: You may call your first witness.

7 MS. SWANSON: Thank your Honor. The State calls
8 Melanie Smith to the stand.

9 (The Witness was sworn.)

10 THE WITNESS: I do.

11 THE CLERK: Thank you.

12 Thereupon,

13 MELANIE SMITH

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 THE WITNESS: My name is Melanie Smith,
17 M-E-L-A-N-I-E, S-M-I-T-H.

18 DIRECT EXAMINATION

19 BY MS. SWANSON:

20 Q Good morning, Ms. Smith.

21 A Good morning.

22 Q Tell us who you work for, please.

23 A Beaufort County Sheriff's Office, 911 center.

24 Q Okay. And back in June of 2012, were you the
25 records custodian for emergency communications?

EXAMINATION OF MELANIE SMITH

1 A Yes, I was.

2 Q Okay. And do you keep 911 phone calls in the
3 ordinary course of business?

4 A Yes.

5 Q Also, CAPS reports, or CAD reports?

6 A Correct.

7 Q Okay. Can you just tell the jury briefly what a
8 CAD or CAPS report is?

9 A CAD is the acronym for computer aided dispatch.
10 That's the program we use to keep track of everything. And
11 CAPS is a report comes out of that CAD, and CAPS stands for
12 computer application for public safety..

13 Q Okay. And what do those reports contain?

14 A It's all the information we get, time, date
15 stamped when we get the 911 call, and when we dispatch
16 officers until the officer clears. And there will be time
17 stamp of notifications we make to and from the officers.

18 Q Okay. And so do dispatchers make notes about what
19 they're hearing from the officers?

20 A Correct.

21 Q Okay. I'm going to show you what the State has
22 marked as Exhibit 60. And if you can please tell the Court
23 -- identify that for the Court.

24 A It's a recording of 911 calls for the sheriff's
25 office case number 201206210048.

EXAMINATION OF MELANIE SMITH

1 Q Okay. And at my request, did you review those
2 calls?

3 A Yes.

4 Q Are those fair and accurate recordings of the
5 phone calls that came in the night of June 21st, 2012?

6 A Yes.

7 Q Okay. Thank you.

8 MS. SWANSON: At this time, Your Honor, State
9 would offer Exhibit 60 into evidence.

10 THE COURT: Any objection?

11 MS. CAMPBELL: Your Honor, may I ask, are they all
12 the calls from that night or just selected ones by the
13 State?

14 THE COURT: Okay.

15 BY MS. SWANSON:

16 Q Yes. Does this contain all of the calls or
17 several calls from the night?

18 A Several calls; not all the calls.

19 MS. CAMPBELL: So not all the calls?

20 THE WITNESS: Right.

21 MS. SWANSON: Correct.

22 MS. CAMPBELL: Thank you, Your Honor.

23 THE COURT: Have you reviewed?

24 MS. CAMPBELL: I've listened to the calls.

25 THE COURT: All right. So it's the copy of -- it

EXAMINATION OF MELANIE SMITH

1 is a copy of -- it's the original of what you have
2 provided a copy?

3 MS. SWANSON: Yes, sir.

4 THE COURT: Any objection then?

5 MS. CAMPBELL: No, sir.

6 THE COURT: Okay. Without objection it's into
7 evidence.

8 *(Whereupon, State's Exhibit No(s). 60 marked for*
9 *identification and received in evidence.)*

10 MS. SWANSON: Thank you, Your Honor. And at this
11 time --

12 THE COURT: State's Exhibit 60. Excuse me. I'm
13 sorry.

14 MS. SWANSON: Yes, sir.

15 And at this time, if I may publish to the jury. I
16 have it saved to my screen, so I'm just going to ask to
17 get the audio up. Thank you.

18 (Audio CD playing.)

19 BY MS. SWANSON:

20 Q Ms. Smith, I'm going to hand you what's been
21 marked as State's Exhibit 61, listed as a CAPS report. Can
22 you please identify that for the Court?

23 A Yes. It's a report on gunshot victim, on
24 6/21/2012 at 56 Toomer Road.

25 Q And did you run that report?

EXAMINATION OF MELANIE SMITH

1 A Yes.

2 Q Okay. And is that a true and accurate copy of the
3 report that you ran?

4 A Yes.

5 Q Is that something that you keep in the regular
6 course of business?

7 A Correct.

8 MS. SWANSON: At this time, I would move 61 into
9 evidence.

10 MS. CAMPBELL: Your Honor, may I see the exhibit?

11 THE COURT: Yes.

12 MS. SWANSON: Oh, I'm sorry. I apologize. It is
13 the CAPS report page 1 through 17 that's been provided
14 to you.

15 MS. CAMPBELL: Your Honor, if it please the Court,
16 the reason that I'm taking time with this is the CAPS
17 and the CAD report that came to me --

18 THE COURT: I don't need you to --

19 MS. CAMPBELL: Okay. Thank you, Your Honor.

20 THE COURT: We'll talk about that at the first
21 recess. Thank you very much.

22 MS. CAMPBELL: Thank you. All right.

23 THE COURT: I need you to tell me whether you have
24 an objection or not.

25 MS. CAMPBELL: No objection. Thank you, Your

EXAMINATION OF MELANIE SMITH

1 Honor.

2 THE COURT: Without objection, State's 61 is
3 admitted.

4 *(Whereupon, State's Exhibit No(s). 61 marked for*
5 *identification and received in evidence.)*

6 MS. SWANSON: Thank you, Your Honor.

7 BY MS. SWANSON:

8 Q Ms. Smith, I'm going to hand you this report and
9 ask you to refer to it. I have a couple of questions.

10 When did the initial calls come in that
11 night?

12 A 0121 in the morning.

13 Q Okay. I'm sorry, can you repeat that?

14 A 0121 a.m.

15 Q 1:21 a.m. And was Adam Paul dispatched to the
16 incident location, Officer Adam Paul?

17 A Yes.

18 Q And what time was he dispatched?

19 A 0124 a.m.

20 Q And what time did he get to the scene?

21 A He arrived at 0134 a.m.

22 Q What sort of information was coming from law
23 enforcement regarding the scene?

24 A Is it all right just to read through?

25 Q Sure.

EXAMINATION OF MELANIE SMITH

1 A Two black males, gunshot wounds to the chest.
2 Also, no pulse on one victim. Large group of people, they
3 are not cooperating. Officers are with EMS, they need more
4 officers.

5 Q Was there any suspect information that was coming
6 out?

7 A One person stated, Lewis Morgan is the shooter,
8 he's not on scene. And also, possible second shooter, Joey
9 Chaplin, Opie, white male on time Fred (phonetic).

10 Q Thank you. I have nothing further for this
11 witness at this time.

12 THE COURT: May she step down?

13 MS. CAMPBELL: Your Honor, may we approach
14 briefly?

15 THE COURT: Ladies and gentlemen, what just
16 transpired, there are a number of ways to take up
17 matters of law out of your presence. One is to excuse
18 you from the courtroom, go back to your jury rooms and
19 we will do that.

20 Another is to do what we just had. It is called a
21 sidebar, where I discuss matters of law. They are for
22 my purposes, not for yours. The fact we have those
23 periodically, you shouldn't read anything into that or
24 wonder what was going on. And that's just the way the
25 process works.

EXAMINATION OF MELANIE SMITH

1 And really, it's to try to accommodate you having
2 to get up and go out and come back again. So thank
3 you.

4 You may continue your cross-examination.

5 MS. CAMPBELL: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MS. CAMPBELL:

8 Q Good morning.

9 The CAPS report -- is that the correct
10 terminology, right, that you have?

11 A Correct.

12 Q There were many of those generated that night,
13 correct? That's just one of them, correct?

14 A That's right.

15 Q Okay. And so you don't have all of them that were
16 generated from the calls that night with you, right?

17 A Correct. Just this one.

18 Q And so what you have from the State there is one
19 of many reports, correct?

20 A Correct.

21 Q All right. And within the one report that you
22 have, there are names I think that you answered the
23 Solicitor on, as being suspects. Now, you said Lewis
24 Morgan, but I think the CAPS report says Lucas Morgan,
25 correct?

EXAMINATION OF MELANIE SMITH

1 A Let me double check that.

2 Q Please do. Thanks.

3 A Yes. It is Lucas Morgan, not Lewis.

4 Q Okay. And the other name that you responded to
5 the solicitor with was a Joey Chaplin, correct?

6 A Right. It says, Joey Chaplin, Opie.

7 Q Joey Chaplin, correct?

8 A Correct.

9 Q Thank you.

10 / MS. CAMPBELL: That's all I have for this witness.

11 THE COURT: Any redirect?

12 MS. SWANSON: No, sir.

13 THE COURT: Thank you. You may come down. Thank
14 you.

15 MS. SWANSON: Thank you. I would ask that

16 Ms. Smith be allowed to be excused.

17 THE COURT: Any objection?

18 MS. CAMPBELL: No.

19 THE COURT: You are free to leave. Thank you very
20 much.

21 Call your next witness, please.

22 MS. SWANSON: Thank you. The State calls Adam
23 Paul.

24 Thereupon,

25 PAUL ADAM

EXAMINATION OF PAUL ADAM

1 was called as a witness, having been first duly sworn,
2 was examined and testified as follows:

3 THE CLERK: Please state and spell your name for
4 us.

5 THE WITNESS: Adam Paul. A-D-A-M, P-A-U-L.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MS. SWANSON:

9 Q Good morning.

10 A Good morning.

11 Q Deputy Paul, can you please tell the Court who you
12 work for?

13 A Beaufort County Sheriff's Office.

14 Q Okay. And what do you do for Beaufort County
15 Sheriff's Office?

16 A Road patrol.

17 Q All right. And back in June of 2012, were you on
18 road patrol the night of the 21st?

19 A Yes, I was.

20 Q All right. And where were you dispatched that
21 night?

22 A We were dispatched to, I believe the address, 56
23 Toomer Road. The club on Lands End, St. Helena.

24 Q Okay. Is that within Beaufort County?

25 A Yes, ma'am, it is.

EXAMINATION OF PAUL ADAM

1 Q About what time did you arrive at the club?

2 A It was about 1:34 in the morning.

3 Q Can you tell us what you found when you got to the
4 club.

5 A There were -- there were many people outside
6 yelling, saying they needed help. They were pointing us to
7 a couple of different people that had been shot.

8 Q All right.

9 MS. SWANSON: Beg the Court's indulgence?

10 THE COURT: Sure.

11 I had mentioned that the last row is for those --
12 for the alternate jurors. Apparently -- can everybody
13 see the screen? Those of you that are sitting on this,
14 can you see it okay? If you can't at any point, feel
15 free to step back to the back, any juror that needs to
16 do that. So you have that degree of flexibility and
17 alternate jurors will be kind enough to share their row
18 for that. Thank you.

19 MS. SWANSON: Thank you, Your Honor.

20 May I approach the witness?

21 THE COURT: Yes.

22 BY MS. SWANSON:

23 Q I want to show you what's been marked as State's
24 Exhibit 44, Deputy Paul. And can you please describe what's
25 in that picture.

EXAMINATION OF PAUL ADAM

1 A It appears to be the Midnight Soul Patrol.

2 Q Okay. And realizing that it's daylight in this
3 picture, is that a fair and accurate depiction of how it
4 appeared that night other than the daylight?

5 A Yes, ma'am.

6 MS. SWANSON: State moves 44 into evidence.

7 THE COURT: Any objection?

8 MS. CAMPBELL: No objection.

9 THE COURT: Without objection, it's admitted.

10 MS. SWANSON: Okay. I ask to publish this to the
11 jury.

12 THE COURT: You may.

13 *(Whereupon, State's Exhibit No(s). 44 marked for*
14 *identification and received in evidence.)*

15 THE COURT: Ladies and gentlemen, from time to
16 time, the exhibits will be published to you. When an
17 exhibit is admitted into evidence, it means simply
18 this, that that exhibit will accompany you to your jury
19 room. So if you need to study it, know that you have
20 an opportunity to study it in greater detail when you
21 do begin your deliberations. But it's not uncommon for
22 them to show it to you from time to time during the
23 trial.

24 Thank you. Excuse me. You may continue.

25 MS. SWANSON: Thank you.

EXAMINATION OF PAUL ADAM

1 BY MS. SWANSON:

2 Q Deputy Paul, what are we looking at in this
3 picture?

4 A That's the front door of the Midnight Soul Patrol.
5 We're looking from the roadway.

6 Q Okay. And is that the parking lot area?

7 A Yes, ma'am.

8 Q Is that where you pulled up that night?

9 A Yes, ma'am.

10 Q All right. And please describe what's to the left
11 of the -- now, let's go back.

12 Is the red barn like structure the Midnight
13 Soul Patrol?

14 A Yes, ma'am.

15 Q Okay. And then to the left of it, what is located
16 to the left?

17 A There's a house to the left of that.

18 Q Whose house is that?

19 A The club's owner. I don't recall her name.

20 Q Okay.

21 Q I'm going to show you what's been marked as
22 State's 46, and can ask for you to describe what you see in
23 this picture.

24 A This is another view of the parking lot, looking
25 from the opposite direction, between the club and the

EXAMINATION OF PAUL ADAM

1 residence.

2 Q Is that a fair and accurate depiction of how the
3 parking lot appeared that night?

4 A Yes, ma'am.

5 MS. SWANSON: The State moves 46 into evidence.

6 MS. CAMPBELL: Without objection.

7 THE COURT: Without objection, State's 46 is
8 admitted.

9 *(Whereupon, State's Exhibit No(s). 46 marked for*
10 *identification and received in evidence.)*

11 MS. SWANSON: May I publish to the jury?

12 THE COURT: You may.

13 BY MS. SWANSON:

14 Q Okay. And if you can just tell us what we're
15 looking at here, Deputy Paul.

16 A Again, this would be from between the residence
17 and the club. You're looking back out towards the roadway
18 and the parking lot to where we pulled up and where most of
19 the people were.

20 Q Okay. What did you find when you got to the club?
21 Besides the victims, what physical evidence did you find?

22 A We found a -- multiple shell casings, found a
23 handgun.

24 Q What kind of handgun?

25 A It was a Glock.

EXAMINATION OF PAUL ADAM

1 MS. SWANSON: I apologize, Your Honor. We need to
2 get a gun lock.

3 THE COURT: Is it an automatic?

4 MS. SWANSON: Yes, sir.

5 THE COURT: Is it breached over?

6 MS. SWANSON: Yes, sir.

7 THE COURT: As long as it's breached over, we can
8 go ahead and show it to him. There's no -- no -- and
9 the fact this witness, you're familiar with firearms;
10 are you not?

11 WITNESS: Yes, sir.

12 THE COURT: Okay. We can go ahead so we don't
13 have to wait much longer. We'll have it before --
14 What we do, ladies and gentlemen, simply as a
15 precaution, and it's a good precaution, we make sure
16 that all weapons introduced have a lock. We're
17 obtaining that, but we will move forward with this
18 witness. It's unloaded, and if it's open, then
19 obviously it's safe.

20 MS. SWANSON: Yes, sir. It does have an empty
21 clip that's separated from --

22 THE COURT: The clip is not in the file.

23 MS. SWANSON: Thank you.

24 BY MS. SWANSON:

25 Q I'm going to show you what's been marked as

EXAMINATION OF PAUL ADAM

1 State's Exhibit 3 and ask that you identify this item.

2 A It appears to be the same Glock located that
3 night.

4 Q Okay. And you can pull out just the -- just the
5 Glock, not the clip, please.

6 Okay. And is that the same -- is that how
7 you found that item that night?

8 A Yes, ma'am. It had the magazine still inside of
9 it.

10 Q Okay.

11 A It was breached open like this.

12 Q Breached open. Okay. Thank you. You can put it
13 back in.

14 MS. SWANSON: And, Judge, this is just for
15 identification purposes at this point.

16 THE COURT: Sure. That's fine. State's what?

17 MS. SWANSON: State's 3.

18 THE COURT: State's 3. ID only.

19 MS. SWANSON: Yes.

20 THE COURT: Okay.

21 *(Whereupon, State's Exhibit No(s). 3 marked for*
22 *identification.)*

23 BY MS. SWANSON:

24 Q Let me show you what's been marked as State's 47
25 and ask for you to identify this picture.

EXAMINATION OF PAUL ADAM

1 A That would be the location where the Glock handgun
2 was found.

3 Q Okay. Is that a fair and accurate depiction of
4 it?

5 A Yes, ma'am.

6 MS. SWANSON: The State moves 47 into evidence.

7 THE COURT: Any objection?

8 MS. CAMPBELL: No objection.

9 MS. SWANSON: Ask to publish to the jury.

10 THE COURT: You may do so. It's admitted without
11 objection.

12 *(Whereupon, State's Exhibit No(s) 47 marked for*
13 *identification and received in evidence.)*

14 BY MS. SWANSON:

15 Q Okay. So is this the parking lot area?

16 A Yes, ma'am.

17 Q And you found the gun in the wood line right
18 there?

19 A Yes, ma'am, right against the wood line.

20 Q Okay. Do you recall what placard it was? It's
21 okay if you don't.

22 A I don't recall. I believe it's No. 2.

23 Q Okay. What else did you find out there that
24 night?

25 A I found a flare gun, a spent flare, and a flare

EXAMINATION OF PAUL ADAM

1 that had not been shot yet.

2 Q I'm going to show you what's been marked as
3 State's 4 and ask that you identify this item.

4 A It appears to be the flare gun located that night.

5 Q Okay. And is that how it appeared that night when
6 you found it?

7 A Yes, ma'am.

8 Q All right.

9 MS. SWANSON: And this is for identification only,
10 Your Honor, item four.

11 Can you just please hold that up so the jury can
12 see it?

13 Thank you.

14 *(Whereupon, State's Exhibit No(s) 30 marked for*
15 *identification.)*

16 BY MS. SWANSON:

17 Q Deputy, I'm also going to hand you what's been
18 marked as State's 30, which is listed as the Orion
19 discharged red flare, and ask if this is what you collected
20 at the scene?

21 A Yes, ma'am.

22 Q Okay. And then the Orion red flare 631. Did you
23 collect that at the scene?

24 A Yes, ma'am.

25 Q And when you collected all of these items, what

EXAMINATION OF PAUL ADAM.

1 did you then do with them?

2 A I put them in the trunk of my patrol car.

3 Q All four items?

4 A I put the handgun and the flare gun. I don't
5 recall which -- which -- I put the spent flare, the gun
6 spent flare in there.

7 Q Okay. And who did you turn them over to?

8 A Investigator Zsamar.

9 Q Okay. About how long after you collected them did
10 you turn them over to Investigator Zsamar? When he got to
11 the scene or later?

12 A Shortly after he got to the scene.

13 Q Okay. You also testified that you observed shell
14 casings at the scene?

15 A Yes, ma'am.

16 Q And what did you do; did you mark those areas?

17 A Yes, ma'am.

18 Q Or did you collect them?

19 A We just marked the areas after we had everybody
20 leave the area and secured it. We marked it with tissues
21 and paper cups and stuff that was laying around.

22 Q Okay. So you didn't actually collect any of those
23 casings, but you just marked it. And who did you show that
24 to?

25 A I showed them to Investigator Zsamar when he

EXAMINATION OF PAUL ADAM

1 arrived.

2 Q Okay.

3 MS. SWANSON: Beg the Court's indulgence?

4 THE COURT: Yes, ma'am.

5 BY MS. SWANSON:

6 Q One other thing, Deputy. Do you recall where the
7 victims were located?

8 A Yes, ma'am.

9 Q Okay. And tell us, please.

10 A Michael Morgan was on the back steps of the
11 residence.

12 Q And when you say the residence, do you mean the
13 residence in front of the club?

14 A Yes, ma'am.

15 Q Okay.

16 A And then Mr. Green was laying on the ground just
17 outside of the side door of the club, closer near the -- an
18 area of the propane tank.

19 Q Okay. Thank you.

20 MS. SWANSON: I have nothing further at this time.

21 THE COURT: Cross-examine.

22 MS. CAMPBELL: May it please the Court.

23 CROSS EXAMINATION

24 BY MS. CAMPBELL:

25 Q Deputy Paul, good morning.

EXAMINATION OF PAUL ADAM

1 A Good morning.

2 Q And your rank is?

3 A Lance corporal.

4 Q Lance corporal. Thank you.

5 Lance Corporal Paul, you're what, I guess, we
6 could call a first responder; is that right?

7 A Yes, ma'am.

8 Q Okay. You were first out to the Midnight Soul
9 Patrol on June 21st, correct?

10 A Yes, ma'am.

11 MS. CAMPBELL: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MS. CAMPBELL:

14 Q I'm going to show you what the State has
15 introduced and published as Exhibit 44.

16 A Yes, ma'am.

17 Q This is the front of the little club, correct?

18 A That's correct.

19 Q Okay. Over here by the silver propane tank and
20 satellite dish, there's a side door, right?

21 A That's correct.

22 MS. CAMPBELL: May I hand this to the jury?

23 THE COURT: Sure.

24 MS. CAMPBELL: Thank you.

25 THE COURT: Again, as they pass those, you may

EXAMINATION OF PAUL ADAM

1 look at it and pass it around rather than pick it up
2 again, but it will accompany you to your jury room.

3 You may continue.

4 BY MS. CAMPBELL:

5 Q Richard Green was just about -- did you say,
6 10 feet, 10 yards from that side door?

7 A I didn't say how far he was.

8 Q You don't know? How far was he from the side
9 door?

10 A I don't know exactly how far he was.

11 Q But he was at that side door?

12 A He was in between the side door -- he was off the
13 side door, closer to the propane tank.

14 Q Okay. And Michael Morgan was on the back steps of
15 the house, correct?

16 A Yes, ma'am.

17 Q Okay. And you found the flare gun that the State
18 has asked you to identify, Exhibit 4, next to Michael
19 Morgan, correct, on the back steps?

20 A Yes, ma'am.

21 Q Okay. And you found, I guess, a spent flare gun
22 casing over by the propane tank area, correct?

23 A I don't recall its exact location.

24 Q Okay. Would you like to have a copy of your
25 report, would that help refresh your recollection?

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EXAMINATION OF PAUL ADAM

1 A Absolutely.

2 MS. CAMPBELL: May I?

3 THE COURT: You may. You can mark it for
4 identification so that -- we don't have to put it in
5 the record what he's looking at. Okay?

6 MS. CAMPBELL: Thank you. We would mark that
7 Defendant's 1 for identification.

8 THE COURT: For identification only.

9 *(Whereupon, Defendant's Exhibit No(s). 1 marked*
10 *for identification.)*

11 BY MS. CAMPBELL:

12 Q Lance Corporal Paul, I'll show you what's been
13 marked Defendant's Exhibit 1 in an effort to refresh your
14 recollection.

15 Would you take a look at this and see if you
16 can discern where you located the spent flare shell casing?

17 A Yes, ma'am. The discharged flare was on the
18 ground near the silver propane tank.

19 Q Thank you.

20 And as a first responder, Lance Corporal
21 Paul, you provide information gathered from the scene to
22 Investigator Zsamar, who was there, in the back of the
23 courtroom. That's correct?

24 A Yes, ma'am.

25 Q Okay. And some of the information you provide to

EXAMINATION OF PAUL ADAM

1 him is where you found the flare gun, where you found the
2 Glock, correct?

3 A Yes, ma'am.

4 Q Okay. Other pieces of information that were
5 important that you provide to him contained in Defendant's
6 Exhibit 1 were that Lewis Johnson had a gun, Dante Bailey
7 had a gun, and Lucas Morgan had a gun, correct?

8 A That's what I was told, yes, ma'am.

9 Q Correct.

10 MS. CAMPBELL: That is all I have.

11 THE COURT: Redirect?

12 MS. SWANSON: No, sir.

13 THE COURT: Thank you. You may come down.

14 MS. SWANSON: May Deputy Paul be excused?

15 THE COURT: Any objection, Counselor?

16 MS. CAMPBELL: Your Honor, I have no objection. I
17 believe he's still under my subpoena. And I'll let --

18 THE COURT: All right. Deputy Paul, you are free
19 to leave, but you need to maintain contact with defense
20 counsel until you are released from that subpoena as
21 well. Thank you so much.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Who's your next witness?

24 MS. SWANSON: EMT.

25 THE COURT: Short?

EXAMINATION OF PAUL ADAM

1 MS. SWANSON: Yes, sir.

2 THE COURT: Let's go ahead and do that one, too.

3 MS. SWANSON: Shayna Orsen.

4 THE COURT: While she's coming forward, ladies and
5 gentlemen, let me use this opportunity. You've heard
6 several times that we say, for identification. For
7 identification only, that means that exhibit may not
8 necessarily come -- sometimes it was later introduced,
9 but that doesn't mean that it's coming to you unless
10 it's ultimately introduced. But the testimony of --
11 concerning exhibits, that certainly is for you, but the
12 exhibit itself will not come to you.

13 Thereupon,

14 SHAYNA ORSEN

15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:

17 THE CLERK: Okay. Please state and spell your
18 name for the Court.

19 THE WITNESS: It's Shayna Orsen, S-H-A-Y-N-A,
20 O-R-S-E-N.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MS. SWANSON:

24 Q Good morning, Ms. Orsen. Can you please tell us
25 who you work for and what your position is?

EXAMINATION OF SHAYNA ORSEN

1 A I work for Beaufort County EMS as a paramedic.

2 Q Were you on duty the night of June 21st, 2012?

3 A Yes, ma'am.

4 Q And were you dispatched to respond to a scene?

5 A Yes, ma'am.

6 Q Tell us where you responded and what the scene was
7 like?

8 A We responded to the shooting on Toomer. And
9 initially, the scene that we first ended up encountering was
10 the one with the green vehicle, with a gentleman that we
11 pronounced in the back of the car. And then we moved on to
12 the secondary scene.

13 Q Okay. And when you say the first scene, was that
14 on Old Ben Road?

15 A Yes, ma'am.

16 Q Okay. And it was a Chevy HHR?

17 A Just dark green vehicle, yes, ma'am.

18 Q Okay. Who was in that car?

19 A There was a gentleman laid across the back seat of
20 the car with injuries, a GSW to the chest. We pronounced
21 him dead in that position on scene and moved forward to the
22 other scene on Toomer.

23 Q Okay. And when you say GSW, I know what you're
24 talking about, but what is that, for the jury?

25 A That's a gunshot wound to the chest.

EXAMINATION OF SHAYNA ORSEN

1 Q Okay. And you pronounced him dead?

2 A Yes, ma'am.

3 Q Were you able to identify that person?

4 A At the time, no, we didn't have identification.

5 We just moved forward to the other victims.

6 Q All right. Were you later able to identify that
7 person?

8 A Later I was given a name so that I could write the
9 report that I pronounced him deceased, yes.

10 Q And do you need to see that report?

11 Okay. Do you know who it was?

12 A I don't recall his name at this time, no, ma'am.

13 Q Okay.

14 MS. SWANSON: Your Honor, I'm marking this 62 only
15 for identification purposes so that the witness may
16 refer to it.

17 THE COURT: Certainly. ID only, State's 62.

18 *(Whereupon, State's Exhibit No(s). 62 marked for*
19 *identification.)*

20 BY MS. SWANSON:

21 Q And, Ms. Orsen, can you please tell us who the
22 victim was that you pronounced dead in the back of that car?

23 A The victim in the back of the car from this report
24 is Dante Bailey.

25 Q Thank you. And -- I'll take that back from you.

EXAMINATION OF SHAYNA ORSEN

1 Where did you head after you pronounced him
2 dead?

3 A We moved forward onto Toomer to the actual scene
4 of the -- the club.

5 Q Okay.

6 A We parked on Toomer, we staged our truck on Toomer
7 for easy exit and walked around buildings into the back, to
8 the secondary scene.

9 Q Okay. And what did you find when you got to the
10 nightclub?

11 A There were a lot of people running around, a lot
12 of vehicles. We ended up carrying our equipment around a
13 bunch of vehicles to the other side of the building we
14 parked in front of and found our two patients were on the
15 ground on that particular scene. /

16 Q Do you recall who those two patients were?

17 A Not by name, ma'am, no.

18 MS. SWANSON: Your Honor, I've marked Exhibit 63
19 and 64 for the witness to refer to, just to refresh
20 memory.

21 THE COURT: Very well. Sixty-three and 64,
22 identification only.

23 *(Whereupon, State's Exhibit No(s). 63 marked for*
24 *identification.)*

25 *(Whereupon, State's Exhibit No(s). 64 marked for*

EXAMINATION OF SHAYNA ORSEN

1 *identification.)*

2 BY MS. SWANSON:

3 Q Ms. Orsen, just tell us the names of the two
4 patients that you found at the scene at the nightclub?

5 A At the nightclub, Michael Morgan and Richard
6 Green.

7 Q Do you recall where Michael Morgan was located?

8 A Mr. Morgan was -- Mr. Morgan was the one that had
9 the GSW, sorry, gunshot wound to the abdomen. He was over
10 in -- near some bushes, near the building that is closer to
11 Toomer. And then Mr. Green was located near a propane
12 cylinder by the steps to, I believe it was, the club.

13 Q Okay. And can you describe the condition that you
14 found each patient in?

15 A I found both patients to be in a critical
16 condition. Any -- any injury to the -- penetrating injury
17 to the abdomen is automatically considered life threatening.
18 And the other patient was showing signs of neural problems.
19 So he's also considered critical.

20 Q And what does that mean?

21 A He was showing signs of paralysis. So we believed
22 that there was a possibility with an entry wound, gunshot
23 entry wound to the chest, that there was spinal
24 complications involved. So on scene showing signs of
25 paralysis is definitely considered critical.

EXAMINATION OF SHAYNA ORSEN

1 Q Okay. And what victim was that?

2 A The victim that had the signs of paralysis was
3 Mr. Green.

4 Q About how far apart were the victims?

5 A I couldn't tell you in feet, but I could tell you
6 that by -- standing by one, I could completely see the
7 other. They were -- he was within view.

8 Q Okay. And were you treating both of the victims?

9 A I was coordinating the treatment, bouncing between
10 the two victims. I had first responders to help me out with
11 the baseline treatment, but being the only paramedic on
12 scene at the time, I had to be able to divide my time
13 between both and coordinate that situation.

14 Q Okay. Do you recall seeing anyone from Lady's
15 Island fire department at the scene?

16 A We had an engine respond, a battalion respond. I
17 remember Scott Sampson and Joe Garvin were there from the
18 engine that responded, the Land's End station, and I can't
19 remember who was on battalion that ended up responding.

20 Q And eventually were you able to get the victims
21 out?

22 A Yes, ma'am.

23 Q Okay. Who got the victims out?

24 A We patched the victims on scene for transport. I
25 transported Mr. Green in EMS 5, and then EMS 7 responded,

EXAMINATION OF SHAYNA ORSEN

1 and they transported Mr. Morgan.

2 MS. SWANSON: Thank Your Honor. That's all the
3 questions I have.

4 THE COURT: You may cross-examine.

5 MS. CAMPBELL: May it please the Court.

6 CROSS EXAMINATION.

7 BY MS. CAMPBELL:

8 Q Ms. Orsen, do you remember being told at the scene
9 that Lucas Morgan was the shooter?

10 A No, ma'am. I didn't hear any names.

11 Q You didn't hear that at all?

12 A No, ma'am.

13 Q Okay. And so -- and some unknown bystander making
14 an outburst, you're testifying here today you didn't hear
15 anything like that?

16 A Not that I can recall at this time, no, ma'am.

17 Q Okay. Have you -- have you testified previously
18 about this matter?

19 A Yes, ma'am.

20 Q Okay. Now, when you got to the HHR on Old Ben
21 Road did you see any black males around the car, walking
22 around the car?

23 A There were people everywhere, ma'am. There's -- I
24 mean, it was a very chaotic scene.

25 I do remember that after I had made the

EXAMINATION OF SHAYNA ORSEN

1 decision that there was nothing that I could do for the
2 gentlemen in the car, I remember turning around and there was
3 a very large black male standing nearby, asking me why I
4 wasn't doing anything, and I had to explain to him that there
5 wasn't anything that I could do. But that there were people
6 I could do things for up the road. And he -- he said okay
7 and walked away.

8 Q And it's not your job to get down their names,
9 it's your job to tend to the person who's been shot,
10 correct?

11 A Yes, ma'am.

12 Q Okay. So I can't -- you can't say who you saw
13 standing around the car, correct?

14 A No, ma'am.

15 Q Okay. Now, you've testified that Michael Morgan
16 was in some bushes near the house; is that correct?

17 A No, ma'am.

18 Q Near some bushes, in some bushes, near the front
19 house, correct, when you found him?

20 A Not that I recall, no, ma'am.

21 Q Okay.

22 A Or -- well, he was -- he was next -- he was next
23 to a building. There were some bushes within eyeshot, but
24 he wasn't actually like in them.

25 Q Was he on the steps?

EXAMINATION OF SHAYNA ORSEN

1 A Not that I recall. He was by some steps, but not
2 actually in bushes, no, ma'am.

3 Q Okay. Now, obviously you're not an expert on
4 wound entries; is that correct?

5 A Only if I see it, I know what to do with it.

6 Q Okay. So you're there to take care of him and get
7 him to the hospital, correct?

8 A Yes, ma'am.

9 Q So if you say he had a wound to his abdomen, you
10 don't know if the wound to the abdomen was where the bullet
11 came out or where the bullet went in, right?

12 A No, ma'am. I wouldn't be able to do that.

13 Q Okay. Thank you.

14 MS. CAMPBELL: That's all I have.

15 THE COURT: Redirect?

16 MS. SWANSON: No, sir.

17 THE COURT: Okay. You may step down.

18 Do you wish this witness to be excused?

19 MS. SWANSON: Yes, please, Your Honor.

20 THE COURT: Any objection?

21 MS. CAMPBELL: No objection.

22 THE COURT: You're also free to leave.

23 All right. At this point, ladies and gentlemen,
24 we'll take a recess for about ten or 15 minutes. You
25 may retire to your jury room. Do not begin your

EXAMINATION OF SHAYNA ORSEN

1 (Jury enters at 11:25 a.m.)

2 THE COURT: Thank you very much, ladies and
3 gentlemen. And as I understand, during the break you
4 selected your presiding juror. Mr. Gestaut, you have
5 been selected; is that correct, sir?

6 THE JUROR: Yes, sir.

7 THE COURT: And your juror number, for the record
8 is?

9 THE JUROR: 111.

10 THE COURT: Thank you so much, sir. And that will
11 be your seat for the remainder of the trial. Thank you
12 very much, ladies and gentlemen.

13 Please give your attention now to the next
14 witness.

15 Solicitor, you may call your next witness.

16 MS. SWANSON: Thank you, Your Honor. The State
17 calls Joe Garvin.

18 THE CLERK: Please be seated and state and spell
19 your name for the Court.

20 THE WITNESS: My name is Joe Garvin. G-A-R-V-I-N.

21 Thereupon,

22 JOE GARVIN

23 was called as a witness, having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

EXAMINATION OF JOE GARVIN

1 BY MS. SWANSON:

2 Q Good morning.

3 A Good morning.

4 Q Tell me your rank, please, Mr. Garvin.

5 A Lieutenant.

6 Q Lieutenant Garvin, can you please tell us who you
7 work for?

8 A I used to work for, I'm since retired, I worked
9 for Lady's Island fire department.

10 Q Okay. Were you working for Lady's Island fire
11 department back in June of 2012?

12 A I was.

13 Q Okay. And what -- what function were you serving
14 the night of the 21st of June?

15 A That night, I was battalion chief. I was active
16 battalion chief.

17 Q Okay. And tell us what you recall about that
18 night.

19 A That night, we had a gunshot went out. I was
20 working at headquarters, which then was by the airport. The
21 engine that was on Land's End responded to it, and as a
22 battalion chief I had the ability to back them up for
23 assistance. And so that's what I did that night.

24 Q Okay. And so what scene did you go out to the
25 night of the 21st?

EXAMINATION OF JOE GARVIN

1 A There was a shooting at a club, the Soul Patrol.

2 Q Okay. And did you go straight to the Soul Patrol?

3 A I did not. On the way to the Soul Patrol, they --

4 my engine company was in the middle of the road, and so I

5 stopped to assist them there. Thought -- thinking that that

6 was the actual scene. That person was deceased, and so I

7 was informed by the engine company that the actual shooting

8 was at a club. So I went to the club.

9 Q All right. So you proceeded on to the club?

10 A I did.

11 Q And were you one of the first people on scene?

12 A For medical, yes.

13 Q Okay. Tell us what you encountered once you got

14 to the scene?

15 A We got on scene, it was pretty much chaotic.

16 There was pointing towards the back of the business. So I

17 went back there as the incident commander for the scene. I

18 had two male patients down on the ground.

19 Q Okay. What did you do when you got to the scene?

20 A Well, my job then is not to render aid or

21 assistance, it's to bring equipment and personnel to the

22 scene. As the incident commander, it's -- it's very

23 important that I make sure the scene is secure, meaning safe

24 to be there for my guys. So that's what I did.

25 Q Okay. And how did you do that?

EXAMINATION OF JOE GARVIN

1 A Well, first of all, the sheriff's department had a
2 perimeter set up. They had a stringer. You know, I don't
3 cross the line.

4 Q Yellow tape?

5 A Yellow tape.

6 Q Okay. And everyone else that was not an emergency
7 service or a police officer had to stay behind that line.

8 The other thing I needed was, what was the
9 shape of the victims, or the patients, we call them. I had
10 one that was -- had no feelings, and the other one had
11 gotten shot in the stomach area. And so I -- for me, that
12 is a critical, so I put Life Star on standby.

13 Q Okay. So you have Life Star on standby and you're
14 assessing the scene to make sure it's safe for your guys.

15 A Yes.

16 Q And so what did you do as a result of that
17 assessment?

18 A Okay. So once -- once I deemed that, hey, guess
19 what, we got a critical, let's get these guys loaded and go,
20 the engine company that was at the other scene came. Also,
21 EMS came. We divided up personnel for each victim.

22 Okay. Then I wanted to know, hey, was the
23 shooter still here? So I was asking questions. I asked the
24 one guy that I was talking with on the ground. I believe his
25 name was Lucas, what had happened.

EXAMINATION OF JOE GARVIN

1 Q But could it have been Michael?

2 A I'm not -- I'm not sure.

3 Q Was his last name Morgan?

4 A It was Morgan, yes. Yes. Okay. I'm sorry.

5 Q Okay.

6 A What had happened. He didn't say anything, so I
7 was asking the crowd. There was probably about 80 people or
8 so out there, what happened.

9 Q I'm sorry, 80?

10 A About 80 people. There was a lot of people out
11 there that night. What had happened. There were one - one
12 gentleman that was really irate, yelling, you know. He
13 named names. I don't know these people at all. He said
14 Lucas and he said --

15 MS. CAMPBELL: Your Honor, objection. Hearsay.

16 THE COURT: Sustained.

17 THE WITNESS: Okay.

18 MS. SWANSON: Your Honor, if I may.

19 THE COURT: I sustained the objection. If you
20 want to excuse the jury to be heard as a matter of law,
21 be happy to do so.

22 Do you want to continue?

23 MS. SWANSON: No, sir. We'll continue.

24 THE COURT: Okay.

25 BY MR. SWANSON:

EXAMINATION OF JOE GARVIN

1 Q Mr. Garvin, did you hear the crowd screaming
2 names, yes or no?

3 A I did.

4 Q Thank you. And how many names did you hear?

5 A I heard two.

6 Q Thank you.

7 Did you provide any treatment to the victims
8 that were on the ground?

9 A I assisted with the Morgan victim.

10 Q Okay. And what kind of shape was he in?

11 A He was in bad shape. He had gotten shot, his
12 blood pressure was decreasing. So . . .

13 Q Okay. Do you recall seeing Shayna Orsen out
14 there?

15 A Yes.

16 Q All right.

17 MS. SWANSON: I have nothing further at this time.

18 THE COURT: Cross-examine.

19 MS. CAMPBELL: I have no questions for this
20 witness.

21 THE COURT: You may come down.

22 Do you wish the witness to be excused, Solicitor?

23 MS. SWANSON: Yes, please.

24 THE COURT: Any objection?

25 MS. CAMPBELL: No objection.

EXAMINATION OF JOE GARVIN

1 THE COURT: You're also free to leave, sir.

2 WITNESS: Thank you.

3 THE COURT: Call your next witness.

4 MS. SWANSON: The State calls Stanley Humphries.

5 THE CLERK: Please be seated. State and spell
6 your name for the Court.

7 THE WITNESS: My name is Stanley Humphries,
8 Junior. S-T-A-N-L-E-Y, H-U-M-P-H-R-I-E-S.

9 Thereupon,

10 STANLEY HUMPHRIES

11 was called as a witness, having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. SWANSON:

15 Q Good morning, Mr. Humphries.

16 A Good morning.

17 Q Do people call -- do you have a nickname?

18 A Hump.

19 Q Hump. Tell us about the events of June 21st, 2012
20 from the time that you recall being with Dante Bailey.

21 A Well, earlier that night me and Dante Bailey and
22 Janey (phonetic) had went to --

23 Q Let me stop you right there. Does Dante Bailey
24 have a nickname?

25 A Cole.

EXAMINATION OF STANLEY HUMPHRIES

1 Q Cole? Okay.

2 A We went to the Sand Dollar, shot pool for a little
3 while. They closed. We left there, went by Dante's house
4 to get a pack of cigarettes. Some other people got in the
5 van with us, and we went to Soul Patrol, I believe is the
6 name of it.

7 Q Okay. You were driving that night?

8 A Yes, ma'am.

9 Q And what were you driving?

10 A A mini-van.

11 Q What color was it?

12 A Green.

13 Q All right. How long have you known Dante Bailey?

14 A Since I was 14, 15. I'm 37 now.

15 Q And where did you -- where did you go pick up the
16 other guys?

17 A From his house.

18 Q Where is his house?

19 A Dulamo Road.

20 Q All right. And you guys went to the Soul Patrol?

21 A Yes, ma'am. First, we went to the Sand Dollar.

22 Q Right.

23 A And then after that, we went back to his house.

24 Some other people got in the van with us, and we went to
25 Soul Patrol.

EXAMINATION OF STANLEY HUMPHRIES

1 Q Okay. And what other people got in the van with
2 you?

3 A I'm not really sure, to be honest with you. I
4 don't want to say the wrong name.

5 Q Okay. Did Joseph Bowers get in the van with you?

6 A Yeah, he rode there with us.

7 Q Okay. Do you see Joseph Bowers in the courtroom?

8 A Yes, ma'am.

9 Q Can you point him out, please?

10 A (Pointing.)

11 MS. SWANSON: Okay. And let the record reflect
12 that he's pointing to the Defense table.

13 THE COURT: So reflected.

14 BY MS. SWANSON:

15 Q Does Joseph Bowers have a nickname?

16 A Opie.

17 Q Opie. Is that how you know him?

18 A Yes, ma'am.

19 Q Okay. So you go pick up Opie at Dulamo Road and
20 -- after the Sand Dollar, and then you guys go to the Soul
21 Patrol?

22 A Yes, ma'am.

23 Q Had you ever been out to the Soul Patrol?

24 A No, ma'am.

25 Q Did you even know where it was?

EXAMINATION OF STANLEY HUMPHRIES

- 1 A No, ma'am.
- 2 Q Did you have to get directions?
- 3 A Yes, ma'am.
- 4 Q Tell us what happened when you got to the club.
- 5 A We went inside. Some people got some drinks. I
6 got a bottle of water. Asked where the pool table was, they
7 said it was off in the side room. Stood around and talked
8 for a little while, walked outside, and this whole incident
9 started. We never even got to shoot pool that night.
- 10 Q All right. And is that why you went there?
- 11 A Yes, ma'am.
- 12 Q And when you say this whole incident started, tell
13 us exactly what started.
- 14 A We were outside smoking, and this guy Krum, they
15 call him Krum, came over there and started some trouble with
16 Dante. And somebody said, Come on, let's go. And as we
17 went to leave the gunshots rang out.
- 18 Q Do you actually get in your van?
- 19 A Yes, ma'am.
- 20 Q All right. Did Dante get in the van?
- 21 A No, ma'am. He was backing us out. There was cars
22 parked real close to us. There was a telephone pole beside
23 us, and he was actually directing us out. He was standing
24 at the back passenger side of the van.
- 25 Q Did Opie get in the van?

EXAMINATION OF STANLEY HUMPHRIES

1 A Yes, ma'am.

2 Q Did he get out of the -- did he stay in the van?

3 A We all got out of the van once we realize that
4 Cole had been shot.

5 Q All right. What did you see after Cole had been
6 shot?

7 A I actually went over there to him and pulled his
8 shirt up, and he had a bullet hole on his right side.

9 Q Did you see anyone tending to him?

10 A No, ma'am. He was -- he was -- he was already
11 dead.

12 Q Did you see anyone take him away from the scene?

13 A No, ma'am.

14 Q Did Opie leave with you?

15 A I told investigators, yes, that I thought Opie
16 left with us, but I was wrong about that. He did not leave
17 with us.

18 Q Okay. And so you actually gave another sworn
19 statement, and so you're saying he did not leave with you?

20 A No, ma'am.

21 Q But he did get into your car at one time and then
22 got out?

23 A Yes, ma'am.

24 Q Did you take anyone to the hospital that night?

25 A Yes. I took -- I don't know his name, ma'am, I

EXAMINATION OF STANLEY HUMPHRIES

1 took one guy to the hospital and dropped him off. He had
2 been shot in his leg.

3 Q Okay. Someone that had been shot in the leg?

4 A Yes, ma'am.

5 Q Do you recall how many white people were out at
6 the Soul Patrol that night?

7 A No, I don't know. There wasn't many. One or two
8 maybe, three maybe. I'm not sure. I really -- I really
9 don't know.

10 Q Okay. What white people do you recall seeing?

11 A Me and Opie.

12 Q All right. Okay. Thank you.

13 MS. SWANSON: I have nothing further at this time.

14 THE COURT: Cross-examine.

15 MS. CAMPBELL: May it please the Court.

16 THE COURT: Yes, ma'am.

17 CROSS EXAMINATION

18 BY MS. CAMPBELL:

19 Q Mr. Humphries.

20 A Yes, ma'am.

21 Q Do you recall having your deposition taken in this
22 case?

23 A Yes, ma'am.

24 Q Do you recall answering questions similar to those
25 asked today in that deposition?

EXAMINATION OF STANLEY HUMPHRIES

1 A Yes, ma'am.

2 Q Do you recall in your deposition stating that you
3 knelt down next to Cole, and that there was someone tending
4 to him with you, but you don't remember who it was?

5 A There wasn't nobody tending to him. There might
6 have been somebody that knelt down beside me, but there was
7 nobody tending to him.

8 Q I guess maybe we're getting hung up on the word
9 tending.

10 A Yeah. I don't understand what you mean by
11 tending. Like CPR or anything that, there wasn't.

12 Q No, no. No.

13 Was there someone down there with you next to
14 Cole, trying to see if the man was alive?

15 A Yes, ma'am.

16 Q Okay. Thank you.

17 And do you remember who that person was?

18 A No, ma'am, I don't.

19 Q Okay. And to the best of your memory about that
20 night, in your prior testimony, you -- you said that some --
21 was it Joseph Bowers, wasn't he the one that called out and
22 said, Come on, let's go. Wasn't he the one that said that
23 when y'all walked off?

24 A He might have been.

25 Q And when you get back to the van Dante Bailey is

EXAMINATION OF STANLEY HUMPHRIES

1 not pulling out his gun shooting it at anybody, is he?

2 A No, ma'am.

3 Q In fact, you said before, I think, and I guess
4 today, that Dante Bailey, you didn't never saw a gun with
5 him, right?

6 A No, ma'am.

7 Q Okay. Did you have a gun that night?

8 A No, ma'am.

9 Q Did Joseph Bowers have a gun?

10 A Not that I know of.

11 Q Okay. And so Dante Bailey, you all are trying to
12 leave, he's backing your van out; is that right?

13 A Yes, ma'am.

14 Q Okay. And trying to back your van out so y'all
15 can leave, somebody fires on him and kills him; is that
16 correct?

17 A Yes, ma'am.

18 Q Do you know where those shots came from?

19 A I don't, ma'am.

20 Q Dante dropped to the ground dead, correct?

21 A Yes, ma'am.

22 Q Okay. And in trying to get yourself out of there,
23 were you fearing for your life then?

24 A Yes, ma'am. But I -- I just can't leave somebody
25 laying there like that. It's -- it's just not possible for

EXAMINATION OF STANLEY HUMPHRIES

1 me.

2 Q Did you help try and get him into a car to get him
3 to safety and to the hospital?

4 A No, ma'am. Once I went over there and his shirt
5 was up and I seen a bullet hole and there was no response
6 for him, no movement, no pulse, no nothing, there was
7 nothing I could do, ma'am.

8 Q You tried to save your life?

9 A Yes, ma'am.

10 Q The shots were still coming, weren't they?

11 A Yes, ma'am.

12 Q Okay. You're under fire, Joseph Bowers right
13 there with you under fire, and y'all are trying to get out
14 of there to save your lives, right?

15 A Yes, ma'am.

16 MS. CAMPBELL: That's all I have.

17 THE COURT: Redirect.

18 MS. SWANSON: No, sir.

19 THE COURT: Okay. You may step down.

20 Do you wish Mr. Humphries to be excused?

21 THE WITNESS: Thank you.

22 MS. SWANSON: Yes, please.

23 THE COURT: Any objection?

24 (No verbal response.)

25 THE COURT: You are free to leave, sir.

EXAMINATION OF STANLEY HUMPHRIES

1 THE WITNESS: Thank you.

2 MS. SWANSON: The State calls Joe Nathan Pope.

3 Thereupon,

4 JOE NATHAN POPE

5 was called as a witness, having been first duly sworn,

6 was examined and testified as follows:

7 THE CLERK: Please be seated. State your -- state
8 and spell your name for the Court.

9 DIRECT EXAMINATION

10 BY MS. SWANSON:

11 Q Good morning, Mr. Pope.

12 A Good morning.

13 Q Were you at the Midnight Soul Patrol the night of
14 June 21st, 2012?

15 A Yes, ma'am.

16 Q Okay. I'm going to show you what's been marked as
17 State's Exhibit 43, and ask that you identify this.

18 A Well, to tell you the truth, I ain't never see it
19 from this angle. Okay?

20 Q Okay.

21 A Okay. But it look like it.

22 Q It looks like what?

23 A The Midnight Soul Patrol.

24 Q Okay. And do you see Ms. Thelma Wilson's house in
25 there?

EXAMINATION OF JOE NATHAN POPE

1 A Yes, ma'am.

2 Q Okay. Does that look like Land's End in the
3 scene?

4 A Yes, ma'am.

5 Q Okay.

6 MS. SWANSON: At this time, the State would move
7 43 into evidence.

8 MS. CAMPBELL: No objection.

9 THE COURT: Without objection, State's 43 is
10 admitted.

11 *(Whereupon, State's Exhibit No(s) 43 marked for*
12 *identification and received in evidence.)*

13 MS. SWANSON: Thank you. I ask to publish to the
14 jury.

15 THE COURT: You may.

16 BY MS. SWANSON:

17 Q All right. And, Mr. Pope, you can refer to this
18 exhibit as you tell us what went on that night.

19 A Well, it happened so fast. When -- when I first
20 got there it -- the first four person I seen was Opie,
21 Stanley, Mike G., and Corleon.

22 Q Okay. And do you see Opie in the courtroom today?

23 A Yes, ma'am.

24 Q Can you please point him out for me?

25 A Right there.

EXAMINATION OF JOE NATHAN POPE

1 Q All right. And where do you see those people?

2 A Ma'am?

3 Q Where did you see those people?

4 A In the parking lot.

5 Q In the parking lot.

6 A Yes, ma'am.

7 Q I'm going to show you what's been entered as
8 State's 46 and ask if that's your car, your white car?

9 A Yes, ma'am.

10 Q Is that where you parked that night?

11 A Yes, ma'am.

12 Q And where did you park? Describe it for me.

13 A Under the streetlight.

14 Q Was that streetlight on that night?

15 A Yes, ma'am.

16 Q All right.

17 THE COURT: You can move that into evidence
18 as well.

19 MS. SWANSON: I did already, Your Honor.

20 THE COURT: Oh, that's right. Thank you very
21 much.

22 BY MS. SWANSON:

23 Q This is State's 46 that I'm referring to. And,
24 Mr. Pope, the white car that we see, is that your car?

25 A The white car? Yes, ma'am.

EXAMINATION OF JOE NATHAN POPE

1 Q Tell us what your car looks like. What kind of
2 car do you have?

3 A A Mercury Mountaineer.

4 Q Mountaineer.

5 A Yes, ma'am.

6 Q Okay. And so in this picture, it's the white SUV
7 under the light pole?

8 A Yes, ma'am.

9 Q Okay. All right. So that's where you pulled up
10 initially?

11 A Yes, ma'am.

12 Q And you see the guys that you just told us about?

13 A Yes, ma'am.

14 Q Okay. And then what did you do?

15 A What did I do?

16 Q Yes, sir.

17 A Well, when I -- when I pulled up, the first
18 somebody asked calling him Opie. He came up to me because
19 he know I was looking for him, because I had animosity in my
20 heart against him.

21 MS. CAMPBELL: Objection, Your Honor.

22 MS. SWANSON: Okay. Let's just move on from --

23 THE COURT: I'll sustain the objection as to that.

24 Jury, disregard the witness' last statement.

25

EXAMINATION OF JOE NATHAN POPE

1 BY MS. SWANSON:

2 Q Yes, sir. Let's move on past that.

3 Who did you go to the Midnight Soul Patrol
4 with?

5 A Ms. Jenkins.

6 Q Okay. And about what time did you guys get there?

7 A I can't really say.

8 Q Was it late?

9 A Yes, ma'am.

10 Q Okay. About how long were you there before an
11 argument broke out?

12 A I don't think I was there ten minutes.

13 Q All right. Did you ever go inside the club?

14 A Yes, ma'am.

15 Q And who did you go inside the club with?

16 A Well, I went there by myself, but Corleon followed
17 me in the club.

18 Q Okay. And you're talking about Corleon. Does he
19 also go by Cole?

20 A Yes, ma'am.

21 Q And that's Dante Bailey?

22 A Well, I don't know his real name.

23 Q Okay. Cole?

24 A Yes, ma'am.

25 Q What happened when you came outside of the club?

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EXAMINATION OF JOE NATHAN POPE

1 A Well, when I came outside of the club the only two
2 persons I see was Mikey Morgan and Mike G.

3 Q All right. Did you see an argument that night?

4 A Yes, ma'am.

5 Q Tell us about that.

6 A Well, I seen this guy walk up to Corleon with a
7 bunch of guys behind him. And him and Corleon had a little
8 argument before, about six week before. And --

9 Q I'm sorry. About what?

10 MS. CAMPBELL: Your Honor, objection.

11 THE COURT: At this time you'll have to connect it
12 if you want to ask him more questions about explaining
13 that. I don't know where you're going with that
14 concerning the prior. If you need to connect that,
15 I'll sustain the objection on relevance at this point.

16 MS. SWANSON: I didn't hear the response. I
17 wasn't sure what Mr. Pope said, but --

18 THE COURT: He said there was some altercation.

19 Jury, disregard this -- that part of it. I'll
20 sustain the objection.

21 MS. SWANSON: Oh, okay. Yes. Yes, sir.

22 BY MS. SWANSON:

23 Q All right. We're just talking about an argument
24 that you witnessed that night.

25 A Yes, ma'am.

EXAMINATION OF JOE NATHAN POPE

1 Q Okay. And so who did you see approach Cole?

2 A I don't know his name, but I seen him before.

3 Q Okay. Did you know his nickname or anything?

4 A Ma'am?

5 Q Did you know his nickname?

6 A No, ma'am.

7 Q Was it one of the Morgan boys?

8 A No, ma'am.

9 Q Okay. And what happened?

10 A They continued to argue. I tried to calm them
11 guys down, and this guy, he had a lot of boys behind him.
12 Corleon was by himself, and Coleon said, Man, you can't be
13 walking up on me if me and you got beef. And the guy had
14 his hand folded like this, you know, just flexing, and he
15 ain't never chanted a word. He said, I came to you like a
16 man.

17 MS. CAMPBELL: Objection, Your Honor. It's
18 hearsay.

19 THE COURT: Hearsay. That will be sustained.

20 BY MS. SWANSON:

21 Q Okay. Without saying what this man said, what
22 happened? Was this just a verbal altercation, or did it get
23 physical?

24 A Yes. Yes, ma'am, it was verbal.

25 Q Okay. So it never got physical?

EXAMINATION OF JOE NATHAN POPE

1 A No, ma'am.

2 Q All right. And at some point, did someone break
3 this argument up?

4 A Yes, ma'am.

5 Q All right. Do you know who that was?

6 A No, ma'am.

7 Q But somebody came between these two?

8 A Yes, ma'am. And he pushed them guys apart and
9 said, It's over. And that was when it start.

10 Q Okay. And so that's when what started?

11 A I mean, Corleon, a bunch of guys came up behind
12 him and told the guy, said --

13 MS. CAMPBELL: Your Honor, objection.

14 MS. SWANSON: From the parking lot area?

15 THE COURT: Sustained as to what someone said.

16 BY MS. SWANSON:

17 Q A bunch of guys came -- came up behind him from
18 where, the parking lot area?

19 A The parking lot, yes, ma'am.

20 Q Okay. And then what happened?

21 A Ma'am?

22 Q And then what happened after the bunch of guys
23 came up behind Cole from the parking lot area?

24 A And it -- the argument was all over with.

25 Q Right. But that wasn't the end of the night, was

EXAMINATION OF JOE NATHAN POPE

1 it?

2 A No, ma'am.

3 Q All right. So what happened then?

4 A When I turned to walk away, because I see all
5 these guys, and I know something is going to happen. I
6 turned to go back toward the club, try to go in the club,
7 because I didn't want to be in the parking lot.

8 Q Why not?

9 A Because I didn't -- I know something was going to
10 go down between all of them guys. I know how they operate,
11 you know.

12 Q All right. Were you in fear?

13 A Yes, ma'am.

14 Q What did you see happen after the argument was
15 diffused?

16 A Okay. When I turned to go toward the club I seen
17 Lucas Morgan in an altercation.

18 Q Okay. Do you recall who he was fighting with?

19 A But they wasn't fighting.

20 Q All right.

21 A Somebody was pushing him back, but Irvin was
22 trying to get to -- to Lucas, but Lucas had a gun. And I
23 don't know if Irvin had seen the gun or not.

24 Q All right. Were you there when gunshots were
25 fired?

EXAMINATION OF JOE NATHAN POPE

1 A Yes, ma'am.

2 Q And where were the gunshots coming from; do you
3 even know?

4 A In front of me.

5 Q Okay. Were multiple people firing?

6 A Well, I only seen one.

7 Q Okay. You only saw one?

8 A Yes, ma'am.

9 Q Okay. Who did you see firing?

10 A Lucas.

11 Q Okay. And that's Lucas Morgan?

12 A Yes, ma'am.

13 Q All right. And what were most people doing when
14 Lucas was firing?

15 A They was just running for cover. They just
16 dissipate.

17 Q Okay. After everything stopped, after the gunfire
18 stopped --

19 A Yes, ma'am.

20 Q -- and law enforcement got there --

21 A Yes, ma'am.

22 Q -- were you still on the scene?

23 A Yes, ma'am.

24 Q Was Lucas there?

25 A No, ma'am.

EXAMINATION OF JOE NATHAN POPE

1 Q Was Opie still there?

2 A No, ma'am.

3 Q All right.

4 MS. SWANSON: Beg the Court's indulgence?

5 THE COURT: Okay.

6 MS. SWANSON: Nothing further at this time. Thank
7 you, Your Honor.

8 THE COURT: Cross-examine.

9 CROSS EXAMINATION

10 BY MS. CAMPBELL:

11 Q Mr. Pope, can you hear me?

12 A Ma'am?

13 Q Can you hear me?

14 A Yes, ma'am.

15 Q Do you want me to come a little bit closer? Will
16 that help?

17 A Yes, ma'am.

18 Q Okay. Mr. Pope, isn't it true that Lucas Morgan
19 was the only person you saw with a gun on June 21st, 2012?

20 A Yes, ma'am.

21 Q Okay. And Lucas Morgan is the person you saw
22 shooting his gun --

23 A Yes, ma'am.

24 Q -- when Richard Green got shot, right?

25 A Yes, ma'am.

EXAMINATION OF JOE NATHAN POPE

1 Q And Lucas Morgan is the person shooting his gun
2 when Robert Goodwine was shot, right?

3 A I don't know. I can't --

4 Q Isn't it true that Irvin Smalls was having an
5 argument with Lucas Morgan?

6 A Yes, ma'am.

7 Q Okay. And isn't it true that Lucas Morgan, as he
8 began to fire into the parking lot, crouched down by the
9 propane tank, firing down like this?

10 A Yeah. He was -- he was -- he was shooting in a
11 lower angle.

12 Q Right. And he pretty much emptied that clip,
13 didn't he?

14 A I'm pretty sure he did.

15 Q Right. Isn't it true, Mr. Pope, that you never
16 saw Joseph Bowers with a gun, right?

17 A No, ma'am.

18 Q Okay. And you never saw Joseph Bowers in an
19 argument with anybody that night, right?

20 A I don't -- I don't think I know to about.

21 Q Okay. Well, that's helpful. Thank you.

22 And isn't it true, Mr. Pope, that you called
23 911?

24 A Yes, ma'am.

25 Q And you told 911, Hey, look, Lucas Morgan's out

EXAMINATION OF JOE NATHAN POPE .

1 here shooting this place up, right?

2 A Yes, ma'am.

3 Q Okay. And you told them, Richard Green's been
4 hit, right?

5 A Yes, ma'am.

6 Q Okay. And you said, Michael Morgan's been hit,
7 too?

8 A Yes, ma'am.

9 Q Right. And did you see Michael get shot?

10 A No, ma'am.

11 Q Did not. And you didn't see Robert Goodwine get
12 shot, correct?

13 A No, ma'am.

14 Q Do you know when Michael Morgan got shot? Was it
15 while Lucas was firing? Do you have any idea?

16 A Well, when them guys came running through the
17 parking lot, Mikey was standing over Richard with a flare
18 gun, holding it like this, and he didn't see them guys
19 coming.

20 Q Right. Michael had a flare gun, right?

21 A Yes, ma'am.

22 Q You saw that flare gun in his hand?

23 A Yes.

24 Q Did you actually see the flare go off?

25 A No, ma'am.

EXAMINATION OF JOE NATHAN POPE

1 Q Okay. But you saw the flare gun in his hand,
2 right?

3 A Yes, ma'am.

4 Q And Michael is standing over Richard?

5 A Yes, ma'am.

6 Q And four men come across the parking lot shooting
7 towards Michael; is that right?

8 A It was four or five. I can't say how many it was.

9 Q And when those four or five men came across the
10 parking lot shooting towards Michael, were they heads up,
11 head down?

12 A Heads down.

13 Q What posture were they in?

14 A Then, when I see them coming with the gun, they
15 was running low with the head down.

16 Q Do you know if they are white, black? Any idea?

17 A Black.

18 MS. CAMPBELL: Thank you very much.

19 THE COURT: Redirect.

20 MS. SWANSON: Just briefly.

21 REDIRECT EXAMINATION

22 BY MS. SWANSON:

23 Q Mr. Pope, you're not sure how many people you saw
24 running through the parking lot?

25 A No. I know it was four or five, at least.

EXAMINATION OF JOE NATHAN POPE

1 Q Okay. And did you identify that there were four
2 black men?

3 A Well, all of them was black. It might be four or
4 five or whatever, but all of them black.

5 Q Okay. Thank you.

6 MS. SWANSON: Can Mr. Pope be excused -- I'm
7 sorry.

8 THE COURT: Recross.

9 MS. CAMPBELL: No, Your Honor.

10 THE COURT: Okay. Any objection to him being
11 excused?

12 MS. CAMPBELL: No, Your Honor.

13 THE COURT: You may step down. You're free to
14 leave, sir.

15 THE WITNESS: All right. Thank you.

16 THE COURT: Call your next witness, please.

17 MS. SWANSON: Robert Goodwine.

18 Thereupon,

19 ROBERT GOODWINE

20 was called as a witness, having been first duly sworn,
21 was examined and testified as follows:

22 THE CLERK: Please be seated. State and spell the
23 name for the Court.

24 THE WITNESS: Robert Goodwine. R-O-B-E-R-T,
25 G-O-O-D-W-I-N-E.

EXAMINATION OF ROBERT GOODWINE

1 DIRECT EXAMINATION

2 BY MS. SWANSON:

3 Q Thank you, Mr. Goodwine.

4 We see that you're in custody. Can you tell
5 us what you're in custody for, please?

6 A Family court, child support.

7 Q Family court. Okay.

8 Were you at the Soul Patrol the night of June
9 21st, 2012?

10 A Yes, ma'am.

11 Q Okay. Tell us what happened that night. Who did
12 you go there with?

13 A Sam Blackman.

14 Q Okay. And about what time did you arrive?

15 A About 12:00, 11:30.

16 Q All right. Where were you when -- were you there
17 when an argument broke out?

18 A No, ma'am. I was in the club.

19 Q Okay. You were at the Soul Patrol, but you were
20 inside the club?

21 A (Nods in the affirmative.)

22 Q Did you end up going outside of the club?

23 A Yes, ma'am.

24 Q Okay. Tell us what you saw when you went outside
25 of the club.

EXAMINATION OF ROBERT GOODWINE

- 1 A I seen an argument. When I went out there, I seen
2 Richard laying on the ground.
- 3 Q You saw Richard laying on the ground?
- 4 A Yes, ma'am.
- 5 Q Okay. Can you speak up a little for me, please?
- 6 A Yes, ma'am.
- 7 Q Thank you.
- 8 Did you see anyone shooting inside the club?
- 9 A No, ma'am.
- 10 Q Did you see anyone shooting outside of the club?
- 11 A Yes, ma'am.
- 12 Q Who did you see shooting outside of the club?
- 13 A Lucas Morgan and Dante.
- 14 Q And Dante?
- 15 A Bailey.
- 16 Q Bailey. Did you get injured that night?
- 17 A Yes, ma'am.
- 18 Q I'm going to show you what's been marked as
19 State's Exhibit 65. Can you identify this for me?
- 20 A Yes, ma'am.
- 21 Q Okay. What is it?
- 22 A A bullet wound. Mine.
- 23 Q All right. Is it your --
- 24 A Yes, ma'am.
- 25 Q Okay. Is that what it looked like that night in

EXAMINATION OF ROBERT GOODWINE

1 the ER?

2 A Yes, ma'am.

3 Q All right. The State moves 65 into evidence.

4 MS. CAMPBELL: No objection.

5 THE COURT: Without objection, it's admitted.

6 *(Whereupon, State's Exhibit No(s). 65 marked for*
7 *identification and received in evidence.)*

8 BY MS. SWANSON:

9 Q All right. And so tell us how you sustained that
10 gunshot wound.

11 A Ma'am?

12 Q Tell us how that happened?

13 A After Cole got shot, I backed out, and then he
14 came around the corner and started shooting.

15 Q Who is he?

16 A Lucas Morgan.

17 Q Okay. Was he the only one shooting that night?

18 A That I seen. I seen a flare gun.

19 Q Okay. You saw a flare gun. Do you know who shot
20 the flare gun?

21 A No, ma'am.

22 Q All right. So you saw a flare gun, and you saw
23 Lucas shooting?

24 A Yes, ma'am.

25 Q Do you know who shot you?

EXAMINATION OF ROBERT GOODWINE

- 1 A Yes, I do.
- 2 Q Okay. Tell us who that is.
- 3 A Lucas Morgan.
- 4 Q And where --- did he shoot you from behind or from
- 5 the front?
- 6 A He shot at me from the front, but he hit me from
- 7 the back.
- 8 Q Hit you from the back?
- 9 A Yes, ma'am.
- 10 Q And what were you doing when he shot you?
- 11 A Running.
- 12 Q Running where?
- 13 A To the main road.
- 14 Q Why?
- 15 A Because he was shooting at me.
- 16 Q So you were running from the gunfire?
- 17 A Yes, ma'am.
- 18 Q You didn't see everyone who got shot, right?
- 19 A No, ma'am.
- 20 Q Eventually, did you get in a car with someone?
- 21 A Yes, ma'am.
- 22 Q Who did you get in a car with?
- 23 A Hump.
- 24 Q Okay.
- 25 A Stanley.

EXAMINATION OF ROBERT GOODWINE

1 Q All right. Where did he take you?

2 A To the hospital.

3 Q Did you all make any stops before that?

4 A I wouldn't know. I was laying down in the back
5 seat.

6 Q Okay. Did you see Opie that night?

7 A No, ma'am. Well, I seen him at the club, but I
8 didn't see him after.

9 Q Do you remember giving a sworn deposition in this
10 case?

11 A How do you mean by that?

12 Q Do you remember giving a sworn statement?

13 A To who, detective?

14 Q To a solicitor.

15 A I don't think so.

16 Q You don't remember sitting down and giving a sworn
17 statement?

18 A Oh, yes, ma'am. I did get a subpoena.

19 Q Right. Right.

20 A Yes, ma'am.

21 Q Okay. Did you see Opie standing over Dante?

22 A Yes, ma'am.

23 Q Okay. Thank you.

24 MS. SWANSON: Nothing further.

25 THE COURT: Cross-examine.

EXAMINATION OF ROBERT GOODWINE

1 CROSS EXAMINATION

2 BY MS. CAMPBELL:

3 Q Mr. Goodwine, not only did you give a deposition,
4 but you testified previously about these matters, correct,
5 in a courtroom, right?

6 A Yes, ma'am.

7 Q Okay. Now, do you remember telling earlier that
8 it was clear to you that Lucas Morgan was shooting, correct?

9 A Yes, ma'am.

10 Q And Dante Bailey was shooting, correct?

11 A Yes, ma'am.

12 Q And that Lucas Morgan shot you, right?

13 A Yes, ma'am.

14 Q Okay. And do you remember stating that you were
15 there at the club with Dante Bailey, right?

16 A Yes, ma'am.

17 Q And with someone you called your home boy, Joey
18 Chaplin, correct?

19 A Yes, ma'am.

20 Q And his name was Joey Chaplin?

21 A Yes, ma'am.

22 Q And those are the people that you remember being
23 with and being around when you were at the club, right?

24 A Yes, ma'am.

25 Q Okay.

EXAMINATION OF ROBERT GOODWINE

1 MS. CAMPBELL: That's all I have. Thank you so
2 much.

3 THE COURT: Redirect.

4 MS. SWANSON: Just briefly.

5 REDIRECT EXAMINATION

6 BY MS. SWANSON:

7 Q Is Joey Chaplin black or white?

8 A Black.

9 MS. SWANSON: Thank you, Mr. Goodwine. I have
10 nothing further.

11 THE COURT: Recross?

12 (No verbal response.)

13 THE COURT: Thank you. You may step down, sir.
14 Call your next witness.

15 MS. SWANSON: State calls Richard Green.

16 Your Honor, Mr. Green is in a wheelchair, so --

17 THE COURT: Okay. That's fine.

18 MS. SWANSON: Okay. If we can just move the
19 microphone down. I just want to make sure everyone can
20 hear him.

21 THE COURT: Does he speak softly?

22 MS. SWANSON: Richard, can you just make sure you
23 speak up for us, please. Thank you. This should be
24 fairly short.

25 THE COURT: Ladies and gentlemen, if any of you

EXAMINATION OF ROBERT GOODWINE

1 cannot hear Mr. Green, just raise your hand and we'll
2 provide a microphone. Otherwise, we'll try to
3 accommodate the situation.

4 Thereupon,

5 RICHARD GREEN

6 was called as a witness, having been first duly sworn,
7 was examined and testified as follows:

8 THE CLERK: Okay. State and spell your name for
9 the Court, please.

10 THE WITNESS: Richard Green. R-I-C-H-A-R-D,
11 G-R-E-E-N.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MS. SWANSON:

15 Q Okay: Richard, if you can just turn around and
16 face the jury a little bit so that they can see you and hear
17 you.

18 THE COURT: Ms. Campbell, if you need to move,
19 feel free to do so as well. Okay?

20 BY MS. SWANSON:

21 Q Richard, were you at the Midnight Soul Patrol the
22 night of the 21st of June?

23 A I was. I was.

24 Q Okay. Tell us what you remember from that night.

25 A I just remember going out there hanging out for a

EXAMINATION OF RICHARD GREEN

1 minute. I went inside the owner's house, came back out. I
2 was outside, had my back against the club, and that's when I
3 heard a gunshot, and I heard another shot. That's when I
4 heard the first gunshot, so I moved. I walked off a little
5 bit, and that's when I felt I got shot, with the second one.

6 Q Okay. So you took a couple steps, and then you
7 got shot?

8 A Yes.

9 Q Do you know who shot you?

10 A No.

11 Q Now, the owner of the club, is that who you call
12 Ms. Poot?

13 A Yes.

14 Q All right. Are you from Land's End?

15 A Yes.

16 Q So do you go to the Soul Patrol quite a bit?

17 A Yes, I would say.

18 Q All right. And you know Ms. Poot?

19 A Yes.

20 Q And that night, did you go see her?

21 A Yes.

22 Q All right. And then you -- was it when you came
23 out that everything started to happen?

24 A Yes. When I came out her house.

25 Q All right. Where were you shot?

EXAMINATION OF RICHARD GREEN

1 A I got shot in the back.

2 Q Okay.

3 A Right side, and it came out the left side, I
4 believe. If I'm not mistaken.

5 Q Okay. And what are the extent of your injuries?

6 A Paralysis.

7 Q All right. From the waist down?

8 A Yes.

9 Q And is that permanent?

10 A No.

11 Q No. Okay. Are you doing rehab or anything?

12 A Yes.

13 Q Okay. So you have hope that you might --

14 A Yes.

15 Q Okay. Good for you.

16 Okay. Thank you, Richard. Please answer any
17 questions that the Defense may have.

18 A All right.

19 THE COURT: Cross-examine.

20 MS. CAMPBELL: May it please the Court.

21 CROSS EXAMINATION

22 BY MS. CAMPBELL:

23 Q Good afternoon, Richard.

24 A How you doing?

25 Q I'm good. Thank you.

EXAMINATION OF RICHARD GREEN

1 Just a couple of things. To be clear, Lucas
2 Morgan is your family; is that right?

3 A Correct.

4 Q Okay. And you're no family to Dante Bailey,
5 right?

6 A No.

7 Q Okay. And when you were coming, if I might --
8 let's see.

9

10 MS. CAMPBELL: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MS. CAMPBELL:

13 Q When you were coming from the back of Ms. Poot's
14 house, right?

15 A Yes.

16 Q Were you walking back over towards the club?

17 A Yes. Not -- not that way; I came in over here.

18 Q Right. Right here by the side door, right?

19 A Yes.

20 Q Okay. And I believe you answered the Solicitor's
21 question that you were shot in your right side; is that
22 correct?

23 A Yes. In the back.

24 Q In the back, on your right side?

25 A (Nods in the affirmative.)

EXAMINATION OF RICHARD GREEN

1 MS. CAMPBELL: Okay. That's all I have. Thank
2 you.

3 THE COURT: Recross?

4 MS. SWANSON: No, sir.

5 THE COURT: The witness may be excused.

6 MS. SWANSON: Thank you, Your Honor.

7 THE COURT: Next witness.

8 MS. SWANSON: The State calls Alvin Wilson.

9 Thereupon;

10 ALVIN WILSON

11 was called as a witness, having been first duly sworn,
12 was examined and testified as follows:

13 THE CLERK: Please be seated. State and spell
14 your name for the Court.

15 THE WITNESS: Alvin Wilson. A-L-V-I-N,
16 W-I-L-S-O-N.

17 DIRECT EXAMINATION

18 BY MS. SWANSON:

19 Q Thank you.

20 Mr. Wilson, do you have a nickname?

21 A Yes.

22 Q What do people call you?

23 A Big D.

24 Q All right. And do you work at the Midnight Soul
25 Patrol?

EXAMINATION OF ALVIN WILSON

1 A Yes.

2 Q How are you related to Thelma Wilson?

3 A That's my grandma.

4 Q All right. So you're Ms. Poot's grandson?

5 A Yes, ma'am.

6 Q All right. And were you DJ'ing the night of the
7 shooting on June 21st, 2012?

8 A Yes, ma'am.

9 Q All right. About what time did you arrive that
10 night?

11 A About 9 o'clock, I believe it was.

12 Q Okay. What do you recall from that night?

13 A I recall it was -- it was kind of crowded that
14 night.

15 Q It was crowded?

16 A Yes.

17 Q About how many people would you say were there?

18 A I don't know. That night, probably 75 people,
19 something like that.

20 Q About 75?

21 A I'm not sure.

22 Q Is that a large crowd for you guys?

23 A Yes.

24 Q What night of the week was it?

25 A Wednesday night.

EXAMINATION OF ALVIN WILSON

- 1 Q Is that your big night?
- 2 A Yes.
- 3 Q All right. Were the majority of the people inside
- 4 the club or outside of the club?
- 5 A At one point in time, it was inside the club.
- 6 Q Okay. And at some point did that change?
- 7 A Yes.
- 8 Q Do you know why it changed?
- 9 A A couple of guys came in.
- 10 Q Okay. Do you know Joseph Bowers?
- 11 A No.
- 12 Q All right. Do you know Opie?
- 13 A No.
- 14 Q All right. How many white people did you see
- 15 there that night?
- 16 A Two..
- 17 Q Two. I'm going to show you what's been entered as
- 18 State's Exhibit 43. And is that big red structure the Soul
- 19 Patrol?
- 20 A Yes, ma'am.
- 21 Q All right. And can you please point to the
- 22 entrance that people use?
- 23 A This side door right here.
- 24 Q Okay. On the side door. All right.
- 25 And I'm going to put this up on the

EXAMINATION OF ALVIN WILSON.

1 projector.

2 So people weren't really using that front
3 door, they're using the side door?

4 A Yes, ma'am.

5 Q That's closest to the propane tank and the
6 satellite dish?

7 A Yes, ma'am.

8 Q All right. And where is the DJ booth located, to
9 the right or the left of the side door?

10 A To the right.

11 Q Okay. So like right here?

12 A Yes, ma'am.

13 Q All right. And is that where you were that night?

14 A Yes, ma'am.

15 Q Okay. Were you playing music all night long?

16 A Yes. Until the club got empty.

17 Q Okay. And what did you do when the club got
18 empty?

19 A I stepped outside and looked around, and an
20 altercation was going on outside.

21 Q Did you shut the music down?

22 A Yes.

23 Q And why is that?

24 A Because an altercation was going on, like I said,
25 and I said, The party is over.

EXAMINATION OF ALVIN WILSON

1 Q All right. So, you said party is over?

2 A Yes.

3 Q Okay. Were you inside or outside when the gunfire
4 started?

5 A I was inside.

6 Q Did you see anyone shooting?

7 A No, ma'am.

8 Q By the time you get outside, what did you see?

9 A A couple of my cousins laying on the ground.

10 Q And who were your cousins?

11 A Michael Morgan and Richard Green.

12 Q Where was Michael Morgan laying?

13 A He was laying pretty much close to my grandma's
14 steps.

15 Q Okay. I'm going to put State's 43 up again.

16 And so your grandma's house, is that this
17 structure right here?

18 A Yes.

19 Q All right. And then she has some back steps?

20 A On that -- where the trees are.

21 Q Right back here?

22 A Yeah, back there.

23 Q All right. Now, do people hang out in this area
24 right here?

25 A Yes.

EXAMINATION OF ALVIN WILSON

1 Q All right. So by the time you get outside,
2 Michael Morgan's already down by the steps?

3 A Yes.

4 Q All right.

5 MS. SWANSON: Beg the Court's indulgence?

6 THE COURT: Certainly.

7 BY MS. SWANSON:

8 Q Now, when I asked you how many white people you
9 saw, were they male or female?

10 A Male.

11 Q Thank you.

12 MS. SWANSON: That's all I have.

13 THE COURT: Cross.

14 MS. CAMPBELL: May it please the Court.

15 THE COURT: Yes.

16 CROSS EXAMINATION

17 BY MS. CAMPBELL:

18 Q Good afternoon.

19 A How you doing?

20 Q I'm good.

21 Mr. Wilson did I -- did I hear you right,
22 your nickname is Big D?

23 A Yes.

24 Q Okay. And you are cousins with Lucas Morgan and
25 with Michael Morgan and with Richard Green?

EXAMINATION OF ALVIN WILSON

1 A Yes.

2 Q Okay. Do you remember giving some statements in
3 this case?

4 A Yes.

5 Q Okay. Do you remember saying that you took a
6 rifle out of the hands of a -- of a fellow named Kantrell
7 Rivers?

8 A Yes.

9 Q Okay. After the initial round of shots fired, and
10 you came out of the club, Richard Green, your cousin, he had
11 been shot, right?

12 A Yes.

13 Q Okay. And is that when you took Kantrell Rivers'
14 gun from him?

15 A Yes. When I got to the club he was walking to the
16 trunk of his car, and he got it out of his car and gave it
17 to me.

18 Q Do you remember feeling like after you had seen
19 Richard get shot that you might fire that gun, too, you
20 were so angry?

21 A Yeah. But I put it on the craps table. The fact
22 that it was a little caliber gun. There was a lot of heavy
23 shooting going on. I didn't want it.

24 Q You didn't have enough heat for what you -- for
25 the fire you were taking?

EXAMINATION OF ALVIN WILSON

1 A Yes.

2 Q Okay. Do you remember talking about the fact
3 that -- well, first off, let me ask you this. You do know
4 Lewis Melvin Johnson, right?

5 A I heard of him.

6 Q Okay. And he's got a nick name of Dolla --

7 A Yes.

8 Q -- or Dollar, or something like that?

9 A (Nods in the affirmative.)

10 THE COURT: Was that a yes?

11 A Yes.

12 MS. CAMPBELL: Thank you.

13 BY MS. CAMPBELL:

14 Q And when you were in the club, and the first shots
15 were going off, were you down behind the bar?

16 A Down, yes.

17 Q So if you're tucked down behind the bar, you're
18 taking cover?

19 A Yes.

20 Q You can't see the doorway, right?

21 A No.

22 Q That side door?

23 A No.

24 Q Okay. So you can't tell us whether or not
25 somebody was shooting out that doorway, right?

EXAMINATION OF ALVIN WILSON

1 A No.

2 Q You couldn't see it?

3 A No.

4 Q Okay. Do you remember having -- well, first off,
5 do you know who Arthur Chaplin is?

6 A Arthur Chaplin?

7 Q Uh-huh.

8 A I heard of him.

9 Q Okay. Does he have a nickname, do you know?

10 A What they call him, Krum.

11 Q They do. Okay. Right, yeah. They call him Krum.

12 Okay.

13 A Yes.

14 Q And do you know who Joey Chaplin is?

15 A No.

16 MS. CAMPBELL: That's all I have. Thanks.

17 THE COURT: Redirect.

18 MS. SWANSON: Just briefly.

19 REDIRECT EXAMINATION

20 BY MS. SWANSON:

21 Q The side door that the DJ booth is located next
22 to, you're crouched down in the DJ booth?

23 A Yes.

24 Q Did you hear any gunfire right next to you?

25 A I'm not sure how it was, it was so much. And then

EXAMINATION OF ALVIN WILSON

1 I heard a shot come in the window, and I don't know how
2 close it was.

3 Q Okay. So, you did hear shots come through the
4 window?

5 A Yeah.

6 Q Okay. I'll show you what's been marked as State's
7 45 and ask for you to identify this.

8 A That's the side.

9 Q The side of the Soul Patrol?

10 A Yes, ma'am.

11 Q Okay. And is that the window that's next to the
12 DJ booth?

13 A Yes, ma'am.

14 Q Is that how it appeared that night?

15 A Yes, ma'am.

16 MS. SWANSON: The State moves 45 into evidence.

17 THE COURT: Without objection?

18 MS. CAMPBELL: No objection.

19 THE COURT: Without objection, State's 45 is
20 admitted.

21 *(Whereupon, State's Exhibit No(s). 45 marked for*
22 *identification and received in evidence.)*

23 BY MS. SWANSON:

24 Q Okay. And you saw a hole in the window?

25 A I heard some glass break some.

EXAMINATION OF ALVIN WILSON

1 Q Okay.

2 A Because I was standing here.

3 Q Okay. Do you see that hole in the window in this
4 picture?

5 A Yes.

6 Q Okay.

7 MS. SWANSON: I'd like to publish this to the
8 jury.

9 THE COURT: Okay.

10 BY MS. SWANSON:

11 Q And so we're looking right about here?

12 A Yes, ma'am.

13 Q All right. And that's the hole that you're
14 referring to.

15 You say that Kantrell Rivers went to his car.
16 Was that before or after the gunfire started -- I mean,
17 stopped?

18 A It was after.

19 Q Okay. And he grabbed a rifle?

20 A Yes.

21 Q And you had that rifle for a time?

22 A For a second.

23 Q Did you ever fire that rifle?

24 A No, ma'am.

25 Q Did Kantrell ever fire that rifle?

EXAMINATION OF ALVIN WILSON

1 A No, ma'am.

2 MS. SWANSON: Thank you. Nothing further.

3 THE COURT: Recross.

4 MS. CAMPBELL: Just briefly.

5 RE-CROSS EXAMINATION

6 BY MS. CAMPBELL:

7 Q So we're clear, Mr. Wilson, you did see Lucas
8 Morgan with a gun that night, right?

9 A Yes.

10 Q I mean, Joe Pope's telling you, Put that gun down.
11 Is he talking about Kantrell Rivers' gun, or are you taking
12 Lucas' gun from him?

13 A He's talking about Kantrell's gun.

14 Q Okay. But you did see Lucas with a gun?

15 A Yes.

16 MS. CAMPBELL: That's all.

17 THE COURT: Okay. You may step down.

18 At this point, ladies and gentlemen, we'll take
19 our recess for lunch. As you go out to lunch, do not
20 begin to deliberate. You can't discuss the case among
21 yourself. And while you're out to lunch, certainly do
22 not allow anybody to talk to you about the case or talk
23 about it in your presence.

24 Have a good lunch. And I'll ask you to return to
25 your jury room, please, by 2 o'clock, and we'll resume

COLLOQUY

1 ladies and gentlemen.

2 All right. Solicitor, thank you very much. We're
3 ready to continue. You can call your next witness.

4 MS. SWANSON: Thank you, Your Honor. The State
5 calls Magnum Smalls.

6 MAGNUM SMALLS

7 was called as a witness, having been first duly sworn,
8 was examined and testified as follows:

9 THE CLERK: Please be seated. State and spell
10 your name for the Court.

11 THE WITNESS: My name is Magnum Smalls,
12 M-A-G-N-U-M, S-M-A-L-L-S.

13 DIRECT EXAMINATION

14 BY MS. SWANSON:

15 Q Thank you, Mr. Smalls. Good afternoon.

16 Are you familiar with the Midnight Soul
17 Patrol?

18 A Yes, I am.

19 Q All right. Where are you from?

20 A I stay in Scott Hill.

21 Q Scott Hill, is that close to Land's End?

22 A Yes, ma'am.

23 Q All right. And how many times have you been to
24 the Midnight Soul Patrol?

25 A Plenty of times.

EXAMINATION OF MAGNUM SMALLS

1 Q Okay.

2 A Maybe -- maybe 30 or more.

3 Q All right. So, you're a regular there?

4 A Yes.

5 Q All right. And were you there the night of this
6 shooting on June 21st, 2012?

7 A Yes, I was.

8 Q All right. Tell us what you remember.

9 A Well, I remember arriving at the club, going to
10 get a few drinks. Came back outside, was standing outside
11 when Mr. Bailey and another group of guys came up to the
12 club. You know, he spoke, shook hands, he asked, you know,
13 how -- how was I doing, or how was I. I told him I was
14 okay, you know, everything was fine.

15 He went inside. Maybe about ten, 15 minutes
16 later I noticed everybody coming outside of the club, and it
17 was him and another guy, Arthur, that was getting in this
18 kind of little altercation, having words.

19 Q And when you say him and Arthur, who is him?

20 A Colyone.

21 Q Colyone, and that's Dante Bailey?

22 A Yes.

23 Q Okay. All right. So, Dante Bailey and Arthur are
24 having words?

25 A Yes.

EXAMINATION OF MAGNUM SMALLS

1 Q Okay. Describe what you saw.

2 A Okay. It was pretty much a heated argument. Guns
3 was fired at each other. D Grant came in, in between, got
4 both of them and was pretty much walking away from everybody
5 else, like diffusing the problem.

6 Q Okay. So, D Grant gets in between them?

7 A Yes. One person under the right arm, the other
8 under the left arm. And was pretty much like getting them
9 away from like the crowd. Pretty much to diffuse whatever
10 altercation or the problem that was between the two.

11 Q Did you see who was in the parking lot area at the
12 time?

13 A It was -- yes. It was -- it was a lot of people
14 there, but I saw a few folks that I can remember that I saw.

15 Q Okay. Who did you remember seeing over there?

16 A Colyone, the defendant.

17 Q Who's -- and who are you talking about?

18 A Joseph.

19 Q Joseph Bowers?

20 A Yes.

21 Q Do you know him by Opie?

22 A Yes.

23 Q Okay. Can you point him out, please?

24 A He's sitting to my right.

25 Q Okay. So, Cole, Opie, who else was in the parking

EXAMINATION OF MAGNUM SMALLS

1 lot area?

2 A It's another guy, white guy, long beard, long
3 hair.

4 Q Okay. Another white guy with long beard and long
5 hair?

6 A Yes.

7 Q Hump, does that ring a bell? Or you don't know
8 his name?

9 A I don't know his name.

10 Q Fair enough.

11 Okay. After guns are flashed, what happens?

12 A Like I said, they walked away pretty much from
13 like everybody else, and they were talking -- D Grant was
14 talking to the both of them. And then flare gun went off.
15 After the flare gun went off, all chaos broke loose.
16 Everybody pretty much started shooting.

17 Q Do you know who shot the flare gun?

18 A Michael Morgan, yeah.

19 Q Okay. And then when you say everything broke
20 loose -- all right. If you can please be specific for us.

21 A Everybody pretty much who -- who had a gun started
22 shooting.

23 Q Okay. Who all did you actually see shooting?

24 A Lucas, Opie, Dante didn't get a chance to shoot,
25 Arthur -- who else. There was -- there was a few other

EXAMINATION OF MAGNUM SMALLS

1 folks, but that's all I can actually recall seeing --
2 actually I actually saw shooting from the position where I
3 was at.

4 Q Okay. And where were you?

5 A Behind this big oak tree, like trying to take
6 cover.

7 Q And why were you trying to take cover?

8 A Because everybody was shooting, and it was either
9 take cover or I -- I figured if I tried to run somewhere,
10 either left or right, I would have ended up getting shot,
11 too.

12 Q Okay. I'm going to show you what's entered as
13 State's 46, and ask you if this is the oak tree that you're
14 referring to?

15 A Yes, it is.

16 Q Okay. And I'm just going to put this up so that
17 the jury may see the oak tree.

18 So, you're in the parking lot area?

19 A More -- yes. That's where I was, yes.

20 Q And you said at some point you take cover behind
21 this oak tree?

22 A Yes.

23 Q Okay. I just want to make sure we're clear about
24 the area that you were in.

25 Do you remember when the gunfire stopped?

EXAMINATION OF MAGNUM SMALLS

1 A Yes.

2 Q Okay. And what happened when the gunfire stopped?

3 A Well, I noticed Dante on the ground, not moving,
4 not responding. I noticed Richard Green on the ground,
5 Michael Morgan on the ground. That's pretty much about it,
6 you know. Everybody was crowded around Richard trying to
7 check on him to make sure that he was okay. A few folks by
8 Mikey, relatives or so, Michael Morgan.

9 Q Right.

10 A Trying to make sure that he was okay. A few
11 people were trying to get Dante inside of a vehicle, I
12 guess, so they could leave at that time also.

13 Q Okay. So you saw people trying to get him in a
14 vehicle to take him away?

15 A Yes.

16 Q Where -- where do you remember seeing Dante
17 laying? And -- and I'm going to show you State's 46 again,
18 if you can point it out.

19 A Right -- right here. Like in between -- right
20 where this police car is here, these two cars here. He was
21 more in that area, like in between them.

22 Q Okay. So, in the dirt parking lot area, in this
23 general area?

24 A Yes, correct.

25 Q Okay. Did you see anyone standing by Cole?

EXAMINATION OF MAGNUM SMALLS

- 1 A When he got shot, no.
- 2 Q What about after he got shot?
- 3 A Yes.
- 4 Q Who was that?
- 5 A It was a few females, and Opie was there, too.
- 6 Q Did you see Opie with a gun?
- 7 A Yes, but I'm -- yes.
- 8 Q Okay. Do you recall what gun?
- 9 A I want to say it was Dante's weapon.
- 10 Q Was it a revolver or a semi-automatic?
- 11 A Semi-automatic.
- 12 Q Okay. And you didn't -- did you see Opie with a
- 13 gun prior to when he was over standing by Cole?
- 14 A Yes.
- 15 Q You did see a gun prior to?
- 16 A Yes, I did.
- 17 Q Okay. Do you remember giving a sworn statement to
- 18 the Solicitor's office in this case?
- 19 A Yes, I do.
- 20 Q A deposition?
- 21 A Yes, I do.
- 22 Q Okay. And -- and if I refreshed your memory --
- 23 I'm going to show you --
- 24 MS. SWANSON: May I show the witness, Your Honor?
- 25 THE COURT: Any objection to using a copy of a

EXAMINATION OF MAGNUM SMALLS

1 deposition for refreshing the recollection?

2 MS. CAMPBELL: No, Your Honor. I have the same
3 copy. If the Solicitor could direct me to a page
4 number.

5 THE COURT: Well, what we need to do is, we need
6 to make the original a Court's exhibit. Do we have the
7 original deposition?

8 MS. SWANSON: Your Honor, actually we --

9 THE COURT: Then if you all will by agreement
10 stipulate that one will become a Court's exhibit that
11 has to remain a part of the record, if you're going to
12 show it to the witness, and you're going to ask him
13 questions about what's contained in that document.

14 MS. SWANSON: If I can --

15 THE COURT: Solicitor, that's the way that I'm
16 going to do it.

17 MS. SWANSON: I apologize.

18 THE COURT: If we do that, it's not uncommon in a
19 civil trial. We'll make it a Court's exhibit. But if
20 you don't want to show it to him, that's fine. You
21 don't have to.

22 MS. SWANSON: Yes, sir. We had agreed prior to
23 trial that we would be using copies --

24 THE COURT: Excuse me. Excuse me.

25 MS. SWANSON: I'm sorry. I apologize.

EXAMINATION OF MAGNUM SMALLS

1 THE COURT: That's no problem. We're going to
2 mark that Court's Exhibit No. 1, I think. Is that
3 correct?

4 MS. SWANSON: Thank you, Your Honor.

5 THE COURT: Let me just state on the record what
6 that is.

7 *(Whereupon, Court's Exhibit No(s). 1 marked for*
8 *identification.)*

9 THE COURT: Can I borrow it from you just a
10 second?

11 MS. SWANSON: Yes, sir.

12 THE COURT: Ladies and gentlemen, what is now
13 Court's Exhibit No. 1, it's called deposition. And
14 this deposition was taken pursuant to the law, and it
15 was taken on January 15th, 2013, commencing about 2:00.
16 Court's -- now Court's Exhibit No. 1.

17 It's not uncommon in trials for there -- for a
18 jury to hear testimony which is deposition testimony,
19 and that's simply a term used to describe testimony
20 taken at a place other than this courtroom. When you
21 deliberate, you consider deposition testimony the same
22 as live testimony. You'll evaluate and assess that
23 testimony ultimately when you're instructed to begin
24 your deliberations.

25 In fact, if it deals with deposition or testimony

EXAMINATION OF MAGNUM SMALLS

1 taken outside -- it shouldn't enter your discussion.

2 It's still appropriate for you to consider that.

3 Thank you, Solicitor. You may continue.

4 MS. SWANSON: Thank Your Honor.

5 BY MS. SWANSON:

6 Q Okay. Mr. Smalls, we're just going to look at

7 Page 66 of your deposition.

8 THE COURT: Line what?

9 BY MS. SWANSON:

10 Q Line four, when you were asked, What happened to

11 Dante's gun? Can you please read your answer?

12 A Highlighted?

13 Q Yes, sir.

14 A No one ever saw him with a gun prior to that

15 until --

16 Q I'm sorry?

17 THE COURT: Speak up louder.

18 Q Right -- right here, What happened to Dante's gun,

19 and then your answer?

20 A The white guy, Opie, had it.

21 Q Okay. But you never saw him shoot a gun, and what

22 was your answer?

23 A No, I never -- no, I never -- never saw him with a

24 gun prior to that until -- until, you know, when he was

25 trying to get, get Cole up to get him in the car. That's

EXAMINATION OF MAGNUM SMALLS

1 when he had Cole's gun.

2 Q Okay. Thank you, sir. And do you recall that?

3 A Yes.

4 Q Does that sound right?

5 A Yes.

6 Q Does that sound like your words?

7 A Yes.

8 MS. SWANSON: MS. SWANSON: That's all I have.

9 Thank you, Your Honor.

10 THE COURT: Okay. Cross-examine?

11 MS. CAMPBELL: May it please the Court.

12 THE COURT: Yes.

13 CROSS EXAMINATION

14 BY MS. CAMPBELL:

15 Q Mr. Smalls, you've actually given a couple of
16 different statements in this case, haven't you?

17 A Well, it was --

18 Q Where you --

19 A It was a lot to remember and to recall all that
20 happened that night. This was two, almost three years ago.

21 Q I understand. And you were interviewed by law
22 enforcement, correct?

23 A Yes, I was.

24 Q And then you were sworn to tell the truth when you
25 were deposed, correct?

EXAMINATION OF MAGNUM SMALLS

1 A Yes, I was.

2 Q And you have been sworn to tell the truth here
3 today?

4 A Yes, I was.

5 Q Okay. So, let me take you back through this.

6 You said that prior to Joseph Bowers, who you
7 know as Opie, from the neighborhood --

8 A Yes.

9 Q -- trying to help get Cole in a car --

10 A Yes.

11 Q -- I guess to take him to -- to safety in the
12 hospital, right?

13 A Right.

14 Q You never saw Joseph Bowers with a gun on
15 June 21st, 2012, right?

16 A Right.

17 Q Okay. And when you are telling us that you saw
18 him pick up Cole's gun, was that picking it up and helping
19 Cole into the car, that was the movement of -- of Joseph
20 Bowers at that time; is that right?

21 A Pretty much, yes.

22 Q Okay. You never saw Joseph Bowers then take that
23 gun and shoot that gun, right?

24 A No, I didn't.

25 Q Okay. Now, you have said, and if I need to direct

EXAMINATION OF MAGNUM SMALLS

1 you to your deposition, I will, that you just kind of heard
2 a lot of shots, right?

3 A Yes.

4 Q And you don't remember a break in the shots,
5 right?

6 A No, not until they stopped completely.

7 Q But you've also -- but, you know, you actually saw
8 the first shot go off, and that was Mikey Morgan, right?

9 A Right.

10 Q Okay. And that was him firing his flare gun?

11 A Yes.

12 Q So, that's one shot right there?

13 A Right.

14 Q And then you saw Lewis Melvin Johnson, Dolla,
15 shooting out the side door of the club, right?

16 A Yes.

17 Q Okay. So that's two. And they're not firing at
18 the same time, right?

19 A Right.

20 Q Okay. So, it's the flare gun, and then Dolla, and
21 then Lucas firing, correct?

22 A Correct.

23 Q Okay. And then I think also you would say that
24 you saw Arthur Chaplin firing his gun across the parking
25 lot, right?

EXAMINATION OF MAGNUM SMALLS

1 A Correct.

2 Q Okay. Would it also be fair to say that you saw
3 Joseph Bowers trying to assist Cole while Cole was on the
4 ground and had been shot?

5 A Yes.

6 Q Now, you, I guess, would also agree with me that
7 you saw people with guns that night, at that Midnight Soul
8 Patrol?

9 A (Nods in the affirmative.)

10 Q And the people that you saw were Arthur Chaplin?

11 A Yes.

12 Q Also known as Krum?

13 A Correct.

14 Q Okay. Dante Bailey?

15 A Yes.

16 Q Also known as Cole?

17 A Yes.

18 Q And these are the two gentlemen that you say were
19 in a little verbal altercation over something?

20 A Yes.

21 Q How about, didn't you see Derrick Grant with a gun
22 that night?

23 A Yes, I did.

24 Q And is that the man you say kind of separated
25 those two?

EXAMINATION OF MAGNUM SMALLS

- 1 A Yes.
- 2 Q And you saw Terry Thornton with a gun that night,
- 3 T Dog?
- 4 A Yes.
- 5 Q And, of course, you -- we established that you saw
- 6 Lucas Morgan with a gun?
- 7 A Correct.
- 8 Q And you saw Mikey with a gun?
- 9 A Correct.
- 10 Q And you saw Dolla, Lucas Melvin Johnson, with a
- 11 gun?
- 12 A Correct.
- 13 Q And you also saw Stanley Humphries, the other
- 14 white fellow, with a gun, didn't you?
- 15 A Yes.
- 16 Q And you saw Kántrell Rivers with his rifle, right?
- 17 A But this was after all the shooting had already
- 18 stopped. He went home and came back with his rifle.
- 19 Q Okay. Would it also be fair to say that Mikey,
- 20 after he shot the first round, and Lucas shooting, Mikey's
- 21 on Ms. Poot's porch; is that right?
- 22 A Yes.
- 23 Q And reloading his flare gun probably?
- 24 A Correct.
- 25 Q Uh-huh. And then Mikey fell, right?

EXAMINATION OF MAGNUM SMALLS

1 A On his way coming back off of Ms. Poot's porch.

2 Q Coming off the porch he fell?

3 A Yes.

4 Q Correct. And that was just after Arthur Chaplin
5 and Lucas Morgan were firing, correct?

6 A Correct.

7 MS. CAMPBELL: I think that's all I have.

8 THE COURT: Okay. Redirect, Solicitor?

9 MS. SWANSON: Just briefly.

10 THE COURT: Sure.

11 REDIRECT EXAMINATION

12 BY MS. SWANSON:

13 Q What -- what direction were Arthur Chaplin and
14 Lucas Morgan firing?

15 A Into the parking lot.

16 Q Into the parking lot area?

17 A Yes.

18 Q So, not where Mikey was standing?

19 A No.

20 Q Okay. And you actually saw Cole's semi automatic
21 gun in Opie's hand?

22 A Yes.

23 Q Standing over him?

24 A Yes.

25 Q Thank you.

EXAMINATION OF MAGNUM SMALLS

1 THE COURT: Recross.

2 RE-CROSS EXAMINATION

3 BY MS. CAMPBELL:

4 Q One other thing. Also, Mr. Smalls, in a second
5 kind of round of shots, did you not see Lucas Morgan brace
6 himself against the building, and that's when he shot Robert
7 Goodwine?

8 A I can't say exactly that's who he shot. But, yes,
9 I could see him up against the building shooting, yes.

10 Q After he had reloaded his gun?

11 A Yes, correct.

12 THE COURT: All right. You may come down. Thank
13 you.

14 Call your next witness, please.

15 MS. SWANSON: Thank Your Honor. May Mr. Smalls be
16 excused?

17 THE COURT: Any objection?

18 MS. CAMPBELL: No objection.

19 THE COURT: Mr. Smalls, you can be released.

20 THE WITNESS: All right. Thank you.

21 MS. SWANSON: Thank you. State calls Adam Zsamar.

22 Thereupon,

23 ADAM ZSAMAR

24 was called as a witness, having been first duly sworn,
25 was examined and testified as follows:

EXAMINATION OF ADAM ZSAMAR

1 THE CLERK: Please be seated, state and spell your
2 name, for the Court.

3 THE WITNESS: Adam Zsamar, A-D-A-M, Z-S-A-M-A-R.

4 DIRECT EXAMINATION

5 BY MS. SWANSON:

6 Q Thank you. Investigator Zsamar, can you please
7 tell the jury how you became involved in this investigation?

8 A Yes. On June 21st, 2012, it was a Wednesday
9 evening, I was on call as the lead investigator for the
10 Beaufort County Sheriff's Office. Around 1:30, 1:40 in the
11 morning, I was notified by the sheriff's office dispatch
12 about the shooting on Toomer Road, which occurred at 56
13 Toomer Road, the Midnight Soul Patrol.

14 I then received a phone call from the patrol
15 supervisor working that night giving me more details about
16 the shooting. He informed me there were more than two
17 people shot, and two crime scenes at that time. I responded
18 to the scene, I notified my immediate supervisors of what
19 was occurring and requested more investigators to respond.

20 Q Okay. You mentioned that there were two crime
21 scenes, so let's talk about the one that you went to first.
22 And if I can have you speak up a little. And pull the mic a
23 little bit closer to you, please.

24 A Sure.

25 Q Okay. Let's talk about the first scene that you

EXAMINATION OF ADAM ZSAMAR

1 responded to.

2 A The first scene I responded to was the vehicle
3 which contained the deceased, Dante, Colyone, or Cole
4 Bailey. That was located pretty much at the corner of the
5 Seaside Road and Old Ben Road.

6 Q And is that close to the Midnight Soul Patrol?

7 A Less than a quarter of a mile.

8 Q All right. What did you find besides Dante Bailey
9 in the back of the car when you got there?

10 A On my arrival I observed that the Chevy HHR, which
11 was the vehicle he was within, in the back seat. The scene
12 was taped off with crime scene tape. He was observed in the
13 back seat on his back, with apparent gunshot wound in the
14 chest area.

15 I was also informed by the supervisor that
16 there was two women that rode in that vehicle to that
17 location. I made contact with them and interviewed them.

18 Q Okay. Did you get any information from them
19 regarding a potential suspect?

20 A No, I did not.

21 Q Eventually, did you turn that scene over to other
22 officers?

23 A I did. When Lieutenant Purdy arrived, along with
24 Corporal Rice, they assumed the investigation of that scene
25 for processing.

EXAMINATION OF ADAM ZSAMAR

1 Q All right. And then what did you do?

2 A I responded to the club to assess what happened
3 there.

4 Q All right.

5 Investigator Zsamar, I'm going to show you
6 what's been marked as State's 41, and ask that you describe
7 what you see here.

8 A Sure. This --

9 Q Just tell me what it is first.

10 A This is an overhead shot pretty much of 56 Toomer
11 Road, pretty much a layout of the crime scene at the club.

12 Q Okay. Is it a diagram that you drew?

13 A Yes.

14 Q Okay. And is it a fair and accurate depiction of
15 that diagram?

16 A It is.

17 Q And what does it convey?

18 A It shows the various items of evidence and their
19 locations that were to be found at the scene.

20 Q Okay.

21 MS. SWANSON: At this time, I would move State's
22 41 into evidence.

23 MS. CAMPBELL: No objection.

24 THE COURT: Without objection, State's 41 is
25 admitted.

EXAMINATION OF ADAM ZSAMAR

1 MS. SWANSON: Okay. Thank you.

2 *(Whereupon, State's Exhibit No(s). 41 marked for*
3 *identification and received in evidence.)*

4 MS. SWANSON: And, Your Honor, if I may have
5 Investigator Zsamar step down briefly?

6 THE COURT: Certainly. If you will, just keep
7 your voice up a little bit.

8 THE WITNESS: Yes, sir.

9 THE COURT: Thank you so much.

10 MS. SWANSON: And Julie Kay, if you don't mind,
11 can you come hold this, and I'm going to put the aerial
12 of the -- I'm going to put 43 on the overhead.

13 BY MS. SWANSON:

14 Q And if you can just describe the scene in general,
15 and then how you processed the scene for the jury.

16 A Sure. Right here is the club, Midnight Soul
17 Patrol. This is Ms. Thelma Poot Wilson's house. This is
18 the dirt parking lot area, which people refer to, and this
19 is the propane tank area, which people refer to. And this
20 is Toomer Road right here.

21 Q Where would Old Ben Road be?

22 A Old Ben, in a roundabout way, would pretty much be
23 right here where I'm standing.

24 Q Okay. Would it be going this way?

25 A If you would come this way, hang a right, and it

EXAMINATION OF ADAM ZSAMAR

1 will be right there.

2 Q Okay. So, it would be perpendicular --

3 A Yes.

4 Q -- to Toomer Road?

5 A Yes.

6 Q Okay.

7 A Upon arriving at the crime scene, obviously there
8 was various emergency personnel there, other sheriff's
9 office deputies, a few witnesses. The scene was taped off
10 with crime scene tape. I made contact with the supervisor
11 on the scene, Sergeant Gars (phonetic) to kind of apprise me
12 of what happened, what they learned, and where our various
13 victims were, and different items of evidence.

14 I also made contact with Deputy Paul, that he
15 noted he collected a firearm, the flare gun, and two other
16 items which he secured in his trunk at the time.

17 Generally, when we investigate a response on
18 scene, most of the items of evidence are already found by
19 the first responding deputies. They don't collect them. As
20 Deputy Paul said, they'll mark them with a cup, piece of
21 paper, notebook pad, something just to mark this location
22 before the investigator arrive to collect the items.

23 Myself, along with Sergeant Wilson, when she
24 arrived, photographed the entire area first, just to
25 document its condition, which are the photos you've already

EXAMINATION OF ADAM ZSAMAR

1 seen.

2 Then we go about marking those items with
3 little triangular placards with numbers on them, just to
4 designate them with a specific number.

5 Q And so is this a diagram of where each of those
6 placards were?

7 A Yes.

8 Q And it notes where you found each item?

9 A Correct.

10 Q And is that a key on the right-hand side?

11 A It is. It's an item with a placard number along
12 with a brief description of what the item is.

13 Q Okay. And we're going to -- you can go have a
14 seat.

15 We're going to go through these items. But
16 we can -- we can again refer to this.

17 A Okay.

18 Q I'll leave that right here.

19 Let's start with State's 3. And if you can
20 please tell me what this item is.

21 A This is the Glock firearm located by Deputy Paul.

22 Q Okay. The Glock firearm located by Deputy Paul,
23 and that is placard two?

24 A Correct.

25 Q Okay. Where was that found?

EXAMINATION OF ADAM ZSAMAR

1 A It was located on the wood line of the parking
2 lot.

3 Q All right. And you took possession of that
4 from --

5 A I did. Deputy Paul signed it over to my custody,
6 yes.

7 Q Okay. State's 4, if you can tell us what that is,
8 where you got it, and where it was found?

9 A This is the flare gun. It was located -- trying
10 to find it on my list.

11 It's marked item No. 19. It was found by the
12 steps of Ms. Thelma Wilson's house, the back steps.

13 Q Okay. What else was located by the back steps of
14 Ms. Wilson's house?

15 A Some clothing items.

16 Q Okay.

17 A There was a ball cap and a shirt. And I believe,
18 possibly a -- I believe flare cartridge, the live cartridge.

19 Q Okay. And I'm going to show you what's been
20 marked as Exhibit 51 and ask for you to describe what's in
21 that picture.

22 A In this picture, these are the back steps of
23 Ms. Thelma Wilson's house, and there are the placards 17 and
24 18. Seventeen is a marking of a pool of blood, and 18 would
25 mark where the flare cartridge was located by Deputy Paul.

EXAMINATION OF ADAM ZSAMAR

1 Q Okay. And when you say flare cartridge, that's
2 the undischarged flare?

3 A Correct.

4 Q Okay. Is this a fair and accurate depiction of
5 placard 17 and 18?

6 A It is.

7 MS. SWANSON: State moves 51 into evidence.

8 THE COURT: Any objection?

9 MS. CAMPBELL: No.

10 THE COURT: Without objection, State's 51 is
11 admitted.

12 *(Whereupon, State's Exhibit No(s). 51 marked for*
13 *identification and received in evidence.)*

14 BY MS. SWANSON:

15 Q And can you identify 31, please?

16 A This is the Orion red flare cartridge.

17 Q Okay. And so that was placard number --

18 A No. 18.

19 Q Eighteen, by the pool of blood?

20 A Yes.

21 Q And you received that from Deputy Paul?

22 A Correct. He secured that.

23 Q Okay. And then the State's 30?

24 A This is the discharge cartridge from the flare
25 gun.

EXAMINATION OF ADAM ZSAMAR

1 Q Where did -- where was that found?

2 A That is placard number -- No. 9.

3 Q Okay. And who did you receive that from?

4 A Again, Deputy Paul.

5 Q All right. Thank you.

6 All right. While we're in that same area
7 behind Ms. Poot's house, I'm going to show you State's 49
8 and 50, and ask that you identify these, please.

9 A These are pictures taken of the scene. If one
10 were standing by the club or between the club and the large
11 oak tree, or Ms. Thelma Wilson's house, facing the propane
12 tank area.

13 Q Is that a fair and -- are those both fair and
14 accurate depictions of how this scene appeared?

15 A Yes.

16 Q And were those photographs taken when y'all were
17 processing the scene?

18 A They were. They're photographs of all the various
19 placards that located evidence.

20 MS. SWANSON: Thank you.

21 The State moves 49 and 50 into evidence.

22 MS. CAMPBELL: No objection.

23 THE COURT: Without objection, State's 49 and 50
24 are admitted.

25 *(Whereupon, State's Exhibit No(s). 49 marked for*

EXAMINATION OF ADAM ZSAMAR

1 *identification and received in evidence.)*

2 *(Whereupon, State's Exhibit No(s). 50 marked for*
3 *identification and received in evidence.)*

4 BY MS. SWANSON:

5 Q Thank you. I'm going to put State's 49 up.

6 Since we were just talking about the back
7 steps to Ms. Poot's house, let's talk about what else was
8 found in this area. I think we've covered the stairs.

9 A Yes.

10 Q What else was found in this area?

11 A Numerous spent bullet casings. Specifically, Wynn
12 nine millimeter Luger. Those would have been tags 10, 11,
13 12, 13 -- 14 and 15 are in view, but they're kind of in the
14 glare. You can't see them, along with 16 as well.

15 Placard No. 9, you can see where the one
16 cartridge was spent, Orion flare cartridge was found.

17 Q Okay. And you said those were Wynn nine
18 millimeter Luger casings?

19 A Yes.

20 Q Okay. I'm going to publish State's 50 now. Is
21 this a more complete view of where those Wynn nine
22 millimeter casings were found?

23 A Yes. Because it also includes placards 5, 6, and
24 7, which are in view. Those are also Wynn nine millimeter
25 Luger rounds, or casings.

EXAMINATION OF ADAM ZSAMAR

1 Q Okay. And can you explain to the jury what a
2 shell casing is?

3 A It's generally a metallic cartridge that contains
4 the gunpowder, and along with the bullet, before it's
5 expelled out of the firearm. And generally it's the semi
6 automatic firearm that's expelled out of the gun upon
7 discharging.

8 Q Okay. And just in your experience in dealing with
9 firearms, how far is it expelled?

10 A Not very far, except for the semi automatic.
11 Depending on the surface of the ground, it'll expel around
12 the area where the person was shooting.

13 Q Okay. And probably obvious, but can you tell us
14 what -- what kind of ground cover was here?

15 A Dirt and grass.

16 Q Okay. Were all of the nine millimeter shell
17 casings found in the same general area?

18 A The Wynn nine millimeter Luger --

19 Q The Wynn.

20 A -- were found in this general area by the propane
21 tank.

22 Q Okay. I'm going to show you what's been marked as
23 State's 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27. These
24 are all labeled as Wynn nine millimeter Luger casings. If
25 you can please tell the jury if these are all casings that

EXAMINATION OF ADAM ZSAMAR

1 you collected from this area, and how you noted where you
2 found those casings.

3 A These are all items located in that general -- in
4 that area. They are noted -- one noted location of the
5 Toomer Road and Midnight Soul Patrol. Along with marking
6 the top left corner a P with a dash and a placard number.
7 For instance, on the bag it will say P-5, indicating placard
8 No. 5 is where the location would have been.

9 Q And so that corresponds with your diagram?

10 A Correct.

11 Q Okay. And can you just show the jury where on the
12 bag that is?

13 A I'm sorry. Top left corner, just underneath the
14 red tape.

15 Q Okay. Are there a -- are there a lot of different
16 numbers on those bags?

17 A Yes.

18 Q Okay. And so these are all ones that you
19 collected. And what did you do once you collected them?

20 A Upon collecting them I submitted it -- submitted
21 them to our evidence division.

22 Q Okay. And who did you submit them to?

23 A Jennifer Snyder.

24 Q And did you also submit the flare gun, the Glock,
25 and the discharged and undischarged flare at the same time?

EXAMINATION OF ADAM ZSAMAR

1 A Yes. All items of evidence were submitted into
2 evidence.

3 Q Okay. To Ms. Snyder?

4 A Yes.

5 Q All right.

6 All right. Let's talk about the parking lot
7 area. I'm going to show you what's been marked as State's
8 48 and ask that you describe this picture.

9 A This is a picture taken if one was standing in the
10 dirt parking lot facing the club.

11 Q Okay. Is that a fair and accurate depiction of
12 what you saw when you arrived at the scene?

13 A It does. And also notes the placards that we set
14 down marking pieces of evidence.

15 MS. SWANSON: Okay.

16 At this time, State moves 48 into evidence..

17 MS. CAMPBELL: No objection.

18 THE COURT: Without objection, State's 48 is
19 admitted. .

20 MS. SWANSON: Thank you.

21 *(Whereupon, State's Exhibit No(s). 48 marked for*
22 *identification and received in evidence.)*

23 BY MS. SWANSON:

24 Q And. Let's talk about what you found in the
25 parking lot area.

EXAMINATION OF ADAM ZSAMAR

1 A All those placards indicate additional shell
2 casings that were located. All the shell casings located in
3 the parking lot were Sphere nine millimeter brand.

4 Q Okay. And were they all clustered in one area?

5 A Yes, they were.

6 Q And is that noted on your diagram?

7 A It is.

8 Q Okay. And do the Sphere nine millimeter casings
9 appear any different than the Wynn nine millimeters?

10 A The only difference between the two, besides the
11 brand, the Wynn nine millimeters are brass casing; the
12 Sphere are silver in color.

13 Q Okay. I'm going to show you what's been marked as
14 State's 10, 11, 12, 13, 14, 15, 16, and 17. These are all
15 labeled as Sphere nine millimeter casings, and I'm going to
16 ask if these are the casings that you collected from the
17 parking lot area.

18 A They are.

19 Q Okay. And what did you do once you collected
20 those?

21 A They were submitted to evidence.

22 Q And who did you submit them to?

23 A They were all submitted to Jennifer Snyder. One
24 was submitted to temporary storage, which is a secured area
25 for evidence overnight, and Jennifer Snyder collected those

EXAMINATION OF ADAM ZSAMAR

1 items afterward.

2 Q Okay. And why was that?

3 A Because I found an additional casing, Sphere,
4 again in the dirt parking lot the day after. Sergeant
5 Wilson and I went back out just to go over the scene one
6 more time. We found an additional shell casing.

7 Q Okay. You guys went out there to make sure you
8 got everything?

9 A Yes, and I believe we also made contact with a
10 witness that day as well.

11 Q Okay. I'm going to show you State's 52 and ask
12 that you identify that, please.

13 A This is a picture of the dirt parking lot. Again,
14 with items of evidence marked with placards.

15 Q All right. Is that how it looked that -- when you
16 were conducting your investigation?

17 A Yes, it was.

18 Q Okay.

19 MS. SWANSON: State moves 52 into evidence.

20 THE COURT: Any objection?

21 MS. CAMPBELL: No.

22 THE COURT: Without objection, State's 52 is
23 admitted.

24 *(Whereupon, State's Exhibit No(s). 52 marked for*
25 *identification and received in evidence.)*

EXAMINATION OF ADAM ZSAMAR

1 BY MS. SWANSON:

2 Q Okay. And these are just additional placards a
3 little bit closer in to the parking lot. And what exactly
4 do those depict, Investigator?

5 A Item No. 1 depicts a Sphere nine millimeter casing
6 found. Twenty-one, again, is another casing, Sphere nine
7 millimeter, and 22 is another Sphere nine millimeter casing.

8 Q Okay. Did you -- did you recover anything from
9 any cars in that parking lot that night?

10 A Yes. I recovered a spent projectile from Joe
11 Pope's vehicle.

12 Q All right. I'll hand you what's been marked as
13 State's 32 and ask if that's the projectile that you
14 recovered?

15 A Yes, it is.

16 Q Okay. And what did you do with it once you
17 recovered it?

18 A It was submitted into evidence.

19 Q All right. To Jennifer Snyder?

20 A Yes.

21 Q Okay. Was that the only projectile that you
22 recovered from a car?

23 A No. The day after, when we went back to go over
24 the scene again, we made contact with a witness. A Shana
25 Green made contact with us and informed us her vehicle was

EXAMINATION OF ADAM ZSAMAR

1 struck with a bullet.

2 Q And were you able to recover a bullet from her
3 vehicle?

4 A A bullet -- we pulled a bullet fragment from her
5 front right headlight.

6 Q Okay. I'm going to show you what's been marked as
7 State's 33, and ask for you to identify that.

8 A Yes. This is the fragment, bullet fragment we
9 pulled from her vehicle.

10 Q And once you recovered it, what did you do with
11 it?

12 A Evidence again.

13 Q To Jennifer Snyder?

14 A Yes, ma'am.

15 Q Thank you.

16 Okay. After you recovered all of the
17 physical evidence from the scene, what was the next step in
18 the investigation?

19 A We interviewed as many people as possible. I also
20 forgot to mention, the night of the incident, my first
21 interview was with Joe Pope. Then we went on collecting
22 evidence at the crime scene, and then through the
23 investigation, in speaking with witnesses, we were able to
24 identify numerous people who were at the scene. Attempted
25 to make contact with them for to interview them.

EXAMINATION OF ADAM ZSAMAR

1 Q Okay. About how many people would you say you
2 interviewed or were interviewed as a part of the
3 investigation?

4 A As a total, as part of the investigation, just
5 under 80 people were interviewed.

6 Q Okay. And most of those people were there that
7 night?

8 A Yes.

9 Q How many were able to -- about how many were able
10 to provide you useful details in the investigation?

11 A A very small percentage.

12 Q As a part of your investigation were you able to
13 have an ATF trace run on the Glock that was recovered?

14 A Yes. The ATF trace revealed that it was
15 registered to Dante Bailey.

16 Q At some point did you obtain a search warrant for
17 Lucas Morgan's residence?

18 A Yes. I believe it was either the day of the
19 incident or the day after.

20 Q And did you, in fact, execute that search warrant?

21 A Yes.

22 Q And what did you find?

23 A We found a small revolver, .22 caliber. We also
24 found two boxes of ammunition on the roof of his house.

25 Q What kind of ammunition?

EXAMINATION OF ADAM ZSAMAR

1 A One was nine millimeter ammunition. I believe the
2 other type was Federal.

3 Q Okay. And so the Wynn nine millimeter that was
4 found on the roof of this house, is that the same type that
5 was recovered around the propane tank area of the scene?

6 A Yes, it was. It was the same brand, Wynn, the
7 same caliber, nine millimeter Luger, and it was the same
8 brass color.

9 Q Okay. How long did this entire investigation
10 last?

11 A I believe I interviewed the last person, or spoke
12 with the last person, February of this year.

13 Q Okay. And so in total?

14 A Almost two years.

15 Q All right. How many suspects did you have at the
16 end of the night on June 21st?

17 A Two.

18 Q And at the end of the investigation, close to two
19 years later, who did you have?

20 A Two suspects.

21 Q And who were those suspects?

22 A Lucas Morgan and Joseph Opie Bowers.

23 Q Based on your investigation, do you believe that
24 those two suspects were the primary shooters?

25 MS. CAMPBELL: Objection, Your Honor.

EXAMINATION OF ADAM ZSAMAR

1 THE COURT: Let me --

2 MS. CAMPBELL: Objection. That invades the
3 providence of the jury.

4 THE COURT: I sustained the objection.

5 MS. CAMPBELL: Thank you, Your Honor.

6 THE COURT: His opinion is not necessary.

7 BY MS. SWANSON:

8 Q As a part of your investigation, did you attempt
9 to obtain DNA samples?

10 A Yes. All the items recovered, the firearms, the
11 shell casings, the projectiles, they are all sent to SLED,
12 which is South Carolina Law Enforcement department or
13 division, and they swab all of those items for possible DNA.

14 Q Were there any results that came about from those
15 swabs?

16 A The only items with DNA which was identified were
17 swabs of the blood that were recovered off the back steps of
18 Ms. Thelma Wilson's house, and swabs collected from blood in
19 the back of the Chevy HHR. Both of those swabs were
20 identified as belonging to a Michael Morgan or Dante Bailey.

21 Q Okay. So the victims that were shot?

22 A Yes.

23 Q And were all of these items submitted for latent
24 prints?

25 A Again, all the firearms, all the shell casings,

EXAMINATION OF ADAM ZSAMAR

1 projectiles were also processed for latent prints by SLED,
2 but they did not reveal any evidence.

3 MS. SWANSON: Okay. I have nothing further at
4 this time.

5 THE COURT: Cross-examine?

6 MS. CAMPBELL: May it please the Court.

7 THE COURT: Yes.

8 CROSS EXAMINATION

9 BY MS. CAMPBELL:

10 Q Good afternoon. Officer -- Investigator --

11 A Sure.

12 Q -- Zsamar, you took a lot of photos out at the
13 Midnight Soul Patrol in your investigation; did you not?

14 A Sergeant Wilson did the photography.

15 Q Okay. You -- well, okay. Let me back up then.

16 You're the lead investigator, right?

17 A Correct. Correct.

18 Q Okay. And so as the lead investigator, as items
19 of evidence came in, as witness statements came in, as maybe
20 a video or an audio CD came in, you reviewed all of that,
21 correct?

22 A Correct.

23 Q Okay. So, let's -- it's fair to say, you had your
24 hands on this case and everything in it, right?

25 A From start to finish.

EXAMINATION OF ADAM ZSAMAR

1 Q You know this case forward and backward, right?

2 A Pretty much.

3 Q And the buck stops with you, right?

4 A It has to.

5 Q Okay. So, in that case, you -- you had had access
6 then to all the photos from the Midnight Soul Patrol,
7 correct?

8 A Yes. Yes.

9 Q Okay. And --

10 MS. CAMPBELL: May I approach, Your Honor?

11 THE COURT: You may.

12 MS. CAMPBELL: May I mark this for identification,
13 Your Honor?

14 THE COURT: Sure.

15 MS. CAMPBELL: Just for identification.

16 *(Whereupon, Defendant's Exhibit No(s). 2 marked*
17 *for identification.)*

18 BY MS. CAMPBELL:

19 Q Officer Zsamar --

20 A Yes.

21 Q -- I'm going to show you what's marked as
22 Defendant's Exhibit 2, for identification only, and ask you
23 if that is a fair and accurate depiction of the placards?

24 MS. CAMPBELL: If I may approach, Your Honor?

25 THE COURT: Okay.

EXAMINATION OF ADAM ZSAMAR

1 MS. CAMPBELL: Make sure that he and I have
2 exactly the same one. And we do.

3 BY MS. CAMPBELL:

4 Q Of the pictures taken from the parking lot with
5 your -- your 24, your 25, and your 27?

6 A Yes. And that's No. 6, I assume you are referring
7 to?

8 Q I don't really -- I'm not concerned about No. 6
9 right now, but I want to know about 24, 25, and 27, correct?

10 A Correct.

11 Q Okay. And those are, according to your diagram
12 and what you testified to, the Sphere nine millimeter Luger
13 casings in the parking lot, correct?

14 A Twenty-four, 25, and 27, yes.

15 Q And you have testified that when shooting a weapon
16 that would eject that type of shell casing, that it pretty
17 much falls where you shoot it, right?

18 A Generally, yes.

19 Q Okay. And in Defendant's Exhibit No. 2 you cannot
20 see the porch of Ms. Poot's house, can you? There's no
21 angle there, correct?

22 A Talking about the front porch?

23 Q I'm talking about the back porch, where Michael
24 Morgan was shot.

25 A No, you can't see the back porch.

EXAMINATION OF ADAM ZSAMAR

1 Q Thank you.

2 Now, you interviewed LaToya Williams and
3 Andrea Williams on Old Ben Road, correct?

4 A Correct.

5 Q And then you got information from these women, and
6 you took that and you moved with that information, correct?

7 A They provided very limited information.

8 Q Okay. But they provided you some information, and
9 you used that in furtherance of your investigation, correct?

10 A Yes.

11 Q Okay. You had a very critical officer on the
12 scene, on Old Ben Road, immediately, and that was Officer
13 DeCarlo, correct?

14 A Staff Sergeant DeCarlo, yes.

15 Q He kind of was the man on the ground in charge
16 right then when it happened, correct?

17 A He was the patrol supervisor.

18 Q Okay. That's his name, patrol supervisor, right?

19 And he was responsible for getting everybody
20 in place while waiting on you to get there, right?

21 A Yes.

22 Q Okay. So, it's fair to say then, as you've
23 testified, you reviewed DeCarlo's in-car video, correct?

24 A I viewed it, yes.

25 Q Okay. And in DeCarlo's in-car video, you

EXAMINATION OF ADAM ZSAMAR

1 retrieved information that, from a witness there, that Lucas
2 Morgan shot his own brother, Michael Morgan; is that not
3 correct?

4 A I don't recall that.

5 Q Okay. You don't recall Sam Blackman being there
6 and -- in the video, in front of DeCarlo's car, making that
7 statement?

8 A I never heard that.

9 Q Okay. How about Officer Will Black, you know who
10 he is, right?

11 A I do.

12 Q He's retired now from the sheriff's department?

13 A Yes, he is.

14 Q Okay. And you were supervising him in this
15 investigation, correct?

16 A I'm not his immediate supervisor, no.

17 Q Okay. But he provided information to you because
18 he was a first responder, along with Officer Paul who
19 testified earlier today, correct?

20 A Yes.

21 Q Okay. So, we got Officer Paul and Officer Black.
22 Now, Officer Black, you know that he -- he's
23 got information for you that says the Morgan boys were
24 spraying the parking lot, correct?

25 A I learned that from his video footage.

EXAMINATION OF ADAM ZSAMAR

1 Q Right. From -- that the Morgan boys spraying the
2 parking lot with gunfire.

3 And Officer Black is not going to be
4 testifying; is that correct?

5 A It's not up to me.

6 Q Okay. Now, Investigator Rice and Investigator
7 Purdy arrive, right?

8 A Correct.

9 Q Okay. And they helped secure evidence, correct?

10 A They processed the Chevy HHR, and they processed
11 the club itself.

12 Q You had Investigator Chris Wilson conduct some
13 interviews for you, correct?

14 A She did.

15 Q And one of those persons that she interviewed was,
16 in fact, Samuel Blackman, right?

17 A She interviewed him, yes.

18 Q And you reviewed his statement that she got from
19 him, correct?

20 A I listened to it.

21 Q Okay. And he won't be here either, correct?

22 A Not that I'm aware of.

23 Q Okay. Now, you had John Gobel with the sheriff's
24 department interview Stanley Humphries. That would be Hump,
25 right?

EXAMINATION OF ADAM ZSAMAR

1 A Right.

2 Q And he has testified here?

3 A John Gobel?

4 Q No, Humphries.

5 A Stanley Humphries testified.

6 Q Right. And then you had Jeremiah Fraser interview
7 some individuals for you, correct?

8 A That's correct.

9 Q And one of those individuals was Arthur Lee
10 Chaplin, right?

11 A Yes.

12 Q Okay. Whom we've come to know as Krum?

13 A Arthur Lee Chaplin is Krum.

14 Q Okay. But you did a critical interview in this
15 case. You actually interviewed, yourself, Joey Chaplin,
16 correct?

17 A I briefly spoke with Joey Chaplin.

18 Q Okay. Well, wouldn't it be briefly -- wouldn't it
19 be more like 20- to 30-minute interview, correct?

20 A It could be that long, yes.

21 Q Okay. And would it be fair to say that in your
22 interview of Joey Chaplin about his being at the Midnight
23 Soul Patrol on June 21st, 2012, when this all happened, that
24 you had questions about his reliability and his credibility
25 and what he was telling you?

EXAMINATION OF ADAM ZSAMAR

1 A Truthful, yeah.

2 Q That's correct?

3 A Yes.

4 Q Okay. And did you ever follow up with Joey
5 Chaplin on your questions about his credibility and what he
6 had told you?

7 A Based on the -- what he told us?

8 Q Correct.

9 A No.

10 Q Now, Joey Chaplin is from Tom Fripp, correct?

11 A Joey Chaplin?

12 Q Correct.

13 A Yes.

14 Q He is. Joseph Bowers is from Tom Fripp, correct?

15 A Yes..

16 Q Thank you.

17 And Dante Bailey is from Dulamo Road, or Tom
18 Fripp, correct?

19 A They're both interchangeable.

20 Q They kind of make a circle, don't they?

21 A It's not a loop, it's more of an intersection.

22 Q You have absolutely no fingerprint evidence to
23 link Joseph Bowers to a single shell casing or a weapon in
24 this case; is that correct?

25 A There was no latents on any evidence.

EXAMINATION OF ADAM ZSAMAR

1 Q Okay. And well, the latent term, I want to be
2 clear, I don't want to use jargon here, that means there are
3 no fingerprints from Joseph Bowers on any evidence in this
4 case, correct?

5 A Correct.

6 Q Okay. There are no CSI here, DNA links between
7 Joseph Bowers and any evidence in this case, right?

8 A Correct.

9 Q Okay. And when you're doing and submitting these
10 items for fingerprint analysis and DNA analysis, you're
11 hoping to get something back that might help you in your
12 investigation, correct?

13 A Yes. That would be the reason.

14 Q So, none of the items submitted helped you in your
15 investigation as far as Joseph Bowers went, correct?

16 A They were all processed.

17 Q And -- and you received nothing back that was
18 helpful to you as far as Joseph Bowers is concerned?

19 A Correct.

20 Q Some of the information you got back, though,
21 might have been helpful to you. For instance, you got back
22 information from items you had sent to SLED that Lucas
23 Morgan's gun didn't fire right, didn't fire straight,
24 correct?

25 A I don't feel comfortable answering that question.

EXAMINATION OF ADAM ZSAMAR

1 My expertise on the firearm and how it discharged --

2 Q Okay. Well, we've let you be a DNA expert, but
3 you're not comfortable with this, so that's fine.

4 THE COURT: Let's refrain from making an argument.

5 MS. CAMPBELL: Thank you, Your Honor. I
6 apologize.

7 BY MS. CAMPBELL:

8 Q Now, the other evidence that you received back
9 also told you that you had, and if I may hold this up, I've
10 got a little tiny one, but if I may hold this up for you,
11 this little placard right here, 23.

12 A Yes.

13 Q Yeah. What is -- what does that stand for?
14 What's in location 23?

15 A It's another shell casing.

16 Q It's a shell casing, right. It's is not a Sphere,
17 right?

18 A No.

19 Q It's not a Wynn, right?

20 A No.

21 Q What is 23?

22 A Twenty-three is a RP Smith and Wesson .40 caliber
23 shell casing.

24 Q There's another shooter right here, isn't there?

25 A There's a shell casing there.

EXAMINATION OF ADAM ZSAMAR

1 Q Which would lead you to believe there was a man
2 standing here shooting, correct?

3 A That's possible.

4 MS. CAMPBELL: I may be -- I may be done, Your
5 Honor. One more second.

6 THE COURT: Okay.

7 (Pause.)

8 BY MS. CAMPBELL:

9 Q Officer -- excuse me, Investigator Zsamar, in
10 the -- I want to say CAPS report about the 911 calls and the
11 information that came out that night, is it your testimony
12 that you were aware that Joey Chaplin was named as the
13 second shooter? Were you aware of that that night?

14 A That night --

15 Q That call came out --

16 A -- Joey Chaplin, no.

17 Q Yeah. So DeCarlo didn't tell you the name of the
18 shooter that had been called out was Joey Chaplin?

19 A No.

20 Q But the CAPS report says that, and you've seen
21 that CAPS report, right?

22 A The CAPS report says Joey Chaplin, Opie, white
23 male from --

24 Q I know what it says after it says Joey Chaplin.
25 But the name Joe Chaplin, with evidence that night that

EXAMINATION OF ADAM ZSAMAR

1 DeCarlo got -- did you get the name Joey Chaplin that night?

2 A No.

3 Q Okay. Thank you.

4 THE COURT: Redirect.

5 MS. SWANSON: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. SWANSON:

8 Q We spent a lot of time talking about Joey Chaplin
9 from Tom Fripp. Is he a white male from Tom Fripp?

10 A He's a younger black male from Dulamo.

11 Q Okay. Does he have the nickname Opie?

12 A No, he does not.

13 Q And when you interviewed Mr. Bowers, did he give
14 you any names of people that were around?

15 A No.

16 Q The second time y'all talked to him?

17 A Yes.

18 Q And with those names, did you interview those
19 people?

20 A Yes, we did.

21 Q So you looked into the story that he was telling
22 you?

23 A Oh, yes. Eighty people were interviewed.

24 Q Right. And we talked about no DNA. Was it just
25 not Joey Bowers' DNA, or anybody's DNA on the Glock?

EXAMINATION OF ADAM ZSAMAR

1 A No one's DNA was on the Glock.

2 Q Thank you.

3 MS. SWANSON: That's all I have.

4 THE COURT: Recross.

5 MS. CAMPBELL: I have nothing further.

6 THE COURT: Thank you. You may step down.

7 THE WITNESS: Thank you, Judge.

8 THE COURT: Call your next witness, please.

9 MS. SWANSON: Thank Your Honor. The State calls
10 Andrew Rice.

11 Thereupon,

12 ANDERW RICE

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 THE CLERK: Would you please be seated, state and
16 spell your name for the Court.

17 THE WITNESS: Andrew Rice, R-I-C-E.

18 DIRECT EXAMINATION

19 BY MS. SWANSON:

20 Q Thank you. Investigator Rice, can you please tell
21 us who you work for?

22 A The Beaufort County Sheriff's Office. I'm
23 assigned to the investigation section.

24 Q Okay. And can you describe your involvement in
25 the investigation of the Midnight Soul Patrol shootings?

EXAMINATION OF ANDREW RICE

1 A Yes, ma'am. On June 21st, 2012, I was contacted
2 by Investigator Zsamar and asked to respond to 56 Toomer
3 Road. At the time he was investigating a shooting and a
4 murder with at least one person deceased at that time. So I
5 responded to that area and assisted in processing in
6 different areas.

7 Q Okay. And what areas did you propose?

8 A I first stopped, and before you could get to where
9 56 Toomer Road is, you have to turn onto Old Ben Road from
10 Seaside Road. Parked in the middle of the road was a 2011
11 Chevy HHR. It was an Enterprise rental car that had a body
12 in the back seat that was later identified as Dante Bailey.
13 And I began processing that vehicle.

14 Q Okay. What did do to process that vehicle?

15 A Photographed the vehicle, examined the body that
16 was there inside the vehicle for injuries, to try to
17 determine how he had died. I also processed -- took several
18 items from within, drinking containers and receipts and
19 processed the victim's hands for GSR.

20 Q All right. What did you do after the Old Ben Road
21 HHR scene?

22 A After we cleared from the road, and that vehicle
23 had been removed and nothing else needed to be done I
24 proceeded to 56 Toomer Road, which is known as the -- either
25 the Poot shop or the Midnight Soul Patrol.

EXAMINATION OF ANDREW RICE

1 Once I was there I was asked to begin
2 processing the interior portion of the club. There was a
3 great proportion of the crime scene was outside in the
4 parking lot. I was asked to process the interior portion,
5 which I did, along with Master Sergeant Jeff Purdy.

6 Q Okay. And so y'all went to the interior first,
7 not the exterior?

8 A Yes, ma'am.

9 Q Okay. I'm going to show you what's been marked as
10 State's 40, and ask that you identify this.

11 A This is the crime scene sketch of the interior
12 portion that I did.

13 Q Okay. And that's a fair and accurate depiction of
14 the sketch?

15 A Yes, ma'am.

16 MS. SWANSON: Okay. State moves 40 into evidence.

17 THE COURT: Any objection?

18 MS. CAMPBELL: No objection.

19 THE COURT: Without objection, State's 40 is
20 admitted.

21 *(Whereupon, State's Exhibit No(s). 40 marked for*
22 *identification and received in evidence.)*

23 BY MS. SWANSON:

24 Q Okay. So, if you want to step down, please,
25 Investigator, and just describe what we're looking at here.

EXAMINATION OF ANDREW RICE

1 A This is the actual club, the Midnight Soul Patrol.
2 This is the road in front, Toomer Road. Old Ben Road, where
3 I was earlier with that vehicle, would come out in this
4 area. The inside portion of the club is a legend which
5 describes the stars and the items that are within.

6 The stars are actually pieces of evidence
7 that were collected, either projectiles or shell casings,
8 spent shell casings. And the circular objects are small
9 tables or lounge tables, where people were inside of the
10 club that night.

11 There's a kitchen area here in the back, some
12 bathrooms in the middle, the pool table, and the DJ booth.

13 Now, this is the front door, but this is the
14 door that's most commonly used that seemed to be the main
15 entrance and exit on the side, near the DJ booth.

16 Q What do these long lines depict?

17 A The long lines depict the trajectory at that time,
18 where we believe were projectiles or bullets that entered
19 the club. As you can tell, like one came through the front
20 door, it lodged inside the ceiling fan. There were some
21 that came into the club, fell on the floor. Some were stuck
22 in the wall. There was also one that traveled all the way
23 through and kept going, and was unable to be recovered.

24 Q Okay. And to the best of your ability, were you
25 able to determine what direction they were coming from?

EXAMINATION OF ANDREW RICE

1 A Yes, ma'am. I believe that they were coming from
2 this direction in, based on the damage it caused to the
3 building, as you can see to the entrance and the exits.

4 Q Okay. And as we're looking at the scene, what is
5 located to the right of the Poot shop?

6 A To the right over here is a parking area. It's a
7 dirt parking lot where the majority of the patrons that
8 arrived in vehicles parked that evening.

9 Q Okay. You can have a seat, Investigator. Thank
10 you.

11 All right. I'm going to show you items that
12 have been marked State's Exhibit 5, 7, 8, and 9, and ask
13 that you identify these items, please.

14 A Yes, ma'am. Exhibit No. 5 is a projectile that I
15 collected there from the club. I initialed the back.

16 Exhibit No. 7 is also a projectile that was
17 collected from the club.

18 No. 8, Exhibit 8, is a projectile that was
19 collected from the club.

20 And Exhibit 9 was also a projectile.

21 Q Okay. And did you note where you found those
22 projectiles on those brown paper bags?

23 A Yes, ma'am, I did. I labeled them by numbers
24 corresponding with the legend as on that sketch.

25 Q Okay. And where did you label them? Can you just

EXAMINATION OF ANDREW RICE

1 show the jury for me?

2 A I labeled them on the description portion of the
3 bag.

4 Q Okay. And what did you do with those projectiles
5 once you sealed them up?

6 A I submitted them to our evidence section, to
7 Jennifer Snyder.

8 Q Okay.

9 Okay. Let's stay on the inside. I'm going
10 to show you three pictures, State's 57, 58, and 59 and ask
11 for you to identify these.

12 A Yes, ma'am. These are photographs from the
13 interior portion of the club. Number 57 is a picture of a
14 trajectory rod as it tries to show the way the projectile
15 came through the wall.

16 Number 1, or Exhibit No. 58, shows a
17 projectile recovered from the floor of the interior portion
18 of the club. And then No. 59 is actually the ceiling fan,
19 where it shows where the projectile entered the fan.

20 Q Okay. Are these all fair and accurate depictions
21 of the way the scene was processed that night and how it
22 appeared?

23 A Yes, ma'am.

24 MS. SWANSON: State moves 57, 58, and 59 into
25 evidence.

EXAMINATION OF ANDREW RICE

1 MS. CAMPBELL: No objection.

2 THE COURT: Without objection, 57, 58, and 59 were
3 admitted.

4 *(Whereupon, State's Exhibit No(s). 57 marked for*
5 *identification and received in evidence.)*

6 *(Whereupon, State's Exhibit No(s). 58 marked for*
7 *identification and received in evidence.)*

8 *(Whereupon, State's Exhibit No(s). 59 marked for*
9 *identification and received in evidence.)*

10 BY MS. SWANSON:

11 Q Okay. So, I'm just going to publish 57. And
12 we're looking at -- that's the DJ booth?

13 A Yes, ma'am.

14 Q Okay. And tell us what the orange thing is.

15 A The orange object is what's called a trajectory
16 rod. When we work a shooting scene, sometimes different
17 areas, it helps to get an overall picture. And we use the
18 rods to show the way the projectile came through the wall,
19 be a bullet, since it was a bullet that came through the
20 wall. It kind of shows you the path that that bullet took,
21 where it came from.

22 Q Okay. And then 58, where is this?

23 A That's also there. It's right behind the DJ booth
24 on the floor. It is a projectile that came through and
25 landed on the floor.

EXAMINATION OF ANDREW RICE

1 Q Okay. And 59, I think I put the sticker on upside
2 down.

3 A Fifty-nine is the ceiling fan. The round that
4 came through the front door and lodged inside of the ceiling
5 fan. We had to take the ceiling fan apart to get the --
6 recover the projectile.

7 Q Okay. Did you also process or examine the outside
8 of the club?

9 A Yes, ma'am, I did.

10 Q All right. I'm going to show you State's 53 and
11 ask if that's a fair and accurate depiction of --

12 A It is.

13 Q -- the club. Okay.

14 MS. SWANSON: Move 53 into evidence, please?

15 MS. CAMPBELL: No objection.

16 THE COURT: Without objection, 53 is admitted.

17 *(Whereupon, State's Exhibit No(s). 53 marked for*
18 *identification and received in evidence.)*

19 BY MS. SWANSON:

20 Q Okay. I'm going to put this up, and if you can
21 please describe what we're are looking at in this picture.

22 A This is the front side of the club. You're
23 looking at the large parking area where the majority of the
24 patrons entered. And it's the -- the northern facing side
25 of the building where the trajectory rods are placed on the

EXAMINATION OF ANDREW RICE

1 building, and it shows the path of the bullets that struck
2 the building.

3 Q All right. And State's 56, is this a fair and
4 accurate depiction of the door of the club?

5 A Yes, ma'am.

6 MS. SWANSON: Move 56 into evidence.

7 MS. CAMPBELL: No objection.

8 THE COURT: Without objection, 56 is admitted.

9 *(Whereupon, State's Exhibit No(s). 56 marked for*
10 *identification and received in evidence.)*

11 BY MS. SWANSON:

12 Q All right. So, what -- what door is this?

13 A This is the front door for that northern facing
14 wall of the -- of the Midnight Soul Patrol, and this is the
15 trajectory rod that shows the way the bullet entered the
16 door.

17 Q Okay.

18 After you were finished processing the HHR
19 scene and then the scene at the Midnight Soul Patrol, what
20 other involvement did you have in the case?

21 A While we were there processing the parking lot
22 area, there was some broken glass. It was obviously auto
23 glass. Based on some interviews by other investigators that
24 had happened we determined that Stanley Humphries, or Hump,
25 had been at the establishment location that evening with

EXAMINATION OF ANDREW RICE

1 some other people and his window had been shot out. So I
2 left from there and went to search for Mr. Humphries.

3 Q Okay. Did you make contact with Mr. Humphries?

4 A I did. I was able to find him in the city of
5 Beaufort at Old Trail Road, which is his mother's
6 house.

7 Q And did you locate his car?

8 A I did. It was parked out front. Just as we had
9 heard, the side window, the passenger side rear window, had
10 been broken out.

11 Q Okay. And did you collect a GSR kit from
12 Mr. Humphries or his car?

13 A I did. I collected Mr. Humphries' clothing that
14 he had worn to the establishment earlier, the Midnight Soul
15 Patrol earlier. I processed the interior portion of the
16 car. I used a GSR kit on the vehicle itself, or gunshot
17 residue kit, to try and collect any evidence of gunshot
18 residue from within the vehicle.

19 Q Okay. I'm going to hand you what's been marked as
20 State's 34 and ask you to identify this package, please.

21 A It's the orange shirt and the khaki pants that I
22 collected from Mr. Humphries that morning.

23 Q Okay. And then that was the clothing that he was
24 wearing that night?

25 A Yes, ma'am.

EXAMINATION OF ANDREW RICE

1 Q Okay. And what did you do with that clothing?

2 A I submitted it to evidence, our evidence section
3 at the Sheriff's Office, to Jennifer Snyder.

4 Q All right.

5 MS. SWANSON: Beg the Court's indulgence?

6 THE COURT: Yes, ma'am.

7 MS. SWANSON: I think that's all that I have for
8 you at this time. Thank you.

9 THE WITNESS: Thank you.

10 THE COURT: You may cross examination.

11 MS. CAMPBELL: Just a couple of questions.

12 THE COURT: Sure.

13 CROSS EXAMINATION

14 BY MS. CAMPBELL:

15 Q Investigator Rice, the clothes that Stanley
16 Humphries gave you are just that, they're what he gave you,
17 correct? You weren't at the Midnight Soul Patrol, right?

18 A I wasn't there. Those are the clothes that he
19 gave me, right.

20 Q So, you don't know if those were the clothes he
21 was wearing at the Midnight Soul Patrol the night when the
22 shooting took place?

23 A No, ma'am, other than what he told me.

24 Q Okay. And your diagram that you did, you have
25 starred 3, 4, and 5, correct?

EXAMINATION OF ANDREW RICE

1 A Yes, ma'am.

2 Q You don't need to come down.

3 A Okay.

4 Q And those are shell casings, correct?

5 A I believe so.

6 Q And were they submitted into evidence?

7 A Yes, ma'am, they were.

8 Q Okay. And based on your experience, shell casings
9 being in that location would indicate someone had fired a
10 gun by the side door, correct?

11 A Yes, ma'am.

12 MS. CAMPBELL: That's all that I have.

13 THE COURT: Redirect?

14 MS. SWANSON: No, sir.

15 THE COURT: You may come down.

16 WITNESS: Thank you, Your Honor.

17 THE COURT: All right. At this point, ladies and
18 gentlemen, let's take a recess for about ten, 15
19 minutes. Do not begin your deliberations or discuss
20 the case. Thank you.

21 THE BAILIFF: The jury is clear, Your Honor.

22 THE COURT: Thank you.

23 Anything from the State before recessing?

24 MS. SWANSON: No, sir.

25 THE COURT: Anything from the Defendant?

EXAMINATION OF ANDREW RICE

1 MS. CAMPBELL: No, Your Honor.

2 THE COURT: We will be at ease for about 15
3 minutes. Thank you.

4 (Break.)

5 THE COURT: All right. Let the record reflect the
6 Defendant is present. Solicitor ready to continue?

7 MS. CAMPBELL: Yes, sir.

8 THE COURT: The State's ready?

9 MS. SWANSON: Yes, sir.

10 THE COURT: The Defendant is ready. Let's bring
11 the jury in. Thank you.

12 THE BAILIFF: The jury is entering the courtroom,
13 Your Honor.

14 THE COURT: Okay.

15 (Jury enters the courtroom at
16 3:45 p.m.)

17 THE COURT: Thank you, ladies and gentlemen.
18 We're ready to continue.

19 Solicitor, you may call your next witness.

20 MS. SWANSON: Thank Your Honor. State calls
21 Jeremiah Fraser.

22 Thereupon,

23 JEREMIAH FRASER

24 was called as a witness, having been first duly sworn,
25 was examined and testified as follows:

EXAMINATION OF JEREMIAH FRASER

1 THE CLERK: Thank you. Please be seated. State
2 and spell your name for the Court.

3 WITNESS: Yes, ma'am. Jeremiah Fraser.
4 F-R-A-S-E-R.

5 DIRECT EXAMINATION

6 BY MS. SWANSON:

7 Q Good afternoon. I almost said good morning.

8 Investigator Fraser, please tell us who you
9 work for.

10 A I work for the Beaufort County Sheriff's Office in
11 criminal investigations.

12 Q And how long have you worked for BCSO?

13 A Thirteen years.

14 Q Have you been an investigator the entire time?

15 A No. About eight years as an investigator.

16 Q Have you always been -- do you always work in the
17 same area?

18 A For the most part, I've worked St. Helena. Yes,
19 ma'am.

20 Q Okay. And tell us how you became involved in the
21 investigation of the Midnight Soul Patrol shootings.

22 A I was contacted to respond to the hospital by
23 Sergeant Zsamar. We had victims at the hospital. My job
24 was to go to the hospital, assess what we had at the
25 hospital, and conduct interviews with anybody that was able

EXAMINATION OF JEREMIAH FRASER

1 to be interviewed, photograph any injuries, things of that
2 nature.

3 Q Okay. And when you got to the hospital, what was
4 the first thing that you did?

5 A I began evaluating the injuries of the people that
6 were there. I spoke to the medical staff to determine if I
7 could talk to the people that were there. I started asking
8 the patrol units that were there to start identifying any
9 witnesses that may be out in the lobby for further
10 interview.

11 Q All right. And were you able to talk to any of
12 the victims that arrived at the ER?

13 A I was; two of them.

14 Q Okay. Who were you not able to talk to you?

15 A May I refer to my notes real quick?

16 Q Yes, sir.

17 A Richard Green was the one that I was not able to
18 talk to.

19 Q Okay. And why was that?

20 A He was not conscious or alert. He was -- it
21 appeared to me that he was in a pretty bad situation. He
22 was not -- he was not conscious to talk to.

23 Q Okay. Was he going to be transported to another
24 facility?

25 A From what I understand, yes.

EXAMINATION OF JEREMIAH FRASER

1 Q Okay. And then who did you talk to next?

2 A I spoke to Michael Morgan next.

3 MS. CAMPBELL: Objection, Your Honor.

4 THE COURT: What's the objection? He said he
5 spoke to him. Overrule objection.

6 MS. CAMPBELL: Thank you.

7 BY MS. SWANSON:

8 Q And what was Mr. Morgan's physical condition like
9 when you spoke to him?

10 A I observed that he had been shot in the pelvis
11 area. It appeared to me, at the time, that there was two
12 puncture wounds, one in his buttock and one in his -- right
13 beside his genitals. He was in obvious pain. He was
14 conscious, he was able to answer questions, but he was
15 having a hard time.

16 Q Okay. And how many times did you talk to him?

17 A Twice.

18 Q And was he able to provide you with a name of who
19 shot him?

20 A He was.

21 MS. CAMPBELL: Objection, Your Honor.

22 THE COURT: I'll allow him to testify to that
23 portion. It's not hearsay. So thank you.

24 MS. SWANSON: Thank you.

25 BY MS. SWANSON:

EXAMINATION OF JEREMIAH FRASER

1 Q And did you relay that name to Investigator
2 Zsamar?

3 A I did. Yes, ma'am.

4 Q Okay. Did you interview Robert Goodwine?

5 A I did.

6 Q Okay. And what was his condition?

7 A Robert Goodwine had been shot, I believe it was in
8 the -- it was in the calf. I believe it was his left leg.
9 Let me refer to my notes real quick.

10 Q Yes, sir.

11 A Yep, it was his left calf. I'm sorry. It
12 appeared to me to be a through and through shot, entering
13 one side and exiting the other.

14 Q Okay. Do you recall if all of the gunshot wounds
15 were what you just termed through and through shots?

16 A From what I understand, all of them were through
17 and through shots, yes.

18 Q Okay. And what does that mean?

19 A What it essentially means is that somebody was
20 struck by a projectile. The projectile passed completely
21 through the body. It wasn't stopped by bone, muscle,
22 tissue, things of that nature. It exited out.

23 Q And so there was no projectile stuck in any of
24 these victims?

25 A That's correct. They were all -- they were all

EXAMINATION OF JEREMIAH FRASER

1 penetrated all the way through, yes.

2 Q Okay. After you got the information from the
3 hospital, what did you do next?

4 A We returned to the investigations office to
5 debrief and to determine what our next course of action was
6 going to be. I made contact with the investigators that
7 were still on scene. It was quite an extensive scene,
8 several of them were out there.

9 I relayed the information that I had learned
10 from the interviews at the hospital. And that -- that's
11 where I got a phone call that one of the people wanted to
12 talk to me.

13 Q Okay. And who wanted to talk to you?

14 A Lucas Morgan called in and asked to speak with me.

15 Q And did you speak with him?

16 A I did.

17 Q All right. And did you collect GSR from him?

18 A I did. Yes, ma'am.

19 Q And did you collect a buccal swab from him?

20 A I did. Yes, ma'am.

21 Q Okay. How many times did you talk to Mr. Morgan?

22 A I talked to Lucas Morgan two times.

23 Q Did he know who shot his brother, Michael?

24 MS. CAMPBELL: Objection, Your Honor. Hearsay.

25 THE COURT: I'll allow him to answer the question,

EXAMINATION OF JEREMIAH FRASER

1 did he know who shot his brother.

2 A Yes, he did.

3 BY MS. SWANSON:

4 Q And did you relay that information to Investigator
5 Zsamar?

6 A Yes, I did.

7 Q In fact, during your second interview with Lucas
8 Morgan, was Investigator Zsamar present?

9 A He was. We conducted the second interview
10 together, yes.

11 Q Okay. And at some point did you come into contact
12 with Joey Bowers?

13 A I did, the same day.

14 Q Okay. And can you describe that for you us,
15 please?

16 A We located Joey Bowers on Delamo Road near where
17 he lived. He was taken into custody and brought to the
18 investigations office for an interview.

19 Q Okay. I'm going to show you what's been marked as
20 State's Exhibit 1 and ask that you identify this form,
21 please.

22 A This is the Miranda form that I utilized to give
23 Joseph Bowers his Miranda rights.

24 Q All right. Can you go over that form, just the
25 way you did with Mr. Bowers, I believe it was that morning?

EXAMINATION OF JEREMIAH FRASER

1 A Yes, ma'am.

2 Q Okay.

3 A These forms are the forms that we use before we
4 talk to somebody. The form says, You have the right to
5 remain silent. Once you give them the right, they'll
6 initial it, that they understand it.

7 Anything that you say can and will be used
8 against you in a court of law. Again, they initial that.

9 You have the right to have an attorney
10 present before or during questioning, which they initial
11 that as well.

12 If you cannot afford an attorney, one will be
13 appointed for you before any questioning if you wish.

14 Following the statement of their rights is
15 the waiver of their rights. The first is, do you understand
16 each of these rights as I've explained it to you? And it's
17 yes or no. He checked yes.

18 Having these rights in mind, do you wish to
19 talk to us now? Again, it's a yes or no question. He
20 checked yes.

21 He then signed and dated it, put the time of
22 10:44 in the morning on it, along with a witness, who was
23 Lieutenant Averill and myself.

24 Q Okay. And he indicated that he understood all
25 that?

EXAMINATION OF JEREMIAH FRASER

1 A Yes, ma'am.

2 Q Okay. And he signed at the bottom?

3 A Yes, ma'am.

4 MS. SWANSON: State moves Exhibit 1 into evidence.

5 THE COURT: Any objection?

6 MS. CAMPBELL: No objection.

7 THE COURT: Without objection, State's 1 is
8 admitted.

9 MS. SWANSON: Thank you, Your Honor.

10 *(Whereupon, State's Exhibit No(s). 1 marked for*
11 *identification and received in evidence.)*

12 BY MS. SWANSON:

13 Q What did Joseph Bowers tell you happened that
14 night?

15 A During the first interview with Joseph Bowers he
16 said that he had gone out to the club that night with his
17 friend, Cole, who is Dante Bailey. During the course of the
18 evening Cole got into an argument with someone. Joey said
19 that he pulled him away from the argument back to a van. As
20 he was pulling him back to the van, shots started ringing
21 out towards them. He said as Cole pulled a pistol out of
22 his waistband and Mr. Bowers tried to prevent him from
23 firing, from what he said. He said that Cole was ignorant
24 and wouldn't listen to him. He said Cole stepped out from
25 behind the van and he was shot.

EXAMINATION OF JEREMIAH FRASER

1 And that was pretty much the extent of it.

2 He wouldn't identify anybody initially that he was with.

3 Nobody else that had gone to the club with them, or anybody
4 else that was in the van.

5 Q Okay. And at some point did another investigator
6 take over the interview?

7 A Yes, ma'am. Investigator Gobel took over part of
8 the way through the interview, yes.

9 Q Okay. Did any new information come to light at
10 that point?

11 A No. I don't believe so, no.

12 Q Okay. And did you have an occasion to speak with
13 Joseph Bowers again?

14 A I did. Once we booked him into the jail, he asked
15 to speak with me again. And, again, I went through Miranda
16 with him before I talked to him again.

17 Q Okay. And I'm going to show you what's been
18 marked as State's 2 and ask for you to identify that.

19 A This is the Miranda form that I used at the jail.

20 Q Is it the same sort of form that we just went
21 through?

22 A Yes, ma'am. It's the same one that we use.

23 Q And you went through it the same way?

24 A Yes, ma'am.

25 Q Is the only difference the time?

EXAMINATION OF JEREMIAH FRASER

1 A Yes, ma'am.

2 Q Okay. And Mr. Bowers understood all of his
3 rights?

4 A Yes, ma'am.

5 Q Never asked for an attorney?

6 A No, ma'am.

7 Q Okay. Thank you.

8 MS. SWANSON: State moves No. 2 into evidence.

9 THE COURT: Any objection?

10 MS. CAMPBELL: No objection.

11 THE COURT: Without objection, State's 2 is
12 admitted.

13 *(Whereupon, State's Exhibit No(s). 2 marked for*
14 *identification and received in evidence.)*

15 BY MS. SWANSON:

16 Q What did Joey tell you the second time?

17 A The second time, once we were at -- once I began
18 the interview -- I'm trying to flip through my notes, excuse
19 me.

20 Q Sure. Take your time.

21 A The second time he added who he had gone out to
22 the club with. He started naming the people that were there
23 with him, and he identified who was shooting. He said that
24 it was not him that was shooting, it was T Dog that was
25 shooting, and T Dog would be Terry Thornton.

EXAMINATION OF JEREMIAH FRASER

1 Q And are you familiar with Terry Thornton?

2 A I am. He's a black male from St. Helena Island.

3 Q Okay. Did you -- did you talk to Terry Thornton
4 as a result of the investigation?

5 A We did. Yes, ma'am.

6 Q Okay. Did you ever arrest Terry Thornton?

7 A No, we did not.

8 Q When Joseph Bowers was at the investigations
9 office, did you collect anything from him?

10 A I believe we collected GSR kits as well as
11 clothing.

12 Q Okay. I'm going to show you what's been marked as
13 State's 29 and ask that you identify this item, please.

14 A Yes, ma'am. This is a gunshot residue kit for
15 Joseph Bowers.

16 Q Okay. And that's the kit that you sealed up?

17 A Yes, ma'am.

18 Q And what did you do once you sealed it up?

19 A Turned it into evidence.

20 Q Okay. Can you describe for the jury how you
21 obtain GSR and -- and just, what is GSR? What does that
22 stand for?

23 A GSR is gunshot residue. Gunshot residue is -- I'm
24 not a scientist, but it's the particles that leave the
25 chamber of a gun when a gun is fired. You collect that by

EXAMINATION OF JEREMIAH FRASER

1 using what's called a dobber inside the gunshot residue kit.
2 The bottom of the dobber is sticky and it will pick up
3 particles that are on your hands, the palms of your hands,
4 on surfaces. You seal those up and you send those to
5 evidence -- or send those to SLED for testing, sorry.

6 Q Okay. At what time was the GSR taken from
7 Mr. Bowers' hands?

8 A 4:45.

9 Q In the morning or afternoon?

10 A In the afternoon --

11 Q Okay.

12 A -- of the 21st.

13 Q Okay. Thank you.

14 I'm going to hand you State's 35 and ask that
15 you identify this.

16 A This is the white shirt that I collected from Joey
17 Bowers.

18 Q Okay. And what did you do with it once you
19 collected it?

20 A Once I collected the shirt, I packaged it in a
21 paper evidence bag, I sealed it, and I submitted it for
22 evidence.

23 Q Who did you submit it to?

24 A I submitted it to Jen Snyder.

25 Q Okay. And then I'm going to hand you Exhibit 38

EXAMINATION OF JEREMIAH FRASER

1 and ask that you identify this item.

2 A These are the black shorts from Joseph Bowers.

3 Again, I packaged it in this paper evidence bag, sealed it,

4 and submitted it into evidence to Jen Snyder.

5 Q Okay. Thank you, Investigator.

6 MS. SWANSON: Beg the Court's indulgence?

7 THE COURT: Certainly.

8 BY MS. SWANSON:

9 Q Just going back to things that you collected from
10 Lucas Morgan, we mentioned that you collected a buccal swab.
11 Just briefly, what do you collect a buccal swab for?

12 A A buccal swab is a long Q tip. You swab the
13 inside of someone's mouth, collect the DNA standards and
14 known standard. I collected one from Lucas Morgan.

15 MS. SWANSON: Okay. Thank you, Investigator.

16 That's all I have.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Cross examination.

19 MS. CAMPBELL: Yes, Your Honor.

20 CROSS EXAMINATION

21 BY MS. CAMPBELL:

22 Q Good afternoon.

23 A Good afternoon, ma'am.

24 Q Did you video and audio tape your interview of
25 Joseph Bowers?

EXAMINATION OF JEREMIAH FRASER

1 A Yes, ma'am. We video taped the first interview at
2 the investigations office; the second interview was audio
3 taped. Yes, ma'am.

4 Q Thank you. And during your -- well, what time of
5 day did you go and pick up Joseph Bowers?

6 A I believe it was around 10:00 that morning.

7 Q And is it your testimony that you did not do the
8 GSR on him then, that you waited until 4:00, some, eight --
9 seven, six, seven -- eight hours afterwards?

10 A I believe that's right. Yes, ma'am.

11 Q So, as a law enforcement officer you have someone
12 that you believe is a suspect in a shooting and you have him
13 in your custody and you don't GSR his hands as soon as you
14 get him; is that what you're telling us?

15 A We were outside of the six-hour window already.

16 Q Okay. So it doesn't matter if you do it at
17 10:00 or 4:00, you're still outside that six-hour window?

18 A The six-hour window, yes, ma'am.

19 Q Okay. And so that's really irrelevant, then, the
20 GSR that you did, because it's outside the window?

21 A We still -- we still do them anyways, but, yes, it
22 won't be tested. Yes, ma'am.

23 Q Better practice perhaps to do it earlier rather
24 than later though, correct?

25 A If it's -- again, if it's outside the six-hour

EXAMINATION OF JEREMIAH FRASER

1 window, it doesn't matter.

2 Q So why did you do it at 4:00 then?

3 A To do it, just in case.

4 Q To see --

5 A It's just a good idea to cover your bases, no
6 matter what you're doing.

7 Q You told Joseph Bowers -- because, I mean, in your
8 mind, when you were talking to him that next day, you had
9 your man, right?

10 A I'm sorry?

11 Q In your mind, you had your man when you were
12 talking to Joseph Bowers the day after the shooting, didn't
13 you?

14 A Ma'am, based upon the information that I had, I
15 conducted the interview. And that's based on the
16 information that I had.

17 Q Uh-huh. And you believed when you were
18 interviewing him that you had the right guy, right?

19 A Based on the interviews that I conducted, yes,
20 ma'am.

21 Q Okay. And with that belief in mind, moving
22 through that interview, you said to Joseph Bowers, Look,
23 Joe, just tell me you picked up the gun. If you picked up
24 the gun, you did it in self-defense. Five times you told
25 him that, right?

EXAMINATION OF JEREMIAH FRASER

1 A That sounds correct, yes.

2 Q And Joseph Bowers told you, I didn't have a gun, I
3 didn't shoot a gun, correct?

4 A That's correct. He did.

5 Q Now, at what point do you realize that you have
6 given the name Joey Chaplin as the second shooter to all of
7 law enforcement, moments after the shooting that night?
8 When do you realize you've given the name Joey Chaplin to
9 everybody?

10 A I don't recall doing that.

11 Q Okay.

12 MS. CAMPBELL: May I approach?

13 THE COURT: You may.

14 MS. CAMPBELL: Let me grab the actual CAP report
15 that she's got here, if I can.

16 THE COURT: It's 61.

17 MS. CAMPBELL: May I approach the witness?

18 THE COURT: Yes, you may.

19 BY MS. CAMPBELL:

20 Q I am going to hand you, Officer Fraser, what's
21 been admitted as State's Exhibit 61 and ask you to refer to
22 Page 13 with me, please.

23 A Yes, ma'am.

24 Q On Page 13 of the CAPS, are you not Unit D-10?

25 A Yes, ma'am.

EXAMINATION OF JEREMIAH FRASER

1 Q Okay. And Unit D-10 puts out, possible second
2 shooter, Joey Chaplin?

3 A Followed by Opie, white male from Tom Fripp.

4 Q I get the overlay of white male, Tom Fripp, over
5 Joey Chaplin. I mean, I get that. But what I'm asking you
6 is, are you not D-10, and did you not put out, possible
7 second shooter, Joey Chaplin?

8 A I don't know that I did. Joey Chaplin is also
9 from the same general area of St. Helena. He is a shorter
10 black male. He's definitely not a white male that goes by
11 Opie.

12 Q So are you saying then that this Nicole Slaussen,
13 who works for dispatch, when you say Joey Bowers, she hears
14 Joey Chaplin, and so she's telling all of law enforcement
15 that night to be on the lookout for the wrong guy, it's not
16 your fault, it's her fault?

17 MS. SWANSON: Objection, Your Honor. There's no
18 way that he can know that.

19 THE COURT: Well, I'll allow him to answer the
20 question. He can explain it if we wants to.

21 THE WITNESS: Sure. Thank you, Judge.

22 I would -- I'll say that Joey -- Joey Bowers is
23 known predominantly by Opie, which is what's in this
24 CAP report along with Joe Chaplin.

25 Now, if I said Joey Chaplin or she recorded Joey

EXAMINATION OF JEREMIAH FRASER

1 Chaplin, I don't know. But what's important to me in
2 this is that Opie, a white male from Tom Fripp, is
3 what's in the same line of that.

4 BY MS. CAMPBELL:

5 Q Thank you. I appreciate that.

6 A Yes, ma'am.

7 Q And so D-10 is you.

8 A Yes, ma'am.

9 Q And the report says, possible second shooter, Joey
10 Chaplin.

11 A Opie, white male, Tom Fripp. Yes, ma'am.

12 Q Correct. The overlay is apparent. Thank you.

13 Now, Joey Chaplin was at the Midnight Soul
14 Patrol on 6/21/2012, correct?

15 A Yes, ma'am. I believe he was.

16 Q Okay. And you're familiar with Joey Chaplin from
17 previous arrests; are you not?

18 A Yes, I am.

19 Q And some of those arrests include unlawful
20 carrying of a gun, correct?

21 A Yes, it does.

22 MS. CAMPBELL: That's all I have.

23 THE COURT: Okay. Redirect.

24 MS. SWANSON: Thank you. Just briefly.

25 REDIRECT EXAMINATION

EXAMINATION OF JEREMIAH FRASER

1 BY MS. SWANSON:

2 Q Investigator, when you interview someone, do you
3 employ what's known as investigative techniques?

4 A Yes, we do. When you're conducting an interview
5 with somebody, generally speaking you're not conducting an
6 interview with somebody that's done something nice. And
7 what you try to do is present the situation in the best
8 light possible to them, so that they'll start talking to
9 you, and that's exactly what I did in this case.

10 Q Okay. And was Joey adamant that he didn't have a
11 gun that night?

12 A Yes, he was.

13 Q Was he adamant that he didn't shoot a gun?

14 A Yes, he was.

15 Q Was he adamant that he didn't touch Cole's gun?

16 A Yes, he was.

17 Q Thank you.

18 THE COURT: Recross?

19 MS. CAMPBELL: No.

20 THE COURT: Thank you. You may step down.

21 THE WITNESS: Thank you, Judge.

22 THE COURT: Do you wish him to be excused?

23 MS. SWANSON: I'm sorry?

24 THE COURT: Do you wish him to be excused?

25 MS. SWANSON: Yes, he may be excused.

EXAMINATION OF JEREMIAH FRASER

1 THE COURT: Any objection?

2 MS. CAMPBELL: No, Judge.

3 THE COURT: Investigator Fraser, you are also free
4 to leave.

5 WITNESS: Thank you, Judge.

6 THE COURT: Thank you.

7 MS. SWANSON: Thank Your Honor.

8 The State calls Jeff Vortisch.

9 (The Witness was sworn.)

10 THE WITNESS: Yes, ma'am.

11 Thereupon,

12 JEFF VORTISCH

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 THE CLERK: Please be seated. State and spell
16 your name for the Court.

17 THE WITNESS: Jeff Vortisch. V, as in Victor,
18 O-R-T, as in Tom, I-S-C-H.

19 DIRECT EXAMINATION

20 BY MS. SWANSON:

21 Q Thank you. Is it lieutenant?

22 A Yes, ma'am.

23 Q Are where do you work, Lieutenant?

24 A Beaufort County Detention Center.

25 Q Okay. And what do you do there?

EXAMINATION OF JEFF VORTISCH

1 A I run the Office of Professional Standards.

2 Q What does that mean?

3 A Internal affairs, training, accreditation.

4 Certain things, whatever the director deems necessary.

5 Q Okay. And as part of your job duties, do you
6 accept subpoenas?

7 A Yes, ma'am, I do.

8 Q Okay. I'm going to show you what's been marked as
9 66 and 67, State's Exhibits, and ask -- this is purely for
10 identification. I just want to ask what these documents
11 are.

12 *(Whereupon, State's Exhibit No(s). 66-67 marked*
13 *for identification and received in evidence.)*

14 A They are subpoenas that was given to myself
15 requesting phone calls from Joseph Bowers on two different
16 dates in 2012.

17 BY MS. SWANSON:

18 Q Okay. What are those dates?

19 A June --

20 Q Phone calls from what dates?

21 A Okay. June 21st, 2012 through August 31st of 2012
22 and September the 1st of 2012 through November 30th of 2012.

23 Q Okay. Inmates phone calls are recorded?

24 A They are.

25 Q All right. And how do you know what inmate the

EXAMINATION OF JEFF VORTISCH

1 phone call relates to?

2 A When a person is processed into the facility, they
3 are assigned a unique identifying number. This same number
4 is then entered into the phone system, and it activates that
5 person's phone account in the phone system. When that
6 person wants to make a phone call the phone instructs them
7 to enter that five-digit number into the phone, and then the
8 person states their first and last name.

9 Q Okay. And did you turn over two discs of Joseph
10 Bowers' phone calls to Investigator Zsamar as a result of
11 being served those subpoenas?

12 A I did.

13 Q Okay. And are those recordings kept in the
14 regular course of business?

15 A They are.

16 Q Okay.

17 MS. SWANSON: Your Honor, at this time I'd like to
18 play a phone call from Mr. Bowers. I have the complete
19 phone call that I'd like to enter as Exhibit 39;
20 however, I'd like to just play a three-minute portion.

21 THE COURT: Is there any objection?

22 MS. CAMPBELL: Subject to some previous rulings,
23 Your Honor.

24 THE COURT: Very well. Subject to the objection
25 that has been argued and briefed and rulings entered in

EXAMINATION OF JEFF VORTISCH

1 the record in this proceeding, you may publish that
2 portion.

3 As I understand the disc contains other calls as
4 well, but you're not publishing those at this point.

5 MS. SWANSON: I made a copy that contains just
6 this phone call, but I'm only publishing a portion.

7 THE COURT: Okay. Let's -- we agree for purposes
8 of the record that we're publishing a portion, but the
9 disc does not reflect the response to the subpoena.
10 But you don't have any objection to having the original
11 disc in that has all the phone calls?

12 MS. CAMPBELL: Correct. As long as it's clear
13 that the only portion that's admitted into evidence is
14 the one section.

15 THE COURT: Yeah, that she's going to publish to
16 which you object.

17 MS. CAMPBELL: Okay.

18 THE COURT: But so that we're clear on the record,
19 you accept that this copy is a duplication of what's on
20 the original?

21 MS. CAMPBELL: I do. Yes, sir.

22 THE COURT: Okay.

23 MS. SWANSON: Thank Your Honor.

24 THE COURT: Has it been marked and entered into
25 the record as yet, that disc?

EXAMINATION OF JEFF VORTISCH

1 MS. SWANSON: Yes, sir. It's State's 39. And
2 I've got the portion on my computer so I'm going to
3 play it.

4 THE COURT: State's 39 is admitted subject to
5 objection of counsel.

6 MS. SWANSON: Thank you.

7 *(Whereupon, State's Exhibit No(s). 39 marked for*
8 *identification and received in evidence.)*

9 *(Audio playing.)*

10 MS. SWANSON: Thank you, Lieutenant Vortisch.
11 That's all I have for you.

12 THE COURT: Cross examination.

13 MS. CAMPBELL: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MS. CAMPBELL:

16 Q Lieutenant Vortisch, good afternoon.

17 A Good afternoon.

18 Q You're the telecommunications guru at the
19 detention center, correct? You know all about phone calls
20 and how it all works, right?

21 A Okay. Yes, ma'am.

22 Q Yes, you do. You're in charge of it, aren't you?

23 A Yes, ma'am.

24 Q Okay. And, in fact, when -- when -- when I set up
25 calls from my office, like to an attorney, we establish that

EXAMINATION OF JEFF VORTISCH

1 those calls are not recorded, correct?

2 A Yes, ma'am.

3 Q Okay. And so when someone is in the detention
4 center, if they're not talking to their attorney, on every
5 single phone call they hear a recording that tells them
6 every single time, This call is being recorded, right?

7 A Yes, ma'am.

8 Q Okay. Would it be fair to say that while Joseph
9 was at the detention center for a couple of months after he
10 was arrested by the sheriff's department that he made
11 hundreds of phone calls?

12 A He made phone calls. I don't know how many
13 without looking at his records. It's possible, I just don't
14 know.

15 Q So, when you pulled up the discs, and you turned
16 them over to the State, you don't know exactly how many
17 phone calls he made?

18 A Yes, ma'am, I do.

19 Q You do.

20 A On those discs, but not totality wise.

21 Q Okay. For a fair number, less than a hundred?

22 A I honestly do not --

23 Q No idea?

24 A I don't know, ma'am. We -- I don't know.

25 Q And you have absolutely no doubt in your mind that

EXAMINATION OF JEFF VORTISCH

1 when Joseph Bowers was on the phone at the detention center
2 he knew his phone calls were being recorded, right?

3 A He was told they was being recorded and subject to
4 monitoring on every phone call except attorney/client.

5 MS. CAMPBELL: Exactly. Thank you. That's all I
6 have.

7 THE COURT: Redirect.

8 REDIRECT EXAMINATION

9 BY MS. SWANSON:

10 Q And so he heard that message hundreds of times.

11 A Could have, yes, ma'am.

12 MS. SWANSON: Okay. Thank you.

13 THE COURT: Recross?

14 MS. CAMPBELL: No.

15 THE COURT: Thank you. You can step down.

16 Do you wish the witness to be excused?

17 MS. SWANSON: Yes, sir.

18 THE COURT: Any objection?

19 MS. CAMPBELL: No, sir.

20 THE COURT: You are free to leave.

21 THE WITNESS: Thank you, sir.

22 THE COURT: Thank you.

23 Call your next witness, please.

24 MS. SWANSON: The State calls Jennifer Snyder.

25 Thereupon,

EXAMINATION OF JENNIFER SNYDER

1 JENNIFER SNYDER

2 was called as a witness, having been first duly sworn,
3 was examined and testified as follows:

4 THE CLERK: Thank you. Please be seated. State
5 and spell your name for the Court.

6 THE WITNESS: Jennifer Snyder, J-E-N-N-I-F-E-R,
7 S-N-Y-D-E-R.

8 DIRECT EXAMINATION

9 BY MS. SWANSON:

10 Q Good afternoon, Officer Snyder. Back in June of
11 2012, what department did you work in?

12 A Worked in our evidence department as an evidence
13 custodian.

14 Q Okay. And so did you receive evidence that was
15 submitted by Investigator Zsamar in this case?

16 A Yes, I did.

17 Q And did you also take some of that evidence to
18 South Carolina Law Enforcement Division for analysis?

19 A Yes, I did.

20 Q Okay. I am going to hand you State's 68 and ask
21 that you identify this document, please.

22 A State's Exhibit 68 is a SLED laboratory forensic
23 service request.

24 Q Okay. And is that a form that was filled out when
25 you took the items submitted by Investigator Zsamar to SLED?

EXAMINATION OF JENNIFER SNYDER

1 A Yes.

2 Q Okay. And is your signature at the bottom?

3 A Yes, it is.

4 Q And when you turned all of these items into SLED,
5 were they sealed?

6 A Yes.

7 Q In your presence?

8 A Yes.

9 Q Okay.

10 MS. SWANSON: At this time, I would like to move
11 68 into evidence and have the witness refer to it as we
12 go through these items.

13 THE COURT: Any objection?

14 MS. CAMPBELL: No objection.

15 THE COURT: State's 68 is admitted without
16 objection.

17 *(Whereupon, State's Exhibit No(s). 68 marked for*
18 *identification and received in evidence.)*

19 MS. SWANSON: Okay. Let's see. Beg the Court's
20 indulgence.

21 THE COURT: Certainly.

22 BY MS. SWANSON:

23 Q I'm going to show you a few items that were
24 actually taken to SLED by another officer in investigation,
25 but it appears that you received them. Let's go through

EXAMINATION OF JENNIFER SNYDER

1 those first.

2 These are State's 5, 7, 8, and 9. Can you
3 please identify these and identify who you received them
4 from.

5 A Yes. Do you want me to identify what's inside of
6 them?

7 Q Just if you can read the item.

8 A Description?

9 Q Yes. State the exhibit number and then the
10 description, please.

11 A Okay. This is Exhibit No. 5, State's Exhibit No.
12 5. And the description is a projectile No. 7. And I
13 believe I received these from Andrew Rice. That looks like
14 his signature.

15 State's Exhibit No. 7 is also a projectile,
16 No. 6, received from Andrew Rice.

17 State's Exhibit No. 8 is projectile No. 1
18 that I received from Andrew Rice.

19 State's Exhibit No. 9 is a projectile, No. 2,
20 and that was also received from Andrew Rice. And that's it.

21 Q Okay. Thank you. I'm going to put those to the
22 side for the moment, and go through the remaining items that
23 you received from Investigator Zsamar. We'll start with
24 State's Exhibit 3, which is the Glock 26, and that is SLED
25 item No. 28.

EXAMINATION OF JENNIFER SNYDER

1 Did you receive this from Investigator Zsamar
2 and then take this item SLED?

3 A Yes, I did.

4 Q Okay. And that's the Glock?

5 A Yes, it is.

6 Q All right. I hand you State's Exhibit 4. This is
7 labeled, Flare gun. This is SLED item No. 8. And I'm going
8 to ask you who you received this from in evidence, and if
9 you took this item to SLED?

10 A I received this item from Sergeant Zsamar, and
11 yes, I did take this item to SLED.

12 Q Okay. I'm going to hand you State's 30 and 31.
13 These are SLED items 9 and 10. Who did you receive these
14 from, and did you take them to SLED?

15 A I received both of these items from Sergeant
16 Zsamar, and I did take them to SLED.

17 Q Okay. And what are those?

18 A These are State's Exhibit 31, is one Orion red
19 flare, and State's Exhibit No. 30 is one Orion discharged
20 red flare.

21 Q Okay. Thank you.

22 I'm going to hand you State's 32 -- oh, I'm
23 sorry -- no, I'm not. Well, yes, I am.

24 I'm going to hand you State's 32 and 33 and
25 just ask you if you received these items into the evidence.

EXAMINATION OF JENNIFER SNYDER

1 department?

2 A Yes, I received both items.

3 Q Okay. And who did you receive those from?

4 A I received both items from Sergeant Zsamar.

5 Q Okay. And what are those items?

6 A State's Exhibit No. 32 is one bullet, spent round.

7 And State's Exhibit No. 33 is one bullet fragment.

8 Q Okay. Are those from vehicles, does it indicate?

9 A Yes. They're both from vehicles.

10 Q Okay. Thank you.

11 BY MS. SWANSON:

12 Q Okay. I'm going to hand you a series of items,
13 eight items, labeled Sphere nine millimeter Luger casings.
14 They are Exhibit Nos. 10 through 17, SLED items. These are
15 going to jump around.

16 If you can actually just refer to the SLED
17 item number that's located in red, and it says, I-40 or
18 I-18, and just double check that these are all items that
19 you submitted to SLED after receiving them into evidence.

20 A Okay.

21 Q And who did you receive those from?

22 A Yes, these are all items that I did take to SLED,
23 and I received all of them from Sergeant Zsamar.

24 Q Thank you.

25 A From the -- actually from the -- one is from the

EXAMINATION OF JENNIFER SNYDER

1 temp storage locker, but it was originally from him to temp
2 storage.

3 Q Okay. Thank you.

4 I'm going to ask that you do the same thing
5 with -- with ten items labeled Wynn nine millimeter Luger
6 casings. These are State's Exhibits 18 through 27, and I
7 ask if you received these, and if you took them to SLED?

8 A Yes. I received all of these, and I did take them
9 to SLED, and they were received from Sergeant Zsamar.

10 Q Okay. Thank you, ma'am.

11 I'm going to hand you State's 34 and ask you
12 if you received this item, what it is, and who you received
13 it from.

14 A State's Exhibit 34 I received from Andrew Rice.

15 Q And what is it?

16 A It is an orange-colored shirt and khaki pants from
17 S Humphries.

18 Q And did you take that item to SLED?

19 A Yes, I did.

20 Q Okay. Thank you.

21 And that's SLED items No. 5?

22 A Yes.

23 Q Okay. I'm handing you State's 35, which is SLED
24 item 29. Did you receive this item?

25 A Yes. I received this from Staff Sergeant Fraser.

EXAMINATION OF JENNIFER SNYDER

- 1 Q What is it?
- 2 A This is a white T-shirt from Joseph Bowers.
- 3 Q And did you take that to SLED?
- 4 A Yes, I did.
- 5 Q Okay. And that's item 29?
- 6 A Yes.
- 7 Q Thank you.
- 8 State's 38, did you receive this SLED item
- 9 30?
- 10 A Yes, I did, and I also received this from Staff
- 11 Sergeant Fraser.
- 12 Q And you took it to SLED?
- 13 A I did.
- 14 Q What is it labeled as?
- 15 A As black shorts worn by Joseph Bowers.
- 16 Q Okay. Last item, State's 29. Who did you receive
- 17 that from?
- 18 A Exhibit 29 I received from Staff Sergeant Fraser.
- 19 Q What is it?
- 20 A This is a gunshot residue kit.
- 21 Q From?
- 22 A Taken from Joseph Bowers.
- 23 Q Okay. And did you deliver that to SLED?
- 24 A Yes, I did.
- 25 Q Thank you.

EXAMINATION OF JENNIFER SNYDER

1 MS. SWANSON: Thank you. That's all I have.

2 THE COURT: Cross-examine.

3 MS. CAMPBELL: Nothing.

4 THE COURT: Thank you. Call your next witness.

5 MS. SWANSON: Thank you. State calls Mike

6 Perkins.

7 Thereupon,

8 MICHAEL PERKINS

9 was called as a witness, having been first duly sworn,

10 was examined and testified as follows:

11 THE CLERK: Thank you. Please be seated and state

12 and spell your name for the Court.

13 THE WITNESS: First name is Michael,

14 M-I-C-H-A-E-L. Last name Perkins, P-E-R-K-I-N-S.

15 DIRECT EXAMINATION

16 BY MS. SWANSON:

17 Q Good afternoon.

18 A Good afternoon.

19 Q Officer Perkins, what department do you work in?

20 A Beaufort County Sheriff's Office evidence section.

21 Q And as part of your duties do you take items to

22 SLED for analysis?

23 A Yes.

24 Q Okay. And I'm going to hand you a SLED forensic

25 request form, Exhibit 69 and ask for you to identify this.

EXAMINATION OF MICHAEL PERKINS

1 A This is a SLED form that I filled out and took to
2 SLED.

3 Q Okay.

4 MS. SWANSON: State moves 69 into evidence,
5 please?

6 THE COURT: Any objection?

7 MS. CAMPBELL: No objection.

8 THE COURT: Without objection, State's 69 is
9 admitted.

10 *(Whereupon, State's Exhibit No(s). 69 marked for*
11 *identification and received in evidence.)*

12 BY MS. SWANSON:

13 Q Okay. And you can refer to this, Officer Perkins,
14 is this just simply an inventory of what you delivered to be
15 analyzed?

16 A Yes.

17 Q Okay. I'm going to show you what's been marked as
18 State's 32, SLED item 59, and ask that -- if you delivered
19 this item?

20 A Yes, I did.

21 Q Okay. And let me ask you, in reference to this
22 item and all of the others that you delivered, were they
23 sealed either prior to or in your presence by SLED?

24 A Yes.

25 Q Okay. All right. So, that's Exhibit 32, SLED

EXAMINATION OF MICHAEL PERKINS

1 item 59.

2 This is Exhibit 33, SLED item 60. Did you
3 deliver this item?

4 A Yes, I did.

5 Q Okay. What is it?

6 A It's a --

7 Q You can just read the description.

8 A It's one fired bullet -- well, actually, I'm
9 sorry. This one says one bullet fragment.

10 Q Okay. One bullet fragment.

11 And I'm going to hand you State's 5, listed
12 as projectile No. 7, ceiling fan of club. This is SLED item
13 56. Did you deliver this items?

14 A Yes, I did.

15 Q All right. State's 7, SLED item 55, listed as
16 projectile No. 6, Midnight Soul Patrol, inside pool room.
17 Did you deliver this item?

18 A Yes, I did.

19 Q Okay. State's 8, SLED item 53, listed as
20 projectile No. 1, Midnight Soul Patrol, inside behind DJ
21 booth. Did you deliver that item?

22 A Yes, I did.

23 Q Okay. And finally, State's 9, this is SLED item
24 54, listed as projectile No. 2, Soul Patrol, inside, behind
25 DJ booth. Did you deliver this item?

EXAMINATION OF MICHAEL PERKINS

1 A Yes.

2 Q Okay.

3 MS. SWANSON: Thank you, Officer Perkins. I have
4 nothing further.

5 THE COURT: Any questions?

6 MS. CAMPBELL: No, sir.

7 THE COURT: Thank you. You may step down.

8 THE WITNESS: Thank you.

9 MS. SWANSON: Those are all my witnesses for this
10 afternoon.

11 THE COURT: All right. That's fine.

12 Thank you, ladies and gentlemen. The next
13 witnesses are scheduled for the morning at 9:30. We
14 finished a little earlier. We thank you for your
15 perseverance and going longer. We finished early and
16 we get to leave a little early.

17 Please understand, you started hearing the
18 testimony obviously in this case. It would be improper
19 for to you discuss this case among yourselves or with
20 anyone outside of the courtroom at any time, and that
21 includes anyone that might be at home.

22 I would imagine the first question that will be
23 asked is what are you doing, what's the case about, and
24 the great human temptation would be to talk about it.
25 If you do you will have commenced your deliberations

1 And I anticipated this, and it's not uncommon.
2 Sometimes they are and sometimes they aren't what you
3 requested, but I've inquired of both counsel. The
4 question is: Is there a transcript of the telephone
5 call? And there is not. That is not -- that will not
6 be a part of the evidence that you will consider.

7 We'll talk about the phone call, you will
8 certainly have an opportunity to rehear that, if it's
9 necessary. The only thing is we will bring you into
10 the Courtroom to accomplish that, but we'll discuss
11 that more during the charge.

12 Thank you, sir. But thank you for your inquiry as
13 well. Thank you so much.

14 All right. Good morning. Ms. Swanson, you may
15 call your next witness.

16 MS. SWANSON: Thank Your Honor. The State calls
17 Dr. Saeed Rehman.

18 Thereupon,

19 SAEED REHMAN

20 was called as a witness, having been first duly sworn,
21 was examined and testified as follows:

22 THE CLERK: Please be seated, state and spell your
23 name for the Court.

24 WITNESS: My name is Saeed Rehman, S-A-E-E-D,
25 R-E-H-M-A-N.

1 DIRECT EXAMINATION

2 BY MS. SWANSON:

3 Q Good morning, Dr. Rehman.

4 A Good morning.

5 Q Are you ill today?

6 A Yes, ma'am. For the last two days, yes.

7 Q Okay. And you're going to speak as closely to the
8 microphone as possible for us?

9 A I will.

10 Q Thank you.

11 Where do you work, Dr. Rehman?

12 A Beaufort Memorial Hospital emergency department.

13 Q How long have you been an ER doctor?

14 A 18 years here in Beaufort.

15 Q Okay. And have you ever testified in Court?

16 A Yes, ma'am.

17 Q Thank you.

18 Did you treat three gunshot wound victims the
19 night of June 21st, 2012 at the ER?

20 A That's correct, ma'am.

21 Q Who did you treat that night?

22 A So, I had three victims: Mr. Richard Earl Green,
23 Mr. Michael Morgan, and Mr. Robert Goodwine.

24 Q Okay. And let's begin with Mr. Richard Green.

25 What was his condition when he arrived?

1 A When he arrived he was shot on his back, his
2 abdomen. He was in a great deal of pain. He wasn't able to
3 move his lower extremity. He sustained a spinal cord
4 injury.

5 Q A spinal cord injury?

6 A That's correct.

7 Q Okay. And was this a through and through shot?

8 A Yes, ma'am.

9 Q Okay. And was he sent to another facility to
10 receive more treatment?

11 A Yes, ma'am.

12 Q Okay. Let's move on to Michael Morgan. What was
13 his condition when you first saw him?

14 A When he arrived he had been shot in his abdomen,
15 and it went through his abdomen as well. And he was --
16 initially he was talking, but eventually deteriorated, which
17 prompted a visit to the operating room in the hospital.

18 Q Okay. So, this condition deteriorated, and you
19 all took him to the OR?

20 A That's correct, ma'am.

21 Q And what did you find when he was opened up?

22 A What I was told by Dr. Crookes, the bullet had
23 perforated one of the main arteries in his extremities. He
24 had blood in his abdomen.

25 Q Okay. So, he was hemorrhaging internally?

1 A That's correct.

2 Q All right. And was he eventually transferred to
3 another facility?

4 A Yes, ma'am. He was transferred from the operating
5 room to Medical University.

6 Q Okay. Was he actually life flighted to the
7 Medical University?

8 A That's correct, ma'am.

9 Q Robert Goodwine, what was his condition?

10 A He was shot in his leg. He had a through and
11 through wound, which spared his bones. So, he was treated
12 and released that day.

13 Q Okay. So, also a through and through?

14 A That's correct.

15 Q Okay.

16 MS. SWANSON: Thank you, Dr. Rehman. Nothing
17 further.

18 THE COURT: Cross examination.

19 MS. CAMPBELL: May I mark this for identification?

20 THE COURT: Sure. Absolutely.

21 MS. CAMPBELL: Defendant's 3.

22 *(Whereupon, Defendant's Exhibit No(s). 3 marked*
23 *for identification and received in evidence.)*

24 CROSS EXAMINATION

25

1 BY MS. CAMPBELL:

2 Q Dr. Rehman, on 6/21/2012, you were the ER
3 physician attending to the victims who were brought to
4 Beaufort Memorial, right?

5 A That's correct.

6 Q Okay. And your emergency department keeps records
7 of your treatment of patients as they come into the ER,
8 correct?

9 A That's correct.

10 Q Your records for the care of your patients are
11 critical to preserving what happened, who was there, and
12 what you did for that patient, right?

13 A That's correct.

14 Q Okay. Some of the things that you note in those
15 records are whether or not a patient had an MRI or an x-ray,
16 correct?

17 A Yes, ma'am.

18 Q Okay. Some of the records that you've provided in
19 this case -- I'll hand you what's been marked Defendant's
20 Exhibit 3 for identification purposes, Page 3 of 5 of the
21 emergency room notes.

22 Could you indicate at the time that is
23 highlighted what was occurring with patient Michael Morgan?
24 Give us the time and what was occurring.

25 A This is the nurse's note. At 3:28 it says, ED

1 physician to see patient. Surgeon on call is Dr. Cisco to
2 see the patient.

3 Q And?

4 A That is where the line ends that you asked me to
5 read, the highlighted area.

6 Q There's an additional sentence, Dr. Rehman. What
7 does that say?

8 A Dr. Cisco is pleased to see patient.

9 Q Is pleased to see patient at 3:28 a.m.?

10 A I don't know. It's the nurse's note; it's not my
11 note.

12 Q Okay. And we've established that these are the
13 notes from Beaufort Memorial Hospital emergency room, that
14 are critical that they be correct, right?

15 A Yes, ma'am.

16 Q And it says that the emergency department
17 physician, which would be you --

18 A That's correct.

19 Q -- in to see the patient, Michael Morgan. Surgeon
20 on call, Dr. Cisco, in to see the patient, Michael Morgan,
21 correct? And then the police in to see the patient at
22 3:28 a.m., correct?

23 A Correct. It could be a typo, either/or.

24 Q A typo?

25 A It wasn't me, I didn't do it, so I can't speak for

1 the other person.

2 Q Okay. But that's what your records say, correct,
3 Dr. Rehman?

4 A It is in there, yes, ma'am.

5 Q Thank you so much.

6 THE COURT: Redirect.

7 MS. SWANSON: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. SWANSON:

10 Q I'm sorry. Where did Defense -- does Dr. Rehman
11 have it? Okay. Thank you.

12 I'm going to show you the same document that
13 Ms. Campbell showed you, Defendant's Exhibit 3, and ask for
14 you to read the note from 4:01. So, at 3:28 the police
15 come, and then at 4:01 what does it say?

16 A It was 3:39 -- 4:01, to OR, critical condition.

17 Q To OR --

18 A Operating room.

19 Q -- critical condition?

20 A That's correct.

21 Q And that's is in reference to Michael Morgan?

22 A That's correct.

23 Q Thank you.

24 THE COURT: Recross?

25 MS. CAMPBELL: We are done.

1 THE COURT: You wish the witness to be excused?

2 MS. SWANSON: Please.

3 THE COURT: Any objection?

4 MS. CAMPBELL: No objection.

5 THE COURT: You're released and free to leave.

6 Have a good day.

7 MS. CAMPBELL: And, Your Honor, just for
8 clarification, I believe Dr. Rehman is here under my
9 subpoena as well, and I would release him from that as
10 well.

11 THE WITNESS: Thank you.

12 THE COURT: Okay. Call your next witness, please.

13 MS. SWANSON: Thank you. State calls Dr. Bruce
14 Crookes.

15 Your Honor, for the record, I did hand Dr. Rehman
16 State's Exhibit 70, 71, and 72, the notes from the ER
17 on all three victims just so that he can refer to
18 those. I'm going to just leave them here for the
19 Court.

20 THE COURT: They were not admitted then.

21 MS. SWANSON: They were not, just for
22 identification.

23 *(Whereupon, State's Exhibit No(s). 70-72 marked*
24 *for identification.)*

25 Thereupon,

1 DR. BRUCE CROOKES

2 was called as a witness, having been first duly sworn,

3 was examined and testified as follows:

4 THE CLERK: Please be seated, state and spell your
5 name for the Court.

6 THE WITNESS: I'm Dr. Bruce, B-R-U-C-E, Crookes,
7 C-R-O-O-K-E-S.

8 DIRECT EXAMINATION

9 BY MS. SWANSON:

10 Q Good morning, Dr. Crookes.

11 A Good morning.

12 Q Can you tell us where you work, please?

13 A I am a trauma surgeon and the trauma medical
14 director at the Medical University of South Carolina in
15 Charleston.

16 Q Okay. And do you also teach?

17 A I do.

18 Q And what is your area of expertise?

19 A I'm a general surgeon. I did a fellowship in
20 trauma surgery, and one in surgical critical care.

21 Q Okay. Did you treat Michael Morgan on June 21st
22 of 2012?

23 A I did, yes.

24 Q All right. And I can hand you what I have marked
25 as State's 73 for identification.

1 *(Whereupon, State's Exhibit No(s). 73 marked for*
2 *identification.)*

3 BY MS. SWANSON:

4 Q Which are your surgery notes, should you need to
5 refer to them.

6 A Thank you.

7 Q Please tell us how Michael Morgan arrived at MUSC.

8 A So, he -- my partner who was on that morning, who
9 was Dr. Stephanie Montgomery, received a phone call from
10 surgeons at Beaufort that they had a gunshot wound victim
11 who they felt had an injury to either his iliac artery or
12 his iliac vein. Those are two large blood vessels that are
13 down in your pelvis, and they are typically very difficult
14 to access and control. They felt that they could not
15 control the bleeding from this area and requested he be
16 transferred to us. We're the level one trauma center in the
17 region, so we gladly accepted the patient.

18 Q Okay. And how was he transported from Beaufort
19 Memorial?

20 A He was transferred to us by air.

21 Q And when did he arrive?

22 A He arrived at approximately 8 o'clock in the
23 morning. My partner and I are well familiar with both --
24 with this type of an injury and know that frequently these
25 are lethal. What we arrange to do is to bypass the

1 emergency room and have the patient go straight from the
2 helipad directly through the emergency room straight up to
3 the operating room where we -- and we met him at the door
4 and transported him up ourselves.

5 Q And what happened once you got into the operating
6 room?

7 A When we moved him over from the gurney to the
8 operating table, the patient was in cardiac arrest. So,
9 what we tried to do is, we tried to -- we did CPR on the
10 patient. Opened his abdomen very quickly, and got control
11 of what we call the aorta, which is the largest blood vessel
12 in your body, to try to prevent any further hemorrhage from
13 the area. And despite our attempts the patient could not be
14 revived, and he died in the operating room.

15 Q Okay. What time did he expire?

16 A I believe he arrived at 7:35 in the morning, and I
17 pronounced him deceased at 7:43. So, he was literally at
18 our trauma center for about eight minutes..

19 Q And in your practice are you familiar with
20 injuries or penetrating wounds to the iliac?

21 A Yes.

22 Q All right. Talk a little bit about how serious of
23 an injury those are.

24 A So, at baseline, if you have a penetrating wound
25 to this area, a gunshot or a stab wound, these are in the

1 large series that we have, and most of them are from urban
2 trauma settings, particularly the biggest area is in
3 Detroit, where you have very short transport times from the
4 field to the operating room. The mortality of these
5 operations -- injuries is about 50 percent. So, one out of
6 two people die at baseline.

7 If they come to your hospital and their blood
8 pressure is low, the mortality from this type of injury is
9 about 90 percent. So, nine out of ten will die if they come
10 in with a low blood pressure.

11 In a rural trauma setting, like we are here,
12 where the transport time from the field to the hospital, in
13 our case the trauma center is very long, his chance of
14 survival was virtually non existent. We review every death
15 at our trauma center, and we have nine trauma surgeons. We
16 all sit down in a multi disciplinary fashion to review every
17 death. And his death was found to be a mortality without
18 opportunity for improvement. Meaning, he was expected
19 death, from our end.

20 MS. SWANSON: Thank you, Dr. Crookes. I don't
21 have anything further.

22 MS. CAMPBELL: No questions.

23 THE COURT: Thank you. You may step down, Dr.
24 Crookes.

25 Do you wish the witness to be excused?

1 MS. SWANSON: Yes, sir.

2 THE COURT: Any objection?

3 MS. CAMPBELL: No, sir.

4 THE COURT: Thank you. You may be excused.

5 MS. SWANSON: The State calls Dr. Cynthia Schandl.

6 Your Honor, we're going to move on to Jennifer
7 Stoner.

8 THE COURT: That's fine.

9 MS. SWANSON: Ms. Schandl is here. I believe she
10 just might have stepped into the restroom.

11 THE COURT: Not a problem. Thank you.

12 (Pause.)

13 MS. SWANSON: Thank you.

14 We actually do have Dr. Schandl.

15 THE COURT: All right.

16 (The Witness is sworn.)

17 THE WITNESS: Yes, I do.

18 Thereupon,

19 DR. CYNTHIA SCHANDL

20 was called as a witness, having been first duly sworn,

21 was examined and testified as follows:

22 THE CLERK: Please be seated. State and spell
23 your name for the Court.

24 THE WITNESS: Cynthia Ana Schandl, S-C-H-A-N-D-L.

25 DIRECT EXAMINATION

1 BY MS. SWANSON:

2 Q Good morning, Dr. Schändl.

3 A Good morning.

4 Q Please tell us where you work and what you do
5 there.

6 A I work at the Medical University of South Carolina
7 in Charleston, South Carolina, in the department of
8 pathology and lab medicine. And my position there is as a
9 forensic pathologist and associate professor.

10 Q Okay. And as part of your duties, do you conduct
11 autopsies?

12 A Yes, ma'am, I do.

13 Q Okay. And how long have you been doing that?

14 A I've been doing autopsies since 1999, and I've
15 been on faculty at MUSC since 2004.

16 Q Thank you.

17 And did you have occasion to examine the
18 bodies of Michael Morgan and Dante Bailey?

19 A Yes, ma'am.

20 Q Okay. Can you please tell us -- let's start with
21 Mr. Bailey, when you examined his body, and what your
22 findings were.

23 A Yes, ma'am. So, as a forensic pathologist, bodies
24 are referred to us by the County coroner's, and we are
25 tasked with determining the cause of death and the manner of

1 death.

2 So, in the case of Mr. Dante Bailey, we
3 received his body on June the 21st of 2012, and that is the
4 day that I performed his autopsy.

5 An autopsy is a medical procedure performed
6 by a medical physician, a doctor, and it includes several
7 different steps, including in this case, where we suspect a
8 gunshot wound, x-ray examination to look for any bullets,
9 because part of our task is also to recover the bullets, if
10 they're there, for evidence and external examination. So,
11 during that part of the examination we look at the outside
12 of the body, we look for any injuries, anything that can
13 identify the body, those sorts of things. And then we go to
14 the internal examination where we do what's typically
15 considered -- or thought of as the autopsy, the Y incision,
16 and look at the organs inside. While doing that we are
17 looking both for any evidence of trauma as well as evidence
18 of disease.

19 So, in the case of Mr. Bailey, the x-ray
20 examination did not show any bullets in his body. During
21 the external examination portion of the autopsy I found that
22 there was an entrance gunshot wound to his right chest, and
23 there was another gunshot wound that was consistent with and
24 turned out to be the exit gunshot wound in his left chest.

25 Upon doing the internal examination on this

1 individual there was a great deal of blood in both of his
2 chest cavities as well as around his heart. A great deal,
3 meaning more -- it was about two and a half liters of blood.
4 So, think of a 2-liter bottle of coke or something, that
5 plus another half liter.

6 And the reason that there was blood in his
7 body cavities, enough that he died from blood loss, was
8 because this bullet went through his heart and through his
9 left lung before it left his body. So, in all, I determined
10 that his cause of death was heart and lung perforation due
11 to a single perforating gunshot wound to the right chest.
12 So, perforating, again, just meaning that it went all the
13 way through the body and out, and there was no bullet in him
14 to recover.

15 Q Okay. So, would you say that he bled out?

16 A That is one way to put it, yes. He lost too much
17 blood to live.

18 Q And what was the manner of death?

19 A The manner of death is homicide.

20 Q And what does that mean?

21 A In South Carolina, they give us five options to
22 choose from as far as our manner of death is concerned.
23 Those include, natural. So, if somebody has a heart attack
24 and no -- nothing else contributed to it, that might be
25 natural death. Accident, homicide, suicide, and

1 undetermined.

2 So, homicide, from my point of view, means
3 that one individual died by another's actions or inactions,
4 and that is how I classified this death.

5 Q Okay. Moving on to Michael Morgan, can you
6 describe -- tell us when his body came to you and then your
7 findings regarding his injuries.

8 A Yes, ma'am.

9 Michael Morgan also came to us on the 21st of
10 June, and that is when we performed the autopsy. Again, the
11 autopsy includes all of those things we talked about. In
12 Michael Morgan's case we did, again, see something that
13 looked like gunshot wounds on his body, and so x-ray
14 examination was performed. No bullets were found on x-ray
15 examination. We continue on to the external examination,
16 and I found what is consistent with an entrance gunshot
17 wound to his right buttock. And then there was another
18 defect in the left inguinal region, sort of where your thigh
19 creases up on your pelvis, or femoral region on the
20 left-hand side consistent with an exit gunshot wound.

21 So, on internal examination, we found that --
22 the other thing on external examination that was quite
23 evident was that somebody had been in his belly surgically.
24 His belly had been sutured back up.

25 So, when we opened him again for his autopsy

1 there was still some blood in his belly, 350 milliliters
2 still in there, in spite of already having surgery and so
3 forth.

4 Other things that we found were evidence that
5 they had taken out part of his bowels, so there were
6 surgical staple lines in place, suggesting that some bowel
7 had been removed. In addition, we found that there were
8 still some holes in his bowel from the gunshot wound. So
9 the gun -- the bullet had gone through his bowel and we
10 could still say that with certainty from what bowel remained
11 in him. And then the next thing that we were able to
12 determine is that the gunshot wound pathways of the bullet
13 also went through his left iliac vein before exiting the
14 body.

15 And so with that in mind, again, this Michael
16 Morgan also died from losing too much blood to live. And
17 his cause of death I state as left iliac vein and bowel
18 perforation due to a single perforating gunshot wound to the
19 right buttock. Again, one gunshot would perforate, meaning
20 it went all the way through the body, so we have no bullet
21 to recover.

22 Q And what was the manner of death in Michael
23 Morgan's case?

24 A The manner of death is also the same. We
25 determined it to be homicide.

1 Q So, would you classify both of these deaths as
2 bleed outs?

3 A That is certainly one way to put it, yes, ma'am.

4 Q Just at different rates?

5 A That is also true. We know by the history and by
6 what I see at autopsy that Dante's Bailey's injury was to --
7 directly to the heart, so that's something that's pumping
8 actively, so it would be more of a high pressure bleed and a
9 faster bleed, whereas Michael Morgan's injury was to a large
10 vein, but still a vein, which is a less high pressure
11 system. So it's not like a heart or an aorta, just the
12 blood is flowing through it continuously, but not under
13 pressure. So, just me seeing those injuries alone tells me
14 that it is very likely that Mr. Bailey, Dante Bailey, lost
15 more blood faster than Michael Morgan did.

16 MS. SWANSON: Thank you, Dr. Schandl. Please
17 answer any questions Ms. Campbell may have.

18 CROSS EXAMINATION

19 BY MS. CAMPBELL:

20 Q Dr. Schandl, did you bring a copy of your autopsy
21 report with you today?

22 A Yes, ma'am.

23 Q Thank you.

24 To make sure we all have this correct, there
25 was no bullet found in Michael Morgan, correct?

1 A That is correct.

2 Q He was shot in the right buttock?

3 A Yes, ma'am.

4 Q Exited the left front iliac fold?

5 A Yes, ma'am.

6 Q Okay. Something else you put in your autopsy
7 report that we've not talked about yet is the actual
8 trajectory of that single perforating gunshot wound to his
9 right buttock.

10 A Yes, ma'am.

11 Q Would you tell the jury now what the trajectory
12 was of that single perforating gunshot wound to the right
13 buttock?

14 A Yes, ma'am. I'll refer to the report to be
15 accurate.

16 So, the gunshot wound is towards the left.
17 So, from right to left, forward, and slightly down. So,
18 starting at the right buttock, it's going forward towards
19 the front of his body, slightly down towards his feet, and
20 to the left.

21 Q Okay. So, from behind, in the buttock, slightly
22 down, right to left, exiting the front, correct?

23 A Yes, ma'am.

24 Q All right. And Michael Morgan, according to your
25 autopsy report was 5 feet 9 inches tall; did I do the math

1 right?

2 A Yes, ma'am.

3 MS. CAMPBELL: Thank you. That's all I have.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MS. SWANSON:

7 Q Just briefly, Dr. Schandl. When we're talking
8 about trajectory, is that dependent on how the person who's
9 shot is positioned when they're shot?

10 A Yes. If I may explain how we determine
11 trajectory.

12 So, basically what we have is what evidence
13 we have on the body. So, to create a trajectory we
14 basically line up the entrance wound with the exit wound
15 with a probe, and then we estimate what direction it goes if
16 the body was standing completely still, which is what we
17 call anatomic position. From my point of view, that does
18 not give you a lot of information about where the two people
19 were in space, because people don't stand still in real
20 life. So, my trajectory is accurate as far as from what I
21 can see with him being still in one position, but that
22 doesn't tell me where two people are in space when they're
23 -- during the altercation.

24 MS. SWANSON: Thank you.

25 MS. CAMPBELL: Nothing further.

1 THE COURT: Thank you. You may step down Doctor.

2 You wish the witness to be excused?

3 MS. SWANSON: Please.

4 THE COURT: Any objection?

5 MS. CAMPBELL: No.

6 THE COURT: You're also free to leave.

7 MS. SWANSON: State calls Jennifer Stoner.

8 Thereupon,

9 JENNIFER STONER

10 was called as a witness, having been first duly sworn,

11 was examined and testified as follows:

12 THE CLERK: Please be seated, state and spell your name
13 for the Court.

14 THE WITNESS: Jennifer Stoner, S-T-O-N-E-R.

15 DIRECT EXAMINATION

16 BY MS. SWANSON:

17 Q Good morning, Agent Stoner. Can you please tell
18 us where you work?

19 A I work in the South Carolina Law Enforcement
20 Division in the trace evidence section.

21 Q Please tell us what trace evidence means.

22 A Trace evidence is a department in the forensics
23 services lab that -- we provide analysis in several
24 different areas. We analyze gunshot residue, explosives,
25 fibers, arson cases, glass, paint, and fire -- tape.

1 Q And so is that your area of expertise?

2 A It is.

3 Q Okay. And how long have you worked in trace
4 evidence?

5 A I've been trace evidence for approximately 16
6 years.

7 Q Okay. And were you asked to analyze some evidence
8 in the case against Lucas Morgan and Joseph Bowers?

9 A I was.

10 Q All right. I'm going to hand you SLED item No.
11 29, listed as white shirt from Joseph Bowers, this is
12 State's Exhibit 35, and ask for you to identify that item,
13 please.

14 A This is our item 29 from lab case L128587.. Every
15 case that comes into the laboratory is assigned a unique
16 identification number, and each item is assigned an item
17 number. In this case I have the label that I placed on the
18 bag with my initials and date. And then also the evidence
19 tape in which I sealed it when I was completed with the
20 analysis.

21 Q And did you put your initials on that tape?

22 A I did.

23 Q And what is the reason behind that?

24 A It just shows that this has not been opened since
25 I analyzed it, and it's just the evidence in here that I

1 analyzed.

2 Q Okay. And what piece of evidence is that?

3 A This is item 29, which was a white shirt collected
4 from Joseph Bowers.

5 Q All right. And did you analyze that piece of
6 evidence?

7 A I did.

8 Q Okay. And I'm going to show you -- I'm sorry.

9 MS. SWANSON: At this time, the State would move
10 35 into evidence.

11 MS. CAMPBELL: No objection.

12 THE COURT: Without objection, State's 35 is
13 admitted.

14 *(Whereupon, State's Exhibit No(s). 35 marked for*
15 *identification and received in evidence.)*

16 BY MS. SWANSON:

17 Q Okay. I'm going to hand you what's been marked as
18 State's 36 and ask that you identify these items.

19 A This is a container that we use to place evidence
20 in that we collect off of clothing. In this case, I have
21 the samples that I collected from item 29, which was the
22 T-shirt from Joseph Bowers. And it also has the seal on the
23 top, where I sealed it, dated it, and initialed it.

24 Q Okay. Let me go ahead and also hand you SLED item
25 30, State's Exhibit 38, and ask that you identify this item.

1 A This is item No. 30 from our lab number L128587.
2 Item 30 was a paper bag containing black shorts collected
3 from Joseph Bowers, and it also has the evidence tape across
4 the bag, which I sealed and initialed.

5 Q And did you analyze that item?

6 A I did.

7 MS. SWANSON: State moves 38 into evidence.

8 MS. CAMPBELL: No objection.

9 THE COURT: Without objection, State's 38 is
10 admitted.

11 *(Whereupon, State's Exhibit No(s). 38 marked for*
12 *identification and received in evidence.)*

13 BY MS. SWANSON:

14 Q Agent Stoner, can you tell us how you analyzed
15 those two items?

16 A When we have a request for gunshot residue to be
17 collected from clothing, we open the clothing, we document
18 anything on the clothing -- if it's dirty, if there's blood
19 present, and what type of clothing it is. We then take what
20 we call a particle lift, and that's what these are in this
21 bag. It's a small round surface that has carbon tape on it,
22 so it's sticky. Kind of like a bandaid adhesive, and we dab
23 it over certain areas of that clothing in order to collect
24 any potential evidence. In this case, for item 29, I
25 collected four particle lifts from the T-shirt.

1 Q Okay. From Mr. Bowers' T-shirt?

2 A Yeah.

3 Q Did you also collect particle lifts from the
4 shorts?

5 A From the shorts, I collected two particle lifts.

6 Q Okay. And what were your findings in reference to
7 those particle lifts?

8 A For which item?

9 Q I'm sorry. For -- let's start with the shirt.

10 A Okay. In the shirt from Joseph Bowers, in the
11 samples that I collected, one round lead particle was found.
12 Round lead particles are one of the components of gunshot
13 residue.

14 Q Okay. So, you found a component of gunshot
15 residue on his T-shirt?

16 A I did.

17 Q What did you find on Joseph Bowers' shorts?

18 A On the shorts, in the samples collected from the
19 black shorts, I found multiple round lead particles, which
20 are a component of gunshot residue.

21 MS. SWANSON: Your Honor, at this time, State
22 moves 36 into evidence.

23 THE COURT: Any objection?

24 MS. CAMPBELL: No.

25 THE COURT: State's 36 is admitted without

1 objection.

2 *(Whereupon, State's Exhibit No(s). 36 marked for*
3 *identification and received in evidence.)*

4 BY MS. SWANSON:

5 Q Agent Stoner, I'm going to hand you what's been
6 identified and marked as State's 29. This is SLED item No.
7 33.

8 Can you tell us what this is?

9 A This is a Tri-tech GSR kit, which the agencies
10 across the state use to collect gunshot residue evidence
11 from a person's hands. This was our item No. 33, which was
12 a GSR kit collected from Joseph Bowers.

13 Q Okay. And did you analyze that item?

14 A I didn't analyze the GSR kit.

15 Q And can you explain why?

16 A When gunshot residue is deposited on your hands,
17 there's a certain time frame that it will remain on a living
18 person. After six hours you don't expect to find any
19 gunshot residue on the hands that can be associated with
20 that particular incident. So, if kit is collected beyond
21 six hours from the time of the shooting, we do not analyze
22 it.

23 Q Okay. Thank you.

24 Does residue last more than six hours on
25 clothing?

1 A It can last more than six hours on clothing, and
2 that's why with clothing we can't put a time frame on when
3 it was deposited on the clothing because of that.

4 Q Okay. I'm going to hand you State's 34, this is
5 SLED item No. 5, and ask that you identify this, please.

6 A This is our item No. 5, from L128587. It has my
7 initials and the date when I opened it, and my initials and
8 date when I sealed it. And these were black shorts
9 collected from Dante Bailey -- or, I'm sorry. That's
10 Stanley Humphries. Sorry.

11 Q Okay. Thank you.

12 A Yeah, this is the clothing from Stanley Humphries.

13 Q Okay. Clothing from Stanley Humphries.

14 MS. SWANSON: State moves 34 into evidence.

15 MS. CAMPBELL: No objection.

16 THE COURT: Without objection, State's 34 is
17 admitted.

18 *(Whereupon, State's Exhibit No(s). 34 marked for*
19 *identification and received in evidence.)*

20 BY MS. SWANSON:

21 Q And did you analyze the clothing from Stanley
22 Humphries?

23 A I did.

24 Q I'm going to hand you what's been marked as
25 State's 37, SLED items 5.1 and 5.2.

1 Can you identify these items?

2 A They are the samples that I collected from Stanley
3 Humphries' clothing, so they are item No. 5.1.1, and 5.2.1.

4 Q What did -- are those particle lifts as well?

5 A These are particle lifts as well. There's two
6 different ways we can collect a particle lift. In the other
7 case I used a different holder for it.

8 Q Okay. What were your findings in reference to
9 Stanley Humphries' clothing?

10 A On item 5.1, which was orange polo shirt, I did
11 not find any gunshot residue. Item 5.2 was a pair of khaki
12 pants, and I did not find any gunshot residue on the pants.

13 MS. SWANSON: State moves Exhibit 37 into
14 evidence.

15 THE COURT: Any objection?

16 MS. CAMPBELL: No objection.

17 THE COURT: Without objection, State's 37 is also
18 entered.

19 MS. SWANSON: Thank you.

20 *(Whereupon, State's Exhibit No(s). 37 marked for*
21 *identification and received in evidence.)*

22 MS. SWANSON: Beg the Court's indulgence.

23 THE COURT: Certainly.

24 BY MS. SWANSON:

25 Q One other question, Agent Stoner. Did you analyze

1 everything that was submitted to SLED?

2 A I did not.

3 Q Okay. And do you analyze GSR kits from victims of
4 gunshot wounds?

5 A In certain circumstances, we can. The lab is
6 moving away from analyzing those, because when you're a
7 victim of a gunshot wound the gun is pointed at you, and we
8 expect to find gunshot residue on you. So, therefore, we
9 can't make a determination whether a victim of a shooting
10 actually fired a weapon. All we can say is they were near a
11 weapon when it was fired.

12 MS. SWANSON: Thank you, Agent Stoner. I have
13 nothing further at this time.

14 THE COURT: Cross-examine.

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

17 THE COURT: Sure.

18 CROSS EXAMINATION

19 BY MS. CAMPBELL:

20 Q Agent Stoner, do you have your report with you?

21 A I do, ma'am.

22 Q Thank you.

23 Let's just establish this first. Gunshot
24 residue, you're an expert, right?

25 A Yes, ma'am.

1 Q - You know all about gunshot residue?

2 A Yes, ma'am.

3 Q When we're talking about gunshot residue, that is
4 actually a number of components or particles put together
5 that make up gunshot residue, right? Many different things.

6 A Primarily three different, but there are more.

7 Q Correct. And you can, let's say, if you handle a
8 gun that has been recently fired, transfer gunshot residue
9 to your own hands, correct?

10 A Yes.

11 Q Okay. Then if you took your hands and touched
12 your clothing, you would transfer it to your clothing,
13 right?

14 A That is possible.

15 Q Okay. So, when you analyzed some of these items,
16 in particular I'll start out with Joseph Bowers' white
17 shirt, you said that you found one round particle?

18 A One round lead particle.

19 Q Correct. That might be consistent with gunshot
20 residue, but effectively no gunshot residue on his shirt,
21 correct?

22 A Gunshot residue is defined as a particle
23 containing barium, antimony, and lead. Round lead particles
24 are a component of gunshot residue that we also see when a
25 gun is fired. But in order to call it gunshot residue, it

1 does have to meet the three particles requirement.

2 Q Okay. Thank you. So, the answer to my question
3 is no, there was no gunshot residue on his shirt, correct?

4 A Not what we classify as gunshot residue. There
5 was a component of gunshot residue.

6 Q Right. So, the answer is no. Thank you.

7 Same goes for his shorts, correct? No
8 gunshot residue on the shorts?

9 A On his shorts, I found round lead particles.

10 Q Right, but no gunshot residue, correct?

11 A Not what we classify as that, no.

12 Q Correct. You said you took four lifts from the
13 shirt, correct?

14 A Yes.

15 Q The one round particle was on just one of those
16 lifts, correct?

17 A Yes.

18 Q And the one particle of the shorts was on one of
19 the two lifts, correct?

20 A I think I found multiple particles on the shorts.

21 Q Was it from one lift or two?

22 A Let me check.

23 One from each lift.

24 Q Okay. Now, you testified that you analyzed Joseph
25 Bowers' clothing, and that clothing can hold onto these --

1 I'm sorry. What were the three components again?

2 A Barium, antimony, and lead.

3 Q Right. Can hold onto those components for a
4 longer period of time than your hands, right?

5 A Yes.

6 Q Okay. And you received Michael Morgan's clothing
7 into -- for an analysis. It was requested that you analyze
8 his clothing, but you did not because you classified him as
9 a victim. Is that your -- what you're telling us?

10 A I think he was actually shot and was considered a
11 victim. So, if anyone was shot, we do not look at the
12 clothing.

13 Q Okay. So, because Beaufort County law enforcement
14 classified him as a victim to you, you just didn't even look
15 at whether or not Michael Morgan had gunshot residue on his
16 clothing in your forensics lab, right?

17 A I actually talked to Meredith Brannen to ask -- to
18 find out what I needed to look at and to discuss these
19 things, and then it became the determination that I did not
20 look at those items because they were victims, and they had
21 been shot.

22 Q Meredith Brannen is a former Solicitor with the
23 State, correct?

24 A Yes.

25 Q So, the Solicitor told you you don't need to

1 analyze that, right?

2 A Yes.

3 Q So you didn't?

4 A No.

5 Q Okay. So, as we stand here today, Michael
6 Morgan's clothing is somewhere, either in your custody or
7 the State, and it's never been analyzed, correct?

8 A Not by a trace evidence examiner. I do not know
9 if it had another request for a different part of the lab.

10 Q Okay. Now, you did analyze Stanley Hump -- the
11 van. You got some evidence from inside the van, correct?

12 A Yes, I did.

13 Q Okay. Someone at the scene took some, as you call
14 them, lifts from the interior of a green van, right?

15 A Yes.

16 Q And inside the green van, you're finding particles
17 that are one of the components of gunshot, correct?

18 A Inside the van?

19 Q Correct.

20 A I found round lead particles, which are a
21 component of gunshot residue.

22 Q Right. That's item 6.2 and 6.3, correct? Page 2
23 of 5?

24 A Six-point one and 6.2, and 6.3 and 6.4.

25 Q Okay. So, the four items there. And as we've

1 established, gunshot residue, a component of it, would
2 indicate inside the van that perhaps someone was inside the
3 van shooting, or had shot a gun and then touched the inside
4 of the van, correct?

5 A It could be from transfer or from shooting, yes.

6 Q Okay. And that's what you're calling transfer
7 when they, you know, have a gun in their hand that shot, and
8 then they touch something else?

9 A Yeah.

10 Q Okay. Now, you testified that the sheriff's
11 department gave you a gunshot residue kit from Joseph
12 Bowers, right?

13 A Yes.

14 Q And they gave you a gunshot residue kit from Lucas
15 Morgan, correct?

16 A Yes, they did.

17 Q And it's clear from your analysis of the gunshot
18 residue kit from Lucas Morgan that Lucas Morgan had gunshot
19 residue on his hands, correct?

20 A Lucas Morgan had round lead particles on his
21 hands, which are a component of gunshot residue.

22 Q Okay. And now, you told us that you didn't
23 analyze Joseph Bowers' gunshot residue kit because it was
24 outside that six-hour time frame?

25 A Yes.

1 Q Who told you it was collected outside the six-hour
2 time frame?

3 A We have an information sheet that is submitted
4 with each GSR kit, and they have the collection time and the
5 incident time, and we go by that information.

6 Q And what's the collection time on Joseph Bowers?

7 A 10:50 a.m. on 6/21/2012.

8 Q Let me get that straight. Just one more time,
9 10:50 a.m. on 6/21/2012, correct?

10 A Yes.

11 Q Okay. Not 4:00; 10:50, right?

12 A 10:50 is what is documented on the GSR kit.

13 Q Thank you very much.

14 Now, you had other items sent to you from the
15 sheriff's department in this case, such as Richard Green's
16 clothing. That also was not analyzed, correct?

17 A That's correct.

18 Q You got a GSR kit, which are those little lifts
19 that we would take from the hands from Robert Goodwine, and
20 that was not analyzed. Item 35?

21 A Item 35 -- yes, that was not analyzed either.

22 Q You got a GSR kit from Richard Green?

23 A That is correct.

24 Q And you didn't analyze that?

25 A I did not.

1 Q Now, again, for our recordkeeping, when were you
2 told those were collected?

3 A On all of them?

4 Q On Robert Goodwine, let's start with him, and then
5 with Richard Green.

6 A Robert Goodwine, it was indicated it was collected
7 on 6/21/2012 at 2:55 a.m.

8 Q Okay.. Do you know that the shooting is alleged to
9 have occurred just an hour and a half before 2:55 a.m? Were
10 you given that information?

11 A The shooting time that I was given was 12:30 a.m.
12 on 6/21.

13 Q But 2:55 a.m. and 12:30, that's within the
14 six-hour time frame, isn't it?

15 A Yes, it is.

16 Q And you didn't perform this analysis?

17 A No, because they were the victim of a shooting.

18 Q On that basis alone, because someone told you this
19 person was a victim.

20 A And because what asked to do with gunshot residue
21 kits is to determine if that person fired a weapon, was near
22 a weapon when it was fired, or handled a weapon. With a
23 victim we already know they were in the vicinity of a
24 discharged weapon because they were shot. So, we can't make
25 any determination on whether they fired or it was from them

1 being shot. So we look at that evidence, and we can't
2 really answer the questions that are asked, and we are not
3 analyzing those.

4 Q And same thing goes, I guess, for Richard Green
5 and then for Dante Bailey. Because someone is telling you
6 they are a victim of the crime you don't analyze that
7 evidence, correct?

8 A That's correct.

9 Q Okay.

10 MS. CAMPBELL: Just one second, Your Honor.

11 THE COURT: Go ahead.

12 MS. CAMPBELL: That's all I have.

13 THE COURT: Redirect.

14 MS. SWANSON: Just briefly.

15 REDIRECT EXAMINATION

16 BY MS. SWANSON:

17 Q Agent Stoner, when you take the particle lifts,
18 are you lifting from the front of the clothing or from the
19 back of the clothing?

20 A We lift from the front of the clothing unless
21 otherwise indicated.

22 Q Okay. And so in this case did you lift from the
23 front of Joseph Bowers' clothing?

24 A Yes.

25 Q Okay. And these particle lifts are pretty small,

1 right?

2 A They are.

3 Q Okay. And so, you're actually only lifting from a
4 small portion of the clothing?

5 A When we look at clothing we look at the areas that
6 would potentially be closest to a weapon if it were fired.
7 So, with shirts, short sleeve shirts, we take them from the
8 sleeve area and the chest area on each side.

9 Q And on the front?

10 A Yes, on the front.

11 Q So, if somebody sat in a van that maybe had
12 gunshot residue on the seat, it wouldn't be on the front of
13 their shirt, would it?

14 A It should not be on the front.

15 MS. SWANSON: Thank you.

16 MS. CAMPBELL: No further questions.

17 THE COURT: You may come down. Thank you, ma'am.

18 THE WITNESS: Thank you.

19 THE COURT: Call your next witness, please.

20 MS. SWANSON: Thank you. State calls Agent
21 DeFreese, Dan DeFreese.

22 Thereupon,

23 FRANK DAN DEFREESE

24 was called as a witness, having been first duly sworn,
25 was examined and testified as follows:

1 THE CLERK: Please be seated, state and spell your
2 name for the Court.

3 THE WITNESS: My name is Frank Dan DeFreese. It's
4 capital D-E, capital F-R-E-E-S-E.

5 DIRECT EXAMINATION

6 BY MS. SWANSON:

7 Q Good morning, Agent DeFreese. Tell us who you
8 work for.

9 A I work for the South Carolina Law Enforcement
10 Division in the forensics services laboratory in Columbia.

11 Q And what is your area of expertise?

12 A I work in the department where we do the analysis
13 of firearm and tool mark evidence.

14 Q Can you tell us briefly what that entails?

15 A Principally, we're asked to determine whether
16 fired ammunition components were fired by a given firearm or
17 were fired by the same firearm. That is, to identify
18 bullets back to the gun barrels from which they were fired
19 and cartridge cases back to the firearms in which they were
20 fired. We also do some safety analysis, some trajectory
21 analysis, and some other things, but our bread and butter is
22 the ammunition component identification.

23 Q Okay. And how long have you worked in firearms
24 identification?

25 A Since 1967, when I was first employed.

1 Q All right. Thank you. Agent DeFreese.

2 Did you have occasion to analyze evidence
3 submitted in the case against Lucas Morgan and Joseph
4 Bowers?

5 A I did.

6 Q All right. And did you, in fact, look at some of
7 that evidence earlier this morning?

8 A I did.

9 Q Okay. And we didn't get through all of it, but I
10 am going to hand you State's Exhibits 10 through 17, which
11 are all of the items listed as Sphere nine millimeter Luger
12 casings. And if you can please confirm that these are the
13 items that you analyzed. I understand that you would like
14 to take a peek inside and make sure that the item is
15 actually in there.

16 A Yes, ma'am.

17 Q Thank you.

18 A All right. I've examined State's 10 through 17,
19 and they do have the correct cartridge cases in them. And
20 they are all fired nine millimeter Luger caliber cartridge
21 cases that bear the Sphere brand head stamp.

22 Q Thank you.

23 MS. SWANSON: At this time, State moves Exhibits
24 10 through 17 into evidence.

25 THE COURT: Any objection?

1 MS. CAMPBELL: No.

2 THE COURT: Without objection, they are admitted.

3 *(Whereupon, State's Exhibit No(s). 10-17 marked*
4 *for identification and received in evidence.)*

5 BY MS. SWANSON:

6 Q And Agent DeFreese, were you able to tell if all
7 of these casings came from the same firearm?

8 A I was.

9 Q Okay. I'm going to show you State's Exhibit 3,
10 and this is SLED item 28 and ask if you examined this item.

11 A Yes, ma'am, I did.

12 Q And what is that?

13 A Exhibit 3 is a Glock model 26, nine millimeter
14 Luger caliber semi automatic pistol.

15 Q And were you able to determine if the shell
16 casings that we were just discussing, the Sphere nine
17 millimeter lugers, came from that pistol?

18 A I was.

19 Q And did they?

20 A They did. This -- this pistol, State's Exhibit 3,
21 fired the cartridge cases in State's Exhibits 10 through 17.

22 Q Okay. Thank you.

23 MS. SWANSON: State moves Exhibit 3 into evidence.

24 MS. CAMPBELL: No objection.

25 THE COURT: Without objection, it's admitted.

1 *(Whereupon, State's Exhibit No(s) 3 marked for*
2 *identification and received in evidence.)*

3 BY MS. SWANSON:

4 Q I'm going to hand you a series of items that you
5 were able to view this morning. These are State's Exhibits
6 5, 7, 8, and 9. They are all listed as projectiles from the
7 club.

8 Did you analyze these items?

9 A I did.

10 Q And could you tell if those projectiles could have
11 been fired by the Glock 26, SLED item 28, State's 3?

12 A Yes.

13 Q They could have been fired by that?

14 A Yes. All of the bullet specimens in State's
15 Exhibits 9, 5, 7, and 8 are consistent with nine millimeter
16 Luger caliber, and they bear rifling impressions that are
17 like the rifling impressions produced by a Glock nine
18 millimeter Luger caliber pistol. That's a six land and
19 groove right-hand twist with what we refer to as polygonal,
20 or polygonal, P-O-L-Y-G-O-N-A-L, rifling. It's a rifling
21 that has smooth edges to it.

22 They're not really well defined in terms of
23 their dimensions, but these are perfectly consistent with
24 having been fired by either State's Exhibit 3 or by another
25 Glock nine millimeter pistol. The bullets contained in

1 these exhibits are consistent with Speer brand bullets of
2 the type loaded into what is known as Gold Dot ammunition.
3 That's a trade name.

4 Q Okay.

5 MS. SWANSON: State moves 5, 7, 8, and 9 into
6 evidence at this time.

7 MS. CAMPBELL: No objection.

8 THE COURT: Without objection, they are admitted.

9 *(Whereupon, State's Exhibit No(s). 5, 7-9 marked*
10 *for identification and received in evidence.)*

11 BY MS. SWANSON:

12 Q All right. Were you asked to analyze some other
13 casings?

14 A I was.

15 Q Okay. And were those a different type of nine
16 millimeter casings?

17 A They were a different brand. They were all
18 Winchester brand nine millimeter Luger caliber cartridge
19 cases.

20 Q And did any of those casings come from State's 3,
21 the Glock 26 that we just saw?

22 A No, they did not. They were all fired by the same
23 firearm, but not State's Exhibit 3.

24 Q And what kind of firearm do you think that was?

25 A It was likely a Glock. There's a chance it could

1 have been an early production Smith and Wesson Sigma pistol,
2 because a Glock has a rather unusually shaped firing pen,
3 and firing pen aperture. And those marks were present on
4 the other nine millimeter, on the Winchester nine millimeter
5 cartridge cases. So, they could have been fired by a either
6 Glock or a Smith and Wesson, based on the cartridge cases.

7 Q Okay. And did you look at evidence that came from
8 other firearms in this case?

9 A I did.

10 Q Okay. And in your opinion, and in analyzing all
11 the evidence that was submitted, did the majority of it come
12 from two Glockes?

13 A Yes. The greater number of them came from two
14 Glock pistols, based on the other recovered bullet and
15 bullet fragments, and on the fired Winchester cartridge
16 cases. They're certainly consistent with that.

17 MS. SWANSON: Thank you, Agent DeFreese. I have
18 nothing further.

19 THE COURT: You may cross-examine.

20 CROSS EXAMINATION

21 BY MS. CAMPBELL:

22 Q Good morning..

23 A Good morning.

24 Q Have you been referring to your report?

25 A I have.

1 Q Okay. Wonderful. Thank you.

2 I'm going to take you to that report, if I
3 might, to -- I guess it's Page 5 of 6.

4 A The report, or the supplemental report?

5 Q I've got 5 of 6 from November 29th, 2012.

6 A Okay.

7 Q All right. I'm trying to understand, and I'm sure
8 that you can help me with this. There were items 2, 3, and
9 4 that were submitted to you, and you have that noted as
10 fired .45 auto caliber cartridge case with a head stamp of
11 Federal .45 auto?

12 A Correct.

13 Q So, items 2, 3, and 4 are the same type of
14 cartridge case?

15 A They're the same caliber brand and type cartridge
16 case, and they were all three fired by the same firearm.

17 Q Thank you. That was my next question.

18 So, 2, 3, and 4 are fired by the same
19 firearm. Do you know what kind of firearm fired them?

20 A No, I don't.

21 Q Okay. But those three items are fired from the
22 same gun?

23 A Correct..

24 Q Okay.

25 A And not by State's Exhibit 3.

1 Q Okay. Thank you very much. Because that's what
2 we need. We need some clarification.

3 A Sure.

4 Q And that's what I'm trying to get to.

5 So, you've got, now, also in your report
6 items 38, which is a revolver?

7 A Correct.

8 Q And, of course, we don't have a revolver up here,
9 we just have the Glock, right? Right now.

10 A To my knowledge.

11 Q Right. And item 38 you got listed as an Imperial
12 Metal Products model 17, .22 short caliber revolver,
13 correct?

14 A Correct.

15 Q And you analyze evidence relating to that
16 revolver, and one of the things that you determine is that
17 it fired item 46, I guess?

18 A That's correct.

19 Q Okay. And item 46 was what?

20 A It's a fired .22 short caliber cartridge case.

21 Q Okay. So, at the Midnight Soul Patrol, what
22 you're analyzing, we have now got one gun firing two, three,
23 and four?

24 A Correct.

25 Q We've got one gun firing 46?

1 A Correct. My item 46.

2 Q We've got one gun, as you previously testified for
3 the Solicitor, firing, for lack of a better, I guess,
4 terminology, let's call them Win and Speer?

5 A Right.

6 Q Okay. You've got gun firing Win?

7 A The Winchester cartridge cases.

8 Q And you've got one gun firing the Speers.

9 A We got item 3 firing the Speers.

10 Q The Glock, right?

11 A The Glock, yes.

12 Q So, I count four guns right now.

13 A So far we're up to four.

14 Q Okay. But we have more, don't we?

15 A We do.

16 Q Okay. Why don't you tell us what else we have.

17 A We have a fired .40 Smith and Wesson caliber
18 bullet. And we have a fired .40 Smith and Wesson caliber
19 cartridge case.

20 Now, the -- I can't say that the bullet and
21 the cartridge case were fired by the same firearm, but they
22 could have been fired by the same firearm. So, we got
23 either one or two .40 caliber firearms involved.

24 Q Okay. So, that puts us at either five or six
25 guns, possibly.

1 A I haven't been doing the math up to now, but I
2 think that's right.

3 Q I think that's about right.

4 So -- and lastly, of course, we have item 10,
5 which was the, I guess, fired flare?

6 A Right. There was a fired flare cartridge that was
7 fired by the item 8 flare pistol.

8 Q Which is the flare gun?

9 A Right.

10 Q Correct. And so that puts us up to four, five,
11 six -- six to seven different guns firing?

12 A Right.

13 Q Based upon the evidence that you reviewed in this
14 case?

15 A Correct.

16 Q Okay. That revolver that you looked at, item 38?

17 A Yes, ma'am.

18 Q When you tested it, would it be fair to say that
19 it misfired 50 percent of the time?

20 A During my testing it did.

21 THE COURT: Okay. Redirect?

22 MS. SWANSON: Just briefly.

23 REDIRECT EXAMINATION

24 BY MS. SWANSON:

25 Q Agent DeFreese, the revolver that Ms. Campbell is

1 asking you about, did you analyze any projectiles that came
2 from that revolver?

3 A None of the projectiles submitted in this case
4 were consistent with .22 short caliber projectiles. There
5 was a .22 Magnum caliber projectile submitted, but it could
6 not have been fired by the .22 short caliber revolver.

7 Q Okay. And you don't know where that revolver was
8 found, do you?

9 A No. And I don't know when it was fired. You
10 know, it could have been fired then, or it could have been
11 fired at some other time, because a revolver keeps its
12 cartridge case in it even after it's fired.

13 Q So, you don't know if it was at the club that
14 night?

15 A I don't.

16 MS. CAMPBELL: Thank you. Nothing further.

17 THE COURT: Recross.

18 RE-CROSS EXAMINATION

19 BY MS. CAMPBELL:

20 Q Just to clarify, item 46 cartridge case was fired
21 by item 38 revolver, correct?

22 A Yes, ma'am, it was.

23 MS. CAMPBELL: Thank you. That's all I have.

24 THE COURT: You wish this witness to be excused?

25 MS. SWANSON: Yes, please, Your Honor.

1 THE COURT: Any objection?

2 MS. CAMPBELL: No objection.

3 THE COURT: Thank you. Good to see you. You're
4 free to leave.

5 THE WITNESS: Thank you.

6 THE COURT: Do you have another witness?

7 MS. SWANSON: I do not, Your Honor. At this time,
8 the State rests its case.

9 THE COURT: Very well. Thank you. That worked
10 out nicely from a standpoint of a break.

11 There are matters of law, now, ladies and
12 gentlemen that I must take up out of your presence, so
13 I'm going to let you go to your jury room. Do not
14 begin your deliberations, do not discuss the case,
15 we'll be with you as quickly as we can.

16 Thank you so much.

17 THE BAILIFF: The jury is clear, Your Honor.

18 THE COURT: Thank you.

19 All right. Any matters from the State at this
20 point, Ms. Swanson?

21 MS. SWANSON: No, sir.

22 THE COURT: Ms. Campbell?

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

25 THE COURT: Yes, ma'am.

1 MS. CAMPBELL: I made copies of a couple of
2 different cases, and I apologize, I don't have copies
3 of all the cases I'm going to refer to.

4 THE COURT: That's all right. You can --

5 MS. CAMPBELL: But I will pass up to Your Honor
6 and to the State three cases which I will be using in
7 my directed verdict motion, if I may.

8 THE COURT: Okay.

9 MS. CAMPBELL: Your Honor, the Defense is going to
10 be relying on the following cases: State V Ziegler,
11 State V Mahoney, State V Reed, the 2014 case.

12 THE COURT: Okay.

13 MS. CAMPBELL: State V Logan, 2013 case; State V
14 Bennett, 2014 case. State V Logan, decided
15 August 14th, 2013. And again, just for reference, for
16 the record, State V Bennett case, May 28th, 2014..

17 And lastly -- well, I'll just save that one for a
18 moment..

19 Your Honor in State V Ziegler the court
20 established that a directed verdict is necessary when
21 the evidence merely raises a suspicion that the accused
22 is guilty. Now, Your Honor, suspicion implies a belief
23 or an opinion as to guilt based on --

24 THE COURT: Ms. Campbell, I appreciate that. I
25 have been studying for my test on Friday. I'm well

1 aware of the standard. Suspensions got to be more than
2 suspicion, it's either got to be by direct evidence or
3 substantial circumstantial evidence. So, you've cited
4 the cases which set forward that proposition. You
5 don't need to read it, I'm very cognizant of the
6 standard.

7 MS. CAMPBELL: Okay. Thank you.

8 THE COURT: And I'm sorry to interrupt you, but
9 I'd like for you to just talk about why that applies
10 here.

11 MS. CAMPBELL: As to the murder indictments for
12 Dante Bailey and for Michael Morgan, I'll speak to
13 those first.

14 THE COURT: All right.

15 MS. CAMPBELL: There is no direct evidence that
16 Joseph Bowers fired a gun on 6/21/2012, save a single
17 jail phone call.

18 THE COURT: Yeah. Well, that's unfortunately, for
19 purposes in the light most favorable to the State,
20 direct evidence.

21 MS. CAMPBELL: And I'll explain why I believe it's
22 not even direct evidence, if I may.

23 THE COURT: Sure.

24 MS. CAMPBELL: That may or may not say that he
25 shot a gun. The State would advance for Your Honor,

1 that the substance of the statement is, I ain't killed
2 the boy, I only shot the boy, which is in essence a
3 denial of killing anyone, and at best an admission
4 that, to his own internal belief, that he may have shot
5 someone.

6 THE COURT: Well, the problem I have with going
7 there is that really goes to a weight situation. But
8 more important, the -- in fact, I've read several cases
9 this morning, I think a couple of them decided in
10 September that talk about merely stating, for instance,
11 they said, I didn't mean to kill them or I didn't
12 intend to hurt them, that that isn't enough to negate
13 it. It's still a matter for the jury, so I appreciate
14 that. I mean, it's just -- I understand there are
15 different ways to construe that. There's no question
16 about that.

17 But that's where it stops. I can't do that
18 because I'd be stepping over the boundary by doing so.
19 If it exists, I can't -- you're certainly entitled to
20 argue that, and the jury may conclude that. But for me
21 to do that, I'm not weighing the evidence and ---
22 basically agree with you, but that doesn't mean that
23 you kill somebody. Frankly, it could mean that he
24 didn't shoot anybody.

25 This case has some significant problems.

1 Unfortunately, they aren't whether or not because of
2 the statement. You know, if we -- if we didn't have
3 the statement from the jail, from him, maybe it's
4 getting close to being suspicious. But because of that
5 it just unfortunately takes it over when you couple
6 that with the other evidence that's been presented, and
7 that is he was charged. I think one person said he had
8 a gun, and then he retracted that, which is a
9 contradiction in his own testimony.

10 But that being said, it's funny, I've already
11 mentioned something about my growing up and my family
12 experience, I didn't handle many cases before the Court
13 of Appeals or the Supreme Court, thank goodness, but
14 it's amazing the one that I did, and I'll never forget
15 then Judge Bell asking me a question because a doctor
16 contradicted himself from direct to cross and then
17 redirect. And Judge Floyd granted my motion for
18 directed verdict as to permanent injury because he said
19 it's not permanent unless he has pain. And I said does
20 he have pain all the time? No, he doesn't have pain.
21 So, the judge agreed that it wasn't permanent.

22 Unfortunately, when he was confronted with the
23 question, why isn't that a jury issue, I couldn't
24 answer it because it is a jury issue. The
25 contradiction.

1 So, I respect your position, but I have testimony
2 that says he did shoot. And so that's up to the jury,
3 so --

4 MS. CAMPBELL: And I respect your --

5 THE COURT: I appreciate your argument, but your
6 argument is not the record though.

7 MS. CAMPBELL: But I haven't made my argument for
8 the record yet --

9 THE COURT: Well, your argument is contained in
10 the cases, I assume.

11 MS. CAMPBELL: Well, not factually, and not in
12 analysis for the record should it need to be clear --

13 THE COURT: That's fine. Go ahead and state what
14 --

15 MS. CAMPBELL: I do need --

16 THE COURT: I appreciate your position. The
17 record speaks for itself, and that's why you don't have
18 to say it. If it's there then you've raised that it
19 doesn't support that position, correct? I mean, that's
20 your position? It doesn't support a verdict of guilty.

21 MS. CAMPBELL: Well, I would just say, in my
22 experience, that if I don't fail to clearly distinguish
23 the facts and the evidence in this case and line it up
24 with the case law --

25 THE COURT: I'll be happy for you to show me a --

1 case that says that. Because I don't believe that it
2 exists. I believe that it exists insofar as arguing a
3 principal of law. Whether or not we agree on what --
4 the facts are the facts. They are what they are. And
5 if you say this one way and I say it's another, that
6 doesn't mean that you have to state it because you're
7 are entitled to. But feel free to state what you think
8 it is that you think is necessary to support your
9 position.

10 MS. CAMPBELL: Thank you, Your Honor.

11 THE COURT: Uh-huh. (Indicating affirmatively.)

12 MS. CAMPBELL: As under the State V Logan case,
13 again, the two murder indictments in this case, the
14 Defendant would assert, should be granted a directed
15 verdict at this stage based upon the evidence and the
16 lack of evidence in this case that's been presented by
17 the State of South Carolina.

18 Also, under State V Bennett, in that case, the
19 State simply placed Bennett at the location where the
20 crime occurred, and that merely raised a suspicion. In
21 this case the State has placed Joseph Bowers at the
22 Midnight Soul Patrol, and that merely raises a
23 suspicion of guilt. What we're back to is having the
24 jury -- because, you see, direct evidence can't require
25 a deduction.

1 THE COURT: I appreciate your argument. You're
2 going into arguing your position. I thank you for
3 that. I just explained to you that case. I
4 distinguished that case because it's more than him
5 being present. I just said that. I testified --
6 there's some testimony that said he had a gun. It's
7 his testimony saying I shot. So, I'm sorry. It just
8 simply doesn't apply to this case and these facts.

9 If his statement isn't there, I might could agree
10 with you, but I can't on that.

11 MS. CAMPBELL: Well, in line with that thought the
12 Defendant will now assert that based upon the State
13 putting the jail phone call into the record that he's
14 entitled to a self-defense instruction to the jury and
15 --

16 THE COURT: I agree. We are well -- we aren't even
17 there yet.

18 MS. CAMPBELL: I understand.

19 THE COURT: I'm not going to deal with that at
20 this juncture.

21 MS. CAMPBELL: But when the State puts the
22 evidence in, at this juncture we must --

23 THE COURT: Listen, Ms. Campbell, I'm -- right
24 now, this morning, because these people, they were --
25 we know to cover the record and chain and testifying,

1 and you knew what they were going to be, they knew what
2 they were going to be, I've been -- so, this part has
3 already been established for my purpose. I've been
4 reading about mutual combat. I think we've got an
5 issue here, in addition to self-defense.

6 So, there are a lot of legal issues, but they
7 don't deal with where we are right now. Okay? There's
8 a time and a -- there's another time for that argument.
9 I'm not going -- you're not prejudiced by this. I'm
10 not -- whether or not he's entitled to a self-defense
11 charge, we aren't even there yet.

12 MS. CAMPBELL: I understand. And if I could just
13 finish the one sentence about self-defense degree at
14 this point.

15 THE COURT: You don't need to talk about
16 self-defense.

17 MS. CAMPBELL: But at the directed verdict stage,
18 a directed verdict should be granted for the Defendant
19 if the State has failed to disprove self-defense at
20 this juncture.

21 THE COURT: I agree. I agree, and they haven't
22 done that yet.

23 MS. CAMPBELL: Thank you, Your Honor.

24 THE COURT: Thank you.

25 MS. CAMPBELL: Thank you.

1 THE COURT: I think they met it in the light most
2 favorable to them. I shot him, I didn't -- I shot him,
3 but I didn't kill him.

4 Well, I'm sorry, he didn't -- there's nothing
5 other than I shot him, and whether or not he had
6 reason, I don't know. If he's shooting, then he may be
7 part of the mutual combat. You know, that's the other
8 issue that's got to be discussed.

9 Frankly, some of the cases have said -- and I
10 asked the Judge earlier, he didn't charge self-defense
11 in that case, but he had a different set of facts
12 before him than I do, in my opinion. And there are
13 certainly some cases that's been cited that said it's
14 not mutually exclusive. So, I'm telling you that that
15 decision hasn't been made yet. Okay?

16 MS. CAMPBELL: Thank you, Your Honor.

17 THE COURT: You bet. Okay.

18 And I don't mean to interrupt you, I just at this
19 stage of the game, I appreciate it. We may -- there
20 are some things that are going be decided when we get
21 to the ultimate -- when we get to the end, that we're
22 going to have to decide, and that is how this case goes
23 forward to the jury.

24 MS. CAMPBELL: Yes, sir.

25 THE COURT: But there's one case that I read this

1 morning, I know you all have read it too, and it's
2 Judge Hayes' reversal for submitting a mutual combat.
3 And that -- I need to look at that from the standpoint
4 of everybody's protection. Okay? Thank you.

5 MS. CAMPBELL: Thank you, Your Honor. That
6 concludes the Defense motion.

7 THE COURT: Thank you very much, Ms. Campbell.
8 And let me say again, thank you for your patience with
9 my interrupting you, but I want you to protect the
10 record. But when you cited those cases, in my opinion,
11 you can rely on every aspect of those cases which are
12 consistent with the facts established in this case, and
13 you certainly will be able to articulate that should
14 that become necessary at a later date.

15 MS. CAMPBELL: Thank you, Your Honor.

16 THE COURT: Uh-huh (indicating affirmatively.)

17 All right. Let me ask you now so we can deal with
18 this. You're at the point where, as I told the jury
19 when we started, you don't have to prove or disprove
20 anything. I'm about to reiterate that, but also
21 explain that you still have the right to present any
22 additional testimony.

23 Does the Defendant intend to call any additional
24 witnesses?

25 MS. CAMPBELL: Your Honor, I would ask that the

1 Court to allow me a brief recess --

2 THE COURT: Oh, absolutely.

3 MS. CAMPBELL: -- to fully discuss that and perhaps
4 whether or not my client would like to take the stand
5 himself.

6 THE COURT: Because that would be a follow-up
7 obviously.

8 MS. CAMPBELL: Yes, sir.

9 THE COURT: I need to do that before you tell me
10 that there aren't any.

11 MS. CAMPBELL: Yes, sir.

12 THE COURT: So, please feel free -- how long do
13 you need?

14 MS. CAMPBELL: Fifteen, 20 minutes.

15 THE COURT: That's fine. No problem.

16 We'll be at ease until about 11:25.

17 MS. CAMPBELL: Thank you, Your Honor.

18 THE COURT: Thank you. And if you need time,
19 request it.

20 MS. CAMPBELL: Okay.

21 THE COURT: No problem.

22 (Whereupon, a brief recess was taken.)

23 MS. CAMPBELL: Would Your Honor like to place on
24 the record first what has occurred?

25 THE COURT: Yes.

1 MS. CAMPBELL: Okay. Thank you.

2 THE COURT: Court's Exhibit 3 is another inquiry
3 from -- provided by the presiding juror. It states,
4 Can gunshot residue be transferred from one person to
5 another?

6 And I've shared that with each counsel. My
7 response is going to be to the jury that that's a
8 matter that has to be ultimately resolved when, based
9 on the evidence, when they are instructed to begin
10 their deliberations. It's something that some
11 jurisdictions are even allowing. So, that is jurors
12 participating with questions that they need to ask.
13 But it's certainly contrary to my instructions, because
14 I gave the example about the school-teacher setting,
15 that you can't ask questions. And so having said that,
16 we had a discussion concerning -- the State, I don't
17 think, has any objection to going forward, but you had
18 expressed some concern that you may want to make a
19 motion for mistrial, but you needed to talk to your
20 client first.

21 MS. CAMPBELL: Thank you, Your Honor. I have
22 discussed the -- both notes now from the jury with my
23 client.

24 THE COURT: Yes.

25 MS. CAMPBELL: And I will take the position that I

1 am compelled to make a motion at this point for a
2 mistrial based upon premature jury deliberations, and I
3 would leave it to the discretion of the Court as to
4 whether or not to grant my motion. Thank you.

5 THE COURT: What's the State's response to motion
6 for mistrial?

7 MS. SWANSON: Your Honor, the State would respond
8 that the first question was simply a matter of not
9 being able to hear clearly a recording. I don't think
10 it was indicative of premature deliberation.

11 And the second question, Your Honor, came from one
12 particular juror. It did not indicate that they have
13 actually spoken about this subject. We do have a
14 well-reasoned smart jury, I just ask the Court to move
15 forward with this case and send it to the jury.

16 THE COURT: Okay.

17 Given the fact that the question that's stated is
18 a question of a juror, something that he or she is
19 looking -- wants to answer, and that's not something
20 that's common, but it's not something that I haven't
21 experienced in my career as a Judge. And, frankly, I
22 think it's something that maybe one day we'll allow to
23 some extent, submitted just like this, to a Judge for
24 the Judge to make a determination whether or not it's
25 legitimate or relevant. And then you can decide

1 whether or not you wish to ask the question after
2 discussing it with you.

3 While it certainly -- this person is wanting to
4 know certain things, but it may be consistent with what
5 I told them on making the mental notes that they are
6 required to make that -- or not necessarily -- he
7 hasn't -- it's not a statement, it's a question. So it
8 doesn't lead me to believe that he's concluded
9 anything, it's just merely his wanting to know an
10 answer to a question. But I will again advise them
11 that that's not something that -- as I've told people
12 before. I understand questions may arise. That's just
13 human nature.

14 But the entire trial is necessary to facilitate,
15 and that's why deliberations should be -- you should
16 refrain from deliberating until you've gone through the
17 entire process. Because a lot of these questions that
18 pop in one's mind ultimately may be answered or
19 addressed somewhere in the process. So that's probably
20 what I'll -- your motion is noted, but I'm going to
21 respectfully deny the motion for the record. But thank
22 you for that.

23 MS. CAMPBELL: Thank you, Your Honor.

24 THE COURT: Thank you very much.

25 Now, we have had a discussion, also a sidebar,

1 All right. Let's bring in our jury panel.

2 THE BAILIFF: The jury is entering the courtroom,
3 Your Honor.

4 THE COURT: Thank you..

5 Thank you very much, ladies and gentlemen. I
6 appreciate your patience with the Court.

7 I have now what's Court's Exhibit No. 3. And as I
8 understand the -- from the presiding juror, a question
9 from a juror, which states as follows: Can gunshot
10 residue be transferred from one person to another?

11 And I appreciate that, and remind you of something
12 I said when we started. The demonstration I saw one
13 time of a jury and how a jury works in this state, and
14 it was said in a classroom setting, where the judge who
15 was also the teacher walks in and goes through the
16 process just as similar as I did, and states, the
17 interesting thing about this, you're not going to be
18 able to ask any questions during the discussion.
19 You're going to be able to talk among yourselves,
20 you're not going to be able to do anything until the
21 Court tells you to decide it. And then you're not
22 going to be able to ask any questions except to each
23 other.

24 I appreciate the question. My response, there are
25 some states, I think Arizona was one of the first ones,

1 where they went and -- they were doing an experiment to
2 allow jurors to ask certain questions. Sometimes
3 obviously, I don't think there are any persons who
4 didn't ask a question but -- that have any training in
5 the law, but if you are, that even is more important to
6 what I'm about to say.

7 There are rules that you've already heard me rule
8 on matters of law, and we'll talk more about that. And
9 there are rules of evidence that govern what persons
10 can say and not say in a proceeding. So, some
11 questions, while they may be questions that you as a
12 lay person may have, they may not be able to be
13 answered, or stated even more so. Sometimes those
14 questions are answered through other parts of the
15 proceeding.

16 You're just in the middle of this right now. You
17 haven't gone through, and you need to go through all
18 parts, and that's so critical and so important, and it
19 goes back to what I said. You can't deliberate until
20 you're instructed to begin your deliberations, and
21 that's collectively or individually.

22 So, while you're expected to make mental notes,
23 and I understand that juror, to them, right now, that's
24 a question. And that question may ultimately be
25 resolved, but we can't answer that question now. But

1 it may be -- it will be resolved when you are
2 instructed to begin your deliberations, and then you
3 can talk to each other about that. And possibly, one
4 of you may be able to answer that question, or there
5 may not be an answer to that question. I don't know.
6 That's up to you to make that determination, and how
7 significant or important that may be again will be up
8 to you collectively as a jury.

9 But, please, I would remind you, do not begin your
10 deliberations or decide any issues until you've been
11 given that instruction. And quite frankly, it's the
12 last thing I'm going to say to you before you leave to
13 commence the process, and that is when it will start.

14 So thank you very much.

15 Now, we've completed the first phase where I
16 mention to you, the State, the party making the
17 accusations, had the burden of proof, and it's the only
18 part that has any burden of proof. And as I told you,
19 the Defendant has absolutely nothing to prove or
20 disprove, but they still had the right, if they chose
21 to, to present any additional testimony they may deem
22 necessary or important for you to consider. But,
23 again, that's up to them to decide, because they don't
24 have to present any testimony or any additional
25 evidence at all.

1 Now, I ask Ms. Campbell, does the Defendant wish
2 to present any additional witnesses for the jury's
3 consideration?

4 MS. CAMPBELL: We do not. And we would rest.

5 THE COURT: Thank you very much.

6 That would conclude then the evidentiary portion
7 of this process, ladies and gentlemen. That means
8 simply this: There still remains two very important
9 remarks, the closing remarks of the attorneys, which
10 unlike the opening statement, now you've heard the
11 evidence. And now it would be proper for them to
12 discuss that evidence with you and suggest reasonable
13 inferences that you may draw from that evidence. Those
14 remarks will be extremely important when you being the
15 process of analyzing this case.

16 Following that then, we'll go into the charge
17 portion, where I will give you the law that you will
18 apply fairly and impartially to those facts that you
19 will very soon determine when you begin to deliberate
20 in this case.

21 So, please remember, it's still improper to decide
22 anything, individually or collectively. It's improper
23 to talk among yourselves about it in any way. It would
24 be improper for you to have anybody talk with you about
25 it.

1 It's now a quarter till 12. There are some
2 matters of law that I now have to take up, and we have
3 to also engage in what we call a charge conference.
4 That is what law my charge will contain. I have to
5 discuss that with the lawyers and we have to decide on
6 certain legal issues as well. That's going to take a
7 little while. So, I'm going to give you a little bit
8 longer than you would customarily have to take a lunch,
9 so that all of us can have a decent lunch hour as well.

10 So, I would ask you to please return to your jury
11 room by 2:00, and we'll resume the trial at that time.

12 Again, have a good lunch. Enjoy the warmth of
13 the day, and I will see you at 2:00. Do not begin your
14 deliberation.

15 (Jury exits the Courtroom at
16 11:50 a.m.)

17 THE BAILIFF: The jury is clear, Your Honor.

18 THE COURT: Thank you very much.

19 All right. Any exceptions or additions from the
20 State regarding my comments about the Court's Exhibit
21 3?

22 MS. SWANSON: No, sir.

23 THE COURT: Any exception or additions other than
24 your motion for mistrial?

25 MS. CAMPBELL: None other than my motion.

1 THE COURT: Thank you so much.

2 Any matters from the State at this point?

3 MS. SWANSON: No.

4 THE COURT: All right. Now, again, your turn, Ms.
5 Campbell. Thank you.

6 MS. CAMPBELL: May it please the Court.

7 Your Honor, at this time, the Defendant would
8 renew his motion for directed verdict.

9 THE COURT: Okay. And I think, at least at this
10 stage, I'm confident that given the state of our law
11 right now, I'm compelled to let the jury make the
12 decision in this case. Because as I stated earlier,
13 primarily it's the testimony -- conflicting testimony
14 of one witness that places a gun with him, or in his
15 hand. It's also his statement that I shot. You know,
16 what he shot, whether he shot anybody, that's a matter
17 for a jury to conclude. There's a lot of evidence that
18 goes contrary to -- such as positions of all the
19 people, where they were, where the shots -- the
20 directions the shots were coming. Those are all weight
21 questions. And I would have to be delving into the
22 weight of the evidence and so I must respectfully deny
23 your motion for directed verdict.

24 Okay. But now we are -- let's be off the record
25 right this minute.

PROCEEDINGS

1
2
3 THE COURT: All right. We've had a charge
4 conference, informally, and we've gone through some
5 certain things, and as -- first of all, as I
6 understand, the State is requesting that I charge the
7 mutual combat. I will include that in my charge, and I
8 understand the Defendant objects to that inclusion.
9 Only because I think that there is -- in view of the
10 evidence that could suggest mutual combat construed
11 based on the testimony. While that testimony was
12 somewhat contradictory, it still would be evidence, if
13 the jury believes, whatever the jury chooses to
14 believe, would support the theory.

15 It only applies, however, to the murder as to
16 Michael -- let me make sure that that's how we had it
17 listed.

18 Indictment 2012 GS 071419, which is the murder of
19 Michael Morgan, and that's -- that's the murder we're
20 talking about. And the attempted -- and we'll find as
21 to attempted murder on the other two.

22 MS. SWANSON: Right. Yes, sir.

23 THE COURT: And obviously, that being murder and
24 attempted murder being a violent crime, I'll charge the
25 weapons charge.

1 I will charge, however, self-defense in all of them
2 because my charge will contain the language with respect
3 to the mutual combat, that, if he breaks it off, then
4 there is no mutual combat. Therefore -- and that's
5 based on the evidence that the occupants were trying to
6 leave, and that could be construed to be I am no longer
7 engaged in mutual combat and, therefore, any actions
8 taken could be considered self-defense and as, you know,
9 I'll charge the State has to disprove self-defense.

10 I'll charge the charge on murder, and I'll
11 charge the -- give the law on attempted murder. I will
12 charge the lesser included offense of voluntary
13 manslaughter. Did you decide whether you were going to
14 object to that or not.

15 MS. CAMPBELL: I do object to it, Judge.

16 THE COURT: Okay. Given -- and as I understand,
17 the State is requesting voluntary manslaughter.

18 MS. SWANSON: That's correct. All the lesser
19 included.

20 THE COURT: I think, based on the fact that there
21 was this heated discussion before, I don't think there
22 was any physical altercation other than maybe some
23 possible pushing construed that the jury could
24 conceive, but there was clearly some heated passion
25 going on, and it sort of all flowed out of the initial

1 confrontation between Bailey and Krum, I think, Alfred,
2 what was his last name?

3 MS. SWANSON: Chaplin.

4 THE COURT: Chaplin, yes. Which I think would
5 warrant voluntary manslaughter. It could say that it
6 was a result of heat of passion. And, therefore, I
7 will include it in the facts supporting that charge,
8 and I will include that as well.

9 I think you've asked about -- I've included
10 language for the circumstantial evidence charge, which
11 you have asked for. I think that covers all the charges
12 that we had in discussion. Have I omitted something
13 other than my general charge? Anything from the State?

14 MS. SWANSON: Nothing from the State.

15 THE COURT: Anything from the Defendant?

16 MS. CAMPBELL: No, Your Honor.

17 THE COURT: Thank you very much. Can you have our
18 jury?

19 MS. SWANSON: Your Honor.

20 THE COURT: Just a moment.

21 MS. SWANSON: I apologize. At this time, Judge,
22 the State is withdrawing the indictment for murder with
23 regard to the victim, Dante Bailey.

24 THE COURT: Okay.

25 MS. SWANSON: And I am filing paperwork on

1 indictment on 2013GS07905.

2 THE COURT: Okay.

3 MS. SWANSON: That charge is still outstanding
4 against Lucas Morgan. So, we will not be proceeding on
5 the murder charge with reference to victim Dante Bailey
6 against Joseph Bowers.

7 THE COURT: Okay. All right. We are ready now.
8 Let the record reflect, Mr. Bowers is present.

9 THE BAILIFF: Ready, Judge?

10 THE COURT: Yes.

11 THE BAILIFF: I'll bring them in.

12 THE BAILIFF: The jury is entering the Courtroom,
13 Your Honor.

14 The jury is seated, Your Honor.

15 THE COURT: Thank you very much.

16 Thank you, ladies and gentlemen. I hope you had a
17 good lunch. I know when we stopped, we completed the
18 evidentiary portion, and during the portions of matters
19 of law one thing has occurred, and that is that
20 indictment 2013GS07905, the indictment against
21 Mr. Bowers for the murder of Dante Bailey, has been
22 dismissed. So, that will not be a matter for your
23 consideration. Okay:

24 Now, we move into that next portion of this
25 proceeding, where the attorneys will have the

1 opportunity to speak to you. Please give them your
2 attention. Their remarks will be helpful, but remember
3 that there will be nothing that you hear now until you
4 begin your deliberations that should be considered
5 evidence. Attorney's remarks on my remarks?

6 Thank you very much, Solicitor.

7 MS. SWANSON: Thank you. May it please the Court,
8 Your Honor.

9 THE COURT: Yes.

10 STATE'S CLOSING ARGUMENT

11 MS. SWANSON: In Ms. Campbell's opening statement
12 we heard the heartwarming story of the little Opie
13 Bowers who grew up on the picturesque back roads of St.
14 Helena. Warm breeze ruffling his hair.

15 Today in this courtroom, little Opie Bowers is not
16 big little, and this is a far cry from the innocence of
17 childhood. This is not child's play, this is extremely
18 serious.

19 Now, that Opie has grown up, his story is the stuff
20 of nightmares, and this was a nightmare for the
21 community of St. Helena. Little Opie is now armed with
22 a Glock 26, Dante Bailey's Glock. He is unloading it
23 into a crowd of people at the Midnight Soul Patrol.
24 Dropping shell casings where he's shooting. Engaging in
25 deadly combat in a residential area. Engaging in mutual

STATE'S CLOSING ARGUMENT

1 combat.

2 Dante Bailey dies. Opie doesn't leave. Remember
3 Stanley Humphries told you they were all leaving.
4 Stanley Humphries may have been the only one in that van
5 that wanted to go play pool that night. The rest of
6 them, armed to the nines, were looking for trouble.
7 This was not their hangout, they are not from Land's
8 End, nobody wanted them there. It was about 15 minutes
9 before trouble started and it got bad.

10 You heard there were four victims. The State has
11 withdrawn the murder charge against Mr. Bowers, reason
12 being because Dante was dead when Joey decided to engage
13 in mutual combat. He leapt out of that car, goes over
14 to Dante, grabs his Glock 26, and unloads.

15 All of those 911 calls that you heard from people
16 asleep in their bed, scared, wanting the protection of
17 law enforcement but not wanting to give their names,
18 they were all impacted by this senseless violence, too.
19 In addition to the victims, the victims' children, the
20 victims' family members, everyone in this community.
21 Everyone in this community knew people on both sides.
22 They're the friends, family members, and neighbors of
23 the victims and the defendants in this case. You heard
24 how uncooperative this community was in this
25 investigation.

STATE'S CLOSING ARGUMENT

1 It should be clear that nobody wanted any part of
2 this violence, nor did they want any part of the
3 investigation or the trial of this case. But the State
4 has trudged along, law enforcement trudged along, and
5 here we are about two years later, after trying to get
6 every lead, following up on every lead, Investigator
7 Zsamar, all the investigation folks who interviewed at
8 least 80 witnesses to find out what happened that night.
9 And at the end of the day we're left with the same two
10 suspects that were developed within minutes of the
11 shooting, Lucas Morgan and Joey Bowers.

12 The two names that keep coming from the scene,
13 Lucas Morgan and Joey, white male, Tom Fripp. You heard
14 that over and over again, not Joey Chaplin, black male.
15 Maybe Joey Chaplin's name was in there. That's a red
16 herring. Nobody is confusing this Joey for Joey
17 Chaplin, little black male.

18 Joe Garden, the firefighter, confirmed there were
19 two names being called at the scene that night.

20 Joe Nathan spoke to you, and although I had to drag
21 it out of him he gave us some insight into how the
22 events played out. Again, I told you in the beginning,
23 different people saw different things because this was
24 chaos. A gun battle. This was a melee. People were
25 ducking, dodging bullets. People saw different things.

STATE'S CLOSING ARGUMENT

1 They may have been behind the oak tree, they may have
2 been behind the satellite dish, they may have not been
3 behind the propane tank, although, I'm not sure I would
4 have wanted to have been there when the Glock 26 is
5 aimed that way.

6 He also told you after the argument between
7 Arthur Chaplin, Krum, and Dante Bailey, Cole, he saw
8 four to five black males run up through the parking lot
9 with guns with their heads down. Well, guess who wasn't
10 running with his head down because he was standing over
11 Dante Bailey's body with the gun unloading it? And that
12 was Opie.

13 Who tells us that? There are a couple of witnesses
14 that tell us that.

15 Magnum Smalls tells us that he saw Opie standing
16 over Dante's body with Dante's gun. Robert Goodwine
17 also tells us that he saw Opie standing over Dante's
18 body.

19 Did you see anyone with guns? No, not really,
20 besides Lucas Morgan. Okay, well, everyone saw Lucas
21 with a gun. Do you know why everyone saw Lucas with a
22 gun? Probably because he was shooting first. He killed
23 Dante. All right? He killed Dante.

24 Meanwhile, everyone is scurrying about, because
25 they're not trying to be witnesses in a murder case

STATE'S CLOSING ARGUMENT

1 later, they're trying to save their lives.

2 The people that were shot were shot outside of
3 the club. Nobody was shot inside of the club. There
4 are some shell casings that were found in the club,
5 there was some evidence of some other gunfire, other
6 people that had guns, I understand that. But today
7 we're here to talk about Joseph Bowers and his
8 responsibility and the choices he made that night.

9 Are other people responsible for this? Absolutely.
10 You heard Dan DeFreese tell you -- he's the ballistics
11 expert from SLED -- that there were two major areas of
12 gunfire, or two major -- I'm sorry. Two primary guns
13 that created most of the evidence of gunfire, likely two
14 Glockes. We know one of them was a Glock, because that's
15 Dante's Glock, and we know that the Sphere nine
16 millimeter shell casings that were found in that dirt
17 parking lot area came from that exact gun.

18 And it's just as I told you when we started this
19 case, we've got Lucas Morgan over here firing this way,
20 we've got Joseph Bowers right here firing this way.
21 Bullets are flying.

22 Bullets also flying into the club, bullets that are
23 consistent with being fired from the Glock 26 that Opie
24 had. Pretty clear that they came from the parking lot
25 area, don't you think? Little bit amazed that Big D,

STATE'S CLOSING ARGUMENT

1 who is rather big, you saw, did not get hit by any of
2 those bullets as he crouched down in his DJ booth. And,
3 of course, that's where Opie stood as he unloaded.

4 Each of the victims in this case, Richard, unarmed
5 Richard Green, who hopes to recover from his paralysis,
6 doesn't know who shot him. Well, I mean, he was shot in
7 the back, it was a through and through shot. We cannot
8 definitively tell you whose bullet hit him, but does
9 that mean that the shooter should go free? That they
10 should get lucky because their bullet tore through
11 somebody's flesh, that it went straight through a human
12 being? Absolutely not. And so that's why the law
13 allows for theories like mutual combat, which I'm going
14 to ask you to listen as Judge Dennis charges you on the
15 law. It holds those people responsible for any death or
16 injury that occurs while they engage in mutual combat
17 with a deadly weapon.

18 Unarmed Robert Goodwine also shot, through and
19 through shot, while Lucas and Opie were engaged in
20 mutual combat. Michael, Michael Morgan, Lucas' brother,
21 he knew who shot him. Lucas didn't shoot him. He was
22 armed with a flare gun. Okay? There was testimony that
23 he shot up the flare in the air. Do we know why? No.
24 Was it stupid? Yes. He wasn't the only one out there
25 without any sense that night.

STATE'S CLOSING ARGUMENT

1 Did he deserve to die? No. Do we know where he
2 was standing when he got shot? No, we don't. Was he
3 standing over by those steps? Probably not. You heard
4 he got shot in the right buttock and it exited the iliac
5 fold, which is right about here. Okay? He bled out
6 slowly internally. He was able to take a few steps
7 before he collapsed on the back of the porch of
8 Ms. Poot's steps. We don't know exactly where he was
9 standing, what position he was in when he was shot.

10 You heard Dr. ****, trajectory -- you need a lot
11 more information. You need the information of exactly
12 where the shooter is standing, if he's standing like
13 this holding the weapon like this, is he standing like
14 this, is he crouched down?

15 How is Michael Morgan standing? Who knows? He may
16 have been running. Does that make sense? He's running
17 like this and he gets shot? We know he was over in this
18 area, and we know that Joey is over in this area and he
19 gets hit. And he bleeds out.

20 Just so we're clear. I want to make sure that
21 nobody thinks that Stanley Humphries could somehow be
22 mistaken for Opie, because Stanley didn't know anyone
23 out there that night. He was with Dante, his buddy,
24 earlier in the night at the Sand Dollar. They were
25 playing pool. They go back to Dante's to get some

STATE'S CLOSING ARGUMENT

1 smokes, and they pick up some guys. Guys that
2 apparently were not wanted at the Midnight Soul Patrol.
3 Stanley said, We didn't even get to play pool. They
4 were there for 15 minutes before gunfire broke out.
5 These guys were looking for trouble.

6 Who goes to play a laid back game of pool armed
7 with a Glock?

8 Scruffy, Salty Stanley -- very different than
9 Opie. Stanley tries to get everyone to leave. Stanley
10 doesn't want any part of this. Stanley is like, oh,
11 man, I'm driving, I got a mini van, let's go. Dante is
12 helping them back out, Dante gets shot, Joey gets out,
13 everyone gets out to check on Dante. Once they realize
14 he's dead, Hump gets back in the car, along with someone
15 else, and picks up another gunshot wound victim, Robert
16 Goodwine, takes him to the hospital. But who doesn't
17 get back in that car? Opie.

18 Instead, Opie grabs Dante's gun and unloads it.
19 Was it a retaliatory gunshot? Maybe. But it was mutual
20 combat. Gunfire everywhere.

21 We also know that Opie was shooting because not
22 only do we have a lot of circumstantial evidence,
23 witnesses that place him over Cole's body, witnesses
24 that place him with Dante's gun, but -- oh -- oh, and
25 GSR also. Particles on the front of his clothing, not

STATE'S CLOSING ARGUMENT

1 particles that he could have gotten, you know, if he got
2 into Hump's van, you know, brushed up against the
3 fabric, something like that. These are -- these are
4 particles that were lifted from small spots on his
5 clothing that were consistent with having fired a gun.
6 Well, why? Because he did fire a gun, and he told us
7 that. He told us that he fired a gun.

8 He told us he fired a gun in his recorded jail
9 phone call to his girlfriend.

10 (Playing audio.)

11 MS. SWANSON: God has got a plan for him. St.
12 Opie has faith in the detention center. I'm pretty
13 sure that it was not in God's plan for him to leave
14 three victims at the Midnight Soul Patrol because he
15 unloaded a Glock 26.

16 As human beings we have something called freewill,
17 and he made choices that night. And no matter what
18 faith you are, you should understand that.

19 This is the same Opie, he was adamant when talking
20 to Investigator Fraser that he had nothing to do with a
21 gun. He did not handle a gun, he did not touch a
22 weapon, he did not fire a gun. That was a lie. It was
23 also a lie when he told Investigator Fraser that Terry
24 Thornton, a black male, stood over Opie and unloaded his
25 Glock 26.

STATE'S CLOSING ARGUMENT

1 DO you honestly think that the witnesses that
2 testified about Opie standing over Cole with Dante's gun
3 mistook him for a black male named T dog? No. That was
4 Opie firing over and over and over again. And he made
5 that choice. He made his bed. In his words, he did it
6 to himself.

7 I'm asking you, I'm asking you to speak the truth,
8 I'm asking you to follow the law that Judge Dennis
9 charges you with. I'm asking you to get this right.
10 Law enforcement got this right, and I ask that you do,
11 too. Find Joseph Bowers guilty in the murders of
12 Michael Morgan, the attempted murders of Robert Goodwine
13 and Richard Green.

14 And I thank you for your attention.

15 MS. CAMPBELL: I apologize, Your Honor.

16 THE COURT: Go ahead, take your time.

17 DEFENDANT'S CLOSING ARGUMENT

18 MS. CAMPBELL: Thank you.

19 Good afternoon. You know, the Solicitor, when she
20 talked to you at the beginning of this the case, she
21 said this is a simple case. It's not a simple case.

22 I remember, you know, I talked to you earlier about
23 my dad and how he used to watch the Andy Griffith Show,
24 and the other favorite show that he watched a lot was a
25 show called Matlock. You get the theme here, because

DEFENDANT'S CLOSING ARGUMENT

1 his favorites for those shows was for that particular
2 actor and his stories.

3 But he was a small town lawyer, defending the people
4 in his community that had been charged with committing
5 criminal offenses. And there's one particular scene
6 where he gets up at the end of the case and he's doing
7 his closing, and he looks at the jury and says, Now,
8 what would you do? What would you do if that had been
9 you?

10 And one of the jurors gets up and says, Well, I'd
11 have done what he did. And Mr. Matlock just sits down.
12 I'm not able to do that. I'm going to have to walk you
13 through everything we have.

14 My dad was also a scientist, an engineer, and a
15 couple things he did manage to teach me about science is
16 that a right angle is always 90 degrees. A plus B plus
17 C, and one plus one equals two. And why is that so
18 important? Why is the science of that so important?
19 I'll tell you why. It's the key to this case.

20 If you look at, and I don't think the Solicitor
21 showed you these, but they are in evidence and you will
22 have them during your deliberations, if you look at the
23 State's Exhibit 48. And you'll recall that I asked
24 Investigator Zsamar about this particular photograph.
25 It is absolutely impossible for the Sphere shell casing

DEFENDANT'S CLOSING ARGUMENT

1 from this angle to go around the corner and to hit
2 Michael Morgan and to kill Michael Morgan. It is also
3 inconsistent that Michael Morgan, as you can look at 49
4 and see how far around the back of that house is where
5 he was, it's a physical scientific impossibility. Look
6 at State's Exhibit 45. All of the shells -- excuse me,
7 all of the projectiles that were coming from the parking
8 lot were hitting the corner of the Midnight Soul Patrol.

9 And who told you that Lucas Morgan on his second
10 clip had positioned himself right there up against the
11 side of the Midnight Soul Patrol, firing around the
12 corner from a position of cover himself. Magnum Smalls
13 told you that.

14 The Solicitor's talked to you about mutual combat.
15 I don't think there's any question that Dante Bailey and
16 Arthur Chaplin were in some sort of disagreement that
17 night. Dante Bailey, Joseph Bowers, and Stanley
18 Humphries withdraw from whatever was going on between
19 those boys. They withdraw to the point that they break
20 it off, and Magnum said it might have been Joey that
21 said, come on, let's go. And they do. They break it
22 off.

23 Why is that important? That's important because
24 Your Honor's going to tell you, when you break it off,
25 when you try to leave, all your self-defense rights are

DEFENDANT'S CLOSING ARGUMENT

1 back in play. They got into that van, and they tried to
2 leave, and Dante -- they can't get out. They're blocked
3 in or something's happening. Dante is trying to get
4 them backed out, and that is when Michael Morgan from a
5 position of over here behind the house lights it up.
6 And he lights it up so Lucas can see what he's doing,
7 and he sprays the parking lot. And when he does, the
8 Solicitor has admitted, Lucas Morgan shot and killed
9 Dante Bailey at basically the feet of Stanley Humphries
10 and Joseph Bowers.

11 She's right. If we've heard it once, we've heard
12 it 15, 20 times. It was chaos. When Lucas Morgan
13 emptied his first clip, you can imagine, you can put
14 yourselves there, the chaos and the fear and the
15 absolute terror that you're going to die, that you are
16 going to be hit by one of those bullets that he's
17 spraying across the parking lot.

18 Self-defense enters play right here. Self-defense,
19 Judge Dennis will tell you is an absolute complete
20 defense. And if it's established you have to find Joey
21 Bowers not guilty on all the indictments.

22 And here's the further thing, the State of South
23 Carolina must prove to you beyond a reasonable doubt
24 that Joey Bowers in no way acted in self-defense because
25 there's never any burden in this country on an innocent

DEFENDANT'S CLOSING ARGUMENT

1 man to prove himself not guilty.

2 Elements of self-defense: Number one, you have to
3 be without fault in bringing about the disturbance. So,
4 Joseph Bowers was leaving, absolutely no question, it's
5 in the evidence, leaving the Midnight Soul Patrol. And
6 there's no evidence that he himself acted in any
7 argumentative or hostile manner to anyone. There's
8 nothing in the record, nothing in the testimony to say
9 that he did anything provocative.

10 Now, number two, you have to find that he was in
11 imminent danger of losing his life. Now, you can put
12 yourself in his shoes, a reasonable person. If you are
13 taking fire, do you think you're are in fear of losing
14 your life? Absolutely.

15 Now, you can also respond to that taking fire,
16 being under fire, and strike a fatal blow in order to
17 prevent the loss of your own life or others around you.

18 And third, no other way to avoid the danger, no
19 other way to avoid it.

20 Now, the evidence is clear, if you were running, if
21 you were moving about, as Robert Goodwine says he was,
22 you were going to get shot. And it's not as if at that
23 moment, after Dante Bailey is shot dead, that -- and
24 Stanley Humphries is clearly backing out, trying to
25 leave, what do you do? Do you drop to the ground?

DEFENDANT'S CLOSING ARGUMENT

1 There's no cover in the parking lot, and you have an
2 active shooter at the corner of the Midnight Soul Patrol
3 still firing on you. And he, Joseph Bowers,, is
4 justified in shooting and continuing to shoot until the
5 danger or the threat to his life is over.

6 A couple of pieces of evidence, Joe Pope is clear,
7 Lucas Morgan opened fire on the parking lot on Dante
8 Bailey. The Sphere shell casings, Zsamar testified, he
9 even admitted, no, you can't hit that area behind
10 Ms. Poot's house from that location. You heard
11 testimony that the casings drop where you fire. They
12 don't eject 50 feet away. If you're standing here,
13 they're dropping here. So, we have a point. We have a
14 location for Joey. And from that location, bullets
15 don't curve. They went into the side of that building,
16 not to where Michael Morgan was.

17 And even, if you want to say, like Solicitor said,
18 well, he's running to Ms. Poot's back porch, he gets hit
19 in the right buttock, not from the parking lot. And
20 I'll tell you why that's significant in just a minute.

21 Clearly, Robert Goodwine says, I know Lucas Morgan
22 shot me. We got no forensic evidence to tie Joey to any
23 of the evidence found at the scene.

24 Stanley Humphries told me, yeah, I was afraid for
25 my life. Trying to leave, trying to get to some safety.

DEFENDANT'S CLOSING ARGUMENT

1 The ER doctors told you that law enforcement came
2 to see Michael Morgan about an hour and a half, two
3 hours after this Joey Chaplin name was called out. And
4 I don't know how that happened. But you needed to know
5 that. I'm not doing my job if I don't tell you that and
6 bring that out. I know the State is not going to bring
7 it out, but I've got to do what I have to do. I don't
8 know how it happened. I don't know if information was
9 laid over other information. But that's for you to
10 decide. But I've got to bring it to you.

11 Now, the jail phone calls. Hundreds of phone
12 calls. Every time, your call is being recorded. Every
13 single time. Moore testified to that. It's an
14 emotional conversation. They're speaking about their
15 relationship.

16 You know, and regardless of whether you're able to
17 understand what's being said in what is clearly in what
18 is clearly in anguish spoken between Joey and Megan, the
19 forensic evidence, the medical evidence, the ballistic
20 evidence and all the other evidence simply -- well, they
21 simply tell a different story.

22 So, where are we? During the first round of shots,
23 who is shooting? Lucas Morgan is shooting from the
24 propane tank. It's clear.

25 Lewis Melvin Johnson is shooting out the side door,

DEFENDANT'S CLOSING ARGUMENT

1 State's 43. Out the side door, right here. Right in
2 here. And from the ballistics and firearms expert, we
3 have placard 23, the .45 shell casing, it's over there
4 in the same area by the wood line, the single shot.
5 Those three shooters had a clear shot to Michael Morgan.

6 Was that .45 shell casing Arthur Chaplin? I don't
7 know. Arthur is not here today.

8 I'll close by saying what does not require
9 guessing? What does not require you to take leaps that
10 are extraordinary or unreasonable?

11 The State told you they dismissed the charge today,
12 the murder indictment against Joey for the killing of
13 Dante Bailey. Today. Joey Bowers could not have shot
14 and killed Michael Morgan. He had no clear shot. The
15 bullet, the laws of physics, don't allow that.

16 Lucas Morgan shot and injured Robert Goodwine, and
17 Lucas Morgan -- Lewis Melvin Johnson had a clear shot to
18 injure Richard Green. And if Joey adopted the belief,
19 if Joey said something about saying, you know, I didn't
20 kill anybody, that part's clear. That we can hear. And
21 you'll have to make a determination of what you hear.
22 But even if you hear and you determine the rest of that
23 statement is, I only shot the boy, then he shot the boy
24 to save his life. And the Judge will tell you that is
25 absolutely permissible. And you must find then that he

DEFENDANT'S CLOSING ARGUMENT

1 is not guilty.

2 You know, I believe an innocent man has sat next to
3 me the last three days. I believe I've worked with an
4 innocent man for two years. He was not a participant in
5 whatever was going on between Dante Bailey and Arthur
6 Chaplin. He withdrew from the Midnight Soul Patrol,
7 trying to get in the car. He said, let's go, let's
8 leave. And if he fired the Glock, if he fired the
9 Glock, he did it at Lucas Morgan, as Lucas Morgan stood
10 right there taking cover on the side of that building,
11 shooting at Joey. And when he did that, if Joey fired
12 back, then he had every right to do it. And I'll say to
13 you as I finish and return to my chair, what would you
14 do?

15 JURY CHARGE

16 THE COURT: Thank you very much. Ladies and
17 gentlemen, now it becomes my responsibility, of course,
18 as the trial judge to give you the law which you have
19 promised to duly accept and apply fairly and
20 impartially to those facts that you will determine very
21 shortly when you begin your deliberations in this case.

22 And it is your duty as the jurors to accept this
23 law as I state it to you, and your exclusive duty to
24 determine the effect, the value, and weight and the
25 truth of the evidence. Both the State and Mr. Bowers

JURY CHARGE

1 have a right to expect that you will perform this task
2 in just a few moments, and once you've done that, you
3 will honor the commitment that you made when we started
4 this process.

5 During this instruction, you may hear me use, from
6 time to time, the term Defendant, as I believe I
7 mentioned to you when we started. That's a term that we
8 use to designate the party against whom some claim is
9 made. Again, that's the sole significance of the term,
10 not to infer anything else from it. It's just another
11 way of referring to Mr. Bowers.

12 And now, as I also mentioned to you when you were
13 qualified, these documents which I hold in my hand are
14 called indictments, and they merely contain the
15 accusations made against Mr. Bowers. He's accused of
16 committing two acts of attempted murder, one act of
17 murder, and being in possession of a weapon during the
18 commission of a violent crime.

19 They're not going to accompany you to your jury
20 room because they are not evidence. And to those
21 indictments, Mr. Bowers has rendered a plea of not
22 guilty. Which, of course, then places upon the State
23 the burden of proving his guilt beyond a reasonable
24 doubt. It's been stated throughout, persons in this
25 country accused of committing criminal offenses, such as

JURY CHARGE

1 Mr. Bowers, are never required to come in and prove
2 themselves innocent.

3 As a principal of law, we call the presumption of
4 innocence and it's not -- those aren't just words. It
5 requires an act of presumption on your part to presume
6 that he is not guilty. And that presumption continues
7 throughout this trial, and has continued throughout this
8 trial, and can only be removed when, through your
9 deliberations, you're convinced beyond a reasonable
10 doubt that the State has met its burden of proof as to
11 each element of the crime as charged, and then and only
12 then may you set aside that presumption.

13 In other words, if at any point you conclude the
14 State has not, that presumption of innocence carries the
15 day, so to speak. It's all that's necessary, and your
16 verdict must be not guilty.

17 So, obviously, ladies and gentlemen, it follows and
18 is logical that persons who are accused of criminal
19 offenses are not required to testify, they are not
20 required to put in any evidence, as I've stated
21 throughout, throughout. That is never a requirement
22 because the sole requirement rests on the State.

23 So, the fact that Mr. Bowers in this case did not
24 put any in evidence and did not testify cannot be
25 considered by you. And in your deliberations and under

JURY CHARGE

1 your oath, you are to reach no inference and draw no
2 conclusion whatsoever from the fact that he didn't
3 testify. And it may not even be discussed by you in the
4 jury room. Or if you do, you will have violated your
5 oath that you took.

6 Know it's incumbent upon the State to prove guilt
7 beyond a reasonable doubt, and you have to assess the
8 evidence to determine whether or not the State has met
9 its burden of proof.

10 What is a reasonable doubt? A reasonable doubt is
11 a doubt which makes an honest, sincere, conscientious
12 juror who's searching for the truth in a case to
13 hesitate -- or hesitate to act.

14 Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the Defendant's guilt of
16 one or more of these crimes. There are very few things
17 in this life and in this world that we know with
18 absolute certainty. And in criminal cases such as this,
19 the law doesn't require proof that overcomes every
20 possible doubt. If based upon your consideration of the
21 evidence you are firmly convinced that Mr. Bowers is
22 guilty of one or more of these crimes you must find him
23 guilty and return a verdict as so states.

24 On the other hand, if you think there's a real
25 possibility that he's not guilty, then you must return a

JURY CHARGE

1 verdict of not guilty by giving him the benefit of the
2 doubt in that particular case.

3 A reasonable doubt may arise from the evidence in
4 the case or lack of evidence in the case. And it's up
5 to you to determine whether or not a reasonable doubt
6 exists as to the guilt of Mr. Bowers.

7 I charge you that he's entitled to every reasonable
8 doubt arising in the whole case. And what is that?
9 Simply this. If, upon any issue of fact, you should
10 have a reasonable doubt as to how that matter should be
11 resolved, I would instruct you to resolve it in his
12 favor because he's entitled to every reasonable doubt
13 arising on any issue in which you have a reasonable
14 doubt.

15 Now, there are two types of evidence generally used
16 in presenting cases, direct the evidence and indirect
17 are the more popular name for that is circumstantial
18 evidence. Direct evidence is the testimony of a person
19 who claims to have actual knowledge of a fact, such as
20 an eyewitness or similar. Basically it's when someone
21 testifies to sensory perception, I saw something, I
22 heard something, I felt something or the like. And if
23 you are firmly convinced as to accuracy and credibility
24 of that testimony, then you certainly may rely on that
25 particular fact as having been established by direct

JURY CHARGE

1 evidence.

2 Circumstantial evidence is a proof of a chain of
3 facts and circumstances which you, when you link them,
4 they point to an existing fact, either through inductive
5 or deductive reasoning. By putting them together it
6 leads you to the logical conclusion. And if you're
7 firmly convinced as to all of those facts that you're
8 linking and the logical conclusion, then, of course, it
9 would establish that particular fact through
10 circumstantial evidence.

11 Now, the law makes absolutely no distinction
12 between the weight of the value to be given to either
13 direct or circumstantial evidence, nor is there any
14 greater degree of certainty required of circumstantial
15 evidence than of direct evidence. You are instructed to
16 weight all the evidence in this case and decide what you
17 find to be credible or believable.

18 However, to the extent that the State is relying on
19 circumstantial evidence, all of the circumstances must
20 be consistent with each other, and when taken together
21 point conclusively to the guilt of the accused, that is
22 Mr. Bowers, beyond a reasonable doubt.

23 If these circumstances merely portray the
24 Defendant's behavior as suspicious, then the proof has
25 failed. Why? Because the mere fact that a circumstance

JURY CHARGE

1 is brought out in a case is strongly suspicion of guilt.
2 Or that the circumstances are such the Defendant's guilt
3 is even probable, that would not be sufficient to
4 sustain a verdict because the proof offered by the State
5 has to be more than mere suspicion, it has to be more
6 than someone being probably guilty. It has to be proof
7 that convinces you beyond a reasonable doubt.

8 Now, the evidence which you would consider as we
9 have stated throughout consists of the testimony of the
10 witnesses and exhibits that were introduced through
11 their testimony, and received. And in that regard, I
12 remind you that I told you that when it was admitted by
13 the Court, that meant that it would accompany you to
14 your jury room, and you will have an opportunity to view
15 that evidence and study that evidence more intensely.

16 If it was referenced in testimony, but the
17 evidence -- but the exhibit itself was not introduced,
18 then that exhibit will not accompany you to your jury
19 room. But you certainly are to consider the testimony
20 where that exhibit was used. Sometimes a witness had
21 even saw this may have their recollection refreshed by
22 referring to a document. You have to assess that
23 testimony, but the exhibit itself does not accompany you
24 to the jury room for your review.

25 I would also remind you that my rulings, my

JURY CHARGE

1 statements now and my rulings on matters of law should
2 likewise not be considered by you as evidence because
3 that was part of our -- the process. It's been my
4 responsibility to rule on matters of law and yours to
5 rule on matters of fact.

6 Generally, those types of rulings occurred in your
7 absence or at a sidebar, as I mentioned to you. And if
8 you heard one, and the only time that you would is when
9 a ruling on typically an evidentiary matter, you heard
10 the attorneys say objection, Your Honor, and my rulings
11 were either sustained or overruled. The fact that I
12 sustained an objection, that meant that you didn't hear
13 the answer or didn't -- the question was not permitted,
14 that should not be considered by you at all. Because if
15 you do, then you have kind of stepped into my area of
16 responsibility.

17 But if I overruled the objection, you're not to
18 consider that either, because the fact that I permitted
19 you to hear it does not mean that you have to accept it
20 as a proven fact. If you look at it in that light, then
21 you've permitted me to step over into your area of
22 responsibility.

23 Quite frankly, it probably at that moment, when I
24 overruled it, it's probably the greatest example I could
25 give to you of how we work together. I've said, as a

JURY CHARGE

1 matter of law, I'm going to permit the question and
2 answer, but now it shifts to you. You have to decide
3 whether or not you believe it, and if so, how strongly
4 you believe it. So, please remember that as you go
5 through and analyze the evidence in this case.

6 Also, I would remind you that the attorneys'
7 remarks and statements, either in opening statement or
8 in closing arguments, likewise should not be considered
9 evidence. While extremely important and very helpful in
10 analyzing the evidence, their remarks are not evidence
11 and should be taken by you as only informational
12 purposes for deciding what the true facts are.

13 And if the fact -- if they, in their arguments,
14 mention testimony which is inconsistent with your
15 collective recollection of what a witness said or didn't
16 say, you are instructed to disregard their remarks in
17 their entirety because you and you alone are the sole
18 judges of the facts in this dispute.

19 Likewise, if their remarks should differ from my
20 instruction on the law, you are instructed to disregard
21 those remarks of the law, the attorneys remarks, and
22 take the law as I give it to you, because for purposes
23 of this proceeding today, I'm the sole judge of the law
24 for your purposes.

25 How do you decide the facts of a case? As we

JURY CHARGE

1 mentioned, when we started and I spoke to you initially,
2 it really is a common sense exercise. It's something
3 that we do everyday. We hear something or we read
4 something and we decide for ourselves whether we believe
5 it or not. And you're going to do the same thing.
6 You're going to apply all of those skills that you've
7 developed in your life assessing what someone says or
8 what you read, and you're going to make a decision
9 whether you believe it or not. And you have very broad
10 discretions in doing this, and there are many, many
11 factors that one may consider to assist them in making
12 this type of decision. I'm going to mention some of
13 them to you now, but if I don't mention a method or
14 factor that you have employed in your life -- I mean,
15 you've found it to be reliable, please use it when you
16 do begin your deliberations.

17 Some of the facts that you may want to consider
18 would be the appearance of the witness. How did they
19 appear to you? Straightforward or hesitant in answering
20 the questions.

21 Was the testimony of the witness consistent, or was
22 it inconsistent? Was it strengthened or weakened by
23 other facts in the case? How did the witness come to
24 know the facts that he or she testified to, and what was
25 the ability of that witness to remember those facts or

JURY CHARGE

1 circumstances? Was -- is there some reason for a
2 witness to give testimony which may be helpful or
3 detrimental to one side or another? In other words, was
4 the witness biased or prejudiced in any fashion?

5 In making determinations of credibility and
6 believability, you may believe many witnesses against
7 one, one witness against many. You don't count the
8 number of witnesses, obviously that's not what we're
9 talking about, but you are simply entitled to consider
10 each other witness. And then so far as their testimony
11 is concerned, you're entitled to believe all the
12 witness' testimony, parts of a witness' testimony, or
13 none of the witness' testimony.

14 Now, of course, you don't make those decisions
15 arbitrarily, but if there's a reason in the record of
16 this case, that is the evidence of this case for taking
17 that position, you have that prerogative because your
18 objective from the start has been to determine the
19 truth, regardless of the source of the evidence.

20 Now, while you enjoy very broad discretions when it
21 comes to determining the facts, please remember, you do
22 not enjoy the same with the law.

23 As I have stated, there are a lot of laws today
24 that may cause us to scratch our head or think there's
25 got to be a better way, and sometimes we do that.

JURY CHARGE

1 Sometimes we change those laws. Law is in a constant
2 state of moving.

3 And you may have some concepts of what you thought
4 the law was, or should be, and I respect you for that.
5 But for the purposes of the proceeding today, you
6 promised the State, you promised Mr. Bowers, and you
7 promised the Court that you'll set aside your personal
8 beliefs and take the law as I give it to you, and apply
9 it fairly and impartially.

10 The fact that I give you an instruction on a
11 particular issue is not to be considered by you as an
12 indication of how you're to resolve the factual issue,
13 because that's your sole job.

14 Also, you consider the charge as a whole, don't put
15 any greater weight or emphasis on one aspect of the
16 charge, but apply it as a whole. And the order of my
17 instruction obviously means nothing. I had to put it in
18 some order to get it to you.

19 Let's look at the various charges now.

20 First, I want to look at the charge of murder and
21 the attempted murder to some extent. I'll go in more
22 detail about the attempted murder, but both the murder
23 and the attempted murder have similar factors that have
24 to be established, or elements, stated another way,
25 elements.

JURY CHARGE

1 First, murder is defined by a code as the killing
2 of a person with malice aforethought, either express or
3 implied. Attempted murder is the killing of a person or
4 the attempt to kill a person with malice aforethought,
5 either expressed or implied.

6 Let's look first at this element of malice, which
7 applies to both of those charges. Malice is hatred, ill
8 will, or hostility towards another person. It is the
9 intentional doing of a wrongful act without just cause
10 or excuse and without -- and with an intent to conflict
11 an injury, or under the circumstances that the law will
12 infer evil intent.

13 Malice aforethought doesn't require that malice
14 exists for any particular time before the act is
15 committed, but rather malice must exist in the mind of
16 the defendant just before and at the time the act is
17 committed. Therefore, there must be a combination of
18 the previous evil intent and the act.

19 Malice aforethought may be expressed or inferred.
20 Expressed and inferred does not mean different kinds of
21 malice, but merely, the mind in which malice may be
22 shown to exist. And that may be shown either by direct
23 evidence or inference from facts and circumstances which
24 have been established and proved.

25 Expressed malice is when a people speak words which

JURY CHARGE

1 express hatred or ill will towards another, or when a
2 person prepares beforehand to do an act which was later
3 accomplished. The deed -- and express malice may be
4 inferred from conduct showing a total disregard for
5 human life.

6 Now, if the facts proven in the case beyond a
7 reasonable doubt are sufficient to raise an inference of
8 malice to your satisfaction, this inference would be
9 simply an evidentiary fact to be considered by you along
10 with all other evidence in the case, and you are
11 entitled to give the weight that you believe it should
12 be -- should receive.

13 Now, under the crime of murder, if you find that
14 the State failed to prove beyond a reasonable doubt that
15 the Defendant committed a murder; that is, failed to
16 prove malice, you may consider the lesser included
17 offense. That would be known as voluntary manslaughter.

18 To prove voluntary manslaughter and be entitled to
19 a verdict of guilty the State must prove beyond a
20 reasonable doubt that the Defendant took the life of
21 another in sudden heat of passion and based on
22 sufficient legal provocation. Both heat of passion and
23 sufficient legal provocation must be present at the time
24 of the killing to constitute voluntary manslaughter.
25 Sudden heat of passion may for a time affect a person's

JURY CHARGE

1 self-control and temporarily disturb a person's reason.
2 The sudden heat of passion must be the type that would
3 make an ordinary person unable to coolly reflect on his
4 actions, and will produce an uncontrollable impulse to
5 do violence.

6 Sufficient legal provocation must be the type that
7 would make a person of ordinary reason and caution
8 become enraged and lose control temporarily. The
9 provocation needed for voluntary manslaughter must come
10 from the -- from some act of or related to the victim.
11 Words alone, however vulgar or insulting, are not enough
12 to be legal provocation.

13 The exercise of legal right, no matter how
14 offensive it is to another, is never sufficient to be
15 legal provocation for voluntary manslaughter.

16 Also, if the heat of passion is cooled, or if there
17 was enough time between the provocation and the killing
18 for the passion for a reasonable person to cool, the
19 killing would not be voluntary manslaughter, it would be
20 instead murder.

21 In deciding whether a reasonable person would have
22 had enough time to cool off, you should consider all of
23 the circumstances surrounding the killing. You may
24 consider the nature of the provocation, if any; the
25 Defendant's mental and physical state; and the

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1 circumstances and relationships between the parties.

2 Now, let's look at the offense. As I mentioned to
3 you that, again, will be murder and 'voluntary
4 manslaughter, the lesser included offense, and what
5 separates the two basically, rather than the elements of
6 voluntary manslaughter is a lack of malice. Malice for
7 murder. You do not have to establish malice for
8 voluntary manslaughter. But it has to be -- those other
9 aspects have to be established and proven.

10 Attempted murder is, as I said, the attempt to take
11 another's life. In addition to the malice, I would
12 instruct you further that a specific intent to kill is
13 not an element of attempted murder, but there must be a
14 general intent to commit serious bodily injury.

15 Intent means intending the result which actually
16 occurred, not accidentally or involuntarily. Intent may
17 be shown by acts and conduct by the Defendant in other
18 circumstances from which you may naturally and
19 reasonably infer to him.

20 Evidence of the character of the act, the character
21 of the instrument used, the manner in which it was used,
22 the purpose to be accomplished, and the resulting wounds
23 or injuries may be considered in determining the intent
24 with which the act was committed.

25 Intent may also be inferred when it's demonstrated

JURY CHARGE

1 that the Defendant voluntarily and willfully commits an
2 act, the natural tendency of which is to destroy
3 another's life.

4 Now, just as you had in the offense of murder,
5 where life has been taken, you had a lesser included
6 offense of voluntary manslaughter. You also have what's
7 known as a lesser included offense in attempted murder.
8 And that's called assault and battery of a high and
9 aggravated nature. If you find that the Defendant has
10 not proven that the -- was guilty of attempted murder,
11 then you may consider this particular offense of assault
12 and battery of a high and aggravated nature. It would
13 include all of the elements of the assault -- of the
14 attempted murder with exception of malice aforethought,
15 just as you recall voluntary manslaughter is not --
16 there's no malice required in that.

17 In addition, however, the State must also prove
18 beyond a reasonable doubt an aggravating circumstance.
19 And the circumstances of aggravation would include the
20 use of a deadly weapon, the intent to commit a felony,
21 the infliction of serious bodily injury, and there are
22 certainly others. These are just examples, but there
23 are other circumstances of aggravation. But you have to
24 have concluded that in addition to the general elements
25 of attempted murder the State has to also prove the --

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1 at least one element of aggravation.

2 In addition, we have the offense of possession of a
3 weapon during a violent crime. And this is provided by
4 Section 1623490 of our code of laws, and it provides
5 that if a person is in possession of a firearm or
6 visibly displays what appears to be a firearm during the
7 commission of a violent crime and is convicted of
8 attempting or -- committing or attempt a violent crime
9 as defined by a code, and in this case, the violent
10 crime would be murder and/or attempted murder.

11 The term firearm is defined in this section as any
12 gun, automatic rifle, revolver, pistol, or any weapon
13 which will or is designed to and may readily be
14 converted to expel a projectile.

15 Now, I want to discuss with you a part of the
16 theory that you'll have to consider, and it's known as
17 mutual combat. And this law provides that if a
18 Defendant voluntarily participated in mutual combat for
19 the purpose other than protection, the killing of a
20 victim would not be self-defense. This is true even if
21 during the combat the Defendant feared death or serious
22 bodily injury.

23 However, if before the killing is committed the
24 Defendant withdraws and tried in good faith to avoid
25 further conflict, and either by word or act makes that

JURY CHARGE

1 fact known to the victim, he would be without fault in
2 bringing on the difficulty.

3 For mutual combat there must be a mutual intent and
4 a willingness to fight. This intent may be shown by the
5 acts and conduct of the parties and circumstances
6 surrounding the combat.

7 In addition, it must be shown by that -- be shown
8 that both parties were armed with a deadly weapon.

9 The Defendant has raised the defense of
10 self-defense. And self-defense would be a complete
11 defense if it is established, and you must find the
12 Defendant not guilty. The State has the burden of
13 disproving self-defense by -- beyond a reasonable doubt.
14 If you have a reasonable doubt of the Defendant's guilt
15 after considering all the evidence, including the
16 evidence of self-defense, then you must find the
17 Defendant not guilty.

18 On the other hand, if you have no reasonable doubt
19 of the Defendant's guilt after considering all the
20 evidence, including the evidence of self-defense, then
21 you must return a verdict of guilty.

22 The following elements are required to establish
23 self-defense. First, the Defendant must be without
24 fault in bringing on the difficulty. If the Defendant's
25 contact was a type which was reasonably calculated to

JURY CHARGE

1 and did provoke a deadly assault the Defendant would be
2 at fault in bringing on the difficulty and would not be
3 entitled to an acquittal based on self-defense.

4 The second element of self-defense is that the
5 Defendant was actually in imminent danger of death or
6 serious body injury, and or that the Defendant actually
7 believed he was in imminent danger of death or serious
8 bodily injury. If the Defendant was actually in
9 imminent danger it must be shown that the circumstances
10 would have warranted a person of ordinary firmness and
11 courage to strike a fatal blow to prevent death or
12 serious bodily injury.

13 If the Defendant believes he was in imminent danger
14 of death or serious bodily injury, it must be shown then
15 that a reasonably prudent person of ordinary firmness or
16 courage would have at the same time had the same belief.

17 In deciding whether the Defendant actually was or
18 believed that he was in imminent danger of death or
19 serious bodily injury, you should consider all the facts
20 and circumstances surrounding the crime, including the
21 physical condition and characteristics of the Defendant
22 and the victim.

23 I would further instruct you the Defendant does not
24 have to show that he was in actual -- actually in
25 danger. It is enough that the Defendant believed he was

JURY CHARGE

1 in imminent danger and a reasonably prudent person of
2 ordinary firmness and courage would have had the same
3 belief.

4 The Defendant has the right to act on appearances
5 even though the Defendant's belief may have been
6 mistaken.

7 It is for you to decide whether the Defendant's
8 fear of imminent danger of death or serious bodily
9 injury was reasonable and would have been felt by an
10 ordinary person in the same situation.

11 The final element of self-defense is that the
12 Defendant had no other probable way to avoid the danger
13 or death or serious bodily injury than to act as the
14 Defendant did in a particular instance. If the
15 Defendant was on his own -- excuse me.

16 A person cannot be required to make an exact
17 calculation as to the degree or amount of force which
18 may be needed to avoid death or serious bodily harm.
19 Therefore, in self-defense, the Defendant has the right
20 to use the force needed to avoid death or serious bodily
21 harm. And that force used in self-defense does not have
22 to be limited to the degree or amount of force used by
23 the victim.

24 The Defendant has the right to use so much force as
25 appears to be necessary for complete self protection in

JURY CHARGE

1 which a person of ordinary reason and firmness would
2 have believed to have been needed to prevent death or
3 serious bodily injury.

4 If the Defendant isn't justified in defending
5 himself or others, in firing the first shot, the
6 Defendant is also justified in continuing to shoot until
7 it is apparent that the danger of death or serious
8 bodily injury has completely ended, as previously
9 stated, completely ended.

10 Now, let's look at the general. And we've talked
11 about criminal intent. As I stated to you earlier,
12 criminal intent is always a matter that the State has to
13 prove beyond a reasonable doubt, and it's determined by
14 you by considering the circumstances surrounding the
15 situation. So, the law says that criminal intent may be
16 inferred from the circumstances shown to exist. This is
17 how you make a determination of whether or not that
18 element has -- is present.

19 The State is not required to prove motive, although
20 the presence or absence of this evidence of motive may
21 be considered in making your determination in this case.

22 Criminal intent is a state of mind that operates
23 jointly with an act in the commission of a crime.
24 Intent includes those consequences which represent the
25 very purpose for which an act is done or known to be

JURY CHARGE

1 substantially certain to result regardless of desire.

2 Criminal intent is a mental state of a conscious
3 wrongdoing, and it's up to you to determine whether or
4 not -- to determine what the Defendant intended to do
5 based on the circumstances shown to have existed. I'll
6 tell you that the State must prove criminal intent as it
7 must prove every other element beyond a reasonable
8 doubt.

9 Throughout this entire matter, ladies and
10 gentlemen, neither you nor I have been advocates or
11 participants of either side. We as judges do not have
12 friends to reward, nor do we have any enemies to punish.

13 In fact, we have to do something which I'll confess
14 is not always easy to do, as a fellow human being. We
15 have to make sure that our decisions, mine on the law,
16 yours on the facts, are not motivated or influenced by
17 any human emotion. It has no place in this process.

18 In fact, you have to set it all aside, and by your
19 God given talents of determining what you believe to be
20 the truth and decide what you believe to be the true
21 facts. Once you decide those facts, take the law as I
22 give it to you, apply it very methodically to those
23 facts, and report your decision. When you've done that,
24 you will honor the commitment that you have made when
25 you raised your hand. And I know that you will do that.

JURY CHARGE

1 You're almost there.

2 To assist you, Mr. Presiding Juror in reporting
3 that, I've prepared four verdict forms which you will be
4 -- which will be sent back with you. I'll discuss them
5 with you now. I want to say to you, first of all, the
6 order of the options -- there are several options on
7 several of the forms. The order of the placement means
8 nothing at all. I had to put them in some order.

9 Each are captioned, and the captioning is simply to
10 facilitate the file. It means nothing else.

11 The first one I have is -- says Verdict Form on the
12 front, and I've written in the victim, the alleged
13 victim's name so that you'll know which one that you are
14 working with. This is Michael Morgan. And it says --
15 it reads, thusly: We the jury in the above entitled
16 action by unanimous consent find the Defendant, Joseph
17 Bowers, on the charge of murder, Michael Morgan in
18 paren, guilty of murder -- see the choices. They're
19 listed three in a row, and a line precedes them. There
20 are three: Guilty of murder, guilty of a lesser
21 included offense of voluntary manslaughter, or not
22 guilty.

23 Let's talk about whichever one it is. If it's the
24 first one, then you will analyze the evidence and decide
25 that, yes, you're convinced beyond a reasonable doubt

JURY CHARGE

1 from the evidence in this case that Mr. Bowers took the
2 life of Michael Morgan with malice aforethought. And,
3 therefore, the State has met its burden, and you are --
4 and you -- they've also established that beyond a
5 reasonable doubt including disproving self-defense.
6 That would be your verdict.

7 Guilty of lesser included offense of voluntary
8 manslaughter. You were convinced that the Defendant,
9 Mr. Bowers, took the life of Michael Morgan, but there
10 was no malice aforethought. And, likewise, the State
11 had disproved the element of self-defense. And your
12 choice was then voluntary manslaughter.

13 Not guilty would be that either the State failed to
14 prove that Mr. Bowers did anything and, therefore, could
15 not be guilty of the crime. Or that he took some action
16 and that there was -- but the State did not prove --
17 disprove self-defense or failed to prove the mutual
18 combat. Because as you know the mutual combat says if
19 he's mutually engaged, then self-defense goes out the
20 window, so to speak. It's not available. But if they
21 failed to prove that then you would consider the
22 self-defense aspect, or again, the State had to prove or
23 disprove that self-defense. And it has to prove mutual
24 combat, all of the elements of that. Whichever your
25 verdict, again, it would be unanimous, all 12 of you

JURY CHARGE

1 must agree.

2 You will sign it where it says, presiding juror,
3 and then you will have completed that form.

4 The next form is attempted murder, and they are the
5 same. There are two; one for Richard Green and one for
6 Mr. Robert Goodwine. The choices, as with the murder,
7 are three. One, guilty of the crime of attempted
8 murder, same language. The only difference is it's
9 attempted murder. Guilty of a lesser included offense
10 of assault and battery of a high and aggravated nature,
11 or not guilty. Again, you would be looking at basically
12 the same analysis that you conducted on the murder.

13 The first -- if the first is there, if you find
14 that there was malice and that he took -- he committed
15 the act and attempted -- and shot, fired a weapon, which
16 he was alleged to have done and then -- and the State
17 has disproved any self-defense or has proven that mutual
18 combat, then your verdict would be guilty.

19 If the State has failed to establish malice, but
20 you believe that he did fire a shot, and, again, mutual
21 combat and/or there was no self-defense, then -- of
22 course, it can't be self-defense if it's mutual combat,
23 based on what I have instructed you, then your verdict
24 would be of the lesser included offense.

25 Not guilty, State's failed to disprove self-defense

JURY CHARGE

1 or failed to establish that he fired anything or did it.
2 So, whatever your verdict, again, must be unanimous.

3 Possession of a firearm requires that you prove --
4 the State prove that he committed one or more of those
5 offenses. Number one, because if he's not guilty on
6 that you can't return a verdict of guilty of possession
7 of a firearm, because he's not guilty of any violent
8 crime. He has to be convicted -- he has to be found
9 guilty of a violent crime before this charge can even be
10 considered.

11 Then you'd have to decide whether or not he did, in
12 fact, have in his possession a firearm. So, obviously,
13 if he didn't have possession of a firearm, the logical
14 conclusion would be he can't be guilty of the others,
15 but up to you to determine. You must establish both a
16 conviction of the crime and his possession of a firearm
17 for you to return a verdict of guilty on that.

18 Whichever, again, your verdict must be unanimous.
19 If you'll provide a checkmark in the spot provided.
20 Sign it. Once you've completed all four forms, knock on
21 the door, and we'll receive your verdict.

22 I know you're anxious to get started, and you're
23 almost there.

24 Let me ask the first 12 of you that were selected,
25 do any of you believe that you will be unable to

JURY CHARGE

1 continue? If so, raise your hand.

2 (No hands raised.)

3 Mr. Alternate, at this point it appears that the
4 first 12 will be able to -- well, now 12. We've already
5 removed one. We'll continue.

6 So, when the jury retires I'm going to ask that you
7 not follow the jury panel into the jury room. They will
8 put you in another room, and I'll be in shortly to
9 discuss how much longer you need to remain with us.

10 You're are almost there. I've got to excuse you to
11 go over my charge, and it might be necessary to return
12 you to the courtroom to give you some instruction,
13 further instruction or clarification. If so, we will do
14 that. And we'll bring you all back in.

15 If there aren't any additions or corrections that
16 need to be given, then we will gather the exhibits, the
17 verdict forms and deliver them to you. When you receive
18 the exhibits then you may begin your deliberations, but
19 not before. Now, once the deliberations are commenced
20 the only restriction that I place on deliberations is
21 this. If any juror has to leave the table for any
22 reason you must stop deliberating until all 12 of you
23 are together. Other than that, you can proceed as you
24 deem fit and proper, any way that you like.

25 Thank you for your attention. You may retire to

JURY CHARGE

1 your jury room and await jury exhibits before commencing
2 deliberation.

3 (Jury exits the courtroom.)

4 THE BAILIFF: The jury is clear, Your Honor.

5 THE COURT: Thank you.

6 Exceptions or additions from the State?

7 MS. SWANSON: None from the State.

8 THE COURT: Exceptions or additions from the
9 Defendant?

10 MS. CAMPBELL: None, Your Honor.

11 THE COURT: Thank you very much. Thank you both
12 for your patience. It has been a pleasure working with
13 each one of you. Thank you.

14 Certainly my heart goes out to everybody involved.

15 Thank you. We'll be at ease.

16 (Jury deliberating.)

17 *(Whereupon, Court's Exhibit No(s) 4 marked for*
18 *identification.)*

19 THE COURT: Court's Exhibit 4 is that we want to
20 see the transcript. Obviously, we can't do that. I
21 see that you have it. You are real-timing it, so that
22 may happen before long but we don't have it yet. So,
23 we will replay the testimony. What I typically say and
24 have done over the years is this. I don't know what
25 they don't want to hear, but I also don't make them

JURY CHARGE

1 listen to all of the testimony. I give the option to
2 them. And I just tell the foreperson presiding juror,
3 he will have to tell me but when the jury has heard all
4 that they need to hear, they will let them know. Then
5 we will stop. Otherwise, I will play it until it is
6 completed but I'll remind them that the testimony of
7 the witness will consist of direct, cross, redirect,
8 and recross, so, there are four parts. So, there may
9 be changes in some parts that are not there in others.
10 So I don't try to make them hear it all. If it's what
11 they are looking for, I'll let them make that call.

12 MS. CAMPBELL: If it pleases the Court, do we know
13 which witness we are listening to?

14 THE COURT: Hump?

15 MS. CAMPBELL: Stanley Humphries, sorry.

16 THE COURT: All right. We are ready. I'm sorry.
17 You were on the way when I mentioned it.

18 (Jury enters the courtroom.)

19 THE COURT: Maybe the day will come that we can do
20 that for you, but now, we can't. We can replay the
21 testimony for you and we are prepared to do that. With
22 respect to that, I don't want know what juror or what
23 it is that you want to glean from that. You may want
24 to re-hear the entire testimony. That is fine. But
25 what I allow the jury to do is if you have heard all

JURY CHARGE

1 that you need from this particular witness, if the jury
2 will make that known to you, presiding juror, and you
3 will raise your hand, and we will stop. Until I see
4 your hand raised, we will continue to play this
5 testimony.

6 I'll remind you insofar as the testimony is
7 concerned, remember, that there are basically four parts
8 of the testimony: Direct examination, cross
9 examination, which generally deals with questions asked
10 on direct and then some other matters, and then
11 redirect, which is confined to cross-examination, and
12 then recross, which would be confined to redirect. So,
13 there may be changes, obviously, in the witness'
14 testimony from time to time, so I just share that with
15 you so far as the completeness of the testimony. Okay.

16 (Playing the audio of the transcript.)

17 THE COURT: Thank you.

18 THE BAILIFF: The jury is clear.

19 THE COURT: Thanks. Any exception or additions
20 from the State?

21 MS. SWANSON: No, sir.

22 THE COURT: Exceptions or additions from the
23 Defendant?

24 MS. CAMPBELL: No, Your Honor.

25 THE COURT: Thank you. We will be at ease.

JURY CHARGE

1 (Jury deliberating.)

2 THE COURT: We have another question. Court's
3 Exhibit 5.

4 *(Whereupon, Court's Exhibit No(s). 5 marked for*
5 *identification.)*

6 THE COURT: Okay. I have Court's Exhibit 5. And
7 I have attached a copy of the portion of my charge.
8 The note says, We would like a reading of the self
9 defense provisions. My feeling is once they have asked
10 for that, the better thing to do, when it comes to
11 talking to jurors, is to give them that portion that
12 they have asked for so they can have it to look at and
13 read themselves. There's some cases -- there's a case
14 that says, once they request a portion you have to give
15 them all. When they ask me to re-read self defense, I
16 would not re-read the entire charge, I would only
17 re-read self defense. I'm just complying with their
18 request. Any objection from the State to sending back
19 a portion of the charge?

20 MS. SWANSON: No, sir, I just don't see mutual
21 combat in here.

22 THE COURT: I'm not. I'm going to discuss that
23 with them, but they haven't asked me for mutual combat.

24 MS. SWANSON: Okay, no objection.

25 THE COURT: Any objection?

JURY CHARGE

1 MS. CAMPBELL: No, sir.

2 THE COURT: Okay. The Defendant is present.

3 Thank you. Let's bring them in.

4 (Jury enters the courtroom.)

5 THE COURT: Thank you very much. Ladies and
6 gentlemen, Court's Exhibit 5 is the last request. We
7 would like a re-reading of the self defense provisions.
8 I will certainly be hey happy to re-read it and I have
9 over the years found and instructed years ago some
10 people are visual learners and some audible.
11 Obviously, if you are visual, you can read it in many
12 times, but you might not grasp it. As a result of
13 that, I have printed a portion that I have read and
14 will deliver that to you for yours and other juror's
15 review. It is attached to Court's Exhibit 5 that will
16 be retained with all of the other exhibits. And I
17 would hasten to add, you have only requested that
18 portion of my charge?

19 THE FOREPERSON: Yes.

20 THE COURT: I would remind you, there are other
21 portions that have interplay with this, but unless you
22 ask me for that, I will not send those. But I will
23 remind you to consider those as well while you are
24 considering the self defense charge. You may continue
25 deliberating and let me know if I may be of assistance.

JURY CHARGE

1 And also, if you want other portions of my charge, just
2 let me know and I will be happy to copy them for you.

3 THE FOREPERSON: Thank you.

4 (Jury exits the courtroom.)

5 THE BAILIFF: The jury is clear, Your Honor.

6 THE COURT: Thank you. Exceptions, additions from
7 the State?

8 MS. SWANSON: No, sir.

9 THE COURT: Exceptions additions from the
10 Defendant?

11 MS. CAMPBELL: No, Your Honor.

12 THE COURT: Thank you. We will be at ease.

13 (Jury deliberating. Time is now 5:03 p.m.)

14 (Jury presents question.)

15 *(Whereupon, Court's Exhibit No(s). 6 marked for*
16 *identification.)*

17 (Off-the-record discussion held.)

18 MS. CAMPBELL: I would ask, at this juncture, that
19 you recharge the burden of proof and reasonable doubt.

20 THE COURT: Okay. I will. Sure.

21 MS. SWANSON: And just that they consider each
22 indictment separately.

23 THE COURT: Yes. Well, they have to.

24 MS. SWANSON: Yeah, just so that they understand.

25

JURY CHARGE

1 THE COURT: All right. Is the Defense ready?
2 What I'll do is recharge mutual combat and explain that
3 part that talks about it. And then tell them, as a
4 matter of law based on our discussion, I don't think
5 that mutual combat can apply to the indictments for
6 attempted murder. I don't think that there's any
7 indication that any of those individuals were engaged
8 in any combat. So, for the purposes of considering
9 that principle and whether or not self defense applies
10 it only would be negated as to -- assuming that they
11 determined mutual combat existed between Michael Morgan
12 and the Defendant.

13 MS. CAMPBELL: Well, clearly self defense could
14 apply to those indictments.

15 THE COURT: Sure, there's no question that it
16 could.

17 MS. CAMPBELL: I wanted to make sure that that was
18 clear.

19 THE COURT: It will. It only negates it as to
20 Michael Morgan. Okay. If they conclude that there was
21 mutual combat.

22 MS. CAMPBELL: Correct.

23 THE COURT: I mean, they will have to first
24 conclude that there was mutual combat for it to negate
25 it. Okay.

JURY CHARGE

1 THE BAILIFF: Yes, sir.

2 (Jury enters the courtroom.)

3 THE BAILIFF: The jury is entering the courtroom,
4 Your Honor.

5 THE COURT: Thank you very much. I appreciate you
6 being conservation minded, but you can use an entire
7 sheet.

8 THE FOREPERSON: It goes against the grain, Your
9 Honor.

10 THE COURT: I understand that, but it helps us
11 with keeping the exhibits.

12 THE FOREPERSON: Point taken.

13 THE COURT: The question which is Court's Exhibit
14 6, does a determination of mutual combat require a
15 finding of culpability in each of the charges?

16 The day may come where we will be able to really
17 answer that charge in detail. There is a provision in
18 our Constitution that prohibits the Court from charging
19 on the facts. And when we get into answering specific
20 questions we are getting close to charging on the facts.
21 And the Federal court they are permitted to do that, but
22 we are not since it is a provision of our state
23 Constitution. So, it's not that I don't want to
24 specifically address it, but I'll address it in this
25 fashion: I'll remind you of the charge by reading the

JURY CHARGE

1 mutual combat charge. And I'm going to preface what I'm
2 saying. Remember, the State has the burden of proof
3 here. They have the burden of proving all elements of
4 the mutual combat. They have the burden of disproving
5 self-defense.

6 And in the mutual combat it states that if the
7 Defendant voluntarily participated in mutual combat for
8 purposes other than protection, the killing of the
9 victim would not be self defense. In fact, if you find
10 mutual combat in the killing of someone self-defense is
11 negated by the finding of mutual combat as a matter of
12 law. That means that you would then be determining
13 whether or not the State proved that this Defendant
14 actually took the action necessary to kill that
15 particular person. And then you would be dealing with
16 whether, whether the killing was with malice or not as
17 to what proof if at all. And of course, the State has
18 the burden again of proving each element of the specific
19 offense in that regard.

20 It goes on further, this is true if even during the
21 combat the Defendant feared death or serious bodily
22 injury, however, if before the killing is committed the
23 Defendant withdraws and tries in good faith to avoid
24 further conflict and either by word or act makes that
25 fact known to the victim he would be without fault in

JURY CHARGE

1 the bringing on the difficulty. That means simply there
2 would not be any mutual combat at that point, if that
3 was concluded.

4 For mutual combat there must be a mutual intent and
5 a willingness to fight. This intent may be shown by the
6 acts and conduct of the parties and circumstances
7 surrounding the conduct. In addition, it must be shown
8 that both parties were armed with a deadly weapon. That
9 being said, that creates an answer as a matter of law
10 without addressing specifics. And that is, there can
11 only be one mutual combat defense in the indictments.
12 That is the indictment with respect to Michael Morgan
13 because there are -- I find as a matter of law there is
14 no evidence to support the other victims being armed at
15 any point.

16 But you would still, as to the other victims, since
17 there's no mutual combat, you would have to consider
18 whether or not the State has disproved self defense
19 because that would apply as to those particular persons
20 because mutual combat would not be there to negate that
21 consideration as to those particular indictments. As to
22 the remaining indictment, obviously, as I indicated to
23 you, the weapons charge is dependent upon your findings
24 of some of the other charges. So, I think that I have
25 addressed that to the extent that I'm permitted to

JURY CHARGE

1 address by law.

2 Please remember again, the burden of proof is
3 beyond a reasonable doubt. As I stated to you, that is
4 a doubt that would cause you to hesitate to act or take
5 some action. So, with that further discussion, I'm
6 going to ask you to retire and resume your
7 deliberations.

8 (Jury exits the courtroom.)

9 THE BAILIFF: The jury is clear. The door is
10 closed, Your Honor.

11 THE COURT: Thank you. Any exceptions or
12 additions from the State?

13 MS. CAMPBELL: No, sir.

14 THE COURT: Any exceptions or additions from the
15 Defendant?

16 MS. SWANSON: No, Your Honor.

17 THE COURT: Thank you. And I appreciate you
18 trying to help me work that answer out. We have that
19 constraint and I would love to do it, we could all
20 fashion a charge if that Constitutional provision
21 wasn't there, but it's there. And we try to honor it.
22 But I appreciate your attention. We will be at ease.

23 (Jury deliberating.)

24 THE COURT: Let the record reflect the Defendant
25 is present.. Is the State ready to receive the verdict?

JURY CHARGE

1 MS. SWANSON: Yes, sir.

2 THE COURT: Is the Defendant ready?

3 MS. CAMPBELL: Yes, Your Honor.

4 THE COURT: Thank you. Hold on just one second.

5 Ladies and gentlemen, thank you very much. And I
6 appreciate again your observing the proper decorum.

7 When the verdict is published, I'll not allow any
8 outbursts, any reaction to it and if you -- I respect
9 your feelings, but if you feel that you will be unable
10 to do that, I would ask that you leave. If there's
11 anyone that remains, by their staying will be an
12 agreement with that. If you should violate it, then I
13 would be forced to deal with contempt of court. So,
14 please understand that and I appreciate again how much
15 you have shown -- the courtesy shown thus far. Thank
16 you. Okay.

17 (Jury enters the courtroom.)

18 THE COURT: Thank you very much, ladies and
19 gentlemen. As far as I understand, the jury has
20 reached a verdict, sir?

21 THE FOREPERSON: Yes, sir.

22 THE COURT: If you would pass the verdict form,
23 please, to the bailiff? Thank you.

24 (Pause.)

25 THE COURT: The verdict forms have been properly

JURY CHARGE

1 completed and signed. I would ask the Defendant to
2 please rise. You may publish the verdicts, please.

3 THE CLERK: The State of South Carolina; County of
4 Beaufort, State of South Carolina versus Joshua Bowers,
5 Defendant. In the Court of General Sessions, Case
6 number 2012GS0701419 verdict form, We the jury in the
7 above entitled action by unanimous consent find the
8 Defendant, Joshua Bowers on the charge of murder of
9 Michael Morgan guilty of the lesser included offense of
10 voluntary manslaughter.

11 The State of South Carolina, County of Beaufort,
12 State of South Carolina versus Joshua Bowers, Defendant.

13 THE COURT: You can just go ahead now and just
14 publish the body of it. You can omit reading the
15 caption because it'll be -- the charge is reflected in
16 the indictment. If that helps. Thank you. Excuse me.

17 THE CLERK: We the jury in the above entitled
18 action by unanimous consent find the Defendant Joseph
19 Bowers on the charge of attempted murder of Richard
20 Green guilty of the lesser included offense of assault
21 and battery of a high and aggravated nature.

22 We the jury in the above entitled action by
23 unanimous consent find the Defendant, Joseph Bowers on
24 the charge of attempted murder of Robert Goodwine, not
25 guilty.

JURY CHARGE

1 We the jury by unanimous consent find the Defendant
2 Joseph Bowers on the charge of possession of a firearm
3 during the commission of a violent crime, guilty.

4 Ladies and gentlemen, if I have accurately
5 published your verdict, please raise your right-hand.

6 (All jurors raise their right hand.)

7 THE COURT: Thank you. Let the record reflect
8 that each juror raised his or her right-hand. And you
9 may put them down.

10 Anything further from the Defendant or the jury at
11 this point?

12 MS. CAMPBELL: We would ask that the jury be
13 polled, Your Honor.

14 THE COURT: Thank you very much. Let the record
15 reflect also that each verdict form has been properly
16 signed by the presiding juror. Ladies and gentlemen,
17 the clerk be will be calling your name and will be
18 asking you two questions. And rather than, we will
19 poll it in a whole. If that's the agreement. We won't
20 do it each individually. She will be saying, are those
21 your verdicts, and are they still your verdicts. So,
22 if you will respond to the questions. You may proceed.

23 Call the juror number and the name if you have --
24 do you have just the juror number?

25 THE CLERK: No, I have the name.

JURY CHARGE

1 MS. CAMPBELL: Not at this point.

2 THE COURT: Let me speak to the jury. And then do
3 you want to go ahead with sentencing to night or do you
4 want to wait until in the morning?

5 MS. CAMPBELL: I'll leave it up to Your Honor's
6 discretion.

7 THE COURT: It is up to you and the persons here.
8 If you want to take a few moments, I'll go with what
9 you want. If you are happy with it, we can do it
10 tonight.

11 MS. CAMPBELL: We can do it tonight.

12 THE COURT: Do you have the sentencing sheets?

13 MS. SWANSON: Yes, sir, we are getting them
14 together.

15 THE COURT: That is fine. We will be at ease for
16 a few moments.

17 (Pause.)

18 THE COURT: Okay. Anything further from the
19 State?

20 MS. SWANSON: No, sir. As far as prior record
21 goes, Mr. Bowers' record is minimal. It is drugs. He
22 received probation. Resisting arrest.

23 THE COURT: Okay. But no resisting could be
24 considered a crime of violence, but no crimes of
25 violence as such of what we are dealing with here.

JURY CHARGE

1 MS. SWANSON: Correct.

2 THE COURT: Yes, Ms. Campbell.

3 MS. CAMPBELL: May it please the Court, I would
4 just like to say for the record I find it unnecessary
5 for me to repeat for Your Honor all of the intricacies
6 of this case that we have dealt with in the last three
7 days. Your Honor is well familiar with the evidence in
8 this case and what Mr. Bowers has been up against. You
9 are familiar with what elements he was faced with that
10 night on June 21st, 2012. And I point to the fact that
11 he has no violent history. Your Honor is aware that
12 you do not have to sentence him to prison for this, the
13 sentencing range being what it is is very wide. Now,
14 the Solicitor has written a sentencing range on the
15 voluntary manslaughter of 0 to 30.

16 THE COURT: I think there is a minimum, isn't it?

17 MS. CAMPBELL: There is. It is a minimum of two
18 years, Your Honor. This happened, June 21st, 2012,
19 Mr. Bowers spent several months in the detention center
20 and he's been on electronic monitoring since that time.
21 As Your Honor is aware, you are allowed to give him
22 credit for the time that he's been on electronic
23 monitoring.

24 THE COURT: What is the time that he's been in
25 some custodial situation?

JURY CHARGE

1 was, clearly.

2 The sentence of the Court is that you be -- this
3 is -- of course, you understand that this is an 85
4 percent, mean non-parolable, you will have to serve at
5 least 15 years -- excuse me, at least 85 percent of the
6 service. So, the sentence of the Court on Indictment
7 2012GS07001418 is 15 years. You are given credit for
8 time served since June 21st, 2012. Sentence of the
9 Court on 2013-906 is 15 years and it is concurrent,
10 giving credit for time served since 6-21-2012. Sentence
11 of the Court on 2012-1548 is five years. It is
12 concurrent and you are given credit for time served
13 since 6-21-2012. Good luck to you, sir.

14 MS. CAMPBELL: Thank you, Your Honor.

15 THE COURT: Uh-huh. (Indicating affirmatively.).

16 THE COURT: All right. Anything else before we
17 adjourn? Thank you. See you in the morning. Thank
18 you, Ms. Campbell.

19 MS. CAMPBELL: Thank you, Your Honor.

20 (Trial concluded.)

21

22

23

24

25

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.INDICTMENT/CASE#: 2013GS0700906Joseph BowersA/W#: 2013GS0700906

AKA: _____

Date of Offense: 6/21/2012Race: _____ Sex: M Age: 29S.C. Code §: 16-03-0029

DOB: _____ SS#: _____

CDR Code #: 3410

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Assault and Battery High and Aggravated Naturein violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd 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:

Swanson, Hunter

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 15 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:☒ 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. 6/21/12☐ 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 (Criminal
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 \$

§ 56-5-2925 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$ 500.00§ 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/cv \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% In County (if paid in installments) \$ 16.90TOTAL \$ 1648.90

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.§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

APP'X 361

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

DOCKET NO. 2013GS0700906

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2013

THE STATE

vs.

Joseph Bowers

Indictment for
Attempted Murder

SC Code: 16-03-0029
CDR Code:3410

WITNESSES

Cpl. A. Zsamar-BCSO

ARREST WARRANT NUMBER

2013GS0700906

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

MAY 30 2013

VERDICT

Foreperson of Petit Jury
Date:
INDICT

APPX 362

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2013GS0700906

At a Court of General Sessions, convened on May 30, 2013, the Grand Jurors of Beaufort County present upon their oath:

Attempted Murder

That in Beaufort County on or about June 21, 2012, while engaged in an ongoing gun battle, an inherently dangerous felony, with malice aforethought, Joseph Bowers did attempt to kill and murder Richard Green by means of shooting,; in violation of Section 16-3-10 of the South Carolina 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

COUNTY OF Beaufort
 STATE VS.
Joseph Bowers

AKA: _____
 Race: CAUCASIAN Sex: M Age: 29
 DOB: _____ SS#: _____
 Address: _____
 City, State, Z: _____
 DL#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Weapons / Poss. weapon during violent crime. if not also sentenced to life without parole or death

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 ☐ §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.

ATTEST:

Swanson, Hunter

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:

☒ 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. 6/21/12

☐ 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 (Criminal
 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 47.9 (Public Def/Prob)	\$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	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 135.90

Clerk of Court/ Deputy Clerk _____

Court Reporter: _____

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0701548

A/W#: 2012GS0701548

Date of Offense: 6/21/2012

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

Presiding Judge _____

Judge Code: 2060

Sentence Date: 10/1/14

APP'X 364

WITNESSES

A. Zsamar-BCSO

ARREST WARRANT NUMBER

2012GS0701548

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: AUG 23 2012

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2012GS0701548

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

Joseph Bowers

Indictment for

Weapons / Poss. weapon during violent crime

SC Code: 16-23-0490
CDR Code:0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

APPX 365

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

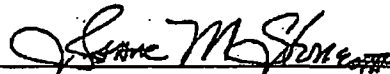
INDICTMENT
2012GS0701548

At a Court of General Sessions, convened on August 23, 2012, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Poss. weapon during violent crime

That in Beaufort County, South Carolina, on or about June 21, 2012, the Defendant, Joseph Bowers, did possess a weapon or visibly display what appeared to be a weapon during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina 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

0-30

363

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.Joseph Bowers

AKA:

Race: Sex: M Age: 29

DOB: SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Manslaughter / Voluntary manslaughterINDICTMENT/CASE#: 2012GS0701419A/W#: M057531Date of Offense: 6/21/2012S.C. Code §: 16-03-0010; 16-03-0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0050 of the S.C. Code of Laws, hearing CDR Code # 0217☐ 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 in Grand Jury, _____ (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Swanson, Hunter

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 1.5 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:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and appliedby the State Department of Corrections. 6/21/12☐ 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 (Criminal
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 SCDPPTS _____

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 47.9 (Public Def/Prob) \$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 \$

Proviso 40.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 333.90

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,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

APP'X 367

WITNESSES

A. Zsamar-BCSO

ARREST WARRANT NUMBER

M057531

ACTION OF GRAND JURY

True Bill

Melinda Basse
Foreperson of Grand Jury
Date: AUG 23 2012

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2012GS0701419

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

Joseph Bowers

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

364

APPX 368

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

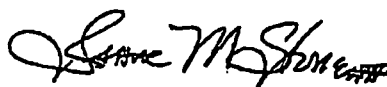
INDICTMENT
2012GS0701419

At a Court of General Sessions, convened on August 23, 2012, the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about June 21, 2012, with malice aforethought, Joseph Bowers did kill and murder Michael Morgan by means of shooting, and that Michael Morgan did die in Beaufort County as a proximate result thereof on June 21, 2012; in violation of Section 16-3-10 of the South Carolina 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

WITNESSES

Cpl. A. Zsamar-BCSO

ARREST WARRANT NUMBER

2013GS0700907

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

MAY 30 2013

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2013GS0700907

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2013

THE STATE

VS.

Joseph Bowers

Indictment for

Attempted Murder

SC Code: 16-03-0029
CDR Code:3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

APPX 370

366

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2013GS0700907

At a Court of General Sessions, convened on May 30, 2013, the Grand Jurors of Beaufort County present upon their oath:

Attempted Murder

That in Beaufort County on or about June 21, 2012, while engaged in an ongoing gun battle, an inherently dangerous felony, with malice aforethought, Joseph Bowers did attempt to kill and murder Robert Goodwine by means of shooting; in violation of Section 16-3-10 of the South Carolina 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

COUNTY OF Beaufort

vs.

Joseph BowersINDICTMENT # 2013-GS-07-905

WARRANT #

↓
SAME (DP)

Murder

THIS INDICTMENT IS NOLLE PROSSED ON 10/1/2014 BYHunter Swenson

FOR THE FOLLOWING REASON:

Victim was shot prior to this Defendant engaging
in mutual combat. State believes that Co-Defendant
Lucas Morgan killed Dante Bailey.Hunter Swenson
14th Circuit SolicitorOCT -8 PM 1:05
1673

WITNESSES

Cpl. A. Zsamar-BCSO

ARREST WARRANT NUMBER

2013GS0700905

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

MAY 30 2013

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO: 2013GS0700905

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2013

THE STATE

vs.

Joseph Bowers

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

APPX 373

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

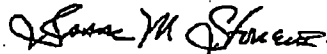
INDICTMENT
2013GS0700905

At a Court of General Sessions, convened on May 30, 2013, the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about June 21, 2012, while engaged in an ongoing gun battle, an inherently dangerous felony, with malice aforethought, Joseph Bowers did kill and murder Dante Bailey by means of shooting, and that Dante Bailey did die as a proximate result thereof on June 21, 2013; in violation of Section 16-3-10 of the South Carolina 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.

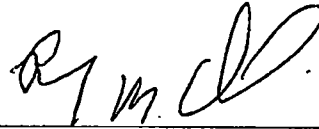


Solicitor

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,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of April, 2017.

RECEIVED

APR 19 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JOSEPH BOWERS

APPELLANT

APPELLATE CASE NO. 2014-002176

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

APP'X 376

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2.

The judge erred by instructing the jury on voluntary manslaughter over appellant’s objection. There was no evidence justifying that verdict option. There was no evidence the decedent, Michael Morgan, did anything that would constitute a sufficient legal provocation for appellant to shoot him. There was also no evidence the decedent did anything that would make appellant act out of a “heat of passion.” 19

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STATEMENT OF ISSUE ON APPEAL

1.

Whether the court erred by instructing the jury on “mutual combat” where the instruction was inapplicable to the facts of this case since there was no evidence of a tacit agreement or otherwise to engage in “mutual combat”?

2.

Whether the court erred by instructing the jury on voluntary manslaughter where there was no evidence the decedent did anything to appellant that would constitute a “sufficient legal provocation” to put appellant in a “heat of passion”?

STATEMENT OF THE CASE

Appellant was indicted for two counts of murder, two counts of attempted murder, and possession of a firearm during the commission of a violent crime. R. 358 – 370. His case came on for trial on September 29, 2014, before the Honorable R. Markley Dennis, Jr., and a jury. R.

1. The state dismissed one count of murder during the trial, and the other count went to the jury after the judge stated directing a verdict in this case would constitute him weighing the evidence.

On October 1, 2014, the jury found appellant guilty of voluntary manslaughter on the other count of murder. The jury found appellant guilty of assault and battery of a high and aggravated nature (ABHAN), on one count of attempted murder, and not guilty on the other count of attempted murder. The jury also found appellant guilty of possession of a firearm during the commission of a violent crime. R. 352, 1. 2 – 353, 1. 3.

Judge Dennis sentenced appellant to fifteen years imprisonment for voluntary manslaughter, fifteen years imprisonment for ABHAN, and five years imprisonment for possession of a weapon during the violent crime. All sentences were concurrent. R. 356, 11. 2 – 13.

This appeal follows.

ARGUMENT

1.

Whether the court erred by instructing the jury on “mutual combat” since the instruction was inapplicable to the facts of this case since there was no evidence of a tacit agreement to engage in “mutual combat”?

Introduction

The evidence in this case showed that appellant went to the club with a couple of people he knew. There was not any evidence before the jury that he went to the club with the intention of engaging in “mutual combat.” An altercation occurred between two other men that did not involve appellant, and armed individuals outside the club began shooting when one decedent fired a flare gun. The trial judge **correctly did not instruct the jury on accomplice liability – the hand of one is the hand of all.**” R. 312, l. 16 – 340, l. 2. Appellant objected to instructing the jury on “mutual combat,” and voluntary manslaughter. The judge instructed the jury on both over appellant’s objection. There was no evidence of a tacit agreement or otherwise to engage in mutual combat in this case. The “mutual combat” instruction was extraordinarily prejudicial because it negated the jury’s ability to find appellant not guilty by reason of self-defense in what certainly appeared to be a self-defense case *if* appellant fired a gun during the chaos that ensued after the flare gun was fired.

Relevant Facts

Stanley Humphries was that state’s first non-law enforcement witness at trial. Stanley went by the nickname “Hump.” R. 74, ll. 10-20.

Stanley remembered that on June 21, 2012, he was with Dante Bailey. Dante went by the nickname "Cole." That night he went with Dante Bailey and "Janey" to the Sand Dollar, and they played pool there until the Sand Dollar closed. Appellant Joey Bowers was not with them. The men then went by Dante's house to get a pack of cigarettes. "Some other people got in the van with us, and we went to the Midnight Soul Patrol [club], I believe is the name of it." Joey Bowers was one of the men who got in the green minivan with them. Appellant's nickname was "Opie." Stanley did not even know where the Midnight Soul Patrol bar was so he had to get directions. R. 75, l. 13 – 77, l. 3. Stanley was driving green minivan at the time. R. 74, l. 15 – 75, l. 14.

Stanley had known Dante since he was about fourteen or fifteen years old, and he was thirty-seven at the time of the trial. The following occurred on direct examination of Stanley.

Q. Tell us what happened when you got to the [Soul Patrol] club.

A. We went inside. Some people got some drinks. I got a bottle of water. *Asked where the pool table was, they said it was off in the side room. Stood around and talked for a little while, walked outside, and this whole incident started. We never even got to shoot pool that night.*

Q. All right. And is that why you went there?

A. Yes, ma'am.

Q. And when you say this whole incident started, tell us exactly what started.

A. We were outside smoking, and this guy Krum, they call him Krum, came over there and started *some trouble with Dante. And somebody said, Come on, let's go. And as we went to leave the gunshots rang out.*

Q. Do you actually get in your van?

A. Yes, ma'am.

Q. All right. Did Dante get in the van?

A. No, ma'am. He was backing us out. There was cars parked real close to us. There was a telephone pole beside us, and he was actually directing us out. He was standing at the back passenger side of the van.

Q. Did Opie get in the van?

A. Yes, ma'am.

Q. Did he get out of the -- did he stay in the van?

A. We all got out of the van once we realize that Cole [Dante] had been shot.

Q. All right. What did you see after Cole had been shot?

A. I actually went over there to him and pulled his shirt up, and he had a bullet hole on his right side.

Q. Did you see anyone tending to him?

A. No, ma'am. He was -- he was -- he was already dead.

R. 77, l. 4 – 78, l. 11. (emphasis added).

On direct-examination Stanley initially said that he thought appellant Joey Bowers left with them but now maintained that he was wrong. However, he acknowledged on cross-examination that appellant Bowers was actually the person who “called out and said, C'mon, let's go.” R. 78, l. 14 – 80, l. 24.

Stanley said he did not have a gun that night, Dante Bailey did not have a gun that night, and to the best of his knowledge appellant Joey Bowers did not have a gun that night. Stanley confirmed that they were attempting to leave in the van, and that someone shot and killed Dante. Stanley did not know where the shots came from and Dante dropped to the ground dead. Stanley obviously feared for his life at the time. Stanley also acknowledged that appellant, who was near

him, was also under fire. They both wanted to get away to save their lives. R. 80, l. 25 – 82, l. 15.

There was evidence that appellant Joseph Bowers, “Opie,” and Stanley Humphries, “Hump,” were the only two white young men at the club that night. Joe Pope remembered seeing appellant, Stanley, “Mike G., and “Corleon” when he arrived at the club but he admitted “It happened so fast.” R. 83, l. 4 – 84, l. 23.

Pope admitted that Lucas Morgan was the only person he saw with a gun at the club that night, and Lucas Morgan was the only person he saw shooting his gun. Pope acknowledged that Irvin Smalls got into an argument with Lucas Morgan and that Lucas Morgan crouched down by a propane tank and began firing his weapon. R. 93, l. 11 – 94, l. 11. (Lucas Morgan was acquitted in a separate trial held about two weeks before appellant’s trial. This Court can also take judicial notice of the fact that the South Carolina Incarcerated Inmate Locator website does not show Lucas Morgan is incarcerated). R. 4, l. 19 – 5, l. 24. The following occurred during the cross-examination of Pope:

Q. Isn't it true, Mr. Pope, that you never saw Joseph Bowers with a gun, right?

A. No, ma'am.

Q. Okay. And you never saw Joseph Bowers in an argument with anybody that night, right?

A. I don't – I don't think I know to about.

Q. Okay. Well, that's helpful. Thank you. And isn't it true, Mr. Pope, that you called 911?

A. Yes, ma'am.

Q. *And you told 911, Hey, look, Lucas Morgan's out here shooting this place up, right?*

A. Yes, ma'am.

Q. Okay. And you told them, Richard Green's been hit, right?

A. Yes, ma'am.

Q. Okay. And you said, Michael Morgan's [the decedent] been hit, too?

A. Yes, ma'am.

Q. Right. And did you see Michael get shot?

A. No, ma'am.

Q. Did not. And you didn't see Robert Goodwine get shot, correct?

A. No, ma'am.

Q. Do you know when Michael Morgan got shot? Was it while Lucas was firing? Do you have any idea?

A. Well, when them guys came running through the parking lot, Mikey was standing over Richard with a flare gun, holding it like this, and he didn't see them guys coming.

Q. Right. Michael had a flare gun, right?

A. Yes, ma'am.

Q. You saw that flare gun in his hand?

A. Yes.

R. 94, l. 15 – 95, l. 23. (emphasis added).

Pope said all of the four or five men he remembered running across the parking lot shooting toward Michael were black men -- meaning appellant was not one of those men. R. 96, ll. 1-17.

Robert Goodwine was one of the men shot at the club that night, and the subject of one of the "attempted murder" indictments. Goodwine testified he was shot by Lucas Morgan. He remembered Morgan "shot at me from the front, but he hit me form the back." Goodwine testified he was running at the time because Morgan was shooting at him. R. 100, l. 25 – 101, l. 19.

Goodwine confirmed the only two people he saw shooting that night were Lucas Morgan and Dante Bailey, "Cole." As seen, Dante Bailey was shot and killed that evening.

Goodwine remembered he got in the van with "Hump," and "Hump," who was Stanley Humphries, took him to the hospital. Goodwine said he had seen appellant earlier that evening at the club but he did not remember appellant being with them when he was driven to the hospital. R. 101, l. 22 – 102, l. 23.

On cross-examination, Goodwine confirmed that he was around Dante Bailey and Joey Chaplin while at the club. R. 103, l. 14 – 104, l. 8. Goodwine confirmed that Chaplin was black.

Richard Green was the victim of the other attempted murder charge. It was apparent he was in a wheelchair at the time of trial. R. 104, l. 14 – 105, l. 23.

Green confirmed he was at the Midnight Soul Patrol club on the evening of June 21, 2012. He remembered "hanging out" for a while at the club before he went to the owner's house nearby. "That's when I heard the first gunshot, so I moved. I walked off a little bit, and that's when I felt I got shot, with a second one." R. 106, ll. 1-5. Green did not know who shot him. Green was paralyzed as a result of the shot. R. 106, ll. 9-10.

Alvin Wilson was also at the club that night. He estimated there were about seventy-five people at the club – it was a busy night. Wilson did not know appellant, but he confirmed he only saw two white people at the club. R. 109, l. 10 – 111, l. 16.

Wilson was in the DJ booth in the club, and he played music. Wilson said he "shut the music down" because "an altercation was going on, like I said, I said, the party is over." R. 112, ll. 8-25.

Wilson did not see anyone shooting but he saw his cousins, Michael Morgan and Richard Green, "laying on the ground outside." R. 113, ll. 5-25. Lucas Morgan was also related to Wilson. R. 114, l. 24 – 115, l. 1. Wilson, nonetheless, admitted that he saw Lucas Morgan with a gun that evening. R. 120, ll. 13-15.

Magnum Smalls was a regular at the Midnight Soul Patrol club. On the night of the shooting he remembered shaking hands with Dante Bailey. Smalls remembered about fifteen minutes later that Dante Bailey and a man named Arthur were "having words." R. 121, l. 6 – 122, l. 25. Another man, "D Grant," got in-between the two men, and "was pretty much walking away from everybody else, like diffusing the problem . . . after that guns [were] flashed . . . like I said, they walked away pretty much from like everybody else, and they were talking – D Grant was talking to both of them. And then the flare gun went off, **after the flare gun went off, all chaos broke loose. Everybody pretty much started shooting.**" Smalls confirmed that decedent Michael Morgan was unfortunately the person who fired the flare gun. R. 123, l. 1 – 124, l. 22. (emphasis added).

Smalls said when the shooting ended he saw Dante Bailey, Michael Morgan, and Richard Green on the ground. As seen, Dante Bailey and Michael Morgan were killed, and Richard Green was badly wounded. R. 126, ll. 2-8.

Smalls saw appellant Joey Bowers standing near his friend Dante, and he maintained appellant picked up Dante's semi-automatic handgun while they were attempting to get Dante inside of the vehicle. R. 126, l. 10 – 127, l. 16. Smalls then gave contradictory statements

saying he saw appellant earlier with a gun, but he admitted at a prior deposition that he said he never saw appellant shoot a gun that evening. R. 127, l. 12 – 131, l. 7.

On cross-examination, defense counsel pointed out the different statements given by Smalls. Smalls admitted he did not see appellant with a gun that night, and that he only saw appellant pick up Dante's gun when they were helping him into the vehicle after Donte had been shot. Smalls repeated he did **not** see appellant shoot the gun however. R. 132, l. 14 – 134, l. 1.

The following occurred on cross-examination of Smalls:

Q. But you've also -- but, you know, *you actually saw the first shot go off, and that was Mikey Morgan, right?*

A. *Right.*

Q. *Okay. And that was him firing his flare gun?*

A. *Yes.*

Q. So, that's one shot right there?

A. *Right.*

Q. And then you saw Lewis Melvin Johnson, Dolla, shooting out the side door of the club, right?

A. *Yes.*

Q. Okay. So that's two. And they're not firing at the same time, right?

A. *Right.*

Q. Okay. So, it's the flare gun, and then Dolla, and then Lucas firing, correct?

A. *Correct.*

Q. Okay. And then I think also you would say that you saw *Arthur Chaplin firing his gun across the parking lot, right?*

A. *Correct.*

Q. Okay. Would it also be fair to say that you saw Joseph Bowers trying to assist Cole while Cole was on the ground and had been shot?

A. Yes.

Q. Now, you, I guess, would also agree with me that you saw people with guns that night, at that Midnight Soul Patrol?

A. (Nods in the affirmative.)

Q. *And the people that you saw were Arthur Chaplin?*

A. Yes.

Q. *Also known as Krum?*

A. Correct.

Q. *Okay. Dante Bailey?*

A. Yes.

Q. *Also known as Cole?*

A. Yes.

Q. *And these are the two gentlemen that you say were in a little verbal altercation over something?*

A. Yes.

Q. How about, didn't you see Derrick Grant with a gun that night?

A. Yes, I did.

Q. And is that the man you say kind of separated those two?

A. Yes.

Q. And you saw Terry Thornton with a gun that night, T Dog?

A. Yes.

Q. And, of course, you -- we established that you saw Lucas Morgan with a gun?

A. Correct.

Q. And you saw Mikey with a gun?

A. Correct.

Q. And you saw Dolla, Lucas Melvin Johnson, with a gun?

A. Correct.

Q. And you also saw Stanley Humphries, the other white fellow, with a gun, didn't you?

A. Yes.

R. 133, l. 7 – 135, l. 15. (emphasis added).

Investigator Jeremiah Fraser testified that he talked to Michael Morgan, who “was in obvious pain,” after being shot, and Lucas Morgan. Fraser said he took appellant into custody the same day. R. 185, l. 1 – 188, l. 18.

Investigator Fraser testified appellant told him he was pulling Dante Bailey, “Cole,” back into the van, that Cole “wouldn’t listen to him,” “Cole stepped out from behind the van and he was shot. That was pretty much the extent of it.” R. 190, l. 13 – 191, l. 11.

On cross-examination, Investigator Fraser admitted that he told appellant five times “look, Joe, just tell me you picked up the gun. If you picked up the gun, you did it in self-defense.” Fraser acknowledged that appellant told him he did not have a gun, and that he did not shoot anyone. R. 197, l. 21 - 198, l. 10.

The state also introduced a phone call made by appellant from the jail in which he said “I ain’t killed the boy. I only shot the boy.” When moving for a directed verdict, defense counsel said this statement was in “essence a denial of killing anyone, and at best an admission that, to

his own internal belief, that he may have shot someone.” R. 203, l. 24 – 206, l. 6. R. 271, l. 9 – 273, l. 5. The judge said the jail call still raised a jury question, and that he could not end the trial by directing a verdict given that jail call. R. 273, l. 6 – 275, l. 20; 277, ll. 1-10.

Charge conference

The judge told defense counsel that he, in addition to charging self-defense, had been reading about the legal concept of “mutual combat”. R. 277, l. 23 – 280, l. 4. The judge observed that he was concerned because he had read one case where Judge John Hayes had been reversed “for submitting” a mutual combat instruction. That case was State v. Taylor, 356 S.C. 227, 589 S.E. 2d 1 (2003), discussed infra. R. 279, l. 25 – 280, l. 4.

At the charge conference defense counsel objected to the judge instructing the jury on “mutual combat.” R. 291, l. 3 – 292, l. 15. In addition to objecting to the “mutual combat” instruction defense counsel also told the judge that she objected to him charging voluntary manslaughter over her objection. R. 291, l. 3 – 293, l. 16.

Following the charge conference, the solicitor told the judge that the state was dismissing the murder indictment against appellant involving Dante Bailey, who went with appellant to the club that night, and who there was evidence appellant was trying to keep out of dangers way at the time Dante was shot and killed. R. 293, l. 21 – 294, l. 23.

Instructions on the Law

The judge, over objection, charged the jury on the lesser-included offense of voluntary manslaughter. R. 325, l. 18 – 327, l. 19. As to “mutual combat” the judge charged the jury:

Now, I want to discuss with you a part of the theory that you'll have to consider, and it's known as mutual combat. And this law provides that *if a Defendant voluntarily participated in mutual combat for the purpose other than protection, the killing of a victim would not be self-defense*. This is true even if during the combat the Defendant feared death or serious bodily injury.

However, if before the killing is committed the Defendant withdraws and tried in good faith to avoid further conflict, and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty.

For mutual combat there must be a mutual intent and a willingness to fight. This intent may be shown by the acts and conduct of the parties and circumstances surrounding the combat.

In addition, it must be shown by that -- be shown that both parties were armed with a deadly weapon.

R. 329, l. 15 – 330, l. 8. (emphasis added).

The judge also charged the jury on self-defense. R. 330, l. 9 – 333, l. 9. The judge reminded the jury as to self-defense that if the jury found “mutual combat,” he told the jurors *“Then self-defense goes out the window, so to speak. Not available.”* R. 336, ll. 13-23. (emphasis added).

Discussion

In State v. Taylor, 356 S.C. 227, 589 S.E. 2d 1 (2003), the case discussed between the judge and the attorneys regarding “mutual combat” during appellant’s trial, our Supreme Court reversed this Court’s holding that the judge not err in charging “mutual combat”¹. In Taylor the Supreme Court noted that the concept of mutual combat had existed in this state since at least 1843, but had fallen out of common use in recent years.

The Supreme Court wrote that the case law established that there must be a mutual intent and willingness to fight to constitute “mutual combat”. State v. Graham, 260 S.C. 249, 250, 196

¹ Defense counsel objected, during an on-the-record charge conference, to the judge instructing the jury on “mutual combat,” and also objected to his refusal to charge voluntary manslaughter. Once her objections and position were placed on the record as to the jury instructions with the judge at the charge conference, she was not obligated to continue to object. State v. Johnson, 333 S.C. 62, 65, n. 1, 508 S.E.2d 29, 31, n. 1.

S.E.2d 495, 496 (1973). Mutual intent is “manifested by the acts and conduct of the parties and the circumstances **attending and leading up to the combat.**” Id. (emphasis added).

Whether or not mutual combat exists is significant because “the plea of self-defense is not available to one who kills another in mutual combat.” Id. (citing State v. Jones, 113 S.C. 134, 101 S.E. 647 (1919)). In order to claim self-defense, the defendant “must be without fault in bringing on the difficulty.” State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

Because mutual combat requires mutual intent and willingness to fight, if a defendant is found to have been involved in “mutual combat,” the “no fault” element of self-defense cannot be established unless the defendant can show he withdrew from the intent to engage in mutual combat.

A jury can still find a defendant guilty of voluntary manslaughter and not murder if it finds he was involved in mutual combat. “Where two persons mutually engage in combat, and one kills another, and at the time of the killing it be maliciously done, it is murder; if it be done in sudden heat and passion upon sufficient provocation without premeditation or malice, it would be manslaughter.” State v. Andrews, 73 S.C. 257, 53 S.E.2d 423 (1906). Our Supreme Court in State v. Taylor, 356 S.C. 227, 232-33, 589 S.E. 2d 1, 4 (2003),

The doctrine has most often been applied in situations where the defendant and decedent bear a grudge against each other before the fight in which one of them is killed occurs. State v. Porter, 269 S.C. 618, 239 S.E.2d 641 (1977) (holding mutual combat precluded a plea of self-defense where Appellant returned to injured party's property at least twice with a gun despite prior verbal warnings not to return and accompanying gunshots); Graham, 260 S.C. at 451, 196 S.E.2d at 496 (finding mutual combat charge proper where appellant and deceased *had quarreled prior to the killing, each knew that the other was armed with a pistol, and each fired his gun at the other*); State v. Mathis, 174 S.C. 344, 177 S.E. 318 (1934) (finding mutual combat charge proper based on testimony that appellant and deceased were on the lookout for each other, that each was armed in

anticipation of meeting the other, and that each drew and fired his pistol at the other).

Although South Carolina has not explicitly required that the fight arise out of a pre-existing dispute, other states have made this prerequisite to mutual combat explicit. Texas and Colorado adhere to the rule that an "antecedent agreement to fight" must exist for the court to charge mutual combat. Eckhardt v. People, 126 Colo. 18, 247 P.2d 673 (1952); People v. Cuevas, 740 P.2d 25 (Colo.App.1987); Lujan v. State, 430 S.W.2d 513, 514 (Tex.Crim.App.1968); Carson v. State, 89 Tex.Crim. 342, 230 S.W. 997 (1921).

Georgia has limited the application of mutual combat in another way by holding that mutual combat arises only when the parties are armed with deadly weapons, and that mutual combat does not arise from "a mere fist fight or scuffle." Flowers v. State, 146 Ga.App. 692, 247 S.E.2d 217, 218 (1978); Grant v. State, 120 Ga.App. 244, 170 S.E.2d 55, 56 (1969). In both Flowers and Grant, the defendant admitted to killing the decedent, but claimed self-defense. In both cases, the disputes that ended in death began as fist fights, and so the court found the mutual combat charge erroneous. Significantly, the court found that commingling charges on mutual combat and justification was "ipso facto harmful" because "it placed upon the defendant a heavier burden than required" for self-defense. Grant, 170 S.E.2d at 56. The court in Flowers explained, "[t]o charge on mutual combat, when there is no evidence to support it, effectively cancels the justification defense." 247 S.E.2d at 218.

We believe the restrictions placed on the applicability of mutual combat by the courts in Georgia, Colorado, and Texas are warranted. These limitations are consistent with the South Carolina cases in which the mutual combat charges given were deemed to be proper: Porter, Graham, and Mathis. As mentioned, mutual combat acts as a bar to self-defense because it requires mutual agreement to fight on equal terms for purposes other than protection. This is inherently inconsistent with the concept of self-defense, and directly conflicts with the "no fault" finding necessary to establish self-defense. As such, it is only logical that the evidence of agreement to fight be plain, like the evidence of mutual combat present in the Porter, Graham, and Mathis cases. In holding that mutual combat was properly charged in Graham, this Court reasoned as follows:

[t]here was ill-will between the parties. They had threatened each other and it is inferable that they had armed themselves to settle their differences at gun point. Under these circumstances, the apparent willingness of each to engage in an armed encounter with the other, sustained an inference that they were engaged in mutual combat at the time of the killing, and required that the issue be submitted to the jury for determination.
260 S.C. at 452, 196 S.E.2d at 496.

(emphasis added).

This was not a mutual combat case. At the outset, there was certainly evidence appellant was not even armed when he went to the club. There was evidence the men only went to the club to play pool. An argument ensued between two men who apparently “flashed” their guns at one another, a “flare” was fired from a gun and “chaos ensued.” If appellant even fired a gun it was apparently Donte’s gun after Dante was shot and killed after appellant urged him not to get out of the minivan. There was also evidence appellant was the man who urged leaving immediately when it appeared there may be trouble.

As this Court also will recall, appellant met Stanley Humphries, “Hump,” over at his house and rode with the others to the club. There was evidence they had never been to the club before that date.

This was not a case where two people or more, held a grudge against each other, they were spoiling for an armed fight, and there was an understanding or a tacit agreement that there would be a fight with deadly weapons. This was not a case where their differences would be settled with a duel, or a shootout at the O.K. Corral with Wyatt Earp, Doc Holliday, Virgil Earp and Morgan Earp on one side and Bill Claiborne, Ike and Billy Clanton and Tom and Frank

McLaury on the other side.² There also was not the Sharks and the Jets from West Side Story agreeing to a “fair fight,” at a specific location, which turned into a deadly rumble.

Respectfully, to charge “mutual combat” in this case was for “mutual combat” to lose its meaning within our case law. Finally, the record in this case shows that the police investigator repeatedly urged that all appellant had to do was admit that he pick up Dante’s weapon, and shot it back at the shooters, and he was not guilty by reason of self-defense. The trial judge correctly struggled with charging “mutual combat.” The solicitor was nonetheless successful in urging the judge to charge “mutual combat” over appellant’s objection.

Because an erroneous finding of mutual combat disqualified appellant from being found not guilty by the jury by the reason of self-defense, it was an extraordinarily prejudicial and misleading jury instruction. “The purpose of instructions is to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury.” State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987) *citing* State v. Hewitt, 205 S.C. 207, 31 S.E.2d 257 (1944). Appellant should be granted a new trial.

² The lawmen were eventually exonerated by a local justice of the peace after a 30-day preliminary hearing and then by a local grand jury.
https://en.wikipedia.org/wiki/Gunfight_at_the_O.K._Corral (last visited October 31, 2016).

The judge erred by instructing the jury on voluntary manslaughter over appellant's objection. There was no evidence justifying that verdict option. There was no evidence the decedent, Michael Morgan, did anything that would constitute a sufficient legal provocation for appellant to shoot him in a "heat of passion." This also was not a trial involving accomplice liability – "the hand of one is the hand of all."

The state's case was that appellant's acquaintance, Dante, was shot and killed next to the green minivan in the parking lot of the Midnight Soul Patrol. Appellant was right next to Dante. The state contended that appellant then grabbed Dante's gun, returned fire, killing the decedent, and wounding two other men.³ This record is the void of any evidence that the decedent did something to appellant that would constitute a "sufficient legal provocation" under our case law.

Specifically, in State v. Locklair, 341 S.C. 352, 535 S.E.2d 420 (2000), the defendant contended that he was entitled to a voluntary manslaughter instruction because there was evidence of a domestic dispute between the defendant and his girlfriend at the time of the shooting. The defendant further contended that because the girlfriend's mother threw a cigarette case at him during the argument -- and immediately before the shooting -- that this constituted the "sufficient legal provocation" necessary for voluntary manslaughter.

The Supreme Court noted that the "provocation necessary to support a voluntary manslaughter charge must come *from some act of or related to the victim* in order to constitute sufficient legal provocation." *citing* State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996). **Provocation of the deceased** must be such as naturally and instantly produces in the mind of a person ordinarily constituted the highest degree of exasperation, rage, anger, sudden resentment,

³ It still remains difficult to understand why the state also tried appellant for murdering Dante before the solicitor dismissed that indictment towards the close of the trial.

or terror, rendering the mind incapable of cool reflection.” State v. Locklair, 341 S.C. 352, 362, 535 S.E.2d 420, 425 (2000).

Our Supreme Court noted, *inter alia*, “This overt act [was] made by a *third party*, *not the deceased*, and South Carolina **has not recognized** sufficient legal provocation from *a third party that can be transferred to the victim*.” State v. Locklair, 341 S.C. 352, 362, 535 S.E.2d 420, 425 (2000). (emphasis added).

Thus, since there was no evidence of a sufficient legal provocation caused by the decedent against appellant in this case the judge erred by instructing the jury on voluntary manslaughter over appellant’s objection. Under the facts of this case, and South Carolina law, appellant had the right to a verdict of guilty of murder or not guilty because the State had failed to disprove self-defense beyond a reasonable doubt. *See, State v. Wiggins*, 330 S.C. 538, 544, 500 S.E.2d 489, 492-93 (1998); State v. Addison, 343 S.C.290, 294, 540 S.E.2d 449, 451 (2000).

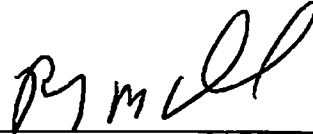
Since there was no evidence tending to reduce the crime from murder to voluntary manslaughter in this case, the judge erred by instructing voluntary manslaughter over appellant’s objection. The shooting in this case was murder or it was in self-defense.

There was no evidence of actions by the decedent against appellant which would have constituted a “sufficient legal provocation” necessary to reduce the shooting from being murder to voluntary manslaughter, and the same is true of the element of “heat of passion” since the record is also the void of any evidence of actions by the decedent which would have caused appellant to go into the highest degree of “exasperation, rage, anger, sudden resentment, or terror, rendering the mind incapable of cool reflection.” State v. Franklin, 310 S.C.122, 125, 425 S.E.2d 458 (Ct. of Appeals 1993).⁴ Appellant should be granted a new trial.

⁴ Overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999).

CONCLUSION

By reason of the foregoing arguments, appellants convictions should be reversed, and this case remanded to the Beaufort County Court of General Sessions for a new trial.

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

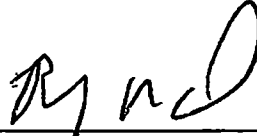
ATTORNEY FOR APPELLANT

This 5th day of May, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 5, 2017



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

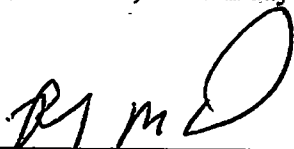
V.

JOSEPH BOWERS

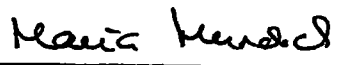
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of May, 2017.


Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of May, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2014-002176

THE STATE,

Respondent,

vs.

JOSEPH BOWERS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Any issues with the trial judge's presentation of jury instructions on mutual combat and voluntary manslaughter were not properly preserved for appellate review because defense counsel never presented any specific grounds to the trial judge in support of an objection to either of those charges, raised no objections after the trial judge instructed the jury on mutual combat and voluntary manslaughter as part of his jury charge, and then directly indicated to the trial judge she had no objections to the jury instructions as presented after the trial judge finished instructing the jury on the applicable law.

STATEMENT OF THE CASE

In June of 2012, Appellant Joseph Bowers was arrested following an investigation into a deadly shooting at a club located in Saint Helena Island, South Carolina. In August of 2012, the Beaufort County Grand Jury indicted Appellant for one count of murder and one count of possession of a weapon during the commission of a violent crime. Thereafter, in May of 2013, the Beaufort County Grand Jury additionally indicted Appellant with one more count of murder along with two counts of attempted murder. On September 29, 2014, a jury trial was commenced in the Beaufort County Court of General Sessions with the Honorable R. Markley Dennis, Jr., circuit court judge, presiding. During the course of trial, the solicitor withdrew one of the murder indictments. Subsequently, at the conclusion of trial, the jury convicted Appellant of the lesser-included offense of voluntary manslaughter, one count of the lesser-included offense of assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime while acquitting Appellant of all other charges. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of fifteen years for voluntary manslaughter, fifteen years for assault and battery of a high and aggravated nature, and five years for possession of a weapon during the commission of a violent crime. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Around 1:21 a.m. on June 21, 2012, the Beaufort County Sheriff's Office's 911 call center began receiving calls about a shooting at Midnight Soul Patrol, a club located in Saint Helena Island, South Carolina. (R. pp. 35-37; pp. 40-41; pp. 43-44; p. 47). In response, multiple law enforcement officers and other emergency responders quickly headed to the scene. (R. p. 40; pp. 44-46; p. 69; p. 138; p. 171). On the way, they located a vehicle with the body of Dante Bailey inside a short distance away from the club. (R. pp. 60-61; p. 70; p. 139; p. 171). Bailey had been shot in the chest, and the bullet struck his heart and one of his lungs, which led to his death. (R. p. 60; p. 70; p. 171; pp. 234-235). The officers and other emergency responders then continued onto the club, and, upon arriving, they encountered a "chaotic" scene with numerous people yelling, running around, and calling for help. (R. p. 45; p. 62; p. 65; p. 70). Furthermore, they found Michael Morgan ("Michael") near the back steps of a residence located in front of the club with gunshot wounds to his buttocks and pelvis and Richard Green on the ground outside of the club in close proximity to a propane tank with a gunshot wound to his back. (R. pp. 63-64; pp. 66-67; p. 222; p. 236). Based on their injuries, both men were then rapidly transported to the hospital. (R. pp. 64-65; p. 71; pp. 221-223).

After the victims were transported to the hospital, the officers and other emergency responders began investigating the shooting and speaking to the large crowd of approximately eighty people still present at the scene. (R. p. 72). As they did so, several people, including an individual called "Opie," were specifically identified as having fired shots during the incident. (R. p. 41; p. 43; p. 73). Furthermore, while processing the scene, officers located numerous pieces of evidence, including a nine-millimeter pistol that was registered to Bailey near a wooded area next to the club's parking lot, numerous nine-millimeter shell casings near the

propane tank where Green was found and in the club's parking lot, a flare gun near where Michael was located, a live round for the flare gun near a pool of blood, a casing from a fired flare near the propane tank, multiple fired projectiles and shell casings from various locations inside the club, and broken glass from a vehicle in the parking lot. (R. pp. 47-48; pp. 50-53; pp. 56-57; pp. 143-145; pp. 147-151; p. 155; p. 173; p. 178). Those items were then collected as evidence, and many of them were subsequently submitted for analysis. (R. pp. 173-175; p. 209; pp. 211-215; pp. 217-219; p. 242; p. 260).

Meanwhile, Investigator Jeremiah Fraser of the Beaufort County Sheriff's Office responded to Beaufort Memorial Hospital to speak with the victims who were taken there following the shooting at the club. (R. pp. 183-184; p. 221). At the hospital, Investigator Fraser made contact with Richard Goodwine, who had been shot in the leg during the incident and was subsequently dropped off at the hospital, and Michael, but was unable to speak with Green due to the fact he was unconscious as a result of his injuries. (R. pp. 78-79; p. 99; pp. 101-102; pp. 184-186; p. 222). During his conversation with Michael, Michael positively identified Appellant Joseph Bowers, who was also known as "Opie," as the person who shot him.¹ (R. p. 8; p. 76). Investigator Fraser then relayed the information he obtained at the hospital to his fellow officers. (R. p. 187).

Thereafter, Michael's condition began to deteriorate, and he was flown to the Medical University of South Carolina for further treatment. (R. pp. 222-223; p. 229). However, Michael had sustained an injury to his iliac vein during the shooting, which was an extremely serious injury. (R. pp. 229-231). By the time Michael made it to an operating room at the hospital, he

¹ During trial, the trial judge ultimately ruled Michael's statement identifying Appellant as his shooter could not be admitted into evidence after concluding the statement was not a dying declaration. (R. pp. 8-14).

was in cardiac arrest, and he died a short time later as a result of his injuries.² (R. pp. 229-230; pp. 236-237).

Several hours later, Appellant was apprehended near his home and placed under arrest, and Investigator Fraser made contact with him following his arrest.³ (R. p. 188). During their ensuing conversation, Appellant claimed he did not have a gun, shoot a gun, or touch Bailey's gun during the incident. (R. pp. 188-189; p. 198; p. 201). Instead, while refusing to identify the people with him at the time, Appellant asserted he went to the club with Bailey on that date, Bailey got into an argument with someone at the club, he pulled Bailey back to their van, someone started shooting at them, Bailey pulled out a gun, Bailey stepped out from behind the van despite his efforts to stop him, and Bailey was shot and killed.⁴ (R. pp. 190-191). Following the interview, Appellant went through the booking process, Investigator Fraser took possession of the clothing Appellant was wearing at the time of his arrest, and, after the booking process was completed, Appellant requested to speak with Investigator Fraser again.⁵ (R. p. 191; p. 193). Investigator Fraser then again met with Appellant, and, during the subsequent interview, Appellant identified the people he went to the club with while claiming "T Dog," whom the officer knew to be Terry Thornton, was the shooter. (R. pp. 192-193).

Subsequently, Appellant was indicted for multiple offenses, including the murders of Michael and Bailey, and he elected to proceed forward to trial. (R. pp. 2-3; pp. 357-370).

² During his trial testimony, Dr. Bruce Cookes, a trauma surgeon at the Medical University of South Carolina, indicated Michael's chance of survival was virtually non-existent after he received the injury he sustained in such a rural area. (R. p. 228; p. 231).

³ Appellant was apprehended around 10:00 a.m. on the date of the shooting. (R. p. 196).

⁴ During trial, testimony was presented establishing Appellant and Bailey were from the same area. (R. p. 165). Regarding their relationship, defense counsel characterized Bailey in her opening statement to the jury as "a daddy and a best friend and a big brother" to Appellant. (R. p. 30).

⁵ Appellant's clothing was subsequently submitted for analysis. (R. pp. 214-215).

During trial, Investigator Fraser presented Appellant's statements regarding the shooting to the jury while several other witnesses offered multiple differing accounts. (R. pp. 74-137; p. 190).

Regarding those accounts, Stanley Humphries testified he went to the club with Bailey, Appellant, and several other people in a van. (R. pp. 74-76). A little while after they arrived, Humphries stated an individual called "Krum" approached them and started trouble with Bailey. (R. p. 77). At that point, Humphries stated someone that might possibly have been Appellant indicated they should go, they started to leave, and gunshots rang out. (R. p. 77). Humphries asserted he then got into the van with Appellant while Bailey attempted to direct them out of the parking spot from behind. (R. pp. 77-78). After that, Humphries testified Bailey was shot by someone, he and Appellant exited the van, and then he left the area in the van without Appellant after realizing Bailey was dead. (R. pp. 78-79; p. 81). Humphries further claimed he did not see Bailey with a gun, did not personally have a gun, and was not aware of Appellant having a gun that night. (R. p. 81).

Additionally, Joe Nathan Pope testified he went to the club and saw several people, including Appellant, Bailey, and Humphries, standing in the parking lot on the night of the shooting. (R. pp. 83-84). Shortly after he arrived, Pope testified an argument broke out, someone got into a verbal altercation with Bailey, he tried to calm them down, and another individual broke up the argument. (R. pp. 87-90). At that point, Pope stated several individuals came up behind Bailey, he began to retreat into the club because he believed something was going to occur, and he observed Lucas Morgan ("Lucas"), who was armed with a gun, arguing with Irvin Smalls. (R. pp. 90-91; p. 94). Pope indicated multiple gunshots were then fired, he saw Lucas fire numerous shots into the parking lot, everyone ran for cover, and Appellant and

Lucas left the scene before law enforcement officers arrived. (R. pp. 92-94). Pope further stated he never saw Appellant with a gun. (R. p. 94).

Likewise, Goodwine testified he was present at Midnight Soul Patrol on the night of the shooting, was there with Bailey and Joey Chaplin, and was inside the club when an argument broke out. (R. p. 98). In response, Goodwine stated he went outside, saw Green on the ground, observed Lucas and Bailey shooting, ran from the gunfire, and was shot by Lucas as he fled. (R. pp. 98-101). After that, he stated he observed Appellant standing over Bailey, and he was taken to the hospital a short time later by Humphries. (R. pp. 101-103).

Similarly, Green testified he was at the nearby home of the owner of the club on the night of the incident and went outside.⁶ (R. pp. 105-106). After he went outside, Green stated he heard a gunshot and began walking away. (R. p. 106). As he did so, Green indicated he was shot in the back by an unknown individual and was paralyzed from the waist down. (R. pp. 106-107).

Furthermore, Alvin Wilson testified he was working at Midnight Soul Patrol on the night of the incident. (R. pp. 109-110). On that night, Wilson indicated approximately seventy-five people were at the club and those people were mostly inside until a group of guys arrived. (R. pp. 110-111). After the guys arrived, Wilson stated he went outside, saw an altercation, went back inside to shut the music off, and then heard gunshots ring out and come through the windows of the club. (R. pp. 112-113; p. 116; p. 118). Wilson indicated he then went back outside, saw Michael and Green on the ground, and armed himself with a rifle that he never fired. (R. p. 113; p. 115; pp. 118-120). He further noted he saw Lucas with a gun on the night of the incident. (R. p. 120).

⁶ During his testimony, Green identified Lucas as a member of his family. (R. p. 108).

Finally, regarding the last account of the shooting presented during trial, Magnum Smalls testified he was at the club on the night of the incident and observed Bailey and another group of guys arrive at the club. (R. pp. 121-122). Shortly after Bailey arrived, Smalls indicated he observed Bailey become involved in a heated verbal altercation with an individual identified as "Arthur." (R. pp. 122-123). Smalls stated Derrick Grant then attempted to diffuse the situation, Michael fired a flare gun, and chaos ensued. (R. pp. 123-124; pp. 134-135). After the flare gun was fired, Smalls indicated everyone with a gun started shooting, and he stated he personally observed Lucas, Appellant, Lewis Melvin Johnson, and Arthur Chaplin, who was also known as "Krum," firing shots before he took cover behind a tree. (R. pp. 124-126; pp. 133-134). He further stated he observed Appellant near Bailey after Bailey was shot and Appellant was in possession of a gun that looked like Bailey's weapon at that time. (R. pp. 126-127; p. 136). However, as his testimony continued, Smalls offered a somewhat contradictory account of what transpired and stated he did not see Appellant with a gun until after Bailey had been shot and never personally saw Appellant shoot a gun during the incident. (R. pp. 130-132).

In addition to those accounts of the shooting, a recording of a phone call Appellant made while incarcerated at the Beaufort County Detention Center subsequent to the incident was admitted into evidence and played for the jury. (R. pp. 203-206). During that call, Appellant appeared to state: "Even though I ain't kill the boy, I only shoot the boy." (State's Ex. # 39 (Jail Call Recording)). Additionally, the officers and other individuals involved in the investigation into the incident testified about what they discovered in the aftermath of the shooting, and Investigator Andrew Rice of the Beaufort County Sheriff's Office specifically noted he verified the rear window of Humphries's vehicle was missing after he had learned Humphries had his vehicle's window shot out when he visited the club earlier on the evening of the shooting. (R.

pp. 35-58; pp. 60-67; pp. 69-73; pp. 138-181; pp. 189-201; pp. 209-219; pp. 221-223; pp. 228-231; pp. 233-237). Furthermore, testimony was presented establishing one of the components of gunshot residue was found on the shirt and shorts Appellant was wearing at the time of his arrest, the shell casings collected in the parking lot at the club were fired from Bailey's nine-millimeter pistol, the fired projectiles collected from inside the club were fired by Bailey's weapon, and a total of approximately six or seven different guns were fired during the incident based on the variety of shell casings that were found at the scene. (R. p. 155; pp. 244-245; pp. 250-251; pp. 259-264; p. 268).

Subsequently, at the conclusion of the evidentiary phase, the trial judge conducted an informal, off-the-record charge conference with the parties. (R. p. 271; p. 288; p. 290; p. 291). Following that informal discussion, the trial judge indicated on the record he intended to instruct the jury on mutual combat at the solicitor's request and over defense counsel's objection. (R. p. 291). In support of that instruction, the trial judge noted the testimony that had been presented during trial was somewhat contradictory but could support a mutual combat charge. (R. p. 291). Furthermore, the trial judge indicated he intended to instruct the jury on murder, voluntary manslaughter, and self-defense. (R. p. 292). At that point, defense counsel objected to an instruction on voluntary manslaughter, but she provided no grounds in support of her objection. (R. p. 292). The trial judge then indicated the fact a heated altercation occurred immediately before the shooting supported a charge on voluntary manslaughter. (R. pp. 292-293). Following that explanation, the trial judge asked the parties if they had anything they wished to put on the record, and defense counsel responded she did not. (R. p. 293).

Thereafter, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law. (R. pp. 295-340). In instructing the jury on the

applicable law, the trial judge specifically charged the jury in regard to murder, voluntary manslaughter, attempted murder, assault and battery of a high and aggravated nature, possession of a weapon during the commission of a violent crime, mutual combat, and self-defense.⁷ (R. 324-333). Following the presentation of the jury instructions, the trial judge asked the parties if there were any “[e]xceptions or additions” to the charge as presented. (R. p. 340). Defense counsel responded: “None, Your Honor.”⁸ (R. p. 340).

Subsequently, at the conclusion of trial, the jury convicted Appellant of voluntary manslaughter, one count of assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime while acquitting him of all other charges.⁹ (R. pp. 352-353). The trial judge then sentenced Appellant to an aggregate term of imprisonment of fifteen years. (R. p. 356).

⁷ Specifically, regarding mutual combat, the trial judge instructed: “Now, I want to discuss with you a part of the theory that you’ll have to consider, and it’s known as mutual combat. And this law provides that if a Defendant voluntarily participated in mutual combat for the purpose other than protection, the killing of a victim would not be self-defense. This is true even if during the combat the Defendant feared death or serious bodily injury. However, if before the killing is committed the Defendant withdraws and tried in good faith to avoid further conflict, and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty. For mutual combat there must be a mutual intent and a willingness to fight. This intent may be shown by the acts and conduct of the parties and circumstances surrounding the combat. In addition, it must be shown that – be shown that both parties were armed with a deadly weapon.” (R. pp. 329-330).

⁸ Later on, during deliberations, the jury submitted a question to the trial judge, and the trial judge responded to the question by re-instructing the jury on the law related to mutual combat. (R. pp. 347-350). Following that re-charge, the trial judge again inquired if there were any exceptions or additions to his instructions, and defense counsel again stated she did not have any objections. (R. p. 350).

⁹ Before the jury began its deliberations, the solicitor withdrew the murder indictment related to Bailey’s death. (R. pp. 293-294).

ARGUMENT

Any issues with the trial judge's presentation of jury instructions on mutual combat and voluntary manslaughter were not properly preserved for appellate review because defense counsel never presented any specific grounds to the trial judge in support of an objection to either of those charges, raised no objections after the trial judge instructed the jury on mutual combat and voluntary manslaughter as part of his jury charge, and then directly indicated to the trial judge she had no objections to the jury instructions as presented after the trial judge finished instructing the jury on the applicable law.

Appellant contends the trial judge committed two separate reversible errors by instructing the jury on mutual combat and voluntary manslaughter during trial. Importantly though, Appellant's appellate issues with the trial judge's jury instructions cannot properly be raised or addressed on appeal because they were not properly preserved for appellate review in the trial court. Critically, in Appellant's case, defense counsel never presented any specific grounds to the trial judge as to why instructions on mutual combat and voluntary manslaughter were allegedly improper and did not raise any objections after the trial judge instructed the jury on mutual combat and voluntary manslaughter as part of his jury charge. Moreover, defense counsel waived any issues she may have had with the mutual combat and voluntary manslaughter charges by specifically indicating to the trial judge she had no objections to those instructions after they were presented to the jury. As a result, Appellant's issues with the trial judge's jury instructions were not properly preserved for appellate review, and those issues cannot properly be raised or addressed on appeal. Accordingly, Appellant's convictions should be affirmed.

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). Significantly, the application of issue preservation requirements ensures the trial court has an opportunity "to rule properly after it considered all relevant facts, law, and arguments." I'On,

L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (emphasis added). In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). Importantly, “[i]f a party fails to properly object, the party is procedurally barred from raising the issue on appeal.” State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005).

Regarding the necessity of sufficient specificity to preserve an issue, an issue must be raised in a sufficiently specific manner “to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge.” State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001); see Johnson, 363 S.C. at 58, 609 S.E.2d at 523 (“The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error.”). Although an objecting party need not use the exact name of a legal doctrine in order to preserve an objection, it must be clear that the argument has been presented on the ground alleged. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Critically, a general objection not specifying any grounds upon which the objection is based is not sufficient to preserve an issue for appeal. State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997). Thus, if there are no grounds stated for an objection, there is nothing for the appellate court to review. State v. Bennett, 328 S.C. 251, 260, 493 S.E.2d 845, 849 (1997); see State v. Hughes, 160 S.C. 474, 476, 158 S.E. 833, 833 (1931) (“The objection made at trial was general, not showing the specific grounds on which it was based, and an exception based on it cannot,

therefore, be considered by this court.”); see also State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991) (“Where an objection **and the ground therefor** is not stated in the record, there is no basis for appellate review.” (emphasis added)).

Furthermore, in addition to the general requirements of South Carolina’s issue preservation rules, the South Carolina Rules of Criminal Procedure also provide specific guidance in regard to raising and preserving an objection to a jury charge. See Rule 20, SCRCrimP (outlining the requirements for requesting jury instructions and objecting to a jury charge). Pursuant to our criminal procedure rules, a defendant must object to the jury charge as given or request an additional charge when afforded the opportunity to do so in order to properly preserve an objection to a charge. State v. Stone, 285 S.C. 386, 387, 330 S.E.2d 286, 287 (1985); see Rule 20(a), SCRCrimP (“All requests for legal instructions to the jury shall be submitted at the close of the evidence, or at such earlier time as the trial judge shall reasonably direct.”); Rule 20(b), SCRCrimP (“Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to **and the grounds for objection.**” (emphasis added)). The rule in South Carolina “is firmly established that failure to object to a charge, or failure to request an additional charge when the opportunity is afforded, constitutes a waiver of any right to complain on appeal of an alleged error in the charge.” State v. Williams, 266 S.C. 325, 335, 223 S.E.2d 38, 43 (1976); see Rule 20(b), SCRCrimP (“Failure to object in accordance with this rule shall constitute a waiver of objection.”).

Moreover, even if a party properly raises an objection during trial, a party may still waive his right to argue error in regard to that objection on appeal under certain circumstances. See

State v. O'Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) (recognizing a previously-raised objection can be waived). Significantly, one of the ways a party can waive an objection is by indicating to the trial judge the party does not have an objection to an issue to which the party previously raised an objection. See State v. Brown, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (holding Brown's issue with a jury instruction was not preserved for appellate review where Brown explicitly stated to the trial judge he had no objection to the instruction); State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding Rios waived his right to allege error with a jury charge on appeal where the trial court specifically asked if there were any objections to the instructions given and Rios responded there were none); State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) ("Dicapua's sole objection to the videotape came in the form of a motion in limine to suppress the videotape because of its lack of audio. Once the State moved to enter the videotape into evidence and publish it to the jury, however, Dicapua's counsel specifically stated he had 'no objection.' We find this amounted to a waiver of any issue Dicapua had with the videotape."); cf. Commonwealth v. Moury, 992 A.2d 162, 178 (Pa. Super. Ct. 2010) ("Generally, a defendant waives subsequent challenges to the propriety of the jury charge on appeal if he responds in the negative when the court asks whether additions or corrections to a jury charge are necessary.").

In the case sub judice, the trial judge instructed the jury on mutual combat and voluntary manslaughter after evidence was presented from which the jury could conclude Appellant shot the victims during the course of a gunfight that erupted following a heated verbal altercation that began when he travelled to the club with Bailey, Humphries, other individuals, and at least one firearm after Humphries's vehicle had been fired upon at that location earlier in the evening. See State v. Taylor, 356 S.C. 227, 231-232, 589 S.E.2d 1, 3 (2003) (explaining mutual combat exists

when parties engage in combat with mutual intent and willingness to fight one another); State v. Knoten, 347 S.C. 296, 307, 555 S.E.2d 391, 397 (2001) (“There can be little argument that an unprovoked knife attack constitutes sufficient legal provocation to warrant the requested [voluntary manslaughter] charge.”); State v. Locklair, 341 S.C. 352, 360, 535 S.E.2d 420, 424 (2000) (“[I]t is proper to charge voluntary manslaughter where the defendant and the victim had been in a heated argument prior to the [killing].”); State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) (finding sufficient evidence existed to support a voluntary manslaughter conviction where the evidence established Wiggins was engaged in a heated argument with the victim and the victim’s sister prior to the killing); State v. Davis, 278 S.C. 544, 546, 298 S.E.2d 778, 779 (1983) (“Here, a witness testified that appellant and the victim had been ‘fighting.’ From this circumstance of ‘provocation’ and ‘heat of passion,’ guilt of voluntary manslaughter could be fairly and logically deduced and was thus a proper matter for jury determination.”); State v. Porter, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977) (finding mutual combat obviated Porter’s plea of self-defense where the evidence established Porter “returned with a gun to Slagle’s property at least twice in spite of prior verbal abuse, threats and gunshots”); see also State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009) (explaining a trial judge must instruct the jury on a lesser-included offense if any evidence warrants the giving of a charge on that offense and should only refuse to instruct the jury on such an offense when there is no evidence whatsoever from which the jury could conclude the defendant committed the lesser rather than the greater offense); State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) (“A trial court has a duty to give a requested instruction that correctly states the law applicable to the issues and which is supported by the evidence. If any evidence exists to support a charge, it should be given.”). Now, on appeal, Appellant is challenging the trial judge’s mutual

combat and voluntary manslaughter instructions on a variety of different grounds. However, any issues with the trial judge's presentation of instructions on mutual combat and voluntary manslaughter during his jury charge were not properly preserved for appellate review for several different reasons.

Specifically, Appellant failed to preserve any issues with the challenged charges because defense counsel did not provide the trial judge with any grounds as to why those charges should not have been presented to the jury during trial. See Rule 20(b), SCRCrimP (mandating "[a]ny objection [to a jury instruction] shall state distinctly the matter objected to **and the grounds for the objection**" (emphasis added)); see also Patterson, 324 S.C. at 19, 482 S.E.2d at 767 ("Appellant is limited to the grounds raised at trial."). Instead, following an off-the-record discussion with the trial judge, defense counsel generally objected to the presentation of jury instructions on mutual combat and voluntary manslaughter during an on-the-record charge conference but, critically, did not provide any grounds in support of those objections despite the fact the trial judge specifically afforded her an opportunity to do so at the conclusion of the charge conference. See State v. Kennerly, 331 S.C. 442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998) ("Kennerly did not raise this issue to the trial court in her directed verdict motion. Instead, she simply moved for a directed verdict without stating any specific grounds. In reviewing a denial of a directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review. A defendant cannot argue on appeal an issue in support of his directed verdict motion when the issue was not presented to the trial court below."); see also York v. Conway Ford, Inc., 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997) ("An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review."). Furthermore, Appellant failed to preserve any

issues in regard to the mutual combat and voluntary manslaughter jury instructions because defense counsel did not raise any objections after the trial judge presented those instructions to the jury and then expressly asked defense counsel whether she had any objections to the jury charge as given. See Rule 20(b), SCRCrimP (“Notwithstanding any request for legal instructions, the parties shall be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection shall state distinctly the matter objected to and the grounds for objection. Failure to object in accordance with this rule shall constitute a waiver of objection.”). In light of the fact defense counsel only, at best, raised general objections to the mutual combat and voluntary manslaughter charges without stating any grounds in support of those objections during a charge conference and did not raise any objection to the jury instructions as presented when afforded an opportunity to do so, no issues in regard to the mutual combat and voluntary manslaughter charges were preserved for appellate review in Appellant’s case. See State v. Hall, 253 S.C. 294, 295, 170 S.E.2d 379, 380 (1969) (“The defendant did not raise the objections to the instructions at the trial although full opportunity was afforded to do so The failure of the defendant to object or request additional instructions, when opportunity was afforded, constituted a waiver of any right to complain on appeal of errors in the charge.”); cf. State v. Thomas, 159 S.C. 76, 83, 156 S.E. 169, 171 (1930) (“Counsel for the defendant interposed with what may be liberally construed as a general objection to the admission of this testimony on the ground of irrelevancy. The objection did not set forth the specific grounds contained in the exception, and these grounds, therefore, cannot be considered.”); State v. Adams, 332 S.C. 139, 144, 504 S.E.2d 124, 126 (Ct. App. 1998) (“This precise argument was neither raised to nor ruled upon by the trial court. Appellant

argued only that the evidence did not rise to the ‘level of a reasonable doubt as to counts 1, 2, and 3.’ . . . Adams’s argument, therefore, is not preserved for our review.”).

Moreover though, even assuming the issues had somehow been properly preserved for appellate review by defense counsel’s general groundless objections during the charge conference, any issues with the mutual combat and voluntary manslaughter jury charges still could not appropriately be raised or addressed on appeal because defense counsel subsequently expressly waived the issues at a later point during trial. See O’Neal, 210 S.C. at 312, 42 S.E.2d at 526 (recognizing a previously-raised objection can be waived). Specifically, after the trial judge presented a jury charge that included instructions on mutual combat and voluntary manslaughter, the trial judge inquired of defense counsel if there were any objections to the jury charge as presented, and defense counsel expressly affirmed she had no objections to the charge.¹⁰ See Brown, 402 S.C. at 125, 740 S.E.2d at 496 (“[Brown]’s trial counsel stated explicitly that he had no objection to the trial court’s instruction. Thus, [Brown]’s argument that the trial court erred in failing to apply section 16-13-30 as amended is unpreserved.”); Rios, 388 S.C. at 342, 696 S.E.2d at 612 (“Even after the trial court specifically asked if there were any objections to the charges given, Rios responded, ‘None.’ By failing to contemporaneously object to the jury charges, Rios has waived his right to allege error on appeal.”); see also Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) (“When a party states to the trial court that it has no objection to the introduction of evidence, even though the party previously made a motion to exclude the evidence, the issue raised in the previous motion is not preserved for appellate review.”). Accordingly, in light of the fact defense counsel directly affirmed she had no objections to the jury instructions after they were given, any issues

¹⁰ Notably, when the trial judge subsequently re-instructed the jury on the law related to mutual combat, defense counsel again affirmed she had no objections to the charge. (R. p. 350).

Appellant may have had in regard to the trial judge's jury instructions were expressly waived, and no issues regarding the mutual combat and voluntary manslaughter instructions can properly be raised or addressed on appeal. See State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court "cannot address unpreserved errors"). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

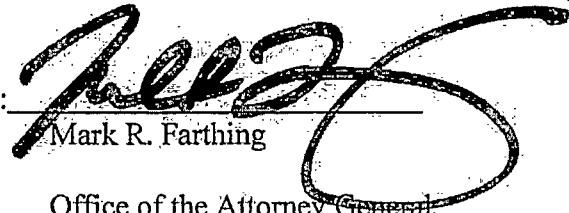
Respectfully submitted,

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BY:

A large, stylized handwritten signature in black ink, appearing to read 'Mark R. Farthing', is written over a horizontal line.

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ATTORNEYS FOR RESPONDENT

April 26, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2014-002176

THE STATE,

Respondent,

vs.

JOSEPH BOWERS,

Appellant.

CERTIFICATE OF COUNSEL

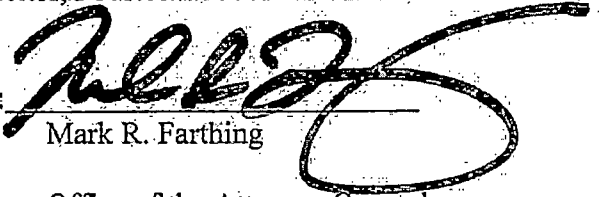
The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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April 26, 2017

APP'X 427

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2014-002176

THE STATE,

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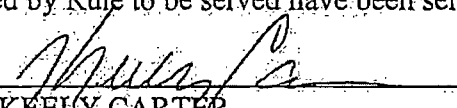
Appellant.

PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Final Brief of Respondent on Appellant by sending two copies of the same to:

Robert M. Dudek, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 26th day of April, 2017.


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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Joseph Bowers, Appellant.

Appellate Case No. 2014-002176

Appeal From Beaufort County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5677
Heard October 10, 2018 – Filed August 7, 2019

REVERSED AND REMANDED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia; and Solicitor Isaac McDuffie Stone, III, of
Bluffton, all for Respondent.

GEATHERS, J.: Late night verbal altercations at a local club escalated to a shootout, resulting in the death of two people, Dante Bailey and Michael Morgan, and the injury of two others, Robert Goodwine and Richard Green. Appellant Joseph Bowers was convicted for the (1) voluntary manslaughter of Michael Morgan, (2) assault and battery of a high and aggravated nature of Richard Green, and (3) possession of a weapon during the commission of a violent crime. Bowers argues the circuit court erred by instructing the jury on mutual combat and

voluntary manslaughter because there is no evidence to support either charge. We reverse and remand for a new trial.

FACTS/PROCEDURAL HISTORY

On June 21, 2012, Stanley Humphries and Dante Bailey were playing pool at the Sand Dollar in St. Helena. After the Sand Dollar closed for the night, the two left and went to Bailey's house to pick up some cigarettes before heading to a local club, Midnight Soul Patrol. Appellant met Humphries and Bailey at Bailey's house, and the group rode in Humphries' car to the club. The group went inside the club but was inside for only a few minutes before walking outside to smoke. Arthur Chaplin and a group of men approached Bailey, and Bailey and Chaplin started arguing.

Humphries testified the argument was only verbal and ended soon after it started. Other witnesses testified similarly. Mangum Smalls stated he saw Bailey and Chaplin arguing and guns were flashed, then Derrick Grant got between the two and defused the situation. Joe Pope testified he saw the argument between Bailey and a group of men and it was defused quickly. Alvin Wilson, the DJ at the club, noticed the crowd was moving outside and when he followed, he saw the altercation. As a result, Wilson declared the party over and walked back inside.

After the altercation was abated, someone suggested leaving, and Humphries, Bailey, and Appellant walked back to Humphries' car, attempting to leave. Meanwhile, Pope turned to walk into the club and saw a separate altercation between Lucas Morgan and Irvin Smalls, unrelated to Bailey and Chaplin's altercation. According to Pope, Irvin was trying "to get to Lucas," but Lucas had a gun. At that time, Humphries, Appellant, and Bailey had returned to Humphries' car, but Bailey was standing outside of the car directing Humphries out of the parking spot to avoid hitting nearby obstacles.

Then the gunshots began, precipitated by Michael Morgan inexplicably firing a flare gun.¹ Bailey was shot. Humphries and Appellant exited the car and Bailey was on the ground, having been hit by a bullet that perforated his heart and a lung. Mangum Smalls testified that he saw Appellant trying to help put Bailey

¹ There was testimony that Lucas Morgan, Michael Morgan, Richard Green and Alvin Wilson were all related.

inside of a car and noticed Appellant was holding Bailey's gun.² Richard Green, who had his back to the club and was outside of the club owner's nearby house, heard the first shot and attempted to flee. He was shot in the back and paralyzed from the waist down. Robert Goodwine walked outside of the club as the gunshots began and saw Green lying on the ground. Goodwine saw Lucas and Bailey shooting and attempted to flee towards the main road when Lucas "came around the corner shooting," hitting Goodwine in his left calf. Pope testified that shortly after the shots began, a group of four or five men ran towards Michael Morgan shooting while Michael was standing over Green with a flare gun. Michael was then hit by a bullet, but no one saw who shot Michael. The bullet struck Michael in his hip, perforated his iliac vein, and he died hours later. All of the injuries were the result of "through and through" shots, meaning a projectile passed completely through the body.

Once the shooting stopped, Pope called 911. Paul Adam, a deputy with the Beaufort County Sheriff's Office, was dispatched to the club and arrived thirteen minutes later. Deputy Adam collected evidence—including spent shell casings, a Glock handgun, and a flare gun—and turned the evidence over to the lead investigator, Adam Zsamar. Deputy Adam also told Investigator Zsamar that three people had guns—Bailey, Lucas Morgan, and Lewis Johnson. Investigator Zsamar processed the scene and located two sets of different brand nine-millimeter shell casings, one set clustered near where Lucas Morgan was seen firing and the other set clustered near where Appellant and Bailey were placed. The day after the shooting, Investigator Zsamar executed a search warrant at Lucas Morgan's residence and found the same brand of ammunition that was clustered near where witnesses placed Lucas Morgan. Further investigation also revealed that the Glock recovered from the scene was registered to Bailey.

Jeremiah Fraser, an investigator with the Beaufort County Sheriff's Office, interviewed Appellant on the day after the shooting. Appellant's version of events was similar to Humphries' version. Appellant told investigators that he was at the club with Bailey and Bailey got into an argument with someone. Appellant said he pulled Bailey away from the argument and towards the car so they could leave but then "shots started ringing out towards them," and that's when Bailey pulled out his

² Mangum Smalls initially testified that he witnessed Appellant with a gun prior to when Appellant was trying to help put Bailey inside of the car. However, once presented with his previous deposition testimony, Smalls corrected himself and testified he did not see Appellant firing a gun and only witnessed Appellant holding Bailey's gun after Bailey had been shot.

gun, stepped out from behind the car, and was shot. Appellant denied shooting a gun, and his clothes were collected for gunshot residue testing. Also, Appellant's hands were swabbed for gunshot residue, but the swabs were never tested because they were collected outside of the six-hour window in which gunshot residue can be expected to be found on living tissue, according to expert testimony. Appellant was jailed after the interview, and his shirt and shorts later tested positive only for lead particles.³ According to one of the South Carolina Law Enforcement Division (SLED) agents, authorities did not test Michael Morgan or Dante Bailey for gunshot residue because they were classified as victims. After being jailed, Appellant chose to speak with investigators again and said that someone else was shooting. While awaiting trial, Appellant had a conversation with his girlfriend on a prison telephone that recorded him saying "I ain't killed the boy, I only shot the boy."

Appellant was tried for the murders of his friend Dante Bailey and Michael Morgan, the attempted murders of Robert Goodwine and Richard Green, and possession of a weapon during the commission of a violent crime. However, after trial but before jury deliberations began, the State withdrew the murder indictment for Bailey and proceeded on the remaining indictments.⁴ Over Appellant's objection, the circuit court instructed the jury on mutual combat and told the jury the doctrine applied only to Michael Morgan's murder. The circuit court also instructed the jury on the lesser-included offenses of voluntary manslaughter and assault and battery of a high and aggravated nature. Appellant objected to the voluntary manslaughter jury instruction. Additionally, Appellant requested a self-defense instruction that was also given.

Ultimately, the jury found Appellant guilty of the voluntary manslaughter of Michael Morgan, the assault and battery of a high and aggravated nature of Richard Green, and possession of a weapon during commission of a violent crime. This appeal followed.

ISSUES ON APPEAL

³ An expert testified that lead is one of three main components of gunshot residue, the others being barium and antimony. Unless the test returns positive results for all three components, the components found cannot be called gunshot residue.

⁴ The court allowed the jury to deliberate on Appellant's indictment for the attempted murder of Robert Goodwine, despite Goodwine's testimony that Lucas Morgan shot him and the circuit court's instruction that the theory of mutual combat did not apply to Goodwine.

1. Did the circuit court err by instructing the jury on mutual combat?
2. Did the circuit court err by instructing the jury on voluntary manslaughter?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). "In general, the trial judge is required to charge only the current and correct law of South Carolina . . . and the law to be charged to the jury is determined by the evidence at trial." *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003) (citation omitted). Unless justified by the evidence, an instruction should not be given because it can confuse the jury. *State v. Commander*, 384 S.C. 66, 75, 681 S.E.2d 31, 36 (Ct. App. 2009), *aff'd as modified*, 396 S.C. 254, 721 S.E.2d 413 (2011). But an instruction must be erroneous and prejudicial to warrant reversal. *Taylor*, 356 S.C. at 231, 598 S.E.2d at 3.

LAW/ANALYSIS

I. Issue Preservation

As a threshold matter, the State contends the jury instruction issue is not preserved for appellate review and Appellant waived his objection by failing to raise specific grounds. Specifically, the State argues that after the off-the-record charge conference, Appellant "generally objected" to the jury instruction but "did not provide any grounds in support of those objections" during the on-the-record charge conference. We disagree.

Issue preservation rules are "meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). But issue preservation is not a "gotcha" game. *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). Instead of being hyper-technical, we approach preservation with a practical eye. *Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011). Once a party objects to a jury charge and, after opportunity for discussion, is denied on the record, no further action is necessary in order to preserve the issue for appeal. *State v. Johnson*, 333 S.C. 62, 64 n.1, 508 S.E.2d 29, 30 n.1 (1998). The failure to raise specific grounds

for an objection will not prevent the appellate court from addressing an issue when the record indicates that the trial court and the State understood the basis for the objection. *State v. Hendricks*, 408 S.C. 525, 531, 759 S.E.2d 434, 437 (Ct. App. 2014) (citing *State v. Kromah*, 401 S.C. 340, 353, 737 S.E.2d 490, 497 (2013)).

In *Hendricks*, the court found the appellant's hearsay objection to a recording preserved despite appellant's failure to state specific grounds, i.e., saying "hearsay," because the basis for the objection was apparent from the context. *Id.* The court based its ruling on Rule 103(a)(1), SCRE, which requires timely objection to the admission of evidence to support a claim of error and specificity in making the objection *if the ground for the objection is not apparent from the context.* *Id.* After the appellant objected, the State responded with hearsay exceptions, arguing the recording was admissible as an excited utterance or present sense impression. *Id.* This court held the issue was preserved because "the State and trial court immediately understood [the appellant's] objection was based on hearsay." *Id.*

Although the *Hendricks* court's ruling was based on Rule 103(a)(1), SCRE, our supreme court in *State v. Cain* relied, in part, on *Hendricks* when it found preserved an appellant's argument challenging the sufficiency of the State's evidence of the quantity of a drug because it was clear from the record that the State and trial court understood the basis for the appellant's argument. 419 S.C. 24, 35, 795 S.E.2d 846, 852 (2017). In *Cain*, during pre-trial motions, the appellant argued the State could not rely on "theoretical yield" to elevate a charge of manufacturing drugs to trafficking drugs under section 44-53-375 of the South Carolina Code. *Id.* at 34, 795 S.E.2d at 851. Our supreme court found this argument necessarily focused on the State's evidence of the quantity of the drug. *Id.* The court noted the State "clearly understood the argument to relate to quantity." *Id.* The trial court took the motion to dismiss under advisement, and when the appellant later moved for a directed verdict based on quantity, the trial court referred back to the previous discussion about theoretical yield to deny the motion. *Id.* at 34-35, 795 S.E.2d at 852. Because the trial court's reference to the previous discussion indicated it understood the directed verdict motion was based on "the sufficiency of the State's evidence on the element of quantity," the argument was preserved. *Id.* at 35, 795 S.E.2d at 852 (citing *Hendricks*, 408 S.C. at 531, 759 S.E.2d at 437).

Following *Cain's* guidance, we find Appellant's argument challenging the sufficiency of the evidence of mutual combat is preserved because it is clear from the record that the circuit court and the State understood the basis for Appellant's

objection. At the directed verdict stage, the circuit court was cognizant of the issue with instructing mutual combat when it is unsupported by the evidence. The court stated, "But there's one case that I read this morning, I know you all have read it too, and it's Judge Hayes' reversal for submitting a mutual combat. And that -- I need to look at that from the standpoint of everybody's protection." The court was referring to *State v. Taylor*, the case Appellant relies on in his appellate brief.

Later, after an off-the-record charge conference, the circuit court stated:

All right. We've had a charge conference, informally, and we've gone through some certain things, and as -- first of all, as I understand, the State is requesting that I charge the mutual combat. I will include that in my charge, and I understand the Defendant objects to that inclusion. Only because I think that there is -- in view of the evidence that could suggest mutual combat construed based on the testimony. While that testimony was somewhat contradictory, it still would be evidence, if the jury believes, whatever the jury chooses to believe, would support the theory.

In other words, the trial judge decided to charge the jury on mutual combat over Appellant's objection, reasoning there was evidence to support the charge. Although the specific ground for Appellant's objection is not expressed on-the-record after the off-the-record charge conference, the record indicates that the trial judge and the State understood Appellant was objecting because he thought there was no evidence to support the charge. See *Kromah*, 401 S.C. at 353, 737 S.E.2d at 497 (holding the issue was preserved when the trial court immediately appeared to understand the objection was a renewal of a previous argument); *Hendricks*, 408 S.C. at 531, 759 S.E.2d at 437 (holding an issue was preserved because the trial court immediately understood the basis of the objection). Thus, we find that the basis of Appellant's objection is apparent from the context of the trial judge's brief synopsis of the parties' respective positions following the off-the-record charge conference. See *Hendricks*, 408 S.C. at 531, 759 S.E.2d at 437 ("We find . . . the hearsay basis for Hendricks' objection is apparent from the context Therefore, the objection preserved the issue because it is clear from the record that both the State and trial court immediately understood Hendricks' objection was based on hearsay."); see also Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 203 (3rd ed. 2016) ("[W]here a contested issue of law has been argued during the course of the trial and ruled upon by the trial court, an objection need not be made

to that portion of the charge dealing with the same issue previously ruled upon by the trial court."); *State v. Grant*, 275 S.C. 404, 407, 272 S.E.2d 169, 171 (1980) ("A review of the colloquy between the judge and counsel convinces us that the position of each was made well known prior to the commencement of the charge. We do not think that any further objection was required under these facts in order to preserve the rights of the defendant."); *Johnson*, 333 S.C. at 64 n.1, 508 S.E.2d at 30 n.1 (clarifying the long-standing rule that "where a party requests a jury charge and, after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the point on appeal, to renew the request at the conclusion of the court's instruction"). Accordingly, we find the issue is preserved and we will address the merits.

II. History of Mutual Combat

"The doctrine of mutual combat has existed in South Carolina since at least 1843, but has fallen out of common use in recent years." *Taylor*, 356 S.C. at 231, 589 S.E.2d at 3. "The doctrine [of mutual combat] has most often been applied in situations where the defendant and decedent bear a grudge against each other before the fight in which one of them is killed occurs." *Id.* at 232, 589 S.E.2d at 4. Mutual combat occurs when there is a mutual intent and willingness to fight. *State v. Graham*, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973). Mutual intent is "manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat." *Id.* (citing 40 C.J.S. *Homicide* § 123). The antiquated doctrine was limited in its application by our supreme court in *State v. Taylor*. In *Taylor*, our supreme court required that the fight arise out of a pre-existing dispute and that the combatants be armed with deadly weapons. 356 S.C. at 233-34, 589 S.E.2d at 4. Additionally, each party must know the other is armed with a deadly weapon. *Id.* at 234, 589 S.E.2d at 5. Moreover, it is essential that the agreement to fight be "entered into prior to the beginning of combat," also described as an antecedent agreement to fight. 40 C.J.S. *Homicide* § 206; accord *Taylor*, 356 S.C. at 233, 589 S.E.2d at 4.

State v. Graham provides the quintessential example of mutual combat in South Carolina. In *Graham*, Graham and the decedent threatened each other and quarreled the day before the shooting. 260 S.C. at 451, 196 S.E.2d at 496. Graham armed himself and the two met in town the next day. *Id.* They became engaged in an altercation, which continued until Graham waived his pistol in the face of the decedent, who then left town only to return shortly thereafter with his own pistol. *Id.* The decedent parked outside of the barber shop where Graham was waiting, and the decedent stepped out of his vehicle, pistol in hand. *Id.*

Graham, seeing the decedent armed, left the barber shop and walked into the street, positioning himself for an encounter. *Id.* As Graham entered the street, both parties fired, and Graham fatally wounded the decedent. *Id.*

Our supreme court determined "[t]here was ill-will between the parties" and it was "inferable that they had armed themselves to settle their differences at gun point." *Id.* at 452, 196 S.E.2d at 496. Accordingly, the question of mutual combat was for the jury to decide. *Id.*; see *State v. Mathis*, 174 S.C. 344, 348, 177 S.E. 318, 319 (1934) (finding the law of mutual combat was appropriately instructed to the jury because "[t]here was testimony that the appellant and the [decedent] were on the lookout for each other; . . . were armed in anticipation of a combat; [and] that each drew his pistol and fired upon the other").

Similarly, other jurisdictions have found a charge on the law of mutual combat appropriate when there is evidence of an antecedent agreement to fight and when both parties are armed with dangerous weapons. See *Hughes v. State*, 274 S.W. 146, 147 (Tex. Crim. App. 1925) (emphasizing the importance of there being evidence of an antecedent agreement to fight before there can be an issue of mutual combat); *Lujan v. State*, 430 S.W.2d 513, 514 (Tex. Crim. App. 1968); *Green v. State*, 809 S.E.2d 738, 741 (Ga. 2018); *State v. Johnson*, 733 A.2d 852, 855 (Conn. App. Ct. 1999).

On the other hand, *State v. Taylor* is an example of circumstances that do not justify a jury instruction on mutual combat. In *Taylor*, the petitioner and the decedent got into a physical altercation after the petitioner attempted to stop a fight between the decedent and another person. 356 S.C. at 229, 589 S.E.2d at 2. At the suggestion of someone in the house, the petitioner and decedent moved their fight outside and, shortly thereafter, the petitioner drew a knife and stabbed the decedent fifteen times. *Id.* at 230, 589 S.E.2d at 2. Our supreme court determined there was no pre-existing ill-will between the parties and no evidence the decedent knew the petitioner was armed with a knife. *Id.* at 234, 589 S.E.2d at 5. Accordingly, there was "insufficient evidence of mutual willingness to fight to submit the issue of mutual combat to the jury." *Id.*

Although we have a limited number of cases in our jurisprudence on the law of mutual combat, that case law unequivocally indicates that it is essential there is evidence of a pre-existing ill-will between the parties and that both parties are armed with deadly weapons and have knowledge that the other is armed. See *id.* at 234, 589 S.E.2d at 4–5 (finding a charge on the law of mutual combat unwarranted when there was "no indication that [the victim] knew Petitioner was armed with a

knife[] and there was no pre-existing ill-will between the parties"); *Mathis*, 174 S.C. at 348–49, 177 S.E. at 319 (finding mutual combat charge proper where appellant and deceased were on the lookout for each other and both parties were armed in anticipation of meeting the other); *Graham*, 260 S.C. at 451, 196 S.E.2d at 496 (finding mutual combat charge proper where appellant and deceased had "quarreled" prior to the killing and each knew the other was armed with a pistol).

A. Mutual Combat Jury Instruction

In the instant case, Appellant argues the circuit court erred in charging mutual combat because there is no evidence to support the charge. We agree and find that this case is more similar to the circumstances in *Taylor* where evidence of one or more elements of mutual combat is entirely lacking. Therefore, a charge on mutual combat was improper.

First, there was no evidence of an antecedent agreement to fight or pre-existing ill-will between Appellant and Michael Morgan. *See Taylor*, 356 S.C. at 233–34, 589 S.E.2d at 4–5. No witness testified that either Appellant or Michael Morgan harbored ill-will toward the other. Moreover, no one testified to seeing Appellant argue with Michael Morgan or anyone else on the night of the shooting. *See Graham*, 260 S.C. at 451, 196 S.E.2d at 496 (finding mutual combat charge proper where, amongst other factors, appellant and deceased had quarreled prior to the killing); *Mathis*, 174 S.C. at 348–49, 177 S.E. at 319 (finding mutual combat charge proper where, amongst other factors, there was testimony that appellant and deceased were on the lookout for each other); *State v. Young*, 424 S.C. 424, 436–37, 818 S.E.2d 486, 492 (Ct. App. 2018) (finding there was sufficient evidence to charge mutual combat).

Significantly, several witnesses testified neither argument that occurred that night involved Appellant. Instead, the first argument involved Bailey and Chaplin, which was immediately defused. There was testimony that Bailey and his friends began to walk away in an effort to leave. The second unrelated argument was between Lucas and Irvin—individuals who were not associated with Appellant and his friends. Additionally, there was testimony that Appellant was pulling Bailey towards Humphries' vehicle so that they could leave. Furthermore, Humphries testified that Appellant was inside of Humphries' vehicle when the shooting began. *See Graham*, 260 S.C. at 450, 196 S.E.2d at 495 ("[Mutual] intent may be manifested by the acts and conduct of the parties and the circumstances attending and leading up to combat." (citing 40 C.J.S. *Homicide* § 124)); *see also Green*, 809 S.E.2d at 741 (holding a jury instruction on mutual combat was not warranted

where there was no evidence that victim had an intention to fight Green and, instead, the evidence showed victim was feuding with Green's friend).

Notably, during oral argument, the State maintained that the flashing of guns between Bailey and Chaplin was "the assent for mutual combat" as it related to Appellant. However, we disagree, and as our supreme court stated in *Taylor*, "[I]t is only logical that the evidence of agreement to fight be plain" 356 S.C. at 234, 589 S.E.2d at 4. To maintain that an argument that did not involve Appellant manifested his assent to engage in mutual combat with Michael Morgan is illogical. *See id.* at 235, 589 S.E.2d at 5 ("The mutual combat doctrine is triggered when both parties contribute to the resulting fight."); *see also Green*, 809 S.E.2d at 741 (holding charge on mutual combat was not warranted when there was no evidence that the victim had an intention to fight the defendant). Thus, there is no evidence that Appellant and Michael Morgan had an antecedent agreement to fight. *See Taylor*, 356 S.C. at 234, 589 S.E.2d at 5 (finding the circuit court erred in charging the law on mutual combat when there was no evidence of pre-existing ill-will or a dispute between victim and petitioner); *see also Lujan*, 430 S.W.2d at 514 (holding charge on mutual combat was unwarranted when there was no evidence of an antecedent agreement); *Hughes*, 274 S.W. at 147 (finding insufficient evidence of antecedent agreement to fight); *id.* ("In our opinion[,] the evidence in this case did not raise the issue of mutual combat. The evidence is utterly lacking in anything indicating any prearrangement between the appellant and the deceased to engage in combat. There is nothing to suggest any ill feeling between [the defendant and victim] until the very moment they began to fight.").

Finally, there was no evidence that Michael Morgan had reason to believe Appellant was armed with a deadly weapon before the shooting started. *See Taylor*, 356 S.C. at 234, 589 S.E.2d at 5. Witnesses testified that they did not see Appellant with a gun prior to the shooting. No one testified to seeing Appellant flash a gun. In fact, the basis for the State's theory of mutual combat was that Appellant picked up Bailey's gun after Bailey was shot. Smalls testified that after Bailey was fatally wounded, he saw Appellant trying to help put Bailey inside of Humphries' car. Smalls indicated that was when he saw Appellant holding Bailey's gun and he did not see Appellant trying to shoot anyone with Bailey's gun. Smalls further stated that he did not see Appellant with a gun prior to the shooting. Additionally, there was no conclusive evidence of gun shot residue found on

Appellant.⁵ Moreover, Appellant's recorded statement, "I ain't killed the boy, I only shot the boy," is insufficient to support a theory of mutual combat when evidence for one or more elements of the doctrine is lacking. Therefore, we find there is "insufficient evidence of a mutual willingness to fight" with deadly weapons and the issue of mutual combat should not have been submitted to the jury. *See id.* at 234, 589 S.E.2d at 5 (holding there was insufficient evidence of mutual willingness to fight to submit the issue of mutual combat to the jury); *id.* (noting that prior South Carolina cases "emphasize[d] that each party knew the other was armed"); *see also Stewart v. State*, 356 S.E.2d 515, 517 (Ga. 1987) (holding there was insufficient evidence to warrant a charge on mutual combat where "there was no evidence that the victim was armed with a deadly weapon at the time of the fight, nor [] was there any evidence that [defendant] and the victim mutually agreed to fight with deadly weapons"); *Hughes*, 274 S.W. at 147 ("[T]he issue of mutual combat . . . does not arise alone from the fact that the parties to the affray are mutually engaged in it, but that the issue arises out of an antecedent agreement to fight . . . [and] before there can be the issue of mutual combat, the testimony must show that the agreement exists.").

B. Prejudice

However, our inquiry does not end because the erroneous charge must also be prejudicial to be reversible. *Taylor*, 356 S.C. at 231, 598 S.E.2d at 3. We find the erroneous charge on mutual combat was prejudicial because the charge effectively negated Appellant's self-defense plea.

The commingling of mutual combat and self-defense jury instructions is problematic. *See id.* at 233, 589 S.E.2d at 4 (noting that, in Georgia, commingling charges on mutual combat and self-defense is per se harmful because it places a heavier burden on the defendant than is required for self-defense (citing *Grant v. State*, 170 S.E.2d 55, 56 (Ga. Ct. App. 1969))). Essentially, the no-fault element of self-defense requires that the defendant is "without fault in bringing on the difficulty," and the State has the burden of disproving self-defense beyond a reasonable doubt. *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). Yet mutual combat negates the no-fault element of self-defense because mutual combat requires an intent and willingness to fight. *Taylor*, 356 S.C. at 232, 589 S.E.2d at 3; *see id.* at 234, 589 S.E.2d at 4 ("[M]utual combat acts as a bar to self-

⁵ The evidence presented indicated that there were lead particles found on Appellant; however, the other two main components of gunshot residue, barium and antimony, were not found.

defense because it requires mutual agreement to fight on equal terms for purposes other than protection."). Stated differently, if a person has an intent and willingness to fight, manifested by conduct, that person cannot be without fault in bringing on the difficulty, and, as a matter of law, the plea of self-defense is unavailable. See *State v. Porter*, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977) ("As a general rule, the plea of self-defense is not available to one who kills another while engaged in mutual combat.").

To complicate matters further, a defendant may still claim self-defense after having engaged in mutual combat if, before the killing, the defendant withdraws and "endeavors in good faith to decline further conflict, and[,] either by word or act, makes that fact known to his [or her] adversary." *Taylor*, 356 S.C. at 232 n.2, 589 S.E.2d at 3 n.2 (quoting *Graham*, 260 S.C. at 451, 196 S.E.2d at 496). This heightened standard directly conflicts with the no-fault element of self-defense and, when there is no evidence of mutual combat, has the effect of placing the burden on the defendant to prove self-defense. This is true even when self-defense is properly charged, i.e., the jury is instructed that the State must disprove self-defense beyond a reasonable doubt. *Id.* at 235, 589 S.E.2d at 5 (noting the trial court charged self-defense properly but "that charge was negated by the court's unwarranted charge on mutual combat," which limited the petitioner's "ability to claim self-defense" and prejudiced the petitioner by requiring him to prove self-defense).

Here, the court instructed the jury on mutual combat and self-defense as follows:

Now, I want to discuss with you a part of the theory that you'll have to consider, and it's known as mutual combat. And this law provides that if a [d]efendant voluntarily participated in mutual combat for the purpose other than protection, the killing of a victim would not be self-defense. This is true even if during the combat[,] the Defendant feared death or serious bodily injury.

However, if before the killing is committed the [d]efendant withdraws and tried in good faith to avoid further conflict, and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty.

For mutual combat there must be a mutual intent and a willingness to fight. This intent may be shown by the acts and conduct of the parties and circumstances surrounding the combat. In addition, it must... be shown that both parties were armed with a deadly weapon.

The Defendant has raised the defense of self-defense. And self-defense would be a complete defense if it is established, and you must find the Defendant not guilty. The State has the burden of disproving self-defense by -- beyond a reasonable doubt. If you have a reasonable doubt of the Defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the Defendant not guilty.

The jury was then instructed on the four elements of self-defense. Additionally, the jury was instructed on the interplay between mutual combat and self-defense: "[A]s you know the mutual combat says if he's mutually engaged, then self-defense goes out the window, so to speak. It's not available. But if [the State] failed to prove that then you would consider the self-defense aspect, or again, the State had to prove or disprove that self-defense."

Although the court instructed self-defense properly, we find the self-defense instruction was negated by the court's unwarranted instruction on mutual combat, which effectively relieved the State of its burden to disprove self-defense and imposed on Appellant the burden to prove self-defense. *See Taylor*, 356 S.C. at 235, 589 S.E.2d at 5 (noting the trial court charged self-defense properly but "that charge was negated by the court's unwarranted charge on mutual combat," which limited the petitioner's "ability to claim self-defense" and prejudiced the petitioner by requiring him to prove self-defense). Therefore, we find that Appellant was prejudiced by having to prove self-defense, contradicting our state's well-established jurisprudence that the State has the burden of disproving self-defense.

Accordingly, we reverse Appellant's convictions and remand for a new trial.⁶ Because we reverse based on the unwarranted mutual combat jury instruction, we

⁶ At oral argument, both counsel for the State and Appellant maintained that all of Appellant's charges were intertwined and a reversal would apply to all of Appellant's convictions. We agree—especially, under these circumstances, where

need not address Appellant's related argument that the circuit court erred by instructing the jury on voluntary manslaughter. *Edwards v. State*, 372 S.C. 493, 496–97, 642 S.E.2d 738, 740 (2007) (holding the appellate court need not address remaining issues when resolution of a prior issue is dispositive).

REVERSED AND REMANDED.

LOCKEMY, C.J., and THOMAS, J., concur.

Appellant's self-defense plea was negated by the unwarranted jury instruction. *See State v. Blurton*, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002) ("If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury.").

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2014-002176

THE STATE,

Respondent,

vs.

JOSEPH BOWERS,

Appellant.

RESPONDENT'S PETITION FOR REHEARING

On August 7, 2019, this Court issued a published opinion in which it reversed Appellant Joseph Bowers's convictions for voluntary manslaughter, assault and battery of a high and aggravated nature, and possession of a weapon during the commission of a violent crime and remanded the matter for a new trial. State v. Bowers, Op. No. 5677 (S.C. Ct. App. filed Aug. 7, 2019). In doing so, this Court first held Bowers's appellate challenge to the jury instructions was preserved for appellate review while only addressing and rejecting a portion of the State's issue preservation arguments. This Court then went on to find the mutual combat charge given by the trial judge was both unsupported by the evidence and prejudicial to Bowers due to its potential to have a confusing impact on and negate the charge on self-defense. Pursuant to Rule 221(a), SCACR, Respondent ("the State") respectfully petitions for rehearing because this Court overlooked, misconstrued, and failed to address several points, including a critical issue

preservation argument raised by the State in addition to the one that was actually analyzed and addressed by this Court.

Initially, in reversing and remanding in Bowers's case, this Court explained the State's issue preservation argument regarding the jury charge issues Bowers raised on appeal consisted of the contention Bowers failed to preserve his objection to the jury instructions "by failing to raise specific grounds," and this Court went on to solely analyze and reject that particular contention on the matter of issue preservation. Significantly, the basis identified by this Court in its opinion was, in fact, *a* basis upon which the State contended Bowers failed to properly preserve his jury charge issues for appellate review, and, for all the reasons identified in the State's brief and during oral argument before this Court, the State reaffirms defense counsel's failure to identify any specific grounds for her general jury charge objections—including after expressly being given an opportunity to put any grounds for the objections on the record—precluded Bowers from being able to properly challenge the trial judge's jury charge decisions on appeal.¹ See State v. Bennett, 328 S.C. 251, 260, 493 S.E.2d 845, 849 (1997) ("[A]s Bennett stated no grounds for his objection, there is nothing for this Court to review."); State v. Hughes, 160 S.C. 474, 476, 158 S.E. 833, 833 (1931) ("The objection made at trial was general, not showing the specific grounds on which it was based, and an exception based on it cannot, therefore, be considered by this court."); State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991) ("Where an objection *and the ground therefor* is not stated in the record, there is no basis for appellate review." (emphasis added)); see also Rule 20(b), SCRCrimP (mandating

¹ At the conclusion of the on-the-record charge conference, the trial judge gave both the solicitor and defense counsel a direct opportunity to put anything they wished regarding the proposed jury instructions on the record, and defense counsel responded she did *not* have anything to add despite the fact she had placed no grounds in support of her objections to the mutual combat charge and voluntary manslaughter charge on the record up to that point. (R. pp. 291-293).

“[a]ny objection [to a jury instruction] shall state distinctly the matter objected to *and the grounds for the objection*” (emphasis added)).

Importantly though, the basis identified and addressed by this Court was not the *only* basis upon which the State contended Bowers’s appellate challenge to the jury instructions was not properly preserved for appellate review. Instead, the State *also* contended defense counsel waived any objection that may have previously been raised in regard to the jury instructions by directly affirming to the trial judge she had *no* objections to his jury instructions once they had actually been presented. As support for that additional issue preservation argument, the State noted the trial judge directly asked defense counsel if she had any “exceptions or additions” to his jury instructions—which had included instructions on mutual combat and voluntary manslaughter—after they were presented to the jury and defense counsel responded to that simple and direct inquiry by stating: “None, Your Honor.”² (R. p. 340). Critically, through that exchange, the trial judge did not ask defense counsel if she had any objections to his jury instructions *other than those previously raised*, and defense counsel did not indicate she did not have any *additional* objections. To the contrary, defense counsel responded to the trial judge’s clear, unambiguous question by affirming she had no objections whatsoever to the jury instructions as presented. Accordingly, although it would have been unnecessary for defense counsel to renew any properly-raised objections that had previously been raised to the jury instructions in order to preserve those objections for appellate review, defense counsel did not simply fail to renew a previously-raised objection and, instead, expressly waived any objections she may have had to the jury instructions through her direct affirmation to the trial judge she did

² Notably, defense counsel later reaffirmed she had no objections to the trial judge’s jury charge on mutual combat when it was again presented to the jury in response to a question raised during deliberations. (R. pp. 347-350).

not have *any* objections to the jury instructions as presented. Compare State v. Johnson, 333 S.C. 62, 64, n. 1, 508 S.E.2d 29, 30 (1998) (“[W]here a party requests a jury charge and, after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the point on appeal, *to renew* the request at conclusion of the court’s instructions.” (emphasis added)); with Burke v. AnMed Health, 393 S.C. 48, 55, 710 S.E.2d 84, 88 (Ct. App. 2011) (“When a party states to the trial court that it has no objection to the introduction of evidence, *even though the party previously made a motion to exclude the evidence*, the issue raised in the previous motion is not preserved for appellate review.” (emphasis added)); and State v. Dicapua, 373 S.C. 452, 455, 646 S.E.2d 150, 152 (Ct. App. 2007) (finding any issue Dicapua may have had with evidence *to which he had previously raised an objection* was waived when defense counsel specifically stated to the trial judge he had no objections to the evidence’s admission). Under such circumstances, Bowers cannot properly challenge the trial judge’s jury instructions on appeal. See State v. O’Neal, 210 S.C. 305, 312, 42 S.E.2d 523, 526 (1947) (recognizing a previously-raised objection can be waived); see also State v. Brown, 402 S.C. 119, 125, 740 S.E.2d 493, 496 (2013) (holding Brown’s issue with a jury instruction was not preserved for appellate review where Brown explicitly stated to the trial judge he had no objection to the instruction).

Significantly, based on the information contained in the record from Bowers’s trial, it is not fully clear why defense counsel elected to expressly waive any objections she may have had to the trial judge’s jury instructions despite the fact she had earlier raised some. Perhaps defense counsel felt like the trial judge’s instructions explaining how self-defense could be restored even if a party had engaged in mutual combat alleviated her concerns about the potential harm the mutual combat charge could cause to Bowers’s case such that an objection was no longer

necessary or warranted.³ Similarly, perhaps defense counsel believed an instruction on the lesser-included offense of voluntary manslaughter was in Bowers's best interests following further deliberation on the matter or discussions with Bowers himself. Although defense counsel's motivations are currently unknown, the answers to the questions raised by her waiver decision can properly be obtained through South Carolina's expansive post-conviction relief process, which will provide Bowers with an opportunity to receive a new trial if defense counsel's waiver rose to the level of constitutional ineffectiveness. See Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001) (recognizing a criminal defendant can obtain post-conviction relief by establishing defense counsel was deficient and prejudice resulted from the deficiency); see also State v. Passmore, 363 S.C. 568, 585-586, 611 S.E.2d 273, 283 (Ct. App. 2005) (holding Passmore "will be forced to seek redress through the avenue of post-conviction relief" due to the fact her appellate issue was not properly preserved for review). Critically though, defense counsel's express affirmation to the trial judge she had no objections to his jury instructions should not and cannot be simply ignored on appeal as this Court has so far done. See State v. Berry, 418 S.C. 500, 503-504, 795 S.E.2d 26, 28 (2016) (vacating the analysis of the Court of Appeals because the issue that had been addressed by the Court of Appeals was not properly preserved for appellate review); see also State v. Rios, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding Rios waived his right to allege error with a jury charge on appeal where the trial court specifically asked if there were any objections to the instructions given and Rios responded there were none); cf. Commonwealth v. Moury, 992 A.2d 162, 178

³ Through his brief instructions to the jury on mutual combat, the trial judge indicated self-defense was not applicable "if a [d]efendant voluntarily participated in mutual combat for the purpose other than protection" but further explained the defendant would be without fault for the difficulty if he withdraw "and tried in good faith to avoid further conflict" prior to the killing. (R. pp. 329-330).

(Pa. Super. Ct. 2010) (“Generally, a defendant waives subsequent challenges to the propriety of the jury charge on appeal if he responds in the negative when the court asks whether additions or corrections to a jury charge are necessary.”).

Moreover, beyond this Court’s failure to address one of the State’s critical issue preservation arguments, this Court also appeared to misconstrue the State’s argument in regard to the effect an error in the giving of the mutual combat charge could have had on Bowers’s conviction for assault and battery of a high and aggravated nature, which was related to his act of shooting Richard Green in the back as Green merely attempted to flee. Specifically, in finding the error determined to have occurred in regard to the mutual combat charge also warranted a reversal of Bowers’s assault and battery of a high and aggravated nature conviction, this Court stated the State maintained during oral argument Bowers’s “charges were intertwined and a reversal would apply to all of [his] convictions.” State v. Bowers, Op. No. 5677 (S.C. Ct. App. filed Aug. 7, 2019). However, although the State agreed Bowers was *appealing* of all his convictions, the State did *not* at any point during oral argument or in its appellate brief state any possible error on the part of the trial judge in the giving of a mutual combat instruction could have prejudiced Bowers in regard to the assault and battery of a high and aggravated nature charge.^{4 5} To the contrary, the State contended the mutual combat charge *could not have had*

⁴ Notably, the reason the State agreed Bowers was appealing all his conviction was Bowers sought for all his convictions to be reversed in his appellate brief. (App. Br. p. 21).

⁵ As to what was specifically stated during oral argument, the State—in response to a question about “the charge that was not appealed or the charges that were not appealed”—agreed with Bowers’s appellate counsel Bowers was *appealing* all of his convictions based on Bower’s appellate issue related to the mutual combat charge. (State v. Bowers Oral Argument Recording, 21:21 to 22:03). However, when asked about whether an error in the giving of a mutual combat charge could have had an impact on the assault and battery of a high and aggravated nature conviction, the State responded: “I believe the mutual combat charge can’t possibly relate to Richard Green because Richard Green, there’s no testimony involved—presented to suggest he

anything to do with Bowers's conviction for assault and battery of a high and aggravated nature under the specific circumstances of Bowers's case.

Critically, looking to the evidence supporting the assault and battery of a high and aggravated nature charge, the only evidence presented established Green, who was the victim of that particular charge, merely exited a house at the scene before quickly being shot in the back as he attempted to flee from the gunfire that suddenly erupted, and no testimony was presented to suggest Green was armed, involved in the altercation or shooting, or acted in a threatening matter towards Bowers.⁶ (R. pp. 105-107; p. 222). In light of that evidence, neither the mutual combat or self-defense jury instructions had anything to do with the shooting of Green, and any confusion the mutual combat charge could have caused in regard to the self-defense charge could not have had any possible impact on the assault and battery of a high and aggravated nature charge since Green was not and could not have been shot in self-defense based on the evidence presented.⁷ See State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010) (recognizing it is

did anything other than come out of the house that—I believe it's Ms. Poot's house—that's next door to the club, he saw a ruckus, turned around to flee, and got shot in the back. So, he certainly—Joseph Bowers certainly wasn't involved in mutual combat with him. *So, I don't think that charge has anything to do with that particular conviction.*" (State v. Bowers Oral Argument Recording, 22:13 to 22:43 (emphasis added)).

⁶ As to the evidence regarding Green's actions on the night of the shooting, this Court summarized what it showed as follows: "Richard Green, who had his back to the club and was outside of the club owner's nearby house, heard the first shot and attempted to flee. He was shot in the back and paralyzed from the waist down." State v. Bowers, Op. No. 5677 (S.C. Ct. App. filed Aug. 7, 2019).

⁷ Tellingly, when the trial judge indicated the mutual combat charge would only negate self-defense as it related to Michael Morgan—the victim related to Bowers's voluntary manslaughter conviction—in the event the jury found mutual combat had been established, defense counsel responded: "Correct." (R. p. 346). Based on that trial concession, Bowers—who was nonetheless free to attempt to appeal all his convictions—could not properly claim the improper presentation of a mutual combat charge could have prejudicially impacted the assault and battery of a high and aggravated nature conviction by negating self-defense in regard to that specific

axiomatic all four elements of self-defense must be established in order for that defense to apply); see also Jamison v. State, 410 S.C. 456, 471, 765 S.E.2d 123, 131 (2014) (“The transferability of intent in a self-defense claim has not been recognized in South Carolina[.]”); State v. Porter, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977) (declining to recognize the theory of transferred self-defense as a viable theory in South Carolina); cf. State v. Curry, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013) (finding a request for immunity from prosecution was properly denied where evidence was presented establishing the unarmed victim was shot in the back); Jackson v. State, 355 S.C. 568, 573, 586 S.E.2d 562, 565 (2003) (holding the absence of a self-defense instruction that was warranted under the circumstances of Jackson’s case could not have affected the outcome of trial in light of the overwhelming evidence of guilt presented, which included evidence establishing the victim was shot in the back); State v. Boozer, 92 S.C. 495, ___, 75 S.E. 864, 866 (1912) (Fraser, J., dissenting) (“It seems to me that the defendant would have been very unwise to confine his defense to self-defense, when the deceased was shot in the back of the head[.]”); State v. Oates, 421 S.C. 1, 23, 803 S.E.2d 911, 923 (Ct. App. 2017) (holding the trial judge properly declined to grant a directed verdict based on a claim of self-defense where the evidence—in part—established the victim was shot in the back). As a result, the prejudice this Court found resulted from the improper presentation of a mutual combat charge could not have been applicable to Bowers’s conviction for assault and battery of a high and aggravated nature since no evidence whatsoever suggested Bowers shot Green in self-defense, and, thus, that conviction should not have been reversed even if the mutual combat charge was improperly given and negated self-defense as it related to the shooting of Bowers’s other victim. See State v. Smith, 230 S.C. 164, 168, 94 S.E.2d 886, 887 (1956) (“The burden is upon the appellant to charge. See State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007) (recognizing an issue conceded during trial cannot subsequently be argued on appeal).

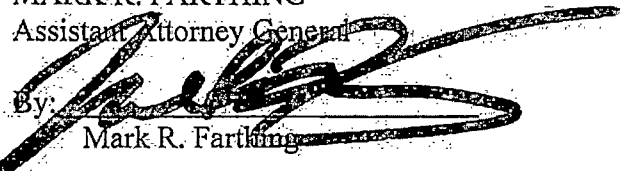
satisfy [the appellate] court that there has been *prejudicial* error.” (emphasis added)); State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005) (recognizing an error that has not been shown to be prejudicial simply does not warrant the reversal of a criminal conviction).

Accordingly, for all the foregoing reasons coupled with the reasons raised through the State’s brief and during oral argument before this Court, the State respectfully urges this Court to reconsider this matter pursuant to Rule 221(a), SCACR, vacate its prior opinion, and issue a new opinion correctly finding Bowers’s issues with the trial judge’s jury instructions were not properly preserved for appellate review in light of defense counsel’s express affirmation she had no objections to those instructions after they were presented to the jury. Furthermore, even if this Court declines to alter its opinion on the matter of issue preservation, this Court should nonetheless grant rehearing, address the potential prejudice caused in regard to the assault and battery of a high and aggravated nature charge, and ultimately affirm that conviction as the mutual combat charge could not have had a prejudicial impact on the conviction for that particular offense even if improperly given.

Respectfully submitted,

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August 22, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2014-002176

THE STATE,

Respondent,

vs.

JOSEPH BOWERS,

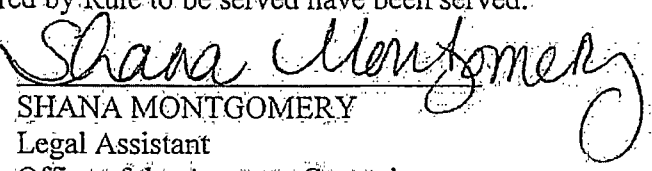
Appellant.

PROOF OF SERVICE

I, Shana Montgomery, certify I have served the within Respondent's Petition for Rehearing on Appellant by sending two copies of the same to:

Robert M. Dudek, Esq.
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 22nd day of August, 2019.


SHANA MONTGOMERY
Legal Assistant
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Columbia, SC 29211
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APP'X 453

The South Carolina Court of Appeals

The State, Respondent,

v.

Joseph Bowers, Appellant.

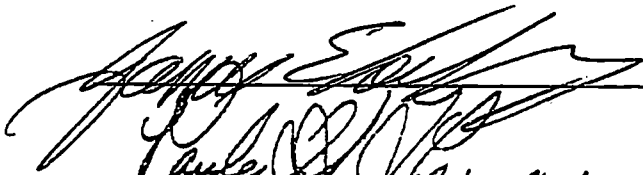
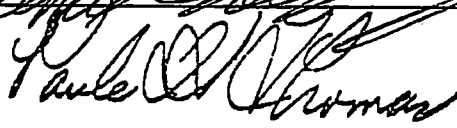
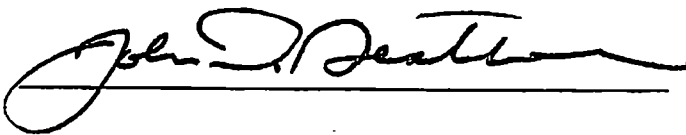
Appellate Case No. 2014-002176

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied. However, we take this opportunity to address the State's misapprehension of our August 7, 2019 opinion and to slightly revise footnote 6.

The State contends the opinion does not address its argument that Bowers waived any objection to the circuit court's jury instructions by indicating that he had no objections to the instructions once they had been presented. We highlight the following case cite included at the beginning and end of the opinion's preservation analysis, as well as the following parenthetical included with the second cite. See *State v. Johnson*, 333 S.C. 62, 64 n.1, 508 S.E.2d 29, 30 n.1 (1998) (clarifying the long-standing rule that "where a party requests a jury charge and, after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the point on appeal, to renew the request at the conclusion of the court's instruction").

Additionally, we modify footnote 6 in Opinion No. 5677 to state the following: "At oral argument, counsel for Appellant maintained that all of Appellant's charges were intertwined and a reversal would apply to all of Appellant's convictions. We agree—especially, under these circumstances, where Appellant's self-defense plea was negated by the unwarranted jury instruction. See *State v. Blurton*, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002) ("If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury.").


C.J.

J.

J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
Mark Reynolds Farthing, Esquire
Isaac McDuffie Stone, III, Esquire
The Honorable R. Markley Dennis, Jr.

FILED

September 20, 2019

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Joseph Bowers, Appellant.

Appellate Case No. 2014-002176

Appeal From Beaufort County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5677
Heard October 10, 2018 – Filed August 7, 2019

REVERSED AND REMANDED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia; and Solicitor Isaac McDuffie Stone, III, of
Bluffton, all for Respondent.

GEATHERS, J.: Late night verbal altercations at a local club escalated to a shootout, resulting in the death of two people, Dante Bailey and Michael Morgan, and the injury of two others, Robert Goodwine and Richard Green. Appellant Joseph Bowers was convicted for the (1) voluntary manslaughter of Michael Morgan, (2) assault and battery of a high and aggravated nature of Richard Green, and (3) possession of a weapon during the commission of a violent crime. Bowers argues the circuit court erred by instructing the jury on mutual combat and voluntary

manslaughter because there is no evidence to support either charge. We reverse and remand for a new trial.

FACTS/PROCEDURAL HISTORY

On June 21, 2012, Stanley Humphries and Dante Bailey were playing pool at the Sand Dollar in St. Helena. After the Sand Dollar closed for the night, the two left and went to Bailey's house to pick up some cigarettes before heading to a local club, Midnight Soul Patrol. Appellant met Humphries and Bailey at Bailey's house, and the group rode in Humphries' car to the club. The group went inside the club but was inside for only a few minutes before walking outside to smoke. Arthur Chaplin and a group of men approached Bailey, and Bailey and Chaplin started arguing.

Humphries testified the argument was only verbal and ended soon after it started. Other witnesses testified similarly. Mangum Smalls stated he saw Bailey and Chaplin arguing and guns were flashed, then Derrick Grant got between the two and defused the situation. Joe Pope testified he saw the argument between Bailey and a group of men and it was defused quickly. Alvin Wilson, the DJ at the club, noticed the crowd was moving outside and when he followed, he saw the altercation. As a result, Wilson declared the party over and walked back inside.

After the altercation was abated, someone suggested leaving, and Humphries, Bailey, and Appellant walked back to Humphries' car, attempting to leave. Meanwhile, Pope turned to walk into the club and saw a separate altercation between Lucas Morgan and Irvin Smalls, unrelated to Bailey and Chaplin's altercation. According to Pope, Irvin was trying "to get to Lucas," but Lucas had a gun. At that time, Humphries, Appellant, and Bailey had returned to Humphries' car, but Bailey was standing outside of the car directing Humphries out of the parking spot to avoid hitting nearby obstacles.

Then the gunshots began, precipitated by Michael Morgan inexplicably firing a flare gun.¹ Bailey was shot. Humphries and Appellant exited the car and Bailey was on the ground, having been hit by a bullet that perforated his heart and a lung. Mangum Smalls testified that he saw Appellant trying to help put Bailey inside of a

¹ There was testimony that Lucas Morgan, Michael Morgan, Richard Green and Alvin Wilson were all related.

car and noticed Appellant was holding Bailey's gun.² Richard Green, who had his back to the club and was outside of the club owner's nearby house, heard the first shot and attempted to flee. He was shot in the back and paralyzed from the waist down. Robert Goodwine walked outside of the club as the gunshots began and saw Green lying on the ground. Goodwine saw Lucas and Bailey shooting and attempted to flee towards the main road when Lucas "came around the corner shooting," hitting Goodwine in his left calf. Pope testified that shortly after the shots began, a group of four or five men ran towards Michael Morgan shooting while Michael was standing over Green with a flare gun. Michael was then hit by a bullet, but no one saw who shot Michael. The bullet struck Michael in his hip, perforated his iliac vein, and he died hours later. All of the injuries were the result of "through and through" shots, meaning a projectile passed completely through the body.

Once the shooting stopped, Pope called 911. Paul Adam, a deputy with the Beaufort County Sheriff's Office, was dispatched to the club and arrived thirteen minutes later. Deputy Adam collected evidence—including spent shell casings, a Glock handgun, and a flare gun—and turned the evidence over to the lead investigator, Adam Zsamar. Deputy Adam also told Investigator Zsamar that three people had guns—Bailey, Lucas Morgan, and Lewis Johnson. Investigator Zsamar processed the scene and located two sets of different brand nine-millimeter shell casings, one set clustered near where Lucas Morgan was seen firing and the other set clustered near where Appellant and Bailey were placed. The day after the shooting, Investigator Zsamar executed a search warrant at Lucas Morgan's residence and found the same brand of ammunition that was clustered near where witnesses placed Lucas Morgan. Further investigation also revealed that the Glock recovered from the scene was registered to Bailey.

Jeremiah Fraser, an investigator with the Beaufort County Sheriff's Office, interviewed Appellant on the day after the shooting. Appellant's version of events was similar to Humphries' version. Appellant told investigators that he was at the club with Bailey and Bailey got into an argument with someone. Appellant said he pulled Bailey away from the argument and towards the car so they could leave but then "shots started ringing out towards them," and that's when Bailey pulled out his gun, stepped out from behind the car, and was shot. Appellant denied shooting a

² Mangum Smalls initially testified that he witnessed Appellant with a gun prior to when Appellant was trying to help put Bailey inside of the car. However, once presented with his previous deposition testimony, Smalls corrected himself and testified he did not see Appellant firing a gun and only witnessed Appellant holding Bailey's gun after Bailey had been shot.

gun, and his clothes were collected for gunshot residue testing. Also, Appellant's hands were swabbed for gunshot residue, but the swabs were never tested because they were collected outside of the six-hour window in which gunshot residue can be expected to be found on living tissue, according to expert testimony. Appellant was jailed after the interview, and his shirt and shorts later tested positive only for lead particles.³ According to one of the South Carolina Law Enforcement Division (SLED) agents, authorities did not test Michael Morgan or Dante Bailey for gunshot residue because they were classified as victims. After being jailed, Appellant chose to speak with investigators again and said that someone else was shooting. While awaiting trial, Appellant had a conversation with his girlfriend on a prison telephone that recorded him saying "I ain't killed the boy, I only shot the boy."

Appellant was tried for the murders of his friend Dante Bailey and Michael Morgan, the attempted murders of Robert Goodwine and Richard Green, and possession of a weapon during the commission of a violent crime. However, after trial but before jury deliberations began, the State withdrew the murder indictment for Bailey and proceeded on the remaining indictments.⁴ Over Appellant's objection, the circuit court instructed the jury on mutual combat and told the jury the doctrine applied only to Michael Morgan's murder. The circuit court also instructed the jury on the lesser-included offenses of voluntary manslaughter and assault and battery of a high and aggravated nature. Appellant objected to the voluntary manslaughter jury instruction. Additionally, Appellant requested a self-defense instruction that was also given.

Ultimately, the jury found Appellant guilty of the voluntary manslaughter of Michael Morgan, the assault and battery of a high and aggravated nature of Richard Green, and possession of a weapon during commission of a violent crime. This appeal followed.

ISSUES ON APPEAL

1. Did the circuit court err by instructing the jury on mutual combat?

³ An expert testified that lead is one of three main components of gunshot residue, the others being barium and antimony. Unless the test returns positive results for all three components, the components found cannot be called gunshot residue.

⁴ The court allowed the jury to deliberate on Appellant's indictment for the attempted murder of Robert Goodwine, despite Goodwine's testimony that Lucas Morgan shot him and the circuit court's instruction that the theory of mutual combat did not apply to Goodwine.

2. Did the circuit court err by instructing the jury on voluntary manslaughter?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). "In general, the trial judge is required to charge only the current and correct law of South Carolina . . . and the law to be charged to the jury is determined by the evidence at trial." *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003) (citation omitted). Unless justified by the evidence, an instruction should not be given because it can confuse the jury. *State v. Commander*, 384 S.C. 66, 75, 681 S.E.2d 31, 36 (Ct. App. 2009), *aff'd as modified*, 396 S.C. 254, 721 S.E.2d 413 (2011). But an instruction must be erroneous and prejudicial to warrant reversal. *Taylor*, 356 S.C. at 231, 598 S.E.2d at 3.

LAW/ANALYSIS

I. Issue Preservation

As a threshold matter, the State contends the jury instruction issue is not preserved for appellate review and Appellant waived his objection by failing to raise specific grounds. Specifically, the State argues that after the off-the-record charge conference, Appellant "generally objected" to the jury instruction but "did not provide any grounds in support of those objections" during the on-the-record charge conference. We disagree.

Issue preservation rules are "meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). But issue preservation is not a "gotcha" game. *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). Instead of being hyper-technical, we approach preservation with a practical eye. *Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011). Once a party objects to a jury charge and, after opportunity for discussion, is denied on the record, no further action is necessary in order to preserve the issue for appeal. *State v. Johnson*, 333 S.C. 62, 64 n.1, 508 S.E.2d 29, 30 n.1 (1998). The failure to raise specific grounds for an objection will not prevent the appellate court from addressing an issue when the record indicates that the trial court and the State understood the basis for the objection. *State v. Hendricks*, 408 S.C. 525, 531, 759 S.E.2d 434, 437 (Ct. App. 2014) (citing *State v. Kromah*, 401 S.C. 340, 353, 737 S.E.2d 490, 497 (2013)).

In *Hendricks*, the court found the appellant's hearsay objection to a recording preserved despite appellant's failure to state specific grounds, i.e., saying "hearsay," because the basis for the objection was apparent from the context. *Id.* The court based its ruling on Rule 103(a)(1), SCRE, which requires timely objection to the admission of evidence to support a claim of error and specificity in making the objection *if the ground for the objection is not apparent from the context.* *Id.* After the appellant objected, the State responded with hearsay exceptions, arguing the recording was admissible as an excited utterance or present sense impression. *Id.* This court held the issue was preserved because "the State and trial court immediately understood [the appellant's] objection was based on hearsay." *Id.*

Although the *Hendricks* court's ruling was based on Rule 103(a)(1), SCRE, our supreme court in *State v. Cain* relied, in part, on *Hendricks* when it found preserved an appellant's argument challenging the sufficiency of the State's evidence of the quantity of a drug because it was clear from the record that the State and trial court understood the basis for the appellant's argument. 419 S.C. 24, 35, 795 S.E.2d 846, 852 (2017). In *Cain*, during pre-trial motions, the appellant argued the State could not rely on "theoretical yield" to elevate a charge of manufacturing drugs to trafficking drugs under section 44-53-375 of the South Carolina Code. *Id.* at 34, 795 S.E.2d at 851. Our supreme court found this argument necessarily focused on the State's evidence of the quantity of the drug. *Id.* The court noted the State "clearly understood the argument to relate to quantity." *Id.* The trial court took the motion to dismiss under advisement, and when the appellant later moved for a directed verdict based on quantity, the trial court referred back to the previous discussion about theoretical yield to deny the motion. *Id.* at 34-35, 795 S.E.2d at 852. Because the trial court's reference to the previous discussion indicated it understood the directed verdict motion was based on "the sufficiency of the State's evidence on the element of quantity," the argument was preserved. *Id.* at 35, 795 S.E.2d at 852 (citing *Hendricks*, 408 S.C. at 531, 759 S.E.2d at 437).

Following *Cain's* guidance, we find Appellant's argument challenging the sufficiency of the evidence of mutual combat is preserved because it is clear from the record that the circuit court and the State understood the basis for Appellant's objection. At the directed verdict stage, the circuit court was cognizant of the issue with instructing mutual combat when it is unsupported by the evidence. The court stated, "But there's one case that I read this morning, I know you all have read it too, and it's Judge Hayes' reversal for submitting a mutual combat. And that -- I need to look at that from the standpoint of everybody's protection." The court was referring to *State v. Taylor*, the case Appellant relies on in his appellate brief.

Later, after an off-the-record charge conference, the circuit court stated:

All right. We've had a charge conference, informally, and we've gone through some certain things, and as -- first of all, as I understand, the State is requesting that I charge the mutual combat. I will include that in my charge, and I understand the Defendant objects to that inclusion. Only because I think that there is -- in view of the evidence that could suggest mutual combat construed based on the testimony. While that testimony was somewhat contradictory, it still would be evidence, if the jury believes, whatever the jury chooses to believe, would support the theory.

In other words, the trial judge decided to charge the jury on mutual combat over Appellant's objection, reasoning there was evidence to support the charge. Although the specific ground for Appellant's objection is not expressed on-the-record after the off-the-record charge conference, the record indicates that the trial judge and the State understood Appellant was objecting because he thought there was no evidence to support the charge. *See Kromah*, 401 S.C. at 353, 737 S.E.2d at 497 (holding the issue was preserved when the trial court immediately appeared to understand the objection was a renewal of a previous argument); *Hendricks*, 408 S.C. at 531, 759 S.E.2d at 437 (holding an issue was preserved because the trial court immediately understood the basis of the objection). Thus, we find that the basis of Appellant's objection is apparent from the context of the trial judge's brief synopsis of the parties' respective positions following the off-the-record charge conference. *See Hendricks*, 408 S.C. at 531, 759 S.E.2d at 437 ("We find . . . the hearsay basis for Hendricks' objection is apparent from the context Therefore, the objection preserved the issue because it is clear from the record that both the State and trial court immediately understood Hendricks' objection was based on hearsay."); *see also* Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 203 (3rd ed. 2016) ("[W]here a contested issue of law has been argued during the course of the trial and ruled upon by the trial court, an objection need not be made to that portion of the charge dealing with the same issue previously ruled upon by the trial court."); *State v. Grant*, 275 S.C. 404, 407, 272 S.E.2d 169, 171 (1980) ("A review of the colloquy between the judge and counsel convinces us that the position of each was made well known prior to the commencement of the charge. We do not think that any further objection was required under these facts in order to preserve the rights of the defendant."); *Johnson*, 333 S.C. at 64 n.1, 508 S.E.2d at 30 n.1 (clarifying the long-

standing rule that "where a party requests a jury charge and, after opportunity for discussion, the trial judge declines the charge, it is unnecessary, to preserve the point on appeal, to renew the request at the conclusion of the court's instruction"). Accordingly, we find the issue is preserved and we will address the merits.

II. History of Mutual Combat

"The doctrine of mutual combat has existed in South Carolina since at least 1843, but has fallen out of common use in recent years." *Taylor*, 356 S.C. at 231, 589 S.E.2d at 3. "The doctrine [of mutual combat] has most often been applied in situations where the defendant and decedent bear a grudge against each other before the fight in which one of them is killed occurs." *Id.* at 232, 589 S.E.2d at 4. Mutual combat occurs when there is a mutual intent and willingness to fight. *State v. Graham*, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973). Mutual intent is "manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat." *Id.* (citing 40 C.J.S. *Homicide* § 123). The antiquated doctrine was limited in its application by our supreme court in *State v. Taylor*. In *Taylor*, our supreme court required that the fight arise out of a pre-existing dispute and that the combatants be armed with deadly weapons. 356 S.C. at 233–34, 589 S.E.2d at 4. Additionally, each party must know the other is armed with a deadly weapon. *Id.* at 234, 589 S.E.2d at 5. Moreover, it is essential that the agreement to fight be "entered into prior to the beginning of combat," also described as an antecedent agreement to fight. 40 C.J.S. *Homicide* § 206; accord *Taylor*, 356 S.C. at 233, 589 S.E.2d at 4.

State v. Graham provides the quintessential example of mutual combat in South Carolina. In *Graham*, Graham and the decedent threatened each other and quarreled the day before the shooting. 260 S.C. at 451, 196 S.E.2d at 496. Graham armed himself and the two met in town the next day. *Id.* They became engaged in an altercation, which continued until Graham waived his pistol in the face of the decedent, who then left town only to return shortly thereafter with his own pistol. *Id.* The decedent parked outside of the barber shop where Graham was waiting, and the decedent stepped out of his vehicle, pistol in hand. *Id.* Graham, seeing the decedent armed, left the barber shop and walked into the street, positioning himself for an encounter. *Id.* As Graham entered the street, both parties fired, and Graham fatally wounded the decedent. *Id.*

Our supreme court determined "[t]here was ill-will between the parties" and it was "inferable that they had armed themselves to settle their differences at gun point." *Id.* at 452, 196 S.E.2d at 496. Accordingly, the question of mutual combat

was for the jury to decide. *Id.*; see *State v. Mathis*, 174 S.C. 344, 348, 177 S.E. 318, 319 (1934) (finding the law of mutual combat was appropriately instructed to the jury because "[t]here was testimony that the appellant and the [decedent] were on the lookout for each other; . . . were armed in anticipation of a combat; [and] that each drew his pistol and fired upon the other").

Similarly, other jurisdictions have found a charge on the law of mutual combat appropriate when there is evidence of an antecedent agreement to fight and when both parties are armed with dangerous weapons. See *Hughes v. State*, 274 S.W. 146, 147 (Tex. Crim. App. 1925) (emphasizing the importance of there being evidence of an antecedent agreement to fight before there can be an issue of mutual combat); *Lujan v. State*, 430 S.W.2d 513, 514 (Tex. Crim. App. 1968); *Green v. State*, 809 S.E.2d 738, 741 (Ga. 2018); *State v. Johnson*, 733 A.2d 852, 855 (Conn. App. Ct. 1999).

On the other hand, *State v. Taylor* is an example of circumstances that do not justify a jury instruction on mutual combat. In *Taylor*, the petitioner and the decedent got into a physical altercation after the petitioner attempted to stop a fight between the decedent and another person. 356 S.C. at 229, 589 S.E.2d at 2. At the suggestion of someone in the house, the petitioner and decedent moved their fight outside and, shortly thereafter, the petitioner drew a knife and stabbed the decedent fifteen times. *Id.* at 230, 589 S.E.2d at 2. Our supreme court determined there was no pre-existing ill-will between the parties and no evidence the decedent knew the petitioner was armed with a knife. *Id.* at 234, 589 S.E.2d at 5. Accordingly, there was "insufficient evidence of mutual willingness to fight to submit the issue of mutual combat to the jury." *Id.*

Although we have a limited number of cases in our jurisprudence on the law of mutual combat, that case law unequivocally indicates that it is essential there is evidence of a pre-existing ill-will between the parties and that both parties are armed with deadly weapons and have knowledge that the other is armed. See *id.* at 234, 589 S.E.2d at 4–5 (finding a charge on the law of mutual combat unwarranted when there was "no indication that [the victim] knew Petitioner was armed with a knife[] and there was no pre-existing ill-will between the parties"); *Mathis*, 174 S.C. at 348–49, 177 S.E. at 319 (finding mutual combat charge proper where appellant and deceased were on the lookout for each other and both parties were armed in anticipation of meeting the other); *Graham*, 260 S.C. at 451, 196 S.E.2d at 496 (finding mutual combat charge proper where appellant and deceased had "quarreled" prior to the killing and each knew the other was armed with a pistol).

A. Mutual Combat Jury Instruction

In the instant case, Appellant argues the circuit court erred in charging mutual combat because there is no evidence to support the charge. We agree and find that ~~this case is more similar to the circumstances in *Taylor* where evidence of one or~~ more elements of mutual combat is entirely lacking. Therefore, a charge on mutual combat was improper.

First, there was no evidence of an antecedent agreement to fight or pre-existing ill-will between Appellant and Michael Morgan. *See Taylor*, 356 S.C. at 233–34, 589 S.E.2d at 4–5. No witness testified that either Appellant or Michael Morgan harbored ill-will toward the other. Moreover, no one testified to seeing Appellant argue with Michael Morgan or anyone else on the night of the shooting. *See Graham*, 260 S.C. at 451, 196 S.E.2d at 496 (finding mutual combat charge proper where, amongst other factors, appellant and deceased had quarreled prior to the killing); *Mathis*, 174 S.C. at 348–49, 177 S.E. at 319 (finding mutual combat charge proper where, amongst other factors, there was testimony that appellant and deceased were on the lookout for each other); *State v. Young*, 424 S.C. 424, 436–37, 818 S.E.2d 486, 492 (Ct. App. 2018) (finding there was sufficient evidence to charge mutual combat).

Significantly, several witnesses testified neither argument that occurred that night involved Appellant. Instead, the first argument involved Bailey and Chaplin, which was immediately defused. There was testimony that Bailey and his friends began to walk away in an effort to leave. The second unrelated argument was between Lucas and Irvin—individuals who were not associated with Appellant and his friends. Additionally, there was testimony that Appellant was pulling Bailey towards Humphries' vehicle so that they could leave. Furthermore, Humphries testified that Appellant was inside of Humphries' vehicle when the shooting began. *See Graham*, 260 S.C. at 450, 196 S.E.2d at 495 ("[Mutual] intent may be manifested by the acts and conduct of the parties and the circumstances attending and leading up to combat." (citing 40 C.J.S. *Homicide* § 124)); *see also Green*, 809 S.E.2d at 741 (holding a jury instruction on mutual combat was not warranted where there was no evidence that victim had an intention to fight Green and, instead, the evidence showed victim was feuding with Green's friend).

Notably, during oral argument, the State maintained that the flashing of guns between Bailey and Chaplin was "the assent for mutual combat" as it related to Appellant. However, we disagree, and as our supreme court stated in *Taylor*, "[I]t is only logical that the evidence of agreement to fight be plain" 356 S.C. at

234, 589 S.E.2d at 4. To maintain that an argument that did not involve Appellant manifested his assent to engage in mutual combat with Michael Morgan is illogical. *See id.* at 235, 589 S.E.2d at 5 ("The mutual combat doctrine is triggered when both parties contribute to the resulting fight."); *see also Green*, 809 S.E.2d at 741 (holding charge on mutual combat was not warranted when there was no evidence that the victim had an intention to fight the defendant). Thus, there is no evidence that Appellant and Michael Morgan had an antecedent agreement to fight. *See Taylor*, 356 S.C. at 234, 589 S.E.2d at 5 (finding the circuit court erred in charging the law on mutual combat when there was no evidence of pre-existing ill-will or a dispute between victim and petitioner); *see also Lujan*, 430 S.W.2d at 514 (holding charge on mutual combat was unwarranted when there was no evidence of an antecedent agreement); *Hughes*, 274 S.W. at 147 (finding insufficient evidence of antecedent agreement to fight); *id.* ("In our opinion[,] the evidence in this case did not raise the issue of mutual combat. The evidence is utterly lacking in anything indicating any prearrangement between the appellant and the deceased to engage in combat. There is nothing to suggest any ill feeling between [the defendant and victim] until the very moment they began to fight.").

Finally, there was no evidence that Michael Morgan had reason to believe Appellant was armed with a deadly weapon before the shooting started. *See Taylor*, 356 S.C. at 234, 589 S.E.2d at 5. Witnesses testified that they did not see Appellant with a gun prior to the shooting. No one testified to seeing Appellant flash a gun. In fact, the basis for the State's theory of mutual combat was that Appellant picked up Bailey's gun after Bailey was shot. Smalls testified that after Bailey was fatally wounded, he saw Appellant trying to help put Bailey inside of Humphries' car. Smalls indicated that was when he saw Appellant holding Bailey's gun and he did not see Appellant trying to shoot anyone with Bailey's gun. Smalls further stated that he did not see Appellant with a gun prior to the shooting. Additionally, there was no conclusive evidence of gun shot residue found on Appellant.⁵ Moreover, Appellant's recorded statement, "I ain't killed the boy, I only shot the boy," is insufficient to support a theory of mutual combat when evidence for one or more elements of the doctrine is lacking. Therefore, we find there is "insufficient evidence of a mutual willingness to fight" with deadly weapons and the issue of mutual combat should not have been submitted to the jury. *See id.* at 234, 589 S.E.2d at 5 (holding there was insufficient evidence of mutual willingness to fight to submit the issue of mutual combat to the jury); *id.* (noting that prior South Carolina cases

⁵ The evidence presented indicated that there were lead particles found on Appellant; however, the other two main components of gunshot residue, barium and antimony, were not found.

"emphasize[d] that each party knew the other was armed"); *see also Stewart v. State*, 356 S.E.2d 515, 517 (Ga. 1987) (holding there was insufficient evidence to warrant a charge on mutual combat where "there was no evidence that the victim was armed with a deadly weapon at the time of the fight, nor [] was there any evidence that [defendant] and the victim mutually agreed to fight with deadly weapons"); *Hughes*, 274 S.W. at 147 ("[T]he issue of mutual combat . . . does not arise alone from the fact that the parties to the affray are mutually engaged in it, but that the issue arises out of an antecedent agreement to fight . . . [and] before there can be the issue of mutual combat, the testimony must show that the agreement exists.").

B. Prejudice

However, our inquiry does not end because the erroneous charge must also be prejudicial to be reversible. *Taylor*, 356 S.C. at 231, 598 S.E.2d at 3. We find the erroneous charge on mutual combat was prejudicial because the charge effectively negated Appellant's self-defense plea.

The commingling of mutual combat and self-defense jury instructions is problematic. *See id.* at 233, 589 S.E.2d at 4 (noting that, in Georgia, commingling charges on mutual combat and self-defense is per se harmful because it places a heavier burden on the defendant than is required for self-defense (citing *Grant v. State*, 170 S.E.2d 55, 56 (Ga. Ct. App. 1969))). Essentially, the no-fault element of self-defense requires that the defendant is "without fault in bringing on the difficulty," and the State has the burden of disproving self-defense beyond a reasonable doubt. *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984). Yet mutual combat negates the no-fault element of self-defense because mutual combat requires an intent and willingness to fight. *Taylor*, 356 S.C. at 232, 589 S.E.2d at 3; *see id.* at 234, 589 S.E.2d at 4 ("[M]utual combat acts as a bar to self-defense because it requires mutual agreement to fight on equal terms for purposes other than protection."). Stated differently, if a person has an intent and willingness to fight, manifested by conduct, that person cannot be without fault in bringing on the difficulty, and, as a matter of law, the plea of self-defense is unavailable. *See State v. Porter*, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977) ("As a general rule, the plea of self-defense is not available to one who kills another while engaged in mutual combat.").

To complicate matters further, a defendant may still claim self-defense after having engaged in mutual combat if, before the killing, the defendant withdraws and "endeavors in good faith to decline further conflict, and[,] either by word or act, makes that fact known to his [or her] adversary." *Taylor*, 356 S.C. at 232 n.2, 589

S.E.2d at 3 n.2 (quoting *Graham*, 260 S.C. at 451, 196 S.E.2d at 496). This heightened standard directly conflicts with the no-fault element of self-defense and, when there is no evidence of mutual combat, has the effect of placing the burden on the defendant to prove self-defense. This is true even when self-defense is properly charged, i.e., the jury is instructed that the State must disprove self-defense beyond a reasonable doubt. *Id.* at 235, 589 S.E.2d at 5 (noting the trial court charged self-defense properly but "that charge was negated by the court's unwarranted charge on mutual combat," which limited the petitioner's "ability to claim self-defense" and prejudiced the petitioner by requiring him to prove self-defense).

Here, the court instructed the jury on mutual combat and self-defense as follows:

Now, I want to discuss with you a part of the theory that you'll have to consider, and it's known as mutual combat. And this law provides that if a [d]efendant voluntarily participated in mutual combat for the purpose other than protection, the killing of a victim would not be self-defense. This is true even if during the combat[,] the Defendant feared death or serious bodily injury.

However, if before the killing is committed the [d]efendant withdraws and tried in good faith to avoid further conflict, and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty.

For mutual combat there must be a mutual intent and a willingness to fight. This intent may be shown by the acts and conduct of the parties and circumstances surrounding the combat. In addition, it must . . . be shown that both parties were armed with a deadly weapon.

The Defendant has raised the defense of self-defense. And self-defense would be a complete defense if it is established, and you must find the Defendant not guilty. The State has the burden of disproving self-defense by -- beyond a reasonable doubt. If you have a reasonable doubt of the Defendant's guilt after considering all the

evidence, including the evidence of self-defense, then you must find the Defendant not guilty.

The jury was then instructed on the four elements of self-defense. Additionally, the jury was instructed on the interplay between mutual combat and self-defense: "[A]s you know the mutual combat says if he's mutually engaged, then self-defense goes out the window, so to speak. It's not available. But if [the State] failed to prove that then you would consider the self-defense aspect, or again, the State had to prove or disprove that self-defense."

Although the court instructed self-defense properly, we find the self-defense instruction was negated by the court's unwarranted instruction on mutual combat, which effectively relieved the State of its burden to disprove self-defense and imposed on Appellant the burden to prove self-defense. *See Taylor*, 356 S.C. at 235, 589 S.E.2d at 5 (noting the trial court charged self-defense properly but "that charge was negated by the court's unwarranted charge on mutual combat," which limited the petitioner's "ability to claim self-defense" and prejudiced the petitioner by requiring him to prove self-defense). Therefore, we find that Appellant was prejudiced by having to prove self-defense, contradicting our state's well-established jurisprudence that the State has the burden of disproving self-defense.

Accordingly, we reverse Appellant's convictions and remand for a new trial.⁶ Because we reverse based on the unwarranted mutual combat jury instruction, we need not address Appellant's related argument that the circuit court erred by instructing the jury on voluntary manslaughter. *Edwards v. State*, 372 S.C. 493, 496–97, 642 S.E.2d 738, 740 (2007) (holding the appellate court need not address remaining issues when resolution of a prior issue is dispositive).

REVERSED AND REMANDED.

LOCKEMY, C.J., and THOMAS, J., concur.

⁶ At oral argument, counsel for Appellant maintained that all of Appellant's charges were intertwined and a reversal would apply to all of Appellant's convictions. We agree—especially, under these circumstances, where Appellant's self-defense plea was negated by the unwarranted jury instruction. *See State v. Blurton*, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002) ("If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury.").