

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable Thomas A. Russo, Circuit Court Judge

QUASHON G. MIDDLETON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000063

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF COLLETON) CASE NO.: 2010-GS-15-960,961,962

THE STATE OF SOUTH CAROLINA)
)
 V.) TRANSCRIPT OF RECORD
)
 QUASHON G. MIDDLETON,)
)
 DEFENDANT.)

JULY 25TH - 27TH, 2011
 COLLETON COUNTY, SOUTH CAROLINA
 BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

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 Official Court Reporter

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Jury Selection
State v. Quashon G. Middleton
2008-GS-15-
July 25th - 27th, 2011

Juror #	Name	Race	Gender	Jury
160	Shawn Simmons	B	M	1
6	James W. Bagwell, Jr.	W	M	2
112	Robert A. Lyons	W	M	3
125	Ashley A. Mount	W	M	4
47	Andrew C. Cooper	B	M	5
66	Eula L. Fancher	W	F	6
166	Loretta A. Spinks	W	F	7
53	Casey L. Hall	W	F	8
13	Don M. Beach, Jr.	W	M	9
93	Edward A. Jacques	W	M	10
136	Rodney C. Pllum	W	M	11
45	Amanda N. Smuz	W	F	12
199	Sandra M. Zaccagnini	W	F	Alt. 1
16	Barbara G. Benton	W	F	Alt. 2

1 **THE COURT:** Is the State ready to proceed?

2 **ASST. SOL. HASELDEN:** Yes, Your Honor.

3 **THE COURT:** Is the defendant ready to proceed?

4 **MR. MATHEWS:** Yes, Your Honor.

5 **THE COURT:** All right, Solicitor, if you would call
6 your case, please.

7 **ASST. SOL. HASELDEN:** Thank you. May it please the
8 Court? The State calls the matter of State v. Quashon G.
9 Middleton in indictment 2010-GS-15-0960, for attempted
10 murder. Indictment 2010-GS-15-0961, for possession of a
11 weapon during a violent crime; and indictment 2010-GS-15-
12 0962, for attempted murder.

13 May I approach?

14 **THE COURT:** You may. Counsel approach.

15 WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
16 AND OUT OF THE HEARING OF THE JURY VENIRE.)

17 **THE COURT:** Ladies and gentlemen of the jury panel, if
18 you would give me your attention, please. The State has
19 called for trial the case of the State of South Carolina
20 versus Quashon Middleton. Mr. Middleton is charged by there
21 three pieces of paper that I hold in my hand, which we call
22 indictments. Mr. Middleton is charged with possession of a
23 weapon during the commission of a violent crime in one
24 indictment. In a second indictment, he's charged with
25 attempted murder. And in a third indictment, he's charged

1 with the offense of attempted murder. The elements of those
2 offenses, if you're selected as a juror in the trial of this
3 case, will be explained to you in my charge to you on the
4 law at the conclusion of the case.

5 For now, you should understand that the defendant has
6 pled not guilty. That places the burden on the State of
7 South Carolina to prove each and every element of the
8 offenses that are charged in the indictment, beyond a
9 reasonable doubt. And it will be your duty, ladies and
10 gentlemen, to decide whether or not the State has met that
11 burden if you're selected as a juror in the trial of this
12 case.

13 Now, I remind you, ladies and gentlemen, that earlier
14 this afternoon, I had the Clerk put you under oath. We did
15 that so that the responses you would give us for your jury
16 qualification questions would be under oath. I remind you
17 that you're still under oath, and I'm going to now ask you
18 questions to ensure your impartiality to serve as a juror in
19 the trial of this case.

20 So the responses that you will give me to any questions
21 I ask you about this case are also under the oath which you
22 took earlier this afternoon from the Clerk of Court of
23 Colleton County.

24 I'd like for you, first, to meet the lawyers that are
25 going to be trying this case and, in addition, when counsel

1 for the defendant introduces himself, I'll have you have
2 your client stand, face my jury panel and introduce your
3 client, beginning with counsel for the State of South
4 Carolina.

5 **ASST. SOL. HASELDEN:** Good afternoon. My name is
6 Amanda Haselden. I'm with the Solicitor's Office. We'll be
7 trying a case before you this week, along with several
8 members of the Solicitor's Office staff, including Chaz
9 Balish, possibly Ben Shelton. We have investigator Angela
10 Stallings of our office and we have a law clerk, Taylor
11 Smith.

12 **THE COURT:** All right. Counsel for the defendant.

13 **MR. MATHEWS:** Thank you, Your Honor. I'm Dave Mathews
14 of the public defender's office, and this is my client,
15 Quashon Middleton.

16 **THE COURT:** Mr. Middleton, stand up and face my jury
17 panel.

18 (DEFENDANT STANDS.)

19 **THE COURT:** Ladies and gentlemen, this is the
20 defendant, Quashon Middleton, of Walterboro, South Carolina.

21 **MR. MATHEWS:** And this is Ms. Pye, who may also be
22 helping.

23 **THE COURT:** I previously introduced you to Ms. Fran Pye
24 of the public defender's office.

25 All right. Ladies and gentlemen, you've now met the

1 attorneys that are going to be trying the case, as well as
2 the defendant. I ask, first of all, is any member of my
3 jury panel, related by blood, connected by marriage, or a
4 close personal friend of the defendant, Quashon Middleton of
5 Walterboro, South Carolina, whom you have just met? Is so,
6 please stand at this time.

7 (JUROR STANDS.)

8 THE COURT: Yes, ma'am. If you'll come forward,
9 please, ma'am. Counsel may approach. Name and juror number?

10 BAILIFF: Juror One twenty-four.

11 THE COURT: How are you doing? Right over here by
12 Becky. They will be able to hear you. You're Ms. Farah
13 Moultrie?

14 JUROR: Yes, sir.

15 THE COURT: Becky, this is juror number one twenty-
16 four, Farah Moultrie. Ms. Moultrie, are you related by
17 blood to Mr. Middleton?

18 JUROR: Not by blood, but his grandma.

19 THE COURT: Hold on a second. You're not related by
20 blood?

21 JUROR: No.

22 THE COURT: Are you connected by marriage to Mr.
23 Middleton?

24 JUROR: Not by marriage? His grandmother ---

25 THE COURT: Hold on a second. Are you a close personal

1 friend of his?

2 JUROR: Yes.

3 THE COURT: So the reason you stood is because of
4 friendship, and not by blood or marriage?

5 JUROR: His grandma is married to my uncle.

6 THE COURT: Okay. So you're standing up because of
7 marriage, because his grandmother is married to your uncle?

8 JUROR: Yes, sir.

9 THE COURT: How -- what would you call him to you?

10 JUROR: Cousin.

11 THE COURT: A cousin by marriage?

12 JUROR: Yes, sir.

13 THE COURT: All right. The fact that he's your cousin,
14 Ms. Moultrie, by marriage, would that in any way affect your
15 ability to give the State of South Carolina or the defendant
16 in this case, a fair and an impartial trial?

17 JUROR: No.

18 THE COURT: All right, now, do you see him on a regular
19 basis?

20 JUROR: Not since he got in trouble.

21 THE COURT: I know that. I realize since he's been in
22 custody, you haven't. But when he's not in jail, do you see
23 him?

24 JUROR: Yes.

25 THE COURT: You do?

1 JUROR: Yes.

2 THE COURT: All right. Do you see him just at family
3 gatherings, or when do you see him?

4 JUROR: With his mom. I'm also acquaintances with his
5 mom.

6 THE COURT: So you're friends with his mom?

7 JUROR: Yes.

8 THE COURT: The fact that you're friends with his mom,
9 would that in any way affect your ability to give the State
10 or the defendant a fair and an impartial trial?

11 JUROR: It wouldn't.

12 THE COURT: All right. Now, can you put aside any
13 relationship by marriage, any friendship that you might
14 have, and decide this case solely upon evidence introduced
15 in this courtroom, when both sides are present with the
16 right of cross-examination?

17 JUROR: Yes.

18 THE COURT: Thank you. You may return to your seat.

19 (JUROR RETURNS TO SEAT.)

20 THE COURT: Juror number One twenty-four is going to
21 remain with us.

22 Let the record reflect that no one else stood in
23 response to my last question. Now, you've met counsel for
24 both the State of South Carolina and the defendant. Any
25 member of my jury panel related by blood, connected by

1 marriage, or a close personal friend of any member of the
2 Fourteenth Judicial Circuit Solicitor's Office? Is so,
3 please stand at this time.

4 (NO RESPONSE.)

5 **THE COURT:** Let the record reflect that no one is
6 standing.

7 Any member of my jury panel ever been represented in
8 the past or currently represented by either Amanda Haselden,
9 Chaz Balish, Ben Shelton, or any other member of the
10 Fourteenth Judicial Circuit Solicitor's Office?

11 If so, please stand at this time.

12 (NO RESPONSE.)

13 **THE COURT:** Let the record reflect that no one is
14 standing. You have also met counsel for the defendant in
15 this case, Mr. David Mathews, with the Colleton County
16 Public Defender's Office. He has introduced the members of
17 his staff, his administrative assistant, Ms. Fran Pye is
18 seated at the table, along with the defendant, Quashon
19 Middleton, of Walterboro.

20 Is any member of my jury panel related by blood,
21 connected by marriage, or a close personal friend of counsel
22 for the defendant, Mr. David Mathews, or any member of the
23 Colleton County Public Defender's Office?

24 Is so, please stand at this time.

25 (JURORS STAND.)

1 **THE COURT:** Yes, ma'am. If you'll come forward for me,
2 please.

3 I know her number. I used her as an example. Hey,
4 Janice. Counsel, this is juror number One ninety-eight,
5 Janice M. Young. Ms. Young, are you related by blood,
6 connected by marriage, or a close personal friend to someone
7 in the public defender's office?

8 **JUROR:** (NODS HEAD.)

9 **THE COURT:** And that would be Mr. Beach or who?

10 **JUROR:** Fran Pye.

11 **THE COURT:** How are you related to Fran?

12 **JUROR:** We are close personal friends.

13 **THE COURT:** Okay. The fact that you are close personal
14 friends with Ms. Pye, who works for the Public Defender's
15 Office, who will be representing the defendant in the trial
16 of this case, would that in any way affect your ability to
17 give the State of South Carolina or the defendant in this
18 case, Quashon Middleton, a fair and an impartial trial?

19 **JUROR:** I don't know.

20 **THE COURT:** You've got to tell me "yes" or "no". You
21 believe you can decide this case solely upon the evidence in
22 this case and not based on any friendship that you might
23 have with any member of the public defender's office; is
24 that correct?

25 **JUROR:** That's correct.

1 **THE COURT:** Thank you. You may return to your seat.

2 Juror number One ninety-eight is going to remain with us.

3 Let the record reflect that only one person stood in
4 response to my question of whether or not any member of my
5 jury panel was related by blood, connected by marriage, or a
6 close personal friend of either Mr. David Mathews or any
7 member of the public defender's office, and that was juror
8 One ninety-eight, Ms. Young. Thank you. You're doing
9 exactly what I asked you to do.

10 Any member of my jury panel ever been represented in
11 the past, or currently represented by either Mr. David
12 Mathews or any member of the Colleton County Public
13 Defender's Office? Either in the past or currently? Is so,
14 please stand at this time.

15 (NO RESPONSE.)

16 **THE COURT:** Let the record reflect that no one is
17 standing. All right, ladies and gentlemen, you've heard a
18 little bit about the allegations, and that's exactly what's
19 in these indictments.

20 The indictments are not evidence, ladies and gentlemen.
21 The indictments are the formal, written instruments by which
22 a case is brought in this court, and what's in the
23 indictment are simply allegations. If you're selected as a
24 juror in the trial of this case, you must decide the case
25 based on evidence introduced during the trial of the case,

1 when both sides are present with the right of cross-
2 examination.

3 But I'll tell you a little bit about the allegations,
4 because I want to ask you about your impartiality to serve
5 as a juror in the trial of this case. In Indictment 2010-
6 GS-15-0962, State v. Quashon Middleton, charging the
7 defendant with attempted murder.

8 It is alleged in this indictment that it occurred in
9 Colleton County on or about September 28th, 2010, and that
10 the defendant with malice aforethought and with the intent
11 to kill did commit an unlawful act of a violent nature upon
12 the victim, Stephanie Mack. It is alleged that the
13 defendant did attempt to kill the victim by shooting at the
14 victim.

15 In Indictment 2010-GS-15-0960, charging the defendant
16 Quashon Middleton also with the offense of attempted murder,
17 it is alleged in this indictment that this offense allegedly
18 occurred in Colleton County on or about September 28th,
19 2010, and that the defendant allegedly with malice
20 aforethought and with the intent to kill did commit an
21 unlawful act of violent nature upon the victim, Ryan R.
22 Stephens, and that's S-T-E-P-H-E-N-S. It is alleged that
23 the defendant did attempt to kill the victim by shooting at
24 the victim.

25 Finally, in Indictment 2010-GS-15-0961, the State v.

1 Quashon Middleton, indictment for possession of a weapon
2 during the commission of a violent crime. It is alleged
3 that this occurred in Colleton County on or about September
4 28th, 2010. That the defendant, Quashon Middleton, did
5 possess a handgun or visibly displayed what appeared to be a
6 handgun during the commission or attempted commission of
7 attempted murder, which is alleged to be a violent crime.

8 I tell you about the allegations in those three
9 indictments to simply ask you this. Is any member of my
10 jury panel read about, heard about, or know anything
11 whatsoever about the facts which are alleged in this case?
12 Is so, please stand at this time.

13 **THE COURT:** Let the record reflect that no one is
14 standing.

15 I am advised that the potential witnesses in the trial
16 of this case will be as follows. If they are present in the
17 courtroom when I call your name, please stand and face my
18 jury panel so they can hear a name called and see a face
19 with it.

20 Allen Inabinett, Colleton County Sheriff's Office.
21 Standing to my right, your left. Thank you, you may be
22 seated. Ryan Stephens, Walterboro, South Carolina. S-T-E-
23 P-H-E-N-S. Stephanie Mack, Walterboro, South Carolina.
24 Anthony Buchanan, formerly with Colleton County Sheriff's
25 Office. Thank you, sir. You may be seated. Ted Stanfield,

1 Colleton County Sheriff's Office. Miranda Varner, V-A-R-N-
2 E-R, Walterboro, South Carolina. Dorothea Gathers, Colleton
3 County Sheriff's Office.

4 R. David Thomas, Colleton County Sheriff's Office.
5 Amanda Campbell, C-A-M-P-B-E-L-L, Colleton County Sheriff's
6 Office Dispatch. Rebecca Mitchell, Colleton County
7 Sheriff's Office Dispatch. Melody Hunt, Colleton County
8 Sheriff's Office Dispatch. Kelly Banks, B-A-N-K-S, Colleton
9 County Sheriff's Office Dispatch.

10 Estis, E-S-T-I-S, Mincey, M-I-N-C-E-Y, Walterboro,
11 South Carolina. Carmen Salley, Walterboro, South Carolina.
12 Steven S. Scurry, S-C-U-R-R-Y, Colleton County Fire and
13 Rescue. Counsel approach.

14 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
15 AND OUT OF THE HEARING OF THE JURY.)

16 **THE COURT:** Kathy, or Kathleen, Woodward, South
17 Carolina Law Enforcement Division. Keith Crosby, Colleton
18 County Sheriff's Office. Jeff Scott, Colleton County
19 Sheriff's Office. Jodi Taylor, Colleton County Sheriff's
20 Office. Ruben Carter, Colleton County Sheriff's Office.
21 Marshall Taylor, Colleton County Sheriff's Office. John
22 Varner, Walterboro, South Carolina. Jerry Polk, Colleton
23 County Sheriff's Office. Quashon G. Middleton -- stand up,
24 Mr. Middleton, and face my jury panel; Walterboro, South
25 Carolina. Thank you, you may be seated.

1 Christi Greene, Colleton County Sheriff's Office.
2 Andre Williams, Colleton County Sheriff's Office. Dolphus
3 Pinckney, Colleton County Sheriff's Office. Katrina Bell,
4 Walterboro, South Carolina. Megan Brown, Walterboro, South
5 Carolina. Alicia Brown, Walterboro, South Carolina. Thomas
6 Herring, H-E-R-R-I-N-G, Colleton County Sheriff's Office.
7 Patricia H. Crooks, C-R-O-O-K-S, South Carolina Law
8 Enforcement Division. Lisa Waananer, Mr. Mathews?

9 MR. MATHEWS: Best I can figure.

10 THE COURT: You have it spelled W-A-A-N-A-N-E-R?

11 MR. MATHEWS: I sure do.

12 THE COURT: Is that the correct spelling?

13 MR. MATHEWS: Yes, sir.

14 THE COURT: Counsel, is that your understanding of the
15 spelling?

16 ASST. SOL. HASELDEN: It's not my witness, Your Honor.
17 I'm unaware of who ---

18 THE COURT: I'm aware of that, counsel. Are you aware
19 of the spelling of the witness's name?

20 ASST. SOL. HASELDEN: No, I'm not.

21 MR. MATHEWS: It's -- I have something that I can check
22 the spelling. She's a chain of custody witness, Your Honor.

23 THE COURT: Mr. Mathews, I'm not asking for argument.

24 Lisa Waananer, W-A-A-N-A-N-E-R, South Carolina Law
25 Enforcement Division. John G. D. Roberts, South Carolina

1 Law Enforcement Division. Amy Stephens, South Carolina Law
2 Enforcement Division. Salina -- is that Salina or Salira?

3 **MR. MATHEWS:** Salina Kinard, Your Honor.

4 **THE COURT:** Salina Kinard, South Carolina Law
5 Enforcement Division. Doris Yarborough, South Carolina Law
6 Enforcement Division. Ray Delong, Colleton County Fire and
7 Rescue. Tony Keen, Colleton County Fire and Rescue. Andy
8 Strickland, formerly South Carolina Highway Patrol. Byron
9 Martinson, Colleton County Fire and Rescue.

10 Any additional witnesses from the State?

11 **ASST. SOL. HASELDEN:** None, Your Honor.

12 **THE COURT:** Any additional witnesses from the
13 defendant?

14 **MR. MATHEWS:** No, Your Honor.

15 **THE COURT:** Any member of my jury panel related by
16 blood, connected by marriage, or a close personal friend of
17 any of the potential witnesses in the trial of this case,
18 whose names I have just called? Is so, please stand at this
19 time.

20 (SEVERAL JURORS STAND.)

21 **THE COURT:** Got everybody up? All right. Bring me a
22 microphone to Ms. Young. Please state your name and juror
23 number, please.

24 **JUROR:** Janice Young, juror One ninety-eight.

25 **THE COURT:** All right. Ms. Young, listen to me and

1 give me a "yes" or "no" answer, please, ma'am. Are you
2 related by blood to any of the potential witnesses?

3 **JUROR:** No, sir.

4 **THE COURT:** Are you connected by marriage to any of the
5 potential witnesses?

6 **JUROR:** No, sir.

7 **THE COURT:** Are you a close personal friend of any of
8 the potential witnesses?

9 **JUROR:** Yes, sir.

10 **THE COURT:** Which witnesses?

11 **JUROR:** Jerry Polk and Dolphus Pinckney.

12 **THE COURT:** Dolphus Pinckney, and what was the other
13 one?

14 **JUROR:** Jerry Polk.

15 **THE COURT:** Jerry Polk. The fact that you are a close
16 personal friend of two people who are potential witnesses in
17 the trial of this case, would that in any way affect your
18 ability to give the State of South Carolina, or the
19 defendant in this case, a fair and an impartial trial?

20 **JUROR:** No, sir.

21 **THE COURT:** Thank you. You may be seated. Pass the
22 microphone. Name and juror number, please.

23 **JUROR:** Simon Andrews, juror number Four.

24 **THE COURT:** Counsel, this is juror number Four, Simon
25 Andrews. Mr. Andrews, are you related by blood to any of

1 the potential witnesses?

2 JUROR: No, sir.

3 THE COURT: Are you connected by marriage to any of the
4 potential witnesses?

5 JUROR: No, sir.

6 THE COURT: Are you a close personal friend of any of
7 the potential witnesses?

8 JUROR: Yes, sir.

9 THE COURT: And who would that be?

10 JUROR: John Varner.

11 THE COURT: John Roberts?

12 JUROR: Varner.

13 THE COURT: Varner. Would the fact that you are a
14 close personal friend of John Varner, would that in any way
15 affect your ability to give the State of South Carolina, or
16 the defendant in this case, a fair and an impartial trial?

17 JUROR: No, sir.

18 THE COURT: Thank you. You may be seated. Yes, ma'am?
19 Behind him, your name and juror number, please.

20 JUROR: Kimberly Claxton, juror number Forty.

21 THE COURT: Counsel, this is juror number Forty,
22 Kimberly Claxton. Ms. Claxton, are you related by blood to
23 any of the potential witnesses?

24 JUROR: No, sir.

25 THE COURT: Are you connected by marriage to any of the

1 potential witnesses?

2 JUROR: No, sir.

3 THE COURT: Are you a close personal friend of any of
4 the potential witnesses?

5 JUROR: Yes, sir.

6 THE COURT: And who is that?

7 JUROR: Jeff Scott.

8 THE COURT: The fact that you are a close personal
9 friend of Jeff Scott who is a potential witnesses in the
10 trial of this case, would that in any way affect your
11 ability to give the State of South Carolina, or the
12 defendant in this case, a fair and an impartial trial?

13 JUROR: No, sir.

14 THE COURT: Thank you, ma'am. You may be seated.
15 Yes, ma'am, in the back. Name and juror number, please,
16 ma'am.

17 JUROR: Lori Whitter, number One ninety-five.

18 THE COURT: Counsel, this is juror number One hundred
19 ninety-five, Lori Whitter. Ms. Whitter, are you related by
20 blood to any of the potential witnesses?

21 JUROR: Yes, sir.

22 THE COURT: And who are you related to?

23 JUROR: Andre Williams.

24 THE COURT: And how are you related to Andre Williams?

25 JUROR: By blood.

1 **THE COURT:** Well, I mean, what degree of kinship?
2 First cousin, brother, sister, or what?

3 **JUROR:** Maybe second or third.

4 **THE COURT:** Second cousin?

5 **JUROR:** Yes, sir.

6 **THE COURT:** All right, Ms. Whitter, I'll excuse you
7 from the trial of this case only. Take a seat for me.
8 Anyone else?

9 (NO RESPONSE.)

10 **THE COURT:** Let the record reflect that no one is
11 standing. Is any of my member of my jury panel formed any
12 opinion about the facts which are alleged in this case? Is
13 so, please stand at this time.

14 (NO RESPONSE.)

15 **THE COURT:** Let the record reflect that no one is
16 standing. Any member of my jury panel formerly a member of
17 the Colleton County Grand Jury which found the Indictments
18 in this case? Is so, please stand at this time.

19 (NO RESPONSE.)

20 **THE COURT:** Let the record reflect that no one is
21 standing. Any member of my jury panel formed any opinion
22 about the alleged guilt or innocence of the defendant in
23 this case, Quashon Middleton? Is so, please stand at this
24 time.

25 (NO RESPONSE.)

1 **THE COURT:** Let the record reflect that no one is
2 standing. Does any member of my jury panel know of any
3 bias, or prejudice, they may have about the facts which are
4 alleged in this case, any of the parties involved therein,
5 or their offices of the parties involved therein, or the
6 attorneys involved therein, or any of the potential
7 witnesses involved therein? Is so, please stand at this
8 time.

9 (NO RESPONSE.)

10 **THE COURT:** Let the record reflect that no one is
11 standing. Any member of my jury panel ever been the victim
12 of a violent crime? Is so, please stand at this time.

13 (NO RESPONSE.)

14 **THE COURT:** Let the record reflect that no one is
15 standing. Any member of my jury panel, or a member of their
16 immediate family, that is, your child, your spouse, your
17 mother, father, brother or sister. Any member of my jury
18 panel, or a member of their immediate family, employed by
19 any law enforcement agency? Is so, please stand at this
20 time.

21 (SEVERAL JURORS STAND.)

22 **THE COURT:** I need a microphone up front. Yes,
23 ma'am, your name and juror number, please.

24 **JUROR:** Deborah Crosby, Fifty-four.

25 **THE COURT:** Counsel, this is juror number Fifty-four,

1 Deborah Crosby. Ms. Crosby, you're standing because you're
2 employed or a member of your immediate family?

3 JUROR: A member of my family.

4 THE COURT: And what member of your family?

5 JUROR: My daughter.

6 THE COURT: And where is she employed?

7 JUROR: Colleton County Sheriff's Office.

8 THE COURT: The fact that your daughter is employed
9 with the Colleton County Sheriff's Office, and there will be
10 people from the Colleton County Sheriff's Office who are
11 potential witnesses in the trial of this case, would that in
12 any way affect your ability to give the State of South
13 Carolina, or the defendant in this case, a fair and an
14 impartial trial?

15 JUROR: No, sir.

16 THE COURT: Thank you, ma'am. You may be seated. Pass
17 the microphone. Yes, sir, your name and juror number for
18 the record?

19 JUROR: Simon Andrews, juror number Four.

20 THE COURT: Counsel, this is juror number Four, Simon
21 Andrews. Mr. Andrews, are you or a member of your family
22 employed by law enforcement?

23 JUROR: A member of my family.

24 THE COURT: What member of your family?

25 JUROR: Father.

1 **THE COURT:** And he's employed by what law enforcement
2 agency?

3 **JUROR:** North Charleston Police Department.

4 **THE COURT:** The fact that your father is employed by
5 the North Charleston Police Department, would that in any
6 way affect your ability to give the State of South Carolina,
7 or the defendant in this case, a fair and an impartial
8 trial?

9 **JUROR:** No, sir.

10 **THE COURT:** Thank you. You may be seated. Next
11 person, name and juror number, please.

12 **JUROR:** Stephanie Ballard, number Nine.

13 **THE COURT:** Counsel, this is juror number Nine,
14 Stephanie Ballard. Ms. Ballard, are you or a member of your
15 immediate family employed by law enforcement?

16 **JUROR:** A member of my family.

17 **THE COURT:** What family?

18 **JUROR:** My brother.

19 **THE COURT:** Employed by who?

20 **JUROR:** The Walterboro City Police Department.

21 **THE COURT:** All right. The fact that your brother is
22 employed by the Walterboro Police Department, would that in
23 any way affect your ability to give the State of South
24 Carolina, or the defendant in this case, a fair and an
25 impartial trial?

1 JUROR: No, sir.

2 THE COURT: Thank you, ma'am. You may be seated. Next
3 juror, name and juror number.

4 JUROR: Don Beach, juror number Thirteen.

5 THE COURT: Counsel, this is juror number Thirteen, Don
6 M. Beach. Mr. Beach, were you or a member of your immediate
7 family employed by law enforcement?

8 JUROR: A member of my immediate family.

9 THE COURT: What member of your family?

10 JUROR: My sister.

11 THE COURT: What agency?

12 JUROR: Colleton County Sheriff's Office.

13 THE COURT: The fact that your sister is employed by
14 the Colleton County Sheriff's Office, would that in any way
15 affect your ability to give the State of South Carolina, or
16 the defendant in this case, a fair and an impartial trial?

17 JUROR: No, sir.

18 THE COURT: Thank you, sir. You may be seated. Yes,
19 sir, your name and juror number, please?

20 JUROR: Rodney Pllum.

21 THE COURT: Number?

22 JUROR: One thirty-six.

23 THE COURT: Counsel, this is juror number One hundred
24 and thirty-six, Rodney C. Pllum. Mr. Pllum, are you or a
25 member of your immediate family employed by a law

1 enforcement agency?

2 JUROR: Family.

3 THE COURT: What member of your family?

4 JUROR: My niece.

5 THE COURT: Niece. What agency?

6 JUROR: Walterboro City Police Department.

7 THE COURT: The fact that your niece is employed by the
8 Walterboro City Police Department, would that in any way
9 affect your ability to give the State of South Carolina, or
10 the defendant in this case, a fair and an impartial trial?

11 JUROR: No, sir.

12 THE COURT: Thank you, sir. You may be seated. Let
13 the record reflect that no one is standing in response to my
14 last question.

15 Any member of my jury panel a member of or a
16 contributor to any group, which has as its primary concern
17 the promotion of law enforcement or victim's rights? These
18 groups would include MADD, SADD, CAVE or CADRE. Is so,
19 please stand at this time.

20 (NO RESPONSE.)

21 THE COURT: Let the record reflect that no one is
22 standing. Ladies and gentlemen, I've identified for you in
23 two indictments, and I've called out their names as
24 potential witnesses, it is alleged that the person in the
25 indictment charged with attempted murder, it is alleged that

1 the victim in one indictment was Stephanie Mack, who is a
2 potential witness in the trial of this case, from
3 Walterboro. It is alleged in the second indictment for
4 attempted murder that the victim is Ryan R. Stephens, S-T-E-
5 P-H-E-N-S, from Walterboro. Any member of my jury panel
6 related by blood, connected by marriage, or a close personal
7 friend of any one who is an alleged victim in this case or a
8 member of their immediate family? Is so, please stand at
9 this time.

10 (NO RESPONSE.)

11 **THE COURT:** Let the record reflect that no one is
12 standing. Any member of my jury panel aware of any reason
13 whatsoever why he or she should not serve as a juror in this
14 case with particular emphasis being placed on your ability
15 to be fair and impartial to both the State of South Carolina
16 and the defendant, Quashon Middleton. If you know of any
17 reason why he or she should not serve as a juror in this
18 case, please stand at this time.

19 (NO RESPONSE.)

20 **THE COURT:** Let the record reflect that no one is
21 standing. Any additional voir dire from the State?

22 **ASST. SOL. HASELDEN:** None, Your Honor.

23 **THE COURT:** From the defendant?

24 **MR. MATHEWS:** No, Your Honor.

25 **THE COURT:** All right. Counsel, it's my understanding,

1 having conferred with you at the bench, that you both agree,
2 pursuant to the statute 14-7-1110, that the strikes are five
3 and five; is that correct, from the State?

4 **ASST. SOL. HASELDEN:** Correct, Your Honor.

5 **THE COURT:** Correct from the defendant?

6 **MR. MATHEWS:** Yes, Your Honor.

7 **THE COURT:** All right. Madame Clerk, the strikes are
8 five and five. We will be drawing two alternate jurors, in
9 addition to the main jury. Strikes on the alternate jury,
10 you agree, Solicitor, one and one on the alternate?

11 **ASST. SOL. HASELDEN:** Yes, Your Honor.

12 **THE COURT:** You agree, Mr. Mathews?

13 **MR. MATHEWS:** Yes, sir.

14 **THE COURT:** All right. Now, ladies and gentlemen,
15 what's happening right now -- I told you this would happen
16 if we used the computer to draw the jury. What's happening
17 is that Gloria Lynah, who is right below me right now, of
18 course, I obviously disqualified some people, and we take
19 their names out. The computer will then, at random, print
20 out a list. No one has seen that list. I haven't seen it,
21 the clerk hasn't seen it; the attorneys for the parties
22 haven't seen it. They will print it out and give a copy to
23 the court reporter, to myself, and my law clerk. She will
24 then call out names in the order in which they are randomly
25 selected by computer. We will ask you to bring your

1 belongings with you, like, your pocketbook, or anything you
2 might have with you, come down the middle aisle. The
3 bailiffs will open the middle aisle. Come down to the
4 clerk's desk and turn around and face the courtroom in the
5 same direction that I'm facing right now. At which time,
6 the clerk will invite each side to exercise, if they so
7 desire, their peremptory strikes. Each side will have five
8 strikes.

9 Once the jury is selected, we will select two alternate
10 jurors. An alternate juror is just as important as a member
11 of the jury. If for some reason a juror cannot continue to
12 serve for a valid legal reason, the alternate juror would
13 take their place on the jury. The alternate jurors will be
14 with the jury at all times throughout the trial of the case.
15 In this case, we will be selecting 12 jurors. We will also
16 be selecting two alternate jurors.

17 (BRIEF PAUSE IN COURTROOM WHILE COMPUTER GENERATES JURY
18 LIST.)

19 **THE COURT:** Is the State ready to proceed?

20 **ASST. SOL. HASELDEN:** State's ready, Your Honor.

21 **THE COURT:** Is the defendant ready to proceed?

22 **MR. MATHEWS:** Yes, Your Honor.

23 **THE COURT:** Madame Clerk, are you ready?

24 **MADAME CLERK:** I am ready.

25 **THE COURT:** Give us a jury, please.

1 **MADAME CLERK:** As I call your name, please come
2 forward, stand in front of my desk, and turn and face the
3 counsel table. Bring all of your personal belongings with
4 you, please.

5 Number Fifty-four, Deborah H. Crosby. What says the
6 State?

7 **ASST. SOL. HASELDEN:** Please present this juror.

8 **MADAME CLERK:** What say ye for the defendant?

9 **MR. MATHEWS:** Please excuse the juror from the trial of
10 this case.

11 **MADAME CLERK:** Please have a seat back with the panel.
12 Juror number One sixty, Shawn Simmons. What say ye for the
13 State?

14 **ASST. SOL. HASELDEN:** Please present this juror.

15 **MADAME CLERK:** What say ye for the defendant?

16 **MR. MATHEWS:** Please swear the juror.

17 **MADAME CLERK:** Please have a seat in my jury box.

18 Juror number Six, James W. Bagwell, Jr. What say ye for the
19 State?

20 **ASST. SOL. HASELDEN:** Please present this juror.

21 **MADAME CLERK:** What says the defense?

22 **MR. MATHEWS:** Please swear the juror.

23 **MADAME CLERK:** Please have a seat in the jury box. One
24 Seventy-six, Vincent D. Sweat. What say ye for the State?

25 **ASST. SOL. HASELDEN:** Please excuse Mr. Sweat.

1 **MADAME CLERK:** Please have a seat back with the panel.

2 One twelve, Robert A. Lyons. What says the State?

3 **ASST. SOL. HASELDEN:** Please present Mr. Lyons.

4 **MADAME CLERK:** What say ye for the defendant?

5 **MR. MATHEWS:** Please swear the juror.

6 **MADAME CLERK:** Please have a seat in the jury box.

7 Number One eighty-five, Marc S. Warren. What say ye for the
8 State?

9 **ASST. SOL. HASELDEN:** Please present this juror.

10 **MADAME CLERK:** What say ye for the defense?

11 **MR. MATHEWS:** Please excuse this juror.

12 **MADAME CLERK:** Please have a seat back with the panel.

13 One twenty-five, Ashley A. Mount. What say ye for the
14 State?

15 **ASST. SOL. HASELDEN:** Please present this juror.

16 **MADAME CLERK:** What say ye for the defendant?

17 **MR. MATHEWS:** Please swear the juror.

18 **MADAME CLERK:** Please have a seat in the jury box.

19 Forty-seven, Andrew C. Cooper. What says the State?

20 **ASST. SOL. HASELDEN:** Please swear Mr. Cooper.

21 **MADAME CLERK:** What say ye for the defendant?

22 **MR. MATHEWS:** Please swear the juror.

23 **MADAME CLERK:** Please have a seat in the jury box.

24 Number One fifty-two, William L. Runyon, III. What say ye
25 for the State?

1 **ASST. SOL. HASELDEN:** Please present Mr. Runyon.

2 **MADAME CLERK:** What say ye for the defendant?

3 **MR. MATHEWS:** Please excuse this juror.

4 **MADAME CLERK:** Please have a seat back with the panel.

5 Sixty-six, Eula L. Fancher. What say ye for the State?

6 **ASST. SOL. HASELDEN:** Please present Ms. Fancher.

7 **MADAME CLERK:** What say ye for the defendant?

8 **MR. MATHEWS:** Please swear the juror.

9 **MADAME CLERK:** Please have a seat in the jury box.

10 Number One hundred sixty-six, Loretta A. Spinks. What say
11 ye for the State?

12 **ASST. SOL. HASELDEN:** Please present Ms. Spinks.

13 **MADAME CLERK:** What say ye for the defendant?

14 **MR. MATHEWS:** Please swear the juror.

15 **MADAME CLERK:** Please have a seat in the jury box.

16 Number Eighty-five, Renee B. Henderson. What say ye for the
17 State?

18 **ASST. SOL. HASELDEN:** Please present Ms. Henderson.

19 **MADAME CLERK:** What say ye for the defendant?

20 **MR. MATHEWS:** Please excuse the juror from the trial of
21 this case.

22 **MADAME CLERK:** Please have a seat back with the panel.

23 Number Fifty-three, Casey L. Hall. What say ye for the
24 State?

25 **ASST. SOL. HASELDEN:** Please present Mr. Hall.

1 **MADAME CLERK:** What say ye for the defendant?

2 **MR. MATHEWS:** Please swear the juror.

3 **MADAME CLERK:** Please have a seat in the jury box.

4 Number Thirteen, Don M. Beach, Jr. What say ye for the
5 State?

6 **ASST. SOL. HASELDEN:** Please present Mr. Beach.

7 **MADAME CLERK:** What say ye for the defendant?

8 **MR. MATHEWS:** Please swear the juror.

9 **MADAME CLERK:** Please have a seat in the jury box.

10 Number One ninety-eight, Janice Young. What say ye for the
11 State?

12 **ASST. SOL. HASELDEN:** Please present Ms. Young.

13 **MADAME CLERK:** What say ye for the defendant?

14 **MR. MATHEWS:** Please excuse the juror from the trial of
15 this case.

16 **MADAME CLERK:** Please have a seat back with the panel.

17 Ninety-three, Edward A. Jacques. What say ye for the State?

18
19 **ASST. SOL. HASELDEN:** Please present Mr. Jacques.

20 **MADAME CLERK:** Does defense have any strikes for cause?

21 **MR. MATHEWS:** Please swear the juror.

22 **MADAME CLERK:** Please have a seat in the jury box. One
23 thirty-six, Rodney C. Pellum. What say ye for the State?

24 **ASST. SOL. HASELDEN:** Please present Mr. Pellum.

25 **MADAME CLERK:** Does the defendant have any strikes for

1 cause?

2 **MR. MATHEWS:** Please swear the juror.

3 **MADAME CLERK:** Please have a seat in the jury box.

4 Number Four, Simon P. Andrews, II. What say ye for the
5 State?

6 **ASST. SOL. HASELDEN:** Please excuse Mr. Andrews.

7 **MADAME CLERK:** Please have a seat back with the panel.

8 Number Forty-five, Amanda N. Smuz. What say ye for the
9 State?

10 **ASST. SOL. HASELDEN:** Please present this juror.

11 **MADAME CLERK:** Does the defendant have any strikes for
12 cause?

13 **MR. MATHEWS:** Please swear the juror.

14 **MADAME CLERK:** Please have a seat in the jury box.

15 **THE COURT:** Alternate number one. Strikes are one and
16 one on the first alternate, Madame Clerk.

17 **MADAME CLERK:** Number One ninety-nine, Sandra M.
18 Zaccagnini. What says the State?

19 **ASST. SOL. HASELDEN:** Please present this juror.

20 **MADAME CLERK:** What says the defense?

21 **MR. MATHEWS:** Please swear the juror.

22 **MADAME CLERK:** Please have a seat in the jury box.

23 Number Seven, Clifton s. Bailey. What says the State?

24 **ASST. SOL. HASELDEN:** Please present Mr. Bailey.

25 **MADAME CLERK:** What say ye for the defendant?

1 **MR. MATHEWS:** Please excuse this juror.

2 **MADAME CLERK:** Please have a seat back with the panel.
3 Number Sixteen, Barbara G. Benton. What say ye for the
4 State?

5 **ASST. SOL. HASELDEN:** Please present Ms. Benton.

6 **MADAME CLERK:** What says the defense?

7 **MR. MATHEWS:** Please swear the juror.

8 **MADAME CLERK:** Please have a seat in the jury box.

9 **THE COURT:** Are there any matters of law pertaining to
10 the selection of the jury that needs to be decided before
11 the jury is sworn, from the State of South Carolina?

12 **ASST. SOL. HASELDEN:** None, Your Honor.

13 **THE COURT:** From the defendant?

14 **MR. MATHEWS:** Yes, Your Honor.

15 **THE COURT:** Counsel approach.

16 (WHEREUPON A BENCH CONFERENCE IS HELD OFF THE
17 RECORD AND OUT OF THE HEARING OF THE JURY.)

18 **THE COURT:** Ladies and gentlemen that have been
19 selected as potential jurors in the trial of this case, bear
20 with me one minute. I have to take up a matter of law. I
21 don't want you to ever think we're trying to hide anything
22 from you.

23 You will notice I bring people up here and we talk
24 quietly. We're not trying to hide anything from you. I
25 don't want you to be influenced by anything that I might say

1 or do in ruling on whether or not a particular piece of law
2 applies to this case. So the custom in this state, you're
3 the sole judges of the facts. I'm the sole judge of the
4 law. The custom in this state is to excuse you from the
5 courtroom when such discussions take place, so that you
6 won't be influenced by anything that I might say and do in
7 ruling on a matter of law.

8 I have to take up a matter of law. I want you to stay
9 right in your jury box. I'm going to move the court
10 reporter and everybody to the jury room. Do not discuss
11 this case. You've not heard any evidence in this case.
12 Talk about the weather, talk about anything else, just don't
13 talk about this case, and I'll be back with you just as
14 quickly as I can.

15 Ladies and gentlemen of my venire, those of you who
16 were not selected as jurors in the trial of this case, I'm
17 going to have to ask you to remain. I have to take up a
18 matter of law pertaining to the selection of the jury. I
19 will be back with you just as quickly as I can. Please do
20 not leave the courtroom. Remain in the area where you're
21 seated now. I'm going to take up a matter of law in the
22 jury room. I'll be back with you just as quick as I can.
23 Thank you for your patience.

24 (5:45 P.M. THE COURT EXITS THE COURTROOM TO JURY ROOM
25 FOR A MATTER OF LAW.)

BATSON MOTION

1
2 **THE COURT:** We're in chambers now, outside the presence
3 of any potential jurors present, or law enforcement
4 personnel, my bailiff's. The court reporter, the defendant,
5 his counsel, David Mathews, representatives of the
6 Solicitor's Office. I've been advised by Mr. Mathews that
7 he wishes to make a Batson Motion on the basis of race.

8 I informed counsel before we went on the record that we
9 would enter into certain stipulations. First, we would
10 stipulate as to the race and sex of the defendant. Is it
11 stipulated between counsel that the defendant is a black
12 male; Mr. Mathews?

13 **MR. MATHEWS:** Yes, sir.

14 **THE COURT:** Ms. Haselden?

15 **ASST. SOL. HASELDEN:** Yes, sir.

16 **THE COURT:** I told them, second, we would agree to a
17 stipulation as to the present potential jury composition.
18 It is my understanding the jury is presently composed of two
19 black males, six white males, and four white females. Do
20 you so stipulate, Mr. Mathews?

21 **MR. MATHEWS:** Yes, sir.

22 **THE COURT:** Do you stipulate, Ms. Haselden?

23 **ASST. SOL. HASELDEN:** Yes, sir.

24 **THE COURT:** I further advised counsel, off the record,
25 that we would stipulate to the State's striking. And it is

1 my understanding that the State struck two black males; is
2 that correct?

3 MR. MATHEWS: Yes, sir.

4 ASST. SOL. HASELDEN: Yes, sir.

5 THE COURT: So you both stipulate. The defendant
6 striking by stipulation was three white females, two white
7 males, and also the defendant struck an alternate, one white
8 male. You so stipulate, Mr. Mathews?

9 MR. MATHEWS: Yes, sir.

10 THE COURT: Do you stipulate, Ms. Haselden?

11 ASST. SOL. HASELDEN: Yes, sir.

12 THE COURT: All right, Mr. Mathews, the first step, as
13 you know, the party wishing to raise the Batson violation --
14 and the reason we call it Batson, so that you know, is it
15 comes from the case of Batson v. Kentucky, which is the
16 United State's Supreme Court case.

17 Make a motion for the hearing with the judge on this
18 matter, to establish a prima fascia case of purposeful
19 discrimination. Mr. Mathews, I'll be happy to hear from
20 you.

21 MR. MATHEWS: Thank you, Your Honor. The State --
22 there are only -- four blacks were -- only four African-
23 Americans or blacks were called; the State struck two of
24 them. And I don't know of any good reason. They were both
25 working. The ones that we struck, the first white female's

1 daughter is a law enforcement officer. One Eighty-Five --
2 Quashon just got a bad feeling about One Eighty-Five. I
3 didn't think he was that bad, but his wife's a dental
4 hygienist and maybe that gave him the creeps. But the One
5 Fifty-Two is a white male. He was the principal -- Quashon
6 got expelled from school, and certainly that is -- he had an
7 immediate reaction. And since he was the principal of the
8 school that Quashon -- I think it's -- was he the principal
9 of the school you got kicked out of?

10 **MR. MIDDLETON:** Yes, sir.

11 **MR. MATHEWS:** He was the principal of the school he got
12 kicked out of. So certainly, that would have been tough.

13 **THE COURT:** Well now hold on a second. One Eighty-Five
14 was a white male that you struck.

15 **MR. MATHEWS:** Right. That was the principal of the
16 school that he got kicked out of.

17 **THE COURT:** One Eighty-Five?

18 **MR. MATHEWS:** Right. One Fifty-Two, I think.

19 **THE COURT:** Hold on, Mr. Mathews. You're going too
20 fast. Let's go back. First you struck a white female,
21 Fifty-Four. What's your reason?

22 **MR. MATHEWS:** Daughter is a police officer.

23 **THE COURT:** Daughter is a police officer. Then you
24 struck -- your second strike was One Eighty-Five, Mr.
25 Warren. What's your reason?

1 **MR. MATHEWS:** Quashon just had an immediate bad
2 feeling. I didn't think it was that bad. Yeah.

3 **THE COURT:** All right. One Fifty-Two, what's your
4 reason?

5 **MR. MATHEWS:** Principal of the school he got kicked out
6 of.

7 **THE COURT:** All right, One Fifty-Two. Now, Eighty-
8 Five, white female.

9 **MR. MATHEWS:** Teacher in the school he got kicked out
10 of.

11 **THE COURT:** All right. And now One Ninety-Eight, white
12 female.

13 **MR. MATHEWS:** Mayor's wife. And Harris immediately
14 said, "Do not seat her."

15 **THE COURT:** Pardon?

16 **MR. MATHEWS:** And Harris told me before that he knows
17 her, he says "Don't seat her."

18 **THE COURT:** All right. And as to your alternates,
19 strike on Number Seven, white male.

20 **MR. MATHEWS:** Number Seven. His comment before that he
21 works for the fire department and there are representatives
22 from the Colleton Fire and Rescue -- Colleton County Fire
23 and Rescue that will be testifying. And so since he works
24 with them, we thought he -- I thought he couldn't be fair.

25 **THE COURT:** Very well. And you are alleging that you

1 believe that the State exercised two peremptory strikes that
2 they used in a racially discriminatory manner; is ---

3 **MR. MATHEWS:** Yes.

4 **THE COURT:** --- that correct? Let the record reflect
5 that the defendant is a black male. That the State, by
6 stipulation, struck two black males. I believe there's a
7 prima fascia matter because he is a black male. So,
8 Solicitor, I will ask you now, since you're the party that
9 exercised the peremptory strikes at issue, to provide a
10 racially neutral explanation for your strikes. Let's begin.
11 The State first struck Juror Number One Seventy-Six, black
12 male.

13 **ASST. SOL. HASELDEN:** Yeah, it's a Vincent D. Sweat.
14 First of all, he's been arrested five times -- or 1, 2, 3,
15 4, 5 times here in Colleton County. He has multiple
16 opportunities of negative law enforcement -- or negative
17 situations with law enforcement. Lieutenant Inabinett
18 actually had pointed him out before we even started,
19 specifically -- additionally, and in accordance with, I
20 believe, it was State v. Johnson, this potential juror's
21 nephew was DeQuincey Johnson. He has pending CSC charges in
22 my office, and Your Honor actually sentenced that individual
23 for ABHAN last year ---

24 **THE COURT:** What individual?

25 **ASST. SOL. HASELDEN:** --- here in Colleton County.

1 **THE COURT:** What individual?

2 **ASST. SOL. HASELDEN:** His nephew, DeQuincey Johnson,
3 for throwing a block through the windshield of a female.
4 And he is currently on our docket, which is a reason
5 straight from State v. Johnson, which is 302 SC 2d, 243.
6 And that gave potential juror's brother's had an indictment
7 against him, and this individual's nephew had a pending
8 criminal sexual conduct indictment against him.

9 **THE COURT:** And that would be Mr. Sweat, the juror's
10 nephew?

11 **ASST. SOL. HASELDEN:** Yes, sir.

12 **THE COURT:** And Mr. Sweat has been arrested how many
13 times?

14 **ASST. SOL. HASELDEN:** Five different times here in
15 Colleton County.

16 **THE COURT:** All right. Anything else on a racially
17 neutral reason as to why you exercised a strike as to Juror
18 One Seventy-Six?

19 **ASST. SOL. HASELDEN:** Just his general negative prior
20 contact with law enforcement with the ongoing feud with his
21 brother.

22 **THE COURT:** Very well. You also exercised a peremptory
23 strike as to Juror Number Four?

24 **ASST. SOL. HASELDEN:** Yeah. Mr. ---

25 **THE COURT:** Who is a black male.

1 **ASST. SOL. HASELDEN:** --- Mr. Simon Andrews lives
2 within a block of the incident location. He testified that
3 he was a close friend of John Varner, who is a witness of
4 both the defense and the State, who is the defendant's
5 cousin, who is going to be testifying in this case, and I
6 would anticipate going to have to be impeached in this case.

7 **THE COURT:** Very well. Anything else on a reason for
8 that strike as to Juror Number Four?

9 **ASST. SOL. HASELDEN:** I understand that his father was
10 previously employed by Colleton County Sheriff's Office. He
11 did stand up and say that his father is currently employed
12 with the North Charleston Police Department. I do not
13 believe he left here under very good circumstances. So
14 negative contact with the current sheriff's office.

15 **THE COURT:** Very well. All right, Mr. Mathews, I've
16 heard her now proffered reasons. They are, on their face,
17 seem to be facially valid. Since you are the party that is
18 asserting discrimination, you bear the burden of showing
19 that the reason is merely pretext and that race was the
20 reason for the strike. Can you tell me anything else, now
21 that you've heard the reasons from the Solicitor?

22 **MR. MATHEWS:** I have looked, trying to find somebody
23 who's -- I don't know of anyone else, any white males or
24 females that have been arrested five times, so no. Those
25 appear to be -- those appear to meet the standard.

1 **THE COURT:** Very well. You withdrawing your motion,
2 now that you've heard that?

3 **MR. MATHEWS:** Now that I've heard that, yes.

4 **THE COURT:** Motion's withdrawn. Let's go back into the
5 courtroom.

6 (WHEREUPON, THE COURT, THE ATTORNEYS, THE DEFENDANT,
7 AND THE COURT REPORTER ENTER INTO THE COURTROOM.)

8 **THE COURT:** Is the State ready to proceed?

9 **ASST. SOL. HASELDEN:** Yes, Your Honor.

10 **THE COURT:** Is the defendant ready to proceed?

11 **MR. MATHEWS:** Yes, Your Honor.

12 **THE COURT:** All right. Ladies and gentlemen of the
13 jury, as I told you, from time to time I would have to take
14 up a matter of law outside your presence, which I will put
15 on the record at the appropriate time, and that is what has
16 just occurred. Thank you for your patience in this matter
17 and for this afternoon. I know it's been a long day for all
18 of you.

19 Okay, counsel. Now, ladies and gentlemen of the jury
20 panel, I need for you -- you haven't heard any evidence in
21 the case. We're not going to start the case tonight, but I
22 need for you to know where to go. We're going to take good
23 care of you, believe me. You're going to find that out.

24 I need you to know where your jury room is, because
25 that's where I want you to report in the morning. Now, you

1 haven't heard any evidence in the case, so it would be
2 improper for you to discuss the case. But I need for you to
3 go to your jury room just briefly. I want you to do a
4 little bit of work for me. Mr. Polk is going to give you a
5 pad and a pencil. I want you to quickly, amongst
6 yourselves, pick a foreperson of the jury.

7 Now, let me tell you what the duties of a foreperson
8 are. Any of the twelve of you are eligible to be
9 foreperson. The foreperson presides in a jury room, just
10 like the chairperson of a committee would preside in a
11 committee room.

12 It's the foreperson's job to see that each and every
13 member of my jury has a full and a fair opportunity to voice
14 their opinions in a jury room once deliberations begin.
15 It's also the foreperson's job to write the jury's verdict,
16 but I'll give you instructions on how to write the verdict
17 in my charge to you on the law. The foreperson signs for
18 the jury and dates the verdict form. The foreperson also is
19 the jury spokesperson out here in the courtroom. The
20 foreperson speaks for the entire jury should that need arise
21 during the trial of the case. So the foreperson presides in
22 the jury room once deliberations begin to see that each and
23 every member of the jury has a full and fair opportunity to
24 voice their opinions. The foreperson writes the jury's
25 verdict. The foreperson speaks, or is the spokesperson, for

1 the entire jury.

2 When you go to the jury room, don't talk about the
3 case. Quickly, amongst each of you, select a foreperson.
4 When you've selected a foreperson, write it on a piece of
5 paper that Bill is going to give you, the name. Knock on
6 your jury room door. Tell the bailiff you've selected a
7 foreperson. I'll bring you back into the courtroom and then
8 I'm going to excuse you for the evening.

9 The reason I want you to go there is that is where
10 you're going to report in the morning. You're going to come
11 to your jury room, and either Mr. Bill Polk or Mr. Glen
12 Grant, or one of my bailiffs, is going to give you
13 instructions about how to get in and out of the courthouse,
14 because you won't be coming back out here like you did
15 today.

16 Now, I'll give you some more instructions about the
17 overnight recess once you've done that, but I want you to --
18 when you're in the jury room, talk about the weather, talk
19 about who the foreperson's going to be, talk about sports,
20 talk about anything you want to talk about, just don't talk
21 about this case; because you haven't heard any evidence in
22 this case and you must decide this case solely upon evidence
23 introduced in the courtroom when both sides are present with
24 the right of cross-examination. Please retire to your jury
25 room to select a foreperson at this time.

1 (5:46 P.M., 7-25-11, WHEREUPON, THE JURY PANEL EXITS
2 THE COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
3 RECORD.)

4 **THE COURT:** All right. Ladies and gentlemen, those of
5 you that were not selected as a juror in the trial of the
6 first case, I want to thank you for your patience. I did
7 not know that I was going to have a matter of law come up.
8 We had to take care of that and that delayed us a little bit
9 this afternoon, but that happens frequently in a trial. You
10 can't always anticipate what may occur.

11 Now, ladies and gentlemen, each of you -- do they
12 already have the card, Pat? Each of you should have a card
13 that has a telephone number, 549-1775. If any of you do not
14 have this card with that telephone number on it, please
15 raise your hand for me at this time. Everybody's got one.

16 Now, when you get home, it's going to be after 6:00, I
17 want you to call the number on that card. There's going to
18 be a taped message on that number. One message for all
19 jurors, telling you when, if at all, I might need you to
20 return to the courtroom. If I ask you to return, I want you
21 to report to the area of the courtroom that you're seated in
22 now. If the line is busy when you call, just keep calling,
23 you'll get through.

24 There's one message for all jurors. It may tell you to
25 call back tomorrow night. It may tell you thank you for

1 your service; you're done. It may tell you to report at
2 10:00 in the morning, 2:00 in the afternoon. Whatever time
3 I ask you to report, I want you to report to the area of the
4 courtroom, if I do ask you to report, that you're seated in
5 now. Please be on time. If one of you is late, all the
6 rest of you have to sit and wait until all jurors are
7 present before we can begin.

8 If anybody needs transportation or anticipates they'll
9 have a problem, let my bailiffs know before you leave, and
10 I'll provide transportation to get you here in a timely
11 fashion. Everybody understand about the call-back
12 procedure? I don't want you to call until after 6:00,
13 because obviously, I haven't had a chance to put any message
14 on the tape, so wait until you get home. Any questions from
15 any of my jurors about the call-back procedure? Everybody
16 know what to do?

17 On behalf of Colleton County and this Court, I want to
18 thank you for your patience during roll call, jury
19 qualification, and jury selection. You are now excused for
20 the balance of today. Call the number after 6:00 tonight.
21 You may leave the courtroom at this time. Everyone else
22 remain seated while the jury is leaving.

23 (5:55 P.M., REMAINING JURY VENIRE EXITS THE COURTROOM.)

24 **THE COURT:** Let the record reflect that I have no other
25 jurors in the courtroom. Let the record reflect that Mr.

1 Mathews has advised me, which was on the record in chambers,
2 that after hearing a racially neutral reasons from the
3 State, Mr. Mathews withdrew his Batson motion.

4 It is my understanding that counsel is aware of several
5 conflicts this week. I plan on starting at 9:30 in the
6 morning. Normally, I will take one morning break and one
7 afternoon break, trying to make it as convenient for the
8 witnesses as possible. Tomorrow I'm going to work until
9 4:25 p.m., so make a note of that because of medical
10 appointments that I have tried to arrange around Court.
11 Also, there is a -- we have a county councilman funeral at
12 11:00 a.m. on Wednesday. I have a status conference that
13 was scheduled four months ago at 12:45 on Wednesday by
14 telephone. I also have another matter at 1:15 on Thursday
15 that I've advised you about, and I'll have to stop Court at
16 4:55 on Thursday, because of another conflicting matter. So
17 I've advised counsel for the State and for the defendant in
18 chambers of all of these matters, but we'll work around it.

19 I would like to stop Court for the funeral of county
20 councilman, but in light of the fact that the funeral is in
21 another county, and in light of the fact that we have other
22 conflicts already this week with scheduled hearings, that
23 I'm going to have to work through. I invite those who want
24 to attend the funeral, as I would myself, if I weren't
25 working, to attend visitation, which is going to be held

1 tomorrow night until 8:00 at St. Peters Church here in
2 Walterboro, but the funeral itself is actually in Varnville,
3 South Carolina; and I've advised both attorneys about that.
4 I will not be stopping Court for the trial of the case in
5 light of that fact.

6 All right. Do I have a foreperson yet, Odell?

7 **BAILIFF:** No, sir, not yet.

8 (BRIEF PAUSE WHILE AWAITING JURY'S NOTE NAMING
9 FOREPERSON.)

10 **THE COURT:** All right, counsel, the bailiff has handed
11 me a note that the jury has chosen juror number Thirteen,
12 Don M. Beach as the foreperson of the jury. Any objection
13 to making the juror's note a court's exhibit from the State
14 of South Carolina?

15 **ASST. SOL. HASELDEN:** None, Your Honor.

16 **THE COURT:** From the defendant?

17 **MR. MATHEWS:** No, Your Honor.

18 **THE COURT:** Court's Exhibit Number One, without
19 objection.

20 (COURT EXHIBIT NUMBER ONE, JURY NOTE - FOREPERSON, IS
21 RECEIVED INTO EVIDENCE.)

22 **THE COURT:** Anything further from the State before I
23 bring the jury back?

24 **ASST. SOL. HASELDEN:** None, Your Honor.

25 **THE COURT:** From the defendant?

1 **MR. MATHEWS:** No, sir.

2 **THE COURT:** Bring us the jury, please.

3 (6:05 P.M., THE JURY ENTERS THE COURTROOM AND THE
4 FOLLOWING IS HELD ON THE RECORD.)

5 **THE COURT:** Congratulations, Mr. Foreperson, on your
6 election. Now, let me help you a little bit, ladies and
7 gentlemen. I told you I was going to excuse you, and we
8 are. When you're coming in and out, the foreperson sits
9 where Mr. Beach is seated, and my alternates, you're going
10 to be right there; alternates one and two, in the order in
11 which you were selected.

12 The rest of you can sit anywhere you want to, but let
13 me give you some practical advice. If you're on that back
14 row, don't sit down and make somebody crawl over you,
15 because there is a step-off on that back row. Fill all the
16 way down. I've had jurors fall, and I don't want anybody to
17 fall. So don't make people crawl over you. If you want to
18 sit by somebody, just line up that way in your jury room,
19 and you can do that, but don't make somebody crawl over you
20 by sitting down. You don't have any assigned seating, other
21 than the foreperson and the alternates. The rest of you can
22 sit anywhere you want to.

23 Now, over the overnight recess, I ask that you do not
24 discuss this case with anybody, not even a member of your
25 own family. I know people are curious; they are at my

1 house. They're going to say, "Did you get on the jury?
2 What's it about?" You don't know anything. You haven't
3 heard any evidence in the case. Just say the judge asked me
4 not to discuss it. If somebody persists in wanting to talk
5 to you about this case, you get their name and you give it
6 to me and I'll handle that problem for you, ladies and
7 gentlemen. That person won't be bothering you anymore. I
8 don't want you to discuss this case with anybody. You must
9 decide this case based on evidence introduced throughout the
10 trial this case, when both sides are present, with the right
11 of cross-examination.

12 Now, I don't know if there will be anything on the
13 radio, on television, or in the newspaper about this case.
14 I instruct you, do not read such, watch such, or listen to
15 such. You must decide this case based solely on evidence
16 introduced during the trial of this case when both sides are
17 present. They have a right, both sides, the State and the
18 defendant, to know what you're basing your decision on. So
19 I don't want you to do any independent research on your own,
20 on the computer. I don't want you to do any independent
21 research on any social networking site. I don't want you
22 reading any newspaper or listening to the radio or watching
23 television. It is important that each of you keep an open
24 mind and decide the case based solely upon evidence
25 introduced during the trial of the case when both sides are

1 present, where they know what you're basing your decision
2 on. Everybody understand what to do? Any questions?

3 (NO RESPONSE.)

4 **THE COURT:** Now, if anybody needs a work excuse for
5 serving on the jury, Pat, where do you want them to go?

6 **MADAME CLERK:** General Sessions, but no one is there
7 now, so we'll have to help them.

8 **THE COURT:** All right. When you leave in just a
9 moment, I'm going to have somebody from the Clerk's Office
10 standing at the door. If anybody needs a work excuse from
11 serving on the jury, there'll be someone standing at the
12 door. We'll be happy to provide one to let your employer
13 know you are serving on the jury.

14 (TO JUROR.) Yes, sir?

15 **JUROR:** I had a question. I didn't know whether I
16 should have brought this up. They had a witness named
17 Stephanie Mack, was one of the witnesses.

18 **THE COURT:** She's a potential witness in the trial of
19 this case. She's from Walterboro.

20 **JUROR:** I got a cousin named that go by the name of
21 Stephanie Bell.

22 **THE COURT:** B-E-L-L?

23 **JUROR:** Yes, sir.

24 **THE COURT:** Is Stephanie Bell and Stephanie Mack the
25 same person?

1 **ASST. SOL. HASELDEN:** It very well could be.

2 **THE COURT:** Counsel approach. I'll find out for you.

3 (WHEREUPON A BENCH CONFERENCE IS HELD OFF THE RECORD
4 AND OUT OF THE HEARING OF THE JURY.)

5 **THE COURT:** So you'll know, and you have to identify
6 yourself for Becky. Your name?

7 **JUROR:** Shawn Simmons.

8 **THE COURT:** All right. This is juror number One sixty;
9 is that right?

10 **JUROR:** Yes, sir.

11 **THE COURT:** Juror number 160, Shawn Simmons. Mr.
12 Simmons, I understand that Stephanie Mack has an older
13 sister -- what's the name, Solicitor?

14 **ASST. SOL. HASELDEN:** Katrina Bell.

15 **THE COURT:** Katrina Bell; is that your family?

16 **JUROR:** Yes, sir.

17 **THE COURT:** All right. And how are you related to
18 Stephanie Mack and Katrina Bell?

19 **JUROR:** Her grandmother is my aunt.

20 **THE COURT:** All right. Whose grandmother? Stephanie
21 Mack's grandmother?

22 **JUROR:** Yes, sir.

23 **THE COURT:** She is your aunt?

24 **JUROR:** Right. Annie Mack is their grandmother; that's
25 my aunt.

1 **THE COURT:** Okay. You're doing exactly what I asked
2 you to do; although, I would prefer that you tell me as soon
3 as possible. The fact that her grandmother is your aunt,
4 would that in any way -- and she's a potential witness in
5 the trial of this case. Would that in any way affect your
6 ability to give the State of South Carolina or the defendant
7 in this case a fair and an impartial trial?

8 **JUROR:** I would say so.

9 **THE COURT:** All right, sir. I'll excuse you from
10 service in the trial of this case only. You may leave the
11 courtroom at this time.

12 (JUROR NUMBER 160 LEAVES THE COURTROOM.)

13 **THE COURT:** My alternate juror -- I hope it's
14 Zaccagnini?

15 **JUROR:** Zaccagnini.

16 **THE COURT:** Ms. Zaccagnini, come on down and take a
17 seat for me in the front row. Move on down for me, please,
18 ma'am.

19 Let the record reflect that prior to swearing the jury,
20 I'm placing Alternate Number One on the jury in light of
21 what we've been told by the juror, that he felt his
22 relationship would affect his ability to be fair and
23 impartial. Any objection from the State?

24 **ASST. SOL. HASELDEN:** No, Your Honor.

25 **THE COURT:** From the defendant?

1 **MR. MATHEWS:** Yes, sir, Your Honor.

2 **THE COURT:** Counsel approach.

3 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
4 AND OUT OF THE HEARING OF THE JURY.)

5 **THE COURT:** Ladies and gentlemen of the jury, as I told
6 you, please don't listen, watch, or read anything. Please
7 be back in your jury room in the morning. Don't come to the
8 courtroom. We'll have something for you to drink, something
9 for you to eat. I'm going to serve you lunch tomorrow. Be
10 in your jury room prior to 9:30. Now, something might come
11 up that I don't know about, and it might delay us; but we're
12 going to try to start at 9:30. So I need all of you here
13 prior to 9:30.

14 I appreciate your service and your patience today. You
15 see it takes a while to get started, and I thank you for
16 that patience today on behalf of Colleton County and this
17 Court. Please report to your jury room prior to 9:30 in the
18 morning. You may leave the courtroom at this time.

19 (6:20 P.M., 7-25-11, WHEREUPON, THE JURY EXITS THE
20 COURTROOM.)

21 **THE COURT:** All right. Mr. Mathews wanted to put
22 something on the record and I think the record speaks for
23 itself. When I inquired of the juror who was number One
24 sixty, Shawn Simmons, I asked him and he said that he had a
25 relationship, and of course, I could see why he didn't tell

1 us, because of the last name "Bell", rather than the
2 witness's name, Mack. However, the Solicitor candidly
3 advised me that the sister's name was Bell, which
4 immediately made the juror know the relationship to himself.
5 When I asked him of the fact that he had that relationship
6 could he give the State and the defendant a fair and an
7 impartial trial, he felt that it would affect him and he
8 could not. For that reason, I excused the juror and put
9 Alternate Number One on the jury. Mr. Mathews, is there
10 anything else you want to add to that, because I think the
11 court reporter took down his exact words; did you not,
12 Becky?

13 **COURT REPORTER:** Yes, sir.

14 **MR. MATHEWS:** Your Honor, I don't have any problem with
15 the Court striking him, but right now, we've got -- we're
16 already into the alternates. We've got a whole jury panel
17 out there that hasn't been sworn. I'd like to get a new set
18 of twelve. If I had known this about him, I would have
19 struck him initially, and I would have configured my strikes
20 differently.

21 **THE COURT:** Well, if the State had known about it, Mr.
22 Mathews, they may have also. That's the reason we choose
23 alternate jurors. We don't start all over just because we
24 have one alternate that we have to use. So the request to
25 start over because I had to use an alternate, that's the

1 very purpose of selecting alternates. That request is
2 respectfully denied. Anything else?

3 **MR. MATHEWS:** No, sir.

4 **THE COURT:** All right, counsel, I'm not sure, because
5 of the -- I realize that you both listed a lot of witnesses,
6 but that you don't necessarily intend to call all of the
7 witnesses, which you listed out of an abundance of caution.

8 It's my intention to swear the jury first thing in the
9 morning, and Mr. Mathews, you know perfectly well why I
10 don't do that, because obviously, once I swear the jury,
11 jeopardy attaches, and Mr. Mathews, something could happen
12 overnight that would affect it. In which case, obviously,
13 that's the reason we don't do it, and you know that, and
14 that's the reason I did not do it in this case. So I'll
15 swear the jury first thing in the morning. I'll expect
16 y'all to be ready to go promptly at 9:30 in the morning.

17 Anything further from the State before we adjourn for
18 the evening?

19 **ASST. SOL. HASELDEN:** Your Honor, I would inquire as to
20 -- due to the late hour, if you would like to have the two
21 hearings in the morning?

22 **THE COURT:** No reason why we can't do that at 9:00.

23 **ASST. SOL. HASELDEN:** Yes, sir.

24 **THE COURT:** You have your witnesses here to do the
25 hearing?

1 ASST. SOL. HASELDEN: I've got one here.

2 THE COURT: But you still don't have the other one?

3 ASST. SOL. HASELDEN: I don't have the other one.

4 THE COURT: Which is why we couldn't do it this
5 afternoon. I'd be willing to do it now, but I can't do it
6 and piece-meal it. Now, my understanding is there is no
7 request for sequestration by the defendant. He withdrew the
8 request so the witnesses can remain in the courtroom. There
9 is the issue of a Jackson v. Denno hearing. I'll take that
10 up first thing in the morning and I'll expect the State to
11 have all of their witnesses concerning any alleged statement
12 that they intend to introduce against the defendant, present
13 in the courtroom at that time. Do you understand,
14 Solicitor?

15 ASST. SOL. HASELDEN: Yes, sir.

16 THE COURT: Do you understand, Mr. Mathews?

17 MR. MATHEWS: Yes, sir.

18 THE COURT: I expect everyone to be on time so we can
19 move along in a timely fashion. Once I've done the Jackson
20 v. Denno hearing, I'll swear the jury and then I'll let you
21 all give your opening statements and we will begin the
22 actual testimony in the trial of the case once I've had an
23 opportunity to rule on it. Anything else from the State
24 before I adjourn for the evening?

25 ASST. SOL. HASELDEN: None, Your Honor

1 **THE COURT:** From the defendant?

2 **MR. MATHEWS:** No, Your Honor.

3 **THE COURT:** Very well. Court's in recess until 9:00
4 a.m. in the morning.

5 (6:30 P.M., 7-25-11, WHEREUPON COURT IS ADJOURNED FOR
6 THE EVENING.)

7 (9:00 A.M., 7-26-11, COURT IS RECONVENED IN THE TRIAL
8 OF THE QUASHON MIDDLETON CASE.)

9 **THE COURT:** So that all of you know that are here that
10 are potential witnesses, in this case, there is no order of
11 sequestration, meaning that y'all can stay in the courtroom
12 during the testimony of other people. That applies to both
13 the State's witnesses and defense witnesses; neither side
14 wants to sequester witnesses in this case.

15 Now, the reason we're starting a little early this
16 morning is because I understand that the State intends to
17 introduce a statement of the defendant, which according to
18 my Assistant Solicitor from the Career Prosecution Team, she
19 doesn't think it's necessary to have a Jackson-Denno
20 hearing, but I do. And since it's my decision on any
21 statement to determine its voluntariness, I have asked her
22 to bring those witnesses here, so that Mr. Mathews, if he so
23 desires, is able to cross-examination the witnesses, outside
24 the presence of the jury, to determine the voluntariness of
25 any statement which the State intends to introduce against

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1 the defendant.

2 So we will begin with the Jackson-Denno hearing this
3 morning. Ms. Haselden, you may call your first witness.

4 **JACKSON V. DENNO HEARING**

5 **ASST. SOL. HASELDEN:** The State calls Tony Buchanan.

6 **MADAME CLERK:** Please come forward and be sworn.

7 **WHEREUPON, TONY BUCHANAN IS DULY SWORN.**

8 **MADAME CLERK:** Please have a seat on the witness stand.

9 **THE COURT:** Good morning.

10 **MR. BUCHANAN:** Good morning.

11 **THE COURT:** How are you doing?

12 **MR. BUCHANAN:** Good.

13 **THE COURT:** Make yourself comfortable. Pull up the
14 microphone. State your full name. Spell your last name for
15 Becky.

16 **MR. BUCHANAN:** Anthony Buchanan, B-U-C-H-A-N-A-N.

17 **THE COURT:** Your witness, counsel.

18 **DIRECT EXAMINATION**

19 **BY ASST. SOL. HASELDEN:**

20 Q Mr. Buchanan, who do you work for?

21 A I work for the Ridgeland Police Department.

22 Q Who did you work for before you worked for Ridgeland
23 Police Department?

24 A Colleton County Sheriff's Department.

25 Q How long were you with Colleton County Sheriff's

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1 Office?

2 A About eight years.

3 Q Were you working the Colleton County Sheriff's Office
4 in September of 2010?

5 A I was.

6 Q Did you respond out to a call at Brittlebank Road?

7 A I did.

8 Q Can you describe for me that call, please?

9 A We had a call that someone was trying to run over a
10 moped. Before we got there, we found out there had been
11 shots fired. We got a phone call that the victim was in a
12 trailer right there. I waited for my backup to come in. We
13 went inside.

14 Q And what happened once you got inside?

15 A We got inside. The defendant stated to me they were
16 trying to run him over and they were shooting at him. And I
17 asked him, I said, "Where's the gun?" And he says he don't
18 know anything about a gun, other than he was getting shot at
19 and they were trying to run him over. And upon me arriving
20 to the scene, I did see a moped that had been run over, or a
21 scooter, or however we're going to call it, had been run
22 over in the middle of the road.

23 Q When you were talking to him, was he handcuffed?

24 A No.

25 Q Had you read him his Miranda Rights?

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Direct examination of Anthony Buchanan by Asst. Sol. Haselden

1 A No.

2 Q Where was he located?

3 A He was laying on the couch in the living room.

4 Q Who all was in the room?

5 A It was myself, another gentleman, and I'm not sure who
6 the other gentleman was, and Officer Taylor. What we were
7 doing, we was making the scene safe, so the medic unit could
8 come in.

9 Q So you said there was another gentleman. Another law
10 enforcement officer?

11 A No. No, no, no. I guess it was the homeowner. It was
12 another black male inside with the defendant.

13 Q Okay. Did you threaten the defendant in any way to get
14 him to tell you?

15 A No.

16 Q Did you promise him anything?

17 A No.

18 Q Coerce him in any way?

19 A No.

20 Q Was he under any kind of physical restraint by law
21 enforcement?

22 A No.

23 Q Did he appear to be under the influence of any drugs or
24 alcohol?

25 A Not that I know of.

1 Q So you didn't offer him any promise or hope of reward?

2 A No.

3 Q At this point, why were you asking him questions?

4 A Well, when -- when we found out that they were -- that
5 -- that there was a gun involved, we wanted to make sure the
6 scene was safe for the medic unit to come in. That's the
7 only reason I was asking him questions.

8 Q And you called him a victim a minute ago. Why did you
9 call him a victim?

10 A I thought he was the victim. I mean, from the way the
11 call come out, he was the one who got run over.

12 Q Did he have any visible signs of injury?

13 A No. He was holding his leg, said his leg was hurting.

14 Q Did he memorialize his statement to you in type of
15 video or written statement?

16 A No.

17 Q What did you do after he made that statement to you?

18 A Had a medic unit come in. Officer Taylor stayed in the
19 house. , I went outside, was looking for shell casings, found
20 the shell casings and myself and Chief Deputy Stanfield
21 tapped the scene off

22 Q About how long were you inside?

23 A Five minutes. At the most ten minutes.

24 Q I have no further questions for you. Thank you.

25 THE COURT: Cross-examination?

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1 **MR. MATHEWS:** Thank you, Your Honor.

2 **CROSS-EXAMINATION**

3 **BY MR. MATHEWS:**

4 Q Officer Buchanan, did it appear that Mr. Middleton was
5 in pain?

6 A Yes.

7 Q And did the other black male in there say anything?

8 A No. Not that I can recall.

9 Q Um -- nothing further.

10 **THE COURT:** Redirect?

11 **ASST. SOL. HASELDEN:** None, Your Honor.

12 **THE COURT:** You may step down, Mr. Buchanan, sir. Call
13 your next witness.

14 **ASST. SOL. HASELDEN:** The State calls Steven Scurry,
15 Your Honor.

16 **MADAME CLERK:** Please come forward and be sworn.

17 WHEREUPON, STEVEN SCURRY WAS DULY SWORN.

18 **MADAME CLERK:** Please have a seat on the witness stand.

19 **THE COURT:** Watch your step for me. Make yourself
20 comfortable. Pull your chair up and adjust that microphone.
21 Speak into it and state your full name and spell your last
22 name for the court reporter.

23 **MR. SCURRY:** Name is Steven Scurry. Last name is
24 spelled S-C-U-R-R-Y.

25 **THE COURT:** Your witness, Counsel.

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Direct Examination of Steven Scurry by Asst. Sol. Haselden

1 **ASST. SOL. HASELDEN:** Thank you, Your Honor.

2 **DIRECT EXAMINATION**

3 **BY ASST. SOL. HASELDEN:**

4 Q Mr. Scurry, who do you work for?

5 A Colleton Fire Rescue.

6 Q How long have you been working for Colleton County Fire
7 Rescue?

8 A I started there in June of last year, just a little
9 over a year.

10 Q You worked anywhere else with fire and rescue before
11 you came to Colleton?

12 A I've been involved with EMS since 1998, in multiple
13 places across the state.

14 Q So were you on call September 28th, 2010?

15 A I was.

16 Q Here in Colleton County?

17 A Yes, ma'am.

18 Q Did you respond out to a call on Brittlebank Road?

19 A I did.

20 Q Can you describe for me the nature of that call,
21 please?

22 A The call came in as a patient needed to be checked. So
23 the dispatch information that I received was just a patient
24 needing to be checked on Brittlebank Road. We responded
25 from our station, Station 19, over in the industrial area of

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1 Walterboro.

2 Q What happened when you got there?

3 A As I arrived, law enforcement was there. I noticed
4 there was -- appeared to be crime scene tape up already,
5 which seemed to be odd to me for a patient needing to be
6 checked, because we didn't have any other information. I
7 noticed a moped, or a scooter, off on the side of the road
8 with heavy damage. I was directed to a mobile home on the
9 left side of the road. Went in and saw a patient there in
10 the living room, complaining of pain to the right leg.

11 Q Were you able to identify that patient by name?

12 A It's Mr. Middleton.

13 Q Do you see Mr. Middleton here?

14 A Yes. (INDICATING) The defendant.

15 Q He's sitting right here with his attorney, David
16 Mathews?

17 A Yes, ma'am.

18 Q And what kind of condition was Mr. Middleton in?

19 A He was -- initially, he was very upset, seemed very
20 agitated, in a lot of pain, saying that his right leg was
21 hurting. I tried to calm him down, to determine the
22 severity of his injuries. I noted the -- the right
23 outermost portion of his lower leg had some deformity to it,
24 possibly a fracture. Other than that, I didn't see any
25 other injuries on him. That's the one thing he complained

1 of.

2 Q No cuts or bruises?

3 A Nowhere else. No, ma'am.

4 Q The part of the leg that appeared to be injured, did it
5 have any exterior cuts?

6 A No exterior cuts. Just a deformity, which appeared to
7 be possibly a fracture of that right leg.

8 Q Okay. So other than appearing to be in a bunch of
9 pain, how was he acting?

10 A Again, just very -- you know, just other than just
11 being in a lot of pain, just very agitated, you know, that
12 sort of thing. And they needed me to help him. And, again,
13 I tried to calm him down, so I could do so.

14 Q What else did he say to you?

15 A I asked him what happened, how he sustained the injury.
16 And he said that he was driving a -- I'm not sure if he used
17 the word scooter or moped, but he was driving either the
18 scooter or the moped down Brittlebank and that a car came
19 behind him, firing shots at him, and they ran over him with
20 the car, or hit him with the car.

21 Q Did he say anything else to you?

22 A No, ma'am. Not that I can remember.

23 **THE COURT:** Just a moment. Shut that door, please.

24 **BAILIFF:** May I approach?

25 **THE COURT:** Yes, sir.

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1 (Off-the-record discussion.)

2 **THE COURT:** Counsel, approach.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
4 RECORD.)

5 **THE COURT:** Proceed.

6 Q Mr. Scurry, did you arrest the defendant when you were
7 talking to him?

8 A No, ma'am.

9 Q Did you have him restrained in any way?

10 A Other than putting him on a long spine board for his
11 possible injuries, other than that, no, ma'am.

12 Q Did you threaten him in any way to talk to you?

13 A No, ma'am.

14 Q Did you promise him in any way?

15 A No, ma'am.

16 Q Are you a police officer?

17 A No, ma'am.

18 Q So you didn't issue any Miranda Warnings before you
19 spoke to him?

20 A No, ma'am.

21 Q Who else was in the room with you?

22 A My partner that I was working with on the ambulance.

23 We had another volunteer fireman; he came in to assist. And

24 there was a law enforcement officer in the room, and there

25 was another gentleman that was in the house that -- I'm not

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1 sure who he was.

2 **ASST. SOL. HASELDEN:** Your Honor, I have no further
3 questions for this witness at this time. Please answer any
4 questions the defense may have.

5 **THE COURT:** Cross-examination.

6 **CROSS-EXAMINATION**

7 **BY MR. MATHEWS:**

8 Q What's your title? Agent? Officer?

9 A Firefighter/paramedic.

10 Q Firefighter/paramedic, that's a lot to say.

11 A Yes, sir.

12 Q Can I call you Mr. Scurry?

13 A Sure.

14 Q Okay. Was Mr. Middleton transported by ambulance?

15 A Yes, sir, he was. He was taken to Colleton Hospital,
16 to the ER.

17 Q Was anybody else on the scene transported?

18 A No, sir.

19 Q Was anybody else from that incident requesting medical
20 attention?

21 A No, sir.

22 **MR. MATHEWS:** Nothing further.

23 **THE COURT:** Redirect?

24 **ASST. SOL. HASELDEN:** None, Your Honor.

25 **THE COURT:** You may step down. Thank you. Call your

1 next witness.

2 **ASST. SOL. HASELDEN:** I have no further witnesses.

3 **THE COURT:** Mr. Mathews, I'll be happy to hear from you
4 now. It appears that the State intends to call these
5 witnesses concerning the statements made, both of Mr.
6 Buchanan and Mr. Scurry.

7 **MR. MATHEWS:** I don't -- I don't -- it doesn't look
8 like there was anything coerced, Your Honor, and I would not
9 ---

10 **THE COURT:** You have no objection?

11 **MR. MATHEWS:** No objection.

12 **THE COURT:** Let me just say for the record, since we
13 conducted an in camera hearing, that based on what I've
14 heard, that any statement obtained from the defendant was
15 freely and voluntarily given, without duress, without
16 coercion, without undue influence, without reward, without
17 promises, or hope of reward, or leniency, without threat of
18 injury, and without compulsion, or inducement of any kind,
19 and that such statement was a voluntary product of the free
20 and unconstrained will of the defendant. And I therefore
21 find that the statements are admissible. I make all of
22 those foregoing conclusions by a preponderance of the
23 evidence, and therefore, find that the statements are
24 admissible.

25 **THE COURT:** All right. Mr. Grant, if you'll come.

1 forward, please. Vicky, would you swear him in for me,
2 please?

3 WHEREUPON, GLEN GRANT, BAILIFF, IS DULY SWORN.

4 THE COURT: Can you state your name for the record,
5 please, sir?

6 MR. GRANT: Glen Grant.

7 THE COURT: Mr. Grant, you're a bailiff with this
8 Court.

9 MR. GRANT: Yes, sir.

10 THE COURT: This morning, I understand that you, when
11 you came to work and part of your job as bailiff was to
12 oversee a security of the jury; is that correct?

13 MR. GRANT: That's correct, sir.

14 THE COURT: And you had a juror who reported to you who
15 had some sort of problem; is that correct?

16 MR. GRANT: Yes, sir; that's correct.

17 THE COURT: And what juror was that? And what was the
18 problem?

19 MR. GRANT: Juror 166.

20 THE COURT: All right. And what was the problem of
21 Juror -- and by the way for the record, that's Loretta A.
22 Spinks, Counsel, Juror 166. What was her problem?

23 MR. GRANT: On her leaving home in the rain, she fell
24 down the steps and bruised her head up.

25 THE COURT: Did she make a request to you concerning

1 medical treatment?

2 MR. GRANT: Yes, sir.

3 THE COURT: Were there visible injuries on her?

4 MR. GRANT: Yes, sir.

5 THE COURT: And where were the injuries?

6 MR. GRANT: To her head, sir.

7 THE COURT: She requested that she be taken to the
8 hospital emergency room.

9 MR. GRANT: Yes, sir.

10 THE COURT: Counsel, it appears that I have a juror
11 that fell this morning at home and still came in. She had
12 visible injuries to my bailiff, and has requested that she
13 be transported to the emergency room. It is my
14 understanding that neither one of you have any objections to
15 using the additional alternate juror; is that correct, from
16 the State?

17 ASST. SOL. HASELDEN: That's correct.

18 THE COURT: From the defendant.

19 MR. MATHEWS: Your Honor, I thought about this and I
20 did just say that and ---

21 THE COURT: Yes, sir. You did just tell me that at the
22 bench, Mr. Mathews.

23 MR. MATHEWS: I did. My only concern is what I said
24 yesterday regarding the panel, generally. The jury hasn't
25 even be sworn yet and we don't have any alternates left. I

1 don't expect it to be a long problem. I was concerned,
2 initially, because of my Batson Motion, which I understand -
3 --

4 **THE COURT:** Which you withdrew ---

5 **MR. MATHEWS:** Which I ---

6 **THE COURT:** --- Mr. Mathews.

7 **MR. MATHEWS:** --- did withdraw.

8 **THE COURT:** And that's the reason we have alternates,
9 as I told you yesterday, is for emergencies like this,
10 or for conflicts.

11 **MR. MATHEWS:** Yes, sir. That's --- I just ---

12 **THE COURT:** Do you have any objection to using this
13 alternate; yes or no? Because you told me you did not.

14 **MR. MATHEWS:** No. No objection.

15 **THE COURT:** Be seated. Thank you, Mr. Grant. Bring me
16 the jury.

17 **ASST. SOL. HASELDEN:** Your Honor, it's my understanding
18 that Mr. Mathews does have an objection to a photo, as to
19 the 911.

20 **THE COURT:** Well, do we need to take that up now
21 because I'm ready to move. I'm not going to stop for that,
22 unless it's the first witness.

23 **ASST. SOL. HASELDEN:** Well, there's the 911 call; so as
24 to the first witness. He wanted to put some stuff on the
25 record.

1 **THE COURT:** Well, he can object contemporaneously. I
2 don't have to send the jury out for that; do I? Because I'm
3 not going to do that on every objection.

4 **ASST. SOL. HASELDEN:** No, that's fine, Your Honor.

5 (9:30 A.M., 7-26-11, WHEREUPON, THE JURY ENTERS THE
6 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

7 **THE COURT:** Good morning, Mr. Beach. Good morning,
8 ladies and gentlemen. Good morning, ladies and gentlemen.
9 Thank you for being here in a little inclement weather,
10 although the rain is much needed, this morning. Thank you
11 for being on time. We've been working, ladies and
12 gentlemen. Mrs. Benton, you are now on the jury.
13 Unfortunately, I understand that one of my jurors this
14 morning, Mrs. Spinks, had a fall and needed medical
15 treatment. So she's been taken to the emergency room. So
16 Ms. Benton, you're now on the jury.

17 Madame Clerk, would you please swear the jury?

18 **MADAME CLERK:** Ladies and gentlemen of the jury, please
19 stand to be sworn. Please raise your right hand.

20 WHEREUPON, THE JURORS ARE DULY SWORN.

21 **THE COURT:** All right. Ladies and gentlemen, you've
22 been sworn now. We're going to begin the trial of this case
23 in just a few moments. I'm going to tell you a little bit
24 about how we're going to proceed and I'm going to tell you a
25 little bit about the procedure that we use, because you want

1 you to have a better understanding of what may be happening
2 during the course of the trial.

3 First thing I want you to understand, we, of course,
4 have rules that we all have to follow in the courtroom. And
5 as I told you last night before you went home, one of the
6 rules is that you not discuss the case with others,
7 including your fellow jurors, until I instruct you to do
8 that. It's very important that each of you keep an open
9 mind and not decide the case until the entire matter has
10 been submitted to you with my -- and that's why my charge on
11 the law comes at the end. I'm going to explain that to you
12 in just a moment.

13 It is also very important that you not read or listen
14 to any news reports about the case, that you not use a
15 computer or a cell phone or any other electronic device with
16 communication capability to try to do any research about the
17 case, or any witness or any lawyer or any court officer or
18 any party, or try to obtain on a computer any news account
19 of the case. Any information that even though you might
20 think it might help you through your own independent
21 research, any information that you would try to obtain
22 through any juror research on any topic, even though you
23 might think helpful in deciding the case is absolutely
24 strictly forbidden. So you may not communicate with anyone
25 about this case on your cell phone, through email,

1 Blackberry, iPhone, text messaging, Twitter, through any
2 blog or a website, including any internet chat room or by
3 way of any other social networking website, which would
4 include Facebook, My Space, Linked-In and You Tube, ladies
5 and gentlemen. All of that is taboo.

6 You may wonder why we're so serious about that. I'll
7 tell you why. Not only is it improper for you to consider
8 something that each side doesn't know, but let me give you
9 an example of how it can become a real problem. I had a
10 jury deliberate, not in this county, and one of the jurors
11 said -- they were talking about a medical issue. And the
12 juror said, "Well, my brother's a doctor. I'll just text my
13 brother and ask his opinion." Obviously, that's improper.
14 That's not in the evidence and you must decide the case
15 solely upon the evidence introduced in the courtroom when
16 both sides are present.

17 So please, I ask you, don't read, watch, or listen to
18 any newspaper account and don't do any kind of juror
19 research on any electronic device about the case, but decide
20 the case solely upon evidence introduced during the trial of
21 the case when both sides are present, with the right of
22 cross-examination.

23 Now, before we begin this trial, one of the things that
24 you're going to probably find surprising is, I want to tell
25 you that this trial will be different from what you might

1 expect. You know, most people don't have the chance to
2 attend an actual court session, as each of you are doing
3 right now. And you may think, most people do, from watching
4 television, such shows as CSI and Cold Case and things of
5 that nature, and most people are going to a movie or reading
6 a book, that trials are always full of high drama and
7 intense action and riveting and entertaining circumstances.
8 And that someone in a white coat's going to walk through the
9 door and sit down on the witness stand and explain to you
10 through scientific theory everything that happened.

11 You know, ladies and gentlemen, an actual trial, unlike
12 a movie or a television show or a book, an actual trial, is
13 not for entertainment. An actual trial is a search for the
14 truth in an effort to make sure that justice is done between
15 the parties, before the Court. Searching for the truth and
16 making sure that justice is done is often slow. It is often
17 repetitive. It is often deliberate. It is the exact
18 opposite of what you may have seen on television or seen in
19 a movie, or read in a book.

20 This courtroom, ladies and gentlemen, all 188 years
21 old, is a place of honor. It is dedicated to the protection
22 and the preservation of citizen's rights through what many
23 people have called the greatest justice system in the entire
24 world.

25 The attorneys that will be appearing before you, ladies

1 and gentlemen, they're advocates for the parties they
2 represent, both the State of South Carolina and the
3 defendant. But first and foremost, even before they are
4 advocates for their respective clients, the attorneys are
5 officers of this court. And as officers of this court, the
6 attorneys took an oath, just like you just did. The
7 attorneys took an oath and they swore in that oath that they
8 would uphold the integrity, that they would uphold the
9 fairness of our judicial system.

10 And the attorneys are here, ladies and gentlemen of the
11 jury, to help you in a search for the truth. So you should
12 expect the attorneys to be professional. You should expect
13 the attorneys to be prepared, to be competent, and you
14 should expect the attorneys to be ethical in the discharge
15 of their duties to their client.

16 Now, I want each of you now to remember that my deputy
17 clerk, Vicky Syfrett, just gave each of you an oath, just
18 like the attorneys and I have taken an oath. And in that
19 oath, each of you said that you would try this case and that
20 you would reach a fair, and that you would reach a just,
21 verdict. So you as jurors, just like the attorneys and
22 myself, you as jurors are also expected to be professional,
23 to be reasonable, and to be ethical in the discharge of your
24 duty as jurors.

25 Even before we begin this trial, I want to thank each

1 and every one of you for accepting this important
2 responsibility of jury service. I told you, without you,
3 ladies and gentlemen, justice cannot be accomplished in our
4 system. So I thank you for your service as jurors and for
5 your contribution today to our justice system. Without you,
6 the jury, justice cannot be accomplished in the courtroom.
7 And I thank you for that service.

8 Now, ladies and gentlemen, the case that we're going to
9 try is a case of the State of South Carolina v. Quashon D.
10 Middleton. It's the State of South Carolina v. Mr.
11 Middleton, and Mr. Middleton is charged by these three
12 pieces of paper, which we call indictments, which are filed
13 with this court. He's charged with the crime of attempted
14 murder in two indictments and with a crime of possession of
15 a weapon during the commission of a violent crime in the
16 third indictment. So there are two charges of attempted
17 murder in the indictments, and one charge of possession of a
18 weapon in the third indictment.

19 And elements of those crimes, even though one is the
20 same, I'm going to explain to you in my charge to you on the
21 law at the conclusion of the case. For right now, though,
22 you should understand that the indictments -- which my law
23 clerk's holding, Mr. Beach, just like I told you; he'll be
24 looking for you -- those indictments are simply the charge
25 or charges by which the case is brought into this Court of

1 General Sessions, and that the indictment is not in any
2 since evidence of any of the allegations contained in the
3 indictment.

4 Now, the defendant Quashon Middleton, has pled "not
5 guilty" to the three indictments. The State of South
6 Carolina, therefore, has the burden of proving each of the
7 essential elements that I'm going to charge you about at the
8 conclusion of the case in the indictment, beyond a
9 reasonable doubt. And it will be your duty, ladies and
10 gentlemen, to decide, as jurors, at the conclusion of the
11 case, whether or not the State has met that burden.

12 It is your solemn responsibility as jurors to determine
13 the guilt or the innocence of the defendant, and your
14 verdict must be based solely on the evidence as it is
15 presented to you in this trial and on the law, as I instruct
16 it to you to be during the trial and at the close of the
17 trial in my charge to you on the law, at the conclusion of
18 the case.

19 Now in just a minute, the Assistant Solicitor will make
20 what is called an opening statement in which she will
21 explain to you the issues in this case, or at least what she
22 contends, as an advocate for the State of South Carolina, to
23 be the issues in this case. And following the opening
24 statement by the Assistant Solicitor, the attorney for the
25 defendant will make an opening statement.

1 Now I want to tell you so you'll understand right now,
2 that what the attorneys tell you at this time in their
3 opening statements, what the attorneys suggest to you in the
4 questions that they're going to ask the witnesses -- and we
5 have certain rules about how questions can be asked, which I
6 will enforce during the trial of this case -- but what the
7 attorneys say in opening statements, what the attorneys
8 suggest to you by their questions, what the attorneys argue
9 to you at the conclusion of the case in their closing
10 argument, is not evidence in the case.

11 The attorneys are advocates for the parties they
12 represent. And although they're here to help you, and they
13 took an oath to be ethical and to discharge their duties,
14 what they tell you is not evidence in this case. I want you
15 to listen to them. They've worked hard to prepare the case
16 for trial. But what they tell you is not evidence.

17 Now what is evidence? Because I told you, you must
18 decide this case as a juror, based on evidence. The evidence
19 in this case will be presented to you by testimony from the
20 witness stand, sworn testimony from that witness stand. Or
21 evidence may take the form of an exhibit, such as a
22 photograph, or a model, or something like that. But as to
23 any such exhibit, you will first hear me say that it is in
24 evidence. That means it's available to you for your
25 consideration and during your deliberations at the

1 conclusion of the case.

2 Evidence may also take the form of what we call a
3 stipulation, an agreement, an understanding between the
4 parties that a fact is true, and therefore not necessary to
5 be proven by a party. So evidence may be sworn testimony.
6 It may be some exhibit, or it may even be a stipulation. It
7 may take several forms during the trial of the case.

8 Now, in the consideration of this evidence, you should
9 remember at all times that you and you alone, the twelve of
10 you, under the Constitution of the State of South Carolina,
11 are the sole judges of the facts in this case. And the same
12 law that makes you the sole judges of the facts, makes me
13 the sole judge of the law. I cannot invade your province
14 and tell you, suggest to you, or even comment to you about
15 what the facts are in this case. And you should not invade
16 my province and differ with me about what the law is in this
17 case.

18 Everything that I say during the course of this trial -
19 - you see Becky right below me right now. She's got her
20 mask up -- everything that I say during the course of this
21 trial is being taken down by my court reporter, Becky Hill.
22 And if I make a mistake as to the law, to the detriment of
23 either party, they can appeal the case to an Appellate
24 Court. And if the Appellate Court agrees that I've made a
25 mistake on the law, they'll send the case back for a new

1 trial.

2 So don't you worry, ladies and gentlemen of the jury,
3 about whether or not I have told you the law correctly.
4 That is somebody else's worry; that is not your concern.
5 Your job is to take the law as I give it to you and apply it
6 to the facts, as you find them to be, based on evidence
7 introduced during the trial of the case.

8 And that means testimony from the witness stand, sworn
9 testimony, any exhibit which has been introduced into
10 evidence during the trial of this case and, if it does
11 occur, any stipulation of a fact which might occur during
12 the trial of the case.

13 And after doing that, ladies and gentlemen, if you base
14 your decision solely on the evidence and listen to my charge
15 on the law at the conclusion of the case, you will then
16 render your verdict at the conclusion of the case, a true
17 and a just verdict, under that oath which each of you just
18 took from the Deputy Clerk of Court, as jurors.

19 Now, from time to time during the course of this case,
20 you going to probably hear one of the attorneys say
21 something like, "Your Honor, I believe we have a question of
22 law," or "Your Honor, may be discuss a matter of law with
23 you? Or I myself might ask you -- I try to minimize this,
24 believe me, because I don't want to send you back and forth
25 anymore than necessary -- I might ask you to go to your jury

1 room, to excuse you from the courtroom while the attorneys
2 and I discuss, as I had to do yesterday during the selection
3 of the jury, a matter of law.

4 Now the reason for this, I told you, is not that we're
5 trying to hide anything from you. The reason for this is
6 exactly what I just told you about our roles. You are the
7 sole judges of the facts; I'm the sole judge of the law.
8 Sometimes when I'm discussing a matter of law with the
9 attorneys, it may be necessary for me to make a comment to
10 the attorneys about some of the facts in the case, in
11 connection with ruling whether or not a particular piece of
12 law applies to this case.

13 Now, I'm not supposed to tell you, the jury, what I
14 think the facts are, or suggest to you what the facts are or
15 make any comment to you about what the facts are. So the
16 practice in this state is to try to either take it up out of
17 your hearing at the bench or sidebar, or to excuse you from
18 the courtroom while any such discussions like that take
19 place, so that you will not in any way be influenced by
20 anything that I might say or do in connection with the facts
21 in this case. And let me tell you again that you and you
22 alone, the jury, the twelve of you, are the sole judges of
23 the facts in this matter. And if you should gather from
24 anything that I might say or do during the course of this
25 trial that I have any opinion as to the facts, please erase

1 that from your mind, ladies and gentlemen, because you and
2 you alone are the sole judges of the facts in this case.

3 Now, how do you determine, as a juror, what the true
4 facts are based on evidence introduced during the trial of
5 the case? Ladies and gentlemen, you will, of necessity,
6 have to pass upon the credibility, which simply means the
7 believability, of the witnesses who are going to take this
8 witness stand.

9 By way of illustration: It will be my responsibility
10 to rule as a matter of law whether or not certain testimony
11 is admissible at all or not. But once I've allowed the
12 testimony to be admitted into evidence, whether or not you
13 as a jury believe that testimony is solely a matter for you
14 to determine. And in passing upon the credibility or the
15 believability of the witnesses, you have the right, as a
16 jury, to take into consideration the interest of any
17 witness, the bias, if any, of any witness, the prejudice, if
18 any, of any witness, the opportunity for the witness to have
19 observed the matters or things about which the witness,
20 which he or she may testify. You may even taken into
21 consideration, ladies and gentlemen, what we call the
22 demeanor of the witness, the appearance of the witness while
23 the witness is on the witness stand. Anything that is in
24 evidence, you as a jury have the right to consider in
25 passing upon the credibility, or the believability, of the,

1 witnesses who will testify during the trial of this case.

2 And that means, Mr. Foreman, and that means, ladies and
3 gentlemen of the jury, that it is your duty under your sworn
4 obligation and oath which you just took as jurors to pay
5 close attention to the witnesses, to observe the witnesses,
6 to listen to the witnesses. Don't let your thoughts wonder,
7 ladies and gentlemen, but give strict attention to the
8 testimony from the witness stand, so that at the conclusion
9 of all the testimony after the closing arguments of counsel
10 and the charge on the law by me, by the Court, you will be
11 in a position from listening, from observing, to determine
12 what the true facts, based on evidence introduced during the
13 trial of the case, and apply the law as I give it to you at
14 the conclusion of the case, to the facts as you find them to
15 be from listening to the evidence that's going to be
16 presented during the trial of the case, and thus at the end
17 render a true and a just verdict.

18 Now, you must not consider anything that you may have
19 read or heard about this case outside this courtroom,
20 whether before or during this trial. And until this case is
21 submitted to you, you must not discuss it with anyone, not
22 even your fellow jurors or members of your own family. And
23 after I submit this case to you at the conclusion of the
24 case, you must discuss it only in your jury room with your
25 fellow jurors. It is important that each of you as a juror

1 keep an open mind and not decide the case until the entire
2 matter has been submitted to you under my instructions.

3 Why do we emphasize that? Because it may be the very
4 last thing in this trial that impresses you. It may be the
5 last thing in this trial that persuades you. So it is
6 important that you listen and not decide the case until the
7 entire matter has been submitted to you under my
8 instructions.

9 It will be your added duty, Mr. Beach, to preside in
10 the jury room as the foreman. And it will be your added
11 duty to be the jury spokesperson if that need arises during
12 the trial out here in the courtroom.

13 It will also be your duty to write the jury's verdict.
14 I'm going to prepare form and I'll explain that to you in my
15 charge to you on the law. And Nick's going to be looking
16 for you so that whatever you write on my verdict form, he
17 wants you to write on the indictment and sign your name
18 before you leave at the conclusion of the case.

19 So it will be your duty as a foreman to write the
20 jury's verdict. But I will give you instructions about how
21 to fill out the verdict form at the conclusion of the case.

22 Now, a couple housekeeping matters, and we're ready to
23 start. If at any time a member of my jury cannot hear,
24 raise your hand for me. If have the ability to turn up the
25 amplification of the microphones here. Attorneys love to

1 walk away. We give them a microphone at that Rostern.. I
2 want y'all to look at it over there. And I encourage them
3 to use it, because they like to turn around and talk with
4 one another. They like to talk to people and they turn
5 their back to you. And they can't help it; they're working
6 on the case, but it makes it hard for the court reporter.
7 You notice where she's sitting. She's sitting so she can
8 turn her head and look at the witness stand. She can look
9 right at me. She can look right at the attorneys. You're
10 sitting on the side of the courtroom in closest proximity to
11 the witness stand, so you can observe the witnesses. You
12 can listen to the witnesses. But if you can't hear
13 something that one of the attorneys says or a witness says,
14 raise your hand.

15 I'll be watching all twelve of you throughout the trial
16 of the case. If an exhibit is introduced into evidence and
17 you can't see the exhibit, raise your hand. I want all
18 twelve of my jurors to be able to hear and to see at all
19 times throughout the trial of the case.

20 Now, Mr. Foreman, we do not normally allow jurors to
21 ask questions here in the courtroom. If at any time,
22 however, a member of the jury has a question, here is the
23 procedure we have to follow. If you are not already in your
24 jury room, you will have to retire to your jury room. You,
25 as the foreman, will write the question on a piece of paper.

1 You will give it to my bailiff; he'll bring it out to me. I
2 will then have to rule as a matter of law, whether or not
3 the question can or cannot be answered, just as I would any
4 question asked by either one of the attorneys during the
5 trial of the case.

6 Now, I've tried it both ways, ladies and gentlemen, I
7 ask that you do not take written notes. You probably wonder
8 why. I'm a note-taker. I keep a pen in my hand. I've got
9 a big old pad right here that I'm writing notes on
10 constantly to remind myself. But I ask that you don't take
11 written notes. Why? Because I've found that if a juror
12 written note-taker makes a mistake in the written notes, the
13 notes can be harmful, rather than helpful in your jury room,
14 once deliberations begin.

15 The time-tested system is for each of you to listen and
16 listen carefully. Now, we're making an audio recording of
17 witnesses' testimony. So if you're worried about that, we
18 can play back an audio recording of the witnesses'
19 testimony, if necessary.

20 We do not allow cell phones, beepers in the jury room
21 or at any time while you're on jury duty. The attorneys
22 know, I'm required to confiscate -- I love to tell this
23 story, since we are so strict about this rule. And my
24 attorneys know this, although they weren't in the courtroom
25 when this happened, but my law clerk -- I got a brand new

1 phone, it's on vibrate, it won't ring. But the Supreme
2 Court has a rule that if a phone goes off in the courtroom,
3 I'm to confiscate the telephone or the beeper; and they want
4 it enforced strictly because of the interference. And
5 people think now, no matter where -- I see people using cell
6 phones in church; it amazes me.

7 And anyway, I walked out from the bench, ladies and
8 gentlemen. I like to tell this story about myself because
9 my sons, who are both in law school, think this is an
10 hilarious story. Nick was right behind me, where he is
11 right now; phone goes off in the courtroom. And I say, "All
12 right, whose phone is it? Going to have to bring it to my
13 bailiff." Nobody said a word. Phone rings second time, and
14 my law clerk grabs me from behind and says, "It's your
15 phone, Judge." I can promise you, I didn't know at that
16 point with a new phone, that when I plugged my phone into
17 the charger, it switched it automatically from vibrate to
18 ring. I learned that little trick. And so I check my
19 phone.

20 Just so you know, I have a color system on my phone and
21 as long as it's orange right here, I know it's on vibrate.
22 And I look at it every time now before I walk out into the
23 courtroom. So, please, if you have a cell phone or beeper,
24 please don't use it or bring it with you while you're on
25 jury duty.

1 Now, I do not intend that you or anyone else should
2 construe what I've just said to you. We have an order that
3 we do everything. And the attorneys know the order and I'm
4 here to enforce the rules. The attorney for the State will
5 give you an opening statement first. The State has the
6 burden of proof; therefore, the State will go first and
7 present its evidence first. And then if the defendant
8 wishes to do so, defendant will present its evidence. We
9 follow the order and the rules in the courtroom.

10 I don't want you to construe my remarks to you that
11 I've just made as a charge on the law in this case, because
12 it is not that. The reason I don't charge the law in the
13 beginning, ladies and gentlemen is I haven't heard the
14 evidence, just like you. I want to have an open mind. And
15 I will have to decide after all the evidence what law to
16 charge you at the conclusion of the case; and I'll be doing
17 that.

18 Throughout the trial, I'll be working on that charge,
19 as I listen to the evidence, along with you. So I will
20 charge you the law that applies to this case at the
21 conclusion of the trial of this case.

22 These remarks that I've made to you have been merely an
23 attempt on my part to briefly explain to you some of the
24 procedure that we will follow in the trial of the case, so
25 that you, hopefully, will have a better understanding as to

1 what may be happening from time to time.

2 But nevertheless, in order to preserve everyone's
3 rights as to anything that anything that I have said, I will
4 give the parties an opportunity to object to anything I have
5 said, if they have any such objections. Any exceptions or
6 objection from the State?

7 **ASST. SOL. HASELDEN:** No, Your Honor.

8 **THE COURT:** From the defendant?

9 **MR. MATHEWS:** No, sir.

10 **THE COURT:** Ladies and gentlemen of the jury, we will
11 now begin the trial in the case. I ask that you give the
12 attorneys your careful consideration. Solicitor?

13 **ASST. SOL. HASELDEN:** May it please the Court?

14 **THE COURT:** Yes, ma'am.

15 **ASST. SOL. HASELDEN:** Mr. Mathews.

16 **OPENING STATEMENT**

17 **ASST. SOL. HASELDEN:**

18 This is a case about a man emptying a gun into a car
19 with two people in it. The car that was stopped at a school
20 bus stop sign. The school bus that was dropping off three-
21 to-five year-olds in a neighborhood in the middle of the
22 afternoon, approximately ten to fifteen feet away from this
23 bus.

24 On September 28th of 2010, Stephanie Mack and Ryan
25 Stephens were in Stephanie's car, driving down Brittlebank

1 Road. They stopped at a school bus stop sign. They were
2 approximately ten to fifteen feet away from it, facing the
3 bus. When all of a sudden, from behind, Quashon Middleton,
4 the defendant, drives up on a moped and empties a gun into
5 their car, striking the car repeatedly, shattering the
6 glass.

7 Ryan jumps from the passenger's seat where he was
8 sitting, on top of Stephanie, and mashed the gas to try and
9 get them out of there. In doing so, he struck the moped and
10 the defendant. The defendant got up and went into a house
11 close by. Stephanie and Ryan proceeded on to Ryan's house a
12 little ways away, where they called 911. Fortunately, Ryan
13 and Stephanie weren't hit, and fortunately, nobody on that
14 bus was hit by any ricochet.

15 Now, he was actually so close to that bus that two of
16 the witnesses you're going to hear from today or tomorrow
17 were on the bus, the bus driver, Mr. Mincey, and the bus
18 aide, Ms. Salley. These children are so young. They have
19 to have two adults on the bus at all times.

20 Once officers got to Ryan's house, where Ryan and
21 Stephanie had gone, took pictures of the car, processed the
22 scene, as we call it, and talked to the victims, Ryan and
23 Stephanie. Ryan was able to give a very good physical
24 description of the defendant. And Stephanie, although she
25 was pretty hesitant at first, because she was terrified,

1 finally gave officers the name of the shooter, because she
2 recognized him.

3 Meanwhile, EMT, Colleton County Fire-Rescue, and more
4 officers responded back to Brittlebank Road, [REDACTED]
5 [REDACTED], specifically, which is where the defendant
6 had limped into and where the moped was still out on the
7 street. Officers secured the scene and EMTs actually had to
8 treat Mr. Middleton on scene for a broken leg, transported
9 him to the hospital.

10 Conveniently, the house that he limped into, [REDACTED] was
11 his cousin and his aunt's house, John and Miranda Varner.
12 You're going to hear from them. John Varner actually called
13 911. You're going to hear about that.

14 Now, we're here today because the Judge already told
15 you, there are three charges. Two counts of attempted
16 murder for the attempt to kill Ryan and the attempt to kill
17 Stephanie, and possession of a weapon during the commission
18 of a violent crime. This just means that he was in
19 possession of the firearm that was used in this crime.

20 Like the Judge already told you, nothing I'm telling
21 you is evidence. That's why we're going to put up a bunch
22 of witnesses, and you might see some other forms of
23 evidence, such as 911 calls, photographs, any other
24 exhibits. And you're going to hear from a bunch of
25 witnesses, like the EMT's I've already told you about, and

1 law enforcement. You're going to hear from the victims.
2 You're going to hear from the folks on the bus. And it's
3 going to be a little overwhelming. It's going to move at
4 times pretty quick and other times kind of drag.

5 So all I can ask you to do is pay close attention to
6 all the little details, to what the witness are like, so
7 that at the end of the trial, you can return a true and just
8 verdict, a verdict that's guilty on these charges. Thank
9 you.

10 **THE COURT:** Mr. Mathews.

11 **MR. MATHEWS:** Thank you, Your Honor.

12 **OPENING STATEMENT**

13 **BY MR. MATHEWS:**

14 Mr. Foreman, ladies and gentlemen of the jury, I'm Dave
15 Mathews. You heard me say that earlier. I'm from the
16 Public Defender's Office, and that's my client, Quashon
17 Middleton.

18 A lot of the things that you'll hear today are not
19 going to be in serious dispute. One of the things that's
20 very clear, on September 28th, 2010, a Honda was stopped,
21 facing a school bus, and a scooter came up behind it and was
22 ridden by Quashon Middleton, rode up behind it and by the
23 side of it and then around it and shots were fired. The
24 Honda then ran into the scooter. Quashon limped off into
25 his cousin's house and the Honda rode off. The Honda also

1 left the scene.

2 An ambulance responded to treat Quashon. No ambulance,
3 nobody treated either Mr. Stephens or Ms. Mack. Officer
4 Buchanan appeared on the scene and Detective Scott and
5 Detective Inabinett, Detective Thomas. Highway patrolman
6 was out there; Andy Strickland was out there. A bunch of
7 folks were out there. Detective Scott took some gunshot
8 residue samples off of Quashon, and, I think, actually
9 Officer Buchanan or Detective Scott or Detective Inabinett
10 took it off of Quashon. Detective Scott took gunshot
11 residue samples from the hands of both Ms. Mack and Mr.
12 Stephens. Those were sent off to SLED and the results
13 should be available.

14 Pictures were also taken, both of the car and of the
15 scene, and those are important, too, because they give you
16 an idea. Listen carefully of the details because people
17 don't see things correctly. They see things differently;
18 they forget things; and sometimes people lie. You might
19 find that a bunch of people are not telling the truth. But
20 the officers, they have no reason to lie in this case. They
21 took pictures, they took measurements, and they took gunshot
22 residue samples.

23 Take a look at those, consider all of them. And also
24 consider when you look at this, among the things that the
25 Judge will charge you at the end, each element has to be

1 met. One of the elements of this case, the State may have a
2 difficult time, may not, will not be able to prove is an
3 intent to kill, and you'll find that from based on the
4 evidence that you will be presented.

5 Listen carefully to all of it. Listen carefully;
6 consider it, along with things that you know. And keep your
7 eye on the ball, because there will be a lot of side issues
8 that don't have anything to do with the specific charges in
9 this case. Thank you.

10 **THE COURT:** Counsel, approach.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
12 AND OUT OF THE HEARING OF THE JURY.)

13 **THE COURT:** Call your first witness.

14 **ASST. SOL. HASELDEN:** State calls Kelly Banks.

15 **MADAME CLERK:** Please come forward and be sworn.

16 WHEREUPON, KELLY BANKS IS DULY SWORN.

17 **MADAME CLERK:** Please have a seat on the witness stand
18 and state your full name for the record. Spell your last
19 name, please.

20 **THE COURT:** Speak up for me, so all of my jurors can
21 hear you out there, okay? Pull that chair up a little bit.
22 Speak into that mic. State your full name and spell your
23 last name for the court reporter.

24 **MS. BANKS:** Kelly Banks, B-A-N-K-S.

25 **THE COURT:** Can you hear back there? Speak up for me

1 now; they need to be able to hear. Your witness, counsel.

2 **DIRECT EXAMINATION**

3 **BY ASST. SOL. HASELDEN:**

4 Q Ms. Banks, who do you work for?

5 A Colleton County Animal and Environmental Control.

6 Q Have you always worked for Colleton County Animal and
7 Environmental Control?

8 A No, ma'am.

9 Q Who did you work for before you went to work for them?

10 A Colleton County Sheriff's Office.

11 Q In what capacity?

12 A In communications.

13 Q And how long did you work in communications?

14 A Probably six years.

15 Q Were you working in communication in September of 2010?

16 A Yes.

17 Q And what ---

18 **THE COURT:** Just a moment. Yes, sir.

19 **MR. MATHEWS:** Your Honor, I have a matter of law.

20 **THE COURT:** Counsel, approach.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
22 AND OUT OF THE HEARING OF THE JURY.)

23 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
24 jury, I'm going to need to take up a quick matter of law.
25 Please retire to your jury room. I'll be right back with

1 you. Please do not discuss the case.

2 (10:20 A.M., 7-26-11, WHEREUPON, THE JURY EXITS THE
3 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
4 RECORD.)

5 **THE COURT:** All right. Let the record reflect that I
6 met with the attorneys this morning before we began the
7 Jackson-Denno hearing. And I was advised that there would
8 be an objection on hearsay grounds to the introduction of
9 anything on the 911 tape. I pointed out with counsel that
10 under the Rules of Evidence, Rule 803, Subsection 1, which
11 is present sense impression, Subsection 2, excited
12 utterance, or possibly Subsection 8, which is public records
13 and reports, that there may be exceptions recognized under
14 the Rules of Evidence to the hearsay rule, which are
15 delineated in 803 as hearsay exceptions, where the
16 availability of the declarant is immaterial. And those are
17 not excluded by the hearsay rule, even though the declarant
18 is available as a witness or not.

19 I told counsel, however, a predicate would have to be
20 laid in order for the Court to make a ruling as a matter of
21 law, whether or not any hearsay exception would apply in
22 order to permit the admissibility.

23 Mr. Mathews has now stated an objection at the bench,
24 that he believes this witness, Ms. Banks, that the State
25 will be eliciting from her, since I've been informed she's a

1 former dispatcher with the Colleton County Sheriff's
2 Department, information from a 911 tape. Therefore, rather
3 than send the jury out more than once on this issue, this
4 will be the time to argue it. Solicitor, you may proceed.

5 **ASST. SOL. HASELDEN:** Your Honor, would you like me to
6 just continue questioning?

7 **THE COURT:** Ask questions of the witness, so I can make
8 a determination whether -- I thought I made that clear.

9 **EXAMINATION CONTINUES:**

10 Q Ms. Banks, you said you worked for communications; is
11 it also known as dispatch?

12 A Yes.

13 Q And what was your job there at dispatch?

14 A Communications officer, take 911 calls, dispatch fire,
15 police.

16 **THE COURT:** Vicky, could you turn that up? You got to
17 speak up for me. I want these people in the back to hear
18 you.

19 (VOLUME ON MICROPHONE IS TURNED UP.)

20 **THE COURT:** All right. Go ahead.

21 Q So do you receive calls as well?

22 A Yes.

23 Q And what happens when people call in?

24 A We get their information and send out whatever agency
25 we need to, whether it be police, fire, EMS.

1 Q And are these calls recorded?

2 A Yes.

3 Q Are they kept somewhere?

4 A Yes.

5 Q Where are they kept?

6 A Usually on the lieutenant's computer.

7 Q Okay. Does anybody have access to alter those calls?

8 A No.

9 Q And did you receive two phone calls on September 28th
10 of 2010 regarding a shooting out at Brittlebank?

11 A Yes.

12 Q Do you remember who called?

13 **MR. MATHEWS:** Your Honor, I know the jury's not here.

14 **THE COURT:** Jury's not here, and I'm going to give you
15 a chance. Let her ---

16 **MR. MATHEWS:** Okay.

17 A I talked to the bus driver first, Mr. Mincey. And then
18 I called back the second time to speak to Ms. Salley.

19 Q Okay. And was that call recorded after you -- or those
20 calls; were those calls recorded as you talked to them?

21 A They were recorded while I was talking to them.

22 Q So it actually happens right then?

23 A Yes.

24 Q Okay. And then were those calls downloaded?

25 A The only person that had access to it was the

1 lieutenant and the second sergeant in charge.

2 **ASST. SOL. HASELDEN:** Your Honor, may I approach?

3 **THE COURT:** You may.

4 **ASST. SOL. HASELDEN:** Thank you.

5 Q Ms. Banks, do you recognize this object?

6 A Yes.

7 Q What is that object?

8 A It's a CD of the call I took, both calls.

9 Q And how do you know that's the same CD?

10 A It's my voice on the recording and it's who I talked to
11 that day.

12 Q So have you listened to that CD?

13 A Yes. And I initialed it.

14 Q And you initialed that CD?

15 A Yes.

16 Q Does that CD and the calls thereon represent a truthful
17 and accurate depiction of the calls that you received, then,
18 on September 28th, 2010?

19 A Yes.

20 Q It hasn't been altered?

21 A No.

22 **ASST. SOL. HASELDEN:** Your Honor, at this time, I would
23 publish, or ask that this be moved into evidence.

24 **THE COURT:** You've done all the predicate you want at
25 this point; is that right?

1 **ASST. SOL. HASELDEN:** A moment's indulgence. I would
2 lay no other predicate questions at this time, Your Honor.

3 **THE COURT:** All right, Mr. Mathews. I understand
4 there's an objection. I'll be happy to hear from you.

5 **MR. MATHEWS:** Thank you, Your Honor. I've heard the
6 CDs. I know what they reveal. There's nothing -- I suppose
7 really, to get into it, we probably ought to listen. I can
8 tell you that ---

9 **THE COURT:** Well now, I've understood the objection was
10 hearsay, Mr. Mathews. So the content of it, you're telling
11 me that there is someone else on the tape speaking to her,
12 and that that's your objection. So the content's not the
13 issue here. What you told me your objection was, was
14 hearsay.

15 **MR. MATHEWS:** Yes, sir.

16 **THE COURT:** And I'm willing to listen to you on that.

17 **MR. MATHEWS:** Thank you, Your Honor. Your Honor, as
18 far as the predicate, I'm not aware of it. In fact, if
19 there is some present sense impression, I missed it, and
20 maybe it's something obvious. But I'm not aware of any
21 present sense impression saying ---

22 **THE COURT:** Well, let me refresh your memory. You're
23 right that there is a present sense impression and an
24 excited utterance. There's also exception Number 5, which
25 is a recorded recollection. And there is also the record of

1 regularly conducted activity, which is Number 6, in addition
2 to public records and reports of excited utterance, present
3 sense impression. So what I'm asking you, because it is my
4 understanding from the Solicitor, that she believes it is a
5 record of regularly-conducted activity, from what she told
6 me in chambers this morning, and you, she believes it is a
7 public report of record.

8 She believes it may be a present sense impression, or
9 an excited utterance, and in addition, which wasn't provided
10 me, what I'm telling you is that there is also an exception
11 to the hearsay rule of recorded recollection, meaning a
12 memorandum or record concerning a matter about which a
13 witness once had knowledge, but now has insufficient
14 recollection to enable the witness to testify fully and
15 accurately, shown to have been made and adopted by the
16 witness when the matter was fresh in the witness's memory,
17 and to reflect that knowledge correctly. And if admitted,
18 this record or this -- if it were reduced to a written
19 memorandum, may be published or read into evidence, but may
20 not itself be received as an exhibit, unless authored by an
21 adverse party. That's an also an exception to the hearsay
22 rule.

23 So there are a number that may apply. Why do any of
24 the exceptions that we've just mentioned not apply in this
25 case? I agree with you that it's hearsay. So the question

1 is whether or not an exception to the hearsay rule applies.

2 **MR. MATHEWS:** Well, Your Honor, first of all, as to
3 present sense impression, we don't have -- at this point, we
4 don't have enough evidence to say there is. We don't --
5 there's nobody that made the -- she obviously wasn't there
6 and didn't receive anything, other than what someone told
7 her. As far as the record's exception, I think with non-
8 controversy of things like when the call was taken, that
9 would be a business record that would probably apply.
10 Perhaps even who made the call, that would be a business
11 record exception.

12 But in terms of the content of what the people said and
13 recorded, I'm unaware of any precedent that said that that
14 could be used, and that that's an official record that can
15 be used.

16 **THE COURT:** Is there any subjective opinion by this
17 witness or any other witness about the content? Or is it
18 merely statements made by some other person?

19 **MR. MATHEWS:** Well, that's the thing. The only thing
20 that she's reported -- which I agree with her on. The only
21 thing that she has to say is -- which is what people told
22 her -- everything that she knows, she doesn't know on her
23 own, nothing. Other than when a call was taken and who made
24 it. That she knows. And I don't have any objection to her
25 saying ---

1 **THE COURT:** So you don't believe the recorded
2 recollection or the record of regularly conducted activity
3 or public records and reports exceptions apply?

4 **MR. MATHEWS:** No, sir.

5 **THE COURT:** Thank you. Solicitor.

6 **ASST. SOL. HASELDEN:** Your Honor, I don't know how we
7 can separate out part of the business record that is kept as
8 a part of regularly conducted activity. I don't know how
9 we're going to separate it out. You know, certain parts
10 that are not controversial, according to Mr. Mathews is
11 public records and reports. So if this is a public record
12 or a report or something that's kept in the regular part of
13 business of the sheriff's office, I don't know why we would
14 separate out certain parts. Furthermore ---

15 **THE COURT:** Mr. Mathews touches on the fact that I'm
16 supposed to listen to the content to make a determination.
17 Now, let me say, I'm very aware that there is a record of
18 regularly-conducted activity exception. And that can be a
19 recording, or it can be a memorandum, a data compilation in
20 any form of acts, events, conditions, made at or near the
21 time by or from information transmitted by a person with
22 knowledge, if kept in the course of regularly conducted
23 business activity and if it was a regular practice of that
24 business activity to make the report. So I understand it.

25 Now, there is a proviso in that exception that says

1 that subjective opinions and judgments found in business
2 records are not admissible. "The term 'business' includes
3 business, institution, association, profession, occupation,
4 and calling of every kind, whether or not conducted for
5 profit."

6 Now, there is also a public record exception.
7 "Records, reports, statements or data compilations in any
8 form, of public offices or agencies, setting forth the
9 activities of the office, the matters observed that was a
10 duty to report, excluding, however, in criminal cases,
11 matters observed by police officers." I'm assuming we don't
12 have any observation on this tape by a police officer; is
13 that correct?

14 **ASST. SOL. HASELDEN:** That is correct.

15 **THE COURT:** I'm assuming that on this tape, there isn't
16 any subjective opinion and judgment in a business record.

17 **ASST. SOL. HASELDEN:** None that I'm aware of.

18 **THE COURT:** All right. And I'm asking you if there's
19 anything else that the rule prohibits, because Mr. Mathews
20 seems to suggest -- he does not believe 5, 6 or 8 apply to
21 the use as an exception to the hearsay rule. What's the
22 State's -- I agree with Mr. Mathews, and I think you'll
23 agree. You hadn't given me any predicate one or two. There
24 is no present sense impression or excited evidence at this
25 point.

1 **ASST. SOL. HASELDEN:** Your Honor, I believe with the
2 dispatcher, that these tapes should come in under 6 or 8.
3 And I believe that either way, she has to testify that that
4 is the accurate copy, and I have to lay that groundwork.
5 And then for the individuals that made the call, they would
6 come in under 1 and 2. Either way, we have four different
7 reasons they should come in, and I don't know why they
8 shouldn't come in under 6 and 8 now, as opposed to going
9 through the whole foundation for 6 and 8 now, and then again
10 1 and 2. You don't have to meet four of them; you just need
11 to meet one. And I would argue that right now with this
12 witness, 6 and 8 should apply as both a public record and
13 report and a record of regularly conducted activity.

14 **THE COURT:** Now, as I understand it, this witness, this
15 tape, contains statements, 'according to Mr. Mathews'
16 argument, that are made by this caller; is that right?

17 **ASST. SOL. HASELDEN:** Yes, sir. There's two different
18 callers on that tape.

19 **THE COURT:** There are two different calls on the tape.
20 Was either caller the defendant?

21 **ASST. SOL. HASELDEN:** No.

22 **THE COURT:** All right. There are two different callers
23 on this tape. Are the callers available for testifying?

24 **ASST. SOL. HASELDEN:** Yes.

25 **THE COURT:** All right. So they will be cross-examined

1 by counsel for the defendant during this case?

2 **ASST. SOL. HASELDEN:** Yes.

3 **THE COURT:** I think the rule says that even though the
4 declarant may be available, that the acts are not excluded
5 by the hearsay rule. I'm referring to 803 in the Rules of
6 Evidence. So I understand your argument.

7 Mr. Mathews, at this point, I agree with you that I'm
8 not in a position to use 1 and 2. But I am in a position to
9 rule on, I believe, 5, 6 and 8. And I believe anyone of
10 those three rules could constitute an exception and,
11 therefore, the tape is admissible under those rules, or
12 those exceptions, which would be 803, 5, 6 and 8, as
13 exception to the hearsay rule. Your objection is
14 respectfully overruled.

15 Bring me a jury.

16 **MR. MATHEWS:** Your Honor?

17 **THE COURT:** No, sir. Sit down, Mr. Mathews. Sit down.

18 **MR. MATHEWS:** Okay.

19 **THE COURT:** I've not asking for any further argument on
20 the matter. The matter's been decided. Do I need to cite
21 the rule to you about that, because you don't argue after
22 I've ruled?

23 **MR. MATHEWS:** No, sir.

24 **THE COURT:** Sit down. When I want an argument, I'll
25 ask for it.

1 **MR. MATHEWS:** Yes, sir.

2 (10:30 A.M., 7-26-11, WHEREUPON, THE JURY ENTERS THE
3 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

4 **THE COURT:** Counsel, approach.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
6 AND OUT OF THE HEARING OF THE JURY.)

7 **THE COURT:** Ladies and gentlemen of the jury, we will
8 now continue with the testimony in the trial of this case.
9 Direct examination, Solicitor, you may proceed.

10 **ASST. SOL. HASELDEN:** Thank you.

11 **DIRECT EXAMINATION**

12 **BY ASST. SOL. HASELDEN:**

13 Q Ms. Banks, does communication at the sheriff's office
14 also go by the term "dispatch"?

15 A Yes.

16 Q So you worked at 911 dispatch?

17 A Yes.

18 Q And what-all did you do as part of your 911 dispatch?

19 A Answered 911 calls and dispatched the sheriff's
20 department, fire-rescue, and a few other police agencies.

21 Q And how did those calls come in?

22 A Through 911 phone lines.

23 Q And are those calls reported?

24 A Yes.

25 Q How are they kept?

1 A In a computer file in our lieutenant's office, that's
2 kept under lock and key.

3 Q When are they downloaded?

4 A When requested.

5 Q When are they initially downloaded into that system?

6 A As soon as the call gets dialed. As soon as they dial
7 911, it starts recording.

8 Q And how are those calls kept? You stated on a computer
9 that's secure?

10 A Yes.

11 Q How is that computer kept secure?

12 A It's locked and we have two doors that we have to go
13 through with a key card.

14 Q So who-all has access to that computer?

15 A Our lieutenant and the second sergeant in charge.

16 Q Is there any way once those calls are downloaded they
17 can be altered?

18 A Not to my knowledge.

19 Q I handed you what's been marked for identification
20 purposes as State's One. Do you recognize that item?

21 A Yes.

22 Q What is that item?

23 A It's a copy of two calls I received on September 28th,
24 2010, of people at the ---

25 Q Do you remember ---

1 A --- scene ---

2 Q -- who those -- sorry, ma'am. I'm sorry. Keep going.

3 A The 911 calls.

4 Q Do you remember who those callers were?

5 A The first person I spoke to was a Mr. Mincey; he was
6 the bus driver. And the second person I spoke to was Ms.
7 Salley, who was the bus aide.

8 Q And how do you know that those are the two calls that
9 are on that disk?

10 A Because I recognize the voices and ---

11 Q So you've listened to that disk?

12 A Yes.

13 Q And how did you know that's the same disk you listened
14 to?

15 A Because I initialed it.

16 Q Okay.

17 **ASST. SOL. HASELDEN:** Your Honor, at this time I would
18 move State's Exhibit, for identification, One into evidence.

19 **THE COURT:** Subject to my earlier ruling, Counsel.

20 (State Exhibit One, disk of 911 call, received into
21 evidence.)

22 **ASST. SOL. HASELDEN:** Your Honor, may I publish to the
23 jury?

24 **THE COURT:** You may proceed.

25 **ASST. SOL. HASELDEN:** May I approach?

1 **THE COURT:** Yes, you may. Is it marked?

2 **ASST. SOL. HASELDEN:** Yes, sir. State's One.

3 **THE COURT:** State's One.

4 **ASST. SOL. HASELDEN:** May I publish at this time?

5 **THE COURT:** Hold on a second. Counsel, approach.

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
7 AND OUT OF THE HEARING OF THE JURY.)

8 Q I have no further questions for you at this time, Ms.
9 Banks. If you'll answer anything Mr. Mathews has.

10 **THE COURT:** Cross-examination?

11 **MR. MATHEWS:** No cross-examination, Your Honor.

12 **THE COURT:** As to this witness, Solicitor?

13 **ASST. SOL. HASELDEN:** Ask that she be excused.

14 **THE COURT:** Any objection to this witness being
15 excused?

16 **MR. MATHEWS:** No, sir.

17 **THE COURT:** You may step down and you are excused from
18 the courtroom. You may leave the trial of this case. Call
19 your next witness.

20 **ASST. SOL. HASELDEN:** State calls Estis Mincey.

21 **MADAME CLERK:** Please come forward and be sworn. Place
22 your left hand on the Bible and raise your right.

23 WHEREUPON, ESTIS MINCEY WAS DULY SWORN.

24 **MADAME CLERK:** Please have a seat on the witness stand
25 and state your full name for the record.

1 **THE COURT:** Watch your step for me.

2 **MR. MINCEY:** Yes, sir.

3 **THE COURT:** Have a seat; be comfortable.

4 **MR. MINCEY:** Yes, sir.

5 **THE COURT:** Pull that chair up and speak in that
6 microphone. It's going to amplify your voice, so the jury
7 and people in the courtroom can hear you. State your full
8 name and spell your last name for the court reporter.

9 **MR. MINCEY:** Estis B. Mincey, Jr., M-I-N-C-E-Y.

10 **THE COURT:** Your witness, Counsel.

11 **DIRECT EXAMINATION**

12 **BY ASST. SOL. HASELDEN:**

13 Q Mr. Mincey, who do you work for?

14 A I work for LCAA Head Start in Cottageville.

15 Q And what do you do as part of Head Start in
16 Cottageville?

17 A As a bus driver and I am also assistant teacher.

18 Q And how frequently do you drive this bus?

19 A Well, I've been driving this -- this -- this is my
20 ninth year as a bus driver.

21 Q Okay. And what kind of program is Head Start?

22 A It is a early childhood program for three years old,
23 until they reach the age of five, and they are graduated to
24 go on to kindergarten.

25 Q So the only children on your bus were three to five

1 years old?

2 A Three years old and early four.

3 Q Okay. And were you driving that bus back in September
4 of 2010?

5 A Yes, ma'am.

6 Q And how big is your bus? Can you describe it for me?

7 A It is a 36-passenger.

8 Q And most days, do you have 36 people on your bus?

9 A Oh, yes, ma'am. Them little ones like school.

10 Q And who-all is on your bus?

11 A Ms. Salley, she is my -- she is my bus aide.

12 Q Any other adults?

13 A No, ma'am.

14 Q The rest are children?

15 A The rest are children.

16 Q And when do you drive the bus? What time during the
17 day?

18 A Well, I -- I starts about seven o'clock in the morning,
19 and then we starts in the evening time, we start at 2:30 to
20 present our evening ride.

21 Q And where do you take the kids to in the morning?

22 A Well, we pick them up from the house in the morning and
23 proceed to the school.

24 Q Where is the school?

25 A The school is at Cottageville.

1 Q So in the afternoon, you just do the reverse?

2 A Yes, ma'am.

3 Q So you left the school at approximately 2:30 on
4 September 28th, 2010?

5 A Yes, ma'am.

6 Q And you had a full bus?

7 A Yes, ma'am.

8 Q And where do you go when you leave the school?

9 A Well, we start on our route. We start dropping the
10 children off from Brittlebank. First, we get off on -- we
11 gets to behind H&D, Fifth Street, Sixth Street. And then we
12 proceed to Henry Street. When we leave Henry Street, we go
13 to Franklin Street. And then we come back to Peurifoy Road,
14 and we -- after that, we proceed on to Brittlebank.

15 Q And when you get to Brittlebank, about how many kids
16 are left on your bus?

17 A We -- we have approximately maybe about 15. Fifteen
18 kids are left, 15 to 17. And we drop off at least about ten
19 kids.

20 Q So 15 to 17 kids, and you and Ms. Salley are still on
21 the bus?

22 A Yes, ma'am.

23 Q Any idea about what time it would take you to get to
24 Brittlebank?

25 A It will be about somewhere in the neighborhood of 3:00

1 or 3:15 somewhere.

2 **ASST. SOL. HASELDEN:** A moment's indulgence, Your
3 Honor.

4 (BRIEF PAUSE.)

5 **ASST. SOL. HASELDEN:** May I approach the witness?

6 **THE COURT:** You may.

7 Q Mr. Mincey, I'm handing you what's been marked for
8 identification purposes as State's Four. Would you please
9 observe this and not show it to the jury at this point, just
10 for your eyes.

11 A Yes, ma'am.

12 Q Do you recognize what that is?

13 A Yes, ma'am. It's a sketch for our -- for Brittlebank
14 Road out in Eastside Acres.

15 Q And is that the route your bus takes?

16 A Yes, ma'am.

17 Q Was your bus there on September 28th, 2010?

18 A Yes, ma'am.

19 Q In the afternoon about 3 to 3:15?

20 A Yes, ma'am.

21 Q And does your bus stop there?

22 A Yes, ma'am. We stop there.

23 Q How long have you been driving this route?

24 A Oh, I've been driving this route for about two years or
25 better.

1 Q Is this route in Colleton County?

2 A Yes, ma'am.

3 ASST. SOL. HASELDEN: Your Honor, at this time, I'd ask
4 that State's Exhibit Four be moved into evidence.

5 THE COURT: As to State's Four, Mr. Mathews?

6 MR. MATHEWS: No objection, Your Honor.

7 THE COURT: Ladies and gentlemen of the jury, State's
8 Exhibit Number Four will be admitted into evidence without
9 objection.

10 (State Exhibit Four, Aerial Map, received into
11 evidence.)

12 THE COURT: State's Four in evidence. You may publish
13 State's Four at this time.

14 ASST. SOL. HASELDEN: May I approach?

15 THE COURT: You may.

16 Q Mr. Mincey, you can leave that open. Can you show me
17 where your bus stops here? Could you make a mark, please?

18 A This is Burgess. We stop about right here. I wait on
19 this side.

20 ASST. SOL. HASELDEN: Your Honor, may I now publish?

21 A Not too far from the Burgess Road is our ---

22 THE COURT: Yes.

23 A --- our stop.

24 Q Thank you.

25 THE COURT: It's in evidence.

1 Q Mr. Mincey, did anything strange happen when you
2 stopped your bus right there near the intersection of
3 Brittlebank and Burgess?

4 A Yes, ma'am. It was a -- a green Honda was stopped in
5 front of us. And -- and me and Ms. Salley -- or when I
6 stopped the bus, I put it in park, emergency brake down and
7 -- and she went to get Jevasia Varner, you know, to let her
8 off the bus.

9 Q Now, you said there was a green Honda parked in front
10 of the ---

11 A Yes, ma'am.

12 Q --- bus?

13 A Yes, ma'am.

14 Q About how far away was it?

15 A About -- about a half a car length, somewhere in that
16 area.

17 Q And when you put the bus in park and the emergency
18 brake on, what happens with the bus?

19 A The bus stop. That's our safety procedure in case, you
20 know, the bus move or -- to protect the children.

21 Q And when does the stop sign come out on the side of
22 your bus?

23 A When -- when I stop the bus, put it in park, we hit a
24 button of caution first. Orange light come on first. And
25 then when the bus stop, the stop sign comes out

1 automatically.

2 Q So did you do that when you ---

3 A Yes.

4 Q --- stopped right here?

5 A Yes, ma'am.

6 Q Is that why the green car stopped?

7 A Yes, ma'am. Because it saw the stop sign. It saw the
8 -- it saw the caution light first, then the stop sign. They
9 did stop.

10 Q And you said that Ms. Salley then got out with a small
11 child?

12 A Yes, ma'am.

13 Q Who was that small child?

14 A [REDACTED].

15 Q [REDACTED] is her last name?

16 A Yes, ma'am.

17 Q Do you know how old she is?

18 A She's three. Her first year on the bus.

19 Q So what did Ms. Salley and [REDACTED] do?

20 A Well, when Ms. Salley unbuckled the child to step down,
21 a Honda -- or I mean a -- a moped pull up side the green --
22 the green Honda and start proceeding -- I heard shots. And
23 -- and it was a rider on there and -- and he just started
24 pointing, shooting in the windshield. I told Ms. Salley,
25 "Hold, stop. There's shooting. Pull the child back up on

1 the bus." We wouldn't let the child get off with that kind
2 of stuff happening." So she was in the doorway waiting.

3 Q Ms. Salley and the child?

4 A And the child.

5 Q All right. And this happened about half a car length
6 in front of you?

7 A Yes, ma'am. Something like that, yes, ma'am.

8 Q Were you able to recognize who was on the moped?

9 A No, ma'am.

10 Q Can you give me any description of him?

11 A All that I know -- all I saw was the back of his head
12 when he was passing after the shooting. He had dreadlocks.

13 Q Was he a white male? A black male?

14 A No, ma'am. He was a black male.

15 Q Young? Old? You couldn't tell?

16 A Young, young-like.

17 Q And you said you saw him pull out a gun?

18 A Well, I didn't see the gun. All I know is he turned
19 his hand and pow, pow, pow, pow. And I tell Ms. Salley,
20 "Don't let the child come across the bus." And we all
21 ducked down, you know, like -- after we heard the shots.

22 Q So the person on the moped was shooting into the car?

23 A Yes, ma'am. Into the windshield like.

24 Q Any doubt in your mind about that?

25 A No, ma'am. No doubt in my mind.

1 Q Did you see anybody get hit?

2 A No, ma'am.

3 Q What did the car do after it was shot?

4 A Well, the individual just reared up, because he was
5 leaning back. And all I saw was a figure reared up. And --
6 and he realized what was happening. He put it in drive and
7 -- and, you know, he proceed on. He -- and I looked back in
8 my rearview mirror and I saw where he hit the moped, and the
9 moped burst up. The individual flew up in the air a little
10 bit and fell down and then limped into the -- into the
11 trailer hurt-like -- that's what he did.

12 Q Okay. Were there any other mopeds around at the time?

13 A No, ma'am.

14 Q Only one moped?

15 A Only one.

16 Q And was there only one person on that moped?

17 A Yes, ma'am.

18 Q What did you do after you saw that?

19 A Well -- well, we saw the adult came out the trailer and
20 Ms. Salley let the child go across and she got on. And then
21 -- then we proceeded on. You know, we put -- you know, I --
22 I did all -- all the emergency to get the bus moving again.
23 And, I mean, we turned off down that dirt road, I started
24 calling 911 to let them know what had happened.

25 Q You said an adult came to the door?

1 A Yes, ma'am. It was an adult, because we cannot put the
2 child off, not until we see somebody, name is on the roster.
3 So that they can, you know, take their little child off the
4 bus.

5 Q Do you know who that adult was that came to the door?

6 A It was a male. I believe that was her uncle that came
7 and got the child.

8 Q But he was one of the people that you're allowed to ---

9 A Yes, ma'am. Yes, ma'am. We are allowed to release the
10 child to.

11 ASST. SOL. HASELDEN: A moment's indulgence, Your
12 Honor.

13 (BRIEF PAUSE.)

14 Q You stated you called 911, correct?

15 A Yes, ma'am.

16 Q About how long after the event did you call 911?

17 A Well, soon as I -- we had turned off on Cole Street to
18 the left off -- to drop off another child. And I started
19 calling 911 then, to let them know what was happening.

20 Q So what were you thinking when you saw this?

21 A I was just glad that nothing did happen to, you know,
22 toward us on the bus, that no -- no kind of ricochet didn't
23 happen, because it was scary to see -- to hear the shots.
24 We have these little kids on the bus. But they were
25 frightened theirselves (sic). They was hollering "Pow, pow,

1 something happened," so we got them and duck down. And we
2 go -- I drove on off around them.

3 Q When you called 911, did you talk to somebody?

4 A Yes, ma'am. I -- I speak to a lady. I think it was a
5 lady that, you know, took our call.

6 Q All right. And you told her -- what did you tell her?

7 A I tell her well, there was someone shooting at a car
8 that was stopped in front of us. And -- and she kept asking
9 where it was at, and I tell her it was on Brittlebank Road.
10 She asked, "Did anybody get hurt." I said, "No, ma'am. I -
11 - I didn't see nobody got hurt." And we proceed -- so I
12 drive on, to continue our route, to finish it.

13 ASST. SOL. HASELDEN: Your Honor, at this time I'd like
14 to publish the first call on State's One.

15 THE COURT: Counsel, approach.

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
17 AND OUT OF THE HEARING OF THE JURY.)

18 Q Mr. Mincey, I don't have any other questions for you at
19 this time. You can answer anything Mr. Mathews has, I'd
20 appreciate it.

21 THE COURT: Cross-examination.

22 MR. MATHEWS: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. MATHEWS:

25 Q Mr. Mincey, how are you doing today?

1 A I'm all right, sir.

2 Q You say that when you looked at -- you were able to see
3 into the green Honda from where you were?

4 A We could -- we could see, but not vividly who was in
5 the car.

6 Q Okay. Who was driving the car, when you looked?

7 A Well, I believe it was a male figure because he was
8 laying back in the car.

9 Q Okay. It was a male. Did you see whether there was
10 anyone in the passenger's seat?

11 A No. No, sir. I couldn't see that.

12 Q You saw a male in the driver's seat, and you couldn't
13 see in the passenger's seat?

14 A Well, I saw the male when he reared up, because he was
15 leaning back.

16 Q He was leaning back?

17 A Right.

18 Q And then he came forward?

19 A After all of this happened, he came forward.

20 Q Did you ever see a woman driving?

21 A No, sir. I didn't see no woman.

22 Q But did you ever see anybody get out of the car?

23 A No, sir.

24 Q And what happened after the Honda hit the moped? What
25 did the Honda do?

1 A The Honda just broked off in pieces and the -- and the
2 young man just went up in the air a few feets and landed
3 down.

4 Q What did the car do?

5 A Well, when I looked in my rearview mirror, I was
6 proceeding on. But I saw the car just hit the moped and
7 drive on. I don't know which way he turned.

8 Q But he didn't stay?

9 A No, sir. No, sir. No, sir.

10 MR. MATHEWS: I don't have anything further, Your
11 Honor.

12 THE COURT: Redirect?

13 ASST. SOL. HASELDEN: No, Your Honor.

14 THE COURT: As to this witness?

15 ASST. SOL. HASELDEN: Ask that he be excused.

16 THE COURT: Any objection to this witness being
17 excused, Mr. Mathews?

18 MR. MATHEWS: No, sir.

19 THE COURT: You may step down, Mr. Mincey. You're
20 excused from the trial of the case. You may leave the
21 courtroom or remain with us, as you wish.

22 MR. MINCEY: Thank you, sir.

23 THE COURT: Call your next witness.

24 ASST. SOL. HASELDEN: The State calls Carmen Salley.

25 THE COURT: Counsel, approach. Go ahead and swear her

1 in.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
3 AND OUT OF THE HEARING OF THE JURY.)

4 **MADAME CLERK:** Please come forward and be sworn. Place
5 your left hand on the Bible and raise your right.

6 WHEREUPON, CARMEN SALLEY IS DULY SWORN.

7 **MADAME CLERK:** Please have a seat on the witness stand
8 and state your full name for the record.

9 **THE COURT:** Be careful. Pull that chair up for me.
10 Make yourself comfortable. You okay? Would you like to
11 have some water?

12 **MS. SALLEY:** Yes, sir. Carmen Salley, S-A-L-L-E-Y.

13 **THE COURT:** Here's your water

14 **MS. SALLEY:** Thank you.

15 **THE COURT:** Just speak up for me. Your witness,
16 Counsel.

17 **DIRECT EXAMINATION**

18 **BY ASST. SOL. HASELDEN:**

19 Q How are you doing, Ms. Salley?

20 A I'm all right.

21 Q Is it safe to assume that you don't want to be here?

22 A No, ma'am.

23 Q Who do you work for, Ms. Salley?

24 A I work for Head Start, also.

25 Q And what do you do for Head Start?

1 A I'm a teacher.

2 Q Do you also ride on a bus?

3 A Yes, sir -- yes, ma'am.

4 Q Why do you have to ride on the bus?

5 A Because it's our job that two people should be on the
6 bus at all times, one driver and one monitor, and make sure
7 the children are secure in their seatbelts and to keep them,
8 like, focused and safe on the bus.

9 Q And how long have you been riding on the bus?

10 A Since my hire date, February of 2000.

11 Q So over ten years now?

12 A Yes, ma'am.

13 Q Good for you. Were you riding on the Head Start bus
14 with Mr. Mincey on September 28th, 2010?

15 A Yes, ma'am.

16 Q Can you tell me what you saw?

17 A Well, on that afternoon, when we approach [REDACTED]
18 [REDACTED] house, while I was getting her out of the seatbelt
19 and when I walked down the aisle of the bus and when I
20 reached to the bottom step and noticed that no one was
21 really at her residence or her door wasn't open -- so that's
22 a part of our policy that if we don't see an adult, not to
23 remove the child from the bus, because they can't even cross
24 the street alone.

25 So in the process of that, I noticed a green Honda

1 coming toward the bus that stopped, because the stop sign
2 was out. And then I noticed a moped, or a scooter, came
3 from around, the same direction from behind, and started
4 shooting into the Honda.

5 Q Okay. Did you see a gun?

6 A No, ma'am.

7 Q But you know the person on the moped was shooting?

8 A Yes, ma'am.

9 Q How do you know that?

10 A Because I was on the bottom step and I was looking, and
11 Mr. Mincey told me there was a shooting -- then when I
12 looked up, and I even heard the gun shots. When I looked
13 up, I seen it.

14 Q And you mentioned there was a small child. What was
15 her name?

16 A [REDACTED].

17 **ASST. SOL. HASELDEN:** A moment's indulgence, Your
18 Honor.

19 (BRIEF PAUSE.) Your Honor, I believe we have a matter
20 of law.

21 **THE COURT:** Counsel, approach.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
23 AND OUT OF THE HEARING OF THE JURY.)

24 **THE COURT:** Proceed, Counsel.

25 **ASST. SOL. HASELDEN:** Your Honor, at this time, may I

1 approach the witness?

2 **THE COURT:** You may.

3 Q Ms. Salley, I just handed you what's been marked for
4 identification purposes only as State's Thirty-One. Can you
5 take a look at that and tell me if you recognize it?

6 A I recognize the child, yes, ma'am.

7 Q Who is the child?

8 A [REDACTED].

9 Q How do you recognize her?

10 A Because it's the same child that rides our bus day
11 after day and attends our program.

12 **ASST. SOL. HASELDEN:** Your Honor, at this time, I'd ask
13 that State's Exhibit Thirty-One be entered into evidence and
14 published.

15 **THE COURT:** Mr. Mathews, any objection as to State's
16 Thirty-One?

17 **MR. MATHEWS:** Yes, sir. As I stated in the sidebar.

18 **THE COURT:** Well, Mr. Mathews, for the record, my
19 understanding of your objection is that prejudice succeeds
20 any probative value; is that correct?

21 **MR. MATHEWS:** That's correct.

22 **THE COURT:** Overruled. Ladies and gentlemen of the
23 jury, State's Exhibit Thirty-One will be admitted into
24 evidence over objection. You may publish to the jury

25 (State Exhibit Thirty-One, photo of [REDACTED],

1 received into evidence.)

2 **THE COURT:** State's Thirty-One in evidence.

3 **ASST. SOL. HASELDEN:** May I approach again?

4 **THE COURT:** You may.

5 Q Ms. Salley, were you able to get a good look at the guy
6 who was on the moped?

7 A No, ma'am.

8 Q Get any type of physical description?

9 A Just race.

10 Q And what race was it?

11 A Black male man.

12 Q So no doubt in your mind, it was the young black man on
13 the scooter who did the shooting?

14 A Yes, ma'am.

15 Q I have no further questions. If you can answer
16 anything Mr. Mathews has, I'd appreciate it.

17 **THE COURT:** Counsel, approach.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
19 AND OUT OF THE HEARING OF THE JURY.)

20 **DIRECT EXAMINATION CONTINUES**

21 **BY ASST. SOL. HASELDEN:**

22 Q Ms. Salley, I forgot. Did you talk to 911 that day?

23 A Well, Mr. Mincey made the call from the incident. And
24 later after the route, a call was returned from 911 and I
25 answered the bus phone because he just can't answer the

1 phone while driving.

2 Q So y'all have a phone actually on the bus with you?

3 A Yes, ma'am.

4 Q Do you remember what you told Dispatch?

5 A That afternoon when she called back? Yes.

6 Q Yes.

7 A Yes, ma'am.

8 Q Can you tell me what you told her?

9 A Well, she was asking me questions like were we still on
10 the scene and what had happened to the young man, whether
11 anybody got hurt. And I was answering her questions, like
12 telling her that I did see the -- like I guess the responses
13 or reflexes from the person in the green Honda. When they
14 sped off, it hit the person on the moped. He did limped
15 into the yard, so that's what I told her.

16 ASST. SOL. HASELDEN: Okay. I have nothing further of
17 this witness at this time.

18 THE COURT: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. MATHEWS:

21 Q Ms. Salley, how are you doing today? A little nervous?

22 A Yes, sir. Yes, sir.

23 Q What side of the Honda did the scooter go?

24 A Where did it go when it came ---

25 Q Did you say it came ---

Direct Examination of Carmen Salley by Asst. Sol. Haselden
Cross-Examination of Carmen Salley by Mr. Mathews

1 A --- it came around like on the passenger's side.

2 Q Around the passenger's side, okay. And you were on the
3 -- you were on the other side, the far side of the car then.

4 A That's right.

5 Q So the side closest to you would be the driver's side?

6 A Yes, sir.

7 Q Who was driving when you saw? You saw ---

8 A I didn't see anybody. I didn't see who was in the
9 Honda because like I said, the seats were laid back. So I
10 didn't know if it was one person, two people, how many
11 people were in the car. I didn't see who was in the car.

12 Q Did anybody get out of the car?

13 A No, sir.

14 Q From the time that the shots were fired to the time the
15 Honda started moving, how much time was that?

16 A I'm not sure because when the children heard the
17 gunshot, they started reacting. And my job is to keep them,
18 you know, calm. So I had to be with the children, so I
19 really don't know.

20 Q Okay. Would it be fair -- you heard the testimony
21 earlier. Would it be fair to say it lurched forward
22 immediately?

23 A Sir?

24 Q You don't know how long it was?

25 A No, sir.

1 Q And then you saw the Honda leave out from there?

2 A Yes, sir.

3 Q And then after that, after the Honda had left and after
4 the guy on the moped limped away, at that point, you let the
5 child go across the street.

6 A When the uncle came out.

7 Q When the uncle came out.

8 A Yes.

9 Q How much longer was that after the collision?

10 A A couple of minutes.

11 Q And then a few minutes after that when y'all got around
12 the corner ---

13 A The next street.

14 Q The next street, okay. So after the Honda left, a
15 couple minutes later, then the child crossed, and then you
16 went on to the next stop.

17 A Yes, sir.

18 Q And after that next stop, that's when y'all called 911.

19 A Yes, sir.

20 **MR. MATHEWS:** Nothing further, Your Honor.

21 **THE COURT:** Redirect?

22 **ASST. SOL. HASELDEN:** Your Honor, I have no other
23 questions, but I would ask that I publish State's Exhibit
24 One at this time.

25 **THE COURT:** But there is no redirect at this time?

1 ASST. SOL. HASELDEN: No redirect for Ms. Salley.

2 THE COURT: As to this witness.

3 ASST. SOL. HASELDEN: Ask that she be excused.

4 THE COURT: Mr. Mathews, any objection to Ms. Salley
5 being excused from the trial of this case?

6 MR. MATHEWS: No, sir.

7 THE COURT: Ms. Salley, you may step down and you're
8 excused from the trial of the case. You may leave the
9 courtroom or remain with us, as you wish. Watch your step
10 on the step.

11 You may publish State's Exhibit Number One, which was
12 admitted with my prior ruling in the case. And I'll put my
13 reasons later on in the record.

14 (State's Exhibit Number One, 911 call, is played.
15 Audio begins at 11:05 a.m. and ends at 11:10 a.m.)

16 THE COURT: Mr. Foreman, ladies and gentlemen of the
17 jury, I'm going to take my mid-morning break at this point,
18 give you a chance to stretch your legs and use the restroom.
19 This will be my only break before we break for lunch later
20 on. Please do not discuss the case and I'll be right back
21 with you. You may retire to your jury room at this time.

22 (11:10 A.M., 7-26-11, WHEREUPON, THE JURY EXITS THE
23 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
24 RECORD.)

25 THE COURT: So there is a record of what occurred at

1 the bench -- and the jury's outside the presence of the
2 courtroom now -- I earlier ruled pursuant to the exceptions
3 to the hearsay rule, and I ruled that State's Exhibit One
4 was admissible, and I used as the exceptions under 803, 5, 6
5 and 8.

6 However, it was my understanding from the Solicitor
7 from the conferences at the bench that she had other
8 witnesses in which she was going to provide the Court,
9 because she also believe there were additional sustained
10 grounds for the admissibility of the exhibit, those being
11 Exceptions 1 and 2. And so I allowed the defendant to
12 cross-examine those witnesses.

13 And in this case, clearly Mr. Mincey -- although Mr.
14 Mathews did ask Ms. Salley about time sequence and she said
15 there was several minutes, Ms. Salley obviously answered the
16 bus phone after the bus had left where the event occurred,
17 and she said a couple of minutes when Mr. Mathews asked her
18 about time. I still believe that there is clearly a basis
19 for admissibility under 5, 6 and 8. And I understand
20 clearly the cross-examination for purposes of Exception
21 Number 2 in Ms. Salley's testimony.

22 However, I believe present sense impression and/or
23 excited utterance may apply to Mr. Mincey's testimony, as an
24 additional sustaining ground in addition to 5, 6 and 8. And
25 I wanted to make a record of that. This had been published

1 to the jury over the objection, Mr. Mathews, as to hearsay.
2 And I believe that the exceptions I've just noted, 5, 6 and
3 8 are the reasons for my ruling. And I believe as to Mr.
4 Mincey's testimony that 1 and 2 would obviously apply. I do
5 not believe as to Ms. Salley's testimony that 1 and 2 would
6 apply, and I wanted there to be a clear record of my ruling.

7 Counsel, this will be my only mid-morning break, so
8 we'll take five minutes and then start back. Thank you.

9 (Off the record, briefly.)

10 **THE COURT:** Let's proceed. Bring me the jury.

11 (11:25 A.M., 7-26-11, WHEREUPON, THE JURY ENTERS THE
12 COURTROOM AND THE FOLLOWING HELD ON THE RECORD.)

13 **THE COURT:** All right, Mr. Foreman, ladies and
14 gentlemen of the jury, we'll now continue with the testimony
15 in the trial of this case. You may call your next witness.

16 **ASST. SOL. HASELDEN:** State calls John Varner.

17 **MADAME CLERK:** Please come forward and be sworn. Place
18 your left hand on the Bible and raise your right.

19 WHEREUPON, JOHN VARNER WAS DULY SWORN.

20 **MADAME CLERK:** Please have a seat on the witness stand
21 and state your full name for the record.

22 **THE COURT:** Proceed.

23 **ASST. SOL. HASELDEN:** Thank you.

24 **THE COURT:** State your full name and spell your last
25 name.

1 MR. VARNER: John Varner, V-A-R-N-E-R.

2 DIRECT EXAMINATION

3 BY ASST. SOL. HASELDEN:

4 Q Mr. Varner, what do you do for a living?

5 A Stay in the house.

6 Q Stay in the house?

7 A Yes, ma'am.

8 Q How old are you?

9 A Nineteen.

10 Q Where do you live in the house you live?

11 A Huh?

12 Q Where is the house you live in?

13 A [REDACTED]

14 Q How long have you been living there?

15 A Nineteen years.

16 Q So all your life?

17 A Yes, ma'am.

18 Q Who else lives in the house with you?

19 A My sister and my mom.

20 Q What's your sister's name?

21 A Princess Varner.

22 Q Pardon me?

23 A Princess Varner.

24 Q Princess? Do you have a niece named [REDACTED] [REDACTED]?

25 A Yes, ma'am.

1 Q Does she live with you?

2 A No, ma'am. Not right now.

3 Q Was she living with you back in September of 2010?

4 A Yes, ma'am.

5 Q And did you ever greet her at the door in the
6 afternoons?

7 A Yes, ma'am.

8 Q You were one of her safe people that the bus could
9 release her to?

10 A Yes, ma'am.

11 Q Did you greet her at the door on September 28th, 2010?

12 A Yes, ma'am.

13 Q And right before that, did you hear or see anything?

14 A No, ma'am.

15 Q What were you doing inside the house?

16 A Sitting down watching TV.

17 Q And you didn't hear any gunshots?

18 A No, ma'am.

19 Q Did you see your cousin that day?

20 A Yes, ma'am.

21 Q Who's your cousin?

22 A Quashon.

23 Q You mean Quashon Middleton, seated right here at this
24 table?

25 A Yes, ma'am.

1 Q When did you see him?

2 A After I went outside and got my niece.

3 Q And where was he?

4 A Coming in, asking ---

5 **THE COURT:** You've got to speak up a little bit so the
6 jury can hear you.

7 A Coming to me, asking me for help.

8 Q Why was he asking you for help?

9 A Because he said his leg was broke.

10 Q So what did you do?

11 A Help him in the house.

12 Q What did you do then?

13 A Put him on the couch and asked him what's wrong. And
14 he told me what was wrong. He said his leg was broke.

15 Q Did you call 911?

16 A No, ma'am.

17 Q Did your cousin tell you why his leg was broken?

18 A Yes, ma'am. Say he got hit by a car.

19 Q He told you he got hit by a car?

20 A Yeah.

21 Q So you don't remember calling 911 and talking to
22 dispatch?

23 A No, ma'am.

24 Q You don't remember telling Rebecca Mitchell with

25 Dispatch on September 28th, 2010, that your cousin told you

1 he broke his leg jumping over a fence?

2 A No, I don't remember that.

3 Q All right. So you didn't hear or see the shooting?

4 A No, ma'am.

5 Q And [REDACTED] [REDACTED] [REDACTED] is that at the intersection
6 of Brittlebank and Burgess Circle?

7 A Actually, I don't know that, tell you the truth.

8 **ASST. SOL. HASELDEN:** Your Honor, may I approach?

9 **THE COURT:** You may.

10 Q Mr. Varner, I'm going to show you what's been
11 previously entered into evidence as State's Exhibit Four.
12 Do you recognize this?

13 A Yes, ma'am.

14 **THE COURT:** Hold the exhibit for him.

15 **ASST. SOL. HASELDEN:** Your Honor, may I just ask him to
16 come off the stand so the jury can see?

17 **THE COURT:** Pat, give me a cordless microphone. Step
18 down. I'm going to hand you a microphone.

19 **MADAME CLERK:** Yes, sir.

20 **THE COURT:** Mr. Mathews, you may come around outside
21 the jury box and you can view what's being shown to the
22 jury.

23 **MR. MATHEWS:** Thank you, Your Honor.

24 **THE COURT:** Proceed.

25 Q Mr. Varner, do you recognize this?

1 A Yes, ma'am.

2 Q Is this the map of your neighborhood?

3 A Yes, ma'am.

4 Q Do you recognize your house on here?

5 A Yes, ma'am.

6 Q Can you point it out for the jury?

7 A Right here.

8 Q Which one?

9 A Right here. (INDICATING.)

10 Q Could you put a little mark on it, maybe, for me?

11 (The witness complies.)

12 Q Thank you. And you can return to your seat.

13 (The witness returns to the witness stand.)

14 **THE COURT:** Proceed.

15 Q I have no further questions for you, Mr. Varner. If
16 you could answer any Mr. Mathews has, I'd appreciate it.

17 **MR. MATHEWS:** Nothing, Your Honor.

18 **THE COURT:** As to this witness, Counsel?

19 **MR. MATHEWS:** He may be excused as far as I'm
20 concerned, Your Honor.

21 **ASST. SOL. HASELDEN:** Ask that he be excused.

22 **THE COURT:** Mr. Varner, you may step down. You are
23 excused from the trial of this case. Call your next
24 witness.

25 **ASST. SOL. HASELDEN:** State calls Rebecca Mitchell.

1 **MADAME CLERK:** Please come forward and be sworn. Place
2 your left hand on the Bible and raise your right.

3 WHEREUPON, REBECCA MITCHELL WAS DULY SWORN.

4 **MADAME CLERK:** Please have a seat on the witness stand
5 and state your full name for the record.

6 **THE COURT:** Watch your step. Pull that chair up,
7 adjust the microphone. It's going to amplify your voice.
8 State your full name and spell your last name for the court
9 reporter.

10 **MS. MITCHELL:** Rebecca Mitchell, M-I-T-C-H-E-L-L.

11 **THE COURT:** Your witness, Counsel.

12 **DIRECT EXAMINATION**

13 **BY ASST. SOL. HASELDEN:**

14 Q Ms. Mitchell, who do you work for?

15 A For Colleton County Sheriff Office in communication.

16 Q Is that also known as dispatch?

17 A Yes, ma'am.

18 Q And what do you do as part of your job at dispatch?

19 A I answer 911 calls and I dispatch them out.

20 Q Were you working there in September of 2010?

21 A Yes, ma'am.

22 Q Were you working on the day of September 28th?

23 A Yes, ma'am.

24 Q Do you remember receiving a call in connection with a
25 shooting on Brittlebank?

1 A Yes, ma'am.

2 Q Do you remember about what time it was?

3 A I have to look at my report.

4 Q That's fine.

5 A It was at 15:10, 3:10.

6 Q 3:10. You're going to help us non-military. And as
7 this call came in, was it recorded?

8 A Yes. It was recorded.

9 Q And what happened to that call once it was recorded?

10 A It gets stored on our lieutenant's computer.

11 Q And anybody have access to change to calls once they're
12 stored on that computer?

13 A No, ma'am.

14 **ASST. SOL. HASELDEN:** Your Honor, may I approach?

15 **THE COURT:** You may.

16 Q Ms. Mitchell, I'm showing you what has been marked for
17 identification purposes only as State's Number Three. Do
18 you recognize it?

19 A I recognize that.

20 Q What is it?

21 A It's the recording of a 911 call that I took.

22 Q And how do you know it's the same recording?

23 A Because I initialed it after I listened to it.

24 Q And it's a truthful and accurate copy of the recording
25 that you took on September 28th, 2010?

1 A Yes, ma'am.

2 ASST. SOL. HASELDEN: Your Honor, at this time, I'd ask
3 that State's Three be entered into evidence.

4 THE COURT: What number?

5 ASST. SOL. HASELDEN: State's Three.

6 THE COURT: Three. As to State's Three?

7 MR. MATHEWS: I object for the previous reasons and the
8 lack of proper foundation.

9 THE COURT: And on my previous ruling as to -- and I
10 put on the record the numbers that counsel's familiar with,
11 5, 6 and 8 of 803. It is admitted over objection. Proceed.

12 ASST. SOL. HASELDEN: Thank you.

13 Q Ms. Mitchell, who called 911 on that specific call that
14 is recorded on State's Three?

15 A The caller identified himself as John Varner.

16 Q And what did he tell you?

17 A He said that his cousin had broken a leg ---

18 MR. MATHEWS: Objection. Hearsay, Your Honor.

19 THE COURT: Sustained.

20 ASST. SOL. HASELDEN: Your Honor, I'm attempting to
21 impeach the witness under Rule 613. I've just asked Mr.
22 Varner if he spoke to Ms. Mitchell.

23 THE COURT: Counsel, approach.

24 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
25 AND OUT OF THE HEARING OF THE JURY.)

1 **THE COURT:** Objection sustained.

2 **ASST. SOL. HASELDEN:** May I approach the witness?

3 **THE COURT:** You may.

4 **ASST. SOL. HASELDEN:** Your Honor, may I publish State's
5 Three for the jury?

6 **THE COURT:** State's Three is in evidence. You may
7 publish.

8 (State's Exhibit Three, the 911 call, is played. Audio
9 begins at 11:36 a.m. and ends at 11:40 a.m.)

10 **ASST. SOL. HASELDEN:** May I approach the court
11 reporter?

12 (Counsel for the State hands the court reporter State's
13 Exhibit Three.)

14 Q Ms. Mitchell, after you received that call, what did
15 you do?

16 A I went ahead and entered a medical call.

17 Q I have no further questions of you. If you can answer
18 anything Mr. Mathews has, I'd appreciate it.

19 **THE COURT:** Cross-examination.

20 **MR. MATHEWS:** None, Your Honor.

21 **THE COURT:** As to this witness.

22 **ASST. SOL. HASELDEN:** Ask that she be excused.

23 **THE COURT:** Any objection, Mr. Mathews?

24 **MR. MATHEWS:** No, sir.

25 **THE COURT:** Ms. Mitchell, you may step down and you're

1 excused from the trial of the case. You may remain with us
2 or leave as you wish.

3 **MS. MITCHELL:** Thanks.

4 **THE COURT:** Thank you. Be careful on the stairs. Call
5 your next witness.

6 **ASST. SOL. HASELDEN:** State calls Steven Scurry.

7 **MADAME CLERK:** Please come forward and be sworn. Place
8 your left hand on the Bible and raise your right.

9 WHEREUPON, STEVEN SCURRY WAS DULY SWORN.

10 **MADAME CLERK:** Please have a seat on the witness stand
11 and state your full name for the record.

12 **THE COURT:** Pull the chair up, pull the microphone
13 down. State your full name, spell your last name.

14 **MR. SCURRY:** Steven Scurry, S-C-U-R-R-Y.

15 **THE COURT:** Your witness, Counsel.

16 **DIRECT EXAMINATION**

17 **BY ASST. SOL. HASELDEN:**

18 Q Mr. Scurry, who do you work for?

19 A Colleton Fire-Rescue.

20 Q How long have you been working there?

21 A A little over a year.

22 Q And how long have you been working for fire and rescue
23 division in general?

24 A Since 1998.

25 Q And what is your position there?

1 A I'm a firefighter/paramedic.

2 Q Can you explain a little bit more of what that means?

3 A Sure. I'm able to go out and respond to calls for
4 assistance. Provides paramedic level care, which is
5 advanced life support care, if needed, and treat a variety
6 of different medical conditions, people that are involved in
7 traumatic injuries and those sorts of things. Just provide
8 patient care to those patients of all injuries.

9 Q So is that the same thing as an EMT?

10 A No, ma'am. There's three separate levels in EMS, and
11 EMT Basic is the -- is the lowest training, or the least
12 amount of training and only about a six month class. They
13 provide basic life support measures, such as bleeding
14 controls, splinting fractures, anybody that has any cardiac
15 arrest where their heart's not beating; they're not
16 breathing. They provide assistance such as that.

17 The middle section is the intermediate, EMT
18 Intermediate. They can do everything a Basic EMT can do,
19 with addition to starting IV -- IVs in folks if they need
20 IVs initiated. And a Paramedic level is the highest trained
21 level. They -- we do everything a EMT Basic can do and
22 Intermediate can do, with addition to we look at cardiac
23 monitors, we give a lot of medications, and those sorts of
24 things.

25 Q So how does one become a Paramedic? What type of

1 training or education did you go through?

2 A Have to go through first the EMT Basic level, then the
3 Intermediate level, which is about another two to three
4 months. And then the Paramedic program now is 18 months of
5 classroom setting and clinical setting, out in the field,
6 riding on an ambulance, as well as working in the hospital
7 under supervision, to try to perfect those skills.

8 Q So how long have you been a paramedic?

9 A Since 2001.

10 Q Any idea how many calls you've responded to?

11 A No, ma'am. No idea. A tremendous amount since 1998.
12 But as a paramedic, a tremendous amount as well.

13 Q Did you respond out to a call on September 28th, 2010?

14 A Yes, ma'am.

15 Q Out on Brittlebank Road?

16 A Yes, ma'am.

17 Q And why did you respond out there?

18 A We were activated by the dispatch center to respond to
19 a call for a patient needing to be checked at -- on
20 Brittlebank Road.

21 Q And what does that mean, when you said "needing to be
22 checked"?

23 A The dispatch information was vague. Usually dispatch
24 will provide a good foundation, a good complaint what we're
25 going to. But in this case, it was just a patient needing

1 to be checked. Sometimes I think that is dispatched that
2 way whenever maybe they don't have all the information from
3 the callers. So with a call like that, we're really unsure
4 of what the situation is, just someone needing assistance.

5 Q So where exactly is it that you responded?

6 A To Brittlebank Road, [REDACTED].

7 Q Is that in Colleton County?

8 A Yes, ma'am.

9 Q Do you remember what time that was?

10 A About 3:15, 3:14, 3:15 in the afternoon.

11 Q So what did you find when you got there?

12 A When we pulled up on scene, I noticed several law
13 enforcement vehicles were already there. I noticed what
14 appeared to be crime scene tape was already being put up.
15 And that when I got out of the ambulance, I noticed a moped,
16 or a scooter-type vehicle that had significant damage off on
17 the side of the roadway.

18 Q So what did you do once you got on scene?

19 A We were directed to a single-wide mobile home on the
20 left side of the road. Walked into the single-wide mobile
21 home and we were led to a patient sitting in the living
22 room.

23 Q All right. And who was that patient?

24 A The defendant, Mr. Middleton.

25 Q You're referring to Quashon Middleton seated right

1 here?

2 A Yes, ma'am.

3 Q It's the same guy?

4 A Yes, ma'am.

5 Q And what was his condition?

6 A He was in -- he appeared to be in significant pain.
7 The general impression of him whenever I walked in the
8 residence was he was sitting on the couch, he was holding
9 his right leg, saying that he was in a -- a good deal of
10 pain, that his leg was hurting.

11 **ASST. SOL. HASELDEN:** Your Honor, may I approach the
12 witness?

13 **THE COURT:** You may.

14 Q Mr. Scurry, I'm handing you what's been marked for
15 identification purposes only as State's Six. Do you
16 recognize that?

17 A Yes, ma'am. It appears to be the living room area
18 where we found our patient at.

19 Q And is that couch in that photograph the same couch
20 that the defendant was on?

21 A Yes, ma'am.

22 **ASST. SOL. HASELDEN:** Your Honor, at this ---

23 Q Does it appear that anything's been altered in that
24 photograph from the way it appeared on September 28th, 2010?

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

1 ASST. SOL. HASELDEN: Your Honor, at this time, I'd
2 move -- what is that? I believe State's ---

3 THE COURT: Six.

4 ASST. SOL. HASELDEN: --- six into evidence.

5 THE COURT: Is it Six?

6 MR. MATHEWS? Yes, sir.

7 THE COURT: As to State's Six?

8 MR. MATHEWS: No objection, Your Honor.

9 THE COURT: Ladies and gentlemen of the jury, State's
10 Exhibit Number Six will be admitted into evidence in the
11 trial of this case without objection.

12 (State Exhibit Six, photo of living room area, received
13 into evidence.)

14 THE COURT: State's Six into evidence. You may
15 publish, Solicitor.

16 Q Before I publish, can I ask you a question about that
17 photograph, Mr. Scurry?

18 A Yes, ma'am.

19 Q I see that there is a bottle of what appears to be
20 rubbing alcohol or hydrogen peroxide there; is that correct?

21 A It's a brown bottle. Looks like there's written on the
22 bottle, "hydrogen peroxide."

23 Q Is that your bottle?

24 A No, ma'am.

25 Q Who else was there assisting in the treatment of Mr.

1 Middleton?

2 A My partner that was working with me on the ambulance
3 that day, his name is Anthony King. And there was a
4 volunteer firefighter that came to provide assistance; his
5 name is Ray Delong. Those -- just the three of us were
6 there with fire rescue.

7 Q So did anybody treat Mr. Middleton while he was under
8 your care with that bottle?

9 A No, ma'am.

10 Q Is that your bottle?

11 A No, ma'am.

12 Q Any chance that was brought from your truck?

13 A No, ma'am.

14 ASST. SOL. HASELDEN: May I now publish to the jury,
15 Your Honor?

16 THE COURT: State's Six is in evidence. You may
17 publish.

18 ASST. SOL. HASELDEN: May I approach?

19 THE COURT: You may.

20 Q Tell me a little bit more about Mr. Middleton's
21 injuries, please.

22 A Sure. He had what appeared to be a deformity to the
23 outermost portion of his right leg. It was at the lower
24 portion of his leg, just around -- just below the knee area.
25 And a deformity to us is -- what signals to us that is

1 possibly a fracture.

2 Q Does a deformity also mean that it's cut?

3 A No, ma'am. A deformity -- normally we'll use that
4 terminology to put that with a -- with a fracture. If it
5 was a cut, it would have been a -- you know, laceration is
6 what we refer to as a -- as a break in the skin like that.

7 Q Well, did the defendant have any lacerations or cuts on
8 his person?

9 A No, ma'am.

10 Q Anywhere all over his whole body?

11 A Not that we noted.

12 Q Do you check an entire person when you go on-call?

13 A Yes, ma'am. It -- it -- it depends on the mechanism of
14 injury. And the mechanism of injury in this case was a
15 moped that had significant damage whenever we approached the
16 scene. Based upon that mechanism of injury, I searched him
17 for life-threatening injuries. We do a head-to-toe, front
18 and back assessment where we're looking for any potential
19 life-threatening injuries. And the only injuries that I
20 noted on him was just the deformity to the right, lower leg.

21 Q How did you know the mechanism of injury was a moped?

22 A I -- initially when I approached the patient, he was,
23 again, very agitated and he was, you know, in a great deal
24 of pain. So I asked him to calm down so I could find out
25 what happened. When I asked him that, he said that he was

1 riding a -- I'm not sure if he used the word "moped" or
2 "scooter" -- but he was riding a moped or a scooter and he
3 said that a vehicle came from behind him, started firing
4 shots at him and then they ran over him or hit him with the
5 -- the vehicle. And that's how he suffered the injuries to
6 the leg.

7 Q So he told you he was on the moped?

8 A Yes.

9 Q And the car hit him while he was on the moped?

10 A Yes.

11 Q What did you treat him with? Or did you do anything?

12 A Yes. Based upon the mechanism of injury of the
13 significant damage to the moped, that he had been
14 reportedly, you know, struck by a vehicle, we splinted the
15 leg with a cardboard-type splint to try to -- just in case
16 it was a fracture, we didn't want to cause any further
17 damage to that leg. Also placed him on a long spine board
18 to protect his -- his spine and his back. I initiated an IV
19 and put him on a cardiac monitor. I monitored his vital
20 signs in route to the hospital, to Colleton ER, and just
21 continued to monitor. I had him on oxygen as well, and just
22 monitored his vital signs, splinted his leg, put him on a
23 spine board to protect his spine.

24 ASST. SOL. HASELDEN: Moment's indulgence, Your Honor.

25 (BRIEF PAUSE.)

1 Q Was the patient wearing clothing?

2 A I remember he had on a pair of shorts. I don't recall
3 if he had on a shirt or not, but I -- I do remember he had
4 on shorts, because I was able to see the injury. As soon as
5 I walked in and started assessing him, I was able to see
6 that injury. I didn't have to remove any clothing to -- to
7 get to it.

8 Q Did you remove the clothing, though, as part of your
9 care?

10 A I palpated the -- the areas that the clothing was
11 covered. And normally, if a person doesn't complain of any
12 injuries to areas that clothing covers, to protect modesty,
13 we don't routinely remove that unless we suspect underlying
14 injury there.

15 ASST. SOL. HASELDEN: Your Honor, may I approach one
16 more time?

17 THE COURT: You may.

18 Q Mr. Scurry, in State's Six, there appear to be some
19 articles of clothing on the floor.

20 A Yes, ma'am.

21 Q Are those the same articles of clothing that the
22 defendant had on?

23 A I can't a hundred percent say for -- for sure. It was
24 a little bit dark in that room, so I can't a hundred percent
25 say for sure that these were the clothes he had on.

1 Q Who else was in the house while y'all were treating
2 him?

3 A It was a member of law enforcement in the house, of
4 course, the technician that was with me, the other volunteer
5 that came, and there was another individual that was not
6 with law enforcement. I'm not sure who he was, but he was
7 in the room. He didn't say anything; he was just in the
8 room.

9 Q Do you remember if the defendant had any difference in
10 appearance as far as his hair?

11 A I think his hair was the same as it is now. I don't
12 recall any difference.

13 Q I have no further questions at this time. If you can
14 answer anything Mr. Mathews has, I'd appreciate it.

15 A Sure.

16 **THE COURT:** Cross-examination.

17 **MR. MATHEWS:** Thank you, Your Honor.

18 **CROSS-EXAMINATION**

19 **BY MR. MATHEWS:**

20 Q Officer Scurry, how are you doing?

21 A Good.

22 Q When you were on the scene, were you asked to treat
23 anybody else or check anybody else?

24 A No, sir.

25 Q Was there anybody else when you arrived there that

1 asked for or appeared to need any treatment?

2 A No, sir. Just -- just Mr. Middleton.

3 Q Okay. And you took him to the hospital. Yes, sir. I
4 transported him to Colleton ER.

5 MR. MATHEWS: Nothing further, Your Honor.

6 THE COURT: Redirect?

7 ASST. SOL. HASELDEN: None, Your Honor.

8 THE COURT: As to this witness?

9 ASST. SOL. HASELDEN: Ask that he be excused.

10 THE COURT: Any objection, Mr. Mathews?

11 MR. MATHEWS: No, sir.

12 THE COURT: Mr. Scurry, you may step down. You're
13 excused from the trial of this case, and may remain with us
14 or leave as you wish. Call your next witness.

15 ASST. SOL. HASELDEN: State calls Anthony Buchanan.

16 MADAME CLERK: Please come forward and be sworn. Place
17 your left hand on the Bible and raise your right.

18 WHEREUPON, ANTHONY BUCHANAN IS DULY SWORN.

19 MADAME CLERK: Please have a seat on the witness stand
20 and state your full name for the record.

21 THE COURT: Mr. Buchanan, you know what to do.

22 MR. BUCHANAN: My name's Anthony Buchanan, B-U-C-H-A-N-
23 A-N.

24 THE COURT: Your witness, Counsel.

25 DIRECT EXAMINATION

1 BY ASST. SOL. HASELDEN:

2 Q Mr. Buchanan, who do you work for?

3 A I work for Ridgeland Police Department.

4 Q Have you always worked for Ridgeland Police Department?

5 A No, ma'am.

6 Q Who did you work for before you went to work for
7 Ridgeland?

8 A Colleton County Sheriff's Department.

9 Q How long were you there?

10 A About eight years.

11 Q Were you working with Colleton County Sheriff's Office
12 in September of 2010?

13 A Yes, ma'am, I was.

14 Q Specifically, were you working on the 28th of that
15 month?

16 A Yes, ma'am.

17 Q Did you respond to any calls out at Brittlebank Road
18 that day?

19 A Yes, I did.

20 Q Can you describe for me the nature of that call?

21 A Dispatch come over the radio and told us that we had a
22 moped, or a scooter, that had been run over by a car, that's
23 what we were dispatched to.

24 Q And what did you find when you got out there?

25 A Prior to when I arrived, right -- right when I arrived,

1 they had -- had told us over the radio that there had been
2 shots fired. When I arrived on the scene, I was the first
3 one there. There was a moped in the middle of the road, or
4 a scooter; I'm not sure where to qualify it. And she told
5 us that the -- the caller had his cousin in the house, that
6 had been run over. So I waited for my backup to get there,
7 which is Deputy Taylor, to go in together, because there was
8 a weapon involved. We wanted to make sure the scene was
9 secure and safe.

10 Q What did you find when you got inside that house?

11 A When I got inside, I had -- the defendant, Mr.
12 Middleton, was laying on the couch, screaming that they run
13 him over and they were shooting at him. And I asked him
14 about a gun, because our thing is to make the scene safe.
15 Said he didn't have a gun; they were shooting at him. He
16 got run over; I told him that medical attention was coming.
17 And I advised dispatch that -- to go ahead and let fire and
18 rescue to come in; the scene was safe.

19 Q And do you remember which house this was specifically?

20 A No. No, I don't. It was right there by the -- by the
21 scooter. It was a single-wide mobile home.

22 Q Who else was in the house with you?

23 A Myself, Deputy Taylor, and there was another black man
24 in the house.

25 Q Was he a member of law enforcement?

1 A No, no.

2 Q With EMT?

3 A No, ma'am. I didn't know if he was the homeowner. He
4 was just in there.

5 Q So just another citizen?

6 A Yes, ma'am.

7 Q So after you spoke with the defendant, what did you do?

8 A After I spoke with the defendant, I told dispatch to go
9 ahead and let fire and rescue come in. I advised Officer
10 Taylor to go ahead and hang tight inside with the fire and
11 rescue personnel. I walked outside, looking for shell
12 casings from the weapon. Once I found the shell casings,
13 myself and Chief Deputy Stanfield had put out tape, crime
14 scene tape around, so nobody would mess with the scene until
15 the detective division got there.

16 Q Okay. And did you or a member of your team stay
17 outside and ensure nobody messed with the crime scene?

18 A Yes. Once fire and rescue was okay inside the house,
19 Deputy Taylor come out and started a crime scene log, and we
20 monitored people that come in and went out of the crime
21 scene. If you wasn't law enforcement or -- law enforcement
22 or fire and rescue, you didn't enter the scene.

23 Q You said you found some shell casings?

24 A Yes, ma'am.

25 Q You remember how many?

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

2 Q Did you do anything with them?

3 A Only thing I did is I kind of, you know, seen what they
4 were laying by and kind of marked them, so I could show the
5 detective division when they got there.

6 Q And did you do that?

7 A Yes, I did.

8 **ASST. SOL. HASELDEN:** A moment's indulgence, Your
9 Honor.

10 Q I have no further questions for you. If you would
11 answer anything Mr. Mathews has, I'd appreciate it.

12 **THE COURT:** Cross-examination.

13 **MR. MATHEWS:** Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 **BY MR. MATHEWS:**

16 Q Officer Buchanan, were you there when Detective
17 Inabinett arrived?

18 A I don't recall if I was there when Lieutenant Inabinett
19 arrived. I knew Andre Williams was there, as well as
20 Dorethea Gathers. And I could have been there when -- when
21 he arrived; I'm -- I'm unsure.

22 Q Did Jeff Scott appear -- or Detective Scott? Or not?

23 A No. I never seen Sergeant Scott. He -- he was
24 elsewhere.

25 Q How about Detective Thomas?

Direct Examination of Anthony Buchanan by Asst. Sol. Haselden
Cross-Examination of Anthony Buchanan by Mr. Mathews

1 A He -- he took the pictures, I believe.

2 Q All right. No further questions.

3 THE COURT: Redirect?

4 ASST. SOL. HASELDEN: No, Your Honor.

5 THE COURT: As to this witness?

6 ASST. SOL. HASELDEN: Ask that he be excused.

7 THE COURT: Any objection, Mr. Mathews?

8 MR. MATHEWS: No, sir.

9 THE COURT: Mr. Buchanan, you may step down. You're
10 excused from the trial of this case.

11 MR. BUCHANAN: Thank you, Your Honor.

12 THE COURT: You may remain with us, as you wish. Call
13 your next witness.

14 ASST. SOL. HASELDEN: State calls Marshall Taylor.

15 MADAME CLERK: Please come forward and be sworn. Place
16 your left hand on the Bible and raise your right.

17 WHEREUPON, MARSHALL TAYLOR WAS DULY SWORN.

18 MADAME CLERK: Please have a seat on the witness stand
19 and state your full name for the record.

20 THE COURT: Have a seat. Adjust that microphone.
21 State your full name, spell your last name.

22 MR. TAYLOR: Marshall Taylor, T-A-Y-L-O-R.

23 THE COURT: Your witness, Counsel.

24 DIRECT EXAMINATION

25 BY ASST. SOL. HASELDEN:

- 1 Q Mr. Taylor, who do you work for?
- 2 A Colleton County Sheriff's Office.
- 3 Q How long have you worked there?
- 4 A Two and a half years.
- 5 Q Were you working September 28th, 2010?
- 6 A Yes, I was.
- 7 Q Did you respond out to Brittlebank Road?
- 8 A Yes, I did.
- 9 Q And while you were there, did you keep a crime scene
- 10 log?
- 11 A Yes, I did.
- 12 Q What exactly is a crime scene log?
- 13 A It's a list of anyone who comes in and out of the area
- 14 of the crime scene.
- 15 Q And any specific manner in which you have to keep that,
- 16 any forms?
- 17 A Usually it's the -- as you come in, you know, the list
- 18 as you come in, who, and by time.
- 19 Q And once you start a crime scene log, do you document
- 20 every person that comes and goes?
- 21 A Yes.
- 22 **ASST. SOL. HASELDEN:** Your Honor, may I approach the
- 23 witness?
- 24 **THE COURT:** You may.
- 25 Q Mr. Taylor, I'm showing you what has been marked for

1 identification purposes only, as State's Five. Would you
2 open that up and tell me if you recognize that item?

3 (Witness complies.)

4 A Yes, I do.

5 Q What is it?

6 A It's a crime scene log from [REDACTED] Brittlebank Road.

7 Q And is there a date on that crime scene log?

8 A September 28th, 2010.

9 Q Is this the same crime scene log that you created the
10 day that you responded out to the shooting on Brittlebank?

11 A Yes, it is.

12 Q So once you started this log, who-all came and went?

13 A Various members of law enforcement and EMS.

14 Q Did you allow anyone else that was in the house to come
15 or go?

16 A There was a -- an individual that was in the house that
17 I did not get his name, so he's not on the log.

18 Q You say he was already in the house?

19 A He was in the house when we arrived.

20 Q Did he ever leave the house?

21 A I don't know.

22 Q You have any type of description of him?

23 A Black male.

24 **ASST. SOL. HASELDEN:** Your Honor, at this time, I'd ask
25 that State's Exhibit Five be entered into evidence.

Direct Examination of Marshall Taylor by Asst. Sol. Haselden
Cross-Examination of Marshall Taylor by Mr. Mathews

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1 **THE COURT:** Any objection as to State's Five?

2 **MR. MATHEWS:** No, sir.

3 **THE COURT:** State's Exhibit Number Five will be
4 admitted into evidence, ladies and gentlemen, without
5 objection.

6 (State Exhibit Five, crime scene log, is received into
7 evidence.)

8 **THE COURT:** State's Five in evidence. You may publish.

9 **ASST. SOL. HASELDEN:** May I approach?

10 **THE COURT:** You may.

11 Q I have no further questions for you at this time. If
12 you can answer anything Mr. Mathews has, I'd appreciate it.

13 **THE COURT:** Cross-examination.

14 **MR. MATHEWS:** Thank you, Your Honor.

15 **CROSS-EXAMINATION**

16 **BY MR. MATHEWS:**

17 Q Officer Marshall, is that everybody that was around
18 there or was there other people? That black male that you
19 mentioned, he is not on the thing. Is that just law
20 enforcement personnel?

21 A That's everyone who comes in and out of the crime
22 scene.

23 Q Okay. So was -- the crime scene was the house? Or was
24 that the whole block?

25 A The area that was around the house.

1 Q So was there also a little girl?

2 A I did not see her.

3 Q So if there was, that would have been somebody -- you
4 didn't check all the bedrooms or anything like that, to see
5 who might have been around?

6 A No, sir.

7 Q Did the crime scene include just the one house or were
8 there other mobile homes around?

9 A Just the house and the roadway.

10 Q Among the names that you have on there is Detective
11 Jeff Scott, and you have the time he arrived. Did he come
12 from a prior crime scene involving this incident before
13 that? Or do you know?

14 A I do not know.

15 Q Okay. Is it your understanding, would somebody keep a
16 separate crime scene log if there were another case, for
17 example, a car. You understand the allegations this
18 involves a Honda hitting a motorcycle, right?

19 A Correct.

20 Q Or a scooter?

21 A Yes, sir.

22 Q Would the Honda, would that also be a crime scene?

23 A Yes, sir.

24 Q Do you have a crime scene log for the Honda?

25 A There was no Honda at this crime scene.

1 Q Okay. That would be up to somebody else to do that?

2 A Correct.

3 Q But that would be a proper protocol?

4 A Yes, sir.

5 MR. MATHEWS: I don't have anything further, Your
6 Honor.

7 THE COURT: Redirect?

8 ASST. SOL. HASELDEN: None, Your Honor.

9 THE COURT: As to this witness.

10 ASST. SOL. HASELDEN: Ask that he be excused.

11 THE COURT: Any objection?

12 MR. MATHEWS: No, sir.

13 THE COURT: Mr. Taylor, you may step down. You're
14 excused from the trial of this case. You may remain with us
15 as you wish. Call your next witness.

16 ASST. SOL. HASELDEN: State calls Miranda Varner.

17 MADAME CLERK: Please come forward and be sworn. Place
18 your left hand on the Bible and raise your right.

19 WHEREUPON, MIRANDA VARNER IS DULY SWORN.

20 MADAME CLERK: Please have a seat on the witness stand
21 and state your full name for the record.

22 THE COURT: Watch your step. Have a seat and be
23 comfortable. Pull the chair up, adjust the microphone,
24 speak into it. Speak up so they can hear you. State your
25 full name and spell your last.

1 MS. VARNER: Miranda Varner, V-A-R-N-E-R.

2 THE COURT: Your witness, Counsel.

3 ASST. SOL. HASELDEN: Thank you.

4 DIRECT EXAMINATION

5 BY ASST. SOL. HASELDEN:

6 Q Ms. Varner, where do you live?

7 A [REDACTED]

8 Q Is that your house?

9 A Yes.

10 Q How long have you been living there?

11 A Since '92.

12 Q And who-all lives there with you, ma'am?

13 A Princess, John, and I keep my granddaughter to go to
14 school.

15 Q Who's your granddaughter?

16 A [REDACTED].

17 ASST. SOL. HASELDEN: Your Honor, may I approach the
18 witness?

19 THE COURT: You may.

20 Q Ms. Varner, I'm showing you what's already been entered
21 in as State's Thirty-One. Do you recognize that?

22 A Yes.

23 Q And who is that precious girl?

24 A A very photogenic [REDACTED].

25 Q Is that your granddaughter?

- 1 A Yes.
- 2 Q She's the one that sometimes stays with you?
- 3 A Yes.
- 4 Q And, Ms. Varner, do you work?
- 5 A Yes.
- 6 Q Where do you work?
- 7 A Gas station.
- 8 Q Were you working on September 28th, 2010?
- 9 A Yes.
- 10 Q What time did you get off?
- 11 A I got off round about something to three. Normally, I
- 12 try to make it home before she get off the bus, but maybe I
- 13 was running late. Yeah.
- 14 Q So you weren't home when the bus pulled up with her?
- 15 A Unh-unh.
- 16 Q So did you see a shooting?
- 17 A No.
- 18 Q Did you hear any shooting?
- 19 A No.
- 20 Q What did you find when you got home?
- 21 A I found -- well, when I turned on Brittlebank, when I
- 22 got close to the house, I seen the moped broke up, like,
- 23 over on Eastside. And when I got in the house, I seen
- 24 Quashon. It was him. He was on the couch, kind of like
- 25 laying on the couch on the floor. He was in pain.

1 Q Who is him? I'm sorry, ma'am.

2 A Quashon.

3 Q Quashon Middleton?

4 A Yes.

5 Q Right over here ---

6 A Yes.

7 Q --- at this table? Is he your -- is he related to you?

8 A Cousin.

9 Q So he was laying on the couch?

10 A Uh-huh.

11 **THE COURT:** You have to say "yes."

12 A Yes, yes.

13 Q And what happened after that?

14 A Well, I did one of my little things. And I -- I don't
15 remember calling 911, but I did get on the phone and call
16 somebody. I'm thinking it was my sister or maybe called the
17 sheriff's department. I don't know what I did, but I
18 panicked just a little, not a lot. After that, now, the
19 ambulance came, and then Net and all them came and ---

20 **ASST. SOL. HASELDEN:** Your Honor, may I approach the
21 witness again?

22 **THE COURT:** You may.

23 Q Ms. Varner, I'm showing you what's already been entered
24 into evidence as State's Six. Is that your living room
25 floor?

- 1 A Yes.
- 2 Q Is that your couch?
- 3 A Yeah.
- 4 Q Is that the same couch Quashon was on?
- 5 A Yes.
- 6 Q And there's some articles right there on the floor. Is
- 7 that your clothing?
- 8 A No.
- 9 Q Whose clothing is that?
- 10 A I'm not sure. But I know they wouldn't be John. They
- 11 might have been his clothing, but I'm not sure whose
- 12 clothing they was.
- 13 Q Do you remember talking to Lieutenant Allen Inabinett
- 14 about those clothes?
- 15 A No, I don't. But if I did, I would have said they were
- 16 Quashon.
- 17 Q Okay. Once law enforcement got there, did they come in
- 18 your house?
- 19 A Yes, they did.
- 20 Q Did you let them come in your house?
- 21 A Yes, I did.
- 22 Q All right. And you said this is Eastside; is that your
- 23 neighborhood?
- 24 A Yeah.
- 25 Q Are there a bunch of houses around you?

1 A Yes.

2 Q So it's a pretty populated street?

3 A Yes.

4 **ASST. SOL. HASELDEN:** A moment's indulgence, Your
5 Honor.

6 Q I have nothing further for you, Ms. Varner. If you
7 would answer anything Mr. Mathews has, I'd appreciate it.

8 **THE COURT:** Cross-examination?

9 **MR. MATHEWS:** Sure. Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. MATHEWS:**

12 Q Ms. Varner, you saw that officer just testified a
13 minute ago?

14 A Yes.

15 Q Did you see him on the scene that day?

16 A I can't say that I did because I was not in the right
17 state.

18 Q I see; okay. Were you in the house until they took
19 Quashon off?

20 A Yes.

21 Q Where is Exhibit Six? Okay. So you were present ---

22 **MR. MATHEWS:** Your Honor, may I retrieve that?

23 **THE COURT:** Yes. What you want?

24 **MR. MATHEWS:** The crime scene log, entered into
25 evidence, Number Five. May I approach the witness, Your

1 Honor?

2 **THE COURT:** You may.

3 Q Ms. Varner, I'm going to hand you what's been marked as
4 State's Exhibit Number Five. And would you flip to the next
5 page and tell me if your name is on that list.

6 **THE COURT:** Mr. Mathews, put my envelope back there
7 with the court reporter.

8 (The witness reviews the list.)

9 A No.

10 **MR. MATHEWS:** No further questions, Your Honor.

11 **THE COURT:** Redirect?

12 **ASST. SOL. HASELDEN:** No, Your Honor.

13 **THE COURT:** As to this witness?

14 **ASST. SOL. HASELDEN:** Ask that she be excused.

15 **THE COURT:** Any objection?

16 **MR. MATHEWS:** No, sir.

17 **THE COURT:** Ms. Varner, you may step down and you are
18 excused from the trial of this case. You may leave the
19 courtroom or remain with us. Call your next witness.

20 **ASST. SOL. HASELDEN:** State calls Detective David
21 Thomas.

22 **MADAME CLERK:** Please come forward to be sworn.

23 WHEREUPON, DAVID THOMAS WAS DULY SWORN.

24 **MADAME CLERK:** Please have a seat on the witness stand
25 and state your full name for the record.

1 **THE COURT:** Det. Thomas, you know what to do.

2 **MR. THOMAS:** Yes, sir. My name is Riddick David
3 Thomas, T-H-O-M-A-S.

4 **THE COURT:** Your witness, Counsel.

5 **DIRECT EXAMINATION**

6 **BY ASST. SOL. HASELDEN:**

7 Q Mr. Thomas, who do you work for?

8 A Colleton County Sheriff's Office.

9 Q How long have you been working for the sheriff's
10 office?

11 A Five years reserve officer in '97; I went to work full
12 time in 2006.

13 Q And what's your position with the sheriff's office?

14 A I'm a detective.

15 Q And as a detective, what do you do?

16 A We investigate crimes.

17 Q Were you working as a detective on the 28th of
18 September in 2010?

19 A Yes, ma'am, I was.

20 Q Did you respond out to a call in the 1400 block of
21 Brittlebank?

22 A Yes, ma'am, I did.

23 Q Can you describe to me why you went out there?

24 A I don't remember the details as far as how I heard it.
25 But basically, that there had been a shooting and an

1 accident. And that was the motivation for responding.

2 Q What did you find when you got out there?

3 A When I arrived, there was a -- crime scene tape was
4 already in place. There was a moped wrecked, or banged up,
5 on the road. And I -- I think Corporal Buchanan had marked
6 on the road or on the grass, where some shell casings were
7 located.

8 Q Okay. So once you got there and observed all this,
9 what did you do?

10 A Lieutenant Inabinett and I actually located -- made
11 some measurements where the shell casings were located,
12 where the moped was located, and I photographed the scene.

13 Q You said you made measurements. What does that consist
14 of?

15 A Well, basic -- basically, now this is not to a surveyed
16 accuracy, naturally, but it's to show where all the pieces
17 of evidence were. Because once they're collected, then
18 they're gone. So this is where you can make a sketch, or
19 what have you, to show what the crime scene looked like.

20 **ASST. SOL. HASELDEN:** Just a moment, Your Honor.

21 (BRIEF PAUSE.)

22 **ASST. SOL. HASELDEN:** May I approach the witness?

23 **THE COURT:** You may.

24 Q Detective Thomas, I'm showing you what's been marked
25 for identification purposes only, States Eight through

1 State's Eighteen. Would you please tell me if you recognize
2 this?

3 (The witness reviews the photos.)

4 A Yes, ma'am. These appear to be photos that I took that
5 day.

6 Q Are they truthful and accurate representations of how
7 the crime existed on September 28th, 2010 when you got
8 there?

9 A Yes, ma'am. They appear to be.

10 **ASST. SOL. HASELDEN:** Your Honor, at this time, I'd ask
11 that States Eight through Eighteen be admitted into
12 evidence.

13 **THE COURT:** Any objection as to State's Eight, Nine,
14 Ten, Eleven, Twelve, Thirteen, Fourteen, Fifteen, Sixteen
15 and Seventeen, or Eighteen?

16 **MR. MATHEWS:** No objection, Your Honor.

17 **THE COURT:** Ladies and gentlemen of the jury, State's
18 Exhibits Eight through Eighteen will be admitted into
19 evidence in the trial of this case without objection.

20 (State Exhibit Eight, photo, received into evidence.)

21 (State Exhibit Nine, photo, received into evidence.)

22 (State Exhibit Ten, photo, received into evidence.)

23 (State Exhibit Eleven, photo, received into evidence.)

24 (State Exhibit Twelve, photo, received into evidence.)

25 (State Exhibit Thirteen, photo, received into

1 evidence.)

2 (State Exhibit Fourteen, photo, received into
3 evidence.)

4 (State Exhibit Fifteen, photo, received into evidence.)

5 (State Exhibit Sixteen, photo, received into evidence.)

6 (State Exhibit Seventeen, photo, received into
7 evidence.)

8 (State Exhibit Eighteen, photo, received into
9 evidence.)

10 **THE COURT:** You may publish to the jury.

11 Q Detective Thomas, could you please go through those
12 photos and explain what they are, while showing them to the
13 jury?

14 A Yes, ma'am. By number or just ---

15 Q If you could identify it by both number and show the
16 jury and explain what it is.

17 A Yes, ma'am. Number Eight is a photograph down
18 Brittlebank Road where all this occurred. It's just a shot
19 of the road itself.

20 Number -- Number Nine is a photograph; it's at the
21 trailer, I think [REDACTED]. That is inside the -- the home.

22 Number Ten is a photograph of the moped, as it's laying
23 on the side of the road, and also a mark in the road where
24 the moped apparently struck the pavement.

25 Number Eleven is a Placard Six, which is a shell

1 casing.

2 Number five -- I'm sorry, Number Twelve is a Placard
3 Five, which is also another spent shell casing.

4 Number Thirteen is Placard Number Four, which is
5 another spent shell casing.

6 Number Fourteen is Placard Number Three, which is an
7 additional spent shell casing.

8 Number Fifteen is Placard Number Two, which is a spent
9 shell casing.

10 Number Sixteen is another photograph of the moped.

11 Number Seventeen is a overall shot of a Placard Two,
12 Three, Four, Five and Six, which the best of my
13 recollection, are all spent shell casings.

14 And the last one here, Number Eighteen, is a -- that's
15 a different photograph, a different angle of the moped.

16 **ASST. SOL. HASELDEN:** May I approach and publish, Your
17 Honor?

18 **THE COURT:** You may.

19 Q Detective Thomas, we talked just a second ago. You
20 said you took measurements. Do you use a device to take
21 those measurements?

22 A Yes. Normally, we use a tape. I think in this case it
23 was a Lufkin tape, capacity like 300 feet.

24 Q And at what point did you start measurements? How did
25 you get a -- what did you measure them to?

1 A When we -- when we do a crime scene, what we normally
2 do is we try to establish a point that's hopefully not going
3 to go away. From this, we measured from the intersection of
4 Brittlebank and Burgess Circle, the center of the
5 intersection. And we measured down the road. Now, if -- if
6 the objects that we're looking at are a long ways away, then
7 we have to make additional measurements off the center of
8 the roadway. On these, we did not because the photographs
9 show where they were, relative to the center line. So these
10 are just basically a distance down the road. And as this
11 turned out, all the shell casings were basically on the edge
12 of the road. So there was not a great discrepancy whether
13 one was six feet away or six inches away.

14 Q Detective Thomas, as a result of your processing the
15 crime scene and photographing and doing these measurements,
16 did you create a crime scene sketch or recreation?

17 A Yes, ma'am.

18 ASST. SOL. HASELDEN: Your Honor, just a moment's
19 indulgence.

20 (BRIEF PAUSE.)

21 ASST. SOL. HASELDEN: May I approach the witness?

22 THE COURT: You may.

23 Q Detective Thomas, I'm showing you what's been marked
24 for identification purposes as State's Seven. Do you
25 recognize it?

1 A Yes, ma'am, I do.

2 Q And what is it?

3 A It was a crime scene sketch of the area of Brittlebank
4 and Burgess Circle.

5 Q Is it a truthful and accurate depiction of the crime
6 sketch as it existed on September 28th, 2010?

7 A It is, other than a few minor discrepancies. Placards
8 Two through Six are actually in reverse order. Two should
9 be Six, Three should be Five. But other than that, and to
10 my recollection, they were shifted down just a bit from
11 Burgess Circle. But other than that minor amount, it is the
12 way I saw this crime scene.

13 ASST. SOL. HASELDEN: Your Honor, may I approach
14 Detective Thomas?

15 Q Detective Thomas, could you make the corrections to the
16 numbers, so that it ---

17 A Yes, ma'am.

18 Q --- is a truthful and accurate depiction of the
19 numbers?

20 (The witness complies.)

21 Q Detective Thomas, may I -- I'd like to get my pen.

22 A Yes, ma'am.

23 THE COURT: Describe what you've done now, and then
24 show it to defense counsel.

25 A What I -- what I done here is Placard Two on the

1 sketch, where it showed Placard Two is actually Placard Six.
2 It's just in reverse order. All of them are shell casings.
3 There's nothing different. Two through Six are spent shell
4 casings. It's just that where Placard Two was, it's showing
5 Six here, and I just wanted to correct that.

6 **ASST. SOL. HASELDEN:** May I approach, to show counsel?

7 **THE COURT:** Yes.

8 Q Detective Thomas, is this sketch perfectly to scale?

9 A No, ma'am. Our sketches -- I guess it's a technical
10 term; they're more to proportion than to scale. And by
11 that, if it's to scale, it will say one inch equals so many
12 feet or once centimeter equals so many meters.

13 And proportion, it's not so much what the scale is but
14 the -- the different components on there are the same
15 proportion, as far as distance apart.

16 Q Okay.

17 **ASST. SOL. HASELDEN:** Your Honor, at this time, I admit
18 Seven Exhibit Seven into evidence.

19 **THE COURT:** Any objection as to State's Seven?

20 **MR. MATHEWS:** No, sir.

21 **THE COURT:** Ladies and gentlemen of the jury, State's
22 Exhibit Number Seven will be admitted into evidence in the
23 trial of this case without objection.

24 (State Exhibit Seven, large crime scene sketch,
25 received into evidence.)

1 **THE COURT:** State's Seven in evidence. You may
2 publish.

3 **ASST. SOL. HASELDEN:** And, Your Honor, if I could ask
4 for the portable mic and get Detective Thomas to come off
5 the bench and explain State's Seven.

6 **THE COURT:** Mr. Mathews, you may come around.

7 **MR. MATHEWS:** Thanks, Your Honor.

8 **THE COURT:** Can everyone on the jury see the board?
9 State what's on the board and put it in the record,
10 Solicitor.

11 **ASST. SOL. HASELDEN:** State's Seven, the crime scene
12 sketch.

13 Q Detective Thomas, could you just walk us through this
14 sketch and explain to us what these numbers are and what
15 this sketch represents?

16 A Yes, ma'am. This is -- this represents Brittlebank
17 Road here. Number One is where the -- the moped was
18 wrecked. Number Seven was a scrape in the road that looked
19 like where the moped might have hit the pavement. Number
20 Two, Number Three, Number Four, Number Five and Number Six
21 are all spent shell casings.

22 Q Detective Thomas, I see some other numbers on here and
23 the little boxes with triangles over them. What do they
24 represent?

25 A Those are houses.

1 Q And are we able to determine which one is [REDACTED]
2 [REDACTED]?

3 A Yes, ma'am. Right there. Right down from where the
4 moped was on the grass.

5 Q Now, as far as the street and the house location, how
6 did you come up with their placement?

7 A On that, that's from 911 addressing.

8 Q Okay. Are they in basically the same areas that they
9 are on a map?

10 A Yes, ma'am.

11 Q And these One, Two, Three, Four, Five, Six and Seven,
12 as noted on your crime scene sketch, which is State's Seven,
13 did you photograph these items?

14 A Yes, ma'am. They're in the photographs that you
15 handled, I believe.

16 Q The same photographs that we just published?

17 A Yes, ma'am.

18 Q I have nothing further from you as far as State's
19 Seven. You can take the stand again, Detective.

20 (Detective Thomas returns to the witness stand.)

21 Q Detective Thomas, what type of other instruments do you
22 use to process a crime scene?

23 A Well, it depends on the crime scene. I'm not sure what
24 the question -- there's a lot of equipment. If we're doing
25 fingerprints or if we're looking for DNA.

1 Q Do you ever use hydrogen peroxide to process a crime
2 scene?

3 A No, ma'am.

4 Q Did you take any out there with you that day?

5 A No, ma'am, I did not.

6 Q Was any used by you or anyone that you saw, to process
7 the crime scene?

8 A No, ma'am.

9 **ASST. SOL. HASELDEN:** Just a moment's indulgence.

10 (BRIEF PAUSE.)

11 Q Detective Thomas, I know that you searched outside of
12 the house. Did you search inside the house at all?

13 A I was with two other detectives that went into the
14 house. Yes, ma'am.

15 Q And what were you looking for?

16 A A weapon. We were concerned that there are a lot of
17 kids and we were concerned about a weapon laying around
18 somewhere.

19 Q Did you find a weapon anywhere?

20 A No, ma'am.

21 Q Thorough search of the area surrounding the house?

22 A Yes, ma'am.

23 Q And inside the house?

24 A Yes, ma'am.

25 Q I have nothing for you at this time. If you'd answer

1 anything Mr. Mathews has, I'd appreciate it.

2 **THE COURT:** Cross-examination.

3 **CROSS-EXAMINATION**

4 **BY MR. MATHEWS:**

5 Q Detective Thomas, those aren't all the pictures that
6 you took; are they?

7 A I don't recall. I'd have to look at the disk. That is
8 probably. I -- I really don't know.

9 Q Did you take any pictures of the Honda or was that
10 somebody else?

11 A No, no, I did not.

12 Q Okay. Do you know who did?

13 A No, I do not.

14 **MR. MATHEWS:** Where is the ---

15 **THE COURT:** What are you looking for?

16 **MR. MATHEWS:** Right here. This one, Your Honor.

17 Q Detective Thomas, where was the ---

18 **MR. MATHEWS:** May I approach, Your Honor?

19 **THE COURT:** You may.

20 Q Where on this was, if you can point, where was the
21 crime scene tape located, if you can show the parameters?
22 It included all of the placards, right?

23 A Yes, it did. The crime scene tape was up near the end
24 of the -- of the diagram on this end.

25 Q Do you have a marker?

1 A And the other end, I honestly don't remember where it
2 was.

3 Q Would the crime scene then have encompassed at least
4 two other residences? Or the street in front of two other
5 residences?

6 A Yes, sir, it would have. The -- the crime scene was
7 kind of stretched out, so there would have been other
8 residences.

9 Q Okay. Did you look in any of those houses for the gun?

10 A I did not.

11 Q Were you aware of anyone having done that?

12 A I'm not aware of anyone else.

13 Q Did you see anybody else from any of those other houses
14 within that area?

15 A I saw people in the -- in their yards.

16 Q Okay. Did you take any statements from any of those
17 individuals?

18 A I did not.

19 Q Were you aware of anyone having done so?

20 A No, sir. I'm not aware of what anyone else might have
21 done as far as taking statements.

22 **MR. MATHEWS:** No further questions, Your Honor.

23 **THE COURT:** Redirect?

24 **ASST. SOL. HASELDEN:** None, Your Honor.

25 **THE COURT:** As to this witness?

1 ASST. SOL. HASELDEN: Ask that he be excused.

2 THE COURT: Any objection?

3 MR. MATHEWS: No, sir.

4 THE COURT: Mr. Thomas, you may step down. You're
5 excused from the trial of this case. You may remain with
6 us, as you wish. Call your next witness.

7 ASST. SOL. HASELDEN: Your Honor, may I approach?

8 THE COURT: Counsel, approach.

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
10 AND OUT OF THE HEARING OF THE JURY.)

11 ASST. SOL. HASELDEN: State calls Stephanie Mack.

12 MADAME CLERK: Please come forward and be sworn. Place
13 your left hand on the Bible and raise your right.

14 WHEREUPON, STEPHANIE MACK WAS DULY SWORN.

15 MADAME CLERK: Please have a seat on the witness stand
16 and state your full name for the record.

17 THE COURT: Watch your step on the stairs for me. Step
18 up there and make yourself comfortable. Pull the chair up.
19 Pull the microphone down; it's going to amplify your voice.
20 I need you to speak up, so they can hear you. State your
21 full name, spell your last for me.

22 MS. MACK: Stephanie Mack, M-A-C-K.

23 THE COURT: Very good. Your witness, Counsel.

24 DIRECT EXAMINATION

25 BY ASST. SOL. HASELDEN:

- 1 Q Ms. Mack, where do you live?
- 2 A I was living on [REDACTED] [REDACTED] [REDACTED] at the time.
- 3 Q What do you do for a living?
- 4 A I go to hair school.
- 5 Q Where do you go to hair school.
- 6 A Charleston Cosmetology Institute.
- 7 Q How much longer do you have before you graduate?
- 8 A Six more months.
- 9 Q Were you in school on September 28th, 2010?
- 10 A No, ma'am.
- 11 Q And what were you doing back then?
- 12 A I was working at Subway.
- 13 Q Okay. Do you remember driving down Brittlebank Road on
- 14 September 28th, 2010?
- 15 A Yes, I do.
- 16 Q What car were you in?
- 17 A My green Honda.
- 18 Q Were you driving?
- 19 A Yes, ma'am.
- 20 Q Who else was in the car with you?
- 21 A Ryan Stephens.
- 22 Q You remember about what time it was?
- 23 A About 3, 3:30.
- 24 Q Did you see a school bus?
- 25 A Yes, I did.

1 Q When did you see a school bus?

2 A At the end, when they were dropping off some -- a
3 little girl at the end of the pavement, when we stopped
4 there for the school bus.

5 Q What happened when you stopped in front of a school
6 bus?

7 A When I stopped in front of the school bus -- the school
8 bus had a stop sign out. And I heard this scooter coming up
9 behind us. So I looked in my rearview mirror. I panicked.
10 So Ryan then reached over and grabbed the wheel. And then I
11 slid up from under him. Then, he drove off and hit the
12 scooter.

13 Q What happened when the moped got close to you? Why did
14 you panic?

15 A I was scared.

16 Q Why were you scared?

17 A Because I ain't never been through nothing like that.

18 Q Can you tell me what you're talking about? What
19 happened that made you scared?

20 A I saw a gun.

21 Q Who had a gun?

22 A Quashon Middleton.

23 Q Now, who's Quashon Middleton?

24 A The -- the guy that was on the blue and black scooter.

25 Q And he drove up from behind you?

1 A Yes, ma'am.

2 Q You saw him with a gun?

3 A Yes, ma'am.

4 Q What did he do with the gun?

5 A He pulled it out.

6 Q And then what did he do?

7 A Start shooting in the windshield.

8 Q The windshield of your Honda?

9 A Yes, ma'am.

10 Q About how many times did he shoot?

11 A About five different times.

12 Q And you said you panicked. What did you -- what did
13 you do when you panicked?

14 A Threw my hands up.

15 Q Where did the bullets come in your car?

16 A Through the windshield.

17 **ASST. SOL. HASELDEN:** Just a moment's indulgence, Your
18 Honor.

19 (BRIEF PAUSE.)

20 **ASST. SOL. HASELDEN:** May I approach the witness?

21 **THE COURT:** You may.

22 Q Ms. Mack, I'm showing you what's been marked, for
23 identification purposes only, so far as State's Twenty-
24 Seven. Do you recognize that?

25 A Yes, ma'am.

1 Q What is that?

2 A It's a picture of my car with gunshots in the
3 windshield.

4 Q It's the same car you were in on September 28th, 2010?

5 A Yes, ma'am.

6 Q And all those gunshots in the windshield, were they
7 there before you drove down Brittlebank Road?

8 A No, ma'am.

9 Q Is that a truthful and accurate depiction of how your
10 car looked immediately following the shooting on September
11 28th?

12 A Yes, ma'am.

13 **ASST. SOL. HASELDEN:** Your Honor, at this time, I'd ask
14 that State's Twenty-Seven be entered into evidence.

15 **THE COURT:** As to State's Twenty-Seven?

16 **MR. MATHEWS:** No objection, Your Honor.

17 **THE COURT:** Ladies and gentlemen of the jury, State's
18 Exhibit Number Twenty-Seven will be admitted into evidence
19 in the trial of this case without objection.

20 (State Exhibit Twenty-Seven, photo, received into
21 evidence.)

22 **THE COURT:** State's Twenty-Seven in evidence. You may
23 publish.

24 Q Just ask you a couple questions real quick Stephanie,
25 before I publish. You said the bullets came in through your

1 windshield?

2 A Yes, ma'am.

3 Q How did you manage not to get hit?

4 A The seats was laid back.

5 Q While you were driving?

6 A Yes, ma'am.

7 **ASST. SOL. HASELDEN:** May I now approach and publish?

8 **THE COURT:** You may.

9 Q Stephanie, what did you do after this individual came
10 up and shot into your car, after you panicked and through up
11 your hands?

12 A I went and got on the passenger's side and just put my
13 hands up.

14 Q Okay. So you switched seats with Ryan?

15 A Yes, ma'am.

16 Q And then what happened?

17 A He continued to shoot. And then Ryan, he sped off and
18 he hit his leg on the scooter.

19 Q Who sped off?

20 A Ryan.

21 Q And hit whose leg?

22 A Quashon Middleton's leg.

23 Q You said he shot about seven times, four to seven
24 times? I don't remember.

25 A Five to seven.

- 1 Q Five to seven times.
- 2 A Uh-huh.
- 3 Q When did he stop?
- 4 A After he got ran over.
- 5 Q So he was still shooting when the car started driving.
- 6 A Yes, ma'am.
- 7 Q About how close were y'all to the school bus?
- 8 A About a half a car away.
- 9 Q Could you see anybody on the school bus?
- 10 A I saw a man driving the school bus.
- 11 Q After Ryan drove away, where did y'all go?
- 12 A We went back to Ryan's house.
- 13 Q Do you know where that is?
- 14 A [REDACTED]
- 15 Q What were you thinking at that point?
- 16 A I was scared and nervous.
- 17 Q Were you hurt in any way?
- 18 A No, ma'am.
- 19 Q Any glass hit you?
- 20 A I had a couple of cuts from the glass.
- 21 Q What did y'all do when you got over to 215 Grayson?
- 22 A Parked the car, went inside the house, then Ryan called
- 23 the police.
- 24 Q Did you talk to the police when they got there?
- 25 A Yes, ma'am.

1 Q Did they take a GSR kit from you?

2 A Yes, ma'am.

3 Q Swabbed down your hands?

4 A Uh-huh.

5 Q I'm sorry. Gun shot residue?

6 A Yes, ma'am.

7 Q And what did you tell the police?

8 A I told them that we was involved in a shooting, the boy
9 was on the scooter.

10 Q Did you tell them who that boy was at first?

11 A No, I didn't tell him who it was at first.

12 Q Why didn't you tell him?

13 A Because I was scared.

14 Q When did you finally tell him who it was?

15 A After-the-fact, then I told what happened in front of
16 the car.

17 Q Who did you finally tell? Do you remember what officer
18 it was?

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

20 Q Okay. Did you get a good look at the person on the
21 moped that was shooting in your car?

22 A Yes, ma'am.

23 Q And who was that person?

24 A Quashon Middleton.

25 Q You're talking about the same Quashon Middleton that's

1 seated right over here with David Mathews?

2 A Yes, ma'am.

3 Q No doubt in your mind?

4 A No, ma'am.

5 Q And did anybody in your car shoot at Mr. Middleton?

6 A No, ma'am.

7 Q Did you have a gun in your car?

8 A No, ma'am.

9 Q Do you own a gun?

10 A No, ma'am.

11 **ASST. SOL. HASELDEN:** Just a moment's indulgence, Your
12 Honor.

13 (BRIEF PAUSE.)

14 Q Before you gave law enforcement the defendant's name,
15 did you give any type of physical description?

16 A Yes, ma'am.

17 Q What did you tell them?

18 A I told him it was a black male, low haircut, red shirt
19 and black hat and black short pants.

20 Q And about how far away from you was he?

21 A He was right beside of me.

22 Q Right beside your car?

23 A Uh-huh.

24 **THE COURT:** You got to say "yes."

25 A Yes, ma'am.

1 Q So you got a good look at his face?

2 A Yes, ma'am.

3 Q Now, you said he was still shooting when y'all put the
4 car in drive?

5 A Yes, ma'am.

6 Q How many guns did he have?

7 A One or two; I don't remember, ma'am.

8 Q Can you describe his route around your vehicle? What
9 direction he came from? And where he was at in relation to
10 you in the driver's seat?

11 A He came from the back, and went to the passenger's side
12 first, and then in front of the car.

13 Q Was he driving the whole time? Did he ever pause?

14 A No, ma'am.

15 Q Okay. But he didn't stop shooting until y'all ran him
16 over.

17 A Yes, ma'am.

18 **ASST. SOL. HASELDEN:** Just a moment.

19 (BRIEF PAUSE.)

20 Q Ms. Mack, I have nothing further for you at this time.
21 If you'd answer anything Mr. Mathews has, I'd appreciate it.

22 **THE COURT:** Cross-examination?

23 **MR. MATHEWS:** Thank you, Your Honor.

24 **CROSS-EXAMINATION**

25 **BY MR. MATHEWS:**

1 Q Ms. Mack, what's your relationship with Ryan Stephens?

2 How long you been knowing Ryan Stephens?

3 A About a year now.

4 Q About a year now. So how long had you known each other
5 in September of 2010?

6 A About a couple of months.

7 Q Couple months?

8 A Uh-huh.

9 Q Were y'all going out?

10 A Yes, we were.

11 Q So he was your boyfriend?

12 A Yes, sir.

13 Q Would you ever lend him your car?

14 A No, sir.

15 Q Why not?

16 A Because.

17 Q Because why?

18 A Because I don't want nothing to happen to my car.

19 Q You think something happened to your car because of
20 him?

21 A No.

22 Q Okay. Is he allowed to drive?

23 A Yes, sir.

24 Q He is?

25 A Yes, sir.

1 Q He didn't tell you he's under suspension?

2 A No, sir.

3 Q He didn't tell you that?

4 **ASST. SOL. HASELDEN:** Objection, Your Honor. Calls for
5 speculation.

6 **THE COURT:** Sustained. Ask and answered. Proceed,
7 Counsel.

8 Q Ms. Mack, you say you were on the passenger's side seat
9 or the driver's seat when this first happened?

10 A I was in the driver's seat.

11 Q You were in the driver's seat. You rolled up to the
12 bus. And at the driver's seat, you're closest to the bus;
13 is that right? Y'all are like corner to corner, right there
14 on each other.

15 A Yes, sir.

16 Q So you can see the driver?

17 A Yes, sir.

18 Q And the driver be able to see you?

19 A I don't know, sir.

20 Q Far as you know. You could see him clearly, though.

21 A Yeah.

22 Q And you're sitting at the driver's seat low, and then
23 you're looking in the rearview because you're in the
24 driver's seat, right?

25 A Yes, sir.

1 Q All right. And then you see the scooter coming up
2 behind you.

3 A Uh-huh.

4 Q And it passes by the passenger's seat.

5 A Yes, sir.

6 Q All right. When does the scooter start firing?

7 A When he gets on the side -- when he gets on the side of
8 the car.

9 Q Okay. All right. And he went around the car all the
10 way when he fired?

11 A No, he wasn't.

12 Q Okay. When he fired, what did you do, specifically?

13 A I panicked.

14 Q I understand that. But, I mean, what were your
15 actions? You say that you -- did you get out of the car?

16 A Tried to.

17 Q You tried to get out of the car?

18 A Uh-huh.

19 Q Okay. So you started to open the driver's side door?

20 A Almost, yes, sir.

21 Q Okay. And then what did you do?

22 A Threw my hands up.

23 Q Okay. All right. So did you hear the shooting first?
24 Or did you see it first?

25 A I heard it.

1 Q Okay. You heard it. All right. You're looking at the
2 bus. You see this coming behind you. Then you hear it, and
3 then you see him and he's firing.

4 A Uh-huh (affirmative)

5 Q Okay. All right. How much time was there between
6 shots? Was he "Pow, pow, pow, pow"? Or was he "Pow
7 (break), pow (break), pow"?

8 A Pow, pow, pow.

9 Q Okay. So it was continuous?

10 A Yes, it was.

11 Q All right. And he's moving. He's going forward,
12 moving.

13 A Uh-huh.

14 **THE COURT:** You have to say "yes" or "no."

15 A Yes, sir.

16 Q All right. And so you're in the driver's seat, and at
17 that point, did you then discuss with Mr. Stephens about who
18 should drive?

19 A No, sir.

20 Q You didn't discuss it?

21 A No, sir.

22 Q He just instinctively knew to hop over you?

23 A He hopped over and grabbed the wheel.

24 Q Okay. So he's sitting on your lap?

25 A Yes, sir. And I crawled out from under him and went to

1 the passenger side.

2 Q All right. And this is bench seats or bucket seats?

3 A Bucket.

4 Q Okay. All right. Is there an emergency brake or
5 anything in-between?

6 A Yes, it is, sir.

7 Q Okay. And so while the shooting is going on, he gets.
8 on top of you, you slide out from under him, and then you
9 sit on the passenger's side?

10 A Yes, sir.

11 Q Okay. And all this time, you're moving?

12 A No, we're not moving.

13 Q Okay. All right. How far did the scooter get before
14 you hit it?

15 A I didn't hit the scooter.

16 Q Okay. All right. How far did it get before Ryan hit
17 it?

18 A By the school bus, right beside the school bus.

19 Q Okay. All right. And then you -- how much longer was
20 it that you called EMS?

21 A I didn't call EMS.

22 Q Okay. When did Ryan -- did you both have cell phones?

23 A Both of us have cell phones.

24 Q All right. Did you wait till you got to his house
25 before he called EMS?

1 A Yes.

2 Q Okay. How far away was that?

3 A Like a couple of blocks over.

4 Q Couple of blocks over, okay. All right. And when you
5 were on the scene, you gave a statement on the officer's car
6 camera, right?

7 A Yes, sir.

8 Q All right. And at that time while you were talking,
9 they told you that they had somebody in custody; did they
10 not?

11 A No, they didn't tell me that.

12 Q The officer did not tell you? That's not on the tape?

13 A Uh-uh. No, ma'am -- no, sir.

14 Q Okay. All right. So you're saying that they learned
15 from you who they had. You didn't learn from them who they
16 had?

17 A I didn't learn from them.

18 Q Okay. All right. They didn't tell you they had
19 somebody in custody?

20 A No, they didn't.

21 Q All right.

22 **MR. MATHEWS:** One moment, Your Honor.

23 (BRIEF PAUSE.)

24 Q Ms. Mack, what officer did you talk to? Do you know
25 his name?

1 A I don't know, sir.

2 Q Okay. But anyway, you gave that statement, first of
3 all, at Ryan Stephens' house?

4 A Yes, sir.

5 MR. MATHEWS: Nothing further, Your Honor.

6 THE COURT: Redirect?

7 ASST. SOL. HASELDEN: Nothing further for this witness,
8 Your Honor

9 THE COURT: As to this witness.

10 ASST. SOL. HASELDEN: I ask that she be excused, but
11 allowed to remain if she would like, as a victim in the
12 case.

13 THE COURT: Well, everyone's allowed to remain in this
14 case. You can remain with us or you're excused from the
15 trial. Any objection, Mr. Mathews?

16 MR. MATHEWS: No, sir.

17 THE COURT: You can remain with us or you're excused
18 from the trial of this case. You may leave the courtroom.
19 Counsel, approach.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
21 AND OUT OF THE HEARING OF THE JURY.)

22 THE COURT: Mr. Foreman, ladies and gentlemen of the
23 jury, we're going to stop at this point for our lunch break.
24 Your lunch is going to be served to you in your jury room.
25 If I have any smokers on the jury -- we don't allow smoking

1 in the courthouse -- they'll take you outside of the
2 courthouse to smoke. Please do not discuss the case amongst
3 yourselves or with anybody else during the lunch break.

4 Now, ladies and gentlemen, I'm going to be talking to
5 my bailiff. As soon as I know you've got lunch, I'm going
6 to start back, because we're going to stop a little earlier
7 this afternoon, because of some matters that I have to take
8 care of. So instead of telling you that we're going to
9 start -- it's ten minutes till one. Rather than tell you
10 we're going to start back at two, I'm going to try to start
11 back as early as 1:45, if possible. I want to give
12 everybody a chance to get a bite and get back. Yours is
13 going to be served to you, but as soon as I know that. So
14 feel free to stretch your legs, use the restroom, have your
15 lunch. But as soon as I know you've been taken care of,
16 we're going to try to start back, hopefully around 1:45 this
17 afternoon.

18 Please don't discuss the case, and I'll be back with
19 you just as quick as I can. You may retire to your jury
20 room at this time.

21 (WHEREUPON, THE JURY EXITS AT 12:50 P.M., AND THE COURT
22 IS RECESSED FOR LUNCH.)

23 **THE COURT:** And Counsel, I want to give y'all an
24 opportunity to have lunch as well, but I want to start back
25 as soon as we can. I'm going to try -- y'all heard what I

1 told the jury. I want you to have your lunch break and have
2 a break. But I'm going to try to start back as early as
3 1:45, which will be a little less than an hour from now.

4 Court's in recess until 1:45. Mr. Shelton, I need to
5 see you.

6 (WHEREUPON, 1:45 P.M. COURT RECONVENES.)

7 **THE COURT:** Everybody ready to go? Anybody need any
8 further break, bathroom-wise, so we can start?

9 **ASST. SOL. HASELDEN:** Your Honor. I just need to
10 briefly approach on a matter.

11 **THE COURT:** Counsel, approach.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
13 AND OUT OF THE HEARING OF THE JURY.)

14 **THE COURT:** All right. Ladies and gentlemen in the
15 courtroom, I've just been advised that there is possibly a
16 situation occurring where a witness, or witnesses, who have
17 testified in this case have been approached concerning their
18 testimony, threatened or offered monetary things of value
19 not to testify. I want everybody in this courtroom to
20 understand that if such an event occurs, it is punishable as
21 a violation of law and contempt of this Court. And if it is
22 proven to this Court that it has occurred, I can assure you
23 this Court will deal with it in an appropriate fashion. And
24 it will not be tolerated. You ready?

25 **ASST. SOL. HASELDEN:** Yes, Your Honor.

1 **THE COURT:** Mr. Mathews, are you ready?

2 **MR. MATHEWS:** Yes, sir.

3 **THE COURT:** Bring me the jury, please.

4 (1:50 P.M., 7-26-11, WHEREUPON, THE JURY ENTERS THE
5 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

6 **THE COURT:** All right, Mr. Foreman and ladies and
7 gentlemen of the jury, I hope everybody had a pleasant
8 lunch. We're now going to continue with the testimony in
9 the trial in this case. Solicitor, call your next witness.

10 **ASST. SOL. HASELDEN:** Thank you, Your Honor. May it
11 please the Court, the State calls Ryan Stephens.

12 **MADAME CLERK:** Please come forward and be sworn. Place
13 your left hand on the Bible and raise your right.

14 WHEREUPON, RYAN STEPHENS IS DULY SWORN.

15 **MADAME CLERK:** Please have a seat on the witness stand
16 and state your full name for the record.

17 **THE COURT:** Watch your step. Make yourself
18 comfortable. State your full name and spell your last for
19 the court reporter, because Stephens is spelled several
20 different ways; isn't it?

21 **MR. STEPHENS:** Yes, sir. Ryan Stephens, S-T-E-P-H-E-N-
22 s.

23 **THE COURT:** Your witness, Counsel.

24 **ASST. SOL. HASELDEN:** Thank you.

25 **DIRECT EXAMINATION**

1 BY ASST. SOL. HASELDEN:

2 Q Mr. Stephens, what do you do for a living?

3 A I'm -- I'm a -- excuse me. I do construction work for
4 T. D. Hiers.

5 Q And what did you do before you did construction work?

6 A Drive a truck.

7 Q Have you ever been in the military?

8 A Yes.

9 Q How long?

10 A Seven years.

11 Q And what did you do in the military?

12 A I worked with helicopters.

13 Q All right. What branch were you?

14 A Army.

15 Q And have you ever been deployed?

16 A Yes. Twice, Iraq.

17 Q Iraq both times?

18 A And Afghanistan once. Three deployments.

19 Q Were you ever trained in any combat?

20 A Yes, ma'am.

21 Q You ever involved in any combat?

22 A Yes, ma'am.

23 Q You been shot at?

24 A Yes, ma'am.

25 Q How does the military train you to prepare for a

1 situation such as active combat like that?

2 A Live fire?

3 Q Yes.

4 A Live fire training.

5 Q Okay. And what is that?

6 A This is the training where most of the time it's under
7 barbed wire. You're getting shot across live fire. You low
8 crawl and we get trained in like vehicle training, too. If
9 fired upon, you form a herring-bone formation. It's the
10 same as like the situation I was in, you cross the vehicle.

11 Q Okay. Why were you in that car with Stephanie on
12 September 28th, 2010?

13 A We was actually going to my mother's house. I was
14 going to get a plate from my mother.

15 Q Okay. And where is your mother's house?

16 A On Franklin Street, Eastside Acres.

17 Q Okay. So Brittlebank is a cut through?

18 A Yes. We came up the dirt road, yes.

19 Q Okay. And you remember about what time it was?

20 A Three, 3:15, something like that.

21 Q So tell me in your words what happened.

22 A All right. We was coming up that dirt road up
23 Brittlebank and was coming up. And she thought -- she
24 thought that the tire -- something was wrong with her -- her
25 driver's side tire. So I got out the car. She stopped on

1 the dirt road. I got out the car to check the tire. And he
2 passed us on the moped going back toward 303.

3 Q Who's "he"?

4 A Quashon Middleton.

5 Q Okay.

6 A And he passed us on the moped and passed back by us.
7 We got back behind us, he turned around and -- and stopped,
8 looking at us. I don't know if he was looking to see what
9 we was doing. I don't know. And so the tire was fine. So
10 we proceeded on going down the road. We came to the paved
11 road, then we came to the bus with the stop sign out. We
12 stopped at the bus. I heard the moped coming; I looked in
13 the rearview. I seen him clutching at his waist, pulling a
14 gun out.

15 Q Okay.

16 A And he got beside -- right beside the passenger side;
17 he fired the first shot. When he fired the shot, I looked
18 over to see if she was going to take off, but she didn't.
19 She just -- you know, she froze. So I jumped across the car
20 on her, grabbed the steering wheel, she struggled, and I got
21 into the seat, and the car was in park. I got into the seat
22 and threw it in drive. And he kept firing, you know. He
23 kept firing and kept firing. So I got over, threw it in
24 drive, got on the gas, and hit him on the moped.

25 Q Okay. Now, you said he came up on your side of the car

1 first?

2 A Yeah, on the passenger's side, where I was sitting.

3 Q So he was shooting at you first?

4 A Yeah.

5 Q And where did he go after that?

6 A To the front of the car. Came up beside he and he got
7 to the front. See, the reason I caught up with him so fast,
8 he didn't get that far away, is because he was shooting at
9 me, but he had the gun in this hand. And I guess the
10 throttle on this side of the scooter, so he couldn't
11 accelerate. He was shooting at me back across his bike. So
12 he couldn't really accelerate to get away from me. But once
13 he saw the car move, he tried to accelerate. You know, so
14 the shot -- the shots did stop, but it stopped, like, as I
15 was hitting him, because he's trying to get away.

16 Q You remember how many times he shot?

17 A Five, seven times.

18 Q Did you know the defendant before this incident?

19 A I -- I knew him by face.

20 Q So you didn't know his name?

21 A No.

22 Q And did you talk to law enforcement about this incident
23 afterwards?

24 A Yes.

25 Q Where were you?

1 A At my house, [REDACTED] [REDACTED] [REDACTED].

2 Q And so after you hit him, did you proceed straight
3 there?

4 A I went straight to [REDACTED] [REDACTED] [REDACTED]. I didn't want
5 to stay in that area, you know, I just got shot at. I
6 didn't want to stay there, so I -- I went home.

7 Q Okay. So when you talked to law enforcement, were you
8 able to give them a name?

9 A No. But I gave them a description.

10 Q Okay. And do you remember what description you gave
11 them?

12 A I said it was a black fellow, low haircut. He had on a
13 red shirt and black pants, driving a blue moped.

14 Q Okay. And did you get a good look at his face, though?

15 A Yeah.

16 Q And you recognize that person in the courtroom?

17 A Yes, ma'am.

18 Q Who is it?

19 A Quashon Middleton.

20 Q Seated right here with his attorney?

21 A Yes, ma'am.

22 Q It's the same man you saw pass you on a moped while you
23 were checking her tire?

24 A Yes, ma'am.

25 Q Have you ever personally had any problems with Quashon?

1 A No, ma'am.

2 Q Y'all ever fought?

3 A No, ma'am.

4 Q Exchanged words?

5 A No, ma'am.

6 Q So why was he trying to kill you?

7 **MR. MATHEWS:** Objection, leading, Your Honor.

8 **THE COURT:** Sustained. Rephrase the question, direct
9 examination.

10 Q So you had no prior argument with Quashon Middleton?

11 A No. The only conversation I've had with him wasn't a
12 conversation. He asked for a cigarette one day while I was
13 in the car with somebody else, and he asked him for a
14 cigarette. And I had it and I gave it to him.

15 Q You heard earlier, Mr. Mathews mentioned to Stephanie
16 that your license was suspended.

17 A Oh, yeah.

18 Q Why is your license suspended?

19 A Child support.

20 **ASST. SOL. HASELDEN:** Just a moment's indulgence, Your
21 Honor.

22 (BRIEF PAUSE.)

23 Q When you were talking to officers at Grayson after the
24 incident, did you give them your GSR?

25 A Yes, I did.

1 Q Did you see any other cars or mopeds in the area after
2 this happened?

3 A Well, I thought I saw a -- a blue, like a Grand Am --
4 like a Grand Am, I think it was, back behind us.

5 Q Any indicator that it had anything to do with this?

6 A I really don't know. I mean, I thought it did at the
7 time, because he ran toward that direction, you know, he ran
8 toward the bus and the car was parked by the bus. The bus
9 started moving, so I -- you know, I thought he was going to
10 the car. And that's really why I sped off, because I
11 thought he was going to get in the car.

12 Q But you don't know if he got in the car or not?

13 A No.

14 Q I have nothing for you further. If you'd answer
15 anything Mr. Mathews has, I'd appreciate it.

16 MR. MATHEWS: May it please the Court?

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. MATHEWS:

20 Q Mr. Stephens, you talked to law enforcement how much
21 after this happened?

22 A Maybe 20, 30 minutes.

23 Q Okay. All right. And during that time, you talked to
24 them for about 25 minutes, something like that?

25 A Yeah.

1 Q And it was on the officer's camera. He said he was on
2 his car camera?

3 A I was in front of the car, yes, sir.

4 Q All right. And he said at one point "Move over so I
5 can see you."

6 A Yes, sir.

7 Q All right. Now, in that 25 minutes, at one point he
8 asked you whether you had any I.D. and you didn't say -- you
9 said "I don't have any I.D." Did you ever tell him -- you
10 never told him, in fact, that you were under suspension at
11 that time; did you?

12 A Actually, I didn't know I was under suspension at that
13 time. I thought I was under suspension when I got stopped
14 driving a truck for Bobby Lyons' Trucking. I got the
15 ticket.

16 Q Okay. You were on suspension since about two weeks
17 before that; was that not correct?

18 A I -- I didn't know I was under suspension until I got
19 stopped.

20 Q All right. Your address is [REDACTED],
21 Walterboro, South Carolina?

22 A Yes, sir.

23 Q And how long has that been your address?

24 A For about the last four years.

25 Q About the last four years. And you went on suspension

1 on September the 6th, 2010; is that correct?

2 **ASST. SOL. HASELDEN:** Objection, Your Honor. This line
3 of questioning about the driver's license being suspended is
4 irrelevant and it's calling for speculation.

5 **THE COURT:** Counsel, approach.

6 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
7 AND OUT OF THE HEARING OF THE JURY.)

8 **THE COURT:** Proceed, Mr. Mathews.

9 Q Mr. Stephens, when you learned you were under
10 suspension, how long had you been under suspension?

11 A For about four months. When I found out, that's when I
12 got my ticket.

13 Q You got a ticket for driving under suspension?

14 A Yes.

15 Q Okay. You told the officer when you got that ticket
16 that you didn't know you were under suspension ---

17 A No.

18 Q --- right? What happened with that? Did you plead
19 guilty to it?

20 A Yes, I -- I went to jail in Dorchester County. They
21 took me to jail. I was driving a big-rig.

22 Q Okay. All right. You indicated that you were in the
23 military and you talked about your combat training; that's
24 admirable. It is. Did you ever have any problems,
25 disciplinary problems, in the military?

1 A Yes, once.

2 Q What about?

3 A I had a ---

4 **ASST. SOL. HASELDEN:** Your Honor, I have to object.
5 Under Rule 608, improper attack on character.

6 **THE COURT:** Counsel, approach.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
8 AND OUT OF THE HEARING OF THE JURY.)

9 **THE COURT:** Overruled.

10 Q Go ahead, Mr. Stephens.

11 A Yes. When I first got in the military, it was me and a
12 bunch of guys and they caught us with a -- like a small bag
13 of marijuana.

14 Q All right. Isn't it true that you told the officer
15 emphatically that you had no idea who that -- you've never
16 seen Quashon before, you never seen that person before.
17 Isn't it true that you told that to the police?

18 A I told him I didn't know who it was.

19 Q Okay. But did you told them -- in fact, you told him
20 you didn't have any idea, you've never seen him before, "I
21 never much seen him before."

22 A Right.

23 Q But that wasn't true; was it?

24 A It was. At the time he was asking me the questions
25 about how I just got shot, I just got shot. I was trying to

1 put my stuff back together, too. I was calming down from
2 getting shot at.

3 Q Okay. And it's your testimony today that Quashon, or
4 whoever's on the scooter, fired into the side of the car?

5 A Inside, soon as you pass the glass of the car, hit the
6 frame of the car, the side of the car, still a bullet hole
7 in it.

8 Q Okay. You say you're sitting there in the passenger's
9 side and he rolled up right next to you, right? On the
10 passenger's side?

11 A Yes, sir.

12 Q Looked you dead in the eye? You looked at him; he
13 looked at you. You had seen him before, so you're looking
14 for him, right?

15 A Sir, I didn't look him dead in the eye. I looked at
16 the gun. I wasn't -- I wasn't looking at -- I didn't look
17 him dead in the eye; he pulled a gun out. I'm looking at
18 the barrel of the gun, to see if the gun will fire. I was
19 trained to do that. I looked at the gun, to see if the gun
20 was going to fire. When I seen the gun firing, fire coming
21 out the front of the gun, I moved to the other seat. I
22 didn't look him in the eye. When he got in the front of the
23 car, I took a look at him.

24 Q Okay. When you got in the front, so at some point he
25 was -- you said you noticed him -- now, you saw him come up

1 behind, you; didn't you just say that?

2 A Yeah, I did. I seen him going down the dirt road.

3 Q Okay. And that alerted you. Something was up, you had
4 seen him before, so you were looking for him, right?

5 A It didn't alert me. He was on a moped. Riding a moped
6 didn't alert me. What alert me was the gun. That alerted
7 me.

8 Q You told police he fired right into the side of the
9 car?

10 A Yeah, soon as he got beside the car, I told the police.

11 Q So how far away was -- how far away were y'all two from
12 each other at that point?

13 A Maybe three, four feet away from each other.

14 Q You to the court reporter there?

15 A Yes, sir.

16 Q Side by side?

17 A Yes, sir.

18 Q And you were at a dead stop. Or the car you were in
19 was at a dead stop, right?

20 A Yes, sir.

21 Q Did you have -- and it was in park?

22 A It was in park.

23 Q All right. So you weren't going anywhere. You were
24 sitting right there stopped, okay. And you noticed him, you
25 watched him drive by, but nothing happened between y'all?

- 1 Nothing?
- 2 A Nothing.
- 3 Q You didn't look up at him? Nothing?
- 4 A Wait, wait now. When you asking me when he drove by?
- 5 On that dirt road? Or by the -- by the -- when he drove by
- 6 me in the dirt road, I was out the car.
- 7 Q Okay.
- 8 A When he drove by me on the road, I was in the car.
- 9 Q All right.
- 10 A So which are you asking?
- 11 Q I'm talking about when you were stopped at the bus.
- 12 A He drove up beside me. I saw a gun.
- 13 Q Okay.
- 14 A Before he pulled the gun out, approaching the car, I
- 15 saw a gun. I didn't know if he was coming to shoot me. I
- 16 didn't know if he was coming to shoot somebody on the bus.
- 17 I didn't know if he was coming to shoot somebody beside the
- 18 bus. I saw a gun, so I kept my eyes on the gun.
- 19 Q Was your window up or down?
- 20 A Cracked, halfway.
- 21 Q Halfway?
- 22 A Yeah.
- 23 Q Okay. When the police came, did you put your window
- 24 up?
- 25 A I don't remember.

1 Q All right. Who took the GSR sample?

2 A A detective. I don't know his name?

3 Q A white guy with red hair?

4 A A white guy took it. It was a white guy, but I don't
5 know his name.

6 Q Jeff Scott, maybe?

7 A If that's his name, sir.

8 Q And was he the one also took pictures of the car?

9 A I don't know who took pictures of the car. I was being
10 -- they was asking me questions while they were doing what
11 they were doing. The car was -- I parked the car on the
12 side of my house. Because, you know, it just got shot at; I
13 didn't want nobody coming over to the house shooting no
14 more.

15 Q And you had a cell phone, right?

16 A Yes, I did.

17 Q And how long did you wait before you called police?

18 A I don't know. I don't remember how long I waited.

19 (BRIEF PAUSE WHILE DEFENSE ATTORNEY HAS THE COURT
20 REPORTER MARK AN EXHIBIT.)

21 **MR. MATHEWS:** Your Honor, may I approach the witness?

22 **THE COURT:** You may.

23 Q Mr. Stephens, I'm handing you what's been marked as
24 Defense Exhibit Number One and ask if you can identify that.

25 A That's the car I was in.

1 Q Was that how it looked the car the day this happened or
2 the day after this happened?

3 A Yeah.

4 MR. MATHEWS: Your Honor, I'd seek to introduce this
5 into evidence at this time.

6 THE COURT: What number?

7 MR. MATHEWS: It's Defense One.

8 THE COURT: Any objection as to Defendant's One?

9 ASST. SOL. HASELDEN: None, Your Honor.

10 THE COURT: Ladies and gentlemen of the jury,
11 Defendant's Exhibit Number One will be admitted into
12 evidence without objection.

13 (Defendant's Exhibit One, photo of car, received into
14 evidence.)

15 THE COURT: Defendant's One now in evidence. You may
16 publish, Mr. Mathews.

17 MR. MATHEWS: Thank you, Your Honor.

18 A Can I say something?

19 Q Sure.

20 A When I was -- you said if he got beside me and shot.

21 The bullet hole -- it's hard to see, but the bullet hole is
22 in the side of the car.

23 Q Mr. Stephens --

24 THE COURT: Mr. Mathews, don't tell him to go ahead and
25 speak and then cut him off.

1 **MR. MATHEWS:** Well, I just know what he's saying now,
2 Your Honor.

3 **THE COURT:** He gets a chance to explain his answer.
4 You may finish and then ask a question. Don't start
5 instructing witnesses to do one thing and then instruct them
6 to do another.

7 **MR. MATHEWS:** Yes, sir.

8 **THE COURT:** You may finish.
9 A Yes, sir. You asked me if he shot me outside the car,
10 and I said "yes." And that's where the bullet hole come at
11 in the corner of the door, and at the corner of the door and
12 the windshield, because he shot the first shot when he got
13 beside the car. You was asking me that.

14 **THE COURT:** Ask the question.

15 **MR. MATHEWS:** All right.

16 Q You own a gun, Mr. Stephens?

17 A No, sir.

18 Q Ever own a gun?

19 A I have.

20 Q When's the last time you owned one?

21 A 2006, when my partner passed away.

22 Q Okay. Any reason you ought to have gunshot residue on
23 your hand that day?

24 A Yes, sir. I was in the car getting shot at.

25 Q You say the window was halfway down. Did any hand come

1 into the car?

2 A No. Bullets came into the car.

3 Q I understand what you're saying. What I'm asking you
4 is you say you were a passenger, or a driver, when this
5 happened?

6 A Passenger. I was a passenger when it started; I was
7 the driver when it finished.

8 Q All right. How much do you weigh?

9 A One-seventy.

10 Q Okay. How much does Ms. Mack weigh?

11 A Hundred and twenty.

12 Q And you were at one point, during the switch over,
13 you're sitting on top of her?

14 A Yes, sir.

15 Q And you're sitting on top of her, and the car is on
16 drive or on park at that time?

17 A It's on park.

18 Q It's on park.

19 A Yeah. I got my hands on -- on the steering. And when
20 I get on top of her, I pull the steering wheel to my chest.
21 I was going to drive on top of her. I pulled my steering --
22 I pulled the steering wheel to my chest; I'm sitting up,
23 almost on her, like this. She escaped from under me. I
24 didn't tell her to get from under me; she got from under me.
25 That's because I was 170 sitting on her.

1 Q Yeah. Sure. Yeah. And at this point, you're looking
2 at the bullets, you're looking at the gun muzzle and all
3 that sort of stuff, and I'm not sure how you do all this at
4 once. Help me understand; I'm not really getting it.

5 A (NO RESPONSE.)

6 MR. MATHEWS: Nothing further, Your Honor.

7 THE COURT: Redirect?

8 ASST. SOL. HASELDEN: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY ASST. SOL. HASELDEN:

11 Q So your window was partway down, Ryan?

12 A Yes, sir. Yes, ma'am.

13 Q How close was he to you when he pulled up beside you
14 first?

15 A Maybe three feet, four feet, right beside the car.

16 Q And you didn't have a gun in that car.

17 A No, ma'am.

18 Q You didn't shoot at the defendant.

19 A No, ma'am.

20 Q I have nothing further. Thank you.

21 THE COURT: Re-cross, limited to redirect.

22 MR. MATHEWS: Nothing, Your Honor.

23 THE COURT: As to this witness, Solicitor?

24 ASST. SOL. HASELDEN: Ask that he be excused.

25 THE COURT: Any objection, Mr. Mathews?

1 **MR. MATHEWS:** No, sir.

2 **THE COURT:** You may step down, Mr. Stephens, and you're
3 excused from the trial of this case, or you may remain, as
4 you desire.

5 Call your next witness.

6 **ASST. SOL. HASELDEN:** State calls Jeff Scott.

7 **MADAME CLERK:** Please come forward and be sworn. Place
8 your left hand on the Bible and raise your right.

9 WHEREUPON, JEFF SCOTT WAS DULY SWORN.

10 **MADAME CLERK:** Please have a seat on the witness stand
11 and state your full name for the record.

12 **THE COURT:** Have a seat. Make yourself comfortable.
13 Pull your microphone up. State your full name, spelling
14 your last name.

15 **MR. SCOTT:** Detective Jeff Scott. Last name, S-C-O-T-
16 T.

17 **THE COURT:** Your witness, Counsel.

18 **ASST. SOL. HASELDEN:** Thank you, Your Honor.

19 **DIRECT EXAMINATION**

20 **BY ASST. SOL. HASELDEN:**

21 Q Detective Scott, who do you work for?

22 A I work for Colleton County Sheriff's Office.

23 Q What do you do there?

24 A I'm currently a deputy assigned to the criminal
25 investigation division in the capacity of a sergeant.

1 Q And what do you do as a detective sergeant?

2 A As a detective assigned to criminal investigation
3 division, it's our job to investigate crimes against
4 property, people, so on and so forth. Also, we are tasked
5 with evidence collection, evidence processing and victim --
6 ???meaningless victims, to attain exactly what it is that
7 occurred at the time.

8 Q Were you working as a detective sergeant on the date of
9 September 28th, 2010?

10 A That is correct.

11 Q Did you respond out to a shooting call?

12 A That is correct.

13 Q Where did you go?

14 A I was in route to Brittlebank Road area, and then I was
15 contacted by my lieutenant, who then instructed me to
16 proceed to meet with the victims at [REDACTED],
17 which is here in Colleton County.

18 Q All right. What did you do when you got there?

19 A When I arrived on scene at [REDACTED], I met
20 with the victims, Mr. Stephens and Ms. Mack, who then showed
21 me the vehicle and instructed me as to what transpired on
22 Brittlebank Road.

23 ASST. SOL. HASELDEN: Moment's indulgence, Your Honor.

24 (BRIEF PAUSE.)

25 ASST. SOL. HASELDEN: Your Honor, may I approach the

1 witness?

2 **THE COURT:** You may.

3 Q Detective Scott, I'm showing you what has been marked
4 for identification purposes only as State's Eighteen through
5 Twenty-Six, and then skipping Twenty-Seven, which is already
6 in evidence, and Twenty-Eight, Twenty-Nine and Thirty.

7 **THE COURT:** Just a moment. Becky, you already have an
8 Eighteen?

9 **COURT REPORTER:** Uh-huh.

10 **THE COURT:** Already got an Eighteen.

11 **ASST. SOL. HASELDEN:** In evidence?

12 **COURT REPORTER:** Uh-huh.

13 **THE COURT:** Yes, ma'am.

14 **ASST. SOL. HASELDEN:** Well then I need to, I guess ---

15 **THE COURT:** Then you need to change ---

16 **ASST. SOL. HASELDEN:** Just need an "A".

17 **THE COURT:** --- the marks.

18 **ASST. SOL. HASELDEN:** We had this issue earlier. Becky
19 requested that I do an Eighteen A, so -- so that will be
20 State's Eighteen A, Nineteen, Twenty, Twenty-One, Twenty-
21 Two, Twenty-Three, Twenty-Four, Twenty-Five and Twenty-Six,
22 skipping Twenty-Seven, Twenty-Eight, Twenty-Nine and Thirty.

23 Q Can you tell me if you recognize those items, Detective
24 Scott?

25 A Sure can. Give me one second, please.

1 (The witness reviews the documents.)

2 A Yes, ma'am, I do.

3 Q And what are they?

4 A These are photographs from the crime scene at [REDACTED]
[REDACTED], which is the green Honda that the victims
6 were traveling in when the incident occurred.

7 Q How do you recognize this?

8 A I recognize those pictures, as I was the one that took
9 them on September 28th.

10 Q Are they a truthful and accurate depiction of the crime
11 scene at 215 Grayson, the green Honda specifically, as you
12 recall it existing on September 28th, 2010?

13 A That is correct.

14 ASST. SOL. HASELDEN: Your Honor, at this time, I would
15 move State's Eighteen A, Nineteen, Twenty, Twenty-One,
16 Twenty-Two, Twenty-Three, Twenty-Four, Twenty-Five and
17 Twenty-Six, Twenty-Eight ---

18 THE COURT: I thought there was no Twenty-Six.

19 ASST. SOL. HASELDEN: There's no Twenty-Seven.

20 THE COURT: Okay.

21 ASST. SOL. HASELDEN: --- Twenty-Eight, Twenty-Nine and
22 Thirty into evidence at this time.

23 THE COURT: Mr. Mathews, I realize that may be a little
24 confusing, but I want to make sure we understand the
25 numbers: Eighteen A, Nineteen, Twenty, Twenty-One, Twenty-

1 Two, Twenty-Three, Twenty-Four, Twenty-Five, Twenty-Six,
2 Twenty-Eight, Twenty-Nine and Thirty. Any objection?

3 MR. MATHEWS: No, sir.

4 THE COURT: Ladies and gentlemen, those exhibit numbers
5 that I just published will be admitted into evidence without
6 objection.

7 (State Exhibit Eighteen A, photo, received into
8 evidence.)

9 (State Exhibit Nineteen, photo, received into
10 evidence.)

11 (State Exhibit Twenty, photo, received into evidence.)

12 (State Exhibit Twenty-One, photo, received into
13 evidence.)

14 (State Exhibit Twenty-Two, photo, received into
15 evidence.)

16 (State Exhibit Twenty-Three, photo, received into
17 evidence.)

18 (State Exhibit Twenty-Four, photo, received into
19 evidence.)

20 (State Exhibit Twenty-Five, photo, received into
21 evidence.)

22 (State Exhibit Twenty-Six, photo, received into
23 evidence.)

24 (State Exhibit Twenty-Eight, photo, received into
25 evidence.)

1 (State Exhibit Twenty-Nine, photo, received into
2 evidence.)

3 (State Exhibit Thirty, photo, received into evidence.)

4 **THE COURT:** They are now in evidence, Eighteen A
5 through thirty, exclusive of Twenty-Seven. You may publish
6 to the jury.

7 **ASST. SOL. HASELDEN:** Thank you.

8 Q Detective Scott, I'm actually going to ---

9 **ASST. SOL. HASELDEN:** Or may I approach the witness
10 again?

11 **THE COURT:** You may.

12 Q I'm going to give you State's Exhibit Twenty-Seven. If
13 you wouldn't mind inserting that into the order, so it's a
14 little bit more clear for the jury.

15 A Certainly.

16 Q Would you mind going through, when you get done with
17 that, and describing what those are photographs of for the
18 jury, please?

19 A Yes, ma'am. State's Eighteen A is a photograph of the
20 center console of the green Honda, which it has a small
21 copper piece of fragment, as well as glass fragments on it.
22 The copper piece of fragment is believed to be the jacketing
23 of a round of some sort.

24 State's Nineteen are, again, small pieces of what
25 appear to be the jacketing of a round. Which the jacket of

1 the round basically consists of the lead portion of the
2 bullet as it is exited from the brass shell casing that
3 contains the lead piece of the -- the fragments in it.

4 State's Twenty is -- and again, it's a picture of the
5 green Honda. This is a picture of the passenger and driver
6 compartment of the vehicle, from the passenger's side of the
7 vehicle which depicts a farther off view of those same
8 fragments, as well as the glass that you can observe on the
9 dashboard and the center console.

10 Twenty-One, again, is a piece of what appears to be
11 jacketing from a spent round. I believe this is located in
12 the rear passenger's side of the vehicle on what appears to
13 be a lady's purse.

14 State's Twenty-Two, again, is a photograph of the
15 driver and passenger rear compartment, into the front driver
16 and -- excuse me, front driver and passenger compartment.
17 Again, it's a far-off view of the jacketing, which is seen
18 in State's Twenty-One.

19 State's Twenty-Three is an impact point, which this was
20 taken from the passenger's side of the vehicle. Looks like
21 a impact point on the passenger's side, door jam between the
22 -- where the door closes and the window area.

23 State's Twenty-Four is an impact point on the steering
24 wheel. It's a close-up of the steering wheel, taken from
25 the driver's side compartment of the vehicle.

1 State's Twenty-Five is a, again, an impact point on the
2 steering wheel, as well as multiple impact points through
3 the glass windshield, the front glass windshield, taken from
4 the driver's compartment of the vehicle, exiting through the
5 front windshield of the vehicle.

6 Twenty-Six, State's Twenty-Six, is the front driver's
7 side bumper, park light, headlight assembly area, which
8 depicts a gash in the bumper, a busted park light, as well
9 as several scratches and some dirt and mud on the front
10 bumper of the vehicle.

11 State's Twenty-Eight -- excuse me, Twenty-Seven --
12 Twenty-Seven is a front view of the Honda as it sat that
13 day, which shows multiple impact points to the front
14 windshield. And you can see the impact point to the
15 passenger's side, the door jam area, as well as the -- a
16 far-off view of State's Twenty-Six, which is the bumper,
17 park light and headlight housing areas.

18 State's Twenty-Eight is, again, impact points, one on
19 the hood and another one on the windshield of the vehicle,
20 as taken from the passenger's side of the vehicle to down
21 onto the hood of the vehicle.

22 State's Twenty-Nine is multiple impact points to the
23 windshield of the vehicle, taken from the passenger's side
24 of the vehicle, down onto the glass of the vehicle, which
25 depicts entry points, as well as glass on the dash inside

1 the vehicle.

2 State's Thirty, again, impact points on the windshield,
3 taken from the passenger's side down onto the windshield, at
4 which you can see the impact point on the steering wheel, as
5 well as the glass on the dashboard area of the vehicle.

6 **ASST. SOL. HASELDEN:** Your Honor, may I approach and
7 publish?

8 **THE COURT:** You may.

9 Q Detective Scott, were you able to determine how many
10 impact points there were in this green Honda?

11 A To me, it appeared that there were at least five impact
12 points to the green Honda.

13 Q And when you processed the inside of this car, did you
14 find any shell casings?

15 A We did not locate any shell casings on the interior of
16 the vehicle.

17 Q But you located what you termed as part of a bullet?

18 A That's correct, bullet fragments.

19 Q Okay. And you said there was glass inside the
20 windshield?

21 A That is correct.

22 Q What type of training do you go through to become a
23 detective to process crime scenes?

24 A Basically, the type of training that is required is --
25 a lot of it's on-the-job training, but we do receive some

1 specialized training, such as classes, detective classes,
2 detective classes, crime scene processing classes and things
3 of that nature. Without getting into exact specifics, we
4 are, again, required to attend some type of extracurricular
5 training, as well as mostly on-the-job training.

6 Q And how long have you been a detective and been
7 processing crime scenes?

8 A I've been an investigator since November 14th, 2006.

9 Q How many crime scenes have you processed since then?

10 A I don't have an exact number. Probably somewhere in
11 the hundreds.

12 Q What does glass inside the windshield, as a detective
13 who's processed hundreds of crime scenes, what does that
14 mean to you?

15 A Generally, when you have glass that's located on the
16 inside of the windshield, such as in the case of this green
17 Honda, it would indicate that something struck the
18 windshield from the exterior of the vehicle, entered into
19 the interior of the vehicle.

20 Q What else did you do out there at 215 Grayson,
21 Detective Scott?

22 A I obtained from the victims, Ms. Mack, Mr. Stephens,
23 what is commonly known as a GSR kit, which is -- stands for
24 a gunshot residue kit. Basically, what you do is you swab
25 the hands of any persons involved in a crime where fire was

1 exchanged, to try to indicate or to determine whether there
2 was gunshot residue on their -- their person, as well as I
3 started to obtain a written statement from both parties,
4 which was later finished at the Criminal Investigation
5 Division Headquarters by my lieutenant.

6 ASST. SOL. HASELDEN: May I approach?

7 THE COURT: You may.

8 Q Detective Scott, I'm showing you what's been marked for
9 I.D. as State's Thirty-Two. If you have a knife or
10 scissors, if you could open that package, or you can tear
11 it, I believe.

12 (The witness complies.)

13 A Yes, ma'am. I can identify these items.

14 Q And are the gunshot residue kits that you spoke of that
15 you took from the victims part of that?

16 A Yes, they are.

17 ASST. SOL. HASELDEN: Becky, I think we need to
18 identify each kit as A, B, C.

19 Q Detective Scott, referring to the numbers, can you
20 please place on the record what the numbers are, letters are
21 of the two GSR kits that you took?

22 A Certainly. The GSR kits that were taken from Grayson
23 Street, [REDACTED], are numbers State's Thirty-Two B
24 and State's Thirty-Two C.

25 Q And what did you do with those two GSR kits?

1 A Those GSR kits, once collected, were turned over to the
2 Criminal Investigation Division locker.

3 Q How soon after the incident did you take these GSR
4 testing kits -- what are they normally referred to as? Just
5 GSR kits?

6 A GSR collection kits, ma'am. Could you repeat that
7 question again, please?

8 Q How long after the incident did you take those from the
9 victims?

10 A These GSR kits, one for Thirty-Two B was taken at
11 16:13, which is 4:13 in the afternoon. The other one was
12 taken at 16:08, which is 4:08 in the afternoon of the same
13 day.

14 Q And you placed those two, Thirty-Two B and C into
15 evidence?

16 A That is correct.

17 Q Did you alter those kits in any way while they were in
18 your possession?

19 A No, ma'am, I did not.

20 Q Do you have anything else to do with them after you
21 turn them into evidence?

22 A No, ma'am. Once the kits are turned into evidence,
23 they are then dealt with by the evidence custodian.

24 Q To rewind just a little bit, let's talk about the
25 differentiation in the parts of bullets. Not everybody is

1 terribly familiar with that. You referred to a shell in
2 bullets and casings. Can you kind of describe what those
3 parts are?

4 A Yes, ma'am. A shell casing basically is what happens
5 when a bullet is fired from a gun. What -- what you have is
6 leftover in the gun, and is commonly referred to as a shell
7 casing, which is basically the brass portion of the bullet.
8 The bullet piece that exits the barrel of gun is commonly
9 referred to as a projectile, usually a -- a lead piece that
10 varies -- actually, it varies. It could be a full metal
11 jacket; it could be hollow points. It -- it varies. So
12 without getting too technical, basically, projectile is what
13 exits the barrel and a shell casing's what's left in the
14 gun.

15 Q Has the shell casing remained in the gun?

16 A If it's a semi-automatic weapon or if the shell casing
17 is discharged in the case of a revolver or a single shot, it
18 can or it cannot.

19 Q So with a typical handgun, semi-automatic, what would
20 happen to the shell casings?

21 A The shell casings would be ejected out the ejection
22 port, located on the weapon.

23 Q And then discuss a little bit more what's the
24 difference between the jacket and then the fragments that
25 you talked about.

Direct Examination of Jeff Scott by Asst. Sol. Haselden
Cross-Examination of Jeff Scott by Mr. Mathews

1 A Okay. The jacket basically which is a lead piece
2 wrapped in a copper jacketing. The jacket actually is what
3 surrounds the lead portion of the projectile, which upon
4 impact causes it to fragment, which is basically just break
5 apart.

6 Q Okay.

7 ASST. SOL. HASELDEN: Just a moment's indulgence, Your
8 Honor.

9 (BRIEF PAUSE.)

10 Q I don't have any further questions for you, Detective
11 Scott. If you could answer anything Mr. Mathews has, I'd
12 appreciate it.

13 A Certainly. Thank you.

14 CROSS-EXAMINATION

15 BY MR. MATHEWS:

16 Q You said you took GSR kits from Ms. Mack and Mr.
17 Stephens?

18 A That is correct.

19 Q And you took photos at the -- I guess this would be the
20 second crime scene.

21 A That is correct. That would be the location of the
22 vehicle, [REDACTED] [REDACTED] [REDACTED].

23 Q What officers were present when you arrived at Grayson
24 Street?

25 A Officers at Grayson Street, which I believe arrived a

1 short time after myself, were Deputy Keith Crosby and
2 Lieutenant Jerry Polk.

3 MR. MATHEWS: Your Honor, may I approach to pick up
4 Defendant's Exhibit Number One?

5 THE COURT: You may.

6 MR. MATHEWS: And may I now hand this to Detective
7 Scott?

8 THE COURT: You may.

9 Q Detective Scott, you took that picture also; did you
10 not?

11 A Yes, sir, I did.

12 Q And that also reflects an accurate depiction of how
13 things looked on September the 28th around four o'clock.

14 A That is correct.

15 MR. MATHEWS: Your Honor, if I may have a moment.

16 (BRIEF PAUSE.)

17 Q Detective Scott, in processing crime scenes, do you
18 sometimes -- do you frequent -- is it a good practice to put
19 tape around it, to make sure nobody comes and goes?

20 A That actually can vary from crime scene to crime scene,
21 depending on the location.

22 Q If this was supposed to have occurred at 3:15, what
23 time did you arrive?

24 A I don't have an exact figure, time at this moment.

25 Just a guess, 20 minutes, 25 minutes after receiving initial

1 calls.

2 Q And there was at least some period of time between the
3 time that Officer Crosby got out there. Obviously, there's
4 some -- do you know how long that the car was sitting at
5 Grayson Street before any member of law enforcement arrived?

6 A No, sir, I do not.

7 Q But it was some period of time.

8 A Again, I just can -- I can testify to when I arrived.
9 I don't have any idea how long the vehicle had been sitting
10 there.

11 Q Do you know where the car may have gone from the time
12 it left Brittlebank to the time it arrived at Grayson?

13 A No, sir. I did not observe the vehicle in motion.

14 Q Okay. Do you have any information of any kind where it
15 may have gone from the left Brittlebank to the time it
16 arrived at Grayson?

17 A The information that I have from the victims, which is
18 once they departed the scene on Brittlebank Road, they
19 proceeded to go straight to [REDACTED].

20 Q Okay. That's what they told you, but you don't have --
21 - that's the only source of information you have, is what
22 they told you.

23 A That's correct.

24 Q Did you look through their house or anything like that?

25 A No, sir, I did not.

1 Q Is driving under suspension a crime?

2 A Yes, sir, it is.

3 Q Is leaving the scene of an accident a crime?

4 A Yes, sir, it is.

5 MR. MATHEWS: Nothing further, Your Honor.

6 THE COURT: Redirect.

7 ASST. SOL. HASELDEN: None, Your Honor.

8 THE COURT: As to this witness.

9 ASST. SOL. HASELDEN: Ask that he be excused.

10 THE COURT: Deputy, you are excused from the courtroom
11 and the trial of this case. Leave that with me; it's been
12 marked for identification. You may remain with us, if you
13 so desire.

14 DETECTIVE SCOTT: I know how to reach you.

15 THE COURT: Call your next witness.

16 ASST. SOL. HASELDEN: State calls Keith Crosby.

17 MADAME CLERK: Please come forward and be sworn. Place
18 your left hand on the Bible and raise your right.

19 WHEREUPON, KEITH CROSBY WAS DULY SWORN.

20 MADAME CLERK: Please have a seat on the witness stand
21 and state your name for the record.

22 THE COURT: Good afternoon, Keith.

23 MR. CROSBY: Good day, sir.

24 THE COURT: How are you?

25 MR. CROSBY: Wonderful. And yourself?

1 **THE COURT:** Doing fine. Thank you. Make yourself
2 comfortable.

3 **MR. CROSBY:** Yes, sir.

4 **THE COURT:** You know what to do.

5 **MR. CROSBY:** Yes, sir.

6 **THE COURT:** Go ahead.

7 **MR. CROSBY:** Keith Crosby, C-R-O-S-B-Y.

8 **THE COURT:** Your witness, Counsel.

9 **DIRECT EXAMINATION**

10 **BY ASST. SOL. HASELDEN:**

11 Q Mr. Crosby, who do you work for?

12 A Colleton County Sheriff's Office.

13 Q And what is your job there?

14 A I'm the first sergeant on road patrol.

15 Q And as a first sergeant on road patrol, what do you do
16 day-to-day for the sheriff's office?

17 A I'm the administrative sergeant ??? patrol. I work
18 underneath the lieutenant. And we have a road sergeant on
19 the shift who is in charge of that shift. I'm over all the
20 shifts.

21 Q Okay. So do you ever go out to incidents?

22 A Yes, ma'am.

23 Q And were you working as first sergeant September 28th,
24 2010?

25 A No, ma'am. I was assigned to the traffic division.

1 Q Did you respond out to a scene on September 28th, 2010
2 with the traffic division?

3 A I did.

4 Q And where was that?

5 A It's on the 1400 block of Brittlebank.

6 Q Okay. What did you do when you got there?

7 A Whenever I got there, I had just arrived on scene and
8 they were starting to tape off that scene whenever there was
9 a radio dispatch that there was a secondary crime scene on
10 Grayson Street. And they needed somebody to go to that
11 scene, so I started en route there.

12 Q Okay. About how long did it take you to get over
13 there? Do you remember?

14 A From where I was at on Brittlebank?

15 Q Yes, sir.

16 A Oh, it's not long. Three, four minutes, maybe.

17 Q And what did you do when you got over to the secondary
18 scene at Grayson?

19 A Whenever I got over there at 215 Grayson, Detective
20 Scott had just arrived right before me. I entered the left
21 rear side of the yard and saw the green Honda back there
22 that was riddled with bullet holes. I was listening to the
23 conversation going on between Detective Scott and the two
24 parties that he was out with, and then I started getting
25 information from them.

1 Q And were you able to determine who the two parties were
2 that you were talking to?

3 A Well, whenever the call initially came out, it came out
4 as one thing, and then moved to something else, and was
5 still trying to figure out what was what because I wasn't at
6 the initial scene long enough to be privy to the information
7 some of those other people were. So I didn't realize these
8 persons that we were now dealing with on Grayson Street were
9 suspects -- or victims until I started listening to their
10 conversation with Detective Scott and figured out, okay,
11 these are the victims. And then I just assisted him as need
12 be. But I ended up getting video statements from both of
13 these.

14 Q And were the two individuals that you talked to that
15 day, are they ---

16 A Mr. Stephens ---

17 Q --- Stephanie Mack and Ryan Stephens?

18 A --- and Ms. Mack, yes.

19 Q And were either Ms. Mack or Mr. Stephens able to give
20 you a name of the shooter?

21 A No, ma'am. I asked and neither one of them at that
22 time could tell me what his name was.

23 Q Could they give you a physical description?

24 A I did get a physical description, yes, ma'am.

25 Q Do you remember what type of physical description they

Direct Examination of Keith Crosby by Asst. Sol. Haselden
Cross-Examination of Keith Crosby by Mr. Mathews

1 gave you?

2 A Yes, ma'am. Dark complexion, black male, low haircut,
3 red shirt -- I believe that Mr. Stephens even said a -- a
4 long red shirt -- black shorts, believe that was it. Oh,
5 I'm sorry, he did say that the person who shot them was a
6 little taller and a little thinner than what he is.

7 Q Did you do anything else while you were out there?

8 A Other than get the video statements from them, no,
9 ma'am.

10 **ASST. SOL. HASELDEN:** Just a moment's indulgence.

11 (BRIEF PAUSE.)

12 Q I have nothing further for you at this time. If you
13 need to answer any questions Mr. Mathews has; I'd appreciate
14 it.

15 A Yes, ma'am.

16 **CROSS-EXAMINATION**

17 **BY MR. MATHEWS:**

18 Q Afternoon, Officer Crosby, how you doing today?

19 A Wonderful, sir.

20 Q Mr. Stephens is very engaging; is he not? He's
21 interesting to talk to.

22 A Yes, sir.

23 Q And y'all talked for 20 minutes or so?

24 A Yes, sir.

25 Q During the course of that time, did you ask him for an

1 I.D.?

2 A Counselor, I remember running his information through
3 dispatch, but I don't remember if I asked him for an I.D. or
4 if I asked him for his name and date of birth, because I can
5 get that information via either way.

6 Q Okay. You ran his information through dispatch?

7 A Yes, sir.

8 Q Did you run his driver's license through dispatch?

9 A May have. I do know they come back and told me that
10 his driver's license was suspended. I remember telling her
11 to fax the information for the vehicle for Ms. Mack and for
12 Mr. Stephens over to the patrolman.

13 Q Did you tell him that at that time? Or did he know
14 that? He told you -- in fact, he told you "I don't have any
15 I.D.."

16 A That may be the case, sir. If it is, I don't remember.

17 Q Okay. But in any event, you were able to pull that up
18 pretty quick.

19 A Yes, sir.

20 Q And at the conclusion of it, you had talked with him
21 for some time, did you or somebody else -- I think it was --
22 did you tell Mr. Stephens that you already had somebody in
23 custody?

24 A I did not tell Mr. Stephens that. There was another
25 party on scene that came up after I had already finished my

1 conversation with Ms. Mack and Mr. Stephens. And there was
2 some mention then, "Well, I hope y'all got him." And my
3 reply was "We already have. He's -- he's in custody."

4 Q Okay. All right. So you didn't have to rely on their
5 description of anybody because you already had -- somebody
6 else already had him?

7 A Well, I knew that we had somebody in custody. I didn't
8 know who it was at that time.

9 MR. MATHEWS: Nothing further, Your Honor.

10 THE COURT: Redirect?

11 ASST. SOL. HASELDEN: None, Your Honor.

12 THE COURT: As to this witness.

13 ASST. SOL. HASELDEN: Ask that he be excused.

14 THE COURT: Any objection, Mr. Mathews?

15 MR. MATHEWS: No, sir.

16 THE COURT: Keith, you may step down. You're excused
17 from the trial of this case. You may remain with us, if you
18 so desire.

19 MR. CROSBY: Thank you, sir.

20 THE COURT: Thank you. Call your next witness.

21 ASST. SOL. HASELDEN: The State calls Ruben Carter.

22 MADAME CLERK: Please come forward and be sworn. Place
23 your left hand on the Bible and raise your right.

24 WHEREUPON, RUBEN CARTER IS DULY SWORN.

25 MADAME CLERK: Please have a seat on the witness stand

1 and state your full name for the record.

2 **THE COURT:** Good afternoon, Ruben. You know what to
3 do.

4 **MR. CARTER:** Ruben Carter, last name C-A-R-T-E-R.

5 **THE COURT:** Your witness, Counsel.

6 **DIRECT EXAMINATION**

7 **BY ASST. SOL. HASELDEN:**

8 Q Detective Carter, who do you work for?

9 A I work for the Colleton County Sheriff's Office,
10 currently assigned to Corporal in the Criminal
11 Investigations Division.

12 Q And what do you do as Corporal with Criminal
13 Investigations?

14 A We work property crimes, crimes against persons. Also,
15 I am one of two evidence custodians assigned to keep up with
16 all the evidence that comes into the sheriff's office.

17 Q And as evidence custodian, tell me a little bit more
18 about what that duty entails.

19 A As evidence custodian, when deputies, investigators
20 find a piece of evidence that's logged in, it's either given
21 to myself or the other evidence custodian, or it's logged
22 into a set of lockers that only me and my -- me and herself
23 have keys to, where we can log it in the actual evidence
24 locker at the sheriff's office, which is a room about half
25 this size, that you have to have a key scan card and a

1 fingerprint to get into. And me and her is the only two
2 that can get into that room.

3 Q Were you working as evidence custodian back in
4 September of 2010?

5 A Yes, ma'am, I was.

6 Q Did you respond out to the crime scenes at either [REDACTED]
7 [REDACTED] or [REDACTED]?

8 A I did go out to Brittlebank close to the end of the
9 investigation. I was placed on restrictive duty due to
10 health reasons at that time.

11 **ASST. SOL. HASELDEN:** Your Honor, may I approach?

12 **THE COURT:** You may.

13 Q Detective Carter, I've handed you what's been entered
14 into evidence as State's Five and State's Thirty-Two. Do
15 you recognize those two items? I believe there's a blue
16 card inside.

17 A Okay. State's Exhibit Number Five is a crime scene log
18 that was turned into evidence by Detective -- I'm sorry,
19 Officer Marshall Taylor, at that time.

20 State's Exhibit Number Thirty-Two is three GSR kits
21 that were turned into evidence, and both of these items were
22 logged in by myself.

23 **ASST. SOL. HASELDEN:** Your Honor, may I approach again?

24 **THE COURT:** You may.

25 Q Detective Carter, I've handed you what's been marked

1 for identification purposes only as State's Thirty-Three,
2 Thirty-four, Thirty-Five, Thirty-Six, Thirty-Seven and
3 Thirty-Eight.

4 A State's Exhibit Number Thirty-Three is a spent shell
5 casing that was recovered by Lieutenant Inabinett, says "on
6 roadway on Brittlebank Road." It was Placard Number Two.

7 State's Exhibit Number Thirty-Four is a spent shell
8 casing which was turned into evidence by Lieutenant
9 Inabinett, which is Placard Number Three, which was found on
10 the roadway on Brittlebank Road.

11 State's Exhibit Number Thirty-Five is another spent
12 shell casing, recovered by Lieutenant Inabinett. It's
13 Placard Number Four. It was also found on the roadway on
14 Brittlebank Road.

15 State's Exhibit Number Thirty-Six is a spent shell
16 casing recovered by Lieutenant Inabinett. It's Placard
17 Number Five, recovered off of Brittlebank Road.

18 And State's Exhibit Number Thirty-Seven is Placard
19 Number Six, and it's also a spent shell casing recovered by
20 Lieutenant Inabinett off of Brittlebank Road.

21 Q For chain of custody purposes, are those five items you
22 just testified to items that were entered into you as
23 evidence custodian?

24 A Yes, ma'am, they were.

25 Q And you logged those into evidence at the sheriff's

1 office and secured them?

2 A Yes, ma'am. State's Exhibit Number Thirty-Eight is a
3 pair of black jeans which was recovered in the living room
4 at -- it was off Brittlebank Road. Let me get the address
5 real quick. It was recovered in the living room at [REDACTED]
6 [REDACTED] by Detective Dorethea Gathers and was
7 turned into myself and logged into evidence.

8 Q And all those items before you that you've just
9 identified for the Court, are those all items that are
10 similar to the five shell casings you discussed, that you
11 kept as evidence custodian?

12 A Yes, ma'am. Those are the five shell casings.

13 Q While they were logged into evidence at the sheriff's
14 office, did you change or alter them in any way?

15 A No, ma'am.

16 Q Allow anyone else to change or alter them?

17 A Not on the shell casings.

18 Q And what did you do with Items -- going to be Thirty-
19 Two ---

20 THE COURT: And you're using the term "item." For the
21 record, say "Exhibit Number."

22 ASST. SOL. HASELDEN: Sorry.

23 Q State's Exhibit for identification purposes only
24 Thirty-Two A, B and C, and for, I believe, identification
25 purposes only ---

1 THE COURT: Thirty-Eight?

2 ASST. SOL. HASELDEN: Your Honor, may I briefly
3 approach?

4 THE COURT: You may approach.

5 ASST. SOL. HASELDEN: Yes.

6 Thirty-Eight.

7 Q --- Thirty-eight. Were those items ever out of your
8 custody?

9 A Yes, ma'am. The three GSR kits and the black jeans
10 were taken by myself to State Law Enforcement Division's
11 forensic laboratory in Columbia and was logged in with their
12 evidence custodian.

13 Q And you personally took those items?

14 A Yes, ma'am. And brought them back from their lab at a
15 later date.

16 Q Okay. And when you brought them back from the lab,
17 what did you do with them?

18 A They were logged back into our evidence locker. Each
19 piece of evidence is assigned a bin number, so we know where
20 it's at. They were logged back into that bin location until
21 they were brought to court today.

22 Q They've been in your custody as evidence custodian the
23 entire time.

24 A Yes, ma'am.

25 Q No one's had access to them ---

1 A No, ma'am.

2 Q --- but the two key-holders and fingerprint ---

3 A That's right. Yes, ma'am.

4 Q All right.

5 **ASST. SOL. HASELDEN:** Just a moment's indulgence.

6 (BRIEF PAUSE.)

7 Q I have no further questions for you at this time,
8 Detective Carter. If you'd answer anything Mr. Mathews has,
9 I'd appreciate it.

10 A Yes, ma'am.

11 **THE COURT:** Cross-examination.

12 **MR. MATHEWS:** No questions, Your Honor.

13 **THE COURT:** As to this witness, Solicitor.

14 **ASST. SOL. HASELDEN:** Ask that he be excused.

15 **THE COURT:** Any objection?

16 **MR. MATHEWS:** No, sir.

17 **THE COURT:** Ruben, you may step down. Leave my
18 exhibits here. You're excused from the trial of this case
19 and you may remain with us, as you so desire.

20 **DETECTIVE CARTER:** Thank you, sir.

21 **THE COURT:** Call your next witness.

22 **ASST. SOL. HASELDEN:** State calls Allen Inabinett.

23 **MADAME CLERK:** Please come forward and be sworn. Place
24 your left hand on the Bible and raise your right.

25 **WHEREUPON, ALLEN INABINETT WAS DULY SWORN.**

1 **MADAME CLERK:** Please have a seat on the witness stand
2 and state your full name for the record.

3 **THE COURT:** Good afternoon, Fred.

4 **MR. INABINETT:** Yes, sir.

5 **THE COURT:** Pull your chair up, adjust the microphone,
6 and you know what to do.

7 **MR. INABINETT:** Fred Allen, last name I-N-A-B-I-N-E-T-
8 T, Inabinett.

9 **THE COURT:** Your witness, Counsel.

10 **DIRECT EXAMINATION**

11 **BY ASST. SOL. HASELDEN:**

12 Q Mr. Inabinett, who do you work for?

13 A Colleton County Sheriff's Department.

14 Q And what's your position there?

15 A Currently, I'm Lieutenant in Investigations.

16 Q As Lieutenant in Investigations, what do you do for the
17 sheriff's office?

18 A We investigate property crimes, crimes against persons.

19 Also, I assign different cases to other co-detectives. On
20 occasion, I also give direction as a Lieutenant in an
21 administrative capacity on crime scenes and also assist
22 management at the actual crime scene process.

23 Q Were you working as Lieutenant of Investigations
24 September 28th, 2010?

25 A Yes, I was.

1 Q Did you respond out to the crime scene at Brittlebank
2 Road?

3 A Yes, ma'am.

4 Q Can you describe to me what happened once you got
5 there?

6 A Yes, ma'am. Upon arrival, I was briefed by Corporal
7 Buchanan of the information, particulars of the crime. I
8 then made contact with the fire-rescue personnel, who was
9 actively treating the individual, Mr. Quashon Middleton.

10 Q Are you referring to the same Quashon Middleton that's
11 right here, seated at the table with his attorney?

12 A That's correct.

13 Q What did you do after you got there and got briefed?

14 A After being briefed and then contacting with fire-
15 rescue, whether it was okay to speak to the defendant. I
16 then collected the GSR kit from Mr. Quashon Middleton.

17 **ASST. SOL. HASELDEN:** Your Honor, may I approach?

18 **THE COURT:** You may.

19 Q Lieutenant Inabinett, I've handed you what's been
20 marked for identification purposes only as State's Thirty-
21 Two. Could you please tell me if you recognize the item in
22 there marked as State's, I believe, Thirty-Two A?

23 A Yes, I do.

24 Q What is that item?

25 A This is the GSR kit, which is gunshot residue kit, from

1 Quashon Middleton.

2 Q Is that the same kit that you collected on September
3 28th, 2010?

4 A Yes, ma'am.

5 **ASST. SOL. HASELDEN:** May I approach?

6 **THE COURT:** You may.

7 Q After you collected what's been marked as State's
8 Thirty-Two A, what did you do with it?

9 A I then secured that in my vehicle, and then I continued
10 to process the crime scene.

11 Q What did you eventually do with Thirty-Two A?

12 A Oh, eventually, it was submitted to SLED for actual
13 testing by their analysis department.

14 Q Was it submitted to your evidence department prior to
15 that?

16 A Yes, it was.

17 Q Do you remember when?

18 A The exact date, that afternoon, I do believe, it was
19 submitted to our evidence custodian.

20 Q Okay. And what did you do after you got done with the
21 defendant's GSR?

22 A After completing the GSR collection, I then continued
23 on to the crime scene where I identified possible items that
24 had evidentiary value.

25 **ASST. SOL. HASELDEN:** Beg the Court's indulgence. I'm

1 trying to get them in order. The record should be clear.

2 (BRIEF PAUSE.)

3 **ASST. SOL. HASELDEN:** May I approach the witness?

4 **THE COURT:** You may.

5 Q Lieutenant Inabinett, I'm going to hand you what's been
6 entered into evidence as State's Exhibit Eight through
7 Eighteen. Do you recognize Eight through Eighteen,
8 Lieutenant?

9 (The witness reviews the documents.)

10 A Yes, I do.

11 Q And what do they depict?

12 A They are the photographs of the crime scene, as it was
13 the day of, September 28th, 2010.

14 Q Do those accurately depict the crime scene as you
15 processed it on September 28th?

16 A Yes, ma'am.

17 Q Did you collect all the items of evidence that were out
18 there, that had placards next to them?

19 A Yes, I did.

20 **ASST. SOL. HASELDEN:** And may I approach again?

21 **THE COURT:** You may.

22 Q Lieutenant Inabinett, I've just handed you what's been
23 marked for identification purposes only as State's Thirty-
24 Three, Thirty-Four, Thirty-Five, Thirty-Six and Thirty-
25 Seven. Can you tell me if you recognize those items,

1 please?

2 A Yes, I do.

3 Q What are those items?

4 A Spent shell casings from the actual crime scene on
5 Brittlebank Road.

6 Q And were those shell casings collected by yourself?

7 A Yes, ma'am.

8 Q What did you do with them after you collected them?

9 A Secured them and turned them into evidence custodian.

10 Q Were those five shell casings ever submitted to SLED?

11 A No, ma'am. We did not recover a actual weapon, to be
12 compared with for SLED.

13 Q So unless you have a weapon, there's nothing that can
14 be done?

15 A Well, there's a -- a area called ITIS, which is a
16 weapons -- excuse me, a shell casing identification process,
17 which they can run the actual shell casing, to see if that
18 shell casing had been fired or had been logged in by a
19 weapon prior, through -- through some other crime scene.
20 But we didn't test ITIS.

21 Q Because a weapon was not recovered ---

22 A That's correct.

23 Q --- in that connection?

24 A That's correct.

25 Q Now, Lieutenant Inabinett, are you also what's termed

1 case officer for this case?

2 A Yes, ma'am.

3 Q And what does that involve for an investigator to be a
4 case officer for a case?

5 A To be more the keeper of records, or keeper of files,
6 to make sure that the witnesses are contacted. Also to prep
7 and/or obtain the actual arrest warrant or the appropriate
8 charge for the case.

9 Q Isn't it also your decision to submit items to SLED or
10 not?

11 A Yes, ma'am.

12 Q And how long have you been a detective, or with
13 investigations?

14 A For approximately six years.

15 Q And it was your call not to submit these items to SLED,
16 as a weapon was not discovered?

17 A That's correct.

18 Q Did you go into the house as well at [REDACTED] [REDACTED]

19 [REDACTED]?

20 A No, I did not. Detective Gathers and Thomas entered
21 the actual residence.

22 Q Did you remember having any conversation with Miranda
23 Varner about the defendant's clothing?

24 A I did.

25 Q And did she indicate to you anything with regards to

1 the pair of shorts that were collected?

2 A Yes, she did. She also gave a voluntary Consent to
3 Search, which is a written form, giving permission to law
4 enforcement to go inside the home. She indicated that the
5 jeans that were in the living room area belonged to Quashon
6 Middleton.

7 Q Are you aware if a red tee shirt of any length was ever
8 located?

9 A To my knowledge, no, ma'am.

10 Q Now, back up just a little bit; I apologize for jumping
11 around. For identification purposes only, State's Thirty-
12 Three through Thirty-Seven, can you open those up for me and
13 review the items?

14 (The witness complies.)

15 Q Lieutenant Inabinett, are Items Thirty-Three, Thirty-
16 Four, Thirty-Five, Thirty-Six and Thirty-Seven in the same
17 condition as September 28th, 2010 when you collected them?

18 A Yes, they are.

19 **ASST. SOL. HASELDEN:** Your Honor, at this time, I would
20 move in -- or ask to be moved into evidence State's Thirty-
21 Three, Thirty-Four, Thirty-Five, Thirty-Six and Thirty-
22 Seven.

23 **THE COURT:** As to Thirty-Three, Thirty-Four, Thirty-
24 Five, Thirty-Six and Thirty-Seven, Mr. Mathews?

25 **MR. MATHEWS:** No objection, Your Honor.

1 **THE COURT:** Ladies and gentlemen of the jury, State's
2 Exhibits, not items, Thirty-Three, Thirty-Four, Thirty-Five,
3 Thirty-Six and Thirty-Seven will be admitted into evidence
4 in the trial of this case without objection.

5 (State Exhibit Thirty-Three, shell casings, received
6 into evidence.)

7 (State Exhibit Thirty-Four, shell casings, received
8 into evidence.)

9 (State Exhibit Thirty-Five, shell casings, received
10 into evidence.)

11 (State Exhibit Thirty-Six, shell casings, received into
12 evidence.)

13 (State Exhibit Thirty-Seven, shell casings, received
14 into evidence.)

15

16 **THE COURT:** They are now in evidence and you may
17 publish.

18 **ASST. SOL. HASELDEN:** Thank you. May I approach?

19 **THE COURT:** You may. Get some gloves.

20 **ASST. SOL. HASELDEN:** If Your Honor would prefer, I can
21 wait and send him back into the back room.

22 **THE COURT:** That's fine, as long as they have gloves.
23 Ladies and gentlemen, I've asked the officer to make sure,
24 if you're going to handle the evidence that's in Thirty-
25 Three, Thirty-Four, Thirty-Five, Thirty-Six and Thirty-

1 Seven, we ask that you use gloves, and we're providing those
2 to you in the box along with publishing the exhibit.

3 Proceed.

4 ASST. SOL. HASELDEN: Thank you.

5 Q Lieutenant Inabinett, were you able to identify what
6 types of casings those were?

7 A Yes, ma'am. They are a .380-caliber shell casing.

8 Q Are they all the same type?

9 A Yes, ma'am.

10 Q Do the casings usually match as far as make? Or color?
11 Anything that would help you to identify ---

12 A There's a stamp on the back by manufacturer, with the
13 actual caliber on the shell, and some manufacturers have the
14 actual name on it. But they all appear to be the same
15 caliber.

16 Q And those are the same items that you collected on
17 Brittlebank Road.

18 A Yes, ma'am.

19 Q Did you locate any bullets, fragments or, I believe
20 Detective Scott called them "jackets," out there on the road
21 as well?

22 A No, ma'am. The only thing that was located after a
23 valid search was done were shell casings in the general
24 inspected area.

25 Q Did you locate the moped?

1 A Yes, ma'am. The moped had sustained heavy damage and
2 was laying in the roadway of Brittlebank.

3 Q Lieutenant Inabinett, as part of your job as lieutenant
4 of investigations, you also oversee personnel below you?

5 A Yes, ma'am.

6 Q Do you have an investigator that works for you named
7 Dorothea Gathers, also known as "Net"?

8 A Yes, ma'am.

9 Q Is Dorothea Gathers, Net, on active duty at this moment
10 with your office, full duty?

11 A No, ma'am. She's out on medical leave due to illness.

12 Q And according to your records, Detective Gathers, Net,
13 is the one who collected black jeans?

14 A Yes, ma'am. That's correct.

15 Q Now, after you finished processing the crime scene,
16 what did you do, Lieutenant Inabinett?

17 A I then made contact with Detective Scott and had him
18 advise the victims to meet myself at the sheriff's
19 department, where I then met with both Mr. Stephens and Ms.
20 -- Ms. Mack.

21 Q And did you advise them to memorialize their statements
22 into any particular form?

23 A Yes, ma'am. I then obtained the written statement from
24 both Ryan Stephens and Stephanie Mack.

25 Q And was Ms. Mack able to identify the person that shot

1 at the car where she and Mr. Stephens were riding?

2 A Yes, ma'am. She identified him as by first name,
3 Quashon and by his -- his common name or street name is
4 "Quay-Quay".

5 Q And as Lieutenant of Investigations here in Colleton
6 County, are you familiar with anybody else called Quay-Quay
7 on the street?

8 A No, ma'am. Not to my knowledge.

9 Q That is only the street name of the defendant, Quashon
10 Middleton?

11 A Yes, that's correct.

12 ASST. SOL. HASELDEN: Just a moment's indulgence, Your
13 Honor.

14 Q Lieutenant Inabinett, you've been my case worker the
15 whole case, right?

16 A Yes, ma'am, I have.

17 Q And you heard some discussion about Mr. Stephens having
18 a suspended license and leaving the scene of an accident; is
19 that right?

20 A That's correct. Yes, ma'am.

21 Q Why wasn't he arrested?

22 A Due to exigent circumstances and that being the actual
23 gunfire and the gunfire that was brought upon Mr. Stephens
24 and Mrs. Mack, when he fled the scene, it's kind of
25 understood that, you know, he would leave the area because

1 it's a target, a hot area, for his safety and well-being.
2 So therefore, he was not immediately charged with leaving
3 the scene of an accident.

4 Q Okay. Is driving under suspension a serious crime in
5 Colleton County?

6 A It is, yes, ma'am.

7 Q Is there a reason that he wasn't arrested out there
8 while officers were talking to him?

9 A When I was aware of his suspension was after-the-fact.
10 On the day of, I couldn't answer that because I don't know.
11 But once again, due to the circumstances, that's why he left
12 the crime scene. But he did call law enforcement
13 immediately thereafter.

14 Q Did he attempt to hide his identity from you in any
15 way?

16 A No, ma'am.

17 Q Try to prevent you from finding out that he had a
18 suspended driver's license?

19 A No, ma'am, he did not. And he was straightforward,
20 because he admitted to actually striking the subject on the
21 moped that fired at him.

22 Q And was he able to give you a name?

23 A No, ma'am, not initially. But he said some young man
24 had gave him the identity.

25 **MR. MATHEWS:** Objection, Your Honor.

1 **THE COURT:** Counsel, approach.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
3 AND OUT OF THE HEARING OF THE JURY.)

4 **THE COURT:** I understand the question is withdrawn; the
5 objection is withdrawn. Is that correct, Counsel?

6 **MR. MATHEWS:** Yes, sir.

7 **ASST. SOL. HASELDEN:** Yes, Your Honor.

8 **THE COURT:** Proceed.

9 Q Lieutenant Inabinett, please just refer -- I'm sorry I
10 led you into that. Please just refer to what you have
11 personal knowledge of.

12 A Yes, ma'am.

13 Q But the victim, Stephanie Mack, you spoke to her as
14 well?

15 A I did. Yes, ma'am.

16 Q She was able to identify Quashon Middleton, the person
17 that tried to kill her and Ryan Stephens?

18 A That's correct.

19 Q Did you have a good chance to look at the blue moped
20 out in the street?

21 A I did. Yes, ma'am.

22 Q Did it have any bullet holes in it?

23 A No, ma'am. Just like impact damage.

24 Q And you said you also had an opportunity to take GSR
25 from the defendant out on the scene, correct?

Direct Examination of Allen Inabinett by Asst. Sol. Haselden
Cross-Examination of Allen Inabinett by Mr. Mathews

1 A That's correct.

2 Q Were you able to view his person at that time?

3 A He was being treated in the back of the fire rescue
4 wagon or the -- the bus, EMS truck, but I didn't see any
5 other damages or injuries to Mr. Middleton.

6 Q Okay. So you didn't process the inside of the house;
7 just the street area?

8 A That's correct, yes.

9 Q I have no further questions for you at this time. If
10 you'd answer anything Mr. Mathews has, I'd appreciate it.

11 A Yes, ma'am.

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION

14 BY MR. MATHEWS:

15 Q Detective Inabinett, your name is Fred?

16 A Yes, sir.

17 Q But your street name is Allen?

18 A Middle name is Allen.

19 Q Middle name. But that's what you go by?

20 A Either one, either one.

21 Q And Dorothea Gathers, her street name is Net?

22 A Yes, sir.

23 Q Have you ever prosecuted any driving under suspension
24 cases?

25 A Many, many years ago.

1 Q How does that go? Normally, the highway department
2 sends a certified letter to the person who's under
3 suspension and tells them they're under suspension, first,
4 before they go under suspension; is that correct?

5 A That's normal protocol, but, once again, there's so
6 many other variables that take place. Could be a bad
7 address, the individual may not even know that they're under
8 suspension. So once again, it's kind of up to our
9 discretion type ---

10 Q You were here ---

11 A ---\case.

12 Q --- to hear also Mr. Stephens testimony, that he didn't
13 find out for several months afterwards, when he got arrested
14 for driving under suspension in Dorchester County; is that
15 correct?

16 A Yes, sir. That's highly possible, yes, sir.

17 Q Okay. That's what he said, but you knew that same day?

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

19 Q Oh, I'm sorry. The officer -- you heard the officer --
20 -

21 **THE COURT:** Hold on one second. Let him finish his
22 answer.

23 A I didn't know the same day, no, sir. I found out days
24 after.

25 Q Okay. But you heard Officer Crosby's testimony that he

1 knew immediately?

2 A Yes, sir.

3 Q Okay. All right. Did anybody -- now, he indicated --
4 did anybody tell him that he was under suspension?

5 A He, being Mr. Stephens?

6 Q Mr. Stephens.

7 A Not to my knowledge. I didn't ask him about the
8 suspension.

9 Q It's a serious crime and nobody told him he committed
10 that. We're letting you go, because you did something
11 wrong, because you were escaping from -- nobody said "You
12 violated the law"?

13 A I'm not certain. I didn't know he was under
14 suspension, sir.

15 Q Until the next day?

16 A Several days later.

17 Q Several days later. Did you know before or after he
18 came in and gave a -- came and talked you at the Annex?

19 A Afterwards. It was several days later. He came in the
20 Annex the same day, on the 28th.

21 Q All right. Why do you take the GSR kit?

22 A To either -- to indicate whether or not someone had
23 fired or was in the general close proximity of a fired
24 weapon.

25 Q You're not an expert in that as far as that goes. So

1 the mechanics of it you know or you don't know?

2 A I'm not an expert in it, but I know the basic
3 mechanics. And also, there are a step-by-step instruction
4 pamphlet that's inside it.

5 Q Okay. All right. So you just read it and do what it
6 says do?

7 A Yes, sir.

8 MR. MATHEWS: Nothing further, Your Honor.

9 THE COURT: Redirect.

10 ASST. SOL. HASELDEN: I have nothing further.

11 THE COURT: You may step down.

12 LIEUTENANT INABINETT: Thank you, Your Honor.

13 THE COURT: And remain with us. Call your next
14 witness.

15 ASST. SOL. HASELDEN: Your Honor, may we very briefly
16 approach?

17 THE COURT: Counsel, approach.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
19 AND OUT OF THE HEARING OF THE JURY.)

20 THE COURT: Mr. Foreman, ladies and gentlemen of the
21 jury, I'm going to take my one and only mid-afternoon break.
22 We have to stop early, so I'm going to try to complete as
23 much as possible today. I won't be long, but I want you to
24 have a chance to use the restroom and stretch your legs.
25 Please do not discuss the case. I'll be right back with you

1 as soon as I can.

2 Mr. Beach, I know you're not used to using those
3 gloves. When y'all are finish using them, throw them in the
4 trash can. I got plenty more. Don't put them back in the
5 box. We're not trying to save them.

6 Thank you very much. You may retire to your jury room.

7 (3:30 P.M., 7-26-11, WHEREUPON, THE JURY EXITS THE
8 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
9 RECORD.)

10 **THE COURT:** Counsel, approach.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
12 RECORD.)

13 **THE COURT:** All right. We'll take five minutes.

14 **ASST. SOL. HASELDEN:** Thank you.

15 (OFF THE RECORD FROM 3:30 P.M.; BACK ON THE RECORD AT
16 3:45 P.M.)

17 **MR. MATHEWS:** Your Honor, I've explained to Mr.
18 Middleton that normally the order in which things are done
19 are at the Court's inquiry.

20 **THE COURT:** You're absolutely right.

21 **MR. MATHEWS:** But he says he doesn't have any problem
22 at this time.

23 **THE COURT:** All right. Let the record reflect that
24 we're waiting on a SLED agent to drive from Columbia, who
25 was on vacation, who's to arrive here any minute, which I'm

1 informed by counsel as being as the last witness. Mr.
2 Mathews has informed his client and informed me that he has
3 no objection to my advising his client as if the State had
4 rested, after this next witness.

5 Madame Clerk, would you swear the defendant, please?

6 **MADAME CLERK:** Raise your right hand.

7 **WHEREUPON, QUASHON MIDDLETON IS DULY SWORN.**

8 **THE COURT:** Step up to the -- is that microphone on,
9 Mr. Middleton?

10 **MR. MIDDLETON:** Yes, it is.

11 **THE COURT:** All right. Raise it up for him, David.
12 State your full name for the record.

13 **MR. MIDDLETON:** Quashon Middleton.

14 **THE COURT:** Mr. Middleton, at this time, I'm going to
15 explain to you certain of your rights. If you do not
16 understand anything that I say, let me know. If you want me
17 to explain anything in further detail, please let me know.
18 Do you understand?

19 **MR. MIDDLETON:** Yes, sir.

20 **THE COURT:** We've reached the stage of the trial almost
21 -- by agreement of both sides. The State hasn't quite
22 rested; there is one more witness. You have reached the
23 stage in the trial where you may ultimately present your
24 defense after the State rests. You have the right to
25 testify in your own behalf.

1 However, no one, no one, not this Court or anyone, can
2 make you testify. In the event you have any record for any
3 conviction involving dishonesty or false statement or for a
4 crime punishable by imprisonment of not more than one year,
5 and this Court determines as a matter of law that the
6 probative value of admitting this evidence outweighs its
7 prejudicial effect to you, the Solicitor would be able to
8 introduce this record for impeachment purposes, if you
9 testified, to try to attack your credibility and your
10 believability.

11 If you elect not to take the witness stand, I will
12 charge the jury that they are not to consider and they are
13 not to give the fact that you did not testify any
14 consideration whatsoever. And there is to be absolutely no
15 prejudice to you because you did not testify. You have the
16 constitutional right to remain silent.

17 As to the decision as to whether or not you testify
18 once the State rests its case in this case will be left
19 entirely up to you. You may talk with your attorney, but
20 the ultimate decision as to whether or not you testify in
21 the trial of this case will be left entirely up to you. You
22 understood what I've told you?

23 **MR. MIDDLETON:** Yes, sir.

24 **THE COURT:** Very well. Mr. Mathews, you want to take a
25 moment and discuss the matter with the client? Because I

1 certainly am not going to make him make a decision until
2 he's heard all the evidence from the State.

3 MR. MATHEWS: Your Honor, we've talked about this
4 several times and it's my belief that he does not desire to
5 testify.

6 THE COURT: Is that your decision, Mr. Middleton and
7 not Mr. Mathews?

8 MR. MIDDLETON: Yes, sir.

9 THE COURT: All right. No one forced you into that
10 decision.

11 MR. MIDDLETON: No, sir.

12 THE COURT: And no one promised you anything to make
13 that decision?

14 MR. MIDDLETON: No, sir.

15 THE COURT: Or threatened you?

16 MR. MIDDLETON: No, sir.

17 THE COURT: And that is entirely your decision not to
18 testify in the trial of this case; is that correct?

19 MR. MIDDLETON: Yes, sir.

20 THE COURT: Thank you very much; you may return to your
21 seat.

22 (MR. MIDDLETON RETURNS TO HIS SEAT.)

23 THE COURT: Thank you, Mr. Mathews, so we didn't waste
24 court time, that's precious this week, based on the volume
25 of work that I'm advised that I have to do this week.

1 All right, Solicitor, the ball's in your court now.

2 Anybody know where this witness is?

3 ASST. SOL. HASELDEN: If you'll allow me ---

4 THE COURT: I'm not going to allow you. You've got two
5 -- you got Chaz sitting beside you and Ben. You take the
6 seat. I got a jury waiting.

7 It's amazing to me how many people want to walk out of
8 the courtroom and check on matters when you got people right
9 there sitting with you that can help you. There is no
10 reason in the world we can't at least telephone this person
11 and find out where they are, so we don't at least waste this
12 time, if possible.

13 I realize that you told her not to come, in
14 anticipation that you thought you could put her up tomorrow.
15 But if we're going to get her up today, we need to go ahead
16 and pursue it.

17 (OFF THE RECORD, BRIEFLY.)

18 ASST. SOL. HASELDEN: She's in Walterboro.

19 THE COURT: Okay.

20 ASST. SOL. HASELDEN: I apologize, Your Honor.

21 THE COURT: No, I understand that. And everybody tries
22 to anticipate. But one of the things I always heard from my
23 lawyers to do, if you're going to tell somebody when you're
24 trying -- because you don't ever know. Sometimes one
25 witness takes all day, and sometimes 16 witnesses can be

1 done in four hours.

2 So for that reason, just like Mr. Mathews, he know I
3 put him on notice, he better be ready to start, and he knows
4 that, because he doesn't ever know when you're going to
5 rest, and he's got to get his people here. It works both
6 ways.

7 (OFF THE RECORD, BRIEFLY.)

8 **ASST. SOL. HASELDEN:** Your Honor, may we approach?

9 **THE COURT:** You may.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
11 RECORD.)

12 **THE COURT:** All right. Bring me the jury, please.

13 (3:55 P.M., 7-26-11, WHEREUPON, THE JURY ENTERS THE
14 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

15 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
16 jury, Counsel, I understand you've reached an agreement that
17 you wish to publish in the presence of the jury.

18 **ASST. SOL. HASELDEN:** Yes, Your Honor. We have two
19 stipulations regarding SLED. The first is that the internal
20 chain of custody as to Item 32 is complete, as to its
21 arrival at SLED through testing and returned to Colleton
22 County Sheriff's Office.

23 The second is that Kathleen Woodward with SLED is going
24 to be stipulated to as an expert in the field of gunshot
25 residue analysis by both myself and Mr. Mathews.

1 **THE COURT:** Is that correct, Mr. Mathews?

2 **MR. MATHEWS:** Yes, sir.

3 **THE COURT:** Ladies and gentlemen of the jury panel, so
4 you know this -- I told you we might have a stipulation;
5 it's an agreement. The stipulation is to the expert.
6 Normally, the witness -- the Rules of Court do not permit a
7 witness to get on the witness stand and testify as to
8 opinions or conclusions. An exception to this rule is for
9 those witnesses who we call expert witness as a witness who
10 by -- claims to have special knowledge, skill, training or
11 experience or education in some field.

12 In this case, the witness claims to have training in
13 the field of gunshot residue analysis. And by stipulation,
14 her qualifications are stipulated to by both the attorneys,
15 and therefore, it's no issue for the Court. She's qualified
16 as an expert to give an opinion as to matters in which she
17 claims to be so skilled.

18 In determining the weight to be given such opinion by
19 an expert, you would consider the qualifications and the
20 credibility of the expert, the reasons given for his or her
21 opinion. You are not bound by such opinion. You give it
22 the weight, if any, to which you deem it should be entitled.

23 All right, Solicitor, your witness is now in the
24 courtroom. Call your next witness.

25 **ASST. SOL. HASELDEN:** Thank you, Your Honor. The State

1 calls Kathleen Woodward.

2 **MADAME CLERK:** Please come forward and be sworn. Place
3 your left hand on the Bible and raise your right.

4 WHEREUPON, KATHLEEN WOODWARD WAS DULY SWORN.

5 **MADAME CLERK:** Please have a seat on the witness stand
6 and state your full name for the record.

7 **THE COURT:** Watch your step for me on my stairs there.

8 **MS. WOODWARD:** Okay.

9 **THE COURT:** Thank you.

10 **MS. WOODWARD:** Thank you.

11 **THE COURT:** Have a seat and make yourself comfortable.
12 You're here now safe and sound. Pull that microphone over.
13 It's going to amplify your voice. Speak into it. Begin by
14 stating your full name and spelling your last name for the
15 court reporter.

16 **MS. WOODWARD:** Okay. Kathleen Woodward, W-O-O-D-W-A-R-
17 D.

18 **THE COURT:** Your witness, Counsel.

19 **DIRECT EXAMINATION**

20 **BY ASST. SOL. HASELDEN:**

21 Q Ms. Woodward, who do you work for?

22 A I work for the South Carolina Law Enforcement Division
23 in the trace laboratory.

24 Q And what do you do in a trace lab?

25 A I am a trace analyst, which means I can analyze gunshot

1 residue, fibers, paint, glass, explosives, and several other
2 different items that we do in that lab.

3 Q And Ms. Woodward, just to let you know, we stipulated
4 to the fact that you're an expert in gunshot residue
5 analysis, so I'm going to skip all your qualifications and
6 just get right into the case at hand. Did you have an
7 opportunity to review the findings or the findings in a
8 gunshot residue analysis in your Lab Number L1013654?

9 A I did. I did the technical review on this case.

10 Q And what does that mean?

11 A What that means is that the analyst who is actually
12 assigned this case completed all the work. And once he was
13 ready to write his report and issue it, I reviewed all of
14 the data, to make sure that it was in line per our protocols
15 and that everything was done correctly.

16 Q And what data does that include? What is involved with
17 gunshot residue testing?

18 A We receive as evidence a gunshot residue kit, which is
19 taken at the scene of the incident by a local law
20 enforcement agent, typically. Sometimes our crime scene
21 agents might take them. And then it comes into the lab and
22 we analyze it for -- for gunshot residue.

23 ASST. SOL. HASELDEN: Your Honor, may I approach the
24 witness?

25 THE COURT: You may.

1 Q Ms. Woodward, I'm going to hand you what's been marked
2 for identification purposes as State's Thirty-Two. Could
3 you review those items in State Thirty-Two?

4 (The witness complies.)

5 A This is Item Number One, which is a gunshot residue kit
6 from ---

7 THE COURT: For the record, Counsel, the packet is
8 Thirty-Two, but inside, there are Thirty-Two A, Thirty-Two
9 B, and Thirty-Two C. Look on the top left of the packet and
10 identify our exhibit number for the record, so we know what
11 you're talking about.

12 MS. WOODWARD: Okay.

13 A This is State's Exhibit Thirty-Two A. It's my Item
14 Number One, and it is a gunshot residue kit from Quashon
15 Middleton.

16 Q Okay.

17 A This is State's Exhibit Thirty-Two C. It is my Item
18 Number Three, and it is a gunshot residue kit from Ryan
19 Stephens.

20 Q Okay.

21 A And this one is State's Exhibit Thirty-Two B. It's my
22 Item Number Two, and it is a gunshot residue kit from
23 Stephanie Mack.

24 Q Okay.

25 ASST. SOL. HASELDEN: Your Honor, at this time, since

1 we've reached the stipulations for internal chain of
2 custody, we would ask that State's Thirty-Two A, B and C be
3 admitted into evidence.

4 **THE COURT:** Any objection as to Thirty-Two A, B and C?
5 You don't want to put the packet in, just Thirty-Two A, B
6 and C.

7 **MR. MATHEWS:** No objection.

8 **ASST. SOL. HASELDEN:** Certainly.

9 **THE COURT:** Certainly, meaning?

10 **ASST. SOL. HASELDEN:** They can be entered individually
11 or they can be kept in their bag.

12 **THE COURT:** All right. Any objection as to Thirty-Two,
13 Thirty-Two A, Thirty-Two B and Thirty-Two C?

14 **MR. MATHEWS:** No objection.

15 **THE COURT:** Ladies and gentlemen of the jury, State's
16 Exhibits Thirty-Two, Thirty-Two A, Thirty-Two B and Thirty-
17 Two C will be admitted into evidence in the trial of this
18 case without objection.

19 (State Exhibit Thirty-Two, GSR kits, received into
20 evidence.)

21 (State Exhibit Thirty-Two A, Middleton GSR kit,
22 received into evidence.)

23 (State Exhibit Thirty-Two B, Mack GSR kit, received
24 into evidence.)

25 (State Exhibit Thirty-Two C, Stephens GSR kit, received

1 into evidence.)

2 THE COURT: You may publish to the jury, Counsel.

3 ASST. SOL. HASELDEN: May I approach again?

4 THE COURT: You may.

5 ASST. SOL. HASELDEN: And, Your Honor, for the Court's
6 note, those don't need gloves. Everything is contained
7 within.

8 THE COURT: Very well. No gloves are needed for this
9 exhibit, ladies and gentlemen. Proceed.

10 Q Now, Ms. Woodward, as part of your tech review, you
11 mentioned that you review findings before a report is
12 issued, correct?

13 A That's right.

14 Q Was a report issued in this case?

15 A It was.

16 Q Can you describe to me the findings in that report,
17 both by yourself and, I believe, John G. D. Roberts?

18 A I can. Let me get it out. Item Number One, which was
19 a GSR kit from Quashon Middleton. The quantities of metals
20 found in his kit do not indicate the presence of gunshot
21 residue.

22 Q Okay.

23 A Item Number Two was a GSR kit from Stephanie Mack. On
24 the right palm, there were quantities of metals that may be
25 associated with gunshot residue. And then on the right

1 back, the quantities of metals did not indicate gunshot
2 residue. On the left palm, the quantities of metals may be
3 associated with gunshot residue. And on the left back of
4 her hand, the quantity of the metals did not indicate the
5 presence of gunshot residue.

6 Q Okay.

7 A And Item Number Three, which is a GSR kit from Ryan
8 Stephens, the quantities of metals found on the right palm
9 of his hand may be associated with gunshot residue. On the
10 right back, the quantities of metals did not indicate the
11 presence of gunshot residue. On the left palm, the metals
12 found may be associated with gunshot residue. And on the
13 left back, the quantities of metals found may also be
14 associated with gunshot residue.

15 Q So kits two and three, which are from Stephanie Mack
16 and Ryan Stephens, have gunshot residue on both fronts of
17 palms; is that correct?

18 A That's correct.

19 Q But nothing on the back of his hands?

20 A On Ryan Stephens' left back, there was a quantity of
21 metals that could be associated.

22 Q And tell me a little bit about how gunshot residue
23 travels. How does it get spread?

24 A Well, gunshot residue starts in the primer cap of a
25 cartridge. And what happens is the hammer of the weapon

1 comes in contact when the gun is fired, using contact with
2 the primer cap, creating a little spark, which causes an
3 explosion, that -- and again, it's a small explosion -- that
4 builds pressure behind the actual bullet and projects it out
5 of the barrel of the gun. So as a result, there's a plume
6 of smoke that comes out from any open orifice in the weapon.
7 You know, out of the barrel, of course, projector ports,
8 maybe around a barrel in the revolver, that kind -- those
9 kind of places. And that gunshot residue will come to rest
10 on anything in the vicinity of that weapon when it's fired.
11 So on the shooter's hands, on the -- on, you know, a
12 potential victim's hands, on a chair, a door, anything
13 that's in the vicinity of the weapon when it's fired,
14 clothing, things like that.

15 Q And does gunshot residue stay on an individual's hands
16 indefinitely?

17 A Gunshot residue will dissipate over time on a living
18 person's hands. Typically, we do not accept a kit that has
19 been taken six hours or longer after the incident, for that
20 reason. GSR is very delicate evidence. It's very easily
21 removed from the hand just by, you know, taking your hands
22 and putting them in and out of your pocket, washing your
23 hands, rubbing them together. It's also absorbed into the
24 skin over time. So it is important to take it as soon as
25 possible after an incident.

1 Q Can it also be removed by washing your hands?

2 A It can be removed by washing your hands.

3 Q What about any specific types of cleansing required to
4 remove GSR?

5 A No. I mean, just your average washing your hands, soap
6 and water, or just water even could potentially remove it.

7 Q In your knowledge as an expert in the field of gunshot
8 residue analysis, does hydrogen peroxide have any particular
9 affect on gunshot residue, such as the application of
10 hydrogen peroxide to an area?

11 A It -- no, it shouldn't have a -- a higher affect or a
12 worse affect on it. But I guess if you washed your hands
13 with hydrogen peroxide, it would probably remove it, just
14 like water does.

15 Q Okay. Tell me a little bit about your testing
16 procedures at SLED for the gunshot residue kits.

17 A Well, when a kit -- a kit is composed of four particle
18 lifts that are taken from the areas of the hands that we've
19 talked about: The right palm and right back, and the left
20 palm and the left back. It also has swabs that are taken
21 from the same areas of the hands, as well as a control that
22 will be taken from an area of the body that is believed to
23 not have been exposed when the weapon was fired.

24 And those -- again, those swabs are taken from those
25 four areas of the hands, and then a control. And that

1 control is taken from a place that's determined by the
2 person who's collecting the kit. You know, they have to
3 make the determination of where that should be taken from.

4 Q Okay. Is it ever the case in your analysis of gunshot
5 residue kits that your findings are perhaps inconclusive,
6 not definitive?

7 A It is possible that they could be -- that we could not
8 get a definitive answer. The way that we analyze the kit
9 and the order in which we do that is we analyze the swabs
10 first. And the -- the metals are extracted from the swabs
11 into a solution and analyzed on a piece of instrumentation
12 in our laboratory that can tell us what metals are present
13 in that extract.

14 And depending on the levels of metals that we find,
15 which is laid out in our protocols, it may or may not
16 warrant going on and analyzing the particle lifts. And
17 those particle lifts are analyzed on a scanning electron
18 microscope where we can actually see the individual
19 particles. And also we can -- we can analyze for their
20 composition as well, using that instrument, the scanning
21 electron microscope.

22 A distinguishing component of gunshot residue, which is
23 unique to gunshot residue, is the morphology, or the shape,
24 of the particles. A three component particle, which is
25 lead-bearing antimony, which are the components of gunshot

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ue. A particle that is round and has those three
nents is unique to gunshot residue. It doesn't come
anywhere else.

4 Q And in your review of this case, was the presence of
5 lead-bearing antimony sufficient enough, after the
6 determination of the swabs, to prevent second testing? Or
7 testing of the latent lifts after the swabs?

8 A Well, they are particle lifts. Latent lifts are a
9 little bit different.

10 Q Oh, okay. I'm sorry.

11 A That's okay.

12 Q Particle lifts.

13 A Yeah, the particle lifts. In this -- in this
14 particular case, the day that we had gotten the swabs was
15 adequate enough to -- based on our protocols, to issue a
16 report.

17 Q Okay. And as an expert in the field of gunshot residue
18 analysis, does the fact that there is gunshot residue on the
19 palms of two individuals indicate anything to you?

20 A Well, in this particular case, the -- the metals that
21 were found were considered to be -- that they -- that they
22 may be associated with gunshot residue. So it's not a
23 definitive call for gunshot residue. But a lot of times in
24 victim's kits, if -- if there are metals present that can be
25 associated with gunshot residue, it's often from a defensive

1 posture possibly. That's one conclusion that we can kind of
2 draw, because typically, when you're in a hostile situation,
3 you look to automatically put your hands up. So we will
4 often see that as defensive posture.

5 **ASST. SOL. HASELDEN:** Just a moment's indulgence.

6 (BRIEF PAUSE.)

7 Q I have nothing further for you, Ms. Woodward. If you
8 can answer anything Mr. Mathews has, I'd appreciate it.
9 Thank you.

10 A No problem.

11 **THE COURT:** Cross-examination.

12 **MR. MATHEWS:** Thank you.

13 **CROSS-EXAMINATION**

14 **BY MR. MATHEWS:**

15 Q Ms. Woodward, how are you doing today?

16 A And how are you?

17 Q Good. Mine is good. Hope the drive wasn't too bad on
18 you.

19 A It wasn't too bad.

20 Q Was it raining?

21 A It was raining pretty hard at one point.

22 Q I'm sorry. Where did you come from?

23 A I came from Columbia.

24 Q Okay. Do you have a copy of your report that was

25 compiled as a result of this? Of the gunshot residue of the

1 -- I've got one if you -- if you need it.

2 A I -- I have the report that was issued by John Roberts.

3 And I technically reviewed that report.

4 Q Pardon me?

5 A I have the report that was issued by John Roberts.

6 Q Uh-huh. Do you have a copy of that?

7 A I do.

8 Q I'd like to ---

9 MR. MATHEWS: May I approach the court reporter, Your
10 Honor?

11 THE COURT: You may.

12 MR. MATHEWS: Defendant's Two.

13 (Exhibit is marked.)

14 MR. MATHEWS: May I approach the witness?

15 THE COURT: You may.

16 Q I've handed you what's been marked as Defendant's
17 Exhibit Number Two and ask if you can identify that.

18 A Yes. This is a copy of the report that was issued by
19 John Roberts and technically reviewed by myself.

20 Q Okay.

21 MR. MATHEWS: I would move that into evidence at this
22 time.

23 THE COURT: Any objection to Defendant's Two?

24 ASST. SOL. HASELDEN: None, Your Honor.

25 THE COURT: Ladies and gentlemen of the jury,

1 Defendant's Exhibit Number Two will be admitted into
2 evidence in the trial of this case without objection.

3 (Defendant Exhibit Two, Report by John Roberts,
4 received into evidence.)

5 **THE COURT:** Defendant's Two into evidence. You may
6 publish, Mr. Mathews.

7 Q And you indicate -- is it Agent Woodward or is it
8 Scientist Woodard or ---

9 A It's just Kathy Woodward.

10 Q Woodward. We've got a Judge Woodard that is spelled
11 the same, it think, or similarly anyway. Then, may I call
12 you Kathy?

13 A That's fine.

14 Q Kathy, you said -- Ms. Haselden asked you about the
15 presence of gunshot residue on palms. You also test for the
16 back. What's the purpose in testing for the back?

17 A We test all four areas of the hands for gunshot
18 residue. That is per our protocol. And, you know, just to
19 make sure that we have a thorough analysis.

20 Q Would that be consistent when you have gunshot residue
21 on the back of the hand, is that consistent with --
22 obviously, you can't say for sure, but is that consistent
23 with firing a gun?

24 A Well, gunshot residue can get on your hands in three
25 ways, like we talked about earlier. It can get on your

1 hands from firing a weapon, from being in the vicinity of a
2 weapon when it's fired, or from handling a weapon that has
3 previously been fired.

4 Q And one of the ways you would most expect to find it on
5 the back, is one of those ways firing a gun?

6 A Yes, one of the ways is possible to have fired a
7 weapon.

8 Q Now, it's not the slug, or the projectile, that causes
9 the gunshot residue; is it?

10 A No, sir.

11 Q It's the plume from the firing of the gun.

12 A That's correct.

13 Q Right at the hammer, where the hammer hits the cap, or
14 whatever, the blasting cap, the little miniature thing that
15 ---

16 A The primer cap.

17 Q The primer cap. And that causes the plume of smoke.
18 So it's being close to where that hammer hits the primer
19 cap, that the plume of smoke, that's where the gunshot
20 residue comes from?

21 A That's correct.

22 MR. MATHEWS: I don't have anything further, Your
23 Honor.

24 THE COURT: Redirect?

25 ASST. SOL. HASELDEN: Just briefly, Your Honor.

REDIRECT EXAMINATION**BY ASST. SOL. HASELDEN:**

Q Ms. Woodward, what distance does gunshot residue typically travel? Or tell me, can it travel?

A That's a -- that's a difficult question to answer. It's very dependent on environmental factors, and I can't really testify how far it would go because environmental factors will affect it, the caliber of the weapon. All kinds of different things that I can't really speak to that, unfortunately.

Q Would it typically go three to four feet? Is that even something you could speculate to?

A I really can't speculate.

Q Okay. I have no further questions. Thank you.

A Thanks.

THE COURT: Re-cross, limited to redirect.

MR. MATHEWS: Nothing, Your Honor.

THE COURT: As to this witness, Solicitor.

ASST. SOL. HASELDEN: Ask that she be excused.

THE COURT: Any objection to this witness being excused?

MR. MATHEWS: No, sir.

THE COURT: Ms. Woodward, you may step down from the witness stand. If you'll leave my exhibit here that we put it; you got it, all right. Drive carefully. You're excused

1 from the trial of this case. Stay safe.

2 **MS. WOODWARD:** Thank you.

3 **THE COURT:** Thank you. Call your next witness.

4 **ASST. SOL. HASELDEN:** The State rests at this time,
5 Your Honor.

6 **THE COURT:** Counsel, approach.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
8 AND OUT OF THE HEARING OF THE JURY.)

9 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
10 jury, I have a quick matter of law I need to take up. I'll
11 be right back with you in just a moment. Please don't
12 discuss the case. You may retire to your jury room.

13 (4:15 P.M., 7-26-11, WHEREUPON, THE JURY EXITS THE
14 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
15 RECORD.)

16 **THE COURT:** Mr. Middleton, I remind you that you're
17 still under oath. I told you, you would not have to make
18 your decision about testifying in the trial of this case
19 until you had heard all the State's evidence. You have now
20 heard all the State's evidence; they've rested. Is it your
21 decision to testify or not testify in the trial of this
22 case? You got to tell me which one it is. Do you want to
23 testify or not?

24 **MR. MIDDLETON:** I do not want to testify.

25 **THE COURT:** You do not?

1 **MR. MIDDLETON:** No, sir.

2 **THE COURT:** Thank you. All right, Mr. Mathews, I
3 understand you have a matter of law that you wish to take up
4 with the Court. The State has rested.

5 **MR. MATHEWS:** Yes, sir, Your Honor. At this point, I
6 make a motion for a directed verdict of acquittal on the
7 basis that the evidence taken in the light most favorable to
8 the -- the State doesn't show a specific intent to kill, as
9 required by the statute on attempted murder. And I would
10 ask for -- I'd ask for that.

11 **THE COURT:** Solicitor, I'd be happy to hear from you.

12 **ASST. SOL. HASELDEN:** Your Honor, the State's position
13 is that there has been ample circumstantial evidence,
14 tending to prove the guilt of the accused, and the proving
15 of each and every element of both the possession of the
16 weapon during the commission of the violent crime charge and
17 the two attempted murder charges. You've heard ample
18 testimony for that individual, who was later determined to
19 be the defendant, Quashon Middleton, drove up on a crowded
20 street, shot five to seven times into a car that had two
21 occupants in it at very close range, pieces of bullets and
22 other residue indicated a proof of that, were both located
23 at the crime scene at [REDACTED], and
24 subsequently inside the victim's car a short distance away.
25 You also have two individuals that testify to the same

1 exact sequence of events, including Mr. Mincey and Carmen
2 Salley, who were some distance away, and saw the individual
3 show up. As far as Mr. Mathews' contention that there has
4 been no evidence of intent, you know, it's generally in the
5 past that the general intent to commit grievous bodily
6 injury is required which, you know, can be shown by an act
7 of conduct, which clearly, discharging a firearm during the
8 middle of the day into a crowded car would clearly show the
9 intent to commit grievous bodily injury, and therefore, the
10 idea of attempted murder, which only requires an intent to
11 kill; an attempt to kill another person by malice
12 aforethought either direct or implied. Malice aforethought
13 can be defined by recklessness, and as I mentioned, the
14 intent to inflict grievous bodily harm, and for the intent
15 to commit a felony, particularly the case here. Clearly,
16 the other three prongs have been met, in the State's
17 opinion.

18 **THE COURT:** All right. Give me one minute because I
19 want to check something on my computer in my office before I
20 rule on this motion.

21 (Off the record, briefly.)

22 **BAILIFF:** All rise.

23 **THE COURT:** Thank you. You can please be seated.
24 Solicitor, I understand in the light of my looking at the
25 indictment, the State wishes to move to amend the

1 indictments without objection by the defendant, due to a
2 Scribner's error in the indictment.

3 **ASST. SOL. HASELDEN:** Yes, Your Honor. Indictment
4 2010-GS-15-0962 and 2010-GS-15-960, both for attempted
5 murder. In the body of the indictment and the back of the
6 indictment, I included the law section 16-3-620. It should
7 be properly reflected at 16-3-29, which is the proper
8 section ---

9 **THE COURT:** And in fairness to you, I want you to know
10 that on the front of the indictment, it has one code
11 section, and in the body of the indictment, it has another.
12 And the body of the indictment is assault and battery with
13 intent to kill, for which no specific intent to kill is
14 required. But on the 16-3-29, a specific intent to kill is
15 required for attempted murder. You agree, Solicitor?

16 **ASST. SOL. HASELDEN:** Yes, sir.

17 **THE COURT:** Which is the reason I took the break. Any
18 objection to the amendment, Mr. Mathews? And so your client
19 knows, the right section was on the outside of the
20 indictment and the name of the offense. And you will notice
21 -- you knew exactly what was going on, but the Court did not
22 understand after reading the indictments, because of your
23 argument on directed verdict.

24 All right, my understanding is, Mr. Mathews, that your
25 motion for directed verdict was on the basis that a specific

1 intent to kill is required and you don't believe there was
2 any evidence at this stage of a specific intent to kill?

3 **MR. MATHEWS:** That's correct.

4 **THE COURT:** And, Solicitor, you believe that intent can
5 be shown by -- y'all don't do that to her when I'm talking
6 to her, okay? Please, I've asked y'all that. She can't
7 listen to me and talk to y'all.

8 And you believe, Solicitor, also, and you believe
9 intent can be shown not only expressly, but you believe
10 intent can be inferred from the acts and circumstances of
11 the parties; is that correct?

12 **ASST. SOL. HASELDEN:** I do.

13 **THE COURT:** Very well. All right. On that basis of
14 that motion at this stage -- and Mr. Mathews, you're very
15 aware of the standard I have to use at the directed verdict
16 stage -- your motion for directed verdict is respectfully
17 denied.

18 And Solicitor, your motion to amend the Scribner's
19 error in the indictment, to reflect the correct code section
20 for attempted murder is granted, without objection.

21 Now, it is my intention, David, to bring the jury back.
22 You have told me, your client's told me, after hearing all
23 the evidence, he doesn't wish to testify. I've advised him
24 of his rights, and I'll let you rest in front of the jury.

25 I recognize that you've just handed me a rather lengthy

1 request to charge. I'm going to need overnight to read it
2 and consider it, and I'll meet with you and Ms. Haselden in
3 the morning, concerning your request for charge. You
4 understand, Mr. Mathews?

5 **MR. MATHEWS:** I do, Your Honor.

6 **THE COURT:** Very well. Bring me the jury.

7 (4:35 P.M., 7-26-11, WHEREUPON, THE JURY ENTERS THE
8 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
9 RECORD.)

10 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
11 jury, you've heard the evidence from the State of South
12 Carolina. We'll now hear from the defendant. Mr. Mathews.

13 **MR. MATHEWS:** The defense rests, Your Honor.

14 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
15 jury, you've now heard all the evidence in the case. It's
16 approximately 20 minutes till 5, and because of the length
17 of time that I would give for argument and charge, we're
18 going to stop at this point for today. We will finish the
19 trial promptly in the morning.

20 Now, I have some matters of law I have to take up in
21 the morning. So I'm going to let you sleep a little bit
22 later. I'm going to ask you to be in your jury room by ten
23 o'clock in the morning, because we will not start before
24 ten. We're going to get here earlier to work.

25 Over the overnight recesses, I've asked you, please

1 don't discuss this case with anyone, not even a member of
2 your own family. If anybody tries to talk to you about it,
3 just tell them the judge said you can't discuss it. And if
4 they persist, get their name and give it to me.

5 Please don't read, watch or listen to any new account
6 of this case. I don't know whether there will be any, but
7 please do not listen to such, watch such or read such. As
8 I've instructed you throughout the trial, you must decide
9 this case solely upon evidence introduced during the trial
10 of the case when both sides are present, with the right of
11 cross-examination. We will conclude this trial promptly in
12 the morning at ten o'clock.

13 Thank you for your patience and your service. You are
14 now excused for the balance of today. You may leave the
15 courtroom at this time. Thank you very much.

16 Everyone else, remain seated while the jury is leaving.

17 (4:40 P.M., 7-26-11, WHEREUPON, THE JURY EXITS THE
18 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
19 RECORD.)

20 **THE COURT:** All right, Counsel, I understand that all
21 we've got left is argument and charge. I'll need you to
22 hand my law clerk -- Mr. Mathews has already done it in my
23 chambers. He's given me, which I hadn't even had a chance
24 to read yet, and he knows that. In fact, he just handed it
25 to me as we were walking out, back to the courtroom, dealing

1 with THE motion for directed verdict.

2 And I don't have any requests from the State. If there
3 are any, I want you -- Mr. Mathews, if you have any requests
4 for lesser included offenses, you need to hand them to my
5 law clerk, so that I can consider that. I'd like to meet
6 the attorneys in chambers for a charge conference in the
7 morning at 9:15. So I expect you in my office, both sides,
8 at 9:15. However, I expect any requests for charge to be
9 handed to my law clerk by five o'clock this afternoon,
10 because we will work tonight in order to prepare for the
11 charge conference at 9:15 in the morning.

12 Does the State understand?

13 **ASST. SOL. HASELDEN:** Yes, Your Honor.

14 **THE COURT:** Does the defendant understand?

15 **MR. MATHEWS:** Already done it.

16 **THE COURT:** Very well. All right, Counsel, be thinking
17 about -- I assume that -- Mr. Mathews has put into evidence,
18 obviously, Solicitor, which affects, even though they didn't
19 put up any evidence in defense case, he has two exhibits in
20 evidence in the trial of this case. So I'm assuming that
21 y'all may be able to agree on the order, otherwise, we'll
22 follow the rule, and think about that for the charge
23 conference, how long you want for argument, so we can work
24 out the order of argument and the timing of argument in the
25 morning at 9:15, as well as considering the request for

1 charge.

2 Anything further from the State before we adjourn for
3 the evening?

4 **ASST. SOL. HASELDEN:** Nothing, Your Honor.

5 **THE COURT:** Anything further from the defendant before
6 we adjourn for the evening?

7 **MR. MATHEWS:** No, sir.

8 **THE COURT:** This Court's in recess until 9:00 a.m. in
9 the morning.

10 (4:50 P.M., 7-26-11, WHEREUPON, COURT IS IN RECESS IN
11 THE TRIAL OF THE CASE.)

12 (10:00 A.M., 7-27-11, WHEREUPON, COURT RECONVENES IN
13 THE TRIAL OF THE CASE. THE FOLLOWING IS ON THE RECORD
14 OUTSIDE THE PRESENCE OF THE JURY.)

15 **THE COURT:** Let the record reflect that I have met
16 since early this morning with counsel for both parties in
17 this matter concerning my charge. I've been over my verdict
18 form with them. They're in agreement as to the form of the
19 verdict, verdict form. And before I actually charge the
20 jury, since it hasn't been printed, although we've agreed to
21 it orally, Nick's working on that right now, I'll show it to
22 both of you before I actually give it to the jury, as we
23 agreed, to make sure it's exactly what we agreed on.

24 This is the statute that was passed by the legislature
25 in June of 2010. And the legislature attempted to change

1 statutorily the common law that we had in our state, as well
2 as statutory law, meaning that the law of assault and
3 battery with intent to kill, assault and battery of a high
4 and aggravated nature, simple assault, is changed by this
5 statute.

6 The attorneys and I have had a lengthy discussion about
7 the changes that are reflected in the statute that was
8 passed in June 2010. And the statute, as both of them know,
9 for attempted murder is 16 -- if I'm quoting it right now,
10 because we changed it in the indictment -- 16-3-29. But
11 there is also quite a bit of law in 16-3-600, which I went
12 over with the attorneys. And 16-3-29 was passed on June the
13 2nd, 2010; 16-3-600 was also effective on June the 2nd,
14 2010.

15 16-3-600 is entitled "assault and battery." It defines
16 the offense now statutorily of assault and battery of a high
17 and aggravated nature. It also defines, which is in B(1) of
18 16-3-600, it also defines the offense statutorily of assault
19 and battery in the first degree, which is in C(1) of 16-3-
20 600.

21 In discussing the evidence with the attorneys in this
22 case, it is my belief, because of the requirements of the
23 statute, that I should charge the lesser-included offenses
24 as to Stephanie Mack of assault and battery of a high and
25 aggravated nature, as well as assault and battery of the

1 first degree. I made that statement -- I began by telling
2 the attorneys that it was actually no battery involved with
3 Mr. Stephens. However, even beyond that, Mr. Mathews
4 inquired of Mr. Stephens when he was on the witness stand
5 whether or not he was injured, which he responded he was
6 not. And both attorneys agreed that that evidence came out
7 during the trial of the case.

8 The statute that we are referring to that's a little
9 over a year old defines, first of all, assault and battery
10 of a high and aggravated nature, if the person unlawfully
11 injures another person, and then there are other things.
12 The statute defines assault and battery in the first degree
13 if the person unlawfully injures another person, and then
14 other things. Although Mr. Mathews does point out that
15 there is an offering, or attempting to injure another
16 person, the first part of the statute for assault and
17 battery in the first degree says in A -- the person commits
18 this if the person unlawfully, A, injures another person and
19 the act either applies to one or two. And then it says B,
20 offers or attempts to injure another person with the present
21 ability to do so.

22 It is my belief that whether it's no touching and
23 because of the language in the statute, that I do not charge
24 the lesser-included offenses as to Ryan Stephens. So the
25 verdict form will reflect that Mr. Stephens is either guilty

1 or not guilty of attempted murder.

2 As to Stephanie Mack, Mr. Mathews has requested that I
3 charge the lesser-included offenses, where there was some
4 injury, not great bodily injury, but some injury, and there
5 was a touching, there was a battery, according to her
6 testimony. She said she had cuts and bruises, according to
7 what the attorneys and I discussed in chambers this morning.
8 For that reason, the Court will charge attempted murder as
9 to Stephanie Mack. The Court will charge the lesser-
10 included offense of assault and battery of a high and
11 aggravated nature. Court will also charge the lesser-
12 included offense of assault and battery in the first degree.

13 The attorneys and I have meticulously this morning gone
14 over the exact elements in the statute, which is 16-3-600,
15 as to what should be charged insofar as the elements are
16 concerned. I am also going to define "attempt" and define
17 "murder," and I have been over the exact wording of those
18 charges. And, of course, I will also be charging possession
19 of a weapon during the commission of a violent crime.

20 Because I am charging the lesser-included offenses, as
21 to Stephanie Mack, assault and battery of a high and
22 aggravated nature is a violent offense. So even if the jury
23 were to find as to Stephanie Mack that she was not guilty of
24 attempted murder, but found the defendant guilty of assault
25 and battery of a high and aggravated nature, they could

1 still find as to Stephanie Mack that the defendant was
2 guilty of possession of a weapon during the commission of a
3 violent crime because both attorneys and I agree that
4 attempted murder and assault and battery of a high and
5 aggravated nature both are violent.

6 However, the lesser-included offense of assault and
7 battery in the first degree is not a violent offense. And
8 if the jury were to find as to Stephanie Mack that the
9 defendant was only guilty -- or obviously not guilty -- of
10 the offense of assault and battery in the first degree, then
11 the jury would not be permitted to find the defendant guilty
12 of possession of a weapon during the commission of a violent
13 crime because assault and battery in the first degree is not
14 a violent offense within the meaning of the code.

15 I have gone through each one of my charges, and I
16 wanted to put what had occurred, because we met for over an
17 hour in chambers this morning to discuss that. My law clerk
18 has just brought the verdict form in. I'd ask counsel to
19 approach the bench.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
21 RECORD.)

22 **THE COURT:** All right. With an amendment to the
23 verdict form, counsel has reviewed the verdict form at my
24 bench, now. They are in agreement. Once again, I will add
25 to the verdict form -- I'm charging exactly what I said, for

1 the reasons I said. I'm charging the lesser-included as a
2 third, because there's evidence to support it. I don't
3 believe there's evidence to support any assault and battery
4 as to him; certainly no battery or any injury to him. In
5 fact, he said there was not.

6 And I'm going to add into the verdict form at the
7 request of the State that if you find the defendant guilty
8 of attempted murder, as to Stephanie Mack, you do not need
9 to answer questions three and four.

10 (SOTTO VOICE DISCUSSION WITH LAW CLERK.)

11 **THE COURT:** All right now, I think I've covered
12 everything that occurred in chambers. As far as the State's
13 concerned, have I covered everything concerning the charge
14 and the verdict form?

15 **ASST. SOL. HASELDEN:** Yes, sir.

16 **THE COURT:** Insofar as the defendant is concerned?

17 **MR. MATHEWS:** Other than A and B for him, and as to the
18 exhibit, yes, sir.

19 **THE COURT:** Mr. Mathews has submitted some requests to
20 charge. I've gone over those with him in chambers. I
21 believe my charge covers his request to charge. Mr. Mathews
22 has requested that I charge the lesser-included offenses as
23 to Ryan Stephens, and I specifically declined to do so
24 because of the evidence produced at the trial in which he
25 said he had no injury. I think it's up or down on attempted

1 murder as to Ryan Stephens. Either the jury finds him
2 guilty or not guilty as to attempted murder.

3 All right. The attorneys have asked for 25 minutes
4 argument each side. My bailiff's, during the attorney's
5 argument, no one leaves and no one comes into this
6 courtroom. During my charge, no one leaves, no one comes
7 into this courtroom. If you need to leave for a restroom
8 now, get up and leave now, but you're not going to come back
9 in until we take a break. So if anybody needs to leave,
10 stand up and leave now.

11 All right. The order of argument will be that Mr.
12 Mathews argues first. He will have 25 minutes, followed by
13 an argument by the State of South Carolina, who will also
14 have 25 minutes. I will then offer the jury a break if they
15 want to use the restroom, stretch their legs, at which time
16 you can get one, which means it will be at least 50 minutes
17 before there's another break, if the jury chooses.
18 Otherwise, I will start my charge, following both parties.
19 No one in or out of the courtroom during the argument or the
20 charge.

21 Anything further from the State before I bring the
22 jury?

23 **ASST. SOL. HASELDEN:** Nothing, Your Honor.

24 **THE COURT:** Anything further from the defendant before
25 I bring the jury?

1 **MR. MATHEWS:** No, sir.

2 **THE COURT:** Bring us the jury, please.

3 (10:45 A.M., 7-27-11, WHEREUPON, THE JURY ENTERS THE
4 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

5 **THE COURT:** Now, I know each of you were sitting back
6 there saying Judge Buckner said be here at 10:00, and it's
7 10:45 and we're just getting started.

8 Let me explain to you, long before you got here this
9 morning, I started a conference with the attorneys. And the
10 reason for that will probably be explained to you some part
11 in my charge to you on the law and in part in their closing
12 remarks to you.

13 We're dealing with a brand new piece of legislation,
14 for which there is no case -- there had been no cases
15 decided under this statute. So we had to be extremely
16 careful and to take extra time, in order that we wanted to
17 ensure that everything was prepared correctly for you. So I
18 take complete responsibility for the delay, because I wanted
19 to make sure that it was right for you. Thank you for your
20 patience.

21 All right now, ladies and gentlemen, you're going to
22 hear the final arguments of the attorneys, followed by my
23 charge to you on the law. First, you'll have an argument,
24 counsel for the defendant; followed by an argument by
25 counsel for the State of South Carolina.

1 I will then offer you your mid-morning break before I
2 begin my charge. The argument's going to take close to an
3 hour; my charge is going to probably run 30 to 35 minutes.
4 So rather than make you sit that long, I'll give you a break
5 in the jury room. But I caution you, do not discuss this
6 case until I instruct you to do so, if you take a break.

7 I ask that you give the attorneys your careful
8 consideration. Mr. Mathews.

9 **MR. MATHEWS:** Thank you, Your Honor.

10 **CLOSING ARGUMENT**

11 **BY MR. MATHEWS:**

12 Well, you've sat through a day of testimony and
13 listened careful; that's evident. You already met Mr.
14 Middleton. You already met me and Ms. Haselden. And you've
15 had a chance to hear now all the evidence that came from
16 that stand, and that's the only thing that's evidence.

17 This is going to be -- the law is actually more
18 complicated than the facts in this case, but it's your sole
19 duty to figure out what the facts are, whether they meet the
20 law as the Court gives it to you.

21 I think it's pretty clear that the State has managed to
22 prove that Quashon Middleton drove around the Honda, and I
23 think they proved that he fired some shots into it. I think
24 that's clear. And then the Honda hit him. He broke his
25 leg, limped into his cousin's house, and was treated by EMS,

1 told them that the Honda had shot at him. And they went
2 back and talked to the Honda, the people there. Nobody
3 there was treated. That much I think is pretty clear.

4 Now, what all that means is a little less clear. The
5 State has to prove every element of its case beyond a
6 reasonable doubt. If you're making a cake, you go through
7 the recipe and you include everything in there. You can't -
8 - if you don't have any baking powder, you can't use extra
9 flour to make up for it. You have to have everything there.

10 One of the things in an attempted murder charge that
11 the State has to prove beyond a reasonable doubt is a
12 specific intent to kill. You can't make up for that by
13 added emotion. And there's a lot of emotion in there. Good
14 golly, there's a lot of emotion. You sit back there and
15 there's a precious little girl here. (HOLDS UP PHOTO.) This
16 is a fine-looking girl right here, but she's not a victim.
17 She's not a victim. She wasn't hit, she wasn't shot at, she
18 didn't get off the bus. She's not a victim in this case.
19 Nobody on the bus is a victim.

20 What that bus does have something to do with is you got
21 an eyewitness, two eyewitnesses, and that's important.
22 Estis Mincey and Ms. Salley both had a chance to see the
23 moped come around this. Now, my recollection of the
24 testimony is that they saw only a man in the car; that's my
25 recollection. My recollection is that they saw the moped

1 get hit, they called in the report and the EMS responded.

2 Now, what happened at the side of that Honda? We don't
3 know. We know that Mr. Stephens says that the window was
4 open, and we know that he said that there was a shot fired.
5 But look at the pictures when you get back there to find out
6 where the bullets went. No guns were found on anybody. Not
7 on Ryan Stephens; not on Quashon Middleton. There was a lag
8 time between the time the police got there, to talk to
9 either of them, and the time that statements were given.

10 No guns were found on anybody, but gunshot residue was
11 found. Now, it's clear that -- I mean, perhaps Quashon
12 maybe used peroxide, maybe he didn't. Maybe he washed his
13 hands, maybe he didn't. He was treated. And I don't think
14 as far as when the gunshot residue test was taken, I don't
15 remember whether it was taken on the scene or at the
16 hospital. I don't remember which. Perhaps you do.

17 But in any event, enough other stuff happened where
18 perhaps, I mean, it should have been there, except that
19 perhaps it was washed off. The absence of it doesn't mean
20 it was not there at one time. However, the presence of it,
21 that is something worth looking at. The fact that Quashon
22 didn't have any gunshot residue on his hand doesn't mean it
23 wasn't there. The fact the gunshot residue was found on
24 Ryan Stephens' hand, that means something.

25 Now, the expert witness in this case, Ms. Woodward,

1 testified that gunshot residue is caused when it comes from
2 the gun. The bullet is hit by the hammer, that causes a
3 little explosion inside the gun, which causes a plume of
4 smoke to rise from the back of the gun and the barrel of the
5 gun. And when that settles, that's when you get gunshot
6 residue.

7 Now, listen to how these things happen. You know that
8 gunshot residue could -- the bullet doesn't cause that; a
9 gun causes that. How did that come to be? Whether or not
10 what happened to Mr. Stephens, I don't know. But I do know
11 that it's unlikely he told the truth about a couple of
12 things.

13 He admitted that he was under suspension at the time
14 and he left the scene at the time. Now, why is this
15 important? Why is it important that he says that he swapped
16 seats? Well, Detective Inabinett gave you a clue on that.
17 He said "We didn't charge him because of exigent
18 circumstances."

19 Now, Detective Inabinett didn't find out he was under
20 suspension till some time later, even though Officer Crosby
21 said he knew right away; he knew it right away. And my
22 understanding is that Officer Crosby also said that Ryan
23 Stephens may have said "I don't have any I.D." He said, "I
24 don't have any I.D." So Ryan Stephens doesn't have any
25 I.D., he said he knew -- he didn't know he was under

1 suspension, but he says he got arrested for it in Dorchester
2 a few months later, as a long-haul trucker.

3 Now, can you imagine being a long-haul trucker and you
4 don't know the status of your driver's license? Can you
5 imagine anybody paying you to be a long-haul trucker that
6 doesn't know the status of your driver's license? That
7 doesn't make any sense at all.

8 Exigent circumstance is why he wasn't charged, as far
9 as that goes, whether he knew or whether he didn't know.
10 And that's why it's important to switch seats, see, because
11 there was no emergency when they rolled up, or he rolled up.
12 I don't know whether or not she was in the car, but I know
13 that he was, because Estis Mincey saw him. It's not an
14 exigent circumstance if you're driving around, you come up
15 to a stoplight. Once you get shot at, it becomes an
16 emergency. But if you're already there, that's not an
17 emergency and you can be charged with driving under
18 suspension. That's why this mythical seat-shifting had to
19 happen.

20 What else happened? He didn't tell the -- it's
21 impossible that he told the truth about that. It's
22 impossible. Long-haul trucker doesn't know the status of
23 his driver's license. She said she doesn't let him drive
24 his car. Now, why? Because she knows. It's her boyfriend.
25 It's her boyfriend.

1 If you find -- I said, what happened on the side of the
2 car, I don't know. But the window was down, gunshot residue
3 was on Ryan Stephens' hand. There was no bullet hole on the
4 side of the car. Nothing. This is a picture. State didn't
5 introduce this; I did. There's no damage to the side of the
6 car. Damage starts here at the door jam in front. You got
7 lots of pictures and lots of angles and stuff like that; you
8 get to see lots of pictures of that. This is the only
9 picture that shows you that door with a good angle. Nothing
10 happened to that door; nothing happened there.

11 Was he scared? Was he shot at? I don't know. I do
12 know that that -- if you're intending to kill somebody,
13 that's your best chance. I know that. If you pull up next
14 to a car and the car is stopped in park, waiting for a bus,
15 they're not going anywhere. And you pull up right next to
16 it and you've got an open window right there, you stop, you
17 point, you shoot. That's a specific intent to kill. You
18 want to kill somebody, that's how you do it.

19 What happened after that? Are you intending,
20 specifically, to kill somebody when you pass and you're
21 firing over your shoulder as you're driving, riding a
22 scooter? You're driving and your shooting. You're either
23 trying to escape, you're trying to scare somebody. I don't
24 know what you're trying to do, but that's not your best
25 chance to kill somebody. That happens beside the car, not

1 in front of the car.

2 If you find that Quashon Middleton intended to shoot at
3 the car, not to protect himself -- he was trying to protect
4 himself. If you believe that the State hasn't proven all
5 its case there, then you find him not guilty of anything.
6 If you find no specific intent to kill, to murder, and you
7 find he didn't have a good reason for shooting, then you can
8 find him guilty of something else, as to Ms. Mack.

9 Now, the assault and battery behind that aggravated
10 nature statute says that if someone is injured, then you can
11 take a look at what kind -- how did their injury come about.
12 If they're injured and some sort of deadly instrument is
13 used, then that's assault and battery of a high and
14 aggravated nature. And a judge will tell you that this is a
15 lesser-included offense of attempted murder. There's no
16 specific intent to murder. You could find somebody guilty
17 of assault and battery of a high and aggravated nature, if
18 there's an injury.

19 Now, Ms. Mack was not treated by EMS. I'm not sure --
20 I think she had some scratches or something like that. That
21 may be enough; it may not. That's up to you whether that's
22 an injury. That's up to you. If you find that she is -- if
23 Quashon is guilty of assault and battery of a high and
24 aggravated nature, the judge will tell you that's a violent
25 crime. Attempted murder and assault and battery of a high

1 and aggravated nature are both considered violent crimes.
2 And then you go on to the next thing, which is the
3 possession of a weapon during the commission of a violent
4 crime. It has to be defined specific as a violent crime.

5 The next thing you can consider as to Ms. Mack is if
6 you find that she wasn't injured -- if you find that she
7 wasn't injured according to the evidence, then you go on to
8 consider the third thing, and that is assault and battery in
9 the first degree.

10 Assault and battery in the first degree is, you can
11 shoot at somebody, you don't hit them, you're not trying to
12 kill them; you're not trying to murder them, but you're
13 using an instrumentality, you're using a weapon that if it
14 did hit them, it could kill them. That's assault and
15 battery first degree.

16 If you find that Quashon didn't have a good reason to
17 shoot at this car, and that Ms. Mack was in the car, even if
18 you find she was not injured, you can still find him guilty
19 of assault and battery in the first degree.

20 Now, as to Mr. Stephens, the Court will charge you,
21 that's up or down. That's either -- either the specific
22 intent -- every ingredient is shown, including a specific
23 intent to kill or it wasn't. No lesser-included offenses as
24 to that. This is the law, as the Judge gives it to you.

25 So if you find that there was not a specific intent to

1 kill, then you can find him guilty as to Ms. Mack, but not
2 as to Mr. Stephens. And again, I think there was some
3 testimony that she had some little scratches or something
4 like that, so you can find her guilty of either of those two
5 things.

6 Like I said, though, if you don't have all the
7 ingredients -- and there are a couple other things I think
8 worth noting. And forgive me for going through my notes.
9 We go through an awful lot of stuff here, and scared to
10 death we're going to leave something out.

11 Oh, one of the things that caught my attention too is
12 why wasn't there any discussion in the car about Quashon's
13 shooting? Ms. Mack said she knew Quashon and recognized
14 him. Mr. Stephens said he met him, but didn't know him. It
15 seems odd to me that he would tell Officer Crosby he didn't
16 know the guy, and there's that car ride over. And in that
17 car ride over, it just seems natural. Somebody's coming
18 around you -- war-trained veteran is seeing somebody come
19 around the car with a gun and doesn't say "Step on it; he's
20 got a gun." Bus or no bus, somebody's coming around me with
21 a gun, you know, okay. I mean as far as, I don't want to
22 violate the law driving under suspension, leaving the scene
23 of an accident; those are violating the law too. So that
24 doesn't make sense.

25 And it doesn't make sense that there wouldn't be some

1 discussion on the way back as to, you know, "You recognize
2 that guy? Who's that guy that shot at me?" Why didn't
3 somebody say, "That was Quashon"? Why didn't Ms. Mack say,
4 "That was Quashon"? I don't know. I don't know the answer
5 to that. The State has to prove these things.

6 But in any event, those are things that make it
7 unlikely -- some of these things make it unlikely that
8 things happen the way it was described. You might hear
9 something about John Varner. John Varner, he took Quashon
10 in. That's his cousin, and also John Varner is her brother,
11 right? He says that Quashon came in, holding his leg and
12 said he had been hit by a car. He says he didn't talk to
13 EMS. The lady from EMS talked to somebody who identified
14 themselves on the tape as John Varner. And she said she
15 listened to the tape, and so that she could identify it.

16 But she also said it had been stored on her
17 lieutenant's computer. And we didn't hear any evidence at
18 all that it was unaltered from the lieutenant's computer.
19 None. I don't know how she got it because there was no
20 testimony of who she got it from, but it is in evidence.
21 Try not to give it too much weight because there was no
22 connection from the lieutenant's computer to the EMS
23 operator who testified.

24 Mr. Foreman, ladies and gentlemen, I appreciate your
25 time and attention. Look carefully at all those pictures.

1 But don't get -- don't let extra flour be your baking
2 powder. Don't let that -- don't let emotion keep you from
3 looking at the facts, as they exist. The victims, if they
4 are victims, are Stephanie Mack and Ryan Stephens. As far
5 as whether Quashon was doing what he had to do to protect
6 himself, or whether he did something that not to protect
7 himself. He didn't specifically intend to kill anybody, or
8 he would have done it by the side of the car and not in
9 front of it while he's driving.

10 Please consider carefully this and listen to the
11 Judge's charges. Thank you for your attention.

12 **THE COURT:** Ms. Haselden.

13 **ASST. SOL. HASELDEN:** May it please the Court?

14 **THE COURT:** Yes, Ma'am.

15 **CLOSING ARGUMENT**

16 **BY ASST. SOL. HASELDEN:**

17 I told you at the beginning of this trial and I'm going
18 to tell you again, maybe a couple of times, this is a case
19 about a man pulling up to a car in a crowded neighborhood in
20 the middle of the afternoon when it was stopped at a school
21 bus stop sign and pumping it full of bullets. That's what
22 this case is about.

23 Tiny little Stephanie Mack; you saw her. She came up
24 here, got on the stand, testified about how she's just
25 driving along, taking her boyfriend over to his mother's

1 house to get a dinner plate, when suddenly, the man that
2 they had just passed down the road who had stopped, gotten
3 off, scoped them out and turned around, comes up behind
4 them. He had the gun in his hand; he shoots. She freaks
5 out a little bit, throws her hands in the air.

6 Thankfully, Ryan Stephens didn't just freak out; he
7 jumped over. Jumped over on top of her, which is
8 corroborated by Mr. Mincey's statement, "I didn't see no
9 woman driving. I just saw a man in the driver's seat,
10 reared up over the steering wheel." Reared up.

11 So you have Stephanie Mack with her hands in the air
12 corroborated; got a shot residue only on her palm. You have
13 Mr. Stephens, who probably originally went like this
14 (demonstrates) when the first bullet -- and you know
15 unfortunately, I disagree a little bit with my esteemed
16 adverse counsel because if there is a bullet on that side of
17 the car. It's harder to see in this tiny picture, which is
18 why you also have some nice big ones. A little bit easier
19 in this one. But there are others in there, and you're
20 going to have all that in the jury room to look at.

21 So you have it -- the initial gunshot residue on Ryan
22 Stephens' hands, and then you have it on the front of his
23 hands when he reared up over the steering wheel, which you
24 don't have to just take their testimony; you have other
25 testimony. You have other testimony.

1 But what else do you have? You have four people
2 testifying that her car was shot five to seven times. Look
3 closely at all these pictures. Put them together. Lay them
4 out on the table. Because you're going to count, as Jeff
5 Scott testified, at least five impact points. I think there
6 are actually more.

7 So what else? Mr. Mathews wants to focus on the fact
8 that Ryan Stephens, the vet who's been deployed three
9 different times; the vet who is trained in live combat; the
10 vet who is trained what to do when you're getting shot at,
11 who's actually been shot at before. And specifically, do
12 you remember him talking about the training he received when
13 you're in a car and you're shot at in the military? You
14 look at that gun. You look to see if that gun's going to
15 fire. And then you react. And how do you react? You jump
16 to the other side of the car; exactly what he did. Exactly
17 what he was trained to do and that Mr. Stephens should be
18 punished for.

19 He believed that because somebody is trying to save
20 their own life and the life of their girlfriend by reacting,
21 jumping into the driver's seat, saving lives, and getting
22 out of there, getting away from the scene where somebody
23 just pumped five to seven bullets in your car, that that
24 should be held accountable as a crime? No, not at all.
25 That is not, indeed, what we are going to punish, because

1 that is exactly what he was trained to do, and that's
2 exactly what he did.

3 Mr. Stephens didn't know Quashon Middleton's name, but
4 he gave a great description. Description that very closely
5 matches the defendant's. Said he was wearing black short
6 pants, which you have a photo of, found at the house, the
7 photo that also shows the bottle of hydrogen peroxide. You
8 heard Steven Scurry testify there wasn't a cut on his body.
9 There wasn't a scratch on his body. There wasn't a bruise.
10 It was just the deformity, just the deformity.

11 What's hydrogen peroxide used for? It's used to clean
12 cuts. In this case, it was used to wash off gunshot
13 residue. Look at those photos. Look at what's next to that
14 hydrogen peroxide bottle. What's next to that hydrogen
15 peroxide bottle? Look at the evidence, y'all. Look at the
16 evidence.

17 Now, Mr. Mathews would also contend that because nobody
18 on that bus was shot, that we shouldn't think about them.
19 What did Mr. Mincey tell you he was thinking when he was
20 driving away? Let me quote exact, because I don't want to
21 misspeak. Do you remember Mr. Mincey? "Been driving the
22 bus for nine years. Same route for over two years. Thirty-
23 six passenger bus." At this time, they were about halfway
24 through with their route. It was around 3:15. They were
25 between 15 and 17 three and five year olds on the bus, in

1 addition to himself and Ms. Salley. At least 17 people on
2 the bus that's only a half a car length away. Mr. Mathews
3 wants you to ignore that.

4 Mrs. Salley is standing in the doorway with this child.
5 Shots rang out. Mr. Mincey's thinking to himself, "I was
6 just thinking that I'm glad nothing happened to us, that
7 there were no ricochets or anything like that." You don't
8 think that if you don't perceive that.

9 Now, he saw Ryan Stephens rear up; it's corroborated.
10 You know why the gunshot residue's on the front and back of
11 his hands. You know why gunshot residue's on the front of
12 Stephanie Mack's hands. Kathy Woodward told you, defensive
13 posture. Stephanie even told you, she freaked out; she
14 threw her hands up, "No, no." Think about the evidence.

15 Ms. Salley also told you, and you heard her reiterate
16 again on that second 911 call -- and y'all to listen to
17 these again if you want to -- that it was the man on the
18 moped that did the shooting. But we already know the man on
19 the moped is Quashon Middleton. How do we know that? We
20 got two people that said it was him because they saw him,
21 and then you have Mrs. Salley who saw him, but didn't see
22 his face.

23 But thankfully, the defendant puts himself on the
24 moped. He tells Tony Buchanan with the sheriff's office and
25 he tells Steven Scurry. Story's changed a little bit. Kind

1 of like his cousin, John Varner, who sits in the house for a
2 living, his story changed a little bit too. Because you
3 could actually hear him talking to the defendant on his 911
4 call. "Hey, Quashon, how you spell your name? Hey, how'd
5 you hurt your leg? He said he was jumping over a fence."
6 That's an exact quote. He said he was jumping over a fence.
7 Why do you go from "Yeah, I jumped over a fence," to all of
8 a sudden "No, no, no, no, no, no, they were shooting at me.
9 They ran me over. They were trying to kill me." Not
10 logical. Look at your evidence.

11 Now, I want to keep going as to other types of
12 evidence, because I told you at the beginning, you are not
13 only going to have testimony. You might have some 911 call,
14 might have some photographs, and you might have some
15 forensic evidence.

16 You heard Jeff Scott get up here. You heard Jeff
17 Scott, who processed the green Honda, get up here. What did
18 he tell you he found? He found bits of a jacket, which is
19 part of a bullet, sprinkled throughout that car, and you got
20 photographs of it. He found glass on the inside of the car,
21 which you have photographs of. That's why we take
22 photographs. Didn't find any shell casings, though, inside
23 that car. Shell casings are expelled when somebody shoots a
24 gun.

25 What did that show him? What did he testify that that

1 showed him? That indicated to him that the shots were
2 coming from the outside of the car, from the outside, to the
3 inside. Some from the outside was shooting into the car.

4 You have a testimony from Miranda Varner. It was her
5 house that he limped into. It was her granddaughter that
6 was standing there, getting ready to get off that bus. It's
7 the defendant's own family, [REDACTED] [REDACTED], that little
8 girl. You heard her say that those black short pants that
9 were sitting in the floor in there, if she had told
10 somebody, she probably would have told them it was
11 Quashon's, because she said it wasn't hers, it wasn't her
12 sons, it wasn't her daughters -- and you know it wasn't
13 [REDACTED] [REDACTED] three years old -- matching the
14 description of Ryan Stephens. Just another element.

15 Again, Mr. Mathews wants you to focus on the fact that
16 the vet has a record, that he got caught smoking smoke pot
17 on a base with some other active military guys; deployed
18 three times. He wants you to focus on the fact that the guy
19 had a suspended license for paying his child support a
20 little bit late. This is what we call a red herring in the
21 law, a red herring. Something I throw at you, like a fish
22 to a seal at Sea World, to distract you from what else is
23 going on. "Look over here." So look over here, when you
24 got all these people saying, "Yeah, it was him. He was on
25 that moped. He tried to kill me."

1 Don't look over there; look over here. Look at the
2 fact that he had a driving under suspension, and that's why,
3 supposedly, they concocted this whole scheme about Quashon
4 Middleton, because Ryan didn't want to get caught driving
5 under suspension. Red herring. Ignore them. Focus on the
6 truth.

7 In fact, Mr. Mathews even told you at the beginning of
8 this case that the jury shouldn't pay attention to side
9 issues that don't have anything to do with the specific
10 charges in this case. Really? What are the specific
11 charges in this case? Two counts of attempted murder and
12 one count of possession of weapon during the commission of a
13 violent crime. Not DUS, not possession of marijuana, not
14 leaving the scene of an accident.

15 Leaving the scene of an accident. Was not an accident
16 that the defendant drove up to his car and shot five to
17 seven times. Five to seven times is no accident. Five to
18 seven times into the upper part of the car where
19 conveniently a person's torso and head is at. Not five to
20 seven times into the air. Not five to seven times into the
21 pavement. Not five to seven times into the tire. Five to
22 seven times, dotted across the front of the car, one
23 striking a steering wheel. You know what's behind a
24 steering wheel? A body. A body. It's behind that steering
25 wheel. A steering wheel's two, maybe three inches. That

1 what stopped that bullet. Two to three inches.

2 It was not an accident that Quashon Middleton drove up
3 to that car. It was not an accident that the only way that
4 they got Quashon Middleton to stop shooting into their car
5 was to hit him with their car when they're trying to get
6 away. Might be karma, but it's not an accident. There's no
7 accident to be running away from here y'all.

8 Now, you're going to hear a lot about the law. The
9 Judge is going to tell you a lot of stuff. As he said, his
10 charge should take about 30 minutes. Please, please, please
11 pay close attention to that charge, because as he said,
12 there was some pretty interesting legal issues in this case.

13 I have the burden as the prosecutor for the State of
14 South Carolina to prove to you beyond a reasonable doubt,
15 which I'm sure you've heard before, it's on TV every day, to
16 prove beyond a reasonable doubt every element of every crime
17 charged.

18 Now, beyond a reasonable doubt confuses a lot of
19 people. But beyond a reasonable doubt does not mean beyond
20 every doubt; it means beyond a reasonable doubt. There are
21 very few things in this world which I can prove for certain,
22 very few, and that's not the burden that I have.

23 If you're firmly convinced of the defendant's guilt,
24 then I have proven beyond a reasonable doubt. That's not
25 all I have to do. I have to relate the element of the

1 charges to the evidence in this case. And one of those
2 elements is the intent to kill, and that's what this case
3 turns on, the intent to kill. Because attempted murder is
4 to attempt to kill somebody with the actual intent to kill,
5 and with a term called "malice aforethought." And malice
6 aforethought can be either expressed or implied. But you
7 have to have the intent to kill. Because if you don't have
8 the intent to kill, it goes down to one of those lesser-
9 included.

10 You'll have the option for lesser-included as to Ryan
11 Stephens, because he didn't have any physical injury. No
12 physical manifestation of what happened. Now, Stephanie,
13 she did. So if you find no intent to kill, then you could
14 find the lesser-included. How do you not find intent to
15 kill with five to seven bullets? Five to seven bullets.
16 How do you not find intent to kill when he turned around and
17 came after them? Went out of his way. This wasn't a chance
18 meeting.

19 Now, I know you've heard about these kids. I know you
20 know the school bus was approximately half a car length
21 away. Think about this. It gets worse. Because if you
22 think, he used that school bus as a shield. He used that
23 school bus as a shield to stop their car. He was on a
24 moped; they're in a car. Probably couldn't catch up to
25 them, without using the school bus.

1 What else, though? He used his moped to stop the green
2 Honda because isn't prey that's sitting still a lot easier
3 to hit? He waited until they were stopped, and he swooped
4 in for the kill. He waited till they were stopped by the
5 school bus, not where they were stopped earlier when Ryan
6 was out of the car checking Stephanie's tire. He used the
7 school bus.

8 Intent to kill is here in many, many different forms.
9 You have the luxury of having intent to kill manifest in
10 many different ways. I don't want you to get caught up in
11 red herrings. You have the five impact points. You have
12 the school bus. And most of all, as to the intent to kill,
13 you have this; that's a steering wheel. That's what stopped
14 the bullet that was intended for the chest or head of Ryan
15 and Stephanie. That's what you have, and that's all you
16 need.

17 Now, malice aforethought is another thing. You have
18 your reasonable doubt, which is kind of a difficult concept.
19 You have your intent to kill, which can be kind of a
20 difficult concept, and you have your malice aforethought.
21 Think of malice aforethought as merely an evil intent. Can
22 be proven by intent to kill. So if you find intent to kill,
23 you can infer that that's malice aforethought, too. You
24 don't have to have separate things to show different
25 elements of the law.

1 It's basically the doing of a wrongful act
2 intentionally and without just cause or excuse. And it can
3 be inferred from a total disregard to human life, such as
4 unloading a gun into a car that's stopped at a stop sign for
5 a school bus in the middle of the afternoon. It had one to
6 Stephanie and Ryan this way. You had at least 17 this way.
7 Both within a car length of your person, the loaded gun.

8 Finally, I have to show aforethought, which judge is
9 going to talk to you about. An aforethought is merely that
10 it was thought about before. Doesn't have to be for any
11 specific amount of time; it can be instantaneous. But you
12 don't even have to worry about that. He obviously had
13 aforethought in it. He came after them. You heard Ryan
14 testify, he was pulling out the gun and he saw him
15 approaching. Obviously thought of it ahead of time. Malice
16 aforethought.

17 Now, this intent to kill is what this case is going to
18 turn on, and that's what Mr. Mathews basically just told
19 you. And the intent to kill is nowhere more obvious than
20 when a bullet strikes the back of that steering wheel, or a
21 bullet strikes the windshield multiple times, and bits of
22 bullets fly throughout your car, peppering your purse in the
23 backseat, peppering the floorboard, bits around your driving
24 column. Intent is not a question here, ladies and
25 gentlemen.

1 The defendant intended to unload that gun in that car.
2 He intended to kill those people, but for that three inch
3 steering wheel, but for that three inch steering wheel. So
4 I ask you, don't get distracted by red herrings.

5 Focus, focus. Focus on all this stuff and all that
6 stuff. At the end of your deliberation, I ask you to find
7 the defendant guilty on attempted murder as to both victims,
8 and because of that, and because of his use of that gun,
9 possession of a weapon during the commission of a violent
10 crime, guilty on all three charges. Thank you.

11 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
12 jury, I'm going to give you just a quick break before I
13 begin my charge. Won't be long. Let everyone stretch your
14 legs, use the restroom. Bring you back and have my charge.
15 Do not discuss the case. You may retire to your jury room
16 at this time.

17 (11:25 A.M., 7-27-11, WHEREUPON, THE JURY EXITS THE
18 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
19 RECORD.)

20 **THE COURT:** Counsel, approach. If anybody needs to
21 take a break, please up and do so now. And I'm going to
22 lock the courtroom down once we start the charge.

23 (Off the record, briefly.)

24 **THE COURT:** Is the State ready to proceed?

25 **ASST. SOL. HASELDEN:** Yes, Your Honor.

1 **THE COURT:** Is the defendant ready to proceed?

2 **MR. MATHEWS:** Yes, Your Honor.

3 **THE COURT:** Let the record reflect that during break, I
4 went over the amended verdict form, which is now amended for
5 the fourth time, with both attorneys, and they are satisfied
6 with the form of the verdict. Is that correct, from the
7 State?

8 **ASST. SOL. HASELDEN:** Yes, sir.

9 **THE COURT:** From the defendant?

10 **MR. MATHEWS:** Yes, Your Honor.

11 **THE COURT:** All right. Has the jury all had a chance
12 to use the restroom?

13 **BAILIFF:** Yes, sir.

14 **THE COURT:** Very good. Bring us the jury.

15 (11:45 A.M., 7-27-11, WHEREUPON, THE JURY ENTERS THE
16 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

17 **JURY CHARGE**

18 **THE COURT:** All right, Mr. Foreman and ladies and
19 gentlemen of the jury, it is now my duty to charge you on
20 the law of this case. As I told you at the outset, State of
21 South Carolina has charged the defendant, Quashon Middleton,
22 and the indictments actually say Quashon G. Middleton, has
23 charged the defendant with attempted murder in Indictment
24 Number 2010-GS-15-0960, as to Ryan Stephens.

25 And the State has charged possession of a weapon during

1 the commission of or attempt to commit a violent crime in
2 Indictment Number 2010-GS-15-0961. And the State has
3 charged in the third indictment attempted murder as to
4 Stephanie Mack in Indictment Number 2010-GS-15-0962.

5 So there are three indictments, two for attempted
6 murder, one is to Ryan Stephens, one is Stephanie Mack, and
7 then there is a charge of possession of a weapon during the
8 commission of a violent crime.

9 I want you to be aware of those charges because at the
10 end of my charge, I'm going to come back to you to explain
11 to you the relationship of the charges. But for now I
12 remind you that the fact that the defendant was arrested,
13 the fact that the defendant was charged, the fact that the
14 defendant was indicted in this case is not evidence in this
15 case. Nor does it create any presumption or inference of
16 guilt. These indictments, these three documents, are simply
17 the formal written instruments which contain the charges
18 made against the defendant. They're the formal documents by
19 which the case is brought into this court. Without the
20 indictments, ladies and gentlemen, the case cannot be
21 brought into this Court.

22 Now, to these three indictments, the defendant, Quashon
23 G. Middleton, has pled not guilty. The plea of not guilty
24 to these indictments puts the burden on the State of South
25 Carolina to prove the defendant guilty beyond a reasonable

1 doubt. A person, any person, charged with committing a
2 criminal offense in South Carolina is never required to
3 prove himself or herself innocent.

4 I charge you, ladies and gentlemen, that it is an
5 important rule of the law that the defendant in a criminal
6 trial, no matter what the seriousness of the charge may be,
7 will always be presumed to be innocent of the crime for
8 which the indictment was issued, unless guilt of that crime
9 has been proven by evidence, satisfying you of that guilt
10 beyond a reasonable doubt. The presumption of innocence
11 does not end when you begin your deliberations, but it
12 accompanies the defendant throughout the trial until you, as
13 a jury, reach a verdict of guilt based on evidence,
14 satisfying you of that guilt beyond a reasonable doubt.

15 The presumption of innocence is not just a legal
16 theory. It is not just a legal phrase. It is a substantial
17 right to which every defendant is entitled unless you, the
18 jury, are satisfied from the evidence of the defendant's
19 guilt beyond a reasonable doubt. Now, what is a reasonable
20 doubt in the law? A reasonable doubt is the kind of doubt
21 that would cause a reasonable person to hesitate to act.

22 The State has the burden of proving the defendant
23 guilty beyond a reasonable doubt. Some of you may in the
24 past has served as jurors in a civil case. We're,
25 obviously, in criminal court now. But in a civil case, you

1 were told that it is only necessary to prove that a fact is
2 more likely true than not true. We call that in a civil
3 case, that burden, the greater weight or preponderance of
4 the evidence. In a criminal case, such as the case here,
5 State's proof must be more than that. It must be beyond a
6 reasonable doubt.

7 Now, proof beyond a reasonable doubt is proof that
8 leaves you, as a juror, firmly convinced of the defendant's
9 guilt. There are very few things in this world that we know
10 with absolute certainty. And in criminal cases, the law
11 does not require proof that overcomes every possible doubt.
12 If based on your consideration of the evidence you are
13 firmly convinced that the defendant is guilty of the crime
14 charged, you must find the defendant guilty. On the other
15 hand, if you think there's a real possibility that the
16 defendant is not guilty, you must give the defendant the
17 benefit of the doubt and find the defendant not guilty.

18 I remind you, that during this entire trial, you, as a
19 jury, and I have had certain duties to perform. For
20 instance, as a trial judge, it has been my responsibility to
21 preside over the trial of the case, and I also have the duty
22 to rule on the admissibility of evidence that was offered
23 during the trial. You are, as a jury, only to consider in
24 your deliberations the competent evidence before you. If
25 there was any testimony ordered stricken from the record

1 during this trial, you must disregard that testimony. You
2 are to consider only the testimony which was presented from
3 this witness stand, any exhibits which have been introduced
4 into evidence during the trial of the case, and any
5 stipulations or agreements of counsel which were made as to
6 any matters during the trial of the case.

7 Now as the presiding judge, I also have the additional
8 duty to charge you the law that applies to this case. As
9 the presiding judge, I'm the sole judge of the law for this
10 case. And it is your duty as a juror to accept and to apply
11 the law, as I now state it to you. If any of you already
12 have any preconceived ideas about what you think the law is,
13 or what you feel the law ought to be, and it does not agree
14 with what I now tell you the law is, you must put aside your
15 preconceived ideas or your preconceived opinions or
16 believes, because of you took an oath and you swore in that
17 oath that you would accept the law and apply the law exactly
18 as I now state it to you.

19 In every case tried in this courtroom before a jury,
20 the jury becomes the sole and the exclusive judge of the
21 facts in the case. A trial judge, such as myself, cannot
22 intimate, state comment on or make any statement to a trial
23 jury, such as yourselves, about the facts in a case. Since
24 you, ladies and gentlemen, the jury in this case, and you
25 are not to infer from what I have said during the progress

1 of this trial in ruling upon the admissibility of evidence
2 or otherwise, or anything that I say now to you during the
3 course of this instruction to you, that I have any opinion
4 whatsoever about the facts in this case. The law does not
5 allow me to have an opinion about the facts in this case.
6 This is a matter, ladies and gentlemen, that is solely for
7 you, the jury, to determine. As jurors, it is therefore
8 your duty to determine the effect, the value, the weight and
9 ultimately, the truth of the evidence that's been presented
10 during the trial of this case. You're the sole judges of
11 the facts; I'm the sole judge of the law in the case.

12 Now, there are two types of evidence that are generally
13 presented during a trial. And like many things in the law,
14 we have names for those types of evidence. We call the two
15 general types of evidence direct evidence and circumstantial
16 evidence.

17 Direct evidence is testimony of a person who claims to
18 have actual knowledge of a fact, such as an eyewitness to an
19 event. Direct evidence is evidence which immediately
20 establishes the main fact to be proved.

21 Circumstantial evidence, as contrasted with direct
22 evidence, is proof of a chain of facts and circumstances,
23 indicating the existence of a fact. Circumstantial evidence
24 is evidence which immediately establishes a collateral facts
25 from which the main fact may or may not be inferred.

1 Circumstantial evidence, ladies and gentlemen of the jury,
2 is based on inference and not on personal knowledge or
3 personal observation.

4 The law makes absolutely no distinction between the
5 weight or the value to be given to either direct evidence or
6 circumstantial evidence. Nor is a greater degree of
7 certainty required of circumstantial evidence than of direct
8 evidence. You, ladies and gentlemen of the jury, should
9 weigh or consider all the evidence in this case, both direct
10 and circumstantial.

11 After weighing and considering all the evidence, both
12 direct and circumstantial, in this case, if you're not
13 convinced of the guilt of the defendant beyond a reasonable
14 doubt, you must find the defendant not guilty. On the other
15 hand, after weighing all the evidence in this case, both
16 direct and circumstantial, if you are convinced of the guilt
17 of the defendant beyond a reasonable doubt, you must find
18 the defendant guilty.

19 Necessarily, ladies and gentlemen of the jury, your
20 job, part of your job will be to determine the credibility
21 or believability of the witnesses who have testified during
22 the trial of this case. Credibility means believability.
23 It therefore will become your duty as a juror to analyze and
24 to evaluate the evidence and determine, as a jury, which
25 evidence convinces you of its truth.

1 In determining the believability of the witnesses who
2 have testified in this case, you may believe one witness
3 over several witness. Or several witnesses over one
4 witness. You may believe a part of the testimony of a
5 witness and reject the remaining part of the testimony of
6 that same witness. You may believe the testimony of a
7 witness in its entirety, or you may reject the testimony of
8 a witness in its entirety. You may consider whether any
9 witness has exhibited to you any interest, any bias, any
10 prejudice or other motive in this case.

11 You may also consider what I told you we call the
12 demeanor of the witness, the appearance, the manner that the
13 witness demonstrates to you while the witness is on the
14 witness stand. Anything that is in evidence, you, as a
15 jury, have the right to consider in passing upon the
16 credibility or the believability of the witnesses who have
17 testified during the trial of this case.

18 Now, I instruct you, and I emphasize the fact, that the
19 defendant did not testify in this case is not a factor to be
20 considered by you in any way in your deliberation and in
21 your consideration on the question of the guilt or the
22 innocence of the defendant. It must not be considered by
23 you in any manner whatsoever. A defendant has the
24 constitutional right, every defendant has the constitutional
25 right to remain silent. And the assertion of this right

1 must not be considered by you in your deliberations.

2 I repeat, under the oath which each of you took, you
3 are to draw absolutely no conclusion whatsoever from the
4 fact that the defendant in this case did not testify. The
5 fact that the defendant did not testify should not even be
6 discussed by any of you in your jury room. The burden of
7 proof, as I have stated to you, is on the State of South
8 Carolina. The defendant is not required to prove his
9 innocence. The burden of proof remains on the State to
10 prove guilt beyond a reasonable doubt.

11 I charge you, ladies and gentlemen, that a statement or
12 statements alleged to have been made by the defendant have
13 been admitted into evidence during the trial of the case.
14 While the Court has determined that the statement or
15 statements are admissible, I instruct you, members of the
16 jury, that you as a jury make the ultimate decision as to
17 whether or not the defendant made any statement or
18 statements.

19 If the defendant did make the statement or statements,
20 you must determine whether or not the statement or
21 statements were made by the defendant voluntarily and of his
22 own free will. This means that the statement or statements
23 were not caused by pressure or fear or force or threats or
24 coercion or intimidation or by hope or a promise of leniency
25 or a reward of any kind. In determining whether the

1 statement or statements were voluntary, you should consider
2 both the characteristics of the defendant and the details of
3 the questioning.

4 Some of the things that you may consider, if based on
5 the evidence introduced during the trial of the case would
6 be things such as defendant's age and education, or lack
7 thereof, mental ability or capacity, defendant's IQ,
8 defendant's background, and environment, the place and
9 length of detention, if any, the nature of the questioning,
10 the advice, or lack thereof, to the defendant of his
11 constitutional right. You must carefully consider, ladies
12 and gentlemen of the jury, all of the surrounding
13 circumstances before you give any weight to any alleged
14 statement.

15 The State has the burden of proving beyond a reasonable
16 doubt that the alleged statement or statements were, in
17 fact, voluntary. If you determine that they were, you may
18 give the statement or statements any further consideration
19 that you deem proper. You must decide, ladies and gentlemen
20 of the jury, what weight, based on the evidence introduced
21 during the trial of the case, if any, should be given to any
22 alleged statement or statements. If you determine that the
23 alleged statement or statements were not the free and
24 voluntary statement or statements of the defendants, you
25 should not consider the statements at all.

1 I charge you, ladies and gentlemen, during the course
2 of this trial, you heard the attorneys enter into what I
3 told you would be a form of evidence, a stipulation. The
4 stipulation is an agreement, an admission or a concession
5 made in a judicial proceeding by the parties or their
6 attorneys. Stipulations, of course, are binding upon those
7 who make them. A stipulation is an agreement that certain
8 facts are true, an understanding and the Court and the jury
9 must accept stipulations as binding upon the parties.

10 If the counsel in this case as stipulated to a fact or
11 any fact as being admitted by a agreement by counsel, you
12 will regard that fact as being conclusively proof as to the
13 party or parties making the stipulation or admission.

14 Now, I told you ladies and gentlemen, there were three
15 indictments. The indictments in this case allege -- there's
16 only two different offenses but three indictments because
17 there is the same offense of attempted murder in two of the
18 indictments, as to two different victims. And I'll be
19 referring to them, ladies and gentlemen, by victim name,
20 rather than indictment number, although I've given them to
21 you. Attempted murder as to Ryan Stephens and attempted
22 murder as to Stephanie Mack, who are the different victims
23 in the two indictments alleging the offense of attempted
24 murder.

25 So the defendant, Quashon G. Middleton, is charged in

1 Indictment 2010-0960 with attempted murder as to Ryan R.
2 Stephens. The defendant, Quashon G. Middleton, is charged
3 in Indictment 2010-0961 with possession of a weapon during
4 the commission of or attempt to commit a violent crime. And
5 then the defendant, Quashon G. Middleton, is also charged in
6 Indictment 2010-0962 with attempted murder as to Stephanie
7 Mack. Each charge, ladies and gentlemen of the jury, is a
8 separate and distinct offense. You must decide each charge
9 separately on the evidence and the law that applies to it,
10 uninfluenced by your decision as to any other charge.

11 Now, if you find the defendant guilty of attempted
12 murder against Ryan Stephens in this case, or guilty of
13 attempted murder against Stephanie Mack, or if you find the
14 defendant guilty of assault and battery of a high and
15 aggravated nature as to Stephanie Mack, you can also find
16 the defendant even guilty or not guilty of the offense of
17 possession of a weapon during the commission of or attempt
18 to commit a violent crime. That is because attempted murder
19 and assault and battery of a high and aggravated nature are
20 violent crimes under the laws of the State of South
21 Carolina. You will be asked to write a separate verdict of
22 guilty or not guilty for each charge, following the
23 instructions on your verdict form.

24 Now, I'll now define the offenses for you. In order to
25 establish criminal liability, ladies and gentlemen of the

1 jury, criminal intent is required. And this is generally,
2 and not just for this case. This is for general criminal
3 cases. For example, the mental state -- and this is an
4 example of criminal intent, required to be proven by the
5 State for a particular crime. It might be purpose, it might
6 be intent, it might be knowledge, it might be recklessness,
7 and it might even in some cases be what we call criminal
8 negligence. Those are examples of criminal intent.
9 Criminal intent must be proven by the State of South
10 Carolina beyond a reasonable doubt. Criminal intent is
11 always a matter that must be determined by the jury, from
12 the circumstances surrounding the situation, based on
13 evidence introduced during the trial of the case.

14 Now, ladies and gentlemen, I'm very aware and the law
15 is aware, that there is no way to prove intent to a
16 mathematical certainty. There is no way that medical
17 science can dissect a person's brain and determine what that
18 person had in mind. So the law says, ladies and gentlemen,
19 that criminal intent may be inferred from the circumstances
20 shown to have existed, based on the evidence introduced
21 during the trial the case.

22 This, ladies and gentlemen, is how you as a jury make
23 any determination of whether or not any element requiring
24 intent, or establishing intent, was present. It is not
25 necessary, ladies and gentlemen, to prove intent by direct

1 evidence or positive evidence. But intent may be
2 established by inference, in the same way as any other fact,
3 by taking into consideration the acts of the parties and all
4 the facts and circumstances of the case, based on evidence
5 introduced during the trial of the case.

6 Criminal intent is a mental state. Criminal intent is
7 a conscious wrongdoing. It is up to you, the jury, based on
8 evidence introduced during the trial of this case, to
9 determine what the defendant intended to do, from the
10 circumstances shown to have existed from evidence introduced
11 during the trial of the case. Criminal intent can arise
12 from an action or a failure to act. It may arise from
13 recklessness, negligence or an indifference to duty.

14 I charge you, ladies and gentlemen, first of all, that
15 the defendant is charged in two indictments. One as to Ryan
16 Stephens, one as to Stephanie Mack, with the offense of
17 attempted murder. A person, for this offense, attempted
18 murder, a person who, with the intent to kill, attempts to
19 kill another person with malice aforethought, either
20 expressed or implied, commits the offense of attempted
21 murder.

22 An attempt is an effort to accomplish a crime which
23 does not succeed. An attempt includes a specific intent to
24 do a particular criminal act, along with an act of falling
25 short of the act intended. The State must show more than

1 mere preparation and intent. There must be some overt act
2 committed in the effort to commit the crime.

3 Intent means intending the result which actually
4 occurs, not accidentally, not involuntarily. Intent may be
5 shown by acts and conduct of the defendant, based on
6 evidence introduced during the trial of the case.

7 Now, for the offense of attempted murder, a person who
8 with the intent to kill, attempts to kill another person
9 with malice aforethought, either expressed or implied,
10 commits the offense of attempted murder. Malice is hatred.
11 Malice is ill-will. Malice is hostility towards another
12 person. It is the intentional doing of a wrongful act,
13 without just cause or excuse, and with an intent to inflict
14 an injury, ???or under circumstances, the law will infer an
15 evil intent.

16 Malice aforethought does not require that malice exists
17 for any particular time before the act is committed. But
18 malice or hostility or hatred or ill-will must exist, ladies
19 and gentlemen, in the mind of the defendant just before and
20 at the time the act being committed. Therefore, there must
21 be a combination of the previous evil intent and the act.

22 Malice aforethought may be express or implied or
23 inferred. The terms "express" and "inferred" don't mean
24 different kinds of malice, but merely the manner in which
25 malice may be shown by the evidence to exist. That is,

1 either by direct evidence or by inference from the facts and
2 circumstances which are proved, beyond a reasonable doubt.

3 Express malice is shown when a person speaks words
4 which express hatred or ill-will or hostility for another.
5 Or when the person prepared beforehand to do the act, which
6 was later accomplished. For example, lying in wait for a
7 person, or any other act of preparation, going to show that
8 the deed was within the defendant's mind, would be examples
9 of express malice. Malice may be inferred from conduct,
10 showing a total disregard for human life.

11 Now, ladies and gentlemen, as to Stephanie Mack, the
12 indictment for attempted murder, I charge you as to
13 Stephanie Mack only. As to Ryan Stephens, you will be asked
14 to render a verdict of either guilty or not guilty as to
15 Ryan Stephens of attempted murder. And if you find him
16 guilty of attempted murder, guilty or not guilty of
17 possession of a weapon during the commission of a violent
18 crime.

19 As to Stephanie Mack, however, I charge you that one
20 lesser-included offense of attempted murder as to Stephanie
21 Mack is the offense of assault and battery of a high and
22 aggravated nature. Assault and battery of a high and
23 aggravated nature is a lesser-included offense of attempted
24 murder. A person commits the offense of assault and battery
25 of a high and aggravated nature if the person unlawfully

1 injures another person and the act is accomplished by means
2 likely to produce death or great bodily injury.

3 An assault for this lesser-included offense occurs when
4 a person unlawfully attempts or offers to commit a violent
5 injury upon another person and had the present ability to
6 complete the attempted injury. An assault is the
7 intentional creation of a reasonable fear of immediate
8 bodily harm. It is not necessary that the attempted injury
9 or harm actually take place. For example, for an assault,
10 if I walk up to you, and when I'm within arm's length of any
11 of you, I draw back to hit you, that is an assault.

12 A battery is the unlawful touching of another person by
13 a person who has committed the assault. An unlawful
14 touching can be caused by a part of the accused's body or by
15 any object the accused puts in motion. A battery is the
16 completion of the assault by using or applying force to
17 another person, however slight, in a rude, angry or
18 resentful manner without legal justification for doing so.

19 Using my earlier example to explain assault and
20 battery, if I carry through when I'm within arm's length of
21 you, not just draw back, but if I carry through and hit you,
22 touch you, that is a battery.

23 I charge you as to Stephanie Mack in the indictment for
24 attempted murder, there is also the lesser-included offense
25 of assault and battery in the first degree. So included

1 within the offense of attempted murder, and included also is
2 assault and battery of a high and aggravated nature, which I
3 just explained, and also the lesser-included offense of
4 assault and battery in the first degree. Assault and
5 battery in the first degree is a lesser-included offense of
6 both attempted murder and assault and battery of a high and
7 aggravated nature.

8 Assault and battery in the first degree occurs if the
9 defendant unlawfully offers or attempts to injure another
10 person with the present ability to do so and the act is
11 accomplished by means likely to produce death or great
12 bodily injury.

13 Now, the defendant in this case is also charged in the
14 third indictment with possession of a weapon during the
15 commission of or attempt to commit a violent crime. The
16 State must prove for this offense beyond a reasonable doubt
17 that the defendant was in possession of a firearm or visibly
18 displayed what appeared to be a firearm, during the
19 commission of a violent crime. A firearm means any machine
20 gun, automatic rifle, revolver, pistol or any other weapon
21 which will or is designed to or may readily be converted to
22 expel a projectile.

23 In order to find the defendant, however, guilty of
24 possession of a weapon during the commission of a violent
25 crime, you must first find the defendant guilty of either

1 committing a violent crime or attempting to commit a violent
2 crime. I charge you, as I told you earlier, that the
3 offenses of attempted murder and assault and battery of a
4 high and aggravated nature are violent crimes under the laws
5 of the State of South Carolina.

6 Now, Mr. Foreman, I told you I would explain the
7 verdict form to you, and I've put a lot of words on my
8 verdict form because I want to make sure it's absolutely
9 clear to you and the other people on the jury. So first of
10 all, pay no attention to the order in which I have written
11 the verdicts. I obviously had to write one before the
12 other. So the order in which the verdicts are written has
13 no significance whatsoever.

14 I have placed the title of the case at the top of your
15 verdict form. It says "State of South Carolina County of
16 Colleton, Court of General Sessions." Lists the three
17 indictment numbers, "The State of South Carolina v. Quashon
18 G. Middleton, defendant," and it has the word "verdict."

19 Under question one, and I numbered them for you, so
20 you'll see them on the side, Mr. Foreman, ladies and
21 gentlemen. I wrote these words: "We, the jury, by
22 unanimous consent find the defendant, Quashon G. Middleton,
23 in Indictment Number 2010-GS-15-0960." And the first form
24 of verdict under Question One is "guilty of attempted murder
25 as to Ryan R. Stephens." If that be your form of verdict,

1 Mr. Foreman, ladies and gentlemen of the jury, you would
2 place a checkmark, Mr. Foreman, on that line beside that
3 form of verdict. Under question one, "We, the jury, by
4 unanimous consent find the defendant, Quashon G. Middleton,
5 in Indictment Number 2010-GS-15-0960." The second form of
6 verdict under Question One, "not guilty of attempted murder
7 as to Ryan R. Stephens." If that be your form of verdict,
8 Mr. Foreman, you would check on the line beside that form of
9 verdict. You cannot find both forms of verdict. You must
10 find one form or the other as to Question One, either guilty
11 or not guilty of attempted murder as to Ryan R. Stephens.

12 Now, in parenthesis, ladies and gentlemen of the jury,
13 I put parenthesis as to Question One because of what I just
14 charged you. I said if you find the defendant guilty of
15 attempted murder as to Ryan R. Stephens, then you would
16 answer Question Six about Ryan R. Stephens. Question Six is
17 the issue of possession of a weapon during the commission of
18 a violent crime, as to Ryan R. Stephens. And that says,
19 "We, the jury, by unanimous consent find the defendant,
20 Quashon G. Middleton, in Indictment Number 2010-GS-15-0961
21 either guilty of possession of a weapon during the
22 commission or attempt to commit a violent crime as to Ryan
23 R. Stephens." Not guilty or guilty. That's Question six.
24 Why? Because you can't find the defendant guilty of
25 possession of a weapon during the commission of a violent

1 crime unless you have found the defendant guilty of a
2 violent crime. And as to Ryan R. Stephens, I charge you
3 that attempted murder is a violent crime under the laws of
4 the State of South Carolina. So there's two questions
5 involving Ryan R. Stephens on your verdict form, are
6 Question One and Question Six. And I'll go back over that
7 in just a moment.

8 Now the second question on your verdict form is as
9 follows: "We, the jury, by unanimous consent find the
10 defendant, Quashon G. Middleton, in Indictment Number 2010-
11 GS-15-0962." And the first form of verdict under Question
12 Two is "Guilty of attempted murder as to Stephanie Mack."
13 If that be your form of verdict, Mr. Foreman, you would
14 check on the line beside that form of verdict under Question
15 Two.

16 Under Question Two: "We, the jury, by unanimous consent
17 find the defendant, Quashon G. Middleton, in Indictment
18 Number 2010-GS-15-0962," second form of verdict is "Not
19 guilty of attempted murder as to Stephanie Mack." If that
20 be your form of verdict, Mr. Foreman, you would check for
21 the entire jury on the line beside that form of verdict.

22 Now, I gave you some further instructions in
23 parenthesis on Question Two. If you find the defendant
24 guilty of Question Two," that is, guilty of attempted murder
25 as to Stephanie Mack, you do not need to answer Questions

1 Three and Four on the verdict form because they are lesser-
2 included offenses, okay, of attempted murder. That being
3 assault and battery of a high and aggravated nature, assault
4 and battery in the first degree, all right.

5 You would go to Question Five if you find the defendant
6 guilty of attempted murder as to Stephanie Mack, in Question
7 Two, and I have placed that on your verdict form, to give
8 you a roadmap of what to do. Question Five deals with the
9 issue, of course, of possession of a weapon during the
10 commission of, or attempt to commit, a violent crime as to
11 Stephanie Mack.

12 However, I want you to be aware of this. If you find
13 the defendant in this case not guilty of attempted murder as
14 to Stephanie Mack, you would go to Question Three. Question
15 Three is: "We, the jury, by unanimous consent find the
16 defendant, Quashon G. Middleton, guilty of the lesser-
17 included offense of assault and battery of a high and
18 aggravated nature," as to Stephanie Mack, which would be the
19 first form of verdict under Question Three, and you would
20 check on the line beside that form of verdict. Or not
21 guilty of the lesser-included offense of assault and battery
22 of a high and aggravated nature as to Stephanie Mack.

23 Now, assault and battery of a high and aggravated
24 nature, as I charged you with attempted murder, is a violent
25 crime under the laws of the State of South Carolina. So if

1 you were to find the defendant not guilty of attempted
2 murder as to Stephanie Mack, but guilty as to the lesser-
3 included offense of assault and battery of a high and
4 aggravated nature as to Stephanie Mack, you would need to
5 answer Question Five as to Stephanie Mack, being whether or
6 not the defendant is guilty of possession of a weapon during
7 the commission of a violent crime because assault and
8 battery of a high and aggravated nature is also a violent
9 crime under the laws of the State of South Carolina. So
10 that's Question Three.

11 Question Four would be, "We, the jury, by" -- if you
12 found the defendant not guilty as to attempted murder, as to
13 Stephanie Mack, not guilty as to assault and battery of a
14 high and aggravated nature as to Stephanie Mack, you would
15 go to Question Four. "We, the jury, by unanimous consent
16 find the defendant, Quashon G. Middleton, guilty of the
17 lesser-included offense of assault and battery in the first
18 degree, as to Stephanie Mack." That's the first form of
19 verdict. You find that, you can check on the line beside
20 that form of verdict.

21 Or in Question Four, "Not guilty of the lesser-included
22 offense of assault and battery in the first degree as to
23 Stephanie Mack." If you found the defendant not guilty of
24 the offense or guilty of the offense of assault and battery
25 in the first degree, you cannot find the defendant in

1 Question Five guilty of possession of a weapon during the
2 commission of or attempt to commit a violent crime because
3 assault and battery in the first degree is not a violent
4 crime under the laws of the State of South Carolina.

5 Now, Question Five that I referred to deals with
6 Stephanie Mack, if you reach that. "We, the jury, by
7 unanimous consent find the defendant, Quashon G. Middleton,
8 in Indictment Number 2010-GS-15-0961." This is the
9 indictment dealing with possession of a weapon during the
10 commission of or attempt to commit a violent crime. And I
11 wrote in parenthesis here, "You may only find the defendant
12 guilty of this crime if you have previously found the
13 defendant guilty of the violent crimes of attempted murder
14 or assault and battery of a high and aggravated nature, as
15 to Stephanie Mack."

16 If you find the defendant not guilty of the violent
17 crimes of attempted murder and assault and battery of a high
18 and aggravated nature as to Stephanie Mack, you must find
19 the defendant not guilty of possession of a weapon during
20 the commission of or attempt to commit a violent crime,
21 because you must convict the defendant of a violent crime in
22 order to find the defendant guilty of possession of a weapon
23 during the commission of a violent crime.

24 And I've given you two forms of verdict under Question
25 Five. And that would be guilty of possession of a weapon

1 during the commission of or attempt to commit a violent
2 crime as to Stephanie Mack. If that be your form of
3 verdict, you would check on the line beside that form of
4 verdict.

5 Or not guilty of possession of a weapon during
6 commission of or attempt to commit a violent crime as to
7 Stephanie Mack. If that be your form of verdict, you would
8 check on the line beside that form of verdict.

9 That brings us to the last question, Number Six on your
10 verdict form. I referred to it earlier. It relates to the
11 other victim, that being Ryan Stephens. Your choices to him
12 do not include lesser-included offenses. If you found Ryan
13 Stephens guilty -- or the defendant guilty as to attempted
14 murder as to Ryan Stephens, you would go to Question Six.
15 Question Six says, "We, the jury, by unanimous consent find
16 the defendant, Quashon G. Middleton, in Indictment Number
17 2010-GS-15-0961 either guilty of possession of a weapon
18 during the commission of or attempt to commit a violent
19 crime as to Ryan Stephens," which would be the first form of
20 verdict, "or not guilty of possession of a weapon during the
21 commission of or attempt to commit a violent crime as to
22 Ryan Stephens." You would check one or the other in
23 Question Six, if you reach Question Six.

24 Obviously, as to Ryan Stephens, if you find him not
25 guilty of attempted murder, the defendant, as to Ryan

1 Stephens, you must find him not guilty of possession of a
2 weapon or attempt to commit a violent crime, as to that
3 offense.

4 Now, when you have filled out -- and I gave you
5 instructions on each, either guilty or not guilty, and which
6 questions to go to, when you have filled out the appropriate
7 lines, and you can't check both under any question. You
8 obviously have to check one or the other; you would sign
9 your name on the end, where it says "Foreperson," and fill
10 in today's date.

11 I then gave you finally some instructions on the last
12 page which says, "Indicate your findings by checking the
13 appropriate line. Certify the findings by your signature.
14 When you have reached a verdict, you would knock on the jury
15 room door, inform the bailiff that you've reached a verdict
16 and we will then bring you back into the courtroom, for you
17 to publish your verdict. And then my law clerk, with
18 whatever you checked on here, will want you to sign the
19 indictments that he's holding in his hand. So what's on the
20 verdict form will also be reflected on the indictments.

21 Now, ladies and gentlemen, your verdict must be
22 unanimous. That is, it must be the verdict of each and
23 every one of you. All 12 of you must agree on a verdict.

24 Now, Mr. Foreman and ladies and gentlemen, I've now
25 charged you on the law in order to help guide you to a fair

1 and a just result in this case. You're the judges of the
2 facts in this case. And based on your determination as to
3 the facts in this case and on the law, as I've explained it
4 to you, you will soon begin your deliberations.

5 You've each been selected as fair and impartial jurors.
6 You have sworn to fairly and impartially try and determine
7 the facts of this case. And when you comply with that oath,
8 nobody, no one can criticize your verdict. You are to
9 decide this case, though, based solely on the evidence in
10 this case. That means testimony from the witnesses from the
11 witness stand, any exhibits which you will have with you
12 your jury room during your deliberations, and any
13 stipulations that may have occurred during the course of the
14 trial. And nothing else, just the evidence.

15 You must decide the issues in this case without any
16 bias or prejudice toward either of the parties. You cannot
17 allow yourself to be governed by prejudice for or against
18 any person, by public opinion, by emotion or any other
19 arbitrary factor that is not in evidence during the trial of
20 this case.

21 Both the defendant and the State of South Carolina have
22 the absolute right to expect that each of you on this jury
23 will carefully, and each of you on this jury will
24 impartially consider all of the evidence in this case, and
25 that you will follow the law as I have instructed it to you

1 in reaching your verdict in this case.

2 Now, Mr. Foreman and ladies and gentlemen of the jury,
3 I've explained the verdict forms to you and I've given you
4 written instructions as to how to fill it out, Mr. Foreman.
5 I'm going to ask you if you would, please retire to your
6 jury room. Do not quite begin your deliberations. Your
7 lunch is there. I'm aware of that. I tried to time it so
8 it would be here when you started.

9 It may be necessary, and I don't know yet, for me to
10 briefly bring you back out here for some additional
11 instructions. When it is time for you -- so don't start
12 your deliberations until I instruct you through the bailiff
13 to do so. When it is time for you to begin your
14 deliberations, I will send your verdict form into you by the
15 bailiff, along with all the exhibits which have been
16 introduced into evidence during the trial of the case, and
17 have the bailiff inform you at that time, you may then
18 commence your deliberations. So do not begin until I
19 instruct you to do so.

20 You may retire to your jury room at this time.

21 (12:35 P.M., 7-27-11, WHEREUPON, THE JURY EXITS THE
22 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
23 RECORD.)

24 **THE COURT:** Any exceptions or additions to the charge
25 from the State of South Carolina?

1 **ASST. SOL. HASELDEN:** None, Your Honor.

2 **THE COURT:** From the defendant?

3 **MR. MATHEWS:** Yes, sir. As to assault and battery,
4 first, as to Ryan Stephens and intent on attempted murder
5 and reasonable doubt, as I have in the Court's Exhibit
6 Number Two, which we already discussed in chambers. Nothing
7 other than what we've already discussed in this in Exhibit
8 Two. I think the other one on the definition of attempted
9 murder I think was covered, but not the specific intent.

10 **THE COURT:** I definitely charged that they had to have
11 a specific intent for attempted murder. In fact, I charged
12 it twice, Mr. Mathews, when I gave the definition of it. I
13 charged it right out of the statute. I decline to change my
14 charge as to attempted murder. I definitely charged
15 reasonable doubt. I decline to change my charge as to
16 reasonable doubt.

17 And I have previously told you since, there was
18 absolutely no testimony of any bodily injury or injury of
19 any kind as to the defendant. Nor was there any testimony
20 as to the victim, Ryan Stephens, nor was there any testimony
21 of any touching for battery. I decline to charge the
22 lesser-included offenses of assault and battery of a high
23 and aggravated nature or assault and battery in the first
24 degree. And therefore, I respectfully decline to change the
25 charges, but you have attached your request to charges to

1 the court reporter, and they are noted for the record.

2 I'd ask that Counsel come forward and certify that
3 you're satisfied the court reporter has all the exhibits and
4 that you have no objection to the bailiff taking the
5 exhibits and the verdict form into the jury, and the bailiff
6 telling the jury they may now commence their deliberation.

7 (BRIEF PAUSE WHILE EXHIBITS ARE PUT IN ORDER AND
8 ACCOUNTED FOR.)

9 **THE COURT:** You got every one of them?

10 **ASST. SOL. HASELDEN:** Yes, sir. Before you came back
11 out, we confirmed and went through them all.

12 **THE COURT:** All right now, the problem that I have is,
13 let's agree, you put into evidence, tapes. They can't play
14 a tape without coming back out here. Mr. Mathews, you agree
15 that those stay here?

16 **MR. MATHEWS:** Yes, sir.

17 **THE COURT:** What numbers are they?

18 **ASST. SOL. HASELDEN:** States One and Three.

19 **THE COURT:** All right. State's Exhibits One and Three,
20 by agreement of Counsel, remain in the courtroom because we
21 have the ability out here to play the tapes, which were
22 previously published to the jury during the trial of the
23 case, with an exception. Is the State satisfied that the
24 court reporter has all the exhibits?

25 **ASST. SOL. HASELDEN:** Yes, sir.

1 **THE COURT:** Does the State have any objection to the
2 bailiff taking the exhibits and the verdict form into the
3 jury and telling the jury they may now commence their
4 deliberation?

5 **ASST. SOL. HASELDEN:** None, Your Honor.

6 **THE COURT:** Is the defendant satisfied that the court
7 reporter has all the exhibits?

8 **MR. MATHEWS:** Yes, sir.

9 **THE COURT:** Does the defendant have any objection to
10 the bailiff taking the verdict form and all the exhibits
11 into the jury and telling the jury they may now commence
12 their deliberation?

13 **MR. MATHEWS:** No, sir.

14 **THE COURT:** Very well, Mr. Padgett.

15 **BAILIFF:** Do we need gloves?

16 **THE COURT:** Do you need what?

17 **BAILIFF:** Gloves.

18 **THE COURT:** Yes, you do, because Fred -- where's Fred?
19 There he is back there. Fred said we needed gloves to look
20 at a casing; did we not?

21 **LT. INABINETT:** That's right, Your Honor.

22 **THE COURT:** And the jury certainly saw Fred put his
23 gloves on when he did it. What's good for a witness, ought
24 to be good for my jury.

25 All right, Counsel, I've got two hearings now. One of

1 them's going to start in four minutes, and y'all are aware
2 of that. So I'm going back to doing hearings by telephone
3 in chambers. If you would, please, we'll be at ease at this
4 case. Ben, you're aware that because of other things, I
5 might not be able to start back before three o'clock at the
6 earliest. And even then, depending on how long I have to
7 wait, might be a stretch. But I'll get back as quick as I
8 can. And we'll go at least until six o'clock, at which time
9 I have another appointment at six o'clock. So I'm just
10 trying to stretch it out, every bit. But you've got me all
11 day tomorrow and you've got me all day Friday. You're not
12 going to get me on Saturday. So you better plan
13 accordingly.

14 (12:45 P.M., WHEREUPON, THE COURT IS IN RECESS.)

15 (1:30 P.M., WHEREUPON, THE COURT IS ADVISED THAT THE
16 JURY HAS REACHED A VERDICT.)

17 **THE COURT:** All right, Counsel, I understand from the
18 bailiff that the jury's reached a verdict, and I got my
19 court reporter back. Anything from the State before we
20 publish the verdict?

21 **ASST. SOL. HASELDEN:** No, Your Honor.

22 **THE COURT:** From the defendant before we publish the
23 verdict?

24 **MR. MATHEWS:** No, sir.

25 **THE COURT:** Vicky, if you want me to do it, I will.

1 **MADAME CLERK:** Yes, sir. I think it's pretty
2 complicated.

3 **THE COURT:** It's a little different verdict form than
4 normal. I'll do it.

5 **MADAME CLERK:** Okay.

6 **THE COURT:** All right. Bill, bring us the jury.
7 Ladies and gentlemen, no emotional outbursts of any kind. I
8 won't tolerate that when the verdict's published. If you
9 can't control your emotions, you need to step out.

10 (1:32 P.M., 7-27-11, WHEREUPON, THE JURY ENTERS THE
11 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

12 **THE COURT:** Mr. Foreman, has the jury reached a
13 verdict?

14 **MR. FOREMAN:** Yes, Your Honor, we have.

15 **THE COURT:** Defendant and Counsel, please rise. State
16 of South Carolina, v. Quashon G. Middleton, Indictment
17 Numbers 2010-GS-15-0960, 2010-GS-15-0961, 2010-GS-15-0962.

18 We, the jury, by unanimous consent find the defendant,
19 Quashon G. Middleton, in Indictment Number 2010-GS-15-0960,
20 guilty of attempted murder as to Ryan R. Stephens.

21 We, the jury, by unanimous consent find the defendant,
22 Quashon G. Middleton, in Indictment Number 2010-GS-15-0962,
23 guilty of attempted murder as to Stephanie Mack.

24 We, the jury, by unanimous consent find the defendant,
25 Quashon G. Middleton, in Indictment Number 2010-GS-15-0961,

1 guilty of possession of a weapon during commission or
2 attempt to commit a violent crime as to Stephanie Mack.

3 We, the jury, by unanimous consent find the defendant,
4 Quashon G. Middleton, in Indictment Number 2010-GS-15-0961,
5 guilty of possession of a weapon during commission or
6 attempt to commit a violent crime as to Ryan R. Stephens.

7 Signed, foreperson, Don Beach, dated July 27th, 2011.

8 Ladies and gentlemen of the jury, if this be your
9 verdict, would you each indicate by raising your right hand?

10 (TWELVE JURORS RAISE THEIR HANDS.)

11 **THE COURT:** Thank you. Let the record reflect, 12
12 hands were raised. Mr. Mathews, anything further of the
13 jury in regards to this case?

14 **MR. MATHEWS:** No, sir.

15 **THE COURT:** Mr. Foreman and ladies and gentlemen of the
16 jury, Mr. Shelton -- Mr. Mathews you and your client may be
17 seated. Mr. Shelton, approach the bench. Hold on one
18 second. Let me do some checking on the rest of my week.

19 Ladies and gentlemen, I told you I was going to see to
20 it that you had a short week. This concludes your service
21 for the week as jurors. You are exempt for three years from
22 jury service, by virtue of your service. On behalf of
23 Colleton County and this Court, I want to thank you for your
24 service. I watched each and every one of you during this
25 trial. And all a judge can ask of a jury is that you listen

1 and listen carefully. Each of you did that. And on behalf
2 of Colleton County and this Court, I want to thank you for
3 your service.

4 Now, ladies and gentlemen, let me tell you what's going
5 to happen. In just a moment, and I mean in just a moment,
6 in the next few minutes, Mr. Mathews and his client will
7 come forward for sentencing.

8 I invite you, if you would like to, you can either stay
9 in the jury box or if you'd like to leave you can. Or if
10 you'd like to go and have a seat back in the courtroom, to
11 watch sentencing, you may do so. I'll be happy for you to
12 stay. Court is a public proceeding and I'm happy for you,
13 if you would like to do so, to stay. You certainly don't
14 have to. You've concluded your service.

15 Now, many times people like to ask you about your jury
16 deliberations. If you want -- because it sometimes helps --
17 the lawyers want to ask questions to how to improve what
18 they do. You don't have to talk to anybody. That's
19 entirely up to you. If you want to talk to somebody about
20 your deliberations, you can. If you do not want to talk to
21 somebody about your deliberations, you do not have to. If
22 somebody persists in wanting to talk to you, get the name,
23 give it to me. I'll handle that problem for you.

24 If anybody needs a work excuse from serving on the jury
25 this week -- Vicky, you going to stand at the door or you

1 want them to go downstairs?

2 **MADAME CLERK:** Down to General Sessions.

3 **THE COURT:** General Session.

4 **MADAME CLERK:** Yes, sir.

5 **THE COURT:** If you'll downstairs, you'll see a doorway
6 marked "General Sessions." There will be a representative
7 from the Clerk of Court's Office down there. Advise him
8 that you've been on the jury in General Sessions this week,
9 and you would like a work excuse for your employer. We'll
10 be happy to provide one for you, if anyone needs one.

11 Now, ladies and gentlemen, because sentencing is going
12 to occur right now, it is up to you. If you'd like to stay
13 for sentencing in the jury box, my bailiffs will be
14 escorting you out. If you'd like to sit in the courtroom
15 and watch sentencing, you can go have a seat in the
16 courtroom for sentencing. Or I send you back now to your
17 homes, your jobs, your families, with my thanks and
18 appreciation. As I told you before we started, without you,
19 ladies and gentlemen, members of the jury, justice cannot be
20 accomplished in the courtroom. And I thank you for that
21 service.

22 Now, for those of you that would like to leave or have
23 a seat in the courtroom, you can get up. Or those of you
24 who want to stay right where you are, you can stay right
25 where you are, because sentencing's going to occur.

1 Entirely up to each of you.

2 (THEREFORE, SOME JURORS LEAVE THE COURTROOM.)

3 **THE COURT:** All right. Bring around the sentence
4 sheet. Mr. Mathews, I'll hear post-verdict motions once you
5 get up here.

6 **MR. MATHEWS:** I don't have any, Your Honor.

7 (Off the record, briefly.)

8 **THE COURT:** You got the sentence sheets?

9 **ASST. SOL. HASELDEN:** Yes, sir. May I approach?

10 **THE COURT:** You may. All right. Let the record
11 reflect that I inquired of Mr. Mathews as to whether or not
12 there were any post-verdict motions on behalf of the
13 defendant. Mr. Mathews tells me there are no post-verdict
14 motions.

15 I've been handed sentence sheets by the Solicitor for
16 both of the attempted murder charges and for possession of a
17 weapon during the commission of a violent crime.

18 Solicitor, obviously, I am very familiar with the facts
19 of this case. However, I would like for you to give me the
20 defendant's prior record, which I would like to be aware of
21 in considering the sentence.

22 **ASST. SOL. HASELDEN:** Yes, Your Honor. Defendant does
23 have a prior record. He actually has a violent and serious
24 track record, but it was as a juvenile, and that's why he
25 was not noticed for life without parole in connection with

1 this case, as he would be eligible as an adult. But you
2 cannot use the juveniles as a predicate.

3 In February of 2007, in fact on February 8th, he pled
4 guilty in family court to attempted armed robbery, two
5 counts of simple assault and battery, and disobedience to a
6 law enforcement officer, for which he was committed to an
7 evaluation center.

8 Your Honor, I have spoken to my victims. They do not
9 wish to be heard. But at the appropriate time, I would like
10 to go into it further, unless you would like for me to go
11 ahead before Mr. Mathews addresses ---

12 **THE COURT:** I'm going to hear Mr. Mathews in
13 mitigation. So if there's anything else you want to tell
14 me, I'll be happy to do so. Although, I will give you a
15 reply, since you had the burden of proof, if you'd like to
16 reply.

17 **ASST. SOL. HASELDEN:** I'll reply, Your Honor.

18 **THE COURT:** Very well. Mr. Mathews, I'm happy to hear
19 from you in mitigation.

20 **MR. MATHEWS:** Thank you, Your Honor. Your Honor,
21 Quashon is 19 years old. He's been in jail on this since
22 the 28th of September of 2010. His mother and grandmother
23 are here, and I understand that his grandmother would like
24 to be heard in mitigation.

25 **THE COURT:** Yes, ma'am.

1 **MS. JOHNSON:** Yes. I'm Cora Johnson. My grandson,
2 he's a good kid. (BECOMES EMOTIONAL.)

3 **THE COURT:** I understand it's hard for you, ma'am, but
4 she's got to take down what you say. So you've got to slow
5 down just a little bit and use that microphone. Your name
6 again, please, ma'am?

7 **MS. JOHNSON:** Cora Johnson.

8 **THE COURT:** Ms. Johnson.

9 **MS. JOHNSON:** I'm his grandmother.

10 **THE COURT:** You're his grandmother.

11 **MS. JOHNSON:** Yes. Quashon, he's a good kid. He don't
12 pick on anybody. I just don't understand...

13 **THE COURT:** Mr. Mathews.

14 **MR. MATHEWS:** Yes, Your Honor.

15 **THE COURT:** Anything else?

16 **MR. MATHEWS:** No, sir.

17 **THE COURT:** All right, Solicitor, you wanted to reply.

18 **ASST. SOL. HASELDEN:** Yes, Your Honor.

19 **THE COURT:** He was convicted as a juvenile of armed
20 robbery; is that correct?

21 **ASST. SOL. HASELDEN:** Attempted armed robbery.

22 **THE COURT:** Attempted armed robbery.

23 **ASST. SOL. HASELDEN:** Your Honor, this could have been
24 really bad. And I know we're not here about the "could
25 have's".

1 **THE COURT:** No, ma'am, we're not.

2 **ASST. SOL. HASELDEN:** But if you've seen those
3 photographs ---

4 **THE COURT:** I have.

5 **ASST. SOL. HASELDEN:** --- they're astonishing. And
6 what those people were put through on that day when they
7 were stopped at the school bus stop sign, something nobody
8 should have to go through. This defendant has shown just
9 reckless disregard for not only those two people, but he did
10 it within close proximity of a whole bunch of other people,
11 innocent people, innocent children. That's one of the
12 scariest parts of this crime. It could have ricocheted;
13 anything could have happened.

14 Your Honor, the recklessness in this case, absolute
15 disregard for the lives of Stephanie Mack and Ryan Stephens
16 is why I would ask for 30 years.

17 **THE COURT:** Anything else?

18 **ASST. SOL. HASELDEN:** Nothing, Your Honor.

19 **THE COURT:** Mr. Mathews, I'm certainly aware, now, of
20 your client's criminal history. Your client exercised his
21 constitutional right in this case not to testify. At your
22 request, I charged the lesser-included offenses. The jury
23 clearly found him guilty of the most serious offenses, for
24 which I believe there was clearly sufficient evidence of
25 attempted murder and I completely understand the jury's

1 verdict.

2 I take into consideration what happened to the victims,
3 insofar as you know there was no testimony of any injury of
4 any kind to Ryan Stephens. There was injury to Stephanie
5 Mack, and because there was no injury to Ryan Stephens, I
6 concluded there was either guilty or not guilty as to
7 attempted murder.

8 The fact that your client has already been convicted,
9 and in fact, the Solicitor is correct, if he'd have been
10 treated as an adult, he'd be looking at life imprisonment
11 without any possibility of any parole for his previous
12 conviction, but because he was sentenced as a juvenile, that
13 does not apply.

14 However, the sentence for attempted murder is up to 30
15 years and it is violent and the sentence for possession of a
16 weapon is five years. I have to say that it is a miracle
17 that more serious injury and lives were not lost in this
18 incident. The jury had ample evidence in which they could
19 have concluded that the defendant was guilty of the offense
20 of attempted murder as to Ryan Stephens and as to Stephanie
21 Mack. It is only through the grace of the good Lord that
22 more serious injury did not occur.

23 Anything else from the defendant, Mr. Mathews?

24 **MR. MATHEWS:** No, sir.

25 **THE COURT:** Anything from the State?

1 **ASST. SOL. HASELDEN:** Nothing, Your Honor.

2 **THE COURT:** On Indictment 2010-GS-15-0960, the State of
3 South Carolina v. Quashon Middleton, the jury has found him
4 guilty of attempted murder. The sentence of this Court is
5 the defendant is committed to the State Department of
6 Corrections for a term of 30 years.

7 On Indictment 2010-GS-15-0962, the State of South
8 Carolina v. Quashon Middleton. The jury has found him guilty
9 of attempted murder. The sentence of this Court is the
10 defendant is committed to the State Department of
11 Corrections for a term of 30 years.

12 On Indictment 2010-GS-15-0961, the State of South
13 Carolina v. Quashon Middleton, possession of a weapon during
14 the commission of a violent crime. The jury has found him
15 guilty, and the sentence of this Court is defendant is to be
16 committed to the State Department of Corrections for a term
17 of five years. The defendant is to be given credit for time
18 served, pursuant to South Carolina Code Section 24-13-40.
19 That is to be calculated and applied by the State Department
20 of Corrections.

21 Thank you. This concludes this matter.
22
23
24
25

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had in the trial of the captioned case, in the Court of General Sessions for Colleton County, South Carolina, on the 25th - 27th days of July 2011.

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

October 12, 2011

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of ColletonQuashon F. Middleton #347130

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

15-CP-15-311

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE-CORRECTIONAL-INSTITUTION / 990 W. Hwy 1 / Bishopville, South Carolina, 29010
2. Name and location of Court which imposed sentence Colleton County / Walterboro, South Carolina, 29488
3. Name(s) of co-defendant(s) (if any) N/A
N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-15-15-0961 ("Poss. of Weapon during Comm. of 1st Crime")
 - (b) 2010-15-15-0960 ("Attempted Murder")

- (c) 2010-ES-15-0962 ("Attempted Murder")
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July-27th 2011 / (30) Thirty Years
- (b) July-27th 2011 / (30) Thirty Years
- (c) July-27th 2011 / (3) Five Years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
-yes-
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Direct Appeal Court
- ii. South Carolina Supreme Court
- iii. Supreme Court of the United States
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. Dismissed
- iii. Dismissed
- (c) the date of each such result:
- i. February-26th 2014
- ii. April-2nd 2014
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. -(un-known)-
- ii. -(un-known)-
- iii. -(un-known)-
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Subject Matters Jurisdiction Was Lacking
 (b) Ineffective Assistance Of Trial Counsel
 (c) Ineffective Assistance Of Appellate Counsel

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Grand Jury Indicted Applicant Under Wrong Statute
 (b) Trial Counsel Failed To Object And Quash Indictment
 (c) Appellate Counsel Failed To Raise Indictment Issue

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? -Yes-
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? -As Asserted-
 (d) any other petitions, motions or applications in this or any other Court? -NO-

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
 ii. N/A
 iii. N/A
 iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A
 ii. N/A
 iii. N/A
 iv. N/A

10) Trial Judge Abuse of Discretion (d)
Trial Judge Abuse of Discretion (e)

11) Trial Judge Failed to Direct an Verdict of Intent To Kill (d)
Trial Judge Failed to instruct jury of lesser offense (e)

12) Trial counsel was ineffective for failing to object to use or not addressing
Juvenile charges

13) Counsel was ineffective for not objecting to statement obtained from one in
Juvenile custody without Parent/counsel

14) Failure To Challenge for cause Prosecution use of Preemptory Strikes

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

-As Asserted-
N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Appellate Counsel Failed To Raise As Attested
 (b) Trial Counsel Failed To Raise As Attested
 (c) N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? -Yes-
 (c) your sentencing? -Yes-
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? -Yes-
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
-Yes-

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Attorney Mr. David S. Mathews, Esq. / Walterboro
South Carolina, 29488 ("Trial Counsel")
 ii. Attorney Ms. Susan Nachett Esq. / Columbia,
South Carolina, 29211 ("Appellate Counsel")
 iii. N/A
N/A
 (b) the proceedings at which each such attorney represented you:
 i. Respectfully Perfecting Jury Trial
N/A
 ii. Respectfully Perfecting Appeal & Petitions
N/A
 iii. N/A
N/A

19. State clearly the relief you seek in filing this application:

Vacating Each "Attempted Murder" (2010-ES-15-0960)
to (2010-ES-15-0962) Sentence and Conviction as
the lower Court lack Subject Matters Jurisdiction.

20. Are you now under sentence from any other court that you have not challenged?

-NO-

N/A

STATE OF SOUTH CAROLINA)

County of Colleton)

VERIFICATION

I, Jonathan B. Middleton # 327130, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X Jonathan Middleton
Impr. Murd.

SWORN to and subscribed before me this 16
 day of Dec, 2014.

Debra Sures (L.S.)
 Notary Public

My Commission Expires: 11-4-2015

Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Quashon L. Middleton # 347130, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

X Quashon L. Middleton
Applicant

SWORN or affirmed to and subscribed before me this

16 day of Dec, 2014.

Debra Series
Notary Public

My Commission Expires: 11-4-2015

2015 FEB 18 AM 10:46
 PAID
 COUNTY CLERK
 COLLECTION
 COMPLAINTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FOURTEENTH JUDICIAL
COUNTY OF COLLETON	)	CIRCUIT
	)	
Quashon Middleton, #347130,	)	Case No.: 2015-CP-15-0311
	)	
Applicant,	)	
	)	RETURN AND PARTIAL MOTION
v.	)	TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on February 18, 2015, would respectfully show this Court:

I. PROCEDURAL HISTORY

The facts supporting the underlying charges are as follows: On September 28, 2010, the victim was driving her vehicle with a passenger and stopped for a school bus. Applicant was driving a moped behind the victims. As children began exiting the bus, Applicant drove his moped around to the passenger side of the victim's car, pulled out a firearm, and began firing shots into the vehicle. The victims managed to drive away without sustaining serious injuries. Subsequently, Applicant was charged with two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. In October 2010, the Colleton County Grand Jury indicted Applicant for two counts of attempted murder (2010-GS-15-0960; -0962) and one count of possession of a weapon during the commission of a violent crime (2010-GS-15-0961). David Mathews, Esquire, of the Fourteenth Circuit Public Defender's Office, represented Applicant.

Assistant Solicitor Amanda Haselden, Esquire, of the Fourteenth Circuit Solicitor's Office, prosecuted the case. On July 25-27, 2011, Applicant proceeded to trial before the Honorable Perry M. Buckner, III. The jury found Applicant guilty as indicted. Judge Buckner sentenced Applicant to imprisonment for concurrent terms of thirty years for each count of attempted murder and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense perfected the appeal. On July 25, 2012, the South Carolina Supreme Court issued an order stating that pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, the appeal is certified for review by the Supreme Court. On February 25, 2014, the South Carolina Supreme Court affirmed Applicant's convictions and sentences. State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014). On March 13, 2014, Applicant filed a Petition for Rehearing. On April 2, 2014, the Supreme Court issued an order denying the petition. The Remittitur was also returned to the lower court on April 2, 2014. On July 1, 2014, Applicant filed a Petition for Writ of Certiorari to the United States Supreme Court. On October 6, 2014, the United State Supreme Court denied the petition.

Attached to this Return and incorporated by reference are the records of the Colleton County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Subject Matter Jurisdiction Was Loss"
 - a. "Grand Jury indicted Applicant under wrong statute"
2. "Ineffective Assistance of Trial Counsel"
 - a. "Trial Counsel failed to object and quash indictment"
 - b. "Trial Counsel was ineffective for failing to object to use or not addressing juvenile charges"
 - c. "Counsel was ineffective for not objecting to statement obtained from one in juvenile custody without parent/counsel."
 - d. "Failure to challenge for cause Prosecution's use of peremptory strikes"
3. "Ineffective Assistance of Appellate Counsel"
 - a. "Appellate Counsel failed to [deem] indictment invalid"
4. "Trial Judge Abuse of Discretion"
 - a. "Trial judge failed to direct a verdict of intent to kill"
 - b. "Trial judge failed to instruct jury of lesser offense"

III. SUBJECT MATTER JURISDICTION

Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Respondent submits that this allegation is meritless and should be dismissed. Defects in the indictment do not affect subject matter jurisdiction. *See State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *U.S. v. Cotton*, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). *See also* S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. *See Gentry, supra*; *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. *See* S.C. Code §§ 17-27-45 and -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Therefore, Respondent would move to dismiss this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

IV. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness

under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). “However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this allegation.

VI. ABUSE OF DISCRETION

Respondent requests that the claim of "trial judge abuse of discretion" be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

“Trial judge abuse of discretion” is not a claim cognizable under the act. Applicant is not collaterally attacking his guilty plea or sentence, but rather makes a claim best suited for direct appeal.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they are proper for direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973).

The allegation is similarly barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to raise this allegation on direct appeal. The South Carolina

Supreme Court issued a final judgement on the merits on very same issue that Applicant now raises in his present action. The finality of the previous Court rulings should be respected, and the application should be summarily dismissed as barred by the doctrine of *res judicata*.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss the Application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act. In addition, the claim should be dismissed as barred by the doctrine of *res judicata*.

VII. AMENDMENTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments received prior to 10 days before an evidentiary hearing will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

VIII. PARTIAL MOTION TO DISMISS

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of trial counsel and ineffective assistance of appellate counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the

South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

IX. CONCLUSION

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial and appellate counsels.

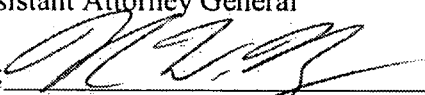
Respectfully submitted,

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By: 

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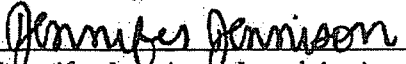
August 3, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	
	)	2015-CP-15-0311
QUASHON MIDDLETON, #347130	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Kristian Falk, Esquire
 Falk Law Firm, LLC
 PO Box 1058
 Charleston, SC 29402

DATED this the 3rd day of August, 2017.


 Jennifer Jennison, Legal Assistant
 For Respondent

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Colleton
3
4 Case No.: 2015CP1500311
5 Quashon Middleton,
6 Plaintiff(s),
7 vs. Transcript of Record
8 State of South Carolina
9 Defendant(s).

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25

October 10, 2017
Beaufort, South Carolina

BEFORE:

The Honorable Thomas A. Russo

APPEARANCE PAGE

1

APPEARANCES

2

3

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CALLING OF THE CASE

1 PROCEEDINGS

2 MR. NEELY: The next case, Quashon Middleton,
3 versus The State of South Carolina, Case No.
4 2015-CP-15-0311.

5 Mr. Middleton was indicted by the Colleton County
6 grand jury October of 2010, with two counts of
7 attempted murder, one count of possession of a weapon
8 during the commission of a violent crime. And he
9 received a trial before the Honorable Perry Buckner,
10 found guilty as indicted, was sentenced for concurrent
11 terms of 30 years for each count of attempted murder,
12 five years for possession of a weapon during the
13 commission of a violent crime.

14 He did file a timely appeal and Suzanne Hackett
15 perfected that appeal. On July 25th, 2012, Supreme
16 Court issued an order certifying review for Supreme
17 Court. Confirmed applicant's conviction and sentences
18 on March 13th, 2014, filed a Petition for Rehearing.
19 April 2nd, 2014, Supreme Court issued a Denial of
20 Petition, and on October 6th, 2014, United States
21 Supreme Court denied the petition for the -- to the
22 Supreme Court of the United States.

23 THE COURT: All right. The State does have a
24 partial motion to dismiss on several of the
25 allegations, before we start.

MOTION TO DISMISS

1 Yes, sir.

2 MR. NEELY: The allegations Mr. Middleton has
3 before the Court are, number one, subject matter
4 jurisdiction was lost. He alleges the grand jury
5 indicted applicant under the wrong statute. The State
6 would seek to dismiss that charge. The front of the
7 indictment had the correct statute. In the middle of
8 the trial, it was discovered that there was a
9 scrivener's error, where he -- the statute cited in the
10 body of the attempted murder indictment was incorrect,
11 and it was changed, amended as a scrivener's error in
12 the middle of trial.

13 However, the indictment was only a notice
14 document. It does not -- they're not deprived of grant
15 of jurisdiction within the embodiment of indictment.
16 That is something that must be brought before the jury
17 is sworn. The jury was sworn when that matter was
18 considered. The State would move to dismiss that as
19 legally incorrect.

20 Mr. Middleton also alleges that trial counsel
21 failed to object to quash the indictment. The State
22 would allege that it is impossible to prove prejudice
23 from trial counsel's failure to quash the indictment.
24 That certainly would not end the case, that would just
25 get it re-indicted and tried again. So it doesn't

MOTION TO DISMISS

1 change any of the elements or facts against
2 Mr. Middleton.

3 The State would also move to dismiss
4 Mr. Middleton's allegations that counsel failed to the
5 challenge for peremptory cause. On Page 41 of the
6 transcript, Mr. Mathews did, in fact, request a Batson
7 motion and did challenge the State peremptory causes.
8 So on the face of that allegation, it's incorrect. The
9 State moves to dismiss that the allegation as well.

10 Mr. Middleton also alleged ineffective assistance
11 of appellate counsel. And the only allegation against
12 appellate counsel was that they failed to deem the
13 indictment invalid. Certainly that is -- it's
14 impossible for the appellate counsel to deem an
15 indictment invalid, or it's counter to the indictment.
16 Once a trial has begun and the jury is sworn, an
17 indictment can't be challenged, and so it was
18 impossible for appellate counsel to have been deficient
19 for failure to challenge the indictment.

20 Then Mr. Middleton also alleges the trial judge
21 abused his discretion, and that the trial judge failed
22 to issue a directed verdict, and failed to instruct the
23 jury of lesser included offense. Those are not issues
24 for PCR, those are issues for direct appeal.

25 So PCR Court is not the appropriate venue to

MOTION TO DISMISS

1 challenge whether the trial judge abused his
2 discretion in making the rulings. And so the State
3 would move to dismiss those allegations as well, and
4 would also note for the record, the trial judge did, in
5 fact, charge lesser included offense on Page 351 in the
6 transcript.

7 THE COURT: So the lesser included offense was
8 charged?

9 MR. NEELY: Yes, sir.

10 THE COURT: Mr. Falk, you wish to be heard on
11 this?

12 MR. FALK: Your Honor, regarding the Batson
13 allegation, it is true that Mr. Mathews conducted a
14 Batson hearing, and did challenge them. But then he
15 withdrew the motion during the hearing, so that if
16 there was a valid -- if there was a Batson challenge,
17 it was never preserved for the record. Because he,
18 when they were going through the three-step process, he
19 said, "Well, I'm not going to go any further, I will
20 withdraw."

21 So although he initiated the proceeding, he didn't
22 follow through with the proceeding, and it's not
23 preserved in the record. So I would disagree with
24 Mr. Neely on there that it's grounds for dismissal.

25 I would also argue that on the indictment, I

MOTION TO DISMISS

1 appreciate the fact that this is a notice document, but
2 the -- it wasn't that the Court would have lacked
3 jurisdiction, but my client -- we would argue that it's
4 negligent on behalf of my client for Mr. Mathews not to
5 have quashed the indictment prior to the start of the
6 trial, or ask to have the trial moved, possibly got a
7 continuance based on that, all things that I think we
8 should be able to explore.

9 THE COURT: What prejudice is any of that?

10 MR. FALK: If he could have had more additional
11 time to prepare for the case.

12 THE COURT: Is there any indication that they
13 needed more time?

14 MR. FALK: Well, I think that's what we can
15 develop through the -- I'm just saying that as far as
16 on a motion for summary judgment, I think I need my
17 client to be able to be heard on that.

18 THE COURT: All right. And --

19 MR. FALK: I do not -- by the same token, I do not
20 argue Mr. Neely's argument about ineffective assistance
21 of appellate counsel, because I agree with that
22 disposition.

23 THE COURT: All right. And then he also, his
24 motion, where he's basing it on abuse of trial judge's
25 discretion?

MOTION TO DISMISS

1 MR. FALK: I would agree that that is also a
2 direct appeal issue.

3 THE COURT: I'm going to grant the State's motion
4 as it relates to the ineffective assistance of
5 appellate counsel, and the trial judge's abuse of
6 discretion, and I'll allow the other matters to go
7 forward, and I'll hear from you on those.

8 MR. FALK: Thank you, Your Honor.

9 MR. NEELY: Thank you, Your Honor.

10 THE COURT: Anything further from the State before
11 we proceed?

12 MR. NEELY: Not from the State, Your Honor.

13 THE COURT: All right. Mr. Falk.

14 MR. FALK: Your Honor, the other allegations that
15 my client did raise in his PCR application, in addition
16 to ineffective assistance of trial counsel was that the
17 trial counsel was ineffective for failure to object to
18 the use of the introduction of his juvenile charges.
19 Counsel was ineffective for not objecting to a
20 statement that was obtained from a juvenile who was in
21 custody without his parents' consent. And, again, he
22 has alleged the peremptory challenges on his
23 application.

24 So I would like to call Mr. Middleton to the
25 stand.

COLLOQUY

1 THE COURT: All right. Mr. Middleton, please, if
2 you would, come forward. And if you need to bring
3 anything, you are welcome to. But if you don't need
4 to, then if you would come around, sir.

5 Thereupon,

6 QUASHON MIDDLETON

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

9 DIRECT EXAMINATION

10 BY MR. FALK:

11 Q Mr. Middleton, can you spell your name for the
12 record, please.

13 A Q-U-A-S-H-O-N.

14 Q And, Mr. Middleton, who represented you in your
15 trial?

16 A Mr. David Mathews.

17 Q And did you have any prior experience with
18 Mr. Mathews?

19 A Yes, I did.

20 Q Were you in custody prior to this trial, or were
21 you out on bond?

22 A No, I was in custody, sir.

23 Q Okay. How often did he come and speak with you
24 about this case?

25 A We spoke about five times.

DIRECT EXAMINATION OF Q. MIDDLETON BY FALK

1 Q And did he go over the discovery with you?

2 A I mean, as far as him giving it to me, no, but we
3 did spoke of it.

4 Q And did he talk to you about what his strategy was
5 for going forward?

6 A Not really.

7 Q What would your defense to this be? Not present
8 at the time?

9 A My defense was I couldn't -- I wouldn't be able to
10 commit attempted murder or murder if, you know, I wasn't
11 nowhere near the driver's side or the passenger side of the
12 door.

13 Q I'm sorry?

14 A My defense was that I wasn't -- I couldn't kill
15 them because -- or was able to attempt -- or to commit
16 attempted murder because of the bullet that they say was in
17 the passenger's door, that it doesn't sit -- it didn't sit
18 well with me because I have no intelligence of that.

19 Q So there was a -- I mean, just for reference,
20 there was gunshots fired back and forth, somebody was on a
21 scooter, somebody was in a car?

22 A Yes.

23 Q And the allegation was that you were trying to
24 kill the drivers of the green Toyota?

25 A Yes.

DIRECT EXAMINATION OF Q. MIDDLETON BY FALK

1 Q And so your argument -- so your defense was that
2 you were not -- you had no intent to kill?

3 A Yes.

4 Q And that was evidenced by the fact of where the
5 bullets landed?

6 A Yes.

7 Q Okay. And then you were injured as a result of
8 this, when they rolled -- when they hit your scooter and hit
9 your leg?

10 A Yes, sir.

11 Q Okay. Now, you have charges as a juvenile. Are
12 those charges that Mr. Mathews represented you on?

13 A Yes, I did. I have a charge when I was 16. But,
14 you know, being that it was a serious charge, he represented
15 me from juvy up until I went to trial as an adult.

16 Q And I'm sorry, sir. What was that juvenile
17 charge?

18 A Murder.

19 Q And what was the result of that?

20 A Not guilty.

21 Q Okay. Did you have any other charges?

22 A No.

23 Q While the jury processes -- while the -- you were
24 obviously in court when they were picking the jury; is that
25 correct?

DIRECT EXAMINATION OF Q. MIDDLETON BY FALK

1 A Yes, sir.

2 Q And you talked with him about jurors that you
3 wanted or did not want?

4 A Yes, sir.

5 Q And did you have -- did you discuss with them
6 particular ones that you wanted him to strike?

7 A Yes, sir.

8 Q And did he strike those?

9 A Yes, sir.

10 Q Did you feel that the State was unfair in the way
11 it was using its strikes?

12 A Yes, sir.

13 Q And what specifically did you think?

14 A That I was going down.

15 Q What was that?

16 A That I wouldn't be found guilty.

17 Q What was your concern about how the State was
18 using their strikes?

19 A It wasn't fair.

20 Q Because they were all?

21 A It was all -- it was all people that I -- like I
22 recently became encountered with, or was recently being
23 involved with trouble with them, you know. That's why I
24 felt like it wasn't -- it wasn't fair.

25 Q Did the State strike all the African-Americans?

DIRECT EXAMINATION OF Q. MIDDLETON BY FALK

1 A Except for two.

2 Q Okay.

3 MR. FALK: Your Honor, I believe this maybe will
4 go quicker if I actually call -- if I could excuse him
5 and call Mr. Mathews to the stand and bring him back at
6 the end.

7 THE COURT: All right. What we'll do,
8 Mr. Middleton, is you're going to still be under oath.
9 I'm just going to have you step down. We will just
10 suspend your testimony for right now, let you call
11 Mr. Mathews, and then after we finish on this issue
12 with Mr. Mathews, then we will let you come back up.
13 All right?

14 THE WITNESS: Yes, sir.

15 (Witness leaves stand.)

16 THE COURT: Mr. Mathews, if you would come on up
17 and be sworn, sir.

18 MR. MATTHEWS: Yes, sir.

19 Thereupon,

20 DAVID MATHEWS

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

23 DIRECT EXAMINATION

24 BY MR. FALK:

25 Q Do y'all have a file in this case?

DIRECT EXAMINATION OF D. MATHEWS BY FALK

1 A I do.

2 Q Very good.

3 Do you -- have you had a chance to look at
4 the transcript?

5 A I have had a chance to, but I didn't do it.

6 Q I was given an electronic copy of it.

7 Do you recall making a Batson --

8 THE COURT: I got a hard copy if anybody needs it.

9 MR. FALK: Can you hand it to the witness?

10 THE COURT: Yeah, absolutely. I didn't want to.

11 MR. NEELY: There you go. I got a hard copy, if
12 you would like one, and -- because I have a copy on my
13 computer.

14 THE COURT: Oh, okay. Well, I'll let you -- I'll
15 take that one, you give him that one. Chinese fire
16 drill here.

17 All right. So everybody has got a transcript.

18 BY MR. FALK:

19 Q Could you look at Page 41 on that transcript?

20 A Forty-one?

21 Q Yes.

22 A Let's see. Okay.

23 Q I believe that shows -- if you could just sort of
24 those pages. Does that refresh your recollection?

25 A That was not a very good panel. I'm -- yes.

DIRECT EXAMINATION OF D. MATHEWS BY FALK

1 Q So based on that, did you make a Batson challenge
2 in this?

3 A Let's see. Well, we were outside the presence of
4 the jury. So, yes. Yes.

5 Q And what were your concerns about the panel that
6 was picked?

7 A Well, I really would have liked to have more
8 African-Americans on there, and I hate that they used some
9 -- two of their strikes to strike black jurors. Black male
10 jurors particularly.

11 Q Because the panel, as it existed, only had two; is
12 that correct?

13 A Yeah. Well, I mean, the two that -- the two that
14 were on there -- let's see.

15 Yeah, the two that were on there, plus two,
16 it could have been four, and it was two. I would have
17 rather had four.

18 Q Do you try a lot of cases in Colleton County?

19 A I do.

20 Q What is -- is two blacks typical?

21 A It's -- it's -- I would say that typically, a
22 typical jury panel is going to be probably about 25 percent
23 African-American. The county is more, but that's usually in
24 the jury -- the venire, that's normally what we get is about
25 a quarter. Something like that.

DIRECT EXAMINATION OF D. MATHEWS BY FALK

1 Q And so basically your objections in this case was
2 that the State was using race-based peremptory challenges?

3 A Yes.

4 Q But you withdrew the objection; is that correct?

5 A Let me get there. I have no reason to doubt you,
6 but let me look through.

7 Q Page 48.

8 A I'm looking. I'm going to have to start reading
9 faster.

10 Q Okay -- no, no, no. I was just --

11 THE COURT: Do you know in the record where it is?

12 MR. NEELY: I told him on Page 48.

13 THE WITNESS: Well, I was trying to get my ball --
14 I'll just flip ahead then. I was trying to get to --

15 THE COURT: I was doing the same thing, trying to
16 get to --

17 MR. FALK: On the top of Page 48, you withdrew to
18 motion.

19 THE COURT: Okay. But can you point out in the
20 record where the State gave their reasons for their
21 strikes?

22 MR. FALK: Oh, yes. Yes.

23 THE COURT: Because that would have been possibly
24 why he, you know, withdrew the motion.

25 MR. NEELY: Page 47, Lines 1 through 6. And Page

DIRECT EXAMINATION OF D. MATHEWS BY FALK

1 46, Lines 2 through 8.

2 THE COURT: Page 46, 2 through 8?

3 MR. NEELY: Yes, sir. And then 47, 1 through 6.

4 THE WITNESS: Okay. Yeah, I see that I had
5 withdrawn them because it looked to me like they were
6 good enough reasons.

7 BY MR. FALK:

8 Q So that issue would not be preserved for appeal?

9 A I maybe should have let somebody else arbiter
10 that, but my feeling is that probably they were good enough.
11 But perhaps somebody else might have felt differently.

12 Q Okay. And there was an inaccuracy in the
13 indictment in this case?

14 A I have no reason to doubt you.

15 Q The actual -- on the affidavit supporting the
16 indictment, it sites Code Section 1603620 and -- instead of
17 160329, which is the murder statute.

18 A Uh-huh. (Indicating affirmatively.)

19 Q Had you reviewed the indictment prior to going to
20 trial on the affidavit?

21 A I probably did, although that's -- in -- I have
22 only recently got -- I have gone through stretches where I
23 have not looked at indictments as well as I should have. I
24 have actually, for my next trial coming up on Monday, got
25 two motions to quash indictments. But I have gone through

DIRECT EXAMINATION OF D. MATHEWS BY FALK

1 periods where I haven't looked at them as closely as I ought
2 to have. This may have been such a thing.

3 Q So on the eve of the trial, and you have a motion
4 to quash the indictment, what's your expectation that could
5 happen?

6 A Well, I mean, the ones that I have got coming up,
7 for example, there is an allegation of attempted murder, and
8 the means to the murder was not in the indictment. And so
9 it didn't give proper notice to my -- to my -- and, in fact,
10 the nature of the case is such, there were a lot of
11 individuals blows and stuff. It was a child abuse case, and
12 without the allegations of what it was particularly, it's
13 hard to put my client on notice. And -- and as to what he's
14 -- I mean, you can't even tell from looking at the incident
15 report of exactly what it is they said that was supposed to
16 have been the blow or whatever, attempting to murder.

17 In this case, you know, shooting at somebody
18 is pretty -- that's pretty obvious. And so it doesn't -- I
19 mean, I knew what I was defending, and that's the
20 difference. I -- I -- sometimes I could make a technical
21 argument that I don't, and this may have been such a time.

22 But if I know -- if I -- if I know what it is
23 they're asking particularly, and it seems pretty clear to
24 me, then a lot of times I don't make that even, and perhaps
25 I should.

DIRECT EXAMINATION OF D. MATHEWS BY FALK

1 Q But, for example, in a case where you are moving
2 to quash the indictment for more specificity, you would make
3 that motion to quash it the day of trial, but prior to the
4 jury being sworn; is that correct?

5 A Right.

6 Q If the judge granted that motion, what would your
7 expectation be?

8 A That the case would not go forward that day, they
9 would have to reimpose a jury if -- you know, unless it is a
10 scrivener's error. But if it is something really having to
11 do with notice, my expectation would be that you would
12 get a -- the case would be tried another day.

13 Q So would you have benefited from possibly having
14 more time to prepare for this case?

15 A I -- I -- at this point, I don't know. I mean,
16 like I said, normally -- normally, I'm ready to go by the
17 time we get there. I can't say that more time would have
18 helped. There are cases where it could, I don't recall
19 whether this is one of them or not.

20 Q Were there any juveniles who testified against my
21 client in this case?

22 A Like I said, I have not reviewed the transcript.
23 I have got the full file. If you know, then you can maybe
24 just tell me, I'll -- I have no reason to doubt whatever you
25 say on that.

DIRECT EXAMINATION OF D. MATHEWS BY FALK

1 Q Well, Stephanie Mack was the driver of the car; is
2 that correct?

3 A Okay.

4 Q Okay. Had you known that a statement was taken
5 from a juvenile who was in custody, would you have had
6 concerns about that statement being used in the trial?

7 A Did she testify?

8 Q Yes.

9 A I mean, and was her testimony inconsistent with
10 statements she made earlier?

11 Q Well, the concern is whether or not it's proper to
12 take a statement from a juvenile in the custody without
13 their parents present.

14 A I -- you know, it may be or it may not be, but it
15 really sort of depends on what the impact is going to be. I
16 mean, if something is -- you know, if something is harmful,
17 then I'm going to object to it. If it's not harmful, then I
18 might not. Whether it is, you know, a good procedure or
19 not, if it doesn't matter, then it doesn't matter, and I
20 don't recall what the situation is on that.

21 Q Do you recall if my client had any criminal -- had
22 any prior juvenile arrests?

23 A Yeah. Quashon was arrested for murder when he was
24 16, but he was tried as an adult. I did a pretty good job
25 on that one. Maybe not as good on this one, but I got him a

DIRECT EXAMINATION OF D. MATHEWS BY FALK

1 not guilty. Three eye witnesses.

2 So -- but I -- he was tried as an adult. So
3 as far as his juvenile, I don't know what his juvenile
4 record was.

5 MR. FALK: I have no further questions.

6 THE COURT: Cross?

7 MR. NEELY: Just briefly, Your Honor.

8 CROSS EXAMINATION

9 BY MR. NEELY:

10 Q If you believe that you need more time to
11 adequately prepare to defend your client before trial, is it
12 your practice to ask for a continuance?

13 A Yes.

14 Q And did you ask for -- you don't?

15 A I mean, if it's not on the record. I don't try a
16 case unless I feel like I'm ready. Sometimes you get pushed
17 and you say -- now, of course, if it's -- if, you know, you
18 make the motion whether you feel like it's going to be
19 granted or not, if you feel like you need more time.

20 I mean, you can always benefit from a little
21 more time, but it's a matter whether it's just dressing it
22 up a little bit better, whether it's something substantive.
23 In this case, I feel like I was ready for any substance.
24 You can always -- you can always benefit from a little
25 longer time. You might have something a little easier to,

CROSS EXAMINATION OF D. MATHEWS BY NEELY

1 you know, pull out.

2 And, obviously we have hundreds of cases, and
3 a little -- you know, if you see up ahead when something is
4 coming up, you know, you get ready. A little more time can
5 help, but I don't know that it would have made a difference
6 in this case.

7 If I felt like it would have made a
8 difference, I would have asked for a continuance.

9 Q Okay. And obviously, you know, you haven't -- you
10 said haven't read the transcript in this case. But would
11 you consider a victim at the scene of an incident a person
12 in custody?

13 A I'm sorry?

14 Q Would you consider a victim at the incident a
15 person in custody?

16 A I don't know why I'm not understanding this.
17 Would I consider a witness at the scene of a crime in
18 custody?

19 Q Correct.

20 A I mean, a witness might be in custody or they
21 might not be in custody. I don't -- I'm not following. I
22 don't understand the question.

23 Q I'll waive the question, and I'll argue it in the
24 transcript in my closing.

25 THE COURT: Okay. I don't understand the question

CROSS EXAMINATION OF D. MATHEWS BY NEELY

1 either.

2 BY MR. NEELY:

3 Q Yeah. That's --

4 And before the -- after you reviewed the
5 Batson motion and the reasons the State gave?

6 A I just did, yes.

7 Q And is it is your opinion that a -- that a member
8 with a pending case against the Solicitor's office -- or a
9 Solicitor's office case pending against a nephew of a juror
10 and a person who is a close personal friend of one of the
11 witnesses?

12 A Yeah, that's a good reason. The only -- the only
13 -- the only time it's not is if you have got somebody
14 similarly situated. You know, if they seated somebody with
15 a -- a white juror with the same problem, then I -- then I
16 might have something there, but those are otherwise valid
17 reasons.

18 Q But the reason that you withdrew the Batson motion
19 is there was no -- no reason to go for it.

20 A I try to make motions for just fun. I try to make
21 them if I think I've got a good reason to. I mean, they
22 answered the questions, which it looked like they did, then
23 -- but, you know, perhaps I should leave some meat on there
24 for the appellate court, but it looked to me like that was a
25 plenty good reason.

CROSS EXAMINATION OF D. MATHEWS BY NEELY

1 MR. NEELY: Beg the Court's indulgence.

2 (Pause.)

3 MR. NEELY: That is all of the questions that I
4 have, Your Honor.

5 THE COURT: Anything further? At least at this
6 time.

7 MR. FALK: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. FALK:

10 Q If you could look at Page 375 of the transcript.
11 Well, actually, starting on Line 22 at Page 374.

12 A Line 22, 374? Okay.

13 Q Were you aware that he was noticed for an LWOP
14 sentence? There was a discussion of that?

15 A It says to where he's not noticed as -- for an
16 LWOP. It says, "Defendant does have a prior record. He
17 actually has a violent serious track record, but it was as a
18 juvenile, so that's why he was not noticed for life without
19 parole," as we would be if were eligible as an adult.

20 Q Yes. That was a poorly worded question.

21 Did you consider trying to object to the
22 Solicitor discussing his juvenile record at sentencing?

23 A You know, that's a -- they -- that's a pretty
24 sneaky thing that Amanda did there. I'm not -- I mean, she
25 technically said, "I'm not asking you to consider that,"

REDIRECT EXAMINATION OF D. MATHEWS BY FALK

1 but, of course, how do you unring the bell? Obviously she's
2 asking the judge to consider it. But she's saying she's not
3 asking the judge to consider it. And at the time, if I at
4 that point I ask that you not consider it, she's already
5 asked the judge not to consider it. I think it's sneaky,
6 but I don't know that there's a lot I could have done about
7 it.

8 Q You were aware that -- you said you had
9 represented him before?

10 A Right.

11 Q And so maybe you don't have a present recollection
12 of what his juvenile record is, but do you think at the time
13 you were preparing for his case, you would have known his
14 juvenile record?

15 A I might have. I -- I mean, like I said, it -- and
16 like I said, she says that she's asking the judge not to
17 consider it, but it's sneaky. Clearly she is, but she says
18 she's not. And other than -- if I object to it, she's
19 already said she is not asking for it. As far as his
20 juvenile record, whether that's accurate or not, I don't
21 recall.

22 Q Would you consider moving in limine to stop the
23 juvenile record from being considered in opening and closing
24 the case in chief?

25 MR. NEELY: That didn't happen.

REDIRECT EXAMINATION OF D. MATHEWS BY FALK

1 A Well, at this point, she's talking in sentencing
2 to the Judge.

3 THE COURT: This is after the jury had returned
4 the verdict, right?

5 THE WITNESS: Yeah, right. This is not --

6 THE COURT: This is during sentencing.

7 THE WITNESS: Obviously I wouldn't want the jury
8 to hear that. And if I did, then I made a mistake. If
9 the jury heard this, then I made a mistake.

10 BY MR. FALK:

11 Q But certainly the judge heard it.

12 A Like I said, I think it's sneaky what Amanda did,
13 but I don't know that there's much I could have done about
14 it.

15 MR. FALK: Thank you. No further questions.

16 THE COURT: Anything further from the State?

17 MR. NEELY: Nothing from the State, Your Honor.

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

19 MR. FALK: Call Mr. Middleton back to the stand.

20 THE COURT: Mr. Middleton, if you would come back
21 around, sir, and please, understand, sir, that you are
22 still under oath from your previous testimony.

23 Thereupon,

24 QUASHON MIDDLETON

25 was recalled as a witness, having been first duly sworn,

DIRECT EXAMINATION OF Q. MIDDLETON BY FALK

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. FALK:

4 Q Now, Mr. Middleton, you were in custody prior to
5 the start of this trial; is that correct?

6 A Yes, sir.

7 Q If you could have, did you think that -- would you
8 have liked more time to have gone to trial, or were you
9 ready to go to trial that day?

10 A I would have liked more time.

11 Q Did you discuss that with Mr. Mathews?

12 A Yes, sir.

13 Q And did you discuss with Mr. Mathews your juvenile
14 record?

15 A I thought he would have known.

16 Q Is there anything additionally that you think
17 Mr. Mathews should have done in representing you in this
18 case?

19 A Yes, sir.

20 Q What was that?

21 A Well, you know, get a statement from the people
22 that I told him to get. You know, to get statements from
23 the people that I told him to -- that was witnesses on my
24 behalf.

25 Q And who were those people?

DIRECT EXAMINATION OF Q. MIDDLETON BY FALK

1 A Like, for instance, a lady named Ms. Latoya Deal.
2 She actually stay on the road, the same road that the
3 incident took place on. So, you know, she was actually
4 present at the time.

5 Q And was she in the accident report? I mean, would
6 Mr. Mathews had any contact information for her?

7 A I mean, I told him -- I told him what her name was
8 and where she stay. I don't -- I don't -- I don't know if
9 he had -- get any type of contact information or not.

10 Q Did an investigator come to the courthouse? Did
11 an investigator come to the jail and talk with you?

12 A No, sir.

13 Q In addition to Ms. Deal, is there anybody else you
14 wanted him to talk to?

15 A No, sir.

16 Q What do you think Ms. Deal would have testified
17 to?

18 A Basically she would have said --

19 MR. NEELY: Calls for speculation, Your Honor.

20 Object.

21 THE COURT: I'm going to let him answer if he
22 knows. I mean, I understand. I need to hear this
23 answer because I think it's relevant to the issue of
24 whether or not it's someone that Mr. Mathews should
25 have tracked down and discussed the case with.

DIRECT EXAMINATION OF Q. MIDDLETON BY FALK

1 BY MR. FALK:

2 Q Well, I could phrase a different way.

3 Why did you want him to talk to her?

4 A Because she would have been helpful for my behalf
5 in trial.

6 Q What do you think that she saw?

7 A She would have saw -- she would have said that she
8 saw them shooting at me first, you know, like a back and
9 forth thing. They started it, you know.

10 Q And you were just responding to it?

11 A Yes, sir.

12 Q Because they were in a car, you're just out in the
13 open, right?

14 A Yes, sir.

15 Q Other than possibly calling witnesses that would
16 have been helpful, is there anything else Mr. Mathews should
17 have done?

18 A Yeah. He could have asked a lot more questions
19 during trial.

20 MR. FALK: I don't believe I have any further
21 questions.

22 THE COURT: Cross?

23 MR. NEELY: No further questions. I would point
24 Your Honor to State V Glover, 318 SC 496, where the
25 Court stated, "The applicant's mere speculation of the

DIRECT EXAMINATION OF Q. MIDDLETON BY FALK

1 witness's testimony would have been, and not by itself,
2 sent by the applicant's burden of showing prejudice."

3 So I just want to make Your Honor aware of that.
4 I don't think that his speculation of what the witness
5 testimony would have been is sufficient to ever show
6 prejudice.

7 THE COURT: Well, the reason I allowed the
8 question to be answered was to find out -- I don't know
9 what Ms. Deal would have testified to. I don't even
10 know if Ms. Deal saw anything. But I didn't know if
11 Ms. Deal was maybe in the car, or was on the back of
12 his Moped, you know, which obviously would have been
13 significant.

14 But, I mean, in other words, I needed to hear the
15 response. I can give the response the weight that I
16 think it deserves, I certainly am the trier of fact.

17 MR. NEELY: Certainly, Your Honor.

18 THE COURT: No other questions?

19 MR. NEELY: That's correct. No other questions.

20 THE COURT: Thank you, sir, you may step down.

21 Anything further, Mr. Falk?

22 MR. FALK: No, Your Honor.

23 THE COURT: All right. The State have anything
24 further?

25 MR. NEELY: I would like to call Mr. Mathews back

DIRECT EXAMINATION OF Q. MIDDLETON BY FALK

1 to the stand.

2 THE COURT: Okay. Mr. Mathews, you are still
3 under oath, sir. If you would please come back around.

4 THE WITNESS: Yes, sir.

5 Thereupon,

6 DAVID MATHEWS

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

9 DIRECT EXAMINATION

10 BY MR. NEELY:

11 Q Mr. Middleton testified that your investigator
12 never spoke with him. Do you have any notes regarding your
13 investigator and conversations he might have had with
14 Mr. Middleton?

15 A Let me look.

16 Check defender data. No, there's nothing in
17 the paper file to indicate that. I did not do a great job
18 of notating this particular file. Let me look and see if I
19 got anything on defender data. I don't know whether we're
20 using -- let me just take a look.

21 Q And, I guess, just while you're looking, if you
22 would also look to see if there's any mention of -- Miss --
23 I don't recall the name off the top of my head that
24 Mr. Middleton mentioned.

25 A Let me look and see.

DIRECT EXAMINATION OF D. MATHEWS BY NEELY

1 Okay. I do have -- let's see. Okay.

2 Phone call to victim Ryan Stevens. Phone
3 call to victim Stephanie Mack; no longer in service. Fast,
4 busy. Phone call to witness Estes Mincey; disconnected and
5 fast busy. Ryan Stevens; mailbox full, left number.

6 Yeah, I did not do a great job notating this
7 file. I'm afraid I have the paper file, at least, but I
8 didn't do a great job notating it.

9 So, no, I don't have any indication that --
10 notes from C.T., our investigator, or that downloaded
11 documents from Solicitor's office in discovery. Just
12 receiving discovery, need pictures and GSR results, received
13 them on 6/27/11, put them on DM chair.

14 So, no, I don't have any indication in my
15 notes that the investigator talked to Quashon.

16 MR. NEELY: Okay. That's all the questions I
17 have.

18 THE COURT: Anything further?

19 CROSS EXAMINATION

20 BY MR. FALK:

21 Q With the way the trial went forward, would it have
22 been helpful to have a witness that would have testified
23 regarding who started the gunplay?

24 MR. NEELY: Your Honor, I'm going to object to
25 speculation.

CROSS EXAMINATION OF D. MATHEWS BY FALK

1 THE COURT: Hold on. The question is?

2 MR. FALK: My question is: I mean, he obviously
3 knows what the trial is, and he knows what the issues
4 are. Would it have been helpful to know -- for a
5 witness to have testified that's saying that the
6 victims, in fact, initiated the gunfire?

7 MR. NEELY: Calling for speculation on a
8 hypothetical. There's been no testimony that the
9 witness would have testified that the victim has fired
10 any shots at all.

11 THE COURT: Well, yeah, I'm going to sustain the
12 objection. I think that's an improper question.

13 MR. NEELY: No further from the State, Your Honor.

14 THE COURT: All right. Mr. Falk.

15 MR. FALK: Your Honor, regarding the indictment, I
16 appreciate the fact that that is a rather minor
17 inaccuracy that was in the indictment, but the
18 indictment was wrong on its face. And if it could have
19 provided more time for trial, to prepare for trial, and
20 it would have been re-indicted, I think certainly that
21 should have been something that my client played a role
22 in, that decision being made.

23 I believe that the testimony is that the reason
24 that it was not brought to anyone's attention is that
25 Mr. Mathews didn't see the inaccuracy on the

ARGUMENT OF COUNSEL

1 indictment, and I think his testimony was that he
2 hadn't been looking at it that closely, but is now.

3 Regarding the Batson motion, I'm not sure I can
4 understand the trial strategy for withdrawing the
5 motion. Granted, sometimes motions that are made
6 before a jury, you might want to withdraw it, maybe
7 think it's going to curry some favor with the jurors.
8 But this was an in camera Batson hearing, and he
9 certainly had gotten over the first wrung of Batson.
10 And the fact that it's not preserved for appellate
11 review, I'm not sure I understand the trial strategy of
12 having Judge Buckner rule on it as opposed to having
13 him withdraw the motion.

14 There's a conflict in the testimony about whether
15 or not my client gave the Public Defender's office the
16 name of a witness, who my client believes would have
17 been helpful in testifying, because he believes she
18 would have testified that the victims in this case
19 actually instigated the gunfire that took place.

20 And I appreciate the fact that once the bell is
21 rung, it's hard to do anything about it. But whether
22 or not it was proper for the State to be arguing my
23 client's juvenile record as a way to try and get a more
24 significant sentence out of Judge Buckner, I think that
25 was improper.

ARGUMENT OF COUNSEL

1 THE COURT: Yes, sir.

2 Mr. Neely.

3 MR. NEELY: Thank you, Your Honor.

4 As Mr. Mathews testified to, he was on notice, the
5 indictment properly noticed him of the charges against
6 the client, and the charges that he needed to defend in
7 order to attempt to get his client a not guilty
8 verdict.

9 The judge made that exact same finding on Page
10 300, that Mr. Mathews knew his client had been charged
11 with murder -- an attempted murder was a charge that he
12 was defending against.

13 As almost -- as a way of coincidence, the judge
14 actually ended up charging ABHAN, which was the statute
15 number in the body of the indictment. The statute
16 number on the face of the indictment was actually the
17 correct statute for attempted murder.

18 THE COURT: Right.

19 MR. NEELY: Just so the court is aware, I guess,
20 from -- usually, I use the defense attorney to kind of
21 give a rather broad picture of the trial. However, in
22 this case, the trial took place a while ago,
23 Mr. Mathews could not recall with specificity.

24 The victims alleged that the Defendant in this
25 case, Mr. Middleton, pulled around their car and

ARGUMENT OF COUNSEL

1 stopped in front of their car and began firing shots
2 into their vehicle as he pulled around in front of
3 their car. There were window fragments and bullets in
4 the car, and actually one of the bullets actually
5 struck the backside of the steering wheel, on which
6 both victims were in the driver's seat. Because as he
7 began firing the shots, the passenger, who was a former
8 Army veteran, jumped into the driver's seat on top of
9 the other victim, and slammed the gas peddle.

10 After slamming the gas peddle, the car struck
11 Mr. Middleton, who was on the Moped in front of the
12 vehicle, breaking Mr. Middleton's leg.

13 Mr. Middleton then limped away to a nearby
14 cousin's house, where I believe, he was -- I believe
15 that he was actually kicked out of the house. They
16 called law enforcement.

17 Mr. Mathews argued at trial that there were --
18 that there were shots fired from the vehicle towards
19 Mr. Middleton. However, there was no testimony or
20 evidence presented to that effect. That was merely
21 argument Mr. Mathews made at trial. And there was no
22 evidence to support that argument.

23 For the Batson motion, I believe Mr. Matthews's
24 testimony was entirely on point, and that he does not
25 make motions frivolously. Once the State had given its

ARGUMENT OF COUNSEL

1 racially valid reasons for striking both jurors, that
2 he withdrew the motion properly.

3 Certainly, that wouldn't have been overturned on
4 appeal. And that would be the standard required for
5 him to have failed to preserve a motion properly for
6 appeal. In fact, it wasn't properly withdrawn.

7 Mr. Middleton's testimony concerning the potential
8 witness, again, I would argue that State V Glover says
9 that an applicant's testimony of what a witness might
10 or might not have said is just not enough for the Court
11 to overturn a case on PCR.

12 Regarding the juvenile record, comments made by
13 the Solicitor's office, I understand that Mr. Mathews
14 did not like the fact that the Solicitor's office made
15 those comments. However, I think that a judge, unlike
16 a jury, is not so easily swayed. And that is why you
17 cannot unring a bell with a jury once they hear
18 something. But certainly a judge, and certainly Judge
19 Buckner, is capable of setting aside the fact that a
20 Defendant had a juvenile record, and not considering
21 that whenever he sentences an applicant.

22 And I believe that's what happened here. I
23 believe there's no argument from the State that the
24 Judge should consider the juvenile record. They merely
25 mention it in a way of passing.

ARGUMENT OF COUNSEL

1 Here, Mr. Mathews testified that he would have
2 made a continuous motion if he felt that he was not
3 prepared to adequately represent the client. Here,
4 there was no continuous motion made because by logical
5 deduction, he was properly prepared to move forward to
6 trial, and argue the trial.

7 I believe he was able to do so competently and
8 with his client's best interest in mind. So there was
9 absolutely no prejudice from the fact that he failed to
10 move to quash the indictment. And as Mr. Mathews even
11 mentioned, the Judge will generally amend an indictment
12 prior to trial if he believes it was merely a
13 scrivener's error. In this case, Judge Buckner did, in
14 fact, find that it was a scrivener's error. So in this
15 case, it would have had even less potential prejudicial
16 value because the judge would have just amended the
17 indictment the day of and moved for it anyway because
18 it was a scrivener's error. And Mr. Mathews was
19 properly on notice of the charges against his client.

20 MR. FALK: Redirect or?

21 One, as I do believe there was some evidence in
22 the record; and, of course, the record will stand on
23 its own, but there was testimony regarding gunshot
24 residue that was on some of the victims' hands. So
25 there possibly was evidence of them.

ARGUMENT OF COUNSEL

1 The jury could draw whatever conclusion they
2 wanted from it, but I'm just saying there was some
3 evidence on that fact.

4 And, two, just like we are speculating on what my
5 client believes this person would testify, we are also
6 speculating on how Judge Buckner would rule that, you
7 know, once the bell was rung regarding his criminal
8 charges. I mean, we are speculating on what Judge
9 Buckner would do.

10 THE COURT: Well, let me ask this question: If I
11 understand, a jury has -- at this stage of the trial,
12 the jury has returned a verdict of guilty. We are now
13 in the sentencing phase. The jury has been excused. I
14 don't know, the judge may let them stay for sentencing,
15 but the jury's role in the case has been exhausted, and
16 their duties are ended.

17 The Solicitor makes this comment, which I don't
18 think it's reasonable to take the position that
19 Mr. Mathews should have known the Solicitor would do
20 this. As a matter of fact, I think as defense
21 attorneys, we have the right to believe that the State
22 is going to do the right thing.

23 But, in any case, so she says what she says. What
24 is the remedy other than the judge is going to say,
25 "Well, I'm not going to consider any juvenile sentence,

ARGUMENT OF COUNSEL

1 that is inappropriate."

2 So I don't know what the remedy would be that we
3 talked about ringing a bell. That is something
4 usually, you know, for a jury's situation, and there is
5 a remedy there. There's a mistrial.

6 I don't know what remedy you would suggest if a
7 Solicitor says to a judge, "As a juvenile, he was
8 convicted of this."

9 My response would be, "Ma'am, I'm not going to
10 consider any juvenile record. That would be
11 inappropriate."

12 I don't know -- I mean, Judge Buckner -- I'm with
13 you, I agree. I don't think we can speculate as to
14 that.

15 But, again, the standard here is, was
16 Mr. Matthews's representation below the standard, and
17 does it, I don't know if -- I don't know that you are
18 suggesting this, but I don't -- if the suggestion is
19 that he should have been aware that his client had a
20 juvenile record, and before they got to sentencing make
21 a motion to limit the State's presentation to eliminate
22 reference to that, that would -- in my opinion, that
23 would have been above and beyond the standard.

24 Now, there may be defense lawyers that do that
25 routinely. Sometimes they do that because they know

ARGUMENT OF COUNSEL

1 they work in a circuit where the Solicitors do tend to
2 be -- play at the edge of the rules and be crafty. But
3 that is certainly not the standard.

4 And I think that --

5 MR. FALK: I was really more suggesting -- I
6 wasn't necessarily suggesting he should have done that,
7 I was suggesting the reason why he would do it. The
8 same reason you don't want the jury to hear it is the
9 same reason you don't want Judge Buckner to hear it. I
10 was just trying to draw a parallel.

11 THE COURT: Yes. Okay. Yeah.

12 MR. NEELY: I would note that a motion in limine
13 would, in fact, make Judge Buckner hear.

14 THE COURT: Would draw attention to it.

15 MR. NEELY: Yeah.

16 MR. FALK: As I said, I was just trying to
17 highlight the point that if you were concerned about a
18 jury hearing something, you would do it.

19 THE COURT: Yeah. My only thing, and I agree with
20 what you are saying, that -- and I never thought about
21 it until you just raised it, but I don't know what the
22 remedy is. I mean, you don't have another judge come
23 in and impose sentence. You don't declare a mistrial
24 at this point, because the case is over.

25 MR. FALK: That's where we are.

DECISION BY THE COURT

1 THE COURT: All right. Here is the thing. A
2 couple of things I want to address. The Batson motion,
3 now I tend to go the opposite direction, and I applaud
4 Mr. Mathews for not standing by a frivolous motion,
5 which obviously became a frivolous motion. But, I
6 mean, I know what you are saying, well, but at least
7 she preserved that and let another Court decide it.

8 But when the reasons were given, these were
9 reasons where these folks were related to witnesses and
10 possibly indirectly to the Defendant. There were no
11 other jurors in the jury pool, the jury selection there
12 that were in the same position. So it's not like, you
13 know, I strike this person because they are a school
14 teacher and school teachers tend to -- with all the
15 problems they deal with, they tend to do this, and then
16 there's -- in that case, it's an African-American
17 school teacher, but the white school teacher gets
18 placed on the jury. We don't have that here.

19 We have a situation where the State gave a
20 racially neutral response, and there were no other
21 jurors seated that were in that like situation. And so
22 it became, I think, apparent, to Mr. Mathews that the
23 State had racially reasons for their strikes and,
24 therefore, he abandoned that motion. I think that's
25 admirable.

DECISION BY THE COURT

1 Because I don't think there's any question, and I
2 think as lawyers, we have an ethical obligation not to
3 pursue frivolous objections and frivolous actions. So
4 I think he operated well at and above the standard.

5 The issue with regards to the indictment and the
6 quashing the indictment, moving for a continuance, and
7 Mr. Mathews was correct in his testimony with regards
8 to, you know, sometimes time -- a little bit more time
9 can be beneficial. But he did mention this, which --
10 and I will -- I have found as a defense lawyer, too,
11 that more time can actually be harmful. And it just
12 depends.

13 It wasn't the case in this case because the
14 defense wasn't wanting to be putting up any defense, or
15 any witnesses. But, you know, witnesses can die,
16 defense witnesses. People who could be beneficial to
17 the defense can move away. For the attorney
18 themselves, it may be a time they prepared to try the
19 case, and Mr. Mathews did testify he had all the
20 substantial matters covered and was prepared to go
21 forward. Those aren't going to change.

22 And possibly if the case gets continued, it may
23 come back up on the roster at the time that is
24 tremendously inconvenient for him, based on either his
25 help or his work schedule. And I guess what I'm saying

DECISION BY THE COURT

1 is that cord -- that sword cuts both ways. And so,
2 simply, that he could have gotten more time or possibly
3 could have gotten more time. And, again, that's
4 speculative, and just as you say, we can't speculate as
5 to what Judge Buckner would have done. I agree with
6 that. You can't.

7 So there's no evidence for this Court to consider
8 that he would have gotten more time. Maybe; maybe not.

9 I just -- and I'm looking. So that dealt with the
10 quashing of the indictment, with the general charge of
11 that. I don't think there's anything he could have
12 done possibly to the handling of -- anticipate that was
13 coming, or for that matter, I think he's handling the
14 Batson motion appropriate.

15 I don't think there's anything in the record that
16 would show that Mr. Mathews, that his representation
17 was below the standard.

18 As a matter of fact, I think it was at and above
19 the standard in many areas. I'm going to respectfully
20 deny the application.

21 MR. NEELY: Thank you, Your Honor.

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DECISION BY THE COURT

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STATE OF SOUTH CAROLINA:

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COUNTY OF BEAUFORT:

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I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

6

DATED this 24th day of April, 2018.

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Mona L. Manley /s/

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MONA L. MANLEY

Official South Carolina Court Reporter

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Circuit Reporter for the 14th Circuit

(850) 893-6662

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mmanley@sccourts.org

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STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Quashon Middleton, #347130,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-15-0311

ORDER OF DISMISSAL

2018 JAN 10 AM 8:32
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

The above-captioned matter is before the court pursuant to a post-conviction relief (PCR) application filed February 18, 2015. This Court convened an evidentiary hearing into this matter on October 10, 2017, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Applicant.

Applicant's trial counsel, David Mathews, Esquire, (Counsel) and Applicant were present and testified. This Court also had the opportunity to listen to their testimony and rule on their credibility. This Court had before it a copy of the trial transcript, the records of the Colleton County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter.

I. PROCEDURAL HISTORY

In October 2010, the Colleton County Grand Jury indicted Applicant for two counts of attempted murder (2010-GS-15-0960; -0962) and one count of possession of a weapon during the commission of a violent crime (2010-GS-15-0961). Assistant Solicitor Amanda Haselden, Esquire, (the solicitor) of the Fourteenth Circuit Solicitor's Office, prosecuted the case. On July 25-27, 2011, Applicant proceeded to trial before the Honorable Perry M. Buckner, III. The jury

found Applicant guilty as indicted. Judge Buckner sentenced Applicant to imprisonment for concurrent terms of thirty years for each count of attempted murder and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense perfected the appeal. On July 25, 2012, the South Carolina Supreme Court issued an order stating that pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, the appeal is certified for review by the Supreme Court. On February 25, 2014, the South Carolina Supreme Court affirmed Applicant's convictions and sentences. State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014). On March 13, 2014, Applicant filed a Petition for Rehearing. On April 2, 2014, the Supreme Court issued an order denying the petition. The Remittitur was also returned to the lower court on April 2, 2014. On July 1, 2014, Applicant filed a Petition for Writ of Certiorari to the United States Supreme Court. On October 6, 2014, the United States Supreme Court denied the petition.

II. ALLEGATIONS

Applicant alleged the following grounds in his application:

1. Subject Matter Jurisdiction Was Lost
 - a. Grand Jury indicted Applicant under wrong statute.
2. Ineffective Assistance of Trial Counsel
 - a. Trial Counsel failed to object and quash indictments.
 - b. Trial Counsel was ineffective for failing to object the solicitor's mention of juvenile charges during sentencing.
 - c. Trial Counsel was ineffective for not objecting to a statement obtained from a person in juvenile custody without parent/counsel.
 - d. Failure to challenge for cause Prosecution's use of peremptory strikes.
3. Ineffective Assistance of Appellate Counsel
 - a. Appellate Counsel failed to brief invalidity of indictment.
4. Trial Judge Abuse of Discretion
 - a. Trial judge failed to direct a verdict of intent to kill.
 - b. Trial judge failed to instruct jury of lesser offense.

At the beginning of the hearing, the State made a motion to dismiss several of Applicant's allegations on the basis they were not appropriate for PCR and could be dismissed without testimony. This Court granted the State's motion to dismiss for failing to state a claim on which relief could be granted on the following allegations:

4. Ineffective Assistance of Appellate Counsel
 - a. Appellate Counsel failed to brief invalidity of indictment.
5. Trial Judge Abuse of Discretion
 - a. Trial judge failed to direct a verdict of intent to kill.
 - b. Trial judge failed to instruct jury of lesser offense.

The validity of an indictment may only be attacked before the jury is sworn. S.C. Code Ann. § 17-19-90 (2003). Applicant did not raise this claim before the jury was sworn, so it was not preserved for appellate review. Therefore, Appellate Counsel was not ineffective for failing to brief the issue.

Allegations that can be raised on direct appeal are not proper for PCR. Applicant alleges the trial court's rulings were in error. This is an issue for direct appeal. "[P]ost-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal. Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel." Drayton v. Evatt, 312 S.C. 4, 8-9, 430 S.E.2d 517, 520 (1993) (cites omitted). Accordingly, these allegations are dismissed as a matter of law.

III. SUMMARY OF FACTS

Around three o'clock in the afternoon of September 28, 2010, Stephanie Mack was driving down Brittlebank Road in Colleton County with Ryan Stephens as her passenger. R. 43 lines 13-23; R. 61 lines 11-20. They came to a stop as a school bus in the on-coming lane stopped to drop off a child. R. 44 lines 2-4; R. 62 lines 10-12. Applicant, riding on a moped,

drove up behind Mack and Stephens and brandished a gun. R. 44 lines 7-22; R. 62 lines 12-14. Applicant then began shooting into Mack's car. R. 44 lines 4-9; R. 62 lines 16-17. Stephens jumped into the driver seat with Mack. R. 47 lines 9-15; R. 55 line 23 - R. 56 line 10; R. 62 lines 19-20; R. 70 lines 20-21; R. 76 lines 12-14. While Applicant continued to shoot, Stephens sped off hitting Applicant's leg. R. 47 lines 16-22; R. 62 lines 22-24. Mack and Stephens then drove to Stephens' home. R. 48 lines 11-12; R. 64 lines 2-4.

The paramedic who arrived at the scene reported Applicant stated he had been run over and the people in the car had been shooting at him. R. 38 lines 2-6. Applicant was in significant pain according to the paramedic. R. 34 lines 6-10. He had a deformity to his right leg indicating a possible fracture. R. 36 lines 22 - R. 37 line 1. Applicant was transported to the emergency room. R. 38 lines 19-21; R. 41 lines 3-4.

When law enforcement arrived at Stephens' home, Mack and Stephens provided statements explaining what happened. R. 49 lines 7-9; R. 63 lines 22-24. Mack testified neither she nor anyone in her car shot at Applicant. R. 50 lines 5-6. Stephens testified he did not have a gun in the car and did not shoot at Applicant. R. 77 lines 16-19.

IV. SUMMARY OF TESTIMONY AT PCR HEARING

Applicant testified he and Counsel spoke about five times and he never received his discovery. He stated Counsel never discussed potential defenses or strategies and Counsel's investigator never spoke with him. He stated his defense was he wasn't near the driver side and he couldn't have attempted to murder someone because he wasn't by the passenger's side. Applicant stated he never told Counsel about his juvenile record. Applicant testified Counsel never interviewed witnesses Applicant told him about.

Counsel testified he withdrew his Batson¹ motion because the State's reasons for striking the jurors were valid. Counsel testified he wasn't sure if he examined the indictment prior to trial. Counsel testified he was ready to go to trial and any motion to quash, if granted, would have only delayed the trial date. Counsel testified he would have asked for a continuance if he felt unprepared. Counsel testified he called the potential witnesses and spoke with them. Counsel testified the Solicitor didn't ask the judge to consider the juvenile record and so there was no basis on which to object.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds Counsel's testimony was credible and Applicant's testimony lacked credibility. This Court finds Applicant has failed to satisfy his burden to prove Counsel's actions were deficient. Applicant also failed to prove he was prejudiced by Counsel's alleged deficiencies. This Court finds Counsel properly prepared for Applicant's trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant and preparing for trial. This Court finds Counsel rendered adequate assistance and exercised professional judgment in his decisions at trial. This Court dismisses Applicant's application for the reasons set forth below:

A. Subject Matter Jurisdiction

Applicant has claimed the trial court lacked subject matter jurisdiction due to defects in his indictment. This Court finds this allegation is meritless. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). Subject matter jurisdiction is the power of a

¹ Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986).

court to hear a particular class of cases, and it has nothing to do with the indictment document.

See Gentry.

In post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90. An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. However, "circuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Applicant failed to present evidence his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge indicted by the Colleton County Grand Jury for General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

Accordingly, Applicant has failed to prove the circuit court did not have subject matter jurisdiction due to a defect in the indictment and, therefore, this Court dismisses this allegation.

B. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). "When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making

all significant decisions in the case.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). An applicant must overcome this presumption to receive relief. State v. Cherry, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second guess counsel’s assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689. “[E]very effort be made to eliminate the distorting effects of hindsight” and to evaluate counsel’s decisions at the time they were made.” Id. Accordingly, courts must be wary of second-guessing counsel’s tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id.

1. Trial Counsel failed to object and quash indictments.

Applicant alleges Counsel was ineffective for failing to challenge the indictments 2010-GS-15-0962 and 2010-GS-15-0960, each for attempted murder, because the statute in the body of the indictments was incorrect. This scrivener’s error was discovered and amended during the trial. Tr. 302. This Court finds the statute on the front of the indictments was correct as were the charge and statutory language contained in the indictments. Tr. 302. “The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, *i.e.*, to

apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted.” Edwards v. State, 372 S.C. 493, 496, 642 S.E.2d 738, 739 (2007). The indictment properly provided Counsel and Applicant notice of the charges on which the State was attempting to convict Applicant. Tr. 302-303. Counsel testified he had prepared for trial on the correct charges, reflected on the front of the indictment, and did not need any more time to prepare. This was further reflected by Counsel’s arguments during trial, which showed he understood the charges to be attempted murder and not assault and battery of a high and aggravated nature. Tr. 300; 302. Accordingly, this Court finds the indictment properly served its function and Applicant was not prejudiced by the scrivener’s error. This Court also finds any motion to quash would have been denied and the indictment amended to properly reflect the statute.

Accordingly, this Court finds Counsel’s failure to quash was not deficient. This Court also finds Applicant failed to prove he was prejudiced by the scrivener’s error in the indictment under Strickland. Accordingly, this Court denies and dismisses this allegation.

2. Counsel was ineffective for failing to object to the solicitor’s mention of juvenile charges during sentencing.

At sentencing, the solicitor told the trial judge Applicant’s prior charges were juvenile charges and, therefore, not predicate charges. Tr. 375. The trial judge noted the juvenile charges did not apply. Tr. 378. Applicant failed to prove he was prejudiced by his juvenile record being mentioned to the trial judge. The trial judge specifically noted the charges did not apply. Tr. 378. Further, the solicitor did not try to persuade the judge to consider the charges against Applicant. This Court finds any objection by Counsel to the solicitor’s comment would have been overruled. The charges were not used by the solicitor’s office against Applicant and the judge did

not consider them. Therefore, Counsel was not deficient nor was Applicant prejudiced by the solicitor's mention of his juvenile record.

Further, Applicant has failed to prove the trial judge considered his juvenile record in his sentence. Applicant's allegation is based purely on speculation. Therefore, Applicant failed to prove he was prejudiced by the solicitor's mention of his juvenile record.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for failing to object to the solicitor's mention of Applicant's juvenile record. This Court also finds Applicant failed to prove he was prejudiced by the mention of his juvenile record under Strickland. Accordingly, this Court denies and dismisses this allegation.

3. Trial Counsel was ineffective for not objecting to a statement obtained from a person in juvenile custody without parent/counsel.

This Court finds there was neither evidence nor argument presented by Applicant to support this allegation. Therefore, this Court finds Applicant abandoned this claim. Accordingly, this Court denies and dismisses this allegation.

4. Failure to challenge for cause Prosecution's use of peremptory strikes.

Applicant asserts Counsel should not have withdrawn his Batson motion to preserve the objection for the record. Counsel initiated a Batson motion after the selection of the jury. Tr. 41. The State provided race-neutral reasons for each of the peremptory strikes. Tr. 45-47. For Juror 176, the State asserted their reason was he had been arrested five times and his nephew had a pending CSC charge with the 14th Circuit Solicitor's Office. Tr. 45. For Juror 4, the State asserted he lived a block from the incident location and was a close friend to one of the witnesses. Tr. 47. At the conclusion of the State's explanations, Counsel withdrew the Batson motion. Tr. 48. This Court finds Counsel's withdrawal was not only reasonable, but expected of an officer of the court. As required by Batson, the State provided valid non-racial reasons for

each strike. "Under our Batson jurisprudence, once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step one), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial discrimination." Purkett v. Elem, 514 U.S. 765, 767 (1995). After the State provided sufficient reasons for each strike, there was no basis for continuing the Batson motion. Therefore, Counsel was not deficient for withdrawing the Batson motion. Nor was Applicant prejudiced by the withdrawal where it certainly would have been denied at trial and upheld by any appellate court.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for withdrawing the Batson motion. This Court also finds Applicant failed to prove the withdrawal of the Batson motion prejudiced him under Strickland. Accordingly, this Court denies and dismisses this allegation.

VI. CONCLUSION

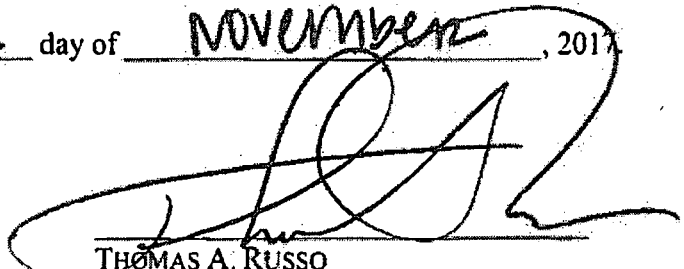
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty 30 days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7th day of NOVEMBER, 2017.


 THOMAS A. RUSSO
 Presiding Judge
 14th Judicial Circuit

Florence, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

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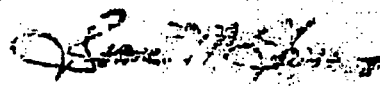
INDICTMENT
2010-GS-15-0960

At a Court of General Sessions, convened on October 28, 2010, the Grand Jurors of Colleton County present upon their oath:

Attempted Murder

That in Colleton County, South Carolina, on or about September 28, 2010, the Defendant, with malice aforethought and the intent to kill, did commit an unlawful act of a violent nature upon the victim, Ryan R. Stephens, to wit: the Defendant did attempt to kill the victim by shooting at the victim; all in violation of the Common Law of South Carolina and Section 16-03-620 of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Isaac M. Stone, III, Solicitor

DOCKET NO. 2010-GS-15-0980

The State of South Carolina
County of Colleton

COURT OF GENERAL SESSIONS

October Term 2010

THE STATE

vs.

Quashon G. Middleton

Indictment for
Attempted Murder

SC Code: 16-03-0029
CDR Code:3410

WITNESSES

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STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

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INDICTMENT

2010-GS-15-0961

At a Court of General Sessions, convened on October 28, 2010, the Grand Jurors of Colleton County present upon their oath:

Weapons / Poss. weapon during violent crime, if not also sentenced to Life
without parole or death

That in Colleton County, South Carolina, on or about September 28, 2010, the Defendant, Quashon G. Middleton, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of Attempted 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.



Isaac M. Stone, III, Solicitor

DOCKET NO. 2010-GS-15-0961

The State of South Carolina
County of Colleton

COURT OF GENERAL SESSIONS

October Term 2010

THE STATE

vs.

Quashon G. Middleton

Indictment for

**Weapons / Poss. weapon during violent crime,
 If not also sentenced to life without parole or
 death**

SC Code: 16-23-0490
 CDR Code: 0549

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STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

TRUE BILL

INDICTMENT
2010-GS-15-0962

At a Court of General Sessions, convened on October 28, 2010, the Grand Jurors of Colleton County present upon their oath:

Attempted Murder

That in Colleton County, South Carolina, on or about September 28, 2010, the Defendant, with malice aforethought and the intent to kill, did commit an unlawful act of a violent nature upon the victim, Stephanie Mack, to wit: the Defendant did attempt to kill the victim by shooting at the victim; all in violation of the Common Law of South Carolina and Section 16-03-620 of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Isaac M. Stone, III, Solicitor

WITNESSES

Inabinett, CCSO

DOCKET NO. 2010-GS-15-0962

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

October Term 2010

IR WARRANT NUMBER

3469

October 3, 2010

TION OF GRAND JURY

TRUE BILL

Morgan G. Williams

representative of Grand Jury

date: 12/28/2010

DICT

GUILTY

Don Beach

representative of Petit Jury

date: 7/27/11

DICT

THE STATE

vs.

Quashon G. Middleton

Indictment for

Attempted Murder

SC Code: 16-03-0029

CDR Code:3410