

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TREMAIN O. DAVIS,

APPELLANT

Appellate Case No. 2011-205209

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2) COURT OF GENERAL SESSIONS
3 COUNTY OF GREENVILLE) 2010-GS-23-9191, 92, 93
4)
5 State of South Carolina) TRANSCRIPT OF RECORD
6)
7 vs)
8)
9 Tremain Davis)
10)
11 -----)

12 November 7, 2010
13 Greenville, South Carolina

14 B E F O R E:

15 THE HONORABLE EDWARD WELMAKER, Judge

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

17 LUCAS MARCHANT, Esquire
18 Assistant Solicitor
19 Attorney for the State

20 ALEX STALVEY, Esquire
21 Assistant Public Defender
22 Attorney for the Defendant

23 Caroline Hiskell
24 Circuit Court Reporter
25

I N D E X

Jackson vs. Denno Hearing

WITNESSES

DR

Roger Frady	101
LeKeisha Young	125
Robbie Slicer	136
Renee Beaufort	139

EXHIBITS

(All Exhibits marked prior to trial).

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P R O C E E D I N G S

(Whereupon, there was an off-the-record discussion.)

THE COURT: For the record, Mr. Stalvey raised the issue of Juror No. 110, Mr. Poole, who did not state in the jury qualifications that he had a prior record because the qualifying question was had it been pardoned and he claimed in a private meeting with the attorneys present that he had received a pardon a couple of years ago, which would make him eligible to be a juror.

He was instructed during the break to talk to his attorney or have his attorney call the court. He told Ms. Olsen that his attorney was Robbie Childs. She tried to call his office to verify it. Mr. Childs father passed away. They're at the funeral now so we're unable to verify that today.

Does the State have a position on whether or not this juror should be qualified?

MR. MARCHANT: We do, Your Honor. In addition, it wasn't brought to the Court's attention that it appears additionally that Mr. Poole has a conviction from North Carolina in 1990 for theft of government property. The disposition shows five years. I don't know if that was an active sentence or suspended on probation but the NCIC appears to show a conviction for theft of

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1 government property with some sort of five-year
2 conviction.

3 So since we are unable to determine at this
4 point in time whether or not the South Carolina conviction
5 for grand larceny has been pardoned, I believe there may
6 be an additional issue with this North Carolina
7 conviction.

8 So I think the easiest thing to do is if
9 Mr. Poole is in the potential panel this morning we remove
10 him for the panel or that he is struck for cause as
11 opposed a strike by Mr. Stalvey or myself.

12 THE COURT: I didn't obviously ask him about
13 that. It wasn't brought to my attention.

14 Mr. Stalvey, do you agree with that?

15 MR. STALVEY: Yes, sir, Your Honor.

16 THE COURT: Rather than redoing the list, if
17 he does appear, I'll just instruct Ms. Troop to skip his
18 name when his name would be called.

19 Any other matters we need to take care of
20 before the jury comes up?

21 MR. STALVEY: Beg the Court's indulgence, I
22 need to ask a question.

23 Judge, one thing that the State and I agree
24 on is that Juror No. 155, Phyllis Gregory, she as an
25 arrest -- conviction for possession of crack or meth. I

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1 don't think she disclosed that during the jury
2 qualifications, but nonetheless, we ask that she be struck
3 for cause based on that but also the fact that I was the
4 solicitor that prosecuted her case.

5 THE COURT: The State in agreement?

6 MR. MARCHANT: Yes, Your Honor.

7 THE COURT: Juror 155 will not be called.

8 MR. STALVEY: Judge, on your witness list,
9 the name that I wrote in, I wrote Master Deputy Jim Cooper
10 but it's Master Deputy James Cooper.

11 THE COURT: He doesn't go by Jim. It would be
12 James. Okay.

13 Anything else we need to take care of before
14 we call the jury up?

15 MS. BENTLEY: Nothing from the State.

16 MR. STALVEY: Nothing from the defense.

17 THE COURT: Again, for the record, the
18 parties approached me before we went on the record that
19 there has been a signed stipulation of agreement as to a
20 chain of custody on certain evidence. At that time when
21 the evidence is first being introduced, the parties agreed
22 that I will read an abbreviated version of what the
23 stipulation reads to the jury. The actual stipulation
24 agreement will be marked as a Court's Exhibit for the
25 record and it will not go back with the jury as a State's

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1 Exhibit. Is that correct, ladies and gentlemen?

2 MS. BENTLEY: Yes, sir, Your Honor.

3 MR. STALVEY: Yes, sir, Your Honor.

4 (Stipulation marked as Court's Exhibit No. 1
5 for identification.)

6 MR. MARCHANT: Your Honor, just a side
7 matter, I don't know if the media is going to show up or
8 not. I know they made a request. I would just request,
9 not a major objection but we just got a significant amount
10 of information and we both will probably travel back and
11 forth back here.

12 THE COURT: Put them behind the rail in the
13 corner. If they do come that's where -- Mr. Thompson, you
14 be back with them.

15 (Whereupon, jury panel enters the courtroom.)

16 Ladies and gentlemen, thank you for your
17 patience. We are now ready to select a jury for the trial
18 of the first case. You've been qualified to serve as a
19 juror this week. I need to ask you some additional
20 questions to determine your eligibility to serve on the
21 particular case.

22 I've been presented with certain indictments
23 brought by the State of South Carolina against Mr. Tremain
24 Orlando Davis. This indictment says that Mr. Davis, here
25 in Greenville County, on or about April 27, 2010 was armed

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1 with a deadly weapon and while alleging either by actions
2 or words that he was armed with such representation of a
3 deadly weapon, committed a robbery by taking by means of
4 force or intimidation goods or monies that being funds, US
5 currency, from the person or presence of Keisha Young, an
6 employee of Dollar General Store. This constituting the
7 offense of armed robbery in violation of the law of South
8 Carolina.

9 I also have an indictment that says on or
10 about the say date of April 27, 2010, that Mr. Davis
11 unlawfully and with malice aforethought did kill Joshua
12 Bryant by means of shooting him and that Mr. Bryant died
13 as an approximate result thereof. Again, this is in
14 violation of the law of South Carolina constituting the
15 criminal offense of murder.

16 I also have an indictment that says on or
17 about the same date of April 27, 2010 that Mr. Davis did
18 possess or visible display a handgun during the commission
19 or attempted commission of a violent crime, that being the
20 murder and or the armed robbery.

21 All these events taking place on the day date
22 at the same location, that being at or near the Dollar
23 General Store off of Augusta Road near I85.

24 Mr. Davis has entered a plea of not guilty,
25 ladies and gentlemen to each of these charges. By

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1 entering a plea of not guilty, the burden is placed on the
2 State of South Carolina to prove his guilt beyond a
3 reasonable doubt. Every person charged with committing
4 any criminal offense is presumed innocent until the State
5 has met his burden of proof beyond a reasonable doubt.

6 I've been assigned to be the judge of the law
7 of this case. We need to find 12 fair and impartial
8 jurors to be judges of the facts in the case.

9 First of all I need to ask you, ladies and
10 gentlemen, is there any member of the panel who has prior
11 knowledge about this particular incident, either that you
12 happened at the scene, you live in the neighborhood, you
13 read something in the newspaper, heard something on
14 television or the radio.

15 If you have any prior knowledge from whatever
16 source, would you please stand at this time.

17 All right, we have five jurors standing. Let
18 me just start with you, ma'am. What is the source of your
19 knowledge about this, is it from television or radio?
20 Just tell me the source.

21 JUROR JONES: I actually live in the
22 neighborhood right now.

23 THE COURT: So you live there now?

24 JUROR JONES: Yes.

25 THE COURT: And did you live there then?

State of South Carolina versus Tremain Davis

1 JUROR JONES: Yes, sir.

2 THE COURT: So you have some information
3 about it.

4 JUROR JONES: I actually heard about it.

5 THE COURT: From neighbors and others?

6 JUROR JONES: Yes, sir.

7 THE COURT: Would that knowledge that you
8 have from our sources, would that interfere with your
9 ability to be a fair JUROR JONES in this case? In other
10 words, if you were selected and you sit in the jury box,
11 could you make a decision about the facts of this case
12 from the evidence that's presented? There will be
13 testimony and I'll give you the law. I don't want to put
14 you in an uncomfortable position by living in the
15 neighborhood, but I need to know and certainly the parties
16 need to know could you be a fair JUROR JONES and set that
17 information aside?

18 JUROR JONES: I can.

19 THE COURT: You can be fair to the State of
20 South Carolina and Mr. Davis in this case and your
21 decision would be made just on what takes place in this
22 courtroom and not any other knowledge that you heard
23 about?

24 JUROR JONES: Yes, sir.

25 THE COURT: Thank you, ma'am. And your name,

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1 please.

2 JUROR JONES: Cynthia Jones.

3 THE COURT: Let me go to you, sir, what's the
4 source of your information?

5 JUROR BANKS: Newspaper and tv.

6 THE COURT: Other than that, do you have any
7 other knowledge about it other than what you heard on the
8 radio, television or read in the newspaper?

9 JUROR BANKS: No.

10 THE COURT: Would that information that you
11 read or heard interfere with your ability to be a fair
12 juror?

13 JUROR BANKS: No, sir.

14 THE COURT: You could set that aside whatever
15 you may have read that may have been accurate or may not
16 have been accurate or whatever you heard, you could make a
17 decision if you're selected on what takes place in this
18 courtroom and that alone?

19 JUROR BANKS: Yes, sir.

20 THE COURT: Your name, please, sir.

21 JUROR BANKS: John Banks.

22 THE COURT: You may be seated. Yes, ma'am,
23 and your name please.

24 JUROR LINDSEY: Kellie Lindsey.

25 THE COURT: And what's the source of your

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1 information?

2 JUROR LINDSEY: The news.

3 THE COURT: And would you be able to set that
4 aside or have you read the news so much that you believe
5 that that would interfere with your ability to be a fair
6 juror?

7 JUROR LINDSEY: I can be a fair juror.

8 THE COURT: To both sides, the State and the
9 defense?

10 JUROR LINDSEY: Yes.

11 THE COURT: Thank you, ma'am, you may be
12 seated.

13 Yes, ma'am, what is the source of your
14 information?

15 JUROR MCNAMARA: From the news.

16 THE COURT: All right. I'll ask you the same
17 question I've asked these other jurors. I don't want to
18 put you in an awkward position. If you have information
19 you believe you just can't set aside and that would
20 interfere with your ability, of course, you need to be
21 excused from this trial.

22 JUROR MCNAMARA: It won't interfere.

23 THE COURT: You could be fair to the State
24 and Mr. Davis.

25 JUROR MCNAMARA: Yes, sir.

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1 THE COURT: Thank you, ma'am. Your name,
2 please.

3 JUROR MCNAMARA: Helen McNamara.

4 THE COURT: Thank you, ma'am, you may be
5 seated.

6 Your name, ma'am.

7 JUROR CARTER: Janet Carter.

8 THE COURT: What is the source of your
9 information?

10 JUROR CARTER: The news and living up from
11 that area.

12 THE COURT: The fact that you've read the
13 news and that you live in the general area and not in the
14 immediate area as the other juror, could you set all of
15 that information aside and make a decision on what you
16 hear on this courtroom from the witness stand, the
17 evidence, the law and that alone?

18 JUROR CARTER: Yes, sir.

19 THE COURT: Thank you, you may be seated.

20 Is there any member of the jury panel related
21 by blood or marriage to Mr. Tremain Davis? If so, would
22 you please stand.

23 (No response).

24 Is there any member of the jury panel who has
25 a close business, personal or social relationship with

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1 Mr. Davis? If so, please stand. Thank you. There is no
2 response.

3 Ladies and gentlemen, several witnesses may
4 be called upon to testify in this case. I'm going to read
5 to you the names of those witnesses and after that I'll
6 need to ask you some questions. Among the witnesses who
7 may be called upon to testify would be Lakeisha Young,
8 Robbie Spicer, Anthony Dunlap, Dewayne Gregory, Ryan
9 Bennett, Lovel Carruthers, Derek Duncan, Avery Thomas,
10 Donna Mulkey, Laura Campbell, DeeDee Dunlap, Artesia
11 Millsap, Aaron Taylor, Lola Millsap.

12 And from law enforcement from the Greenville
13 County Sheriff's Department potential witnesses would be
14 Investigator Chris Hammett, Master Deputy James Cooper,
15 Antonio Bailey, Roger Frady, Renee Beauford, Robert
16 Parrish, Tom McConnell, David Weiner, Wayne Campbell, Mike
17 Rainey, Eric Whaley, Mike Peterson, Dar Shaw.

18 From SLED potential witnesses would be
19 Jasper Humbert, John GD Roberts. From Greenville County
20 Department of Public Safety potential witnesses would be
21 Chris Gary, Kara Bennick, also the Chief Medical Examiner
22 Dr. James Fulcher from Greenville County.

23 Is there any member of the jury panel related
24 by blood or marriage to any of these potential witnesses?
25 If so, would you please stand.

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1 (No response).

2 Is there any member of the panel who has a
3 close business, social or personal relationship with any
4 of these potential witnesses, if so, would you please
5 stand. Thank you. There's no response.

6 Is there any member of the jury panel who is
7 expressed or formed an opinion in any way about the facts
8 in this case, if so, would you please stand.

9 (No response).

10 Is there a member of the jury panel who is
11 aware of any bias or prejudice that would interfere with
12 your ability to be a fair juror if selected in this case?
13 If so, would you please stand.

14 (No response).

15 Is there any member of the jury panel who is
16 a contributing member of any organization whose primary
17 concern is that of promotion of law enforcement or
18 victim's rights such as MAD or SAD or the Sheriff's
19 Association? If you are a contributing member of any of
20 those organizations, would you please stand.

21 Thank you. There is no response.

22 Is there any member of the jury panel or a
23 member of your immediate family that has ever been the
24 victim of a violent crime? If so, would you please stand.

25 (No response).

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1 Is there any member of the panel who has ever
2 been the victim of a crime that involved a weapon, if so,
3 would you please stand.

4 Your name please.

5 JUROR VANDERHOFF: My name is Kathy
6 Vanderhoff.

7 THE COURT: How long ago was this crime?

8 JUROR VANDERHOFF: It was quite a while ago.
9 It was back in 1972, '73. I worked at a convenience store
10 and we were held up at gun point.

11 THE COURT: That being some nearly 40 years
12 ago, would that event that happened in your life affect
13 your ability to be a fair juror now if you hear testimony
14 concerning such as similar event?

15 JUROR VANDERHOFF: I don't think it would.

16 THE COURT: Would you have any hesitancy at
17 all? I want to make sure you can be fair to both. We can
18 select other jurors. Do you believe in your heart of
19 hearts you could be fair to the State and Mr. Davis in
20 this case?

21 JUROR VANDERHOFF: I do.

22 THE COURT: And whatever happened to you some
23 40 years ago can be set aside.

24 JUROR VANDERHOFF: Yes.

25 THE COURT: Thank you, ma'am.

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1 Is there any member of the jury panel or a
2 member of your immediate family involved in law
3 enforcement in any way? If you or your immediate family
4 works in law enforcement, you yourself or immediate family
5 member, would you please stand.

6 Your name, please.

7 JUROR ROGERS: Tracy Rogers.

8 THE COURT: And what relative do you have?

9 JUROR ROGERS: My daughter and my son were
10 police officers.

11 THE COURT: Where?

12 JUROR ROGERS: My daughter was until April of
13 this last year. She was in Greer City.

14 THE COURT: And your son.

15 JUROR ROGERS: Duncan.

16 THE COURT: Okay. In Duncon. If you would
17 remain standing for just a moment.

18 Your name, please, sir.

19 JUROR LABASH: Jonathan LaBash.

20 THE COURT: And what relative do you have?

21 JUROR LABASH: My brother-in-law.

22 THE COURT: What agency?

23 JUROR LABASH: Charleston.

24 THE COURT: City or county?

25 JUROR LABASH: I'm not sure.

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1 THE COURT: Ma'am, state your name please.

2 DEBORAH: Deborah***

3 THE COURT: And what relative do you have
4 you?

5 JUROR: My father, he's a police officer and
6 my brother Charleston.

7 THE COURT: Yes, sir, in the back. Could I
8 get your name, please.

9 JUROR ANDERSON: Mike Anderson and I did have
10 a nephew who did work for Inman Police and some time
11 moonlights for Campabello. He's a full-time fire fighter
12 for Spartanburg.

13 THE COURT: Okay. Those of you who are
14 standing who have relatives in, now, law enforcement or
15 prior worked in law enforcement, the fact that you have
16 this relative in law enforcement and you're picked to be a
17 juror, obviously law enforcement people are going to
18 testify, would that relationship effect your ability to be
19 a juror? In other words, if you are selected as a jurors,
20 could you set those relationships aside, make a decision
21 on the evidence and the law and that alone? If for any
22 reason you could not be a fair juror in this case, I'll
23 ask if you would remain standing. If you could be a fair
24 juror, please be seated.

25 Let the reflect that all jurors have been

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1 seated.

2 Is there any member of the jury panel who is
3 morally opposed to the use or possession of firearms? If
4 you have a moral conviction against the use or possession
5 of firearms, would you please stand.

6 Thank you. There is no response.

7 Is there any member of the jury panel that is
8 morally opposed to homosexuality or who considers that a
9 person who is homosexual is inherently evil or morally
10 corrupt based upon that lifestyle choice alone? If you
11 have such a conviction, would you please stand.

12 Thank you. There is no response.

13 At this time I'm going to ask the attorneys
14 if you would, please, stand and introduce yourselves to
15 the jury panel. Mr. Marchant.

16 MR. MARCHANT: If it please the Court, I'm
17 Lucas Marchant and this is my co-counsel, Lisa Bentley, we
18 are prosecutors for Greenville County. Also, seated is
19 our investigator.

20 MR. STALVEY: If it please the Court, my
21 name is Alex Stalvey, I'm a lawyer here in Greenville.
22 This is my client Tremaine Davis. Sitting with my during
23 this trial is Evelyn Mitchell. She's also a lawyer and
24 just passed the bar two weeks ago.

25 THE COURT: Is there any member of the jury

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1 panel related by blood or marriage to either of the
2 attorneys who stood and introduced themselves or the other
3 parities at the tables? If you're related by blood or
4 marriage, would you please stand.

5 (No response).

6 Is there any member of the jury panel who has
7 a close business or a social, a personal relationship with
8 any of these individuals who have been introduced? If so,
9 would you please stand.

10 (No response).

11 Is there a member of the jury panel who has
12 ever been involved in any litigation in which any of these
13 attorneys have represented either you or represented the
14 opposing side? If so, would you please stand.

15 Thank you. There's no response.

16 Ladies and gentlemen, the State of South
17 Carolina, the defendant Mr. Davis, they desire to have
18 fair jurors to hear this case, to make a decision based on
19 the evidence, the law and that alone. That's their
20 desire. They deserve to have fair and impartial jurors to
21 hear this case.

22 Is there a member of the panel who is aware
23 of any reason whatsoever that if you were selected you
24 could not be fair to both the State of South Carolina, to
25 the defendant in this case, render a verdict that speaks

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1 to the law and the evidence and that alone and for any
2 reason whatsoever you believe you could not be a fair
3 juror, would you please stand.

4 Thank you. There is no response.

5 Any other questions from the State?

6 MS. BENTLEY: Nothing from the State.

7 THE COURT: From the defense?

8 MR. STALVEY: No, sir, Your Honor.

9 THE COURT: Let's impanel the jury.

10 THE CLERK: When I call your name, bring your
11 things with you, come forward and stand at this podium and
12 face the door.

13 Juror 112, Glenda Porter.

14 What says the State?

15 MR. MARCHANT: Please excuse the juror from
16 the trial of this case.

17 THE CLERK: Ms. Porter, you may be seated.
18 You have been excused from this case.

19 Juror 63, Todd Griffiths. Is Juror 63
20 present?

21 THE COURT: Todd Griffiths.

22 (No response).

23 Juror 57, Tricia Gambrell.

24 What says the State?

25 MR. MARCHANT: Please present the juror.

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1 THE CLERK: What says the defendant?

2 MR. STALVEY: Please swear the juror.

3 THE CLERK: Ms. Gambrell, would you please
4 have a seat in the jury box.

5 Juror 123, Joseph Shaw.

6 What says the State?

7 MR. MARCHANT: Please present the juror.

8 THE CLERK: What says the defendant?

9 MR. STALVEY: Please swear the jury.

10 THE CLERK: Mr. Shaw, please have a seat in
11 the jury box.

12 Juror No. 8, John Banks.

13 What says the State?

14 MR. MARCHANT: Please swear the juror.

15 THE CLERK: What says the defendant?

16 MR. STALVEY: Please excuse the juror from
17 this case.

18 THE CLERK: Mr. Banks, you may be seated. You
19 have been excused from this case.

20 Juror 11, Jason Bergeron.

21 What says the State?

22 MR. MARCHANT: Please swear this juror.

23 THE CLERK: What says the defendant?

24 MR. STALVEY: Please swear the juror.

25 THE CLERK: Mr. Bergeron, please have a seat.

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1 in the jury box.

2 Juror 135, David Taylor.

3 What says the State?

4 MR. MARCHANT: Please excuse the juror from
5 the trial of this case.

6 THE CLERK: Sir, you may be seated. You have
7 been excused from the trial of this case.

8 Juror 87, Timothy Liley.

9 What says the State?

10 MR. MARCHANT: Please present the juror.

11 THE CLERK: What says the defendant?

12 MR. STALVEY: Please excuse the juror from
13 this case.

14 THE CLERK: Mr. Liley, you have been excused
15 from this case. You may be seated.

16 Juror 100, Helen Mcnamara.

17 What says the State?

18 MR. MARCHANT: Present the juror.

19 THE CLERK: What says the defendant?

20 MR. STALVEY: Please swear the juror.

21 THE CLERK: Ms. Mcnamara, please have a seat
22 in the jury box.

23 Juror 153, Brigitte Bibb.

24 What says the State?

25 MR. MARCHANT: Please present the juror.

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1 THE CLERK: What says the defendant?

2 MR. STALVEY: Please swear the juror.

3 THE CLERK: Ms. Bibb, please have a seat in
4 the jury box.

5 Juror 59, Karen Garrett.

6 What says the State?

7 MR. MARCHANT: Present the juror.

8 THE CLERK: What says the defendant?

9 MR. STALVEY: Please swear the juror.

10 THE CLERK: Ms. Garrett, please have a seat
11 in the jury box.

12 Juror 140, Quoc Tran.

13 What says the State?

14 MR. MARCHANT: Present the juror.

15 THE CLERK: What says the defendant?

16 MR. STALVEY: Please swear the juror.

17 THE CLERK: Please have a seat in the jury
18 box.

19 Juror 36, Laura Correll.

20 What says the State?

21 MR. MARCHANT: Present the juror.

22 THE CLERK: What says the defendant?

23 MR. STALVEY: Please swear the juror.

24 THE CLERK: Please have a seat in the jury
25 box.

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1 Juror 75, Cynthia Jones.

2 What says the State?

3 MR. MARCHANT: Please excuse the juror.

4 THE CLERK: Please have a seat. You have
5 been excused the trial of this case.

6 Juror 138, Kenny Theaker.

7 What says the State?

8 MR. MARCHANT: Present the juror.

9 THE CLERK: What says the defendant?

10 MR. STALVEY: Please excuse this juror.

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

12 You have been excused from the trial of this case.

13 Juror No. 145, Sheryl Vaughn.

14 What says the State?

15 MR. MARCHANT: Present the juror.

16 THE CLERK: What says the defendant?

17 MR. STALVEY: Please swear the juror.

18 THE CLERK: Ma'am, please have a seat in the
19 jury box.

20 Juror 66, Kerry Hartline.

21 What says the State?

22 MR. MARCHANT: Please present the juror.

23 THE CLERK: What says the defendant?

24 MR. STALVEY: Please swear the juror.

25 THE CLERK: Please have a seat in the jury

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1 box.

2 Juror 42, Hugh Davis.

3 What says the State?

4 MR. MARCHANT: Please present the juror.

5 THE CLERK: What says the defendant?

6 MR. STALVEY: Please swear the juror.

7 THE CLERK: Sir, please have a seat in the
8 jury box.

9 Juror 65, Jessica Haney.

10 What says the State?

11 MR. MARCHANT: Present the juror.

12 THE CLERK: What says the defendant?

13 MR. STALVEY: Please excuse the juror from
14 this case.

15 THE CLERK: Ma'am, you may be seated. You
16 have been excused from the trial of this case.

17 Juror 39, Elizabeth Crane.

18 What says the State?

19 MR. MARCHANT: Present the juror.

20 THE CLERK: What says the defendant?

21 MR. STALVEY: Swear the juror.

22 THE CLERK: Ma'am, please have a seat in the
23 jury box.

24 For alternate, Juror 144, Catherine
25 Vanderhoff. What says the State?

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1 MR. MARCHANT: Please present the juror.

2 THE CLERK: What says the defendant?

3 MR. STALVEY: Please excuse the juror from
4 this case.

5 THE CLERK: Ma'am, you may be seated. You
6 have been excused from the trial of this case.

7 Juror 141, William Tucker.

8 What says the State?

9 MR. MARCHANT: Please present the juror.

10 THE CLERK: What says the defendant?

11 MR. STALVEY: Please excuse the juror from
12 this case.

13 THE CLERK: Sir, you may be seated. You have
14 been excused from the trial of this case.

15 Juror 19, Christopher Riff.

16 What says the State?

17 MR. MARCHANT: Present the juror.

18 THE CLERK: What says the defendant?

19 MR. STALVEY: Please swear the juror.

20 THE CLERK: Sir, you may be seated in the
21 jury box.

22 Alternate 2, Juror No. 3, Michael Anderson.

23 What says the State?

24 MR. MARCHANT: Please present the juror.

25 THE CLERK: What says the defendant?

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1 MR. STALVEY: Please swear the juror.

2 THE CLERK: Please be seated in the jury box.

3 THE COURT: Any legal matters we need to take
4 place as far as the selection of the jury in this case
5 from the State?

6 MR. MARCHANT: Nothing from the State.

7 THE COURT: From the defense?

8 MR. STALVEY: No, sir, Your Honor.

9 THE COURT: Ladies and gentlemen who were not
10 selected for the trial of this case I can dismiss you at
11 this time. Please go back down to the assemble room.
12 Ms. Olsen will have further instructions for you there.
13 Thank you for your patience with us. Everyone else please
14 remain seated while the jury departs.

15 (Remainder of the panel exits the courtroom).

16 Ladies and gentlemen, I would just like to
17 take a few preliminary remarks to you and then we'll let
18 you take a lunch break. You've seen the selection process
19 by which you were chosen to serve as a juror in this case.
20 Attorneys have expressed confidence in you that you were
21 the best of this group to decide the facts of this case.

22 You're going to be the judges of the facts.
23 I wear the robe, I'm referred to you as the judge, but
24 you're going to be every bit as much judges as I am
25 because that's your prerogative to determine just what the

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1 facts are and to be the judge of those facts.

2 I'm honored to be working with you in this
3 case. It makes me proud that you've excepted this
4 responsibility and made a commitment to these parties to
5 try this case. I'm well aware of the sacrifice that
6 you're making to be here. You may have some apprehensive
7 about where you find yourself.

8 It's a nice crisp Monday morning and you came
9 for jury service, went through the process of watching the
10 film, being qualified and sitting with several other
11 jurors and now all of a sudden you find yourselves sitting
12 in a jury box perhaps never having done that before. You
13 may never even been in a courtroom or a courthouse and now
14 you're sitting where you are. I crown you with the title
15 of judge and you may have some nervous apprehension about
16 fulfilling that role.

17 I assure you, ladies and gentlemen, you bring
18 into this courtroom every skill you need to be a judge of
19 the facts because into this courtroom, you bring in the
20 everyday experience you enjoy from work, home, social
21 activities and otherwise. You bring in the good common
22 sense for which you've been blessed and that's what you're
23 going to need to utilize to be the factfinder in this
24 case.

25 You're going to have to be a good listener to

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1 listen to what the testimony is, what the questions are,
2 watch the demeanor of the witness, watch what's taking
3 place in the courtroom among the parties who are here.

4 My job, of course, is to be the judge of the
5 law and I'll explain what the law of the case is to you at
6 the end of the trial. You're obligation is the accept
7 that law and apply that law to the facts that you hear.
8 My job is also to preside during the course of the trial.

9 Normally we will start each morning at 9:00,
10 9:30. We will take a morning break. We will normally try
11 to operate from about 1:00 or sometimes a little early and
12 then we'll stop and have an afternoon break. Hopefully
13 we'll be able to stop by 5:00, 5:30. Depending on where
14 we are in a witness's testimony, it may be a little later
15 than that. We'll try to work with you during those times
16 so you'll know when we're working.

17 If I haven't called for a break and you need
18 a break, you need to get my attention. As I said earlier,
19 it's very important that you be a good listener. If
20 you're uncomfortable in any way then you can't be a good
21 listener, you need to take a break. If you can't get my
22 attention, we have several folks throughout the courthouse
23 that you've had a chance with to interact with already.
24 The bailiffs are Mr. Thomas, Ms. Dougherty, Ms. Fryer,
25 they're all here to assist you if you can get their

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1 attention.

2 The young lady seated directly in front of
3 me, Ms. Caroline Hiskell, she's the court reporter. She's
4 taking down everything that's said during the course of
5 the proceedings. She keeps a record of the exhibits that
6 may be introduced into the evidence. She will certainly
7 assist you if she can. Ms. Troop who called your names
8 out downstairs and also called your names out here, she's
9 with the Clerk's Office. She will certainly be available
10 to help you in any way she can.

11 Seated directly beside me is Mr. Shawn
12 Henton, also a recent law school graduate. He just passed
13 the bar. He is certainly an assent to me. You'll see him
14 coming and going during the course of the trial taking
15 care of matters in the office that need attention.

16 Any of these folks around the courtroom will
17 assist you if you have a special need if you need a break.

18 Part of my job, also, is to rule on
19 objections that may be made. In the course of a trial,
20 there are stages. There's opening statements where the
21 attorneys give you an overview of the case where there's
22 testimony offered and other evidence tangible or otherwise
23 introduced. Sometimes during the course of a trial, in a
24 particular stage of a trial, there needs to be a legal
25 matter that needs to be taken care of. Sometimes there's

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1 an objection from one of the attorneys or the other. Some
2 trials have no objections, but if an objection is made, my
3 job is to rule on that objection. Often I can do that
4 fairly summarily by saying overruled or sustained and we
5 move on to the next question.

6 Sometimes you may see us huddling up with the
7 attorneys at the bench and we are whispering to resolve an
8 issue settling or otherwise. Sometimes during the course
9 of a trial because of the objection or because it's at
10 that stage of a trial, there might be a legal matter that
11 I need to take care of out of your presence.

12 As the judge of the law, I want to make the
13 best decision I can in ruling on matters of law.
14 Sometimes that requires me to hear evidence that wouldn't
15 be properly presented to the jury. I may need to hear
16 some argument of counsel or exam some law books or hear
17 oral arguments from them that would not affect you. So
18 while I take care of those legal matters, I'm trying to
19 resolve those issues and make a good sound decision on
20 that, so you may have to be back in your jury room during
21 those stages of the trial when we have to take those
22 matters up.

23 You're the sole judges of the facts even
24 though I'm a fellow judge with you, when all the facts are
25 in and I've instructed you on the law and you're back in

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1 the jury room deliberating, I'm not going to be back there
2 with you because that's not my job. You're the sole
3 judges of the facts, not me. I will not have any opinion
4 on the facts. I'm prohibited from having an opinion about
5 the facts per state law and our Constitution in South
6 Carolina.

7 So I hope you understand that we have
8 different roles that we are to fill. After all the
9 evidence is in, the attorneys will then have a chance to
10 address you in a closing statement and I'll instruct you
11 in the law and then the case will be yours to decide.

12 While the trial is going on, you should not
13 be discussing the case with one another or anyone else.
14 Your commitment to these parties is that you honor the
15 process of the trial and there's a very important purity
16 of that process that you're going to be committed to
17 refrain from any outside influences be it a spouse, family
18 member, business associate over lunch. Obviously those
19 folks are going to be curious. Did you get picked or
20 what's the case about, certainly you can let your loved
21 ones know that you're serving in a jury that involves
22 murder and armed robbery, but other than that you should
23 not be discussing the case with anyone. Don't let anyone
24 discuss the case with you. You should not be discussing
25 it with one another while you're in the jury room. It's

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1 only at the conclusion of the case that you start your
2 deliberative process.

3 While you're out on lunch, I can't image that
4 someone may want to approach you and give you information
5 or ask you questions about the trial. You indicate to
6 that person that you're on a jury and you can't be
7 discussing it with anyone and you overhear some
8 conversation from some other folks who are involved in the
9 a trial or witnesses and they're near by and you start
10 hearing them talk about it, you take the initiative,
11 ladies and gentlemen, and just move to another location in
12 the restaurant or tell the folks you're on a jury and you
13 can't be listening to anything.

14 If someone were to approach you and want to
15 give you information, please excuse yourself as soon as
16 you can and possibly get the name of that individual and
17 report it back here and I would take care of that matter.
18 I don't expect anything like that to happen, wouldn't
19 anticipate it happening, but I want you to understand how
20 important it is that the commitment that you're making
21 remains pristine and not adulterated in any way with
22 outside influences.

23 There may be media coverage on this case and
24 maybe some news articles tonight or television or radio.
25 Again, ladies and gentlemen, you go friends or others who

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1 can clip newspaper articles our or tape record anything
2 that happens on the radio or video tape anything that's on
3 the news, you can certainly watch it when the trial is
4 over. But while the trial is going on, you should refrain
5 and make sure that you don't have any immediate coverage
6 that may be here as well.

7 We're in a highly technological age now with
8 communication. To such an extent that our Chief Justice
9 of our Supreme Court has issued an order that all trial
10 judges such as I are required to give to jurors who are
11 sitting on the case. That order is that you're not to do
12 any kind of communicating whatsoever about the trial while
13 it's in progress, certainly it's in progress now, through
14 social media or any kind of media whatsoever. You should
15 not be doing your own investigation about the case,
16 looking at archives, going to the library or riding by the
17 scene or anything such as that. That would be improper
18 and against the instruction of the court for you to do
19 that.

20 These lawyers are going to give you
21 information you need to make a good sound decision about
22 the facts of the case and it certainly should not come
23 from any other source other than what's in this courtroom.
24 Please keep in mind that you made a high commitment to
25 well and truly try the case that you'll here in this

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1 matter and you should refrain from any kind of outside
2 influence or any kind of investigation on your own
3 concerning this matter.

4 As we come and go during the lunch and other
5 breaks, in the hallway and the elevator, you may see some
6 of the attorneys or the other participants in the trial.
7 If they seem a little distant to you and unfriendly,
8 please don't hold that against the attorney. That's the
9 nature of their training. They want to make sure there's
10 no appearance of any impropriety. If they're riding on an
11 elevator with a jury, someone could jump to a conclusion
12 even though you're talking about the weather or a sporting
13 even or some other matter. Someone could look on that as
14 something altogether different. So if they seem to high
15 hat you in any way and just walk another way, that's not
16 their nature and I assure you and you should not, in any
17 way, hold that against the attorneys.

18 You made a commitment to bring justice to
19 both sides. You've made that commitment and I'm confident
20 you'll honor that.

21 We're going to take a lunch break and take
22 care of some of those legal matters that I had talked to
23 you about that we need to take care of. Hopefully, we can
24 get some of that resolved during our lunch break and still
25 have time to get a quick sandwich to be ready to start the

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1 trial after lunch and hopefully expedite the matter before
2 you. Get some of the exhibits hopefully can be marked and
3 things of that nature that we need to take care of.

4 The lawyers have given me an estimate and I'm
5 going to see -- my job is to try not to keep you waiting
6 and we're going to do our best to fulfill that obligation.
7 If you would, be back in your jury room at a 2:45. That
8 would give you two hours and it would give us hopefully
9 give us an hour to have lunch and hopefully get these
10 legal matters resolved.

11 You've noticed that there is not 12 jurors,
12 there's 14 jurors. I told you down stairs that this will
13 be a trial that will certainly end in a week. Sometimes
14 during a trial, an emergency may come up with one of the
15 jurors that may befall you. Certainly we don't hope that,
16 but we have two alternates just in case. Rather than
17 having to start the trial all over again, one of those
18 alternates can step in the shoes of the one had an
19 emergency or special need during the course of the trial
20 and it would keep the trial in progress. They're every
21 bit as much a part of the trial as anyone else. They'll
22 always occupy those two seats that they're in now as the
23 trial progresses.

24 Ladies and gentlemen, I'm going to ask you to
25 go with the bailiff. He'll show you where to report back

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1 to where your jury room will be. If you'll be back at
2 2:45 we'll be ready to start.

3 (Jury exits the courtroom).

4 (Whereupon, there was a jury lunch break).

5 THE COURT: All right, I understand we have
6 some preliminary matters that perhaps we could get taken
7 care of and get some exhibits marked before we start back
8 and that would certainly help the court reporter.

9 Solicitor, are there any matters we need to
10 take care of?

11 MR. MARCHANT: Yes, Your Honor. The
12 defendant, Mr. Davis, gave a written statement to
13 Investigator Bailey who was the lead investigator in this
14 case and I believe we need a Jackson v. Denno hearing.

15 Subsequent to Investigator Bailey typing up
16 the statement and having it signed, Investigator Wayne
17 Campbell notarized Mr. Davis's signature and then
18 Mr. Davis made some additional statements to Investigator
19 Campbell, so we also need a Jackson v. Denno hearing with
20 respect to Mr. Campbell.

21 THE COURT: How many oral statements are
22 there, one or two?

23 MR. MARCHANT: There is one oral statement --
24 one conversation that is outside of what Investigator
25 Bailey took down in the typed written statement to Tremain

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1 Davis. There is also additional statements that were made
2 to Investigator Bailey that are not in the written
3 statement.

4 THE COURT: Are they three times or two
5 times?

6 MR. MARCHANT: They all kind of run together.
7 There are some things that are outside the written
8 statement and then after that transaction was complete
9 that's when Investigator Bailey and Campbell and the
10 defendant, both of those investigators walked the
11 defendant from the Law Enforcement Center where
12 Investigator Bailey's office is located, out the bottom of
13 the Law Enforcement Center, up the side walk to detention.
14 The defendant was not questioned at that time by
15 Investigator Campbell or Bailey but Fox Carolina and YFF
16 were present with their video cameras. The defendant was
17 asked questions by the news media outlets and did respond
18 to those questions.

19 It's the State's position we don't need a
20 Denno hearing with respect to that because there was no
21 law enforcement officer involved at that point in time.
22 All Investigator Bailey and Campbell were doing was
23 walking him from their office to detention in order for
24 him to be processed with booking.

25 Those statements made in between the time

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1 Investigator Bailey and Campbell left their offices,
2 exited the building in between the time they entered the
3 Detention Center, again they are recorded and are on video
4 and the State plans to introduce both the recordings from
5 Fox Carolina as well as YFF.

6 I believe Mr. Stalvey has an objection to
7 those records. Again, the comments made on the records
8 are not in response to any law enforcement questioning so
9 it's the State's position that no Denno hearing is needed
10 for those comments.

11 At the appropriate time we are prepared to
12 call Investigator Bailey and Campbell to the stand to go
13 through the defendant's written statement and waiver of
14 Miranda Rights.

15 MR. STALVEY: Judge, that's correct. Our
16 position is the statements made to the media, we're not
17 arguing that that doesn't need to be covered by a Denno
18 hearing, but just to kind of cover a scheduling aspects,
19 we're going to have an objection to the written statement
20 and statements made to Investigator Bailey and Campbell,
21 that's going to be part of the Jackson v. Denno hearing.
22 So we'll need Davis and Campbell and we'll need to take
23 some testimony from them on that.

24 Then there's a separate issue of the
25 introduction of these videos which not only included some

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1 statements that my client made to the media as a result of
2 their questions, we're going to object to that being
3 introduced on other grounds, but for that motion hearing
4 we also need Investigator Bailey as a witness is that.

5 THE COURT: Campbell is another investigator
6 with law enforcement.

7 MR. STALVEY: I'm going to need both of them
8 for that second motion.

9 THE COURT: Okay. Mr. Marchant, call your
10 first witness on that Jackson v. Denno hearing and then
11 we'll decide how far we go after lunch.

12 MR. MARCHANT: The State would call Antonio
13 Bailey to the stand.

14 THE COURT: If you would place your left hand
15 on the Bible and raise your right hand.

16 ANTONIO BAILEY, after having been duly sworn,
17 testified as follows:

18 If you would, please be seated and state your
19 full name for the record.

20 THE WITNESS: Antonio Bailey.

21 MR. MARCHANT: If it please the Court.

22 DIRECT EXAMINATION

23 BY MR. MARCHANT:

24 Q. Investigator Bailey, you're employed with
25 Sheriff's Office as a detective in Homicide Violent

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1 Crimes.

2 A. That's correct.

3 Q. And you're assigned to the case that occurred on
4 April 27th of 2010 where there was a robbery and a
5 shooting at the Dollar General, 5922 Augusta Road here in
6 Greenville County.

7 A. Yes, sir.

8 Q. In the course of your investigation, did you have
9 occasion to speak with the defendant that's on trial in
10 this case, Tremain Orlando Davis?

11 A. I did.

12 Q. And how did it come to pass that you had the
13 opportunity to speak with Mr. Davis?

14 A. Mr. Davis had been arrested by the Uniformed
15 Patrol Division and brought to my office.

16 Q. And your office is located where?

17 A. 4 McBee Street, Room 206 on the second floor.

18 Q. And can you generally describe the environment of
19 your office? Are there exterior windows, do you have an
20 office where you have a door that can be shut, or do you
21 work off of a cubicle type situation, and how many people
22 were in the office at the time you interviewed the
23 defendant?

24 A. The office is located on the second floor. It
25 does have windows. It's a cubicle style office. I

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1 believe there were two individuals, myself and another
2 investigator present when Mr. Davis was brought in.

3 Q. And the other individual present, was that
4 Investigator Chris Hammett?

5 A. Yes, it was.

6 Q. And was Investigator Hammett the officer or
7 deputy that transported Mr. Davis to the Law Enforcement
8 Center from where he was apprehended?

9 A. No, sir.

10 Q. So the deputy that brought Mr. Davis to you was
11 neither Investigator Hammett or you? Neither one of you
12 brought him from the scene.

13 A. That's correct.

14 Q. And when Mr. Davis arrived in your office, how
15 was he dressed? Was he --

16 A. I believe he was wearing an orange tee shirt,
17 Clemson tee shirt and a pair of shorts, I believe.

18 Q. Do you recall whether or not he had shoes on?

19 A. No, sir, I can't recall whether or not he was
20 wearing shoes.

21 Q. And was he handcuffed?

22 A. Handcuffed to the rear.

23 Q. Handcuffed to the rear. Were his feet shackled
24 as well?

25 A. No.

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1 Q. When you received him in your office, did you
2 take the handcuffs off of him?

3 A. Probably took it from the rear and placed it in
4 front of him.

5 Q. Is it possible also that you would have uncuffed
6 one hand for him to drink any water or smoke a cigarette
7 or anything like that?

8 A. Yes, sir.

9 Q. Do you recall whether or not during the time that
10 you spent with Mr. Davis whether or not you offered and
11 whether or not he accepted anything to drink or eat?

12 A. He was offered. He did not accept any.

13 Q. Did he ask you to use to restroom facility or did
14 you ask him whether he needed to use the restroom
15 facility?

16 A. He was offered to use the restroom facilities but
17 he declined.

18 Q. At any time during the interview with Mr. Davis
19 in your office, did he ask for something to drink and did
20 you deny him something to drink?

21 A. No, sir, never asked.

22 Q. Did he ask to use the restroom and did you deny
23 him the ability to use the restroom?

24 A. No, sir.

25 Q. Did he ask for anything to eat?

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1 A. No, sir.

2 Q. Do you recall what time you received Mr. Davis in
3 your office?

4 A. It appears to be 5:07 p.m.

5 Q. I'm showing you what's been marked for
6 identification at this time State's Exhibit No. 2, do you
7 recognize that document?

8 A. Yes, sir.

9 Q. And how is it that you recognize that document?

10 A. It basically has my signature and Mr. Davis's
11 signature on it. It's an advisement form.

12 Q. Advisement form of what?

13 A. Miranda.

14 Q. And I'm going to show you what's been marked as
15 State's Exhibit No. 1, do you recognize that document?

16 A. I do.

17 Q. How is it that you recognize that document?

18 A. It is a suspect statement form and has
19 Mr. Davis's name it, his signature to include my
20 signature, and a notarized signature by Investigator
21 Campbell.

22 Q. Before you began questioning Mr. Davis, how were
23 you dressed? Were you in uniform or were you dressed like
24 you are today or did you have a Polo shirt on?

25 A. Pretty much dressed the way I am today with the

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1 exception of a jacket, I was not wearing a jacket.

2 Q. And did you have a badge that was visible for him
3 to see and identify you as a Sheriff's Office employee?

4 A. Yes, sir.

5 Q. Did you inform him and tell him who you were and
6 what your roll is with the Sheriff's Office?

7 A. I did.

8 Q. Did he have any question about what your job was
9 or what you were doing with him that day?

10 A. No, sir.

11 Q. Did he ask you any questions?

12 A. No, sir.

13 Q. Did you have a firearm displayed on the side of
14 your hip or an ankle such that was visible to Mr. Davis?

15 A. On my hip, yes, sir.

16 Q. At any point in time did you remove that firearm
17 and put it on your desk or chamber a shell or anything of
18 that nature?

19 A. No, sir.

20 Q. It remained in the holster on your hip the entire
21 time?

22 A. Yes, sir.

23 Q. When Mr. Davis was initially brought into your
24 office, did you start the questioning with respect to
25 State's No. 2 or advisement of State's No. 2 on the Waiver

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1 of Rights or did Investigator Hammett?

2 A. I started it.

3 Q. And what is the purpose when a suspect -- well,
4 let me ask you this before we get there. Was the
5 defendant informed that he was under arrest?

6 A. Yes, sir.

7 Q. Is there any doubt that he was in custody at this
8 time?

9 A. No.

10 Q. Was he free to leave?

11 A. No.

12 Q. Did he get up and walk away?

13 A. Could not.

14 Q. But he was under arrest. Did you serve the
15 charges you had on him at that time?

16 A. Another deputy, sir, actually served him with the
17 arrest warrants.

18 Q. Did you instruct him or inform him of what he was
19 charged with?

20 A. I did.

21 Q. And you informed him that he was charged with
22 what?

23 A. Murder and armed robbery.

24 Q. Following that, did Mr. Davis ever ask for an
25 attorney or indicate that he did not want to speak with

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1 you?

2 A. No, sir.

3 Q. And with respect to what's marked as State's
4 Exhibit No. 2, please explain to the Court why you --
5 excuse me -- how you went through informing Mr. Davis of
6 his rights?

7 A. When Mr. Davis was brought in, again, the
8 handcuffs were removed from his rear and placed on the
9 front. He was asked whether or not he was right-handed or
10 left-handed. One cuffed was removed. I then ask them
11 some personal questions in terms of -- I asked him his
12 name, address, phone number, social security number, birth
13 date. I asked whether or not he completed high school and
14 he indicated he did, graduated in 2005. And, lastly, I
15 asked if he could read and write.

16 Q. And when you were asking him these questions, did
17 he respond with any hesitation to you?

18 A. None whatsoever.

19 Q. What was your impression of Mr. Davis's education
20 level at this time?

21 A. That he was fully aware of what was going and
22 that he understood what was being asked.

23 Q. Did you ask him whether or not he had any college
24 experience?

25 A. Can't remember whether or not I asked him at that

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1 point. Later on in the interview I believe I did.

2 Q. Did he ever indicate to you in the interview that
3 he had any college experience?

4 A. He did.

5 Q. After you -- well, how would you describe to the
6 Court what Mr. Davis's demeanor is at this stage? Is he
7 happy or sad, crying, angry?

8 A. Cried intermittently, somewhat sad, but not
9 intoxicated; didn't appear to be high or anything of that
10 nature.

11 Q. Is the intoxication something you routinely look
12 for when you're interviewing a suspect?

13 A. Yes, sir.

14 Q. And why is that?

15 A. Because one is advised on his rights, we want to
16 make sure that they're not being influenced in any way or
17 form so, of course, we want to make sure they're in their
18 right mind and they're fully aware of what's going on.

19 Q. Approximately, if you can put a ballpark on it,
20 how many interviews you've done throughout your career
21 with the Sheriff's Office?

22 A. At least ---

23 Q. Hundreds? Thousands?

24 A. Hundreds.

25 Q. And should you come across an individual in your

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1 opinion in your experience who is intoxicated, how do you
2 handle that situation?

3 A. They're not interviewed.

4 Q. Do you not interview them at that time, possible
5 interview them later?

6 A. It's possible -- they would definitely interview
7 them at a later time, but it's something we would not do
8 at that time.

9 Q. And how long have you been with the Sheriff's
10 Office?

11 A. Twenty-four years.

12 Q. In your twenty-four years of training and
13 experience, is it your opinion that this defendant was not
14 intoxicated?

15 A. That's correct.

16 Q. And therefore you proceeded with the Waiver of
17 Rights form.

18 A. I did.

19 Q. And how is it you go through the Waiver of Rights
20 form such that you are certain that the individual you are
21 interviewing understands the process and what's going on?

22 A. I basically get the form and read it word for
23 word. There are certain advisement on the form and he's
24 instructed that I'm going to recite and read to him each
25 advisement and just to acknowledge that he can understand

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1 what those rights are, he's asked to initial each
2 advisement as it's being read. He's told it's not an
3 admission of guilty or anything, it's just to acknowledge
4 that he understands what's being read.

5 Q. And then you read each statement?

6 A. Advisement.

7 Q. Advisement word for word?

8 A. Word for word.

9 Q. And then is it after the time that you read it
10 the suspect would initial it or do you read through all of
11 them and the suspect initials at the end?

12 A. After each advisement.

13 Q. And how many advisement of rights are there that
14 you go through with each suspect?

15 A. Five.

16 Q. And after all five of these on this occasion that
17 you were talking with Mr. Davis, did he initial each line?

18 A. Not at that particular time. There is one other
19 thing. After we go through the advisement, there's a
20 Waiver of Rights on that form. He's told just to
21 acknowledge that he can read, he's asked read that waiver
22 portion aloud in which he did.

23 Q. Let me stop you there, Investigator Bailey. Did
24 you read it to him first or did you ask him to read it?

25 A. The waiver portion.

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1 Q. The Waiver of Rights portion, yes, sir?

2 A. No, he was asked to read that aloud to me.

3 Q. Did he read that out loud?

4 A. Yes, sir, no problem at all.

5 Q. And was Investigator Hammett still with you at
6 this time?

7 A. Yes, sir.

8 Q. And typically in this Waiver of Rights form,
9 there is a portion down there that indicates coercion.
10 Did you address the word coercion with Mr. Davis?

11 A. I did.

12 Q. And why is it a detective or someone interviewing
13 a suspect, why is it that y'all go over that word coercion
14 specifically?

15 A. Because you want to make sure that that person
16 knows that he does not have to speak with him, and the
17 fact that you want to let them know that they are not
18 being forced in any way. We're not holding a gun to their
19 head. We're not threatening to harm their family or them
20 if they don't speak with us. After that word was
21 explained to him, he was again -- he was advised to, if he
22 understood it, circle it and put an initial under it which
23 he did.

24 Q. So the purpose of circling it and initially it is
25 so that --

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1 A. That's to acknowledge that it was explained and
2 that he understood what the word coercion was?

3 Q. And then you go back and go through each line and
4 have them initial his rights?

5 A. No, sir. Basically what happens is he's brought
6 in and as I go through each advisement, he's asked do you
7 understand that advisement. If he acknowledges, yes, he
8 puts his initials by that advisement, which he did. I'll
9 go through the second advisement and do it the same way.
10 Once we got through the five advisement, he's asked just
11 to acknowledge that he can read, read the Waiver portion
12 of the rights for me. He reads that aloud. Once we get
13 to the word coercion, I explain the word coercion to him
14 and if he understands that word, he's asked to circle it
15 and put his initials under it. That's how that went that
16 particular time.

17 Q. So following Mr. Davis initially and circling,
18 did you also sign?

19 A. I did.

20 Q. The statement. And why do you sign the
21 statement?

22 A. That's how -- I'm sorry.

23 Q. I'm sorry, Investigator. Why do you sign the
24 Waiver Form.

25 A. As a witness that all that I just talked about

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1 was done and the fact that he was advised on his rights.

2 Q. And what time did you start this Waiver of Rights
3 form?

4 A. 5:07 p.m.

5 Q. And what was the date?

6 A. April 28, 2010.

7 Q. Were you also present when Investigator Hammett
8 signed?

9 A. I was.

10 Q. Did you and Investigator Hammett confer at any
11 point in time either in the presence or outside the
12 presence of Mr. Davis of whether or not y'all believed
13 that he understood what was going on and at that point in
14 time initialed and waived his rights to speak with you?

15 A. Yes.

16 Q. Following the Waiver of Rights forms, how is it
17 that a conversation took place in this instance? Did you
18 initiate questioning the defendant or did the defendant
19 just voluntarily start telling you a story?

20 A. I would have asked questions in terms of one
21 being whether or not he knew the reason he was there and
22 if he was wanted to tell us his part of the story.

23 Q. So you initiated the conversation?

24 A. Yes.

25 Q. I failed to ask you, did the defendant ever ask

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1 for a lawyer?

2 A. No, sir.

3 Q. He understood he had a right to a lawyer,
4 correct?

5 A. That's correct.

6 Q. And at any point in time during either the
7 discussion of the Waiver or Rights form, or the statement
8 which you subsequently typed, did he ever ask for a
9 lawyer?

10 A. No.

11 Q. Did he ever ask for questioning to be stopped?

12 A. No, sir.

13 Q. Did he ever indicate to you he did not want to
14 speak with you any further?

15 A. No, sir.

16 Q. So you have the Waiver of Rights for started at
17 5:07, both yourself and Investigator Hammett were present,
18 and you completed that Waiver of Rights and then you moved
19 to taking a statement from the defendant. Did you take an
20 oral statement initially and reduce it to writing or did
21 you transcribe, did you type the statement out, as the
22 defendant was giving the information to you?

23 A. Typed the information out as it was being given
24 to me.

25 Q. And, again, where is this taking place such that

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1 you are able to type the information as he was giving it
2 to you?

3 A. In my office at my desk. We were sitting right
4 beside each other.

5 Q. And at some point in time did Investigator
6 Hammett leave?

7 A. Yes.

8 Q. So was Investigator Hammett present through the
9 entire time questioning that you had with the defendant?

10 A. No, sir.

11 Q. At some point in time did Investigator Campbell
12 show up?

13 A. Yes, he did.

14 Q. Was Investigator Campbell involved with you in
15 the examination of the defendant or was he kind of in the
16 peripheral on the side?

17 A. Kind of peripheral on the side.

18 Q. So the whole time with respect to State's No. 1,
19 the written statement, did Investigator Campbell ask the
20 defendant any questions which are noted in the statement?

21 A. No, sir.

22 Q. The only person who was asking him questions is
23 you?

24 A. That's correct.

25 Q. Again, did he ever ask for a lawyer or ask to use

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1 the bathroom or anything during this period or did y'all
2 continuously talk about this, whatever it is he wanted to
3 talk about?

4 A. Continuously talked about it.

5 Q. And what time did his statement, the typed
6 written statement begin?

7 A. 17:43 which is 5:43.

8 Q. The Waiver of Rights was at 5:07?

9 A. 5:07.

10 Q. And you started typing the statement
11 approximately 45 minutes give or take later?

12 A. Uh-hum.

13 Q. Now, the words that are typed down on that page,
14 are those words your summary of what the defendant said or
15 are those his words?

16 A. That's his words.

17 Q. And by the time you ended up at the end of his
18 statement, did you give him an opportunity to read that
19 statement?

20 A. I did.

21 Q. And did he make any changes or corrections?

22 A. Any corrections that he made would have been done
23 at that time.

24 Q. How is it that you are assured or convinced that
25 what is on that page are his words? Did you have him read

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1 it one more time?

2 A. He's asked to read it and if he agrees with it
3 there are several places that is asked to place his
4 initials.

5 Q. And typically those places are where?

6 A. At the very beginning which is Page 1 of 2 of
7 this particular incident after his phone number, the start
8 time of the interview, at the beginning and ending of each
9 paragraph, and then he's asked to sign it.

10 Q. And what time did you finish the typed statement?

11 A. 18:37 which is 6:37.

12 Q. So you interviewed him, took down the information
13 he wanted to give you in between 5:43 and 6:37?

14 A. That's correct.

15 Q. Now, all of the information that he gave to you
16 that day, is it contained in his written statement?

17 A. Yes, sir.

18 Q. Is there additional information that he provided
19 to you that's not in this statement?

20 A. Yes.

21 Q. Additional comments?

22 A. Yes.

23 Q. Why are there other comments that are not in his
24 statement?

25 A. Those comments were made after the statement was

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1 completed.

2 Q. And do you recall what other things you asked
3 him, and I'm going to refer to just in your office, what
4 are the other things he told you that are not in his
5 written statement?

6 A. Not without looking at my supplemental.

7 Q. So if I referenced Page 18 of 20 on 5/11 --

8 MR. MARCHANT: Got that Alex?

9 MR. STALVEY: Yes, sir.

10 BY MR. MARCHANT:

11 Q. I'd like you to take a look at that and see if
12 that refreshes your memory.

13 A. Yes, sir.

14 Q. I'm just talking about comments made to you in
15 your office, were they in response to questioning?

16 A. Yes, sir.

17 Q. Had he indicated in between the time you gave --
18 excuse me -- in between the time he finished and signed
19 his written statement and the time he made these comments,
20 did he ever ask for a lawyer?

21 A. No, sir.

22 Q. Did he ever ask for anything you did not provide
23 him?

24 A. No, sir.

25 Q. Did you threaten him or promise him any time

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1 throughout this process?

2 A. None whatsoever.

3 Q. And the other statements that were made after the
4 completion of his written statement, what is the context
5 of those statements?

6 A. Can I read?

7 Q. Please.

8 A. He stated it was caused while playing basketball.
9 By that time he stated he did not want to tell any other
10 names and flatly refused to do so. He went on to say
11 those persons were the only persons who accepted him for
12 who he was and then he told me he was gay.

13 Q. Did he make any other comments before you
14 finished the interview and then walked him to the
15 Detention Center?

16 A. Yes.

17 Q. He did. Okay, what are those comments.

18 A. I told the suspect that until those persons could
19 be identified and arrested there was always a possibility
20 of someone else getting hurt or killed. Despite numerous
21 pleas, he flatly refused to tell me the names of other
22 persons involved.

23 Q. Did you take any other or record or write down
24 any other comments that the defendant made at this point
25 in time before you walked him to the Detention Center?

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1 A. No, sir.

2 Q. And at the conclusion of the written statement,
3 did the defendant sign it?

4 A. Yes, he did.

5 Q. Why do you have him sign it?

6 A. It's to acknowledge that the information that
7 appears on the statement is actually true and accurate and
8 that's what he wants on his statement.

9 Q. Did you sign it?

10 A. I did.

11 Q. Was there a second witness to his signature?

12 A. It was Investigator Campbell notarized the
13 signatures.

14 Q. And were you present when Investigator Campbell
15 asked the defendant some questions?

16 A. I was.

17 Q. Were you present for the entire time Investigator
18 Campbell asked him some questions?

19 A. No, sir.

20 Q. Where did you go?

21 A. I stepped out of the room to go to the printer
22 which is located in an adjacent room.

23 Q. Following Mr. Davis giving up his right to
24 counsel, agreeing to speak with you, providing a written
25 statement, did you allow him to use the bathroom, get

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1 something to eat, make any phone calls?

2 A. I did allow him to make some phone calls but he
3 did not want to use the restroom.

4 Q. So following the phone calls, what did you then
5 do with him?

6 A. He was handcuffed and taken to the Detention
7 Center.

8 Q. Did you provide him with a copy of his statement?

9 A. Yes, I did.

10 Q. Now, your office is on the second floor of the
11 Law Enforcement Center; is that correct?

12 A. That's correct.

13 Q. How is it that you got from your office to walk
14 him over to the Detention Center?

15 A. Elevator to the basement of the Law Enforcement
16 Center and once we reached the basement the basement is
17 ground level; walked him from the back door of the Law
18 Enforcement Center to the Detention Center.

19 Q. Once you exited the or prior to exiting the rear
20 door of the Law Enforcement Center, did you make any
21 comments or ask the defendant anything?

22 A. I did.

23 Q. Did you ask him something or did you tell him
24 something?

25 A. I told him something.

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1 Q. And what did you tell him?

2 A. I told Mr. Davis that when we go out the door
3 there's going to be a lot of photographers and news media
4 outside. I said whatever you do, just keep your mouth
5 shut, don't say anything, you don't have to answer any
6 questions.

7 Q. Then you exited the doors of the Law Enforcement
8 Center?

9 A. I did.

10 Q. And how far approximately it is between the back
11 door of that Law Enforcement Center up to the Detention
12 gate that you walked into to take him to booking?

13 A. 15, 20 yards. It's not far? Probably a little
14 longer.

15 Q. More than 15, 20 yards between ---

16 MR. STALVEY: Objection, leading.

17 THE COURT: Rephrase your question.

18 BY MR. MARCHANT:

19 Q. Is it your testimony that it's greater than 20
20 yards or shorter than 20 yards?

21 MR. STALVEY: Objection. He's already
22 answered this question.

23 THE COURT: I overrule your objection.

24 THE WITNESS: Greater.

25 BY MR. MARCHANT:

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1 Q. And during the time that you were walking
2 Mr. Davis did you have another Investigator with you?

3 A. Yes.

4 Q. And who was with you?

5 A. Investigator Campbell.

6 Q. What, if anything, did you ask the defendant in
7 between the Law Enforcement Center and the Detention
8 Center?

9 A. Nothing.

10 Q. Did you speak with him at all?

11 A. No, sir.

12 Q. You indicated earlier that you told him that
13 there were going to be news media present and instruct him
14 or advised him not to take; is that correct?

15 A. That's correct.

16 Q. And what, if anything, did the defendant say in
17 between the rear door of the Law Enforcement Center and
18 the Detention Center?

19 A. The news media was standing there asking several
20 different questions. One of which that comes to mind is:
21 Why you did it? Tremain, why did you do it?

22 Q. Let me be clear, you didn't ask this question.

23 A. I did not.

24 Q. Someone from the media?

25 A. That's correct.

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1 Q. Do you recall who it was, which channel they
2 worked for?

3 A. I can only tell you that there was Channel 4 and
4 21 were two of the news media that were outside when we
5 entered the LEC. As far as which photographer or which
6 reporter asked specific questions, no, sir.

7 Q. And the substance of the question was effectively
8 what?

9 A. Why did you do it? Tremain, why did you do it.

10 Q. And Tremain's response was?

11 A. For the money man, for the money.

12 Q. Were there any other questions that were asked to
13 him with respect to this incident?

14 A. Several which he replied he wasn't expecting
15 anybody to be superman and they asked ---

16 Q. I'm sorry, I cut you off.

17 A. The other one was basically the photograph asked
18 if he had anything to say to the victim and whether or not
19 he was actually sorry.

20 Q. Do you recall his response?

21 A. That he was sorry and he wasn't expecting anybody
22 to be superman.

23 Q. Are there any other comments that he made from
24 the Law Enforcement Center to the Detention Center that
25 you recall and that you noted in your report?

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1 A. No, sir.

2 Q. Once you got him up to the Detention Center, what
3 other dealings did you have with him?

4 A. None other, just took him inside and turned him
5 over to the Detention Officers.

6 Q. Any other questioning of him at any other point
7 in time?

8 A. No, sir.

9 Q. Any other comments that he made to you?

10 A. No, sir.

11 Q. Was Investigator Campbell with you the entire
12 time you walked from the Law Enforcement Center to the
13 Detention Center?

14 A. He was.

15 MR. MARCHANT: Again, for purposes of this
16 hearing, State's Exhibit 1 is the type written statement
17 of Tremain Davis and State's 2 is his Waiver of Rights
18 form.

19 BY MR. MARCHANT:

20 Q. Please answer any questions Mr. STALVEY may have.

21 CROSS-EXAMINATION

22 BY MR. STALVEY:

23 Q. Investigator Bailey, it was Master Deputy Cooper
24 who brought Tremain to the Law Enforcement Center from
25 where he was apprehended; is that correct?

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1 A. That's correct.

2 Q. Were you aware of any statements that Tremain
3 made to Master Deputy Cooper during that trip?

4 A. No, sir.

5 Q. Did you ask Master Deputy Cooper if he had made
6 any statements to him?

7 A. Don't recall, but no, sir.

8 Q. Do you recall if Master Deputy Cooper provided a
9 supplemental report?

10 A. He should have.

11 Q. Are you aware of it?

12 A. If he provided one, it would be in the case file.

13 Q. And that was around 5:30 in the afternoon,
14 correct?

15 A. That's correct.

16 Q. Investigator Bailey, you testified he didn't
17 appear to be under the influence of any drugs or alcohol,
18 right?

19 A. That's correct.

20 Q. Did you ask him if he was under the influence of
21 any drugs or alcohol?

22 A. If I asked him I would have asked basically all
23 of these questions. I don't believe I asked him if he was
24 under the influence, no, sir.

25 Q. Did he appear sleep deprived at all in your

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1 opinion?

2 A. No, sir.

3 Q. He appeared to understand what was going on,
4 correct?

5 A. That's correct.

6 Q. And before you questioned him, is it my
7 understanding that you actually recited his Miranda Rights
8 to him?

9 A. I read each advisement to him, yes, sir.

10 Q. I'm talking about before you -- let me see this
11 exhibit. You're talking about these rights right here,
12 correct?

13 A. That's correct.

14 Q. Before you went over this with him, did you give
15 him his Miranda warnings?

16 A. I don't believe I follow your -- don't believe I
17 understand your question.

18 Q. Well, when he first came in before you sat down
19 to do the interview, did you say you have the right to
20 remain silent, you have a right to an attorney?

21 A. That was one of the first things he did when he
22 came in was advise him of his rights.

23 Q. But was that done and then going through the
24 actual Waiver of rights or is this all one process?

25 A. It's one process.

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1 Q. Okay. And at the beginning of the interview
2 Tremain initially denied any involvement, correct?

3 A. That's correct.

4 Q. And at that point you explained to him the
5 evidence you had up to that point, right?

6 A. That's correct.

7 Q. You told him that you knew he had called his
8 mother?

9 A. Yes, sir.

10 Q. You told him that the gun had been recovered and
11 he had been identified by some other people as being
12 involved in the shooting?

13 A. That's correct.

14 Q. And you actually told him that he had been
15 identified as the shooter in this incident?

16 A. That's correct.

17 Q. Did you ever tell him or indicate to him that you
18 didn't think he meant to do it?

19 A. No, sir.

20 Q. Did you -- well, let me back up. You mentioned
21 or you testified that he was crying intermittently during
22 this process, right?

23 A. Right.

24 Q. When did he begin to cry?

25 A. It was off and on during the entire process.

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1 Q. Did he begin to cry, if you can remember, prior
2 to admitting involvement in the incident?

3 A. Probably, but I can't be absolutely totally sure.
4 What I do remember is the fact that he was crying.

5 Q. And do you remember him being visibly upset and
6 breathing heavily?

7 A. Visibly upset.

8 Q. And that's when he said I'll tell you what you
9 need to know, right?

10 A. Yes, sir.

11 Q. And then you went through -- he told you what's
12 in his statement, right?

13 A. That's correct.

14 Q. Now, Investigator Bailey, at the conclusion of
15 his statement, did he say, "I called numerous people, but
16 I don't feel like talking about it."

17 A. May I?

18 Q. Yes, sir.

19 A. And your question was?

20 Q. Did he says, "I called numerous people but I
21 don't feel like talking about it," at the conclusion of
22 your interview with him?

23 A. Yes, sir.

24 Q. And that was the last thing he said and at that
25 point you ended your interview, correct?

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1 A. That's correct.

2 Q. Now, Investigator Bailey, when you were
3 describing to Mr. Marchant the way your office is set up,
4 was this interview going on -- you mentioned it's a
5 cubicle style set up, correct?

6 A. That's correct.

7 Q. When I'm thinking cubicles, I'm thinking open
8 space. It's not enclosed in any way, is that right?

9 A. It has a wall.

10 Q. If somebody's outside your office and the door is
11 closed, are they able to hearing what's going on inside
12 your office?

13 A. Yes.

14 Q. And was Investigator Campbell, was he in your
15 cubicle during this questioning?

16 A. He sits directly in front of me. There's a
17 cubicle wall that separates the two of us and he was
18 sitting on the other side of that wall.

19 Q. On the other side of the wall.

20 A. It's really not even a wall, it's actually the
21 way our desks are built it's high enough for a wall, but
22 it's not necessarily a wall.

23 Q. He could probably hear what you were talking
24 about, right?

25 A. Absolutely.

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1 Q. Did y'all arrange for you to be interviewing
2 Tremain on your side of the wall and Investigator Campbell
3 to be kind of listening in to make sure -- did y'all
4 arrange for that?

5 A. No, sir, that's not an arrangement that was made.

6 Q. And remind me, you may have testified to this,
7 when you stepped out of your office when you concluded
8 this interview, where did you go?

9 A. I went into the adjacent room, which is the
10 office.

11 MR. STALVEY: Thank you, sir, I don't have
12 any other questions.

13 THE COURT: Any redirect.

14 MR. MARCHANT: Just a point of clarification.

REDIRECT EXAMINATION

15
16 BY MR. MARCHANT:

17 Q. Do you have a door to your cubicle?

18 A. No, sir, no door.

19 Q. If I'm understanding you correctly, you only have
20 one wall to the cubicle?

21 A. No, sir. If I could use an example, this
22 courtroom being our office. It has six desks in it, three
23 on either side of the wall and my cubicle is located to
24 the rear of the office. I'd say cubicle but it's actually
25 a space with a desk but it's not necessarily a walled

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1 cubicle.

2 Q. And the wall that you referred to, does it go up
3 to the ceiling or can you look up over the top of it?

4 A. You can look over the top of it.

5 Q. Thank you, Investigator.

6 MR. MARCHANT: No further questions.

7 MR. STALVEY: Judge, I don't have any
8 recross, but I'd like to call Investigator Campbell.

9 THE COURT: Step down, please, sir.

10 Are there any other witnesses the State
11 intends to offer?

12 MR. MARCHANT: The State would call
13 Investigator Campbell with respect to this hearing.

14 THE COURT: Any other witness other than
15 Officer Campbell for this hearing.

16 MR. MARCHANT: No, sir.

17 THE COURT: Why don't we take a short lunch
18 break and then take his testimony. Anyone the defense
19 might want to call, we can take care of all of these
20 things. We'll be at ease until quarter after two.

21 (Whereupon, there was a lunch break.

22 THE BAILIFF: Court will come to order. The
23 Honorable Judge Welmaker presiding.

24 THE COURT: Keep your seats, ladies and
25 gentlemen. Solicitor, you can call your next witness.

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1 MR. MARCHANT: If it please the Court, Your
2 Honor, there is, I believe, one issue that needs to be
3 clarified with respect to Mr. Davis's statement in order
4 for you to make a ruling about the statements that
5 occurred after he finished his written statements. With
6 the Court's indulgence and permission, I would really like
7 to call Investigator Bailey for just clarification.

8 THE COURT: All right. Mr. Bailey, come back
9 around, please. I remind you you're still under oath.

10 MR. STALVEY: Your Honor, before Investigator
11 Bailey gets up, I would ask that the witnesses be
12 sequestered for the pretrial motions.

13 THE COURT: For the pretrial motion is
14 Officer Campbell in here?

15 MR. CAMPBELL: Yes, Your Honor.

16 THE COURT: Investigator Campbell will be
17 testifying pretrial?

18 MR. MARCHANT: Yes, Your Honor. I'd ask what
19 the nature of the reason for the sequestration is other
20 than they are just employed by the same agency.

21 THE COURT: I'll grant the motion. If you
22 will just step out. It will only be a couple of minutes
23 here.

24 MR. MARCHANT: If it please the Court.

25 THE COURT: Yes, sir.

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1 (Whereupon, Investigator Bailey recalled to
2 the stand).

3 BY MR. MARCHANT:

4 Q. Investigator Bailey, if you will refer to the
5 last line of Mr. Davis's statement if you would read it
6 into the record, please, sir.

7 MR. STALVEY: Judge, and I should have made
8 this objection but -- Investigator Bailey has testified
9 regarding this statement he took. He was cross-examined.
10 Mr. Marchant had an opportunity to redirect which I
11 believe he may have asked some questions. I had a chance
12 to recross which I didn't have any questions. Judge, I
13 believe any testimony to clarify whatever he said would be
14 improper. That should have been done during redirect and
15 anything he says would be outside the scope. I think it
16 would just be improper.

17 THE COURT: How many questions do you have of
18 this witness?

19 MR. MARCHANT: Just one or two.

20 THE COURT: I'll overrule your objection,
21 Mr. Stalvey.

22 BY MR. MARCHANT:

23 Q. Investigator Stalvey, please read the last line
24 of Mr. Davis's statement which is marked State's Exhibit
25 No. 1.

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1 A. The last line?

2 Q. Yes, please.

3 A. "I called numerous people but I don't feel like
4 talking about it."

5 Q. The time that you had spent with him was
6 approximately hour-and-a-half give or take; is that right?

7 MR. STALVEY: Objection, leading.

8 THE COURT: Overruled.

9 THE WITNESS: Yes.

10 BY MR. MARCHANT:

11 Q. What is the context or what is the understanding
12 of the context of that statement that Mr. Davis made?

13 A. That he called numerous people?

14 Q. Yes.

15 A. He called numerous people but he didn't want to
16 tell me about it.

17 Q. But you subsequently questioned him following
18 this last statement; is that correct?

19 A. I don't believe I understand your question.

20 Q. After Mr. Davis stated, "I called numerous people
21 but I don't feel like talking about it, did you ask him
22 further questions?

23 A. I did.

24 Q. In the context with which you and Mr. Davis were
25 talking and he made that statement, what is your

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1 understanding of what he meant when he said, "I don't feel
2 like talking about it."

3 MR. STALVEY: Objection, calls for
4 speculation as to what my witness was thinking.

5 THE COURT: For the purpose of this hearing,
6 I'll overrule your objection for this hearing only.

7 MR. STALVEY: And, Judge, I'll renew my
8 previous objection that this is outside the scope. The
9 solicitor had an opportunity to redirect. He's asked I
10 think three questions at this point.

11 THE COURT: I think he's about to conclude.

12 MR. STALVEY: Thank you, Your Honor.

13 THE WITNESS: That he didn't want to give the
14 names of the persons that were with him and knew about
15 this incident.

16 BY MR. MARCHANT:

17 Q. Did you take his statements to mean that he did
18 not want to answer any further questions from you?

19 A. What was that?

20 Q. Did you take this last statement that you made
21 did you take it to understand that he did not want to
22 speak with you any further.

23 A. No.

24 Q. Only that he did not want to talk about ---

25 A. The persons that were involved with him.

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1 Q. Thank you, Investigator Bailey.

2 THE COURT: Cross.

3 RECROSS-EXAMINATION (Investigator Bailey recalled.)

4 BY MR. STALVEY:

5 Q. Investigator Bailey, just one question. This is
6 the statement you took, could you tell me what it says
7 right there.

8 A. "Interview ended."

9 Q. And that's the last line of that statement,
10 correct?

11 A. Correct.

12 Q. Thank you, sir.

13 THE COURT: You may step down.

14 MR. MARCHANT: If it please the Court, the
15 State would call Investigator Wayne Campbell.

16 THE CLERK: Investigator Campbell, would you
17 please place your left hand on the Bible and raise your
18 right hand.

19 WAYNE TAYLOR CAMPBELL, having been duly
20 sworn, testified as follows:

21 Thank you. Please be seated. Please state
22 your full name for the record.

23 THE WITNESS: Wayne Taylor Campbell.

24 DIRECT EXAMINATION

25 BY MR. MARCHANT:

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1 Q. Investigator Campbell, how long have you been
2 employed with the Sheriff's Office?

3 A. Since 2002.

4 Q. And do you have prior law enforcement experience
5 prior to the Sheriff's Office?

6 A. Yes.

7 Q. And approximately how long, total, do you have
8 law enforcement experience?

9 A. Twenty-six years.

10 Q. In April of 2007, were you employed in the
11 Homicide Violent Crimes Unit with the Sheriff's Office?

12 A. Yes.

13 Q. And Investigator Bailey who sits over at counsel
14 table, was he a peer of yours?

15 A. Yes, sir.

16 Q. In general do y'all investigate crimes of the
17 same nature?

18 A. That's correct.

19 Q. Were you involved in the investigation of this
20 case?

21 A. Yes, sir.

22 Q. And when Investigator Bailey started the Waiver
23 of Rights Form with the defendant, were you present?

24 A. No, sir, I was not.

25 Q. At some point in time did you come into the

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1 investigation office?

2 A. Yes, sir, I did.

3 Q. And proximity wise, where is your cubicle in
4 reference to Investigator Bailey's?

5 A. My desk is right in front of Investigator
6 Bailey's, basically a hutch is the only thing that
7 separates the two work areas.

8 Q. Is there anything preventing you from overhearing
9 what's going on at this desk space and visa versa?

10 A. No, sir, as long as they're speaking loud enough.

11 Q. Were you present when he was interviewing the
12 defendant, Tremain Davis in this case?

13 A. Yes, sir, I was.

14 Q. Did you overhear Investigator Bailey asking the
15 defendant questions?

16 A. I was dealing with evidence at the time. I was
17 sort of halfway listening to him and their conversation
18 but I was not paying full attention.

19 Q. At the conclusion of Investigator Bailey's
20 conversation with the defendant, did you notarize the
21 defendant's statement?

22 A. Yes, sir, I did.

23 Q. And referring to State's Exhibit No. 1, where did
24 you notarize the statement?

25 A. It's underneath the line that says, "Sworn before

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1 me this," and I wrote the 28th day of April, 2010 and
2 that's my signature and expiration of my commission.

3 Q. Did you notarize both page 1 and page 2 of the
4 statement?

5 A. Yes, sir and signed in both places.

6 Q. What is the purpose of you notarizing the
7 statement?

8 A. To make it a legal and binding document.

9 Q. And what exactly are you notarizing?

10 A. I asked Mr. Davis if this was his name in which
11 is says, "I, Tremain Orlando Davis." I asked him if this
12 was his name and he said it was. He had initialed in
13 various places through the statement. I asked him of
14 those were his initials and he stated they were. I asked
15 him if this was his signature on the statement and he
16 stated it was, and then I asked him if this statement was
17 true and factual that I was about to notarize it and make
18 it a legal document and he stated that it was correct. So
19 therefore I made him swear to it and I notarized it.

20 Q. Did he indicate to you -- when you notarized this
21 document, was Investigator Bailey present?

22 A. Yes, sir, he was.

23 Q. So in the presence of you and only you, the
24 defendant swore that the signature was his and the
25 information contained there in was correct.

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1 A. Yes, he swore in front of Investigator Bailey and
2 myself?

3 Q. Then did you spend some time with the defendant
4 after you notarized this statement?

5 A. Yes, sir, I did.

6 Q. At any point in time that you spent with the
7 defendant did he ask for a lawyer?

8 A. No, sir, he did not.

9 Q. Did he indicate that he did not want to talk
10 about anything else?

11 A. My originally my purpose was just to watch him
12 while Investigator Bailey stepped out of the office. When
13 he placed his hands over his face and made a remark I then
14 started a conversation.

15 Q. Did you ask him a question or did he comment
16 something that sparked your interest?

17 A. He said, "I fucked up. I fucked up." At that
18 point in time, I asked him a couple of questions.

19 Q. What is the substance of the questions that you
20 asked him and what were he responses?

21 A. Basically I asked him who else was with him
22 during this instance, the robbery and the ultimate
23 shooting, and he didn't want to get into it or name names.
24 He eventually said that if you looked at the video, you
25 would see one of the people going in moments before him.

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1 Q. I'm going to stop you real quick. You said he
2 said he didn't want to get into it.

3 A. Naming names. He did not want to sit and tell
4 who his friends were, but he would tell us enough that he
5 could figure out who they were.

6 Q. What other -- did you ask him questions, did he
7 just continuously volunteer information?

8 A. Well, I asked him the questions who was involved
9 in this and that's when he didn't want to name their
10 names. And then he basically said, you know, if you look
11 at the video, you can see one of the people walk in before
12 me -- you know -- moments before I did. And then he
13 mentioned there were two people in a vehicle parked on a
14 side street that were also involved.

15 When I asked him again who were these people,
16 you know, you really need to tell us, he basically said
17 something to the effect that if you'll check the gun,
18 everybody that handled it was involved except for one
19 person. One person was not involved, so hearing that we
20 could not get him to mention any names as far as being
21 responsible.

22 He did go into stating that outside of the
23 convenience store, he had pulled the weapon from his
24 person and that a white guy had seen him do it. That if
25 he had not pulled the gun outside the convenience store --

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1 he couldn't have done it outside, so he drew the weapon
2 outside, the guy saw him. He walked in while he was doing
3 the robbery. He looks and a white guy is peering through
4 the glass door and then he wasn't expecting this guy to be
5 superman. He come running in the store so he shot him.

6 Q. Did he indicate to you upon you questioning him
7 or did he volunteer about any other individuals that were
8 involved in the location of the event?

9 A. No, sir.

10 Q. Investigator Campbell, do you have your report?

11 A. I do.

12 Q. If you would take a look at page 1 if you would,
13 paragraph 2, seven lines down. If you would review that
14 and see if that refreshes your recollection of what
15 Mr. Davis told you.

16 A. This is the part where he stated that two other
17 people were parked in a vehicle the street over. And he
18 had met these individuals back in 2009 while playing
19 basketball. And then three weeks earlier he had moved
20 into the area?

21 Q. Investigator Campbell, if you would to make sure
22 the record is clear, would you repeat what it is that you
23 just testified to?

24 A. He's talking about two other people being in a
25 parked vehicle the street over and he stated that he had

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1 met these individuals playing basketball in December of
2 2009 and that he had moved into the area just three weeks
3 go and that they were playing basketball Wednesday
4 afternoon; that he had needed money and he brought it to
5 one of the guys and he had a gun, that it belonged to him.

6 He stated that person left, came back
7 approximately 30 minutes later with another gun.

8 Q. Did you question him -- outside of the
9 information that you've just provided, did you question
10 him any further? Did he provide any further details to
11 you while you were in your office?

12 A. Basically what's in the report is all the
13 conversation we had.

14 Q. What you've testified today is what's in your
15 report?

16 A. Yes, it is.

17 Q. Now, were you dressed the way you are today in
18 your office or did you have on a road deputy uniform and
19 all that?

20 A. I guarantee I was not wearing a jacket or a tie.

21 Q. Did you have your badge around your neck or your
22 hip?

23 A. Badge on the belt beside the phone.

24 Q. And the firearm you carry?

25 A. It's a .45 glock.

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1 Q. Did you ever pull your firearm out?

2 A. No, sir.

3 Q. Did you promise Mr. Davis for anything he was
4 telling you?

5 A. No, sir.

6 Q. Did you threaten him in any way?

7 A. No, sir.

8 Q. Did he ever ask you if he could go to the
9 restroom or anything to drink or eat?

10 A. No, sir, he did not.

11 Q. Approximately how long were you with him before
12 Investigator Bailey came back in?

13 A. It was just a matter of minutes.

14 Q. And were you aware that with respect to State's
15 No. 2 had you seen the Waiver of Rights form as well or
16 only the written statement that Mr. Davis had given?

17 A. Only the written statement.

18 Q. Again, were you present when Investigator Bailey
19 was going over the Waiver of Rights form?

20 A. No, sir, I was not.

21 Q. So the conversation you had was completed. Did
22 you walk with Investigator Bailey from the Law Enforcement
23 Center to the Detention Center?

24 A. Yes, sir.

25 Q. And do you recall Investigator Bailey asking the

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1 defendant any questions in between the Law Enforcement
2 Center and the Detention Center?

3 A. The only discussion we had once we left the
4 office was Mr. Davis asked if the news media was going to
5 be outside. He was informed that there would be and if he
6 did not want to have any interaction with them, all he had
7 to do was be quiet and walk. And that was the only
8 conversation from the second floor to the back door.

9 Q. Did he ever ask for a lawyer in between the
10 second floor and the back door?

11 A. No, sir, he did not.

12 Q. Once you exited the back door, did you ask him
13 any questions in between there and the time that you
14 entered the Detention Center?

15 A. No, sir, I did not.

16 Q. Do you recall anyone asking him questions in
17 between the Law Enforcement Center and the Detention
18 Center?

19 A. The news media was asking all the questions.

20 Q. Do you recall which media outlet it was?

21 A. No, sir, I did not.

22 Q. Do you recall what questions were asked of
23 Mr. Davis?

24 A. I remember two of them that I put in my report
25 basically asking why he did it and then they asked him

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1 something concerning the victim and his answer was, "I
2 didn't expect anyone to be superman."

3 Q. Is there anything in your report indicating why
4 he did it.

5 A. Yes, sir. He told us before we escorted him out
6 of the building I asked him basically why he had done it
7 and he replied, "If he took me, I wouldn't have gotten the
8 money. I would have gone to jail."

9 Q. I'm a little confused. Where was that statement
10 made.

11 A. That was in our office on the second floor of the
12 Law Enforcement Center.

13 Q. So that statement is there anything following
14 that statement that you and the defendant talked about?

15 A. There may have been but that's all I noted in my
16 report.

17 Q. Once you got outside in between the Law
18 Enforcement Center and the Detention Center, was the
19 defendant asked why he did it?

20 A. Yes.

21 Q. And what was his response?

22 A. "For the money."

23 Q. Thank you, Investigator Campbell. Please answer
24 any questions Mr. Stalvey may have.

25 CROSS-EXAMINATION

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1 BY MR. STALVEY:

2 Q. Investigator Campbell, did you hear Tremain say
3 at the conclusion of Investigator Bailey's interview, "I
4 called numerous people but I don't feel like talking about
5 it," while you were on your side?

6 A. I don't remember.

7 Q. You witnessed this statement, right?

8 A. I notarized it.

9 Q. Did you noticed that he had said this last line,
10 "I called numerous people but I don't feel like talking
11 about it."

12 A. No, sir, I did not read it?

13 Q. If you would have heard Tremain say, "and I don't
14 feel like talking about it" -- let me back up. You never
15 gave Tremain his Miranda warnings, did you?

16 A. No, sir, I did not.

17 Q. And how much time passed between the time
18 Investigator Bailey left and the time you started
19 questioning Tremaine?

20 A. Probably about a minute or so.

21 Q. And you asked him about this incident with the
22 robbery and the shooting at the Dollar General, correct?

23 A. That's correct.

24 Q. Investigator, if you would have heard Tremain
25 assert his right to silence, wouldn't you have given him

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1 his Miranda warnings again?

2 A. Meaning he did not want to speak with any further
3 and wanted his attorney, is that what you're talking
4 about?

5 Q. I'm talking about if he had asserted his right to
6 silence, if he told you he didn't want to talk any more.
7 I'm not talking about an attorney.

8 A. If he had told me he no longer wanted to speak,
9 then no further questions would have been asked.

10 Q. If he initiated a conversation with you after
11 that, would you have given him his Miranda Warnings for a
12 second time?

13 A. Once he was Mirandized the first time, unless he
14 asked for an attorney, then, no, I would not have
15 Mirandized again.

16 MR. STALVEY: Thank you, sir. I don't have
17 any further questions.

18 MR. MARCHANT: I don't have any redirect,
19 Your Honor.

20 THE COURT: Thank you. You may step down.

21 (Witness leaves the witness stand.)

22 MR. MARCHANT: That would be the testimony
23 that the State would present with respect to the
24 voluntariness of the defendant's statement. If the Court
25 wants to hear arguments ---

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1 THE COURT: Well, let me hear from
2 Mr. Stalvey.

3 Mr. Stalvey, do you have any testimony you
4 want to present?

5 MR. STALVEY: No, sir, Your Honor.

6 THE COURT: Can I see a copy of the
7 statement?

8 Do you have it there, Caroline?

9 (Statement handed to Judge Welmaker.)

10 I'll be glad to hear any arguments about the
11 statements -- let me make sure I got the parameters here.
12 Are we talking about four different statements? We've got
13 a written statement. We've got a statement to Officer
14 Bailey about his sexual orientation. We got a statement
15 to the news media and we got statements that Officer
16 Campbell just testified to. Is that a composite of what
17 we got or did I misinterpret any of these.

18 MR. STALVEY: Judge, I might be able to save
19 us some time if I might be able to address your questions.
20 What I'm asking to sequester would be the statement or any
21 statements that Mr. Davis made to Investigator Campbell.
22 It's our position that when Investigator Bailey concluded
23 the interview after Mr. Davis said I don't want to talk
24 about it, it's our position that that was Mr. Davis
25 asserting his right to silence. And then when

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1 Investigator Campbell came in, he re initiated the
2 interview and didn't give him his Miranda Warnings. It
3 was on the same subject matter, Judge, but our position is
4 that statements made by Mr. Davis to Investigator Campbell
5 from that point on should be excluded.

6 Judge, the statements to the media, and I
7 know you heard some testimony about it, I'm not arguing
8 that's a violation of Mr. Davis's rights at least under
9 the parameters of this hearing. I agree the police
10 weren't -- the case law is the police has to have some
11 concerted effort with the media to have those statements
12 suppressed and that's not our position. We're going to
13 argue that's something else in the next motion.

14 THE COURT: So your objection here is over
15 the statements listed by Officer Campbell.

16 MR. STALVEY: Yes, sir.

17 THE COURT: Solicitor, I'd be happy to hear
18 about how those are admissible.

19 MR. MARCHANT: If it please the Court, it
20 would be the State's position that based on the testimony
21 for both Bailey and Campbell that Campbell comes in at the
22 end and notarizes Mr. Davis's statement. He goes over all
23 the information that Mr. Davis has just provided to
24 Investigator Bailey. I believe Officer Campbell was
25 Officer Bailey was still present at that time.

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1 The defendant acknowledges all of the
2 sections of the statement in which he was questioned by
3 Investigator Campbell. Investigator Campbell then goes on
4 the notarize the statement.

5 It would be our position, one, that the
6 conversation is the continuous fluid conversation in
7 question and the defendant never invoked his right to
8 silence. You heard Investigator Bailey's testimony was
9 that based off the content and the context in which he was
10 talked to the defendant at time was that he chose not to
11 speak about anybody else that was involved, not
12 necessarily that he was saying I don't want to speak with
13 you any more or I invoke my right to silence from this
14 point forward.

15 Additionally, Investigator Campbell did
16 testify that the defendant after acknowledging his
17 signature and Investigator Campbell notarizing his
18 statement, the testimony was defendant put his head in his
19 hands without questioning said, "I fucked up. I fucked
20 up." And it was that point in time it's the State's
21 position that it was voluntary and fluid and continuous
22 the whole time.

23 If the Court is not inclined to agree that
24 Investigator Campbell had the right to continue
25 questioning him, then it would be my argument to the Court

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1 that the defendant re-initiated it by making those
2 statements and inviting Investigator Campbell back into a
3 second conversation at which point in time he volunteered
4 answers to the questions that Investigator Campbell was
5 asking.

6 I would also state, Your Honor, the only
7 testimony you have is from Investigator Bailey and
8 Campbell is that the defendant, it's their impression with
9 their combined 45, 50 years of experience, that the
10 defendant never invoked his right to counsel, right to
11 silence, right to not be questioned any further.

12 THE COURT: All the oral statements took
13 place after the written statement, correct?

14 MR. MARCHANT: To Investigator Campbell?

15 THE COURT: Both. As I understood Officer
16 Bailey's testimony was that the other statements about
17 what was said was after the written statement when he came
18 back from the prison.

19 MR. MARCHANT: Yes, Your Honor. The oral
20 statements made to both Investigator Bailey and
21 Investigator Campbell were after the conclusion and
22 signature and notification of the defendant's written
23 statement.

24 THE COURT: Are any of those statements in
25 substance not in the written statement, Mr. Stalvey?

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1 MR. STALVEY: Yes, sir. Judge -- I mean --
2 let me -- first of all the oral statements that were made
3 to Investigator Campbell it's our position are extremely
4 damaging to Tremain. He asked why he did it and it says
5 for the money, but ultimately ---

6 THE COURT: He told the press that.

7 MR. STALVEY: He told the press that, he told
8 Investigator Campbell that, and in those written
9 statements the substance is in there, is that just goes to
10 strengthen our position that there's no need for these
11 extra statements to Investigator Campbell. We're not
12 arguing that this statement to Investigator Bailey. We're
13 not fighting the fact that he gave him his Miranda Rights,
14 it was voluntary and he gave this statement to
15 Investigator Bailey.

16 I don't think they need anything else and if
17 you -- if you approach it in a more cautious way, there's
18 not point in having these other statements. It's almost a
19 probative versus a prejudicial situation. It's just not
20 necessary.

21 THE COURT: But Officer Campbell did not know
22 -- he testified he did not read the statement. He
23 notarized it but he didn't read it so how does he know to
24 even interpret it that the rights to silence have been
25 invoked? How does he know that?

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1 MR. STALVEY: First of all, he says he didn't
2 read the -- there's conflicting testimony about that. I
3 think he testified that he did, that after he went through
4 the statement he notarized it. So I'm not ready to
5 concede the fact that he didn't read the statement.

6 THE COURT: Well, let me go to another point.
7 Having read the statement myself, how can I take the last
8 sentence in the context of what the full statement is that
9 that is an invocation of rights to silence?

10 MR. STALVEY: Well, Judge ---

11 THE COURT: In the context of what he's
12 saying about talking to his mother and other folks.

13 MR. STALVEY: According to Miranda, if the
14 defendant indicates in any manner and that's the language
15 that they use, "any manner," that he wants to revoke his
16 right to remain silent, that should honored. I think that
17 language is strong. He said: I don't feel like talking
18 about it. Well, that line of questioning continued,
19 there's no doubt about that.

20 If you look at Investigator Campbell's
21 report, he continues to ask him about other people who
22 were involved.

23 THE COURT: But he never said who the other
24 people were.

25 MR. STALVEY: Yes, sir, but he continued the

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1 interrogation on that one issue. If you want to look at
2 it narrowly like that, he said: I don't want to talk
3 about it, if you consider he was just talking about
4 implicating the other co-defendants and he didn't want to
5 talk about it, the interrogation continued. He asserted
6 his right to remain silent.

7 THE COURT: So, Mr. Stalvey, are you
8 objecting to any oral statements given to Officer Bailey?

9 MR. STALVEY: Yes, sir.

10 THE COURT: All statements given to Officer
11 Bailey?

12 MR. STALVEY: No, sir. I'm objecting to any
13 statements given to Officer Campbell or Officer Bailey
14 after Officer Campbell re initiated the interrogation.
15 Because what happened was Officer Campbell re initiated
16 the interrogation and Investigator Bailey came back from
17 the printer and joined in. So it's a continued
18 interrogation and that'd be our position.

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

20 MR. MARCHANT: I believe the testimony was
21 that Officer Campbell came over to nodosarine the
22 statement and that would be when Investigator Bailey had
23 come back from the printer. Investigator Campbell's
24 testimony was I went through the statement with him. I do
25 not believe he indicated that he went through line by

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1 line. Nevertheless, he asked the defendant is this your
2 signature, are these your initials, is this your name,
3 date of birth and other pertinent information for which
4 the defendant acknowledged.

5 It's the State's position at that point in
6 time the questioning is still ongoing, that the defendant
7 has never made a statement that he wanted the questioning
8 to end, that it was not a clear articulation. If it was
9 an indication that he wanted to end, it was not clear.

10 In addition, Investigator Campbell did not
11 ask any questions in relation to this event until the
12 defendant initiated comment to him when he says, "I fucked
13 up. I fucked up." At that point in time, Campbell then
14 asked him some questions.

15 Again, it's the State's position that this is
16 a fluid ongoing and continuous. There was no indication
17 -- clear indication. If you take it into context for
18 which the entire statement is written as well as
19 Investigator Campbell understanding from the comment, all
20 the defendant says is I don't want to take about that.
21 "That," being the particular information that Investigator
22 Bailey was trying to solicit particularly who was
23 involved. He says, "I don't want to take about that."

24 Again, it's the State's position it was
25 continuous and it was fluid and if the Court were to find

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1 that it wasn't, the defendant then re-initiated by saying,
2 "I fucked up. I fucked up." And then he never indicated
3 again from there out that he wanted to not speak with
4 either investigator about the comments that he made. So
5 it's the State's position the written statement comes in,
6 the oral statements to both Investigator Bailey and
7 Campbell after the written statement is complete to come
8 in, as well as comments made to the news media.

9 MR. STALVEY: I didn't address this
10 initially, but as far as Tremain re initiating contact
11 with law enforcement, I just point out to the Court that
12 according to Investigator Campbell's report, Tremain had
13 his head in his hands when he said, "I fucked up. I
14 fucked up," so it would be our position how would he even
15 know that Investigator Campbell was in the room.

16 If he had his head in his hands, how could he
17 re initiate the contact with law enforcement? He said
18 that, he had his head in his hands, that's when
19 Investigator Campbell started asking him questions again.

20 Just for preservation for the record, I've
21 handed up four cases on this issue and I can go through
22 very quickly our arguments on those ---

23 THE COURT: Which case in particular?

24 MR. STALVEY: Judge, first, under State v.
25 Multury, the court says we interpret this as indicated

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1 that, "Once a voluntary waiver of Miranda is effected, the
2 waiver continues until the individual being questioned
3 indicates that he wishes to invoke the waiver and remain
4 silent." That's our position that Tremain did that in
5 this case. "Or circumstances exist which establish that
6 his will was overborne in this capacity for self
7 determination critically impaired." Judge, we would argue
8 that he was sobbing intermittently according to report.
9 He was crying and at that point his will was overborne.
10 Based on that the Court should consider suppression.

11 As far as the right to cut off questioning,
12 according to Michigan versus Mosley the right to cut off
13 questioning, and they referred to an interrogation, must
14 be scrupulously honored, Judge. In Michigan versus
15 Mosley, the court in determining whether the State made an
16 second interrogation was admissible, considered whether
17 Miranda was given initially, which it was in this case,
18 whether police immediately ceased interrogation of the
19 suspects indicating that he did not answer questions, they
20 did cease questioning in this case, whether police resumed
21 suspect only after the passage of a significant amount of
22 time. Judge, only one minute elapsed in this case so
23 that's not a significant amount of time -- whether police
24 gave a fresh set of Miranda Warnings a second time, that
25 clearly didn't happen in this case, and whether that

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1 second interrogation was restricted to (inaudible) subject
2 of the earlier interrogation. Judge, clearly the
3 interrogation was on the same subject matter.

4 Your Honor, the other case, State versus
5 Benjamin, that's actually narrows that and says police can
6 come in and ask about the same subject matter but the
7 court should consider those other factors in Mosley to
8 determine whether the statement should be suppressed.

9 THE COURT: Well, I've read the statement,
10 heard the arguments and reviewed the arguments, obviously
11 this is custodial interrogation whether or not it was
12 voluntarily given. The only issue we have is whether the
13 statements made to Officer Campbell and or Office Bailey
14 after the signing of the statement -- looking at the
15 totality of the circumstances, I find they were proper
16 statements given certainly under the preponderance of the
17 evidence. I find that they were admissible and voluntarily
18 given.

19 I, first of all, find that the context of the
20 last sentence of the statement is not an invocation of the
21 rights to remain silent. Even if it is viewing it out of
22 context, I believe there has been a valid re-initiation of
23 that right, again, looking at all the factors in Mosley
24 and the case law State v. Kennedy and State v. Anderson,
25 State v. Benjamin, State v. Franklin.

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1 I'm further impressed by the fact that if he
2 really intended to invoke his right to silence and not
3 answer any more questions after receiving advise from his
4 adversary, the police officers on his way to the booking
5 station, he again, to the media, answered the questions.
6 I think under the totality of the circumstances, he did
7 not intend to invoke his silence under his Constitutional
8 Rights.

9 I've considered the totality of the
10 circumstances and the evidence that has been presented and
11 reviewed the statement and I find all the statements were
12 voluntarily given so I'll deny your motion, Mr. Stalvey.

13 Obviously, I'll certainly instruct the jury
14 the statements are for their determination under the
15 standard beyond a reasonable doubt but I think there's
16 been a preponderance of the evidence established that the
17 statements were freely and voluntarily given.

18 All right, anything else we need to take care
19 of before the jury comes in?

20 MR. STALVEY: Judge, I have a motion on the
21 use of these videos that were taken by the media that
22 you've heard about during the last pretrial motion. I
23 think we need to handle that especially in light of the
24 fact Ms. Bentley may refer to it in her opening statement.
25 I think we need to get a decision on that prior to

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1 openings. That's my position.

2 THE COURT: Ms. Bentley, can you -- the
3 statements are coming in based upon the dialogue we've had
4 so far. First of all the lack of objection there does not
5 mean custodial interrogation -- but can you not elude to
6 the statements without saying you will see a video of
7 them.

8 MS. BENTLEY: I can leave that out.

9 MR. STALVEY: I actually said I'm not
10 challenging the statements under Jackson v. Denno but I am
11 going to challenge the statements under some other case
12 law that I'd like the Court to consider.

13 THE COURT: What is that?

14 MR. STALVEY: As far as the videos and we're
15 going to have to get some testimony from Investigator
16 Bailey or Investigator Campbell, but I've handed up, Your
17 Honor, rule 605 of the South Carolina Appellate Court
18 Rules and, Judge, under rule 605 and Mr. Marchant and I
19 have already stipulated to the fact that this will not
20 happen in this case, in order for the media to be in an
21 area immediately adjacent to a courtroom, they must have
22 permission from a presiding judge which includes the
23 magistrate before coming into that area.

24 They never had -- well, first they never
25 requested it, second, it was never granted. It's our

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1 position -- I think Investigator Bailey changed his
2 testimony but he initially testified that the bond court
3 hearing in which they were taking Mr. Davis to was 15 to
4 30 yards from where he was moving. Your Honor, I feel
5 like the same spacial situation is in his courthouse.

6 It would be like the media never requested
7 from this court to have cameras in this courthouse but
8 they set up and were ready to question a defendant as he
9 walked down the hall out here. I mean, it clearly fits
10 within the statute. It's adjacent to the bond hearing
11 room. Your Honor, if you look at it on the video, you can
12 see how close it is.

13 THE COURT: Was he going to a bond hearing or
14 to booking?

15 MR. STALVEY: He was going to his
16 arraignment.

17 THE COURT: I though he was going from the
18 LEC to the booking area but let's say it's the bond
19 hearing or arraignment.

20 MS. BENTLEY: Your Honor, he was going to be
21 processed.

22 THE COURT: Booking.

23 MR. STALVEY: I thought he was going to be
24 arraigned because that's part of the booking process.

25 MS. BENTLEY: Your Honor, if we could have

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1 Investigator Bailey back up that might clear some of this
2 up. Do you want to call him or I should call him?

3 THE COURT: What portions of the rule have
4 been violated? Can you point me to the particulars,
5 Mr. Stalvey?

6 MR. STALVEY: Yes, sir, Your Honor. Under
7 subsection B, "The general rule except as provided by C
8 through F broadcasting, televising, reporting or taking
9 photographs in the courtroom in areas immediately adjacent
10 thereto during session of court of recesses between
11 sessions is prohibited." We're going to look at the
12 report but he was arraigned shortly after being taken to
13 booking. That's between court, Judge. It's an area
14 that's immediately adjacent. They agreed that -- I'm
15 sorry, Judge -- one of the exceptions is that a judge
16 grants the media a request to be there and that hasn't
17 taken place therefore it's our position it's a violation
18 of this rule.

19 THE COURT: The area is immediately adjacent,
20 what's the definition of that?

21 MR. STALVEY: Judge, they don't define it but
22 I consider 15 yards, that's 45 feet. There's 45 feet from
23 this courtroom to courtroom 8 and the elevator. I'd say
24 that's immediately adjacent.

25 Judge, during my examination of either

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1 Investigator Bailey or Campbell, I asked them and if the
2 court wants to ask them, according to this State v. Myers
3 case that I handed up, the court says police conduct in
4 arranging media coverage of a felons perp walk, which is
5 what this walk was, were "improper and reflect poorly in
6 the professionalism of the department."

7 Your Honor, according to this time frames
8 that were given so far in this case and I'd like to
9 refresh Investigator Bailey's recollection on when he was
10 notified, it appears that he was notified, according to
11 his report, around 5:00, 5:30 that afternoon that they had
12 taken Mr. Davis into custody. I believe according to his
13 statement that was given there was maybe 15, 20 minutes
14 from the time that he was taken into custody to the time
15 he came to the police station. I'd like to know if the
16 Sheriff's Office contacted the media to advise them of
17 where he'd be arriving because if you look at the video,
18 it's apparent that all the media is at that one back door
19 of the Law Enforcement Center.

20 They knew where he was going to be. It would
21 be our position, unless I hear otherwise, that the only
22 way they knew where he'd be coming in is if the media was
23 notified by the Sheriff's Office. If the media was
24 notified by the Sheriff's Office of him coming into the
25 station, if they were notified of this perp walk,

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1 according to the Supreme Court, that's improper and
2 reflects poorly on the professionalism of the department.
3 And, Judge, based on that and based on the violation of
4 the appellant court rule, we ask that any video, any
5 statements, any conduct from Mr. Davis based on that
6 should be excluded from this trial.

7 THE COURT: What in the Myers case are you
8 referring to?

9 MR. STALVEY: I beg the Court's indulgence.
10 Judge, if you look on Page 5 of this opinion in the second
11 column, it's the last full paragraph that starts with
12 "While we find.."

13 THE COURT: All right. Is there anything
14 else you have other than that case and the rule?

15 MR. STALVEY: Judge, I would go with the
16 statements. As far as the actual video being introduced,
17 if you want to address that tomorrow, we can wait to do
18 that. This video shows him in leg irons. If you want to
19 admit the statements and reserve judgment on the actual
20 videos --

21 THE COURT: As I understand for right now the
22 statements is is that it's in violation of Rule 605B and
23 in violation of the language of the State v. Myers; is
24 that correct?

25 MR. STALVEY: Yes, sir, Your Honor.

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1 THE COURT: I overrule your objection on both
2 of those. I read the case and the record that I have now
3 before me, I find there's not been a violation of either
4 of those rules.

5 MR. STALVEY: Judge, for preservation of the
6 record we would argue in order to make this determination
7 it would be necessary to hear from Sheriff's Office as to
8 whether they ---

9 THE COURT: I'd be glad to hear from you if
10 you want to call any witnesses you want on that.
11 If you want to call some witnesses, I'd be glad to hear
12 from you.

13 MR. STALVEY: If I could, could I call
14 Investigator Bailey to the stand?

15 THE COURT: Sure. Come back around Officer
16 Bailey. Again, I remind you, you're still under oath.

17 BY MR. STALVEY:

18 Q. Officer Bailey, Tremain Davis had been taken into
19 custody according to your initial report around 5:30 that
20 afternoon, correct?

21 A. Correct.

22 Q. And he arrived at the Law Enforcement Center
23 approximately 15 minutes later; is that correct?

24 A. Correct.

25 Q. And how soon were you notified -- strike that.

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1 When he arrived he was driven to the back of the Law
2 Enforcement Center, correct?

3 A. That's correct.

4 Q. Did you advise the officer bringing him in to
5 take him to that door?

6 A. No, sir.

7 Q. Was the media waiting for him when he arrived at
8 that door?

9 A. I'm trying to think. Based on the videos that
10 I've seen, yes, sir.

11 Q. Are you aware of who notified the media that he
12 would be arriving at the Law Enforcement Center?

13 A. Personally, I can only speculate if you'd like me
14 to do that.

15 Q. Tell me what you know first and then I'll let you
16 speculate?

17 A. I don't know who notified the news media.

18 Q. Was someone in the Sheriff's Office?

19 A. It would be PI if anybody.

20 Q. What is PI?

21 A. I don't specifically what PI. If that had
22 happened, it would have come out through the Public
23 Information Office. I don't know which office would have
24 done it.

25 Q. Is that a normal duty of the Public Information

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1 Office to notify the media when a suspect is coming out?

2 A. They work with the media. I don't know exactly
3 what actually transpires or what actually happens.

4 Q. But you think that's who notified them, correct?

5 A. I know I did not notify them.

6 Q. But you think that's who notified them, correct?

7 A. If I had to guess, I would say, yes.

8 Q. Who's the head of that division over there?

9 A. Major Smith.

10 MR. STALVEY: Thank you, sir, I don't have
11 any further questions.

12 THE COURT: Cross-examination.

13 BY MR. MARCHANT:

14 Q. Officer Bailey, the area that we're talking about
15 in between the Law Enforcement Center and the Detention
16 Center, is there anything to prevent any citizen in this
17 country from walking through that area?

18 A. There's no fencing. No, sir.

19 Q. Government property?

20 A. Yes, sir.

21 Q. In between what we're talking about here and
22 where you took him up to the gated area that you take
23 inmates, suspects in to be booked, is there anything that
24 would prevent anybody from walking through that area at
25 any time day or night?

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1 A. No, sir.

2 Q. And what was the purpose for which you were
3 taking the defendant up to the Detention Center?

4 A. To be processed.

5 Q. And when you say processed, what does that mean?

6 A. Basically that means he's going to be processed,
7 photographed, booked and booking purposes, photographs,
8 pictures, placed in the cell.

9 Q. Were you taking him to any court proceedings?

10 A. No.

11 MR. MARCHANT: I have no further questions.

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

14 MR. STALVEY: Judge, based on Investigator
15 Bailey's statement, I'd ask the Court to hold off on a
16 decision on this issue until we're allowed to at least
17 hear from somebody over at this Public Information Office
18 as to whether they contacted the media in this specific
19 case. Judge, it's important to this issue. Statements
20 were made that were extremely damaging to Mr. Davis and,
21 Your Honor, if somebody from the Sheriff's Office, from
22 this Public Information Office had contact, we feel like
23 it would violate the principals set forth in Myers and
24 also the rule that we've talked about.

25 THE COURT: Any other motions from the

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1 defense before the jury comes back in?

2 MR. STALVEY: Judge, we can go ahead and do
3 openings if you like. The one other thing I was going to
4 object to or move to suppress was 911 tape. If it's not
5 going to be referenced in any of the opening statements,
6 then we can wait to do that tomorrow.

7 THE COURT: Okay. I'm going to ask that the
8 solicitor not to reference anything about media and I
9 think your opening would be quite effective without any
10 reference to that. So if you'll just refrain,
11 Ms. Bentley, from any mention of that until we have a
12 chance to hear any other testimony Mr. Stalvey wants to
13 present first thing in the morning.

14 MR. BENTLEY: For clarification, Your Honor,
15 I might have to make reference to statements made that law
16 enforcement overheard or any reference to the media being
17 there and there could be video.

18 THE COURT: You're going to be making a brief
19 statement, I'll be Judge Pyle, so I don't know how
20 specific you need to get into who heard what. Let's just
21 avoid anything -- this is your opening statement. You
22 don't need to talk about each question you're going to ask
23 and each statement you expect. And that will -- you can
24 refrain from any 911 tape or any statement given to the
25 media for the day and then we'll try to work this out

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1 tomorrow first thing. Let's not keep our jury waiting any
2 longer.

3 Anything else?

4 MR. STALVEY: No, sir, Your Honor.

5 MR. MARCHANT: Judge, may we have a two
6 minute break before we get started.

7 THE COURT: Two minute break. We have a jury
8 waiting.

9 (Whereupon, there was a brief break).

10 All right, ladies and gentlemen, are you
11 ready to proceed?

12 MR. MARCHANT: Yes, sir.

13 THE COURT: All right, let's have our jury
14 come in if they're ready.

15 (Jury re-enters the courtroom).

16 Ladies and gentlemen, as I told you earlier,
17 I'm conscience of your time. We missed the first estimate
18 by about an hour. I apologize for keeping you waiting but
19 I want you to understand that we have not been doing
20 nothing out here. We've been trying to get some things
21 worked out so hopefully when the case starts, it will move
22 in an expedient manner and we won't have delays that will
23 inconvenience you. Although I tell you that sometimes
24 that happens in a trial.

25 In a few moments the attorneys are going to

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1 make an opening statement. This is not evidence what the
2 attorneys have to say to you; however, I'm going to urge
3 you to listen carefully as each of these attorneys address
4 you. I'm confident they can give you valuable insights
5 that would assist you in your view of the case as it
6 develops and your listening skills there.

7 Before the attorneys address you, I'm going
8 to ask the clerk to administrate an oath to you. I hope
9 you'll listen carefully to this oath that's given to you.
10 I'm honor it's been in existence well before the
11 foundation of our country. Folks such as you have sat in
12 the position such as you're sitting in now have taken this
13 oath to well and truly try a case in a dispute between
14 citizens and the State, a defendant, and I urge you to
15 listen carefully as you take this oath and I'm confident
16 that you'll fulfill the obligations there of.

17 Ms. Troop, you can swear the jury at this
18 time.

19 THE CLERK: Please stand and raise your right
20 hand for the oath. The proper response is I will.

21 You shall well and truly try the case
22 2010-GS-23-9193, the State versus Tremain Orlando Davis
23 indicted for murder, 9192, indicted for armed robbery and
24 9191 for possession of a weapon during the commission of a
25 crime and a true verdict render according to the law and

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1 the evidence so help you God. I will.

2 THE JURY: (Collectively) I will.

3 THE CLERK: Thank you, please be seated.

4 THE COURT: Solicitor, you may address the
5 jury.

6 MS.BENTLEY: Thank you, Your Honor.

7 Mr. Stalvey. Ladies and gentlemen, we are here because
8 the State alleges that on April 27, 2010, the defendant
9 Tremain Orlando Davis, walked in the Dollar General Store
10 located at 5922 Augusta Road armed with a loaded .357
11 revolver and was prepared to do whatever it took to rob
12 that store. This includes shooting Joshua Bryant who died
13 as a result of his injuries.

14 The evidence will show that Joshua Bryant
15 whose mother was in line when Tremain Davis entered the
16 store, surprised Davis when he tried to stop the robbery
17 and Davis shot him once in the neck. He died within
18 moments on the scene.

19 My name is Lisa Bentley and Lucas Marchant
20 and I along with the help of lead investigator Antonio
21 Bailey are here prosecuting Tremain Davis. He is charged
22 with murder, armed robbery and possession of a weapon
23 during the commission of a violent crime. It is our duty
24 as attorneys for the State to prove his guilt beyond a
25 reasonable doubt.

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1 You will find during the course of this trial
2 that there will be no doubt as to the facts in this case,
3 virtually no doubt at the end of this trial that Tremain,
4 with the assistance of his friends, Dwayne Gregory,
5 Derrick Duncan and Avery Thomas, executed the robbery that
6 lead to Joshua Bryant's death.

7 We will present evidence to you covering
8 every aspect of this case and you're about to see a
9 surveillance video from the Dollar General of the crime as
10 it occurred.

11 The Judge will instruct on the law and the
12 elements required to find Mr. Davis guilty until the end
13 of the trial, but there are things you need to listen for
14 that the State will prove that you need to hear during the
15 trial.

16 Mr. Davis has been charged with murder. To
17 find him guilty, the State will present evidence that will
18 prove Mr. Davis shot Joshua Bryant with malic
19 aforethought. Mr. Davis is charged with armed robbery and
20 possession of a weapon during the commission of a violent
21 crime. To find him guilty, the State will show evidence
22 that he took something of value, in this case money from
23 the Dollar General, with the use of a deadly weapon.

24 As I said a few seconds ago, by the end of
25 the trial, you will have no doubt as to the facts of this

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1 case, but ladies and gentlemen, that is ultimately up to
2 you. You are the sole judges of fact in this case. To
3 aide you in this task, the State will present evidence in
4 the form of testimony from experienced law enforcement
5 officers investigating the crime, testimony from forensic
6 technicians and experts who analyze things such as gunshot
7 residue, DNA and fingerprints; and also testimony from
8 Mr. Davis's friends.

9 You will hear from Dwayne Gregory. You will
10 hear from Derrick Duncan, you will hear from Andrew
11 Thomas, and as you listen to the testimony that comes from
12 that stand, law enforcement officers or those other
13 witnesses, there are a few things you need to remember.

14 The first thing applies to all witnesses.
15 The only things that you can consider in your
16 deliberations is testimony and evidence the Judge allows
17 you to take back with you during deliberations. You may
18 hear things referenced such as police reports or witness
19 statements. Those items may not actually be admitted into
20 evidence so you need to listen to each witness when they
21 testify.

22 The second thing to remember is specifically
23 regarding to those witnesses I just mentioned, Dwayne
24 Gregory, Derrick Duncan, Avery Thomas. The three of them
25 have not been allowed to walk away from their roll in the

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1 events on April 27th. They will appear before you in
2 orange jump suits and possibly shackles because they have
3 also been charged with murder and armed robbery. They
4 have not been made any promises or offers in reduction of
5 sentence for their testimony, but today you are only here
6 to determine Tremain Davis's guilt. This is Tremain
7 Davis's trial and you should consider the evidence as it
8 relates to his guilt.

9 At this point, I'm going to begin to let the
10 evidence speak for itself. I only ask that you do what
11 you've already sworn that you would, listen to the
12 testimony and consider the evidence.

13 At the end of the trial, Mr. Marchant will
14 come back before you. He will discuss all of the evidence
15 the State has presented and he will ask you to return a
16 verdict. Until then, thank you for your patience and
17 thank you for your attention and thank you for your
18 service.

19 THE COURT: Mr. Stalvey, you may address the
20 jury in your opening statements.

21 MR. STALVEY: Thank you, Your Honor. May it
22 please the Court. Ladies and gentlemen, on April 27,
23 2010, my client, Tremain Davis made a choice. He chose to
24 get together with his friends and decide to rob the Dollar
25 General on Augusta Road here in Greenville County.

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1 He chose, when one of his friends went and
2 got a gun, to take that gun to go into the Dollar General
3 to point it at the cashier and to rob the store. Those
4 are the choices that he made that day and he has accepted
5 responsibility for those choices.

6 He accepts responsibility for armed robbery.
7 He accepted responsibility for being in possession of a
8 weapon during the commission of an armed robbery. Those
9 were the choices he made and ladies and gentlemen, we'll
10 admit because of those choices a tragic but unintentional
11 act occurred.

12 You heard the State take about malice and
13 intent and that's the key issue in this case. Did Tremain
14 Davis maliciously and intentionally kill the victim Joshua
15 Bryan. I agree with the solicitor we'll let the evidence
16 speak for itself, but I'm going to tell you a little bit
17 about the evidence that the State is going to give you to
18 prove that he intentionally and maliciously killed Joshua
19 Bryant.

20 The State is going to rely on some of these
21 co-defendants. She referred to them as friends. After
22 you hear their testimony and after you hear what happened
23 during this case, they weren't friends and they're
24 certainly not friends today.

25 They're going to ask you to rely on these

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1 co-defendants who as you heard have been charged with
2 armed robbery. They've been charged with murder. They're
3 going to get up there and testify and I'm not going to sit
4 up here and insult your intelligence and tell you that
5 they're going up there just because they think they need
6 to do the right thing. We know why we're getting up there
7 to testify. We know that they're getting up there to help
8 themselves out.

9 Now, the solicitor hadn't made any specific
10 promises, but everybody knows the real reason that they're
11 getting up there, that they're pointing the finger at
12 Tremain Davis, because a positive outcome for the State in
13 this case is going to equal a positive outcome for those
14 witnesses, these co-defendants they're going to ask you to
15 rely on.

16 Ladies and gentlemen, they're also going to
17 ask you to rely on an incomplete police investigation
18 which includes the taking of a statement from my client
19 that you will see excludes extremely beneficial
20 information to my client. You see, they didn't want you
21 to know about that. You'll see from the statement it
22 certainly does exclude beneficial information, beneficial
23 statements that my client made and the police purposely
24 excluded those statements for what they wanted you to see.

25 I want you to pay attention during this

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1 trial. I want you to think about what the State is asking
2 you to rely on in coming to the decision that Tremain
3 intentionally and maliciously killed Joshua Bryant.

4 Beyond reasonable doubt is an extremely tough
5 burden that the State must overcome. Beyond a reasonable
6 doubt -- for you to find beyond a reasonable doubt that
7 he's guilty of this murder, each and every one of you at
8 the conclusion of this case may have no reasonable
9 hesitation as to his guilt. I want you to think about it.

10 Does the fact that they, the State, are
11 relying on these co-defendants who have a reason to get up
12 here and tell y'all what you want to hear, does that cause
13 you any hesitation. Does the fact the statements and
14 investigation by the police purposely exclude beneficial
15 information about my client, does that cause you any
16 hesitation? It should and it will at the conclusion of
17 this case and when it does each and every one of you have
18 a duty to find Tremain Davis not guilty of this murder.

19 Thank you.

20 THE COURT: Solicitor, you may call your
21 first witness.

22 MS. BENTLEY: Your Honor, the State calls

23 THE CLERK: Sir, if you would, pause at the
24 end of the bench, place your left hand on the Bible and
25 raise your right.

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1 ROGER FRADY, having been duly sworn,
2 testified as follows:

3 Thank you. You may be seated. Please state
4 your full name for the record.

5 THE WITNESS: Roger Frady.

6 DIRECT EXAMINATION

7 BY MS. BENTLEY:

8 Q. Deputy Frady, where are you employed?

9 A. Greenville County Sheriff's Office.

10 Q. How long have you been there?

11 A. Six years.

12 Q. And what is your job at the Sheriff's Office?

13 A. Echo Platoon, Uniformed Patrol.

14 Q. Were you working on April 27, 2010?

15 A. Yes, ma'am.

16 Q. What shift were you working?

17 A. Echo Platoon.

18 Q. What does that mean?

19 A. Echo Platoon, you got five platoons of uniformed
20 patrol, Alpha, Charlie, Bravo, Delta, Echo, we work until
21 2:00 in the afternoon until 2:00 in the morning.

22 Q. And at any point during your shift were you
23 called to 5922 Augusta Road?

24 A. Yes, ma'am, I was.

25 Q. Where is that?

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1 A. It's a Dollar General considered the south end of
2 the county. It's right at Augusta and Stratford Road.
3 It's right there at the intersection.

4 Q. You said the county, is that Greenville County?

5 A. Yes, ma'am.

6 Q. Why were you dispatched there?

7 A. Dispatch sent out (inaudible) to everybody for
8 armed robbery in progress and there was a gunshot victim
9 and I was in the area.

10 Q. Approximately what time did that call come out?

11 A. I don't remember exactly. I would say around
12 4:00 something in the afternoon.

13 Q. How long after the call came out did you arrive
14 at the Dollar General?

15 A. I was there in only a few minutes.

16 Q. Was that the first place you went?

17 A. No, ma'am, it wasn't.

18 Q. Where did you go first?

19 A. When the call first came out it was reported
20 there was a possibly suspect at East Fairfield and
21 Stratford Road so I went down there first. We had a
22 trainee with me so we went down there first. Shortly
23 after being there, maybe a minute, we were released and
24 went back to the Dollar General.

25 Q. And when you arrived at the Dollar General, were

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1 there any other law enforcement officers present?

2 A. There was one, Deputy Laura Campbell.

3 Q. What had Deputy Campbell done prior to your
4 arrival?

5 A. I'm not sure exactly what she'd done. I know she
6 was in the store upon my arrival.

7 Q. Upon your arrival, was the suspect still in the
8 store?

9 A. He was not.

10 Q. Was there a victim?

11 A. Yes, there was.

12 Q. Where was the victim?

13 A. He was laying on the floor as soon as you open
14 the door outside the cash register.

15 Q. Could you tell if he was alive when you got on
16 the scene?

17 A. When I got on the scene, I grabbed a hold of his
18 wrist to feel for his pulse. I did feel a pulse, it was
19 faint, but within a matter of seconds I did lose his
20 pulse.

21 Q. Are you able to pronounce someone deceased?

22 A. No, ma'am.

23 Q. Who can do that?

24 A. EMS.

25 Q. When did EMS arrive?

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1 A. At 16:30.

2 Q. That would be 4:30. In the afternoon?

3 A. Yes, ma'am.

4 Q. I'd like to show you a picture marked as State's
5 28.

6 MR. STALVEY: No objection.

7 BY MS. BENTLEY:

8 Q. Do you recognize this photo?

9 A. Yes, ma'am. It's the Dollar General.

10 Q. How do you recognize that?

11 A. I worked the area. I know the area very well, I
12 was there, the crime scene tape, my training.

13 Q. Any changes or alterations been made to this
14 photo?

15 A. No.

16 MS. BENTLEY: Your Honor, the State wishes to
17 admit State's 28 into evidence.

18 THE COURT: Without objection Exhibit 28 is
19 admitted and may be published to the jury.

20 (Photograph previously marked as State's
21 Exhibit No. 28 for identification was admitted into
22 evidence.)

23 MS. BENTLEY: I have no further questions.
24 Please answer any questions Mr. Stalvey may have.

25 MR. STALVEY: I don't have any questions for

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1 Deputy Frady.

2 THE COURT: Thank you. You may step down.

3 MS. BENTLEY: May this deputy be excused,
4 Judge?

5 THE COURT: Without any objection, this
6 witness may be excused.

7 MR. STALVEY: Yes, sir, Your Honor.

8 (Witness leaves the witness stand).

9 MS. BENTLEY: Your Honor, the State calls
10 LeKeisha Young.

11 THE CLERK: Ms. Young, please pause at the
12 end of the bench. Place your left hand on the Bible and
13 raise your right.

14 LEKEISHA YOUNG, having been duly sworn,
15 testified as follows:

16 Thank you. You may be seated. Please state
17 your full name for the record.

18 THE WITNESS: LeKiesha Annette Young.

19 DIRECT EXAMINATION

20 BY MS. BENTLEY:

21 Q. Ms. Young, where are you employed?

22 A. Dollar General.

23 Q. How long have you worked at a Dollar General?

24 A. Three years.

25 Q. Which Dollar General do you work at?

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1 A. Augusta Road.

2 Q. Where did you work before working at Dollar
3 General?

4 A. McDonalds in White Horse Road.

5 Q. Did you go to school in Greenville?

6 A. Yes.

7 Q. Where did you go to high school?

8 A. Southside High School.

9 Q. And is that in this general area?

10 A. Yes.

11 Q. Ms. Young, were you working on April 27, 2010?

12 A. Yes.

13 Q. What shift were you working?

14 A. First shift.

15 Q. What hours is that typically encompass?

16 A. It's usually 8:00 to 3:00 or 8:00 to 4:00.

17 Q. Were you still working at 4:00 pm that day?

18 A. Yes.

19 Q. Was the store busy?

20 A. Yes.

21 Q. Did anything happen on April 27th which is the
22 reason why you're here today?

23 A. Yes.

24 Q. What happened?

25 A. We got robbed and Josh got killed in the store.

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1 Q. Tell us about how your recollection of the
2 robbery occurred?

3 A. I had just got finished ringing a customer up.

4 Q. Were you the cashier that day?

5 A. Yes, I was. And I turned around to look at the
6 door because of the way that the registers are you can't
7 really see who's coming in and out so you have to turn
8 around and look and as I turned around to look I seen a
9 guy coming in the store. He had a bandanna on his face.
10 He had on a blue rag and hat and I seen him coming in with
11 a gun in his right hand and he has a glove on his right
12 hand.

13 Q. How could you tell this?

14 A. The way his body was built.

15 Q. And you say he had something covering his face?

16 A. He had on a black and white bandanna.

17 Q. Do you recall what other clothing he was wearing?

18 A. He had on black blue jeans and I think it was a
19 black and white jacket.

20 Q. Please continue.

21 A. And he came in the store. When he came in I fell
22 on the floor with my hands up and he came around the
23 register and said, "Bitch, give me the money or I'm going
24 to shoot you." At that time I got up off the floor and I
25 let him know that I had to ring up an item in order to

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1 open up the register. So he told me to ring it up. I got
2 a pack of Trident gum and I rang it up and he instructed
3 me to give him all of the money. He wanted all of the
4 money in the register and he even wanted the change.

5 I started giving him the 20s and I was
6 handing it to him because he tore a bag off of the rack
7 and he told me to put the money in a bag so I started
8 putting the money in a bag where I was at?

9 Q. Did he hand you the bag or did you use a bag that
10 was next to you?

11 A. No, I used the bag that was next to me. You
12 could see Josh standing at the door.

13 Q. When you say Josh, how do you know the victim's
14 name?

15 A. Because he was a regular customer that came in
16 the store.

17 Q. Do you know what he would buy?

18 A. Basically dollar food.

19 Q. How often would he come in?

20 A. Maybe two times a week. And Joshua stayed at the
21 door and I was taking the money out of the register
22 putting into the bag and the door opened and Josh ran in
23 and they got to struggling and the defendant shot him in
24 the neck and he fell on the floor in a puddle of blood.

25 Q. Ms. Young, were you scarred when this happened?

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1 A. I was scarred for my life.

2 Q. Have you ever been the victim of a crime before?

3 A. No.

4 Q. Have you ever had a gun pointed at you before?

5 A. No.

6 Q. Were you immediately aware that you knew the
7 victim?

8 A. No, not at that time.

9 Q. When you saw someone run into the store, did you
10 know it was Josh?

11 A. Not at that time. After the defendant shot him
12 and he fell and he was still in the store and he was like,
13 "If any of you other motherfuckers in here want it, you
14 can get it too," and then he turned around and ran out the
15 store and I had ran into the office after he left the
16 store and then ran out to see if he was okay; if he was
17 dead or alive.

18 Q. How long do you think it took for you to put
19 money in the bag and for all of this to happen?

20 A. Maybe 30 seconds.

21 Q. Did you put money in the bag?

22 A. Yes.

23 Q. Do you recall how much you put in?

24 A. No.

25 Q. Did you see the suspect take that money when he

State of South Carolina versus Tremain Davis

1 ran out the door?

2 A. He had the bag in his hand.

3 Q. At what point did you leave the front area and
4 return to the office?

5 A. When he shot the victim, that's when I started
6 running.

7 Q. Does the Dollar General Store have video
8 surveillance?

9 A. Yes.

10 Q. Do you know how many cameras they have in the
11 store?

12 A. Nine.

13 Q. Do you know how many are in the front area where
14 you were?

15 A. I think about four.

16 Q. When you went into the back, could you tell what
17 was happening in the store?

18 A. Yes.

19 Q. How?

20 A. By looking at the monitors.

21 Q. The monitors are in the office?

22 A. Yes.

23 Q. Ms. Young, you looked at what's marked State's
24 Exhibit 41 earlier, do you remember that?

25 A. Yes.

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1 Q. Do you remember previously viewing that tape?

2 A. Yes.

3 Q. Do you remember specifically watching beginning
4 at approximately 4:10 p.m.

5 A. Yes.

6 Q. What does that tape show?

7 A. It shows the robbery and the murder.

8 Q. Do you recall how many camera angles are shown on
9 that tape?

10 A. I think just one.

11 Q. Is it possible there's more than one?

12 A. Could be.

13 Q. Based on your review of the tape and your
14 recollection of events that day, had any changes,
15 deletions, alterations been made to that surveillance
16 tape?

17 A. No.

18 Q. Does that tape fairly and accurately represent
19 the robbery as it occurred on April 27th?

20 A. Yes.

21 MS. BENTLEY: Your Honor, at this time, the
22 State wishes to admit Exhibit 41 into evidence and publish
23 to the jury.

24 MR. STALVEY: No objection.

25 MS. BENTLEY: Without objection the Exhibit

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1 41 has been admitted and may be published to the jury.

2 (Video tape previously marked as State's
3 Exhibit 41 for identification was admitted into evidence).

4 BY MR. BENTLEY:

5 Q. Ms. Young, I'm going to ask you as the tape plays
6 to kind of narration what you recall by using this laser
7 pointer. We're not going to pause it but if you see
8 anybody you recognize or anything you remember just point
9 it out on the screen.

10 (Video played in open court).

11 Looking at this video, Ms. Young, do you know
12 which camera is recording this image?

13 A. That's the camera that's at the front door. I
14 think it's No. 1. That's Josh. This one over here is
15 when the man came into the store and he said give me the
16 money.

17 Q. Do you remember what he said to you?

18 A. He said, "Bitch, give me all the money or I'm a
19 shoot you." He had shot Josh in this one.

20 Q. Did he run out of the store immediately after the
21 shot was fired?

22 A. After he shot him, he ran to the end of the aisle
23 and that's when he was like, "If any of you other
24 motherfuckers in here want it, y'all can get it too,"
25 that's when he turned around and ran out of the store.

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1 Q. There's another camera angle that looks at the
2 cash register. Do you recall that camera?

3 A. Yes, that's camera 2.

4 Q. I'm going to ask you do the same thing as we
5 review the same time frame from camera 2.

6 Ms. Young, could you point out which person
7 you are on this video?

8 A. I'm right here. At this point that's right here
9 that's when he demands the money and I tell him I have to
10 ring up something and he told me to ring it up and to give
11 him all of the money in the register and even the change.
12 That's where he shot Josh.

13 Q. Which direction did you go back to the office?

14 A. Back to the left.

15 Q. Do you know who that woman is that's on the right
16 hand side of the screen?

17 A. That's Josh's mother.

18 Q. Did you see them walk in together?

19 A. No, I didn't at that time. I didn't know that it
20 was his mom. When I came out of the office, she was
21 standing over him and she was crying and stuff.

22 Q. When you went to the office, did you make any
23 emergency calls?

24 A. The two managers that was there had already made
25 calls.

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1 Q. Did you speak to the law enforcement officer on
2 the right, did you ever speak to them?

3 A. No.

4 Q. I'm going to show you what's been collectively
5 marked as State's Exhibit 35. Do you recognize those
6 images or do you recognize where they're from?

7 A. Yes.

8 Q. What are they?

9 A. They're from the Dollar General.

10 Q. Are these the still images that from the tape but
11 in a still format?

12 A. Yes.

13 Q. Can you tell if they're in chronological order
14 and show things in the order in which they appeared?

15 A. Yes.

16 Q. And I'm going to ask you if any of those pictures
17 have been altered in any way that you can determine?

18 A. No.

19 MS. BENTLEY: Your Honor, at this time, the
20 State admits 39 into evidence.

21 MR. STALVEY: No objection.

22 THE COURT: Without objection.

23 (Photographs previously marked as State's
24 Exhibit 39 for identification was admitted into evidence).

25 BY MS. BENTLEY:

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1 Q. Ms. Young, do you have any idea who the person
2 was that entered the Dollar General that day?

3 A. No.

4 Q. And do you have any idea how much money was
5 taken?

6 A. No.

7 Q. Did someone else from the corporate office come
8 to determine the monetary amount?

9 A. It was another. Manager from another store.

10 Q. Do you know that manager's name?

11 A. Robbie.

12 Q. I don't have any further questions. Please
13 answer any questions Mr. Stalvey may have.

14 MR. STALVEY: Judge, I don't have any
15 questions for Ms. Young.

16 THE COURT: Thank you, ma'am, you may step
17 down.

18 (Witness leaves witness stand).

19 You may call your next witness.

20 MR. BENTLEY: May Ms. Young be excused?

21 THE COURT: Any objection to Ms. Young being
22 excused?

23 MR. STALVEY: No objection.

24 THE COURT: Without objection.

25 MS. BENTLEY: We would call Robber Spicer to

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1 the stand.

2 THE CLERK: Ms. Spicer, come up to the stand
3 to be sworn. Please place your left hand on the bible and
4 raise your right.

5 ROBBIE BLACK SPICER, having been duly sworn,
6 testified as follows:

7 Thank you. You may be seated. Please state
8 your full name for the record.

9 THE WITNESS: Robbie Black Spicer.

10 DIRECT EXAMINATION

11 BY MS. BENTLEY:

12 Q. Ms. Spicer, where are you employed?

13 A. Dollar General.

14 Q. At which store?

15 A. The one at 114 West Butler Road in Mauldin.

16 Q. And what is your position there?

17 A. I'm a store manager.

18 Q. Ms. Spicer, were you called to another Dollar
19 General Store on April 27, 2010?

20 A. Yes, my district manager called and asked me to
21 go over and see if I could offer assistance until I could
22 get there.

23 Q. And which store were you told to go?

24 A. The one on Augusta Road.

25 Q. The one at 5922 Augusta Road?

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1 A. Correct.

2 Q. When you arrived, did you know why you had been
3 asked to go there?

4 A. I knew there had been a robbery and a shooting
5 but I did not know there was a murder at that time.

6 Q. What is the Dollar General procedure when a
7 robbery takes place?

8 A. Normally the store manager of that store would
9 count the money down once loss prevention and the district
10 manager gets there.

11 Q. Why did they call you over to the store on April
12 27th?

13 A. Because of the circumstances of the murder, the
14 co-manager was having to go downtown and she could not
15 verify the funds.

16 Q. What did you do when you reached the store on
17 April 27th?

18 A. We had to wait until the coroner got there and
19 after the coroner got there, we went inside and I counted
20 the money down for that till while the district manager
21 stood there and loss prevention watched the tape.

22 Q. And were you able to determine how much money was
23 taken?

24 A. Yes, ma'am.

25 Q. How much money was taken that day?

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1 A. \$194.

2 Q. And how did you determine that -- count the till?

3 A. The tills have \$100 cash bank that they start
4 with every day. We count that down back to \$100, put it
5 into a cash balancing report and it comes up with how much
6 you're missing or how much you have.

7 Q. And did you use receipts to help you?

8 A. There was \$100 bill under the door that they
9 didn't get and the change was left in the drawer, and
10 counting that it was \$194 that didn't come up from the
11 receipts.

12 Q. Ms. Spicer, I have no further questions. Please
13 answer any questions Mr. Stalvey may have.

14 MR. STALVEY: Judge, I don't have any
15 questions for Ms. Spicer.

16 THE WITNESS: Thank you. You may step down.

17 (Witness leaves the witness stand.)

18 MS. BENTLEY: Can Ms. Spicer be excused,
19 Judge?

20 THE COURT: Without objection this witness
21 may be excused.

22 MS. BENTLEY: Your Honor, the State calls
23 Renee Beaufort.

24 THE CLERK: Ms. Beaufort, please pause at the
25 end of the bench, raise your left hand on the Bible and

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1 raise your right hand.

2 RENE BEAUFORT, having been duly sworn,
3 testified as follows:

4 Thank you. Please be seated.

5 Please state your full name for the record.

6 THE WITNESS: Wanda Renee Beaufort.

7 DIRECT EXAMINATION

8 BY MS. BENTLEY:

9 Q. Ms. Beaufort, where are you employed and in what
10 capacity?

11 A. Greenville County Sheriff's Office and I'm a
12 communication training specialist and research
13 coordinator.

14 Q. What are the duties of your job?

15 A. My training is probably the least of my job.
16 What I do is I research any kind of call that has come in
17 to our communication center whether it is documented in
18 our computer aided dispatch, which is called CAD, whether
19 it be documented on our phone tape system or any other
20 time means. I try to research any type of information
21 that we would receive within the dispatch center for any
22 type of incident.

23 Q. And how long have you held that position?

24 A. This position I've actually been in since June of
25 last year.

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1 Q. And before this position, were you still employed
2 by the Sheriff's Office?

3 A. Yes, I was. I was with Greenville County for 16
4 years in the capacity of a 911 supervisor.

5 Q. Okay. And in your current position, are you
6 responsible for authenticating 911 calls and recordings?

7 A. Yes, ma'am, I am.

8 Q. And as a dispatch -- dispatch supervisor, what
9 were your primary duties at that point?

10 A. As dispatcher is to answer any of the incoming
11 calls that come in whether they come in on a 911 or a
12 seven digit line, but answer all calls and dispatch them
13 out or answer them appropriately to the proper agency.

14 Q. Are you currently authorized to listen to and
15 verify the recordings of other 911 dispatchers take?

16 A. Yes, ma'am, that's part of my job.

17 Q. And have you been asked to review and
18 authenticate 911 recordings in this trial?

19 A. Yes, ma'am, I have.

20 Q. What day did the calls come in?

21 A. April 27, 2010.

22 Q. Do you recall about what time the first call came
23 in?

24 A. Right around 16:15 hours which is 4:15 p.m.

25 Q. And how many calls in total came in regarding the

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1 Dollar General store on April 27th?

2 A. We actually received seven actually coming in and
3 then we made a call back to one of them that had hung up
4 and did not wait on the dispatcher to pick up.

5 MR. STALVEY: Judge, at this point I hate to
6 interrupt the witness but I'd ask if we could approach.

7 THE COURT: Ladies and gentlemen, we have a
8 legal matter we need to take care of outside of your
9 presence. I'll ask you if you would go back to your jury
10 room. Don't discuss the case just now and we'll call you
11 back in just a few minutes. It won't be long I understand
12 from the attorneys.

13 (Jury exits courtroom).

14 MS. BENTLEY: Would you like me to continue
15 laying the foundation or would you like to go ahead and
16 address the issue at hand?

17 THE COURT: Let me reiterate for the record,
18 the bench conference was the defense had some objection to
19 some of the 911 tapes being played before the jury because
20 of their prejudicial effect on the jury and it would
21 outweigh any probative value. Obviously, I'm going to
22 need to listen to those in order to make a ruling on that.

23 Is there other objection other than as to the
24 authenticity of the tapes other than the exclusion under
25 Rule 403.

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1 MR. STALVEY: Judge, I'm thinking about it
2 and I'm kind of in a position now where -- I thought we
3 were going to have this hearing prior to -- I didn't
4 realize this is how they're going to get in the 911 tapes.
5 I'm looking in my evidence book because it's my
6 understanding that she just testified that she
7 authenticates 911 recordings between people other than
8 her.

9 I don't even know if there is any probative
10 value to the 911 tapes that don't involve the mother, but
11 that sounds like some particular or specialized knowledge
12 that would require her to be certified as an expert and I
13 haven't heard any foundation for her to be qualified as an
14 expert witness. So, Judge, I don't know if we need to be
15 heard on that and then get to the 403 issue on the
16 mother's 911 call?

17 THE COURT: Solicitor, I'll let you lay a
18 foundation as to her custodial care of the 911 tapes and
19 her expertise and get into if the recordings are valid.

20 MS. BENTLEY: Yes, sir.

21 BY MS. BENTLEY:

22 Q. Ms. Beaufort, you said earlier that you were
23 previously a 911 supervisor; is that correct?

24 A. That's correct.

25 Q. And how long were you a supervisor?

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1 A. Approximately 14 years with Greenville County.

2 Q. And as a supervisor, were you in charge of all
3 the dispatchers? Did you supervise all the dispatchers?

4 A. No, I had a shift. I was a shift supervisor.

5 Q. In your capacity as shift supervisor, did you
6 have occasion to become familiar with most of the 911
7 dispatchers?

8 A. Yes.

9 Q. Did you have occasion to become familiar with all
10 of the 911 dispatchers?

11 A. Recognition that they worked there, I would work
12 overtime on the other shifts as far as getting to know
13 them on a personal level, to know that they weren't there,
14 yes.

15 Q. Did you become familiar with recognizing their
16 voices?

17 A. Yes, repetitive -- especially when I pull the
18 tapes for authentic the documentation in the call that has
19 their name and knowing them and that is their voice, it
20 becomes over the years.

21 Q. In your current capacity for what reasons did you
22 pull and research 911 recordings?

23 A. It could be for different reasons. It could be
24 for criminal investigation on a case. It could be for a
25 complaint or our complaint with our DS department, it

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1 could be a request for an attorney for the public and it
2 would be passed down to me so I would have a number of
3 reasons I would research the call.

4 Q. And are you familiar with the dispatchers for
5 Greenville County?

6 A. Yes, I am.

7 Q. And are you still familiar -- has there been
8 enough turn over that there are voices that you do not
9 recognize, that you did not work with on a regular basis?

10 A. The position I am in now is Monday through Friday
11 and our shifts are 12 hour shifts and they rotate 1st and
12 3rd, so at some point I'm working with a shift because my
13 office is within dispatch that I'm hearing them break-
14 wise, when I go into the radio room to research things. I
15 might even go out and assist if they get real busy to help
16 answer phones to get them through a bad time if a bad
17 situation has come in.

18 So at this point now, yes, I'm pretty much
19 working with everyone unless they are permanently third
20 and I know the ones that are on the two permanently third
21 that I have worked with in the past.

22 Q. You were asked to pull recordings from the Dollar
23 General event. How would you go through that process?

24 A. The first thing I would do is to run our
25 computer-aided dispatch report which we call our CAD

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1 report.

2 Q. And what does that report tell you?

3 A. It tells me the time the event came in, the
4 location of the event and it's based against the case
5 number and its researched by either the case number or
6 date and time or location.

7 Q. And who puts that information into computer-aided
8 dispatch?

9 A. The call taker that takes the original call would
10 be the one to initial the event in the system.

11 Q. When you have multiple calls, as you did in this
12 case, seven incoming calls, at what point are the group
13 together or do you group those together when you're asked
14 to pull an event?

15 A. No. They are actually grouped together by
16 documentation in that event in the system by the
17 individual dispatchers, and I base my research on their
18 documentation. For instance, say if they only put a
19 telephone number in versus a name on their actual comment
20 line, it's got the name of the dispatcher, the CAD
21 position they were at at the time they put the comment in,
22 and say they did put a telephone number in, then I can go
23 back to our phone system and research by telephone, a date
24 and time, CAD position, or even a dispatcher or call
25 takers' name. I match it up according.

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1 Q. Did you do that with each of the seven incoming
2 and one outgoing calls in this case?

3 A. Yes, I did.

4 Q. Tell me how you group these calls together? How
5 you identified them and how you grouped them?

6 A. The first thing I did, like I said, I pulled our
7 CAD dispatch report and verified the date, time, and case
8 number that I was given to research. From that point I
9 went to the phone system and I started out doing a time
10 frame period from the time that the first event come in to
11 the documentation and the call of the last call. I then
12 went and researched a second wave back telephone number of
13 the ones that are documented in the CAD report that have a
14 telephone number beside it and match those up with the
15 dispatcher or the call taker that took the call, their CAD
16 position and the time that it was documented in the
17 system.

18 I narrowed it down to where I had one that
19 was not documented and that was a hang up call, but then
20 later in the call it was documented when that dispatcher
21 made that call back. And from the printout from the phone
22 system, it actually shows -- it says "ANI call back," and
23 that means that's the automated number indicator and that
24 that dispatcher actually just hit call back 911 and he
25 didn't per say dialed that number. It automatically

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1 dialed that number that was displayed on this screen.

2 Q. These computer-aided dispatch reports, these CAD
3 reports you speak of, are those kept in the regular course
4 of business for 911 dispatch?

5 A. Yes, it is.

6 Q. And these printouts that you spoke of, are those
7 also kept in the regular course of business for 911
8 dispatch?

9 A. Yes, they all are kept within the 911 system and
10 can be printed.

11 Q. How long were those kept?

12 A. They CAD goes back to I believe 2007 and then it
13 goes into an archive.

14 Q. And what about the calls, themselves, are those
15 kept and recorded in the regular course of business for
16 911 dispatch?

17 A. Yes, they are.

18 MS. BENTLEY: Your Honor, I don't have any
19 further questions with regard to laying the foundation
20 that she does this.

21 THE COURT: Any objection to this witness's
22 testimony from the defense?

23 MR. STALVEY: Judge, it was my understanding
24 they're going qualify her as an expert.

25 THE COURT: What would be her expertise?

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1 What is the requirement? That she be an expert.

2 MR. STALVEY: Judge, she got up there and --
3 well, I'm sorry. She testified that she could
4 authenticate voices on 911 calls and my original objection
5 was that type of testimony sounds like something she would
6 have to be qualified as an expert for.

7 THE COURT: I thought her testimony was she's
8 familiar with them because she works with the people and
9 she hears their voices all the time. Would that require
10 expertise?

11 MR. STALVEY: Judge, she authenticates voices
12 from other people.

13 THE COURT: I thought the only voices she was
14 authenticating were her dispatchers, the call takers, not
15 the people calling -- you intend for her to authenticate
16 voices that are calling in?

17 MS. BENTLEY: No, I do not, Your Honor, just
18 the dispatchers so she can identify the dispatcher who
19 took the call and map it out that way. I apologize for
20 the confusion.

21 MR. STALVEY: Judge, if the Court's ruling
22 that this witness is going to testify to something that
23 doesn't require specialized knowledge or expertise, I
24 respect that opinion. If you rule she doesn't need to be
25 an expert, then I have no objection.

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1 THE COURT: I believe that, again, we haven't
2 gone to the 403 objection, yet, but I think under the
3 records kept in the regularly conducted activity of a
4 business that based on the foundation laid that under 803
5 that the 911 tapes would be admissible. So I don't see
6 where she has to be qualified as an expert.

7 MR. STALVEY: Thank you, Your Honor.

8 THE COURT: Could we play the tapes now so we
9 can move onto the 403 issue?

10 MR. MARCHANT: Yes, sir.

11 THE COURT: These are ---

12 MS. BENTLEY: The ones dealing with the
13 victim's mother.

14 THE COURT: Okay, play those for me, please.

15 (911 tape played outside presence of jury.)

16 MS. BENTLEY: That was call No. 4, Your
17 Honor, and we are going to play call No. 3 that we were
18 intending to play for the jury.

19 THE COURT: That was the mother calling?

20 MS. BENTLEY: No, Your Honor. This is the
21 mother calling.

22 (911 tape call No. 6 played).

23 Your Honor, we are now playing call No. 6
24 which is the call back from dispatcher to the person from
25 call No. 3.

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1 (911 tape call played.)

2 And that concludes.

3 THE COURT: What portions you believe are
4 prejudicial?

5 MR. STALVEY: Judge, the entire phone call
6 was prejudicial. It's obviously going to play on the
7 emotions of the jury. I mean it's a woman describing the
8 moment that she sees her son get shot. It's obviously
9 hysterical. The only probative value that it may have is
10 that a black guy was the person who shot the victim. And
11 I mean, Your Honor, in the scope of this trial in my
12 opening statement we've already admitted he's the one that
13 fired the gun. I know the State has to lay a foundation
14 to prove their case, but this doesn't need to be part of
15 it.

16 I also point out to the Court that there's a
17 written transcript of these 911 calls. So if they feel
18 like it's so probative, why aren't they trying to admit
19 these into evidence. That's my position.

20 THE COURT: Are the transcripts going to be
21 introduced into evidence?

22 MS. BENTLEY: No, Your Honor.

23 THE COURT: What's the probative value of
24 this 911 tape?

25 MS. BENTLEY: The same as all the other 911

State of South Carolina versus Tremain Davis

1 tapes, it shows the presence and impression of all of the
2 witnesses to the crime. This one in particular identifies
3 the victim and it identifies the reason presumably why he
4 entered the store to try to stop the robbery. It's his
5 mother that's in there and that's who she sees and she
6 identifies him as the victim.

7 It's not unduly prejudicial, Your Honor.
8 While she is hysterical, most of the language is
9 unintelligible. She just says a black guy shot him and
10 she offers -- there were numerous calls. Everyone was
11 trying to get medical attention as quickly as possible.
12 It's part of the res justis of the case and of the crime
13 itself. You can see her making the calls on the
14 surveillance video that we just watched and it just ties
15 everything together.

16 THE COURT: Is she going to be testifying for
17 the State?

18 MS. BENTLEY: Not at this time, Your Honor.
19 We were going to just put in the call. We were going to
20 try to minimize the jury's exposure to her.

21 We are also objecting to Mr. Stalvey's
22 opening statement that he has admitted his armed robbery
23 and possession of a weapon. There's been no plea entered.
24 The armed robbery is still a part of this trial.

25 THE COURT: Mr. Stalvey, if the witness were

State of South Carolina versus Tremain Davis

1 to testify and say the same things that were on tape,
2 would your objection be the same that it was prejudicial?

3 MR. STALVEY: No, sir.

4 THE COURT: I'll overrule your objection. I
5 don't find, weighing under 403, I don't believe the 911
6 tape substantially outweighs the prejudicial effect is
7 substantially outweighed probative value. I will allow
8 the tape in.

9 MR. STALVEY: I'm sorry to keep throwing in
10 these objections.

11 THE COURT: You make your objections as you
12 need to.

13 MR. STALVEY: I appreciate that, Your Honor.
14 If they're going to introduce this tape in replacement for
15 the mother's testimony, then that creates a Sixth
16 Amendment problem for this defendant to confront all the
17 witnesses against him.

18 THE COURT: Well, what about that with the
19 other 911 calls as well? Are you saying that all the
20 witnesses have to be called to testify?

21 MR. STALVEY: Yes, sir. You know, I don't
22 really see the other -- first of all there's one from
23 Avery Thomas who I expect to testify. The other ones I
24 don't really see any harm to them if I could remember
25 correctly.

State of South Carolina versus Tremain Davis

1 THE COURT: Of the 911 call, how many 911
2 calls were made by individuals?

3 MS. BENTLEY: Yes. The store manager, a
4 witness, Sherri Hood, the victim's mother, Avery Thomas,
5 an unidentified man, and two unidentified female -- I'm
6 sorry, we did identify the last female. We will not be
7 testifying as who made this call. We'll probably identify
8 her as Donna Mulky. We'll identify her as the victim's
9 mother was inside the store and the victim was Josh.

10 THE COURT: But the other witnesses are
11 testifying?

12 MS. BENTLEY: No, Your Honor, they're not.

13 THE COURT: None of the 911 callers are
14 testifying?

15 MS. BENTLEY: Avery Thomas called. He will
16 be testifying and his 911 call will corroborate some of
17 this other testimony and from what you can see on the
18 video, you can see a call being made.

19 THE COURT: Is there any relevance in the --
20 I haven't heard the 911 calls. Are there relevant facts
21 from the other 911 calls other than Mr. Thomas.

22 MS. BENTLEY: The second 911 call to be
23 introduced is just an independent witness who happened to
24 be inside the store to show that it's not just the
25 co-defendant or the mother that's calling in this robbery.

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1 It's people who are not affiliated as well.

2 THE COURT: But you say you're only planning
3 on playing a couple but all are going to be for the jury's
4 benefit if they want to hear them. Is that what you plan
5 on doing, correct?

6 MS. BENTLEY: Yes, Your Honor.

7 THE COURT: That's your plan to introduce all
8 of them?

9 MS. BENTLEY: Our plan would be to admit the
10 911 compilation but to only publish calls 3, 4, 5 and 6.
11 We have no problem publishing them all but to save the
12 court some time those were the calls that we chose to
13 introduce or publish.

14 THE COURT: How about the confrontation issue
15 on all of these as far as Crawford? Do you believe that
16 that presents a problem with Crawford with the defendant's
17 right to examine these witnesses if they are not
18 testifying?

19 MS. BENTLEY: I do not, Your Honor. The
20 people in the calls are not identified by name. The only
21 way they're identified for information gathering purposes
22 is the phone numbers from which they called. I believe
23 the Supreme Court has ruled on the Crawford issues as far
24 as 911 tapes.

25 THE COURT: Yes, they have.

State of South Carolina versus Tremain Davis

1 I have, again, found that the prejudicial
2 effect is not substantially outweighed by the probative
3 value and I will allow the tapes to be played or the
4 witnesses to testify as the State sees fit. I believe
5 under the Crawford issue that there is a sufficient
6 grounds to exclude the confrontation on 911 tape under
7 Crawford and as the South Carolina cases interpret
8 Crawford. So I will allow the 911 tapes to be played.

9 Your objection is noted on all grounds,
10 Mr. Stalvey.

11 MR. STALVEY: Thank you, Your Honor.

12 THE COURT: If the jury is ready, you can
13 have them come in.

14 Can I see the attorneys just for a minute
15 before the jury comes back?

16 (Whereupon, there was a bench conference).

17 (Jury re-enters the courtroom.)

18 All right, you may continue, solicitor.

19 BY MS. BENTLEY:

20 Q. Ms. Beaufort, we were speaking about your
21 compilation of recording from this event. Could you
22 please tell the jury how you determine which 911 calls
23 coming in that day were related to that event?

24 A. The first thing I did was to pull what we call
25 the CAD report, computer-aided dispatch report, where all

State of South Carolina versus Tremain Davis

1 the -- where the initial event is created into our system
2 to create the call. Any subsequent calls that come in
3 that are related to it, there are other dispatchers or
4 even the same dispatcher that might take a secondary call
5 would document any additional information that they might
6 receive pertaining to the situation as it comes in.

7 First of all, I located it in our phone
8 system based on date and time and then I narrowed the time
9 down from the first caller to when the last caller and
10 everything in between I narrowed it down by documentation
11 within that CAD report. If there was a phone number
12 documented, I cross referenced it with the CAD position
13 and the dispatcher's name that was associated with that
14 CAD entry into the event.

15 So I found the call based on their position
16 that they were sitting at, then I cross referenced it by
17 the telephone number that they documented as being the
18 incoming call number and then I narrowed it down to where
19 I found everyone except there was one and there was a 911
20 hang up. Then the dispatcher calls it back and I was able
21 to group those two together based on voice recognition of
22 the dispatcher and his documentation in the CAD system
23 that displayed his name and the position that he sat at
24 the time the documentation was put in.

25 Q. Ms. Beaufort, are the CAD reports that you've

State of South Carolina versus Tremain Davis

1 mentioned, are those kept in the regular course of
2 conducting business with the 911 dispatch?

3 A. Yes, it's automated on a server.

4 Q. And how long are those kept for?

5 A. Our CAD reports actually go back to
6 approximately, I think, 2007 and then they're put into
7 archive into what we call a bi-web system where we can
8 access prior reports.

9 Q. What about the 911 calls that come in, are those
10 also kept in the regular course of business?

11 A. Yes, they are.

12 Q. And how are they stored?

13 A. They're stored also on a separate server called a
14 plant phone system. I believe we only go back about three
15 years on those but then they put into archive where they
16 can be access.

17 Q. When someone calls to access a group of 911
18 recordings, what is the first thing you do?

19 A. The first thing I do is gather the information
20 from the person who is doing the inquiry, case number,
21 location, date, time, and type of event and from there I
22 got to the computer-aided dispatch and pull a report based
23 on that either by date and time or case number or
24 location.

25 Q. Is every call that comes in to Greenville 911

State of South Carolina versus Tremain Davis

1 recorded?

2 A. Yes, they're recorded automatically, digitally
3 and simultaneously.

4 Q. And at what point does the recording begin?

5 A. If it is a 911 call, that begins when that person
6 makes that phone call. When they actually, physically
7 call 911 and hit that second 1 it begins recording at that
8 time prior to our dispatch ever picking up. Now, if it is
9 on what we call a seven digit line, which is a
10 nonemergency line, then it does not start recording to
11 either the dispatcher picks up or if the dispatcher is
12 making the outgoing call you will hear the phone ringing
13 and then the person start talking. But it will start
14 recording after that dispatcher starts the dialing mode,
15 but as far as 911, it records automatically as soon as
16 they hit that second 1 it starts recording.

17 Q. Regarding the calls in this case, were they all
18 calls?

19 A. Seven of those calls were 911 calls and the
20 eighth call in this situation was a call back to one of
21 the calls that had hung up.

22 Q. Do you recall looking at State's Exhibit 42?

23 A. Yes, I do.

24 Q. Were you able to identify that?

25 A. Yes, I was.

State of South Carolina versus Tremain Davis

1 Q. What was it?

2 A. CD audio recording.

3 Q. Of what?

4 A. Of the event on April 27th, 2010 at the Dollar
5 General and it had phone as well as some radio traffic on
6 that CD.

7 Q. And did you listen to this tape to refresh your
8 recollection of events?

9 A. Yes, I did.

10 Q. And did you listen to this tape in order to make
11 sure it was an authentic copy of the records?

12 A. Yes, I did.

13 Q. Were you able to determine whether any of those
14 recordings had been altered in any way?

15 A. They were not.

16 Q. And how could you tell that?

17 A. I went back and pulled the actual traffic on our
18 recording that was still there and listened to it first
19 and then I listened to the CD.

20 Q. Calling your attention to calls 3, 4, 5 and 6, do
21 you recall whether any of those calls was not a 911 call?

22 A. Yes, I believe it was 6 was not. That was the
23 call back to a 811 hang up.

24 Q. And how does a call back work?

25 A. When a person calls 911 and abandons the call to

State of South Carolina versus Tremain Davis

1 a dispatch picking up, it actually brings to the
2 dispatcher whether this person is still on or not and
3 shows up on our identifier screen as being an abandoned
4 call and we have a one button call back which says ANI
5 call back which stands for Automatic Number Indicator.
6 All that dispatch has to do is once that screen is
7 displayed, hit the button and it automatically dials the
8 phone back for them.

9 MS. BENTLEY: Your Honor, at this time the
10 State seeks to admit Exhibit 42 into evidence and publish
11 calls 3 through 6 to the jury.

12 THE COURT: Subject to objection Exhibit 42
13 has been admitted into evidence.

14 (911 tape previously marked as State's
15 Exhibit 42 for identification was admitted into evidence.)

16 (Tape played in open court).

17 BY MS. BENTLEY:

18 Q. Do you remember which call that was?

19 A. I believe that was call No. 3.

20 MS. BENTLEY: Now, we're going to play call
21 No. 4 for the jury.

22 (Tape played in open court).

23 Call 5.

24 (Tape played in open court).

25 Now, we're going to play call No. 6 at this

State of South Carolina versus Tremain Davis

1 time.

2 (Tape played in open court).

3 Your Honor, I have no further questions for
4 Ms. Beaufort. Please answer any questions Mr. Stalvey may
5 have.

6 MR. STALVEY: Judge, I don't have any
7 question for Ms. Beaufort.

8 THE COURT: Thank you. You may step down.

9 (Bailiff approached the bench).

10 MS. BENTLEY: May Ms. Beaufort be excused,
11 Judge?

12 THE COURT: Without objection.

13 MR. STALVEY: No objection.

14 (Witness leaves the witness stand).

15 THE COURT: Ladies and gentlemen, I believe
16 this is a good time for us to break for the evening. I'll
17 remind you again you should not be discussing the case
18 while you're out and about and you should refrain from any
19 view of any media coverage about the case. You made a
20 high commitment to the parties involved in this matter.

21 I told you before you'll have an opportunity
22 to share your experiences with your loved ones and your
23 friends but not while it's in progress. So you should
24 refrain from any outside contact through any media, any
25 research by yourself and maintain the purity of that

State of South Carolina versus Tremain Davis

1 process. I'm sure you will.

2 Normally we would be starting back at 9:00 or
3 9:30 in the morning but we do have a legal matter that we
4 need to take care of first thing in the morning and I also
5 have a conflict that I have first thing in the morning so
6 we'll start at 10:00.

7 Have a good evening, ladies and gentlemen,
8 have a good evening.

9 Ms. Gambrell, if you could stay for a few
10 moments, we'll take care of that other matter.

11 (Jury exits the courtroom and dismissed for
12 the day).

13 Ms. Gambrell, while we were taking care of
14 some legal matters I understood from the bailiff that you
15 had mentioned that you perhaps knew Ms. Young when she was
16 testifying.

17 JUROR GAMBRELL: I didn't know her but we
18 went to the same church in 1995 and I didn't know her and
19 when I saw her going out the door with her mom, then
20 that's how ---

21 THE COURT: That's how you tied it in. Do
22 you believe now that you do know this relationship in 1995
23 you knew her mother and went to church with her, would
24 that affect your ability to continuing being a juror or
25 would that create a problem for you?

State of South Carolina versus Tremain Davis

1 JUROR GAMBRELL: No, sir. Because just like
2 the attorney said we have to listen to the evidence and
3 see which way it points whichever way it points, that's
4 where we go.

5 THE COURT: Thank you, again, for bring that
6 up because you don't know those things until the trial is
7 in progress and I appreciate you doing that. You believe
8 you could be a fair juror to both sides in this case?

9 JUROR GAMBRELL: Yes, sir.

10 THE COURT: Any questions from either
11 attorneys?

12 MS. BENTLEY: None from the State.

13 MR. STALVEY: None from the defense.

14 THE COURT: Thank you, Ms. Gambrell, you're
15 free to go and I hope you have a good rest of the day.
16 I'm sorry we had to have you working on your birthday and
17 sorry we had a communication problem on getting your cake.
18 Thank you very much. We'll see you tomorrow at 10:00

19 JUROR GAMBRELL: Thank you.

20 THE COURT: Are there any matters we can take
21 up tonight? I don't know, Mr. Stalvey, if you want to
22 call any witnesses on the Myers and the rule issue, I'll
23 be happy to hear you on that. Certainly the media
24 statements that may or may not be coming in, we'll
25 certainly address that again in the morning. As I

State of South Carolina versus Tremain Davis

1 mentioned to you I have a dental appointment in the
2 morning and I also need to vote in the election.
3 Hopefully that will give the jurors time as well if they
4 have a desire to.

5 I'll see y'all back at about 10:00 in the
6 morning.

7 ---END OF TRANSCRIPT RECORD FOR DAY 1 OF TRIAL---

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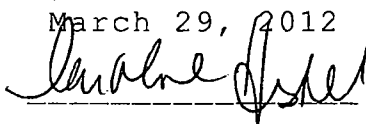
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State of South Carolina versus Tremain Davis

1 I, the undersigned, Caroline Hiskell,
2 Official Court Reporter of the State of South Carolina, do
3 hereby certify that the foregoing is a true, accurate, and
4 complete transcript of record of all the proceedings had
5 and evidence introduced in the trial of the captioned
6 case, relative to appeal, in the Circuit Court of
7 Greenville County, South Carolina on the 7th day of
8 November, 2011.

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

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13 March 29, 2012

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State of South Carolina versus Tremain Davis

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF GREENVILLE) 2010-GS-23-9191, 92, 93
3)
4 State of South Carolina) TRANSCRIPT OF RECORD
5 vs)
6 Tremain Davis)
7 -----)

8 Day 2 - November 8, 2010
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE EDWARD WELMAKER, Judge

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

13 LUCAS MARCHANT, Esquire
14 Assistant Solicitor
15 Attorney for the State

16 ALEX STALVEY, Esquire
17 Assistant Public Defender
18 Attorney for the Defendant

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State of South Carolina versus Tremain Davis

I N D E X

(No Exhibits or Witnesses presented).

State of South Carolina versus Tremain Davis

P R O C E E D I N G S

(Day 2)

THE BAILIFF: All rise, the Honorable Edward Welmaker presiding.

THE COURT: Thank you. Good morning. Please be seated.

THE CLERK: Mr. Davis, come right here, please.

Your Honor, this is Case No. 2010-GS-23-9193 the State versus Tremain Orlando Davis who is indicted for murder. He is pleading to the same. In the case of 2010-GS-23-9192, Mr. Davis is indicted for armed robbery and pleading to the same. In the case of 2010-GS-23-9191, Mr. Davis is indicted for possession of a weapon during the commission of a crime and pleading to the same. And Your Honor, these are all True Billed.

Mr. Davis, please raise your right.

TREMAIN ORLANDO DAVIS, having been duly sworn, testified as follows:

Thank you.

THE COURT: Mr. Stalvey, you represent Mr. Davis in these matters; is that correct?

MR. STALVEY: Yes, Your Honor.

THE COURT: I understand now that he wants to enter a plea of guilty to each of these charges. Is that

State of South Carolina versus Tremain Davis

1 correct?

2 MR. STALVEY: That's correct, Your Honor.

3 THE COURT: And you've discussed with him the
4 nature of the charges that are pending against him.

5 You've discussed with him his Constitutional Rights?

6 MR. STALVEY: Yes, Your Honor.

7 THE COURT: And do you believe he understands
8 those discussion you've had with him?

9 MR. STALVEY: I do, Your Honor.

10 THE COURT: Based upon your work on this case
11 and you're evaluation of the evidence that you've heard
12 already and you've examined that has not been presented to
13 the jury, do you believe the State has sufficient evidence
14 that proved by the State could convince a jury of his
15 guilt beyond a reasonable doubt as to all of these
16 charges?

17 MR. STALVEY: Yes, I do, Your Honor.

18 THE COURT: Now, Mr. Davis, we've begun a
19 jury trial. The jury hasn't made a decision, obviously,
20 because all the evidence is not in. You have every right
21 to allow this case to continue before that jury or let
22 that jury do its deliberations when all the evidence is in
23 and, of course, I'd instruct them that they'd have to
24 unanimously find you guilty of the charges beyond a
25 reasonable doubt.

State of South Carolina versus Tremain Davis

1 If we go forward with the plea now, the
2 process will end. The jury won't get an opportunity to
3 decide the case. Do you understand that?

4 DEFENDANT DAVIS: Yes, sir, I do.

5 THE COURT: You understand you have that
6 right to continue the case and you also have a right to
7 continue that plea.

8 DEFENDANT DAVIS: Yes, sir.

9 THE COURT: That's what you tell me you want
10 to do, you want to enter that plea of guilt.

11 DEFENDANT DAVIS: Yes, sir.

12 THE COURT: Mr. Davis, if you would, give me
13 a little information about yourself. How old are you,
14 sir?

15 DEFENDANT DAVIS: Twenty-four.

16 THE COURT: Are you married?

17 DEFENDANT DAVIS: No, sir, I'm not married.

18 THE COURT: Do you have any children?

19 DEFENDANT DAVIS: No, sir, I do not have any
20 children.

21 THE COURT: What's your educational
22 background?

23 DEFENDANT DAVIS: I graduated with the gold
24 seal diploma from Rock Hill High School, Rock Hill, South
25 Carolina. I was in the process of finishing up my

State of South Carolina versus Tremain Davis

1 paralegal degree at York Technical College in Rock Hill,
2 also. At the time that all this happened, my GPA was 3.3.

3 THE COURT: Have you had any treatment for
4 alcohol or drug abuse?

5 DEFENDANT DAVIS: Actually I have since I
6 been here.

7 THE COURT: In the Law Enforcement Center?

8 DEFENDANT DAVIS: Yes, sir.

9 THE COURT: Did you complete the program they
10 have for you?

11 DEFENDANT DAVIS: Yes, sir.

12 THE COURT: How long have you been using
13 drugs?

14 DEFENDANT DAVIS: My first time I was 20
15 years old when I finally moved out from my mother's house
16 and didn't have nobody telling me what I could or could
17 not do. I got around people or around that environment I
18 started.

19 THE COURT: Have you had any mental health
20 counseling?

21 DEFENDANT DAVIS: I actually have.

22 THE COURT: How long ago did you have that
23 treatment?

24 DEFENDANT DAVIS: That was all through my
25 elementary, middle school, and a little bit of my high

State of South Carolina versus Tremain Davis

1 school because my brother and I were adopted in 1995.

2 THE COURT: Are you under a doctor's care
3 now?

4 DEFENDANT DAVIS: No, sir, I'm not.

5 THE COURT: Do you take any medication?

6 DEFENDANT DAVIS: No, sir.

7 THE COURT: Are you fully aware what the
8 charges are pending against you and the nature of these
9 cases?

10 DEFENDANT DAVIS: Yes, sir.

11 THE COURT: You're fully confident to know
12 why we're here today, then?

13 DEFENDANT DAVIS: Yes, sir.

14 THE COURT: These indictments that I have
15 that are read to the jury, I don't know if you heard that
16 or not, but I will recite them again for you. They state
17 that on or about April 27, 2010 that you committed an
18 armed robbery here in Greenville County and that you used
19 a deadly weapon, presented that to the person, LeKiesha
20 Young, you took from her who was employed at the Dollar
21 General Store certain goods and money that being US
22 currency. Are you pleading guilty to this particular
23 armed robbery today?

24 DEFENDANT DAVIS: Yes, sir.

25 THE COURT: On that same date of April 27,

State of South Carolina versus Tremain Davis

1 you shot and killed an individual named Joshua Bryant
2 unlawfully and with malice aforethought and he died as a
3 result of that shooting. Are you pleading guilty to the
4 charge of murder today?

5 DEFENDANT DAVIS: Yes, sir.

6 THE COURT: And I also have an indictment
7 that says on that same day of April 27, 2010 that you
8 possessed, visibly displayed a handgun during the
9 commission or attempted commission of a violent crime,
10 that being either the armed robbery or the murder. Are
11 you pleading guilty to that as well?

12 DEFENDANT DAVIS: Yes, sir.

13 THE COURT: Solicitor, I have not heard all
14 of the evidence. I've heard part of the evidence. Can
15 you please give me the background facts of what the State
16 intended to prove.

17 MR. MARCHANT: Certainly. May it please the
18 Court, on April 27, 2010, this defendant along with
19 Derrick Duncan, Avery Thomas and Dwayne Gregory got
20 together over at Dwayne Gregory's house at 117 South
21 Estates Drive. This occurred around noon. In between
22 noon and 4:00 p.m., they discussed and devised a plan to
23 rob the Dollar General.

24 Testimony that would be presented from the
25 co-defendants would show that Dwayne Gregory is the one

State of South Carolina versus Tremain Davis

1 that at this defendant's request went and secured the .357
2 Magnum that was used to shoot and kill Mr. Bryant.

3 Mr. Avery Thomas was inside the store when
4 these events occurred. The information Mr. Thomas would
5 provide that this defendant Mr. Davis was to call him
6 ahead of time and Mr. Thomas was then supposed to tell him
7 whether or not it was clear to come in.

8 In addition the car that was used in this
9 incident was provided by Derrick Duncan. So the four of
10 time devised, hatched this scheme to rob the Dollar
11 General.

12 Following Mr. Thomas's entry into the store
13 and after the event was to take place, this defendant was
14 supposed to then run back to where he was dropped off at
15 by Derrick Duncan and Dwayne Gregory and be picked up and
16 then they would subsequently would pick up Mr. Thomas.
17 Obviously that did not occur as Mr. Bryant was shot.
18 Things obviously went sideways and they never reconnected
19 back with Mr. Davis.

20 Mr. Davis subsequently ran to a fifth
21 person's house by the name of Anthony Dunlap which is the
22 street, Belvadere Street where Mr. Duncan and Mr. Gregory
23 was supposed to pick up Mr. Davis. Mr. Dunlap lives a
24 couple of houses down from the corner where they were
25 supposed to pick him.

State of South Carolina versus Tremain Davis

1 He went and sat in Anthony Dunlap's father's
2 truck until he saw Mr. Dunlap come home. Mr. Dunlap was a
3 student at Southside High School. He got off the school
4 bus and at that point in time the defendant went into
5 Mr. Dunlap's house, left a gun, took off his clothes,
6 changed cloths inside Mr. Dunlap's house.

7 He then fled from there and was not
8 apprehended until the following day back on South Estates
9 Drive. It was not Mr. Gregory's house he was apprehended
10 at but it was across the street at 124 which we believe is
11 some relatives of Mr. Gregory.

12 It's the State's position that the evidence
13 will show both from the co-defendants as well as the store
14 clerk that this defendant entered the store with malic
15 aforethought. Without going into extreme details as to
16 what each defendant would testify to, there would be
17 information stating that this defendant made the comment
18 to the co-defendants while they were planning this event
19 something to the effect of: If I'm confronted or somebody
20 tries to stop me, I will shoot them or I will do what I
21 have to do. Something to that effect.

22 So it's the State's position and has been
23 from day one that the malice aforethought existed and that
24 it was not simply inferred by the use of the firearm, that
25 it was expressed.

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1 As Your Honor already heard when the
2 defendant entered the store, Ms. Young was approached.
3 She removed what Ms. Spicer testified to was \$194 from the
4 cash register and then as Your Honor is aware that both
5 armed robbery and murder are violent crimes which,
6 therefore, the elements of the possession of the weapon
7 during a violent crime.

8 Again, these events occurred on April 27,
9 2010 at the Dollar General, 5922 Augusta Road here in
10 Greenville County. The incident occurred at approximately
11 4:15 p.m. The defendant would be identified from the
12 stand by both the co-defendants as the ones who was
13 supposed to enter the store as well as the young man
14 Anthony Dunlap whose house he ran to. He admitted both to
15 Mr. Dunlap at the time immediately following the incident
16 what he had done and subsequently upon his arrest he gave
17 a two-page written statement to Investigator Antonio
18 Bailey detailing what he had done.

19 He does not indicate in his written statement
20 and has never indicated who was involved in this incident
21 with him. The co-defendants in this case were apprehended
22 by law enforcement on June 11th and June 18th and 19th.
23 Investigator Bailey and law enforcement continued to work
24 this case knowing that there were other people involved
25 for the next 45 to 60 days until the other arrests were

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1 made.

2 This defendant did not provide any
3 information other than that there were other people
4 involved and investigators could figure out who was
5 involved by either fingerprinting the gun or look at the
6 video but he did not give any names of his
7 co-conspirators.

8 Your Honor, those would be the facts
9 presented at trial. At the appropriate time, Ms. Young,
10 the store clerk would like to address the Court and the
11 Bryant family, Mulky family, have prepared a statement
12 they wish me to read into the record. I respectfully ask
13 the Court to allow me to do so at the appropriate time.

14 MR. STALVEY: Judge, while you're considering
15 the factual basis for the plea and before you actually
16 accept Mr. Davis's plea, I need to inform the Court that
17 while Mr. Marchant was telling you about the facts
18 Mr. Davis indicated to me he had a question whether he was
19 going to be sentenced today or at a later time. I told
20 him he was going to be sentenced today and explained some
21 other things. Later while he was reading the facts he
22 said, never mind, I just want to proceed with it. I don't
23 know what the Court wants to ask him.

24 THE COURT: I'll follow up on it. Thank you,
25 Mr. Stalvey.

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1 Mr. Davis, you understand that by entering a
2 plea that will end the case and you'll be sentenced for
3 these charges if you're pleading guilty today. Do you
4 understand that?

5 DEFENDANT DAVIS: Yes, sir.

6 THE COURT: You still want to enter your
7 plea?

8 DEFENDANT DAVIS: Yeah, I don't want to put
9 anybody through this.

10 THE COURT: Now, you heard the recitation of
11 the facts by the solicitor. Substantially are those the
12 facts for which you're pleading guilty to as far as each
13 of these offenses, having the weapon, committing the armed
14 robbery and committing the murder?

15 DEFENDANT DAVIS: You mean that is everything
16 he saying true?

17 THE COURT: I'm asking you if those
18 substantially the facts. Did you, in fact, have a weapon?

19 DEFENDANT DAVIS: Yes, sir.

20 THE COURT: And did you use that weapon in
21 committing the murder and the armed robbery?

22 DEFENDANT DAVIS: Yes, sir.

23 THE COURT: And you did commit an armed
24 robbery?

25 DEFENDANT DAVIS: Yes, sir.

State of South Carolina versus Tremain Davis

1 THE COURT: And you did commit a murder?

2 DEFENDANT DAVIS: Yes, sir.

3 THE COURT: And that's what you're pleading
4 to today?

5 DEFENDANT DAVIS: Yes, sir.

6 THE COURT: Mr. Davis, I need to make sure
7 that you understand the rights that you're giving up by
8 pleading guilty. I'm confident that you've had a chance
9 to go over these with your attorney but I need to be
10 satisfied in my own mind that you understand them.

11 Obviously, you have a right to a jury trial.
12 We've impaneled a jury. They've been sworn in. They've
13 indicated that they're committed to seeking the truth, and
14 the State will have to prove to that jury beyond a
15 reasonable doubt that you did, in fact, commit these
16 offenses. They're going to have to convince them
17 unanimously, that all 12 of them must agree, that the
18 proof is sufficient beyond a reasonable doubt to convict
19 you of each and every charge that you're standing trial
20 on. You have no burden of proof during a trial. You can
21 remain silent throughout the entire proceedings. You're
22 presumed innocent and I would certainly tell the jury that
23 as I have already briefly that you're presumed to be
24 innocent of these charges and until the State meets that
25 burden beyond a reasonable doubt, then their verdict

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1 should be not guilty.

2 You've had a right already for your attorney
3 to examine the witnesses that the State has called and
4 challenged the evidence. Other witnesses will be called
5 by the State presumably and again, your lawyer would have
6 a right to confront them for the jury.

7 If you chose to put up a defense, you'd have
8 a right to testify if you chose to. If you chose not to
9 testify, I would explain that to the jury that you have an
10 absolute right not to testify, that you can't be required
11 to testify and that you have a right to do that. If you
12 were to put up a defense, you could call any witnesses and
13 the State would be required to have them subpoenaed for
14 you to be here.

15 You have these and other rights in both the
16 South Carolina and the United States Constitution that you
17 give all those up, you waive them, by pleading guilty. Do
18 you understand that?

19 DEFENDANT DAVIS: Yes, sir.

20 THE COURT: Do you still want to enter a
21 plea?

22 DEFENDANT DAVIS: Yes, sir.

23 THE COURT: Are you satisfied with the legal
24 representation you received?

25 DEFENDANT DAVIS: Yes, I'm satisfied with the

State of South Carolina versus Tremain Davis

1 legal representation I received.

2 THE COURT: And you've met with Mr. Stalvey
3 as often and as long as you feel necessary?

4 DEFENDANT DAVIS: Yes, sir.

5 THE COURT: And you've understood the
6 discussions you've had with him?

7 DEFENDANT DAVIS: Yes, sir.

8 THE COURT: Do you have any complaints about
9 his representation?

10 DEFENDANT DAVIS: No, I don't.

11 THE COURT: Now, has anybody threatened you
12 in any way to cause you to plead guilty?

13 DEFENDANT DAVIS: No, sir.

14 THE COURT: Has anybody promised you anything
15 by way of reward or otherwise?

16 DEFENDANT DAVIS: No, sir.

17 THE COURT: You know you could be sentenced
18 for armed robbery up to 30 years in jail?

19 DEFENDANT DAVIS: Yes, sir.

20 THE COURT: The murder, you could be
21 sentenced to life?

22 DEFENDANT DAVIS: Yes, sir.

23 THE COURT: Do you understand for the weapons
24 violation up to five years in jail?

25 DEFENDANT DAVIS: Yes, sir.

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1 THE COURT: Are you entering this plea,
2 Mr. Davis, of your own free will?

3 DEFENDANT DAVIS: Yes, sir.

4 THE COURT: Are you pleading guilty because
5 you are guilty?

6 DEFENDANT DAVIS: Yes and no.

7 THE COURT: If you don't feel like you're
8 guilty then ---

9 DEFENDANT DAVIS: There's other things with
10 it, but, yes, sir. There's other reasons. I'm just being
11 considerate of Joshua's family and my family.

12 THE COURT: In other words, to enter a plea
13 of guilty, you've got to tell me your guilty.

14 DEFENDANT DAVIS: Yes, sir.

15 THE COURT: Are you guilty?

16 DEFENDANT DAVIS: Yes, sir.

17 THE COURT: Are you guilty of armed robbery?

18 DEFENDANT DAVIS: Yes, sir.

19 THE COURT: Are you guilty of possessing a
20 weapon during the commission of a violent crime?

21 DEFENDANT DAVIS: Yes, sir.

22 THE COURT: Have you understood the questions
23 I've asked you?

24 DEFENDANT DAVIS: Yes, sir.

25 THE COURT: Have you been truthful in your

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1 answers to me?

2 DEFENDANT DAVIS: Yes, sir.

3 THE COURT: You have a right, if you meet our
4 Appellant Court rules to appeal this decision within 10
5 days and if you can't afford an attorney one could be
6 appointed to you, do you understand that?

7 DEFENDANT DAVIS: Yes, sir.

8 THE COURT: Do you have any questions of me?

9 DEFENDANT DAVIS: No, I don't have any
10 questions.

11 THE COURT: I find there's a substantial
12 factual basis for the plea, that it has been free,
13 voluntarily, knowingly and intelligently made by Mr. Davis
14 with the advice of competent legal counsel in which he has
15 expressed his satisfaction. So I will accept your plea,
16 sir.

17 Solicitor, I'll be glad to hear anything else
18 the State has and I'll be glad to hear from Mr. Davis or
19 his attorney or anyone else who'd like to address the
20 Court.

21 You said you had a statement to read, sir.

22 MR. MARCHANT: Certainly, Your Honor, I would
23 like to inform the Court that Mr. Davis was arrested on
24 4/28 of 2010 and our records indicate that he had served
25 559 days in the Detention Center. Of course, he'd be

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1 entitled to the credit for those days.

2 At this time, Ms. Young would like to address
3 the Court.

4 THE COURT: Yes, ma'am, Ms. Young.

5 MS. YOUNG: I would just like to say that
6 after the 27th he came into the store, robbed me at
7 gunpoint, he changed my life. It's made me to be a very
8 angry person because my job was a place I could go and be
9 safe. Now I don't feel like I could be safe there any
10 more. Every time I go to work I'm looking over my
11 shoulder because I'm scared that somebody else would come
12 in and rob me. If I didn't cooperate with what he wanted
13 me to do, it could have been me instead of Josh. It could
14 have been my family sitting here instead of Joshua's
15 family.

16 I've had a hard time dealing with this on a
17 daily basis. I take medicine every day so I can sleep. I
18 take nerve pills because my nerves are bad and I just ask
19 that you give him the max. If the max is life, then
20 that's what I ask that he get.

21 THE COURT: Thank you, Ms. Young.

22 Solicitor, I'll be glad to hear the statement
23 or anyone else who wants to address the Court.

24 MR. MARCHANT: Yes, sir. I do not believe
25 that any of the other family members of Joshua Bryant are

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1 able to address the Court so they have asked me to read
2 the statement that the family has prepared on behalf of
3 them..

4 "I'm speaking today on behalf of the family
5 because Josh's mother, father and brother can not bring
6 themselves to do so. Josh's whole family is still totally
7 devastated by your poor choices that day in April when you
8 and your friends plotted and planned a robbery. You went
9 into a store full of innocent people who were shopping
10 never thinking they would be looking down the barrel of a
11 gun and a son who never thought he would be in a situation
12 that would cost him his life just to save his mom.

13 Your intentions that day were to use the gun
14 probably on the clerk if she didn't move fast enough to
15 suit you. You have damaged her beyond repair too. In
16 your little speech you made to the media that day you were
17 arrested, you said you didn't expect superman. Josh never
18 expected to see a threat to his mom either. Who knows if
19 Josh hadn't stopped you how many more deaths there might
20 have been that day.

21 Every one has to pay for their stupid
22 actions. Now is your time. Your judgment day is here
23 today on earth but the real judgment day is yet to come.
24 You will stand before the Lord and be judged. He will
25 know your true intentions that day."

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1 Your Honor, the family, which includes the
2 parents, aunts, uncles and other relatives request that
3 the Court impose the maximum sentence in this case.

4 THE COURT: Is there anything else from the
5 State?

6 MR. MARCHANT: Your Honor, you've heard the
7 facts. You've certainly presided over more of these trial
8 than I've had experience with so we ask the Court to
9 impose the sentence that the Court deems appropriate. We
10 are not making a recommendation with respect to any
11 specific time and Mr. Stalvey has aware of that and we
12 have discussed that on numerous occasions. But we'd ask
13 the Court to do what the Court feels is appropriate.

14 THE COURT: Is there a prior record?

15 MR. MARCHANT: Your Honor, I do not show any
16 prior convictions. He's got some magistrate court arrests
17 on two separate occasions from Lancaster PD and Rock Hill
18 PD but they're all 30 day offenses none of which I show
19 dispositions for.

20 Your Honor, with respect to any sentence the
21 Court imposes, we would certainly request no contact with
22 the victim's family be it direct or indirect through the
23 defendant or any member of his family. And, of course,
24 this is a highly charged emotional event, we would ask
25 that either the defendant's family exit the courtroom

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1 first or the victim's family and allow time for the
2 victims and victim's family to make their way out of here
3 so there's no confrontation or issue.

4 THE COURT: Mr. Stalvey, I'd be glad to hear
5 from you and certainly any others, your client or others
6 that might want to address me.

7 MR. STALVEY: Thank you, Your Honor. If it
8 please the Court, Judge, as Tremain told you he's 24 years
9 old. He grew up in Rock Hill, South Carolina. He
10 graduated from Rock Hill High School with a 3.85 GPA.
11 During the last two years of high school he worked at the
12 Bi-Lo part time.

13 He then got a lifetime scholarship to go to
14 York Technical College where he majored in paralegal
15 studies. He completed two years and while he was going to
16 York Tech, he worked two jobs, one at Foot Action and the
17 other at McDonalds. He worked those two jobs, went to
18 school and still maintained a 3.3 grade point average.

19 Judge, he grew up singing in the choir at
20 church. His parents are pastors at Mount Olive Holiness
21 Church. They were here in the courtroom yesterday.

22 Your Honor, he grew up singing in the choir,
23 went to college. He's always been interested in music.
24 In 2008 he went down to Orlando and tried out for American
25 Idol and another show Making the Band. While in college,

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1 he was the first runner up in the Alpha Phi Alpha
2 Fraternity for raising money for a scholarship.

3 He got all state choir while he was in high
4 school.

5 Judge, the reason I tell you all this is
6 because in considering a sentence for Tremain, you can
7 give him 30 years to life imprisonment, but Your Honor,
8 but for the short time he was in Greenville, he was a
9 model student. He was a great son. He was a member of
10 church. He's still very religious. He was a good kid,
11 Judge, and the fact that in this short span of time that
12 he was in Greenville and I even hesitate to throw this
13 cliché out but he got involved with some people he
14 shouldn't have been involved with.

15 He's certainly not using that as an excuse
16 and I certainly don't want the Court to think that I'm
17 saying he was hanging around the wrong people and that's
18 why this happened. He's excepted responsibility for his
19 actions. He knows that as I said in my opening statement
20 the choices he made that day resulted in a tragic
21 consequence.

22 But, Judge, he's not somebody that poses --
23 he's going to pay for his action. He's going to prison
24 for 30 years but he's not the kind of inherently evil or
25 dangerous person that I think warrants a life sentence.

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1 Judge, he's going to pay a significant price for his
2 actions that day but I don't think he's the kind of person
3 that is beyond rehabilitation. I think his past that I
4 told you about speaks to that.

5 I think 30 years is an awful lot of time for
6 rehabilitation but I don't think he's one of these people
7 where you look at them and you hear about them, sure his
8 actions that day were idiotic, they were stupid, they were
9 foolish, and what happened was tragic, but he's not the
10 kind of guy I feel needs to be locked away and kept away
11 from society for the rest of his life in order to protect
12 society. I don't think this case is that type of
13 situation.

14 Judge, again, I hesitate to throw out an
15 often used cliché but, you know, nothing that this Court
16 can do in sentencing can bring Joshua Bryant back.
17 Tremain sent a letter to his mother shortly after this
18 happened admitting to doing it, admitting his remorse for
19 what happened. He is certainly remorseful and if there
20 was anything he could do to bring Joshua Bryant back, he'd
21 certainly do that. He sent one of the letters to Joshua's
22 mother that if it could be his life, he would give that
23 up, and I sincerely believe that.

24 Judge, again, a tragic tragic event that he
25 is extremely remorseful for, however, I don't think a life

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1 sentence is appropriate. I think a sentence of 30 years
2 would be appropriate in this case. I don't know if
3 Tremain wants to address the Court but I would certainly
4 ask the Court to consider that and fashion a sentence
5 according.

6 THE COURT: Thank you, Mr. Stalvey.

7 Mr. Davis, anything you want to tell me?

8 DEFENDANT DAVIS: This was not supposed to
9 happen. I got so many dreams in life. I never give
10 nobody no problems. Everything I wanted to do I put my
11 mind to it and do it. That day, I didn't know he was
12 behind me. I turned around and he grabbed me. It caused
13 the gun to go off. I would never hurt nobody. I would
14 never hurt nobody. And I do want to apologize again to
15 the family. I wouldn't hurt nobody. I wasn't myself.
16 The drugs and alcohol.

17 Everything just happened so fast. I turned
18 around the leave and boom there it was. I would never
19 hurt nobody and it kill me every day. I ask God to
20 forgive me and he know he have and the letter that the
21 family wrote everybody does have their time for judgment
22 and God has already forgiven me for that. But that
23 doesn't make me out to be a bad person. That doesn't make
24 me out to be a bad person.

25 I been here in Greenville County for almost

State of South Carolina versus Tremain Davis

1 two years. I go to church faithfully. I haven't given
2 nobody, no officers, no COs no problems. I'm still my
3 happy go lucky self like I am on the street. There's not
4 a person you can find that would say anything bad about
5 me.

6 I'm just the type of person that everybody
7 like to be around, have fun. If they depressed, they
8 know, oh, Tremain, he going to make us laugh or anything
9 like that. I would give nobody no problems. I'm trying
10 to get myself together.

11 I said I wasn't going to be everything that
12 my parents were. Not my adoptive parents but my
13 biological parents because my biological mother, she was
14 on crack and she couldn't take me and my brother and my
15 father was in prison. She abandoned us in a shelter and
16 God bless Mr. and Mrs. Davis, my mother and father, to
17 take us in and adopt us like their own. They gave us
18 everything we never had. I said I wouldn't never make the
19 same mistakes and that day it just happened. I wouldn't
20 try to hurt nobody.

21 I can't turn about the hands of time. I'm
22 sorry, y'all.

23 THE COURT: Take your time.

24 DEFENDANT DAVIS: I'm just asking, please.
25 I'm not who you think I am and I'm not who you think I am.

State of South Carolina versus Tremain Davis

1 I had written a song about the situation and about how,
2 you know, God it doesn't matter what I done you still love
3 me about the situation and everything. I was writing a
4 book, it's titled Yesterday is Gone and I include a lot of
5 things that I feel and I have felt being that I might
6 think of that day and everything. It isn't all bad
7 because I'm still able to do things, make positive things
8 happen from a negative environment. I don't have to be a
9 product of my environment and I just really hope that
10 y'all know that I'm not that person.

11 I never intended on hurting nobody. I didn't
12 know that he was behind me but that still doesn't change
13 the fact that I shouldn't have been there. But to turn
14 around that quickly and something happened -- somebody
15 reaching for me it caused to gun to go off, it was no
16 intent. There was no malice. There was none. You can
17 even see that from the video.

18 But, of course, the State will want to say
19 that he did this on purpose or whatever, it's not the
20 case, it's not the case, and I would really like to ask
21 you to take that into consideration if you don't mind,
22 sir.

23 THE COURT: What brought you to Greenville?

24 DEFENDANT DAVIS: An opportunity. I had met
25 with this guy in Atlanta from this audition I had done in

State of South Carolina versus Tremain Davis

1 Charlotte at the Hilton downtown. The were hosting open
2 auditions and I had gone one early Saturday morning and I
3 paid my \$100 and they gave me a call back about two or
4 three weeks after and they said they were interested in
5 me. So people who had management companies in Atlanta and
6 this other guy from Atlantic Records so I me with them and
7 they was like, you know, we want to work with you. You
8 got the talent, you got the voice and everything, so I was
9 like okay.

10 I come to Greenville because I had a friend
11 in Greenville and I didn't want to stop going to school so
12 I put in an application for Greenville Tech so I could
13 transfer and I already had a place to stay. I wanted to
14 continue my education as well as my music, plus I met
15 other guys here that were into music as well. So I
16 thought it would be a great opportunity for a new start, a
17 different environment and, you know, just trying to
18 fulfill my dreams.

19 I had told myself, I told my parents, you're
20 not going to have to work forever. I'm going to take care
21 of you, I'm going to do this, I'm going to do that, I'm
22 going to get this, I'm going to get that, you know, and I
23 was just so sure of myself and everything just came
24 crashing down.

25 THE COURT: When did you start living with

State of South Carolina versus Tremain Davis

1 your parents? How old were you?

2 DEFENDANT DAVIS: We were in foster care from
3 age 8 all the way to 10 or 11 until my mother's rights
4 were terminated from the court because she wasn't making
5 her court date. They were able to adopt us then so we
6 were there all the way from age 18, when I graduated from
7 high school until I started going to school, then I moved
8 out.

9 THE COURT: Do you have brothers and sisters?

10 DEFENDANT DAVIS: Yes, sir, I have a younger
11 brother.

12 THE COURT: How old is he?

13 DEFENDANT DAVIS: He just turned 17 last
14 month and he's a nervous wreck from all this too. My
15 mother and them are in their 60's. Every adult tell their
16 child we just want the best for you, we don't want you to
17 make the same mistakes that we made, but all together you
18 still want to find out for yourself and I'm supposed to be
19 a role model for my brother. I'm supposed to be there to
20 chastise him, to push him to go to school, to push him to
21 do this and that, and I can't be there for him and it's
22 tearing me up.

23 He's so hurt he wanted to come see me.

24 THE COURT: What drugs were you using that
25 day?

State of South Carolina versus Tremain Davis

1 DEFENDANT DAVIS: Ecstasy, alcohol and
2 marijuana, but I can't quite understand what happened. I
3 smoked marijuana but I don't know what happened that day,
4 sir. It just wasn't the same. Something unusual took
5 place. I've never ever gone through anything like this.

6 THE COURT: But you took the gun in there
7 with you, didn't you?

8 DEFENDANT DAVIS: Yes, sir.

9 MR. STALVEY: Judge, for what its worth, I
10 didn't mention that his decision to enter this plea when
11 we talked about it this morning, he immediately told me
12 that not only didn't he want to put his family, who is in
13 the courtroom, through this any more, he doesn't want to
14 put Joshua's family through any more grief and anything
15 else that continuing this trial would subject them to. I
16 didn't mention that to the Court but I felt like it's
17 necessary for you to know that.

18 DEFENDANT DAVIS: Would it be okay if my
19 mother and father could say something?

20 THE COURT: If they would like to address the
21 Court, I'd be happy to hear from them.

22 MR. STALVEY: Judge, Mr. Davis would like to
23 address the Court.

24 THE COURT: If you would stand and state your
25 name for the record, Mr. Davis.

State of South Carolina versus Tremain Davis

1 MR. DAVIS: My name is Walter Davis. I want
2 to say that I'm just sorry it happened this way. I didn't
3 raise him that way. I'm very sorry. Sometimes in life
4 you chose your road to go down on (inaudible) once it gets
5 started and it can't be turned around. The only one that
6 can turn it around is God from above. The only one that
7 can help him is God above. I can't -- I can't -- I have
8 to say that I'm sorry. I'm sorry. I just asked the Court
9 to -- he's a young man and I never had no problems out of
10 him. He's just chose to go down the wrong road.

11 I always tell him to be sure you know who
12 your friends are. Not everybody that gets in your face
13 and laugh is not your friends and sometimes we make stupid
14 decisions in life, and sometimes those decisions have
15 great consequences. I'm sorry.

16 THE COURT: Thank you, Mr. Davis.

17 Mr. Davis, thank you for your comments to me
18 and I'm confident that you'll be able to fulfill your God
19 given roll in the prison system that you'll be in. Our
20 society can't prosper, can't exist really, when we let
21 evil prevail over right. In this particular situation, a
22 person chose to do what was right and lost his life as a
23 result thereof.

24 I am certainly making a no contact provision
25 a part of your sentence to the victims directly or

State of South Carolina versus Tremain Davis

1 indirectly, but hopefully there will be healing on both
2 sides. You've created some prisons not just for yourself
3 but for other people too. Hopefully, they'll be some
4 healing closure for them. Certainly if they want to
5 initiate contact with them, they are welcomed to do that,
6 but you're not to have any contact uninitiated with any of
7 the victims in the case.

8 This is as tragic event.

9 2010-GS-23-9193, the sentence of the Court is
10 the defendant be committed to the State Department of
11 Corrections for life; 9192, a 30 year sentence concurrent;
12 9191, five year sentence concurrent.

13 I wish you the best and I certainly wish the
14 family who's been harm the best.

15 Before we bring our jury we'll make time for
16 our families to exit the building. We'll need time for
17 them to get the courthouse. Everyone else please remain
18 seated while the family exits.

19 (Defendant leaves courtroom).

20 (Jury re-enters the courtroom).

21 Ladies and gentlemen, I thank you for being
22 patient with us. As you waited back there, the case that
23 you've been involved with has been resolved, a plea was
24 entered. Unfortunately, I wasn't allowed to bring you out
25 here until we were sure it was finalized. So it has been

State of South Carolina versus Tremain Davis

1 now, so your services on this case are no longer needed.

2 We have your fellow jurors coming in at 2:00
3 this afternoon to start another trial. We will have
4 sufficient panel to not need your services. However, if
5 you want to be here and participate in another trial and
6 perhaps be selected, you're certainly welcomed to show up
7 at 2:00 this afternoon down at your assembly room.

8 You're free for today. If you call back
9 after 6:00, there would be instructions for you as to
10 whether we'll need a jury tomorrow. I'm sure we'll have
11 other cases and we'll start tomorrow.

12 Thank you for your kind attention in this
13 case. Even though briefly, it was a delight to work with
14 you. I may have a chance later this week to work with you
15 in some other cases. You're free to go at this time.
16 Thank you very much and please call back after 6:00.

17 You're dismissed.

18 (Jury dismissed for the day and exits the
19 courtroom).

20 ---END OF TRANSCRIPT RECORD---

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24

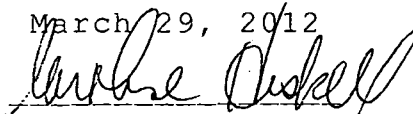
25

State of South Carolina versus Tremain Davis

1 I, the undersigned, Caroline Hiskell,
2 Official Court Reporter of the State of South Carolina, do
3 hereby certify that the foregoing is a true, accurate, and
4 complete transcript of record of all the proceedings had
5 and evidence introduced in the trial of the captioned
6 case, relative to appeal, in the Circuit Court of
7 Greenville County, South Carolina on the 8th day of
8 November, 2011.

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

11
12
13 March 29, 2012

14 

15 Caroline Hiskell
16
17
18
19
20
21
22
23
24
25

2013
WITNESSES

A L Bailey

Greenville County Sheriffs Office

4/30/2010

ARREST WARRANT NUMBER

1479614

ACTION OF GRAND JURY

TRUE BILL
Ann Spivey

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-
LCM

009191

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November

TERM 2010

11-8-11

THE STATE

VS.

TREMAIN ORLANDO DAVIS

Indictment for

✓
0549

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

**INDICTMENT FOR
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
CRIME**

At a Court of General Sessions, convened on **NOV 23 2010** the Grand Jurors of Greenville
County present upon their oath:

That TREMAIN ORLANDO DAVIS did in Greenville County, on or about the 27th day of April, 2010, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Murder and/or Armed Robbery. 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.

to the statute in such case made and provided

J. C. M.
SOLICITOR

028
WITNESSES

A L Bailey

Greenville County Sheriffs Office

4/28/2010

ARREST WARRANT NUMBER

1479574

ACTION OF GRAND JURY

TRUE BILL

Wm J. Ferrelle
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-

LCM

009192

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2010

11-8-11

THE STATE

vs.

TREMAIN ORLANDO DAVIS

Indictment for

✓0139

ARMED ROBBERY

VIOLATION § 16-11-0330

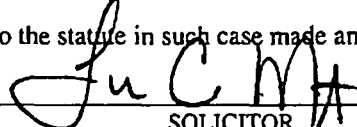
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **NOV 23 2010** the Grand Jurors of Greenville
County present upon their oath:

That TREMAIN ORLANDO DAVIS did in Greenville County, on or about the 27th day of April, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. Currency from the person or presence of Lakeisha Young, an employee of the Dollar General Store. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

 WITNESSES

A L Bailey

Greenville County Sheriffs Office

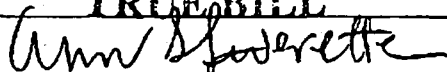
4/28/2010

ARREST WARRANT NUMBER

1479572

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-

LCM

009193

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2010

11-8-11

THE STATE

VS.

TREMAIN ORLANDO DAVIS

Indictment for

✓ 0116

MURDER

VIOLATION § 16-03-0010

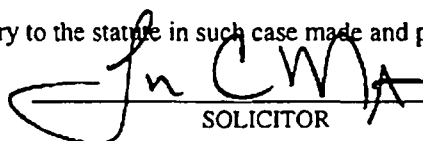
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on **NOV 23 2010** the Grand Jurors of Greenville
County present upon their oath:

That TREMAIN ORLANDO DAVIS did in Greenville County, on or about the 27th day of April, 2010,
unlawfully and with malice aforethought kill JOSHUA BRYANT by means of shooting him, and that JOSHUA
BRYANT died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws
(1976) as amended.

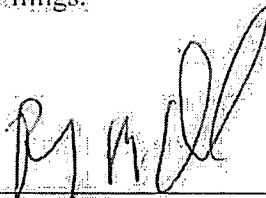
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 21st, 2013



Robert M. Dudek
Chief Appellate Defender

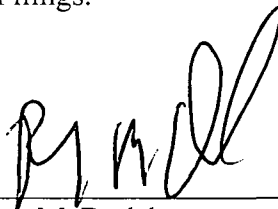
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 21st, 2013

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT