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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. SUPREME COURT

Appeal from Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Petitioner.

APPENDIX

F. Elliott Quinn IV
The Steinberg Law Firm, LLP
103 Grandview Drive
Summerville, SC 29484

Jennifer K. Dunlap
Parker Poe Adams & Bernstein LLP
200 Meeting St., Ste. 301
Charleston, SC 29401

ATTORNEYS FOR PETITIONER

Attorney General. Alan McCrory Wilson
Donald J. Zelenka
Melody Jane Brown
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Solicitor Isaac McDuffie Stone III
P.O. Box 1880
Bluffton, SC 29910

ATTORNEYS FOR RESPONDENT

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1 shooting that was down at the Allen Road area.

2 Q. And did he make any response?

3 A. He did.

4 Q. And what was that?

5 A. He stated it was just a thing. I did not know what
6 that meant so I ask him what that meant. And then he
7 stated that was between him and Tyrone Robinson.

8 Q. And did he - Did you attempt to interview him any
9 more at the intersection or did he make any other
10 statements to you at the intersection?

11 A. Yes, sir.

12 Q. While you were there he was - you indicated he was
13 in a car - shift car driven by Garcia; is that correct?

14 A. That's correct.

15 Q. Did anyone threaten him in any way during your - in
16 your presence?

17 A. Not in my presence, sir.

18 Q. And did anyone promise him anything while in your
19 presence?

20 A. No, sir.

21 Q. Did you make a decision at that point to continue
22 talking with Mr. Young, Junior, or to send him somewhere's
23 specific?

24 A. We decided to take him to the Hilton Head office which
25 is our branch office.

1 Q. And what was the purpose of that?

2 A. For many reasons. Where we were actually at we were
3 at there due to a lot of the traffic capability of, you
4 know, interview rooms, things like that. And also it was
5 just me as an investigator that - -

6 Q. And did you - Do you have an interview room that has
7 audio and video?

8 A. Yes, sir.

9 Q. All right. And do you know, and if you don't fine,
10 but do you know whether or not Mr. Young, Junior, was
11 talked to subsequent to that by anyone else?

12 A. I'm aware of that yes, sir.

13 Q. All right. And who if anybody talked to Mr. Young,
14 Junior?

15 A. That would be Sergeant Laurel Alberton.

16 Q. And did she perform the vast majority of the rest of
17 the interview to your knowledge?

18 A. Yes, sir.

19 Q. And was - Is that something that's recorded that
20 you've seen in preparation for this case?

21 A. Yes, sir.

22 Q. Excuse me. Now, did - to your knowledge did Sergeant
23 Alberton or anyone else in between leaving you and then
24 driving to the - where is it again?

25 A. The Hilton Head office?

INVESTIGATOR DOUG SEIFERT: DIRECT BY SOLICITOR THORNTON
IN CAMERA

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1 Q. Yes, sir. Did he get mirandized again or was your
2 Miranda the one that people were using?

3 A. My Mirahnda was the one I used.

4 Q. And did you let anyone know that you had Mirandized
5 Aaron Young, Junior?

6 A. Yes, sir.

7 Q. And who did you tell that to?

8 A. Captain Brummage, Sergeant Alberton, Staff Sergeant
9 - I'm sorry, Wendy Conant and I believe that's it.

10 Q. All right. And to your knowledge at some point does
11 Aaron Young, Junior does he also talk with other officers
12 while at the Hilton Head office voluntarily?

13 A. Yes, sir.

14 Q. Okay.

15 SOLICITOR STONE: Your Honor, the court's indulgence
16 please just a moment.

17 THE COURT: All right.

18 SOLICITOR THORNTON: Thank you. I don't have any
19 further questions. Your Honor, just for yourself and for
20 Mr. Vaux's knowledge, what I will do is I have several - as
21 with any statement, Your Honor, especially as one as
22 extended as this there are certain clips of it that we will
23 introduce especially in light of some recent Supreme Court
24 cases that Your Honor knows about, so what I will do is
25 introduce those through Sergeant Albertin.

1 THE COURT: Okay.

2 SOLICITOR THORNTON: And then to the extent that Your
3 Honor needs to see the complete interview which is some
4 three hours long I have that behind this. But that part
5 will be transcribed. I will not seek to introduce it until
6 Sergeant Albertin gets on the stand. That's all I have at
7 this time.

8 Please answer any questions --

9 THE COURT: Mr. Vaux, you can cross-examine.

10 CROSS-EXAMINATION - IN CAMERA

11 INVESTIGATOR DOUG SEIFERT BY MR. VAUX:

12 Q. Detective Seifert, is it standard policy at the
13 sheriff's department that you orally mirandize people or if
14 you're not on video audio that you have them sign and
15 initial that they were read their rights?

16 A. It depends. There's situations that if they're
17 handcuffed or anything like that its just a verbal. As far
18 as anything on paper no, no, sir.

19 Q. Okay.

20 MR. VAUX: I have no further questions of this
21 witness. It might be helpful and less time consuming if
22 the solicitor would give us the written excerpts that they
23 wish to use. I would be more easily able to see if there
24 are complete/incomplete, out of context, what have you.
25 Not that I think they would do any of those things.

1 THE COURT: All right.

2 MR. VAUX: Otherwise we're gonna be sitting here and
3 I'll have to watch each one and look back and forth on the
4 pages.

5 SOLICITOR THORNTON: Your Honor, what I can do is
6 this. I can go ahead and I can play it right now. I can
7 get a printout for him of what our transcription is in case
8 he has any issues with errors. But I can go ahead and get
9 that done for him today so that in the over night he's got
10 time to do that. What we're playing I can assure you it's
11 not complete in the sense of the complete interview because
12 I don't think - I know for a fact its not admissible -

13 THE COURT: Right.

14 SOLICITOR STONE: --- in it's entirety. We have
15 certainly pulled clips that we think are relevant. I don't
16 think there's anything that could be argued that would be
17 out of context and if Mr. Vaux wanted to introduce parts of
18 it that we don't he's certainly able to do that.

19 But I'm happy to play the part that we have.

20 THE COURT: Right now of course we're talking about -
21 we're concerned more about voluntariness than anything
22 else.

23 SOLICITOR THORNTON: Yes, sir.

24 THE COURT: And so, Mr. Vaux, do you wish to cross
25 examine him any more on the voluntariness? That is the -

1 MR. VAUX: No, sir.

2 THE COURT: --- completeness of the Miranda and
3 things of that nature?

4 MR. VAUX: No, sir.

5 THE COURT: All right. Since right now I'm afraid
6 they're gonna have that transcript but let's try to go
7 through the way they're gonna do it. Just show me the
8 clips that you intend to offer; is that fair?

9 SOLICITOR THORNTON: Yes, sir.

10 THE COURT: Is that what you're gonna do?

11 SOLICITOR THORNTON: Yes, sir, Your Honor.

12 MR. VAUX: Can they at least tell us the page and
13 lines from the transcript that they plan on using?

14 SOLICITOR THORNTON: I can, Your Honor.

15 THE COURT: Okay. Do you have --

16 SOLICITOR THORNTON: The transcript is actually built
17 into this. As they watch it if they - and I can get it or
18 if the court wants to take a five minute break I can get it
19 printed. Makes no difference to me, Judge. I'm happy to
20 do it either way.

21 THE COURT: Well if you can get it in five minutes
22 let's do that. That will probably be the best way to spend
23 that five minutes.

24 SOLICITOR THORNTON: Yes, sir. I'll have it for you
25 in just a few minutes, Your Honor.

1 THE COURT: Okay. We'll stand down for about five or
2 ten minutes or however long it takes.

3 (COURT IN RECESS AT 04:55 P.M.)

4 (COURT BACK IN SESSION AT 05:15 P.M.)

5 THE COURT: All right, can we get Detective Seifert
6 back on the stand, please.

7 SOLICITOR THORNTON: Your Honor, I apologize, I have
8 talked to Mr. Vaux, and Mr. Seifert, we allowed him to go.

9 THE COURT: Okay.

10 SOLICITOR THORNTON: And I can get him back here if I
11 need to but -

12 THE COURT: If you all don't need him I don't need
13 him.

14 SOLICITOR THORNTON: Yes, sir. Thank you very much,
15 Judge.

16 THE COURT: Okay.

17 SOLICITOR THORNTON: Your Honor, at this time I've
18 given - would you like a copy, Your Honor, to follow along
19 with?

20 THE COURT: Yeah, if you would.

21 SOLICITOR THORNTON: Yes, sir. I've given Mr. Vaux
22 two copies of it.

23 THE COURT: Thank you. All right, thank you.

24 SOLICITOR THORNTON: Yes, sir.

25 THE COURT: Your Honor, at this time we're just gonna

1 go ahead and publish - and these would be the - this would
2 be the portion of the interview, Judge, that we would seek
3 to introduce that we feel like it is admissible based on
4 all the rules of evidence.

5 THE COURT: Okay.

6 MR. VAUX: Are you gonna take 'em up one by one or
7 how do you want to do it?

8 THE COURT: Let's just go through and however you all
9 can - -

10 SOLICITOR THORNTON: Yes, sir. We'll just go through,
11 it's - like I said we'll just go through each clip, Judge,
12 and go through them in their entirety would be and if
13 there's an argument to be made then we'll deal with it at
14 that time.

15 THE COURT: Okay. All right.

16 (AUDIO/VIDEO INTERVIEW OF DEFENDANT AARON YOUNG,
17 JUNIOR PUBLISHED TO THE COURT AT 05:16 P.M..)

18 THE COURT: Is this just a monolog? Is he in a room
19 by himself?

20 SOLICITOR THORNTON: He is right now in the room by
21 himself. They've been in and out of the room with him.
22 He's in the room by himself doing a monolog yes, sir.

23 THE COURT: Okay.

24 (AUDIO/VIDEO INTERVIEW OF DEFENDANT AARON YOUNG,
25 JUNIOR, CONTINUES TO BE PUBLISHED TO THE COURT.)

1 SOLICITOR THORNTON: Sorry, Your Honor, we're having a
2 little difficulty.

3 (AUDIO/VIDEO INTERVIEW OF DEFENDANT AARON YOUNG,
4 JUNIOR CONTINUES TO BE PUBLISHED TO THE COURT.)

5 SOLICITOR THORNTON: Your Honor, that would be the
6 extent of the interview that we would play. And I
7 apologize to the court and Mr. Vaux. The video had that
8 lag, it froze up part way through. Rather than start it
9 all over I just let it go ahead and play because the audio
10 obviously with - if Mr. Vaux has an issue as to the
11 transcription, you know, it would be the audio portion and
12 that's what we played.

13 Again, Judge, I've got - the actual video itself of
14 the interview is probably some three hours long which based
15 on the fact that it's already almost six o'clock I will
16 make available to the court - I don't remember how much the
17 court had already seen of a lot of these videos in the very
18 first go round.

19 THE COURT: And I don't either really.

20 SOLICITOR THORNTON: But clearly I think from a
21 Jackson v. Denny perspective, Your Honor, you can see what
22 the demeanor is. You can see what his behavior is and a
23 lot of the discussions he does frankly are when he's - you
24 know when he's by himself and not being ask a question.
25 That kind of pervades all through it. And I'll save my

1 argument until the end, that's to give Mr. Vaux an
2 opportunity but that would be the portion and it is in
3 chronological order that we would play of the interview,
4 Your Honor.

5 THE COURT: Do you intend to offer any other
6 interviews or any other statements made by Mr. Young,
7 Junior?

8 SOLICITOR THORNTON: I would not, Your Honor, except I
9 would reserve the right in rebuttal to do depending on what
10 Mr. Vaux may offer but that - other than the statements he
11 gave to - he gave to Detective Seifert -

12 THE COURT: Right.

13 SOLICITOR THORNTON: --- and he also the only other
14 one, Judge, he - Bob Bromage was actually and he wasn't on
15 there but in the very opening part Bob Bromage ask him
16 something to the effect of, you know, tell me what's going
17 on down there and Mr. Young Junior basically says I don't
18 know what you're talking about, I was home with Ebony
19 Campbell, something to that effect.

20 THE COURT: All right.

21 SOLICITOR THORNTON: Other than that and what's up
22 there that would be it for us, Your Honor.

23 THE COURT: Okay. Thank you.

24 Mr. Vaux,

25 MR. VAUX: Your Honor, it's impossible for me to

1 respond specifically because we just panned out which parts
2 they want to play but a lot of this is totally irrelevant
3 and prejudicial. I mean it has absolutely - And I can give
4 you one example of it. It has - The second slide it
5 appears apparently on page 1-0-8, line 3 of the transcript
6 and it reads "Oh, boy," and of course this comes out of
7 context as something - there's a line or two before that -
8 "Oh boy get that badge, they think they shit. They think
9 they the shit. Fuck that badge, nigger, straight up
10 nigger. Don't know. Y'all think this shit a act. This
11 how I act everyday. For real I'm bad ass serious. That
12 bitch know I'm crazy boy. When I get mad I don't give a
13 Fuck about shit I don't care. Y'all about to go get the
14 gun y'all better hope I don't - better hope nothin I don't
15 give a Fuck I'll kill myself before y'all even get a chance
16 to prosecute me."

17 I mean what's that got to do with him talking about an
18 astronaut. It has nothing to do with whether or not he
19 engaged in mutual combat or in an attempt to murder.

20 THE COURT: And I - Frankly I don't know what a lot of
21 this has to do with anything in so far as the events are
22 concerned because to some extent this is sort of a
23 performance. It certainly was not rung from by scaling
24 cross examination even if he's running his mouth. But at
25 the same time it could have a bearing on his credibility

1 how much of this if any the jury chooses to believe.

2 In other words it appears that the first line is a
3 criticism of the law enforcement. They think they know
4 everything, think the badge of course is all powerful and
5 they think I'm putting on an act, no this is how I act all
6 the time, I'm dead serious about this.

7 So I think all of those things whether they're
8 directly relevant to the events themselves or they're
9 relevant to his state of mind or relevant to his
10 credibility. These are statements which he's making
11 voluntarily and the jury is entitled to hear them and give
12 it the weight that they think it should receive on any of
13 those issues, credibility, state of mind, or the facts that
14 were involved in this particular case.

15 MR. VAUX: If I could be heard, Your Honor?

16 THE COURT: Okay.

17 MR. VAUX: First of all the probative value is
18 substantially outweighed by the danger of unfair prejudice
19 and confusion of the issues. And with regard to Rule 403
20 although it may be relevant evidence may be excluded if
21 it's probative value is substantially outweighed by the
22 danger of unfair prejudice and confusion of the issues or
23 misleading the jury or by consideration of undue at the
24 time of needless presentation of cumulative evidence.

25 My point is that what they're trying to do is just

1 show the grossness of the language and the outrageousness
2 of the talk. If you and I talk like that frankly I'd
3 probably not be a lawyer any more and you probably wouldn't
4 be practicing as a judge.

5 But that's solely the point of it: is it has nothing to
6 do with whether or not he committed these offenses. And as
7 to his credibility, his credibility is not an issue unless
8 and until he takes the stand.

9 THE COURT: Credibility of his statement the state has
10 offered into it and the jury has the right to weigh the
11 credibility of what he's saying in regards to the statement
12 itself. The state has obviously offering this statement
13 because they think it has some probative value on the issue
14 of what was going on that day and whether he's being
15 truthful or not.

16 The unfair prejudice if it exist comes from his own
17 mouth. It is not evidence that comes from somebody else or
18 outside evidence or astringent evidence or anything like
19 that. It's evidence that comes directly from him. And I
20 suppose it's unfortunate but if you had to cull out the
21 vulgarities and the obscenities it would not much left here
22 but - and the jury's entitled to hear this in the context
23 in which it was offered.

24 Some of it has - Of course some of it has frankly it's
25 probably consistent with what your defense is.

1 MR. VAUX: Yes, sir.

2 THE COURT: And might avoid the problem of your
3 putting him on the stand. You might be able to get his
4 case in without ever having to call him. What I've seen so
5 far I feel that it is relevant on some of those issues if
6 not all of them. I suppose there might be one or two
7 statements in here that are less relevant than others but a
8 great deal of it is about the events of that day and how
9 the Robinson - how Mr. Robinson and he and his father came
10 together and chased him down the road - -

11 MR. VAUX: Yes, sir. I didn't mean that none of it
12 was relevant.

13 THE COURT: Right.

14 MR. VAUX: As I understand it, Your Honor, just so my
15 ground rules are straight, they're gonna put an officer up
16 to testify that he made these statements and this is the
17 tape and she or he were there and?

18 THE COURT: That's right.

19 MR. VAUX: Okay.

20 THE COURT: That he made these statement voluntarily
21 and of course you will have the opportunity if anything is
22 - If anything is prejudicial because it's taken out of
23 context then you have the right to offer anything that you
24 might chose to put it in context. Or if you can show me
25 that it's out of context so much as to be misleading and

1 you don't want to offer evidence because you don't want to
2 loose that right then in - under the rule of completeness
3 I'll require them to put it in to keep it in context.

4 MR. VAUX: Thank you.

5 THE COURT: All right. And so far as the portion of
6 the tape that was shown here today, I find that it was
7 voluntary; that Mr. Young received the benefit of the
8 Miranda warnings. Mr. Seifert has testified to that that
9 he was told as the law requires that he had the right to
10 remain silent, that anything he said could and would be
11 used against him in a court of law, that he had the right
12 to have an attorney present, if he could not afford one one
13 would be appointed to represent him free of charge.

14 He appeared to understand those rights and then made
15 this statement primarily to Officer Albertin and then to
16 himself in the room therefore the state has met it's burden
17 of proving by the preponderance of evidence at this stage
18 that the statement was voluntarily given, that there were
19 no threats or promises or anything of that nature that were
20 made that were - that would taint the voluntariness of the
21 statement. The ultimate relevance -

22 (PAUSE DUE TO COURT REPORTER COUGHING.)

23 THE COURT: All right. The statement is therefore
24 admissible and for the jury's consideration for the reasons
25 I have stated.

1 All right, any additional motions from the state?

2 SOLICITOR THORNTON: No, sir.

3 THE COURT: Okay. Anything further, Mr. Vaux, from
4 the defense?

5 MR. VAUX: No, sir. I just would like to reserve to
6 have a chance to see the statements tonight to respond to
7 you so I can complete, jumping around from page to page.

8 THE COURT: I understand. Do you have the copies of
9 the entirety of the statements on there?

10 MR. VAUX: Yes, sir.

11 THE COURT: Okay.

12 MR. VAUX: I just need to a chance to look at 'em.
13 They start on Page 108.

14 SOLICITOR STONE: And they are in chronological order
15 just to make it a little bit easier, Your Honor. All of
16 these clips are in the chronological order.

17 MR. VAUX: And I didn't mean that they were out of
18 order. You get a hundred and eight pages before they
19 start.

20 THE COURT: Okay. All right. Gentlemen, I will do my
21 homework that you all have assigned to me for the night and
22 will be prepared tomorrow to rule on the issue of the
23 transferred intent and its applicability or not to the
24 mutual combat situation. The jury's supposed to be back at
25 nine thirty, if we could be back at nine fifteen and be

1 prepared to go from that point on.

2 Once I've dealt with this issue the jury will be
3 brought in and sworn. I'll appoint a foreperson, make
4 brief introductory comments allow opening statements from
5 both of you all and then we'll start the testimony tomorrow
6 morning.

7 SOLICITOR STONE: Yes, sir.

8 MR. VAUX: Your Honor, could I, I just add one thing
9 on the transferred intent.

10 THE COURT: Right.

11 MR. VAUX: I bring your attention to State versus
12 Fennell.

13 THE COURT: Wait one second and let me . . .

14 Okay. Give me the caption again, Mr. Vaux.

15 MR. VAUX: State versus Fennell, F-e-n-n-e-l-l.

16 THE COURT: Yes.

17 MR. VAUX: 531 S.E. 2d 512. State versus Childers 645
18 S.E. 2d 233.

19 THE COURT: Okay.

20 MR. VAUX: And State versus Worten 672 S.E. 2d 786.
21 Those are 2007 and '09 cases.

22 THE COURT: All right.

23 SOLICITOR STONE: Here's a copy of Childers, Judge.

24 THE COURT: Okay. All right. All right, folks, if
25 there's nothing else we'll stand in recess until nine

1 fifteen tomorrow. We'll be in Courtroom Number One
2 tomorrow morning.

3 (COURT IN RECESS AT 05:50 P.M..)

4 (COURT BACK IN SESSION TUESDAY, FEBRUARY 24, 2015 AT
5 09:45 A.M..)

6 (WHEREUPON, STATE'S EXHIBITS ONE THROUGH THIRTY-ONE,
7 PREMARKED FOR IDENTIFICATION:)

8 THE COURT: Thank you, please be seated.

9 Folks, there is pending Mr. Robert's motion to - Mr.
10 Roberts. I'm sorry, Mr. Vaux's motion to quash the
11 indictment for murder in this particular case. Argument
12 yesterday and authority was given on either side of that
13 issue. I think we all agree that that is the case of
14 novel impression in this particular type of case involving
15 a charge against an individual for the murder of an
16 innocent bystander whose immediate death was caused by
17 someone else - in this case a mutual combatant - which
18 brings into play several theories of law, three of which I
19 address this morning. There are a lot more on this issue.
20 If it has to be decided by a higher court we'll of course
21 address all of the other issues which have not even
22 occurred to me.

23 We have here the juxed position - I use that word
24 instead of conflate. Conflate actually is in the footnote
25 in that opinion that I cited to you earlier, gentlemen.

1 The juxted position of at least three theories of law.
2 One is the hand of one is the hand of all which makes
3 accomplices, those who are aiding and abetting each other,
4 all responsible for the act of a shooter. All become
5 principle as a matter of law. All then are equally at
6 fault whether they actually were the agent that caused the
7 harm or just an accomplice to the one that did.

8 And in that particular case the doctrine of
9 transferred intent applies so that if an innocent bystander
10 happens to be shot by one of the accomplices then the
11 shooter is responsible as are all who were there engaging
12 in that enterprise.

13 In transferred intent then it is the mind - the state
14 of mind of the individual and not the identity of the
15 victim that controls because in every case of transferred
16 intent by definition someone is harmed who was not the
17 intended victim.

18 Nonetheless the state of mind if transferred intent is
19 applying - is applied to the case controls the guilt or the
20 innocence of the culpability or not of the person who is
21 involved.

22 Now against those circumstances which are pretty well
23 hammered out, that is, the hand of one the hand of all, the
24 transferred intent to an innocent victim, a bullet for
25 example, a shooting, and how it makes everybody

1 responsible, against that the law of mutual combat comes
2 into play. And the mutual combat case which I have relied
3 upon in this case is the one that was cited to me
4 yesterday, the case of *State versus Brown* a 1916 case, 108
5 South Carolina 490 is the cite, which involves the
6 responsibility of all of those who are involved in mutual
7 combat.

8 Mutual combat has it's most significant application in
9 the law in that it denies anybody who is involved in mutual
10 combat the defense of self-defense because none of them can
11 claim to be without fault in brining about the incident.

12 Citing - And quoting from *Brown* it says, that everyone
13 is presumed to know the consequences of his act and if one
14 voluntarily enters a mutual combat where deadly weapons are
15 used, knowing that they're being used and death results to
16 one of the participating parties, everyone engaged in such
17 combat is equally guilty.

18 Regardless of whether he used the deadly or not and
19 regardless of whether he was on one side or the other makes
20 no difference. And where all are participating in the
21 mutual combat all are equally responsible for the natural
22 consequences.

23 And so in this particular case we would all agree, I
24 think, that if in the shooting between Tyrone Robinson who
25 was on trial earlier, and Aaron Young, Junior and Aaron

1 Young, Senior, if for example Tyrone Robinson had shot at
2 Aaron Young, Junior and had missed and killed Aaron Young,
3 Senior, then obviously under Brown all would be guilty. In
4 this case clearly Mr. Robinson would have been guilty as a
5 party who fired the shot, but Aaron Brown, Junior - I mean
6 Aaron Young, Junior would have also been guilty under the
7 Brown case because it doesn't matter which side you're on.

8 That's a pretty clear case. The fact that Robinson
9 his intent was to shoot and kill Aaron Young, Junior, that
10 intent would have been transferred. Not because he
11 intended to kill Senior, but because he had the state of
12 mind that was necessary when he was trying to kill Junior.

13 But the facts as we know them tragically in this case
14 are not that any of those individuals were killed, I'm not
15 saying that's a tragedy, but the tragedy was an innocent
16 victim was indeed killed.

17 And so the question then becomes who then can be held
18 responsible and under the indictment that's really the
19 question that we're dealing with here today. Here an
20 innocent person, not a combatant, was killed. The question
21 is whether the law relieves the mutual combatants of the
22 responsibility of that. The responsibility of which had
23 been one of their's if they had killed an equally guilty
24 party involved are they now not responsible because an
25 innocent party was involved. And I hold that they would be

1 responsible.

2 Once again because it is not the identity of the
3 victim that controls, it is the intent, the state of mind
4 which led to the mutual combat in the first place and the
5 consequences that followed from that.

6 So the motion to quash the indictment is respectfully
7 denied.

8 MR. VAUX: Thank you, Your Honor.

9 THE COURT: Thank you, gentlemen.

10 All right. Are we ready now for the jury?

11 SOLICITOR STONE: The State's ready, Your Honor.

12 MR. VAUX: The defense is ready, Your Honor.

13 THE COURT: Thank you. You can bring us a jury.

14 (JURY ENTERS COURTROOM AT 10:56 A.M..)

15 THE COURT: You all leave that first chair on the
16 front row vacant please.

17 Ms. Fobes, would you please sit in that first chair
18 right there. Thank you, ma'am.

19 Ms. Fobes, I've ask you to occupy that chair, ma'am,
20 because I want you to act as the forelady of the jury. All
21 that means is that you'll be the jury's spokesperson here
22 in court. And when the trial is over you will be
23 responsible for writing the verdict of the jury but I will
24 tell you more about that before you have to do it. You
25 don't need to worry about that now. All you need to

1 remember is you've got a reserved chair. You will occupy
2 that chair throughout the trial of the case.

3 And, Mr. Bittick, Ms. Michels, is it?

4 A. Michels, yes, sir.

5 THE COURT: As alternate jurors, folks, you will
6 occupy those two chairs throughout the trial of this case
7 unless sometimes during the trial I ask you to sit
8 somewhere else. Okay. The rest of you folks don't have
9 reserved seats, you've got general admission you got to do
10 the best you can when you come in from time to time. Do
11 what you did this time though, walk all the way down before
12 you sit down. In other words don't leave an empty seat
13 beyond you because if you do somebody's got to step on your
14 feet to get to it. That could get kind of painful during
15 the trial of the case.

16 Ladies and gentlemen, you're gonna be sworn in now as
17 jurors and I want you to pay particular attention to the
18 oath that you're about to take. It is a time honored oath,
19 it's an artfully worded oath. It explains to you at the
20 same time very concisely but yet very completely what your
21 responsibilities are as jurors and I'm gonna be reminding
22 you during this trial and indeed after this trial as to
23 exactly what those responsibilities are. So please now
24 give attention to the Clerk as she administers the oath.

25 Madam Clerk.

1 MADAM CLERK: Please stand up and raise your right
2 hand, please.

3 (WHEREUPON, PETIT JURY SWORN AT
4 10:57 A.M..)

5 THE COURT: Folks, let me take just a few minutes to
6 tell you the process that we'll be following during the
7 course of this trial and what your role would be as jurors
8 in this trial.

9 In just a minute when I finish talking to you Mr.
10 Stone on behalf of the state is going to stand before you
11 and make an opening statement, and in this opening
12 statement he is going to outline to you in something of a
13 preview fashion what this case is all about from the
14 state's point of view. And may also indicate some of what
15 he intends to offer by way of proof in support of the
16 charges that they state has brought in these indictments.

17 After he has finished making the opening statement on
18 behalf of the state then Mr. Vaux on behalf of the
19 defendant has the right to make an opening statement but he
20 is under no obligation to do that and I'll tell you why
21 shortly. After the opening statements have been made then
22 you will actually begin to see and hear the presentation of
23 evidence.

24 Evidence for the most part will take the form of
25 testimony of witnesses who will sit right here in this

1 chair, under oath, and will answer questions the lawyers
2 from both sides will put to them. Evidence will also take
3 the form of photographs, documents, diagrams, and items of
4 evidence that will be introduced under our rules of
5 evidence. The state will offer its evidence and testimony
6 first. And after the state has put in all of its evidence
7 and testimony, then the defendant Mr. Young has the right
8 to offer evidence and testimony if he chooses to but once
9 again, he doesn't have to.

10 And after all of the evidence has been presented then
11 the lawyers will come back before you and they will make
12 their closing statements or their final arguments as they
13 are sometimes called. And in those final arguments they
14 are allowed to summarize the evidence which you have seen
15 and heard and to submit to you conclusions that you should
16 draw from that evidence. Obviously conclusions which
17 support their side of the case.

18 And after the final arguments have been made then I
19 will instruct you or charge you as to what the law is in
20 this case. And then you will finally be able to go to your
21 jury room and start talking about this case among
22 yourselves. Until then you are not allowed to do that.
23 And the reason that you're not allowed to do that is this.
24 You might hear some testimony out here and it might
25 interest you and you might have some questions about it,

1 you'll want to go back there and talk among yourselves
2 about it and discuss it at that time. But once you start
3 to discuss the evidence you're going to start to make up
4 your mind about the evidence. You're going to start to
5 draw conclusions as a group about the evidence.

6 It could happen that later in the trial you hear some
7 evidence that's different from that that you've already
8 started to talk about. But if you have already started to
9 make up your mind based on the evidence that you've
10 discussed you're not likely to receive that later testimony
11 with an open mind. So that's the reason you have to keep
12 an open mind throughout the trial of this case and not talk
13 about it until it's entirely over.

14 And for the reasons that I've already made clear to
15 you, you can't talk with anybody else about it let anybody
16 else talk with you about it.

17 You can't try to find out anything on your own about
18 the evidence. You can look at the back and see that the
19 cameras are in the courtroom. You're not gonna be on TV,
20 they are not allowed to take your picture so no point in
21 looking at that.

22 Moreover you don't have to see what the television has
23 to say about this case to find out what's happening in the
24 courtroom. You folks are sitting twenty feet away from it
25 where it's happening yourselves. Right here, this is.

1 where's its gonna happen so you don't need to read what
2 anybody else tells you about or find out from anybody else
3 about it. You are first hand witnesses to what's happening
4 in this courtroom. Nobody else can explain that to you any
5 better than you yourselves can understand, so that's the
6 reason you can't expose yourselves to any publicity about
7 the trial of this case.

8 Ladies and gentlemen, the oath that you took a few
9 moments ago said that you would well and truly try this
10 case and render a true verdict according to the law and the
11 evidence. Now I'm gonna tell you what the law is, you
12 don't need to concern yourselves about that. But now you
13 do need to concern yourselves about the evidence because
14 when it comes to the matter of evidence, you ladies and
15 gentlemen, actually act as the judges. You are the judges
16 of the evidence. That's what you do. And so it's
17 important that you understand first of all what is evidence
18 and what is not evidence.

19 The opening statements that you're going to hear in a
20 few minutes are not evidence. And the closing statements
21 that you're going to hear at the conclusion of the trial,
22 that's not evidence either. And the questions that the
23 lawyers ask, they are not evidence either. Now all of
24 those things are important. We could not conduct a very
25 orderly trial without those things to help us move through

1 the process, but they are not evidence. The evidence is
2 not a question that's ask. The evidence is the answer to
3 the question that comes from somebody who is under oath and
4 who is purporting to have some actual knowledge of the
5 things that they're talking about. That's the evidence.

6 And so some of you if you want to take notes and you
7 will be allowed to take notes if you choose to. You don't
8 have to but some folks do and some folks are note takers
9 and they like to rely on those notes. That's fine. But
10 you will only take notes during the evidence portion.
11 That's the reason you don't have your notepads right now
12 and you won't have them until the testimony actually
13 begins.

14 I caution you if you choose to take notes please don't
15 become so consumed in writing those things down that you
16 miss the next question and the next answer. You know how
17 it is, we've all taken notes in college and I feverishly
18 write that thing down and I'm about half way through and I
19 say now what did he say next. I could have missed the
20 point that was gonna make me pass or fail the case for all
21 I know. You can do that here but except it's a lot more
22 important than college classrooms. So please don't become
23 so consumed about it that you loose sight of what's going
24 on in the courtroom.

25 Now, so as judges of the evidence, ladies and

1 gentlemen, your job is to determine the truthfulness of
2 what you see and hear in this case and you're well equipped
3 to do that. Whether you have ever served as a juror before
4 or whether you have ever been in a courtroom before
5 yesterday or not you are well equipped to do the things
6 that we're gonna be asking you to do in this trial.
7 Because ever since you've been able to think on your own
8 and make up your mind for yourself you've been doing the
9 things that we ask you to do and that we expect you to do
10 in this courtroom.

11 Anytime there is a point in controversy, anything
12 there is a difference of opinion of things, anytime you
13 listen to something that you're trying to decide whether
14 you're gonna act on it or not and what you're gonna do and
15 whether you're gonna believe it or not, you use the same
16 qualities that you're gonna be using in this courtroom.
17 You use your common sense, you use your experiences in
18 life, you use your sense of logic and your sense of reason.
19 And once you do that, you will be able to decide the truth
20 of this case and once you have decided what the truth of
21 the case is, you'll take the law that I charge you and
22 apply it to the truth that you find, and those two things
23 will come together to result in the truth of this
24 particular case.

25 I told you a while ago that the defendant in this case

1 do not have to make an opening statement and he did not
2 have to offer evidence and testimony if he chose not to do
3 that, because as I told you yesterday, he has pled not
4 guilty to the charge contained in these indictments. And
5 under our Constitution when someone pleads not guilty to a
6 charge in an indictment, he is presumed to be innocent of
7 that charge. You all heard innocent until proven guilty
8 I'm sure. Well that's what I'm talking about. Innocent
9 until proven guilty.

10 There's nothing in that phrase that says innocent has
11 to be proved. Innocent until proven guilty says that guilt
12 has to be proved. And so the burden of proof is on the
13 state, not just in this case but in every case of this
14 sort, to prove the guilt of the defendant beyond a
15 reasonable doubt before you can convict him and find him
16 guilty. When the trial of this case is over I will explain
17 to you in greater detail what we mean by proof beyond a
18 reasonable doubt but for our purposes right now let me tell
19 you that proof beyond a reasonable doubt is proof that
20 leaves you firmly convinced of the defendant's guilt. And
21 so after you've heard all of the evidence if you are firmly
22 convinced whether the defendant is guilty of the charge
23 then the state has met its burden of proof and would be
24 entitled to a verdict of guilty.

25 But after you have heard all of the evidence if you

1 think there's still a real possibility that he is not
2 guilty the state would not have met it's burden of proof.
3 And in that case the defendant would be entitled to a
4 verdict of not guilty.

5 So you're gonna be listening for the next couple of
6 days to the evidence, the testimony, the lawyers, to me,
7 and then you will go into your jury room and you will
8 listen to each other and in your discussions you will come
9 to the conclusion of whether or not the state has met it's
10 burden of proof and you will express your conclusion by
11 writing a verdict that says we the jury find the defendant
12 guilty or we the jury find the defendant not guilty
13 according to your view of the evidence and the law that I
14 will instruct you.

15 Thank you, folks, so much for your attention to these
16 remarks. Now please listen to the lawyers as they make
17 their opening statements to you.

18 Mr. Stone.

19 SOLICITOR STONE: May it please the Court, Your Honor,

20 THE COURT: Yes, sir.

21 SOLICITOR STONE: September the 1st, 2012 Khalil
22 Singleton was eight years old, an eight-year-old child, and
23 he died as a result of a running gun battle between this
24 man over here, Aaron Young, his father, and a man named
25 Tyrone Robinson. See Aaron Young and Tyrone Robinson

1 didn't like each other, they fought before, they had
2 argued, they had even try to hurt each other before. And
3 on September the 1st, 2012 they tried to kill each other.
4 Robinson got a .38 caliber revolver, Young a .9 millimeter
5 handgun that held over thirty bullets in the clip and they
6 tried to kill each other. But they didn't, they didn't
7 kill each other, they killed Khalil Singleton whose only
8 crime was playing on the trampoline with two other of his
9 friends in his own neighborhood.

10 The facts that you're gonna hear over this next day
11 and maybe even into tomorrow, it's gonna tell you this,
12 Tyrone Robinson goes over to the Young's house, it's on
13 Wild Horse Road on Hilton Head, they get in a fight, they
14 get in an argument. Tyrone Robinson brings out his .38 and
15 he shoots three times. He doesn't hit the Young's, he
16 doesn't hit anybody, but he shoots and he gets in his car
17 and he flees. Aaron Young accompanied by his father go
18 into their house they get a bag that carries the gun, the
19 .9 millimeter, they get in their Ford F 150, Aaron Young,
20 Senior driving, Aaron Young, Junior in the passenger seat
21 along with a man by the name of Jontu Singleton who was
22 also there during the argument, and they go chasing after
23 him.

24 They leave their house on Wild Horse, they go across
25 Highway 278, they go down Spanish Wells Road and they catch

1 up with him. They catch up with him in Spanish Wells and
2 you will hear from Aaron Young, Junior's own mouth I tried
3 to kill him then but the gun jammed. Robinson escaped, he
4 went two miles further down the road down Marshland Road
5 under the Cross Island Expressway until he got to a
6 neighborhood that bordered on Allen Road.

7 Robinson escaped in Allen Road and hid and the Young's
8 came after him. They went also down Allen Road and they
9 looked for him and they couldn't find him but they found
10 his uncle. And this man held a gun out talked to the uncle
11 and said "you tell Tyrone we're looking for him". And they
12 left and went back to Wild Horse to drop off Jontu
13 Singleton.

14 They didn't stay. They dropped off Jontu Singleton
15 and turned right back around and went back hunting. They
16 went back to Allen Road and this time when they get to
17 Allen Road they see children outside playing. It doesn't
18 slow 'em down any. It doesn't cause them to hesitate, it
19 doesn't certainly cause them to stop. They're looking for
20 Tyrone Robinson. Aaron Young is looking to kill Tyrone
21 Robinson.

22 They don't find Robinson again but they find his car.
23 So Aaron Young takes his gun and he fires ten to twenty of
24 those bullets into Tyrone Robinson's car. And I would
25 submit to you in an effort to do what he's been doing is to

1 find Tyrone Robinson; get Tyrone Robinson to come out and
2 it worked. It worked.

3 Tyrone Robinson heard the shots, knew the shots and
4 took his .38 caliber and shot back at the Young's as they
5 were driving back by. The bullet didn't find Aaron Young,
6 it found Khalil Singleton. It went into his body and he
7 literally drowned in his own blood. Those are the facts
8 you're gonna hear. At the end of this case quite frankly
9 everybody in the courtroom's gonna know exactly what
10 happened or at least as much as we can possibly know.

11 Tyrone Robinson shot the fatal bullet that killed
12 Khalil Singleton. But that's not the issue in this case.
13 The issue is this. Who's responsible? As you heard when
14 the judge told you Tyrone Robinson's already been tried.
15 He's already been convicted. And I'm not standing here
16 today telling you that Tyrone Robinson shouldn't have been
17 convicted. I'm also telling you that Tyrone Robinson fired
18 that fatal bullet. But what I'm also suggesting to you,
19 ladies and gentlemen, is that the case isn't over yet. The
20 responsibility goes deeper than just the person who happens
21 to be the one that kills the child and that's the issue in
22 this case.

23 The law in South Carolina says this, and the judge
24 will charge you, and if I get anything wrong obviously you
25 take whatever the judge tells you, but what the judge is

1 gonna tell you at the conclusion of this case is the law in
2 South Carolina is about mutual combat. It means if two or
3 three or five or ten people decide to arm themselves and
4 fight that every single one of them is responsible if
5 someone dies regardless of who pulled the trigger on the
6 fatal bullet because every bullet is fatal, every gun is
7 fatal, and that's what the law of South Carolina talks
8 about. Armed mutual combat everyone is responsible not
9 just the one that happens to shoot and kill the child.

10 Now I'm gonna ask you at the end of this case to do
11 what I ask every jury to do. Return a verdict that speaks
12 the truth. What happened in this case will be pretty
13 clear. That's part of the truth. The full truth is this.
14 The law in South Carolina says everyone's responsible -
15 everyone. And I'm gonna ask you to say the same thing.

16 Thank you.

17 THE COURT: Thank you, Mr. Stone.

18 Mr. Vaux.

19 MR. VAUX: Thank you, Your Honor.

20 Ladies and gentlemen of the jury, I'm Roberts Vaux,
21 I'm an attorney from Bluffton and I represent Aaron Young,
22 Junior, who's charged as Solicitor Stone told you with
23 murder and attempted murder. Murder of the child Khalil
24 Singleton and attempted murder of Tyrone Robinson the
25 fellow who sits in jail.

1 The solicitor and I agree on a couple of things and as
2 you would expect we disagree on a couple of things. We
3 certainly agree that the Young's were on this afternoon of
4 the 1st of September about four o'clock where standing in
5 their yard getting ready to go to work. And we certainly
6 agree that at that time uninvited Tyrone Robinson drove up
7 in their yard. And we certainly agree at that time that
8 Tyrone Robinson jumped out of his car and apparently
9 unprovoked started to shooting a gun and he shot into the
10 ground at their feet and he shot the neighbors house and he
11 shot one time and they still don't know where that bullet
12 went yet to this day. And then Mr. Robinson left.

13 That wasn't the first time that there had been a - Mr.
14 Robinson had - I'm gonna use the word terrorized the
15 Young's - but it was - it certainly was an additional
16 terrorism. And at that point in time the Young's were
17 angry. There's no question about that. Now you know we
18 call him Junior. Junior's grandmother and mother are
19 sitting in the courtroom today and they are going to be as
20 embarrassed as I when some of the language comes out
21 because - I apologize to you ahead of time - but I don't
22 use the word Mother Fucker, I don't use the word Shit -
23 Well, I take that back. Occasionally I do on the golf
24 course.

25 And I don't use the word Fuck. And those just are not.

1 in my ordinary course of language. But you're gonna hear
2 that today, okay. And they're as embarrassed as I am and
3 I'm sure that you will be too. I don't live the life style
4 that you may see and hear about. You don't live that life
5 style. But the life style and the language don't
6 constitute murder. And the life style and the language
7 don't constitute attempted murder. If they did then the
8 jails would be full and we'd have a different definition of
9 murder and attempted murder.

10 Now, they were angry, there's not question about it.
11 You know if you came and shot at me and had done it before
12 I'd be angry too. Life styles would probably have dictated
13 that I dial 911 but that's not what they did. Had they I
14 wouldn't be standing here with you hopefully. But the
15 point is that this thing ensued.

16 Now in order to tack mutual combat you have to have
17 people in combat against each other. And that's fine. But
18 at some point in time you also have when people have calmed
19 down have become rational you then retreat and you stop and
20 you say you know I probably shouldn't ---- I've had enough
21 of this and let me go home. I'm just gonna stop I
22 shouldn't have done this. So I ask you to keep that in
23 mind cause I think you're gonna hear the fact that yes they
24 went somewhere's and this is gonna be interesting. I don't
25 think Judge Judy or Law and Order could write a script that

1 like you're gonna hear in the next couple of days.

2 But because the solicitor said they went down and
3 waved a gun around and tell Tyrone I'm looking for him.
4 Remember that phrase. I'm gonna ask you to remember a
5 couple of phrases. Tell Tyrone I'm looking for him. Then
6 look for the phrase or listen for the phrase I tried to
7 kill him then. That's a direct quote from what the
8 solicitor said. Some of these things you got to listen
9 for, okay, because some evidence you can see and you can
10 feel. And some evidence you're gonna have to listen for
11 and make them prove their case.

12 You're gonna hear from Tyrone Robinson and he's got a
13 history of - and he's an interesting fellow. I have no
14 idea what kind of testimony you're gonna get out of him
15 this time or you know I know what his statement was, I know
16 what he said the last time. But they went - No question
17 they went looking for him. They're not gonna be able - I
18 don't think - unless somebody comes up new with new
19 testimony to show that Aaron Young, Junior, took a gun and
20 pointed it at Tyrone Robinson and tried to pull the
21 trigger. But this does not happen. He certainly didn't
22 fire a bullet at Tyrone Robinson.

23 Now, in his mind he did - angry - find Tyrone
24 Robinson's car and he shot at it. Tyrone didn't see Tyrone
25 Robinson. The children were no where's near around, didn't

1 hit anything or anybody other than he hit the car. That
2 point anger frustration what have you over and he leaves.
3 In the law we call that retreating. And the testimony is
4 that he went down - and this is - the solicitor will show
5 you - he goes down Allen Road and he gets out to the
6 Marshland Road and they leave. And it's some time after
7 they get out on Marshland Road, and again, the state proves
8 this case, not us, we don't have to put up anything.

9 Hopefully they'll put a witness up who will say cause
10 there are witnesses out there who will say after they got
11 out on the road they heard shots and the child was killed.
12 So make us, both me and Solicitor Stone, prove to you the
13 case. Listen to the evidence. Don't become embroiled in
14 the Mother Fucker's and the rest of it that you just begin
15 to think they got to be guilty just because of the life
16 style and the language. Make them prove their case. Make
17 me substantiate what I say to you. Thank you.

18 THE COURT: Thank you, Mr. Vaux.

19 Mr. Stone, you can call your first witness.

20 SOLICITOR STONE: Thank you, Your Honor.

21 The State calls Melanie Smith.

22 THE COURT: Ms. Smith, come forward please and be
23 sworn.

24 (WHEREUPON, MELANIE SMITH,
25 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

MARIE SMITH; DIRECT BY SOLICITOR STONE

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1 MADAM CLERK: You may sit down. Please state your
2 full name.

3 A. My name is Melanie Smith: M-e-l-a-n-i-e, S-m-i-t-h.

4 SOLICITOR STONE: I'm gonna let the juror's get their
5 pads first.

6 THE COURT: Ladies and gentlemen, I remind you again
7 that you are under no compulsion to use those pads. They
8 are there to use if you wish to.

9 DIRECT EXAMINATION

10 MELANIE SMITH BY SOLICITOR STONE:

11 Q. And I think everybody was getting their pads when you
12 were introducing yourself. Your name is Melanie Smith?

13 A. Correct.

14 Q. And where do you work, ma'am?

15 A. Beaufort County Sheriff's Office 911 Center.

16 Q. What do you do there?

17 A. I was the records custodian. I'm currently now the
18 training officer. I was the record's custodian up until
19 last year.

20 Q. Now the dispatch center what does that - what is that
21 encompass, what does that - what land area I guess does
22 that cover?

23 A. We dispatch all law enforcement for Beaufort County,
24 fire and EMS, for Bluffton and Beaufort.

25 Q. And so everything in Beaufort County?

MARIE SMITH: DIRECT BY SOLICITOR STONE

1 A. Correct.

2 Q. All right, anything that's going outside of Beaufort
3 County or pretty much everything you handle is just for
4 Beaufort County?

5 A. For Beaufort County.

6 Q. Okay. Now are you familiar with - And I guess you'd
7 almost have to with this job - the roads and the areas of
8 Beaufort County?

9 A. Yes.

10 Q. Let me show you what's been marked State's Exhibit
11 One.

12 SOLICITOR STONE: I'm gonna use this, Your Honor, as
13 an exhibit, I'm certainly gonna put it in evidence:

14 THE COURT: Okay. Without objection State's One.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE, PREMARKED FOR
16 IDENTIFICATION, IDENTIFIED AND RECEIVED INTO EVIDENCE.)

17 Q. Let me just show you this first of all before I ask
18 you. Are you familiar with this, the land area that is
19 depicted in State's Exhibit One?

20 A. Yes. That's Hilton Head.

21 Q. All right: And these particular dots around these
22 areas are you familiar with these areas?

23 A. Sort of. I am now.

24 Q. All right. By the map, that's what I'm talking about.

25 A. Okay.

MARIE SMITH: DIRECT BY SOLICITOR STONE

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1 Q. Okay. Let me if I could get you to come off the stand
2 just briefly.

3 (WITNESS LEAVES WITNESS STAND.)

4 Q. And I will hold this up instead of turning it around.

5 THE COURT: Ms. Smith, if you could sort of direct
6 your face toward the court reporter and keep your voice up
7 so that she can hear you as well please, ma'am.

8 A. Yes, sir.

9 Q. Okay. Again, referring to your State's Exhibit One,
10 first, this first number up here Number One, could you tell
11 us what roads are depicted in this area here?

12 A. Its showing Old Wild Horse Road so that's the Wild
13 Horse Road area.

14 Q. Okay. And this main road coming in here, what is
15 that?

16 A. That is - That's Highway 278, William Hilton Parkway.

17 Q. So now this comes down and curves around here. Is
18 this the - I guess Cross Island Parkway?

19 A. Yes. That's the access to the Cross Island Parkway
20 here.

21 Q. Okay. The road crossing over 278 coming in this
22 area here to this Number Two area, what road is that?

23 A. That's Spanish Wells Road.

24 Q. And then the area that's depicted in Number Two,
25 roads -

MARIE SMITH: DIRECT BY SOLICITOR STONE

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1 A. Oak View Road area.

2 Q. And I think Muddy Creek is down here somewhere as
3 well; is that correct?

4 A. Yes. Right in here.

5 Q. Okay.

6 A. Yes.

7 Q. Then this road goes - get this right - curves
8 around under - Marshland Road is somewhere along here; is
9 that correct?

10 A. Yes. Its this road right here.

11 Q. All right.

12 A. It goes back under the Cross Island.

13 Q. And that's going from area two to area three?

14 A. Correct.

15 Q. And the road here at the end of -

16 A. At the end, that's Allen Road.

17 Q. Okay. Thank you, ma'am, you can take the stand.

18 Thank you.

19 (WITNESS RETURNS TO WITNESS STAND.)

20 Q. Now as the records custodian for Beaufort County,
21 and I recognize that this is was a different position but
22 from the stand point of being the record's custodian, tell
23 me how calls work into the 911 Center, how the dispatch
24 takes place and things like that.

25 A. Well we receive all emergency and non-emergency calls

1 for Beaufort County. They come into our center and
2 they're recorded simultaneously. We also have a sister
3 dispatch center on Hilton Head. They sometimes receive
4 calls and they transfer them to us.

5 Q. And all of those are kept in basically the same
6 computer system. I'm sure there's a fancier word for that
7 but they're all kept in the same system; is that correct?

8 A. Correct.

9 Q. And they are recorded contemporaneously with the calls
10 coming in and with the dispatches going out?

11 A. Correct.

12 Q. And that is kept in the ordinary course of business
13 from the 911 Center?

14 A. Correct.

15 SOLICITOR STONE: Your Honor, at this time this is
16 State's Exhibit Two.

17 MR. VAUX: No objection, Your Honor.

18 THE COURT: I think that was two without objection.

19 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO, PREMARKED AND
20 IDENTIFIED, RECEIVED INTO EVIDENCE.)

21 Q. Let me show you what's been marked State's Exhibit
22 Two, and I just want to make sure I cover that.

23 Have you reviewed that disc?

24 A. Yes.

25 Q. And are those the 911 calls that came in on September

1 the 1st, 2012?

2 A. Correct.

3 Q. And those are accurate?

4 A. Yes.

5 SOLICITOR STONE: And there is a transcript that goes
6 along with that, Your Honor, we will use that as well as an
7 exhibit.

8 Q. Is that accurate as to what you will hear on the 911
9 tape?

10 A. Correct.

11 Q. Okay.

12 SOLICITOR STONE: At this time, Your Honor, I move
13 this into evidence and ask to publish to the jury.

14 THE COURT: Its in evidence without objection and you
15 may publish.

16 SOLICITOR STONE: And the transcript will run and
17 obviously this is just audio off the tape. The transcript
18 will end there.

19 THE COURT: Some of you who are seated right above
20 that screen can you see okay? If not we can move you down
21 on the back row so you can see a little bit better.

22 THE JUROR: I need to move down.

23 THE COURT: All right. Ms. Phillips, can you see?

24 MS. PHILLIPS: I can. Thank you.

25 THE COURT: Okay. If you need to move back to the

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1 back so you can see feel free to do that.

2 Yes, sir.

3 (WHEREUPON, STATE'S EXHIBIT TWO PUBLISHED TO THE JURY
4 AT 10:29 A.M..)

5 SOLICITOR STONE: Your Honor, just to clarify, this
6 does not have a transcript with it or it's not running on
7 this but I don't think it's necessary so we're not gonna -

8 THE COURT: Okay.

9 SOLICITOR STONE: Thank you.

10 (WHEREUPON, STATE'S EXHIBIT TWO CONTINUES TO BE
11 PUBLISHED TO THE JURY.)

12 BY SOLICITOR STONE:

13 Q. Ms. Smith, all of the events on that 911 tape took
14 place in that - in this area indicated by I guess Number
15 Three around the Allen Road area; is that correct?

16 A. Correct.

17 Q. And that's all in Beaufort County?

18 A. Correct.

19 Q. Thank you, ma'am.

20 SOLICITOR STONE: No further questions.

21 THE COURT: Thank you.

22 Mr. Vaux.

23 MR. VAUX: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 MELANIE SMITH BY MR. VAUX:

1 Q. Ms. Smith, do you - did you hear on the tape that
2 the fellow that did the shooting was in red shorts?

3 A. I don't recall.

4 Q. You don't? Have you read the transcript?

5 A. No, sir.

6 Q. But the transcript would be an accurate record of
7 what was said?

8 A. Correct.

9 Q. Did you hear in there that - that T shot him?

10 A. I'm sorry.

11 Q. Did you hear on the tape that T shot him?

12 A. I don't recall.

13 Q. You don't recall that? Okay. Thank you, ma'am.

14 THE COURT: Mr. Stone, any redirect?

15 SOLICITOR STONE: No, sir.

16 THE COURT: Thank you, Ms. Smith, you can step down.

17 (WITNESS LEAVING WITNESS STAND.)

18 SOLICITOR STONE: The state calls Zachary Taylor to
19 the stand.

20 THE COURT: Mr. Taylor.

21 SOLICITOR STONE: Yes, sir. All the witnesses are
22 sequestered out there and it takes a little bit to get them
23 in.

24 THE COURT: All right.

25 (WHEREUPON, ZACHARY TAYLOR,

ZACHARY TAYLOR: DIRECT BY SOLICITOR STONE

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1 BEING FIRST CALLED AND DULY SWORN; TESTIFIED AS FOLLOWS:)

2 MADAM CLERK: If you'll be seated and please state
3 your full name.

4 A. My name is Zachary William Taylor.

5 DIRECT EXAMINATION

6 ZACHARY TAYLOR BY SOLICITOR STONE:

7 Q. And, Mr. Taylor, what do you do, sir?

8 A. I'm a fire fighter and paramedic for the Town of
9 Hilton Head Island.

10 Q. How long have you been a paramedic? Now let me focus
11 strictly on that. How long have you been a paramedic?

12 A. I have been a paramedic since 1992.

13 Q. And what type of training do you receive to be a
14 paramedic?

15 A. Approximately nine months of advanced training beyond
16 my basic training of EMT.

17 Q. I've seen the shows but what exactly is a paramedic?
18 What do you do from that standpoint?

19 A. From the stand point of emergency medicine we do
20 advanced procedures. We can give IV's, start lines, give
21 medication. We have additional training as far as
22 identifying life threatening injuries. We can use advanced
23 electronic equipment, cardiac monitors, to determine the
24 state of a person's health and life.

25 Q. And so you're basically one of the I guess what we

1 would refer to as first responders? You're the first
2 responder when it comes to an emergency event?

3 A. Generally. Usually for medical events.

4 Q. And let me first talk to you specifically about
5 September the 1st, 2012. You were a paramedic at that
6 time?

7 A. Yes, sir.

8 Q. And you were working on Hilton Head?

9 A. Yes, sir.

10 Q. Did you respond to the Allen Road area that afternoon?

11 A. Yes, sir.

12 Q. What did you find once you got there?

13 A. I found the victim on the ground with a woman beside
14 him trying to protect him or try to render aid.

15 Q. Did you do any test on this victim? Do you recall
16 by any chance the name of the victim or the - anything
17 about the victim?

18 A. I do remember his name was Khalil. I don't remember
19 his last name at this time.

20 Q. And how old was he?

21 A. I was told he was seven.

22 Q. When you get there what condition is Khalil in?

23 A. He was apneic, he was pulseless, he was not breathing,
24 he was bleeding from the mouth. There was no response from
25 him.

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1 Q And what does that mean from the standpoint of
2 determining his condition?

3 A. Initially that I would assume that he was dead. There
4 was no obvious sign of life at that time.

5 Q. All right, sir. Thank you.

6 SOLICITOR STONE: Nothing further.

7 THE COURT: Mr. Vaux.

8 MR. VAUX: No questions.

9 THE COURT: Thank you, Mr. Taylor, you can step down.

10 (WITNESS LEAVING WITNESS STAND.)

11 SOLICITOR STONE: The state calls Charlese Jackson.

12 THE COURT: Ladies and gentlemen, all the witnesses in
13 the case are outside of the courtroom in what we call a
14 sequestration so that they are not here for anybody's
15 testimony so that's the reason it takes a moment to get 'em
16 in here.

17 Come forward please and be sworn.

18 (WHEREUPON, CHARLESE

19 MITCHELL, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
20 FOLLOWS:)

21 MADAM CLERK: Please be seated and please state your
22 full name.

23 A. Charlese Mitchell.

24 DIRECT EXAMINATION

25 CHARLESE MITCHELL BY SOLICITOR STONE:

1 Q. And I had called you Ms. Jackson before but that's
2 your former name; is that correct?

3 A. Yes, sir.

4 Q. You're name is Charlese Mitchell?

5 A. Yes, sir.

6 Q. I apologize for that. Ms. Mitchell, back in September
7 of 2012 where were you living?

8 A. 229 Marshland Road.

9 Q. And where is - Where is that in relation to - This is
10 down - Where is that in relation to the Cross Island
11 Expressway?

12 A. It's right off Spanish Wells.

13 Q. And Spanish Wells is on one side of it and then -

14 A. Marshland.

15 Q. --- Marshland Road connects the two?

16 A. Yes, sir.

17 Q. And you were living - Whereabouts were you living in
18 that area? What was the address?

19 A. 229 Marshland Road.

20 Q. Now I have shown you basically a model of the
21 neighborhood. Would that aide in your testimony today?

22 A. Yes, sir.

23 Q. And you have seen this model before have you not?

24 A. Yes, sir.

25 Q. Okay.

1 SOLICITOR STONE: Your Honor, at this time may we
2 bring this in front of the jury?

3 THE COURT: All right.

4 Q. Now what I'm gonna ask you to do, and I'd like you to
5 keep your voice up if you could, and I'd like you to come
6 down from the stand.

7 (WITNESS LEAVES WITNESS STAND.)

8 Q. And let's start originally where you lived.

9 THE COURT: Ms. Mitchell, if I could ask you to stand
10 at the other end where there is less obstruction.

11 A. Yes, sir.

12 THE COURT: That way you will - you will be more or
13 less facing the court reporter.

14 A. Yes, sir.

15 THE COURT: And so we'll coordinate with you.

16 A. Yes, sir.

17 THE COURT: Thank you.

18 BY SOLICITOR STONE:

19 Q. And I'll tell you what, I'll give you this rod.

20 A. Okay.

21 Q. Tell me what this depicts?

22 A. This right here, this mobile home right here is my
23 mobile home. Right here. This right here is my Uncle
24 Eddie Allen's old trailer. This is the trampoline that
25 sits by the front of his trailer. This trailer right here

1 is my old - Is Margarite's old trailer. This trailer that
2 sits right here is my cousin Ernie's trailer, this trailer
3 here is Margarette's trailer. This trailer here is Ms.
4 Mary's trailer and this trailer right here is Shirley's
5 trailer. And this right here is a little place that a lot
6 of people sits.

7 Q. Okay. And this main road that's going along here what
8 road is that?

9 A. This is Marshland Road.

10 Q. And Allen Road is where?

11 A. It's right here.

12 Q. Now, and I believe Tyrone Robinson lives or has
13 relatives that live down Allen Road as well; is that right?

14 A. Yes, sir.

15 Q. And where are they in this area? Are they off of
16 this board or are they -

17 A. Pretty much. Well all of us that pretty much reside
18 here is related to Tyrone.

19 Q. Okay. All right. On September the 1st you were in
20 your home over here on the right, this house right here; is
21 that right?

22 A. That is correct.

23 Q. Okay. About four o'clock sometime in that time
24 frame tell me what - tell me what happened? What did you
25 hear?

- 1 A. I was inside the house. Me and my son and my step
- 2 kids was inside the house.
- 3 Q. What were your sons names?
- 4 A. My son's name is Calvin Maurice Junior. And my two
- 5 step sons was Xavier Delaney and Jashawn Washington.
- 6 Q. Okay.
- 7 A. We were inside the house and while we were inside the
- 8 house we heard some gun shots that went off like pop pop
- 9 pop pop pow is what we heard.
- 10 Q. About how many did you hear?
- 11 A. With the pow pow pow we - its' pretty much almost
- 12 like a rapid sound.
- 13 Q. Okay.
- 14 A. Is what we heard.
- 15 Q. What did you do after you heard the rapid firing?
- 16 A. After we heard the rapid sound we stayed inside and
- 17 we all stayed inside the house and then all of a sudden the
- 18 sound had ceased.
- 19 Q. Okay. What did you see after that?
- 20 A. After that took place Tyrone Delaney which is my
- 21 now fiancé came home. As he came home - As he came home we
- 22 heard a second round of pow pow pow shots but that was
- 23 before when he came home we had the kids to come outside
- 24 because Xavier - I'm sorry, Jontu Junior and Khalil came to
- 25 our house to get Tyrone's son which is Xavier. When they

1 came over there to get him they came over there and played
2 on his trampoline here. That's when we heard the second
3 round of pow pow pow pow.

4 Q. Okay. After the first - Let me back up. The first
5 set of gunshots that you heard that - the rapid fire, the
6 kids were not outside at that time; ---

7 A. They were not ---

8 Q. --- is that correct?

9 A. --- outside at that time no, sir.

10 Q. Did you see any cars or anything like that in the
11 area after that first shot?

12 A. No, sir.

13 Q. Okay. Tell me what you saw after that.

14 A. After we saw that like I said the kids came over
15 and got Xavier, they came on the trampoline and started
16 hearing the second round of shots. That's when we told the
17 kids to come inside the house. Xavier came inside the
18 house, Xavie and - I'm sorry, Jontu Singleton, Junior and
19 Khalil came walking back past this way. But at the time he
20 left his little - it's called a four wheeler by the
21 trampoline at that time. That's when after we heard the
22 second round of shots we told the kids to come inside the
23 house which the other two went a different way besides
24 Xavie. Then the last what we seen was a grey truck came
25 speeding up out of Allen Road onto Marshland Road and as of

1 that time -

2 Q. And I'll show you we've got a grey truck here.

3 A. Okay.

4 Q. It came along - You're seeing the truck coming this
5 way?

6 A. Yes. The grey truck started - The grey truck sped off
7 coming from out of Allen Road was turning this way. It was
8 coming - As we were coming me and - I was standing like in
9 the doorway, that's when I noticed who the driver was
10 driving the grey truck.

11 Q. And who was the driver driving the grey truck?

12 A. That was Aaron, Senior.

13 Q. Aaron, Aaron who senior? Aaron, last name?

14 A. Oh. I know him as Aaron Young.

15 Q. Okay. Aaron Young, Senior?

16 A. Yes, sir.

17 Q. Okay. And he's driving. Do you see who's in the
18 passenger seat?

19 A. There was somebody in the passenger seat but I
20 couldn't see who was the person in the passenger seat and
21 at that time that's when we heard the last three shots and
22 it was coming like from close to this area right here.

23 Q. And how much time separated the first set of shots and
24 the second set of shots and what - I'm not talking now
25 about the shots that came this way, I'm talking about the

1 first rapid fired shots and then the second set of rapid
2 fired shots.

3 A. I'll say within fifteen minutes, ten to fifteen
4 minutes afterwards.

5 Q. And your boyfriend at that time was Tyrone Delaney?

6 A. Yes, sir.

7 Q. And he came home at some point during that time; is
8 that correct?

9 A. Yes, sir.

10 Q. Okay. So put me in the order as far as the time line.

11 The first set of shots does Tyrone come home at that
12 time? Delaney, excuse me, come home at that time?

13 A. No.

14 Q. How does that - Tell me how that works?

15 A. The first sets of shots Tyrone is not home at the
16 first sets of shots. Tyrone came home -

17 Q. And let's use Tyrone Delaney because I don't want to
18 confuse him with Tyrone Robinson.

19 A. Okay. Tyrone Delaney came home during the second
20 round of shots.

21 Q. Before or after the second shots?

22 A. That was after the first sets of shots.

23 Q. Okay. But before the second set?

24 A. That's right.

25 Q. And the kids at that point were outside?

1 A. The kids were outside on the trampoline.

2 Q. Now, let me show you - First of all let me show you
3 what's been marked as State's Exhibit Three and ask you to
4 identify that please.

5 A. Yes, sir. This is my yard and that's my trailer and
6 this is the trampoline that sits right in front of Daveon's
7 trailer.

8 Q. Okay. All right.

9 SOLICITOR STONE: At this time, Your Honor, --

10 Q. And that's a fair and accurate depiction of how that
11 scene looked that day?

12 A. That is correct.

13 SOLICITOR STONE: At this time I offer State's Exhibit
14 Three into evidence.

15 MR. VAUX: No objection.

16 THE COURT: Thank you. Without objection.

17 (WHEREUPON, STATE'S EXHIBIT NUMBER THREE, PREMARKED
18 FOR IDENTIFICATION AND IDENTIFIED, RECEIVED INTO EVIDENCE.)

19 SOLICITOR STONE: And I'd like to publish that to the
20 jury please.

21 THE COURT: Yes, sir.

22 (STATE'S EXHIBIT NUMBER THREE PUBLISHED TO THE JURY
23 AT 10:56 A.M..)

24 Q. And what we're now showing up there that is State's
25 Exhibit Three. That is the trampoline and you told me I

1 think earlier, what's the trailer we see at the end of
2 that?

3 A. That's my mobile home.

4 Q. That's your mobile home?

5 A. Yes, sir.

6 Q. Okay. And the car is?

7 A. It was like - The white car is mine, the green.
8 truck is Tyrone Delaney and the little blue car is my son
9 Calvin.

10 Q. Okay. All right. Let me show you what's been
11 marked State's Exhibit Four. Can you identify that please?

12 A. Yes, sir. That's the grey truck that came - -

13 THE COURT: I'm sorry, your voice has dropped a little
14 bit.

15 SOLICITOR STONE: Yeah.

16 Q. Don't let your voice drop. That's the - -

17 A. That's the grey - That's the grey truck that came
18 speeding down from Allen Road.

19 Q. Okay. And that's a fair and accurate depiction of
20 that truck?

21 A. Yes, sir.

22 SOLICITOR STONE: State's Exhibit Four, Your Honor, we
23 ask that that be moved into evidence.

24 MR. VAUX: Without objection.

25 THE COURT: Without objection.

1 (WHEREUPON, STATE'S EXHIBIT NUMBER FOUR PREMARKED FOR
2 IDENTIFICATION, IDENTIFIED AND RECEIVED INTO EVIDENCE.)
3 BY SOLICITOR STONE:

4 Q. All right. And that is the truck that you saw
5 speeding out of Allen Road after the rapid fire shots?

6 A. That is correct.

7 Q. Okay. I show you a picture of State's Exhibit Five
8 and ask if you can identify the person in that photograph?

9 A. Yes, sir. That's Aaron Young, Senior.

10 Q. Okay. That's Aaron Young, Senior?

11 A. Yes, sir.

12 SOLICITOR STONE: At this point, Your Honor, we move
13 State's Exhibit Five into evidence.

14 MR. VAUX: Objection, Your Honor.

15 THE COURT: What's the nature of the objection?

16 MR. VAUX: There's no relevance to the case.

17 THE COURT: He's been identified as the driver of the
18 truck.

19 MR. VAUX: But he's not the defendant.

20 THE COURT: That's right, not the defendant, but we're
21 talking about Aaron Young, Senior; is that -

22 MR. VAUX: Yes, sir.

23 SOLICITOR STONE: Yes, sir.

24 THE COURT: That's right. I'll allow it in. She's
25 already identified Aaron Young, Senior as the driver of the

1 pickup truck. I'll allow it in over objection.

2 SOLICITOR STONE: Thank you.

3 MR. VAUX: Is that Number Five?

4 THE COURT: Right. Number Five.

5 SOLICITOR STONE: And that is State's Exhibit Five.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER FIVE PREMARKED FOR
7 IDENTIFICATION, IDENTIFIED AND RECEIVED INTO EVIDENCE.)

8 Q. And who is that person?

9 A. Aaron Young, Senior.

10 Q. All right. That is - And the person that you
11 identified driving State's Exhibit Four; is that correct?

12 A. Yes, sir.

13 Q. Let me show you what's been marked State's Exhibit
14 Six. Do you know who is depicted in that photograph?

15 A. Yes, sir.

16 Q. And who is that?

17 A. That's Tyrone Robinson.

18 Q. Okay. Now did you see Tyrone Robinson that day?

19 A. Yes, sir.

20 Q. Okay.

21 SOLICITOR STONE: State's Exhibit Six, Your Honor, we
22 move that into evidence as well.

23 MR. VAUX: No objection.

24 THE COURT: Thank you. Without objection.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER SIX PREMARKED FOR

1 IDENTIFICATION, IDENTIFIED AND RECEIVED INTO EVIDENCE.)

2 Q. And that is a picture of Tyrone Robinson there; is
3 that correct?

4 A. That is correct.

5 Q. You said you saw Tyrone Robinson that day.

6 A. Yes, sir, I did.

7 Q. Now going back to the model. When did you see Tyrone
8 Robinson?

9 A. Right after --

10 Q. And let's put them back into the relevance as far as
11 the time is concerned with the rapid shots, the second set
12 of rapid shots and --

13 A. I seen Tyrone like I said after the first set of
14 shots.

15 Q. Okay. The first sets of shots, it happened then you
16 see Tyrone Robinson?

17 A. That is correct.

18 Q. And how does that happen? How do you see him?

19 A. He wanted to come into my front door and knocked on
20 the front door and as he knocked on the door I opened the
21 door and as Tyrone seen I opened the door he proceeded
22 inside the house and that's how I met - that's how me and
23 him was talking.

24 Q. Okay. What - How was he acting when you saw him?
25 What condition was he in?

1 A. He was a little hyped up and he had me a little
2 scared too.

3 Q. Okay. And when you say hyped up, he was excited?

4 A. To me he was excited.

5 Q. And how did he scare you?

6 A. Cause he had a gun hanging out to his side, a gun
7 handle.

8 Q. All right. Did you talk to Tyrone Robinson?

9 A. I did.

10 Q. And what did he say to you?

11 A. He said those M.F. was shooting at him.

12 Q. And what did you do at that point with Tyrone
13 Robinson?

14 A. I then ask him to leave and as I ask him to leave
15 my fiancé was pulling up in the drive.

16 Q. All right. And that's Tyrone Delaney?

17 A. Yes, sir.

18 Q. Okay. So you have this conversation. The rapid fires
19 had already shot the first time?

20 A. That's right.

21 Q. That's when you see Tyrone Robinson, Tyrone Delaney
22 then comes to your house. Do they go outside and talk?

23 A. No. He met Tyrone Delaney outside.

24 Q. Out in this area here?

25 A. Out in this area right here.

1 Q. Okay. All right. And how long did they stay outside
2 and talk?

3 A. No more than ten - I'll say no more than ten minutes.

4 Q. Were they outside talking when the kids went outside
5 to play on the trampoline?

6 A. That is correct.

7 Q. And tell me what happens then.

8 A. After that, after Tyrone left after he told Tyrone
9 that he had to leave Tyrone Delaney told Tyrone Robinson he
10 had to leave. That's when Tyrone disappeared. I don't know
11 where Tyrone what way he went but then all of a sudden and
12 like I said ten or fifteen minutes we started hearing the
13 rapid shots again.

14 Q. Okay.

15 A. And after that second round of rapid shots was going
16 on that's when we told the kids to come off the trampoline
17 and come inside the house.

18 Q. Okay. All of the kids - Did all of the kids come
19 into your house or did they scatter?

20 A. No. They scattered. Jontu Singleton and Khalil went
21 back toward - Well Margaret stays here and Devina stays back
22 here further back. They came so I figured that he had to go
23 by - he must a been going back to his momma's house and
24 Khalil was going over here to Shirley's house ---

25 Q. I see.

1 A. --- and Jontu was liven.

2 Q. Okay. Did you later go out and find Khalil?

3 A. No, sir.

4 Q. Did you ever see him?

5 A. I went out after the last three shots when I heard the
6 screaming from my bathroom right here which is right here
7 and we heard somebody screaming and that's when I came
8 outside and I found Brittany with Khalil.

9 Q. Okay. And where was Khalil at that point?

10 A. Khalil was laying right up in here.

11 Q. Okay. Go ahead and I'll ask you to take the stand.

12 (WITNESS RETURNS TO WITNESS STAND.)

13 Q. Let me show you what's been marked as State's Exhibit
14 Twelve and ask you if you can identify that please?

15 A. That's the grey truck.

16 Q. Okay. And that's the truck you saw Aaron Young,
17 Senior driving?

18 A. That is correct.

19 Q. Okay. And that's a fair and accurate depiction of
20 the back of the truck?

21 A. Yeah that is correct.

22 MR. VAUX: Objection.

23 Q. I show you what's been marked as State's Exhibit
24 Seven and State's Exhibit Sixteen and ask if you can
25 identify those two?

1 A. Yes. That's Tyrone Robinson's vehicle.

2 Q. And State's Exhibit Seven?

3 A. That is Tyrone Robinson's vehicle.

4 Q. Are those fair and accurate depictions of how the car
5 looked that day?

6 A. That is correct.

7 SOLICITOR STONE: Your Honor, at this time we move
8 State's Exhibit Twelve and Seven and Sixteen into evidence.

9 THE COURT: Any objection?

10 MR. VAUX: No objection, Your Honor.

11 THE COURT: Without objection. Thank you.

12 (WHEREUPON, STATE'S EXHIBITS SEVEN, TWELVE, AND SIXTEEN
13 PREMARKED FOR IDENTIFICATION, IDENTIFIED AND RECEIVED INTO
14 EVIDENCE.)

15 SOLICITOR STONE: Wish to publish to the jury State's
16 Exhibit Twelve.

17 Q. And you can see the monitor, Ms. Mitchell, up here.

18 That is State's Exhibit Twelve. And that's a fair and
19 accurate depiction of the truck that you saw go by I guess
20 after the second set of shots?

21 A. That is correct.

22 Q. State's Exhibit Seven. And then State's Exhibit
23 Sixteen. Did you see that vehicle that day?

24 A. That is correct. That's Tyrone Robinson's vehicle.

25 Q. And where did you see that car?

CHARLESE MITCHELL: DIRECT BY SOLICITOR STONE
CROSS BY MR VAUX

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1 A. That car came speeding down Washington Road.

2 Q. And was that after the truck went by?

3 A. That is correct.

4 Q. All right.

5 SOLICITOR STONE: Excuse me just a moment, Your Honor.

6 THE COURT: Okay.

7 Q. And you had mentioned earlier I think that Tyrone
8 Robinson lives or has relatives that live somewhere back
9 into this neighborhood as well; is that correct?

10 A. That is correct.

11 Q. Okay. All right.

12 SOLICITOR STONE: I don't have any further questions at
13 this time, Your Honor.

14 THE COURT: Mr. Vaux, cross-examine.

15 MR. VAUX: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 CHARLESE TAYLOR MITCHELL BY MR. VAUX:

18 Q. Ms. Mitchell, without any intent to be disrespectful
19 I'm gonna call them Delaney and Robinson so that there is no
20 confusion between the two Tyrone's. Okay?

21 A. That's fine.

22 Q. Okay. Or I may call 'em Mr. Delaney Mr. Robinson.

23 That'll make things simpler. All right, if you would
24 come back down again for me please.

25 (WITNESS LEAVES WITNESS STAND.)

1 Q. Now as I understand it on September the 1st you were
2 at home?

3 A. Yes, sir.

4 Q. Okay. If you would go stand on this side of the
5 model. And you live in this house?

6 A. That is correct.

7 Q. Okay. And you were at home with your two step-sons?

8 A. And my son.

9 Q. And your son?

10 A. Yes, sir.

11 Q. Okay. The three of you are in the house?

12 A. Yes, sir.

13 Q. Okay. And what happens at that point?

14 A. While we were in the house we heard rapid gunshots
15 while we were in the house.

16 Q. Now you didn't think they were gunshots did you?

17 A. That's what we thought. That's what we thought they
18 were.

19 Q. Okay. And where did they sound like they were coming
20 from?

21 A. I actually thought they were coming from the back.

22 Q. From back there? Okay. Do you recall having
23 testified earlier?

24 A. Yes, sir.

25 Q. Okay. At that time of Officer Stone ask - I mean

1 Solicitor Stone ask you a question about the gun shots that
2 you heard and you had said the gun shots that were heard the
3 first sets were like pow pow pow pow pow pow were the first
4 set of shots that you heard the first time after you heard
5 the first set of gun shots me personally I didn't dawn on me
6 that it was shots. Do you remember saying that?

7 A. No. I remember saying that they were rapid shots.

8 Q. Okay. Now, how long after that do you say that the
9 next set of shots came?

10 A. Maybe ten or fifteen minutes after - -

11 Q. Okay. But between the first set and the second shots
12 ten to fifteen minutes?

13 A. Yes.

14 Q. Okay. Now, is it true that during that ten to
15 fifteen minute period Tyrone Robinson came to your door?

16 A. He came to my door.

17 Q. Okay. And is it true Mr. Robinson had on a pair of
18 shoes, red shorts, two beers, and a pistol sticking out of
19 his pocket?

20 A. I didn't see the beer.

21 Q. You didn't see the beer?

22 A. No, sir.

23 Q. But you saw the pistol?

24 A. I did.

25 Q. Okay. And you and Mr. Robinson had a conversation?

1 A. We did.

2 Q. And he ask you to use the telephone?

3 A. He did.

4 Q. Okay. And he made a call?

5 A. He did.

6 Q. Do you know who he called?

7 A. No, sir, I do not.

8 Q. Did you hear what he said?

9 A. No, sir.

10 Q. Okay. Do you recall if he ask if your cousin Patrick
11 Young was at home?

12 A. He did.

13 Q. Okay. Do you recall saying when he came in there he
14 walked - he pretty much - I opened the door he came inside.
15 When he came inside he walked in the house inside the house
16 I have like a bar. He walked in and set a brown paper bag
17 bottle with beer inside and ask if my cousin Patrick Young
18 was at home?

19 A. He ask if Patrick was at home.

20 Q. Do you remember seeing the brown paper bag with beer
21 in it?

22 A. No. At this moment no I don't remember the bag.

23 Q. Okay. Now, when did the boys go outside to play on
24 the trampoline?

25 A. They went outside to play after Tyrone Delaney came

1 home.

2 Q. Okay. So you're in the house?

3 A. Yes, sir.

4 Q. With the three boys?

5 A. Yes, sir.

6 Q. And Tyrone Robinson comes up and knocks on the door?

7 A. That is correct.

8 Q. Gun in his pocket?

9 A. That is correct.

10 Q. And he ask to use the telephone?

11 A. That is correct.

12 Q. And you let him use it?

13 A. That is correct.

14 Q. Then Mr. Delaney comes home?

15 A. That is correct.

16 Q. And Robinson is standing in the yard talking on the
17 telephone?

18 A. Yes he was talking on the phone, yes.

19 Q. So the two Tyrone's are talking in the yard?

20 A. Yes, sir.

21 Q. All right. At that point in time did Mr. Delaney
22 come up to you and say ask him to leave or tell him to leave
23 I'm not comfortable with him being here?

24 A. No I ask Tyrone Delaney to ask him to leave.

25 Q. You ask Tyrone Delaney to ask him to leave?

- 1 A. That is correct.
- 2 Q. Okay. So at that point does Mr. Delaney tell him to
- 3 leave?
- 4 A. Yes he did.
- 5 Q. Now where are the boys at this point?
- 6 A. When Tyrone came home the boys go on their trampoline.
- 7 Q. Okay. The three boys?
- 8 A. That is correct.
- 9 Q. Khalil, Jontu, and?
- 10 A. Xavier.
- 11 Q. And Xavier?
- 12 A. That is correct.
- 13 Q. All right. So the three boys are on the trampoline,
- 14 the two Mr. Delaney and Mr. Robinson are basically at your
- 15 front door?
- 16 A. They were right here.
- 17 Q. Right there in the yard?
- 18 A. Yes, sir.
- 19 Q. Okay.
- 20 A. That is correct.
- 21 Q. All right. And then Mr. Delaney tells Mr. Robinson
- 22 to leave?
- 23 A. That is correct.
- 24 Q. And Mr. Robinson leaves?
- 25 A. That is correct.

CHARLESE MITCHELL: CROSS BY MR. VAUX

1 Q. And do you know where he went?

2 A. No, sir.

3 Q. Okay. So how long after that do you hear the next
4 set of shots?

5 A. Within ten or fifteen minutes we heard the next sets
6 of shots.

7 Q. All right. Ten to fifteen minutes after Mr. Robinson
8 leaves your house?

9 A. After he leaves the house.

10 Q. All right. So you had the first set of shots then
11 ten or fifteen minutes ---

12 A. Yes.

13 Q. --- and Mr. Robinson comes to your house?

14 A. That is correct.

15 Q. And he's there for a little while and then you have
16 another ten or fifteen minutes?

17 A. That is correct.

18 Q. So we narrow that twenty to thirty minutes ---

19 A. And -

20 Q. --- after the first set of shots?

21 A. That is about right.

22 Q. All right. Now do you know who fired the first set
23 of shots?

24 A. No, sir.

25 Q. Okay.

1 A. I do not.

2 Q. Now you say you identified if you look over your left
3 shoulder you identified Mr. Robinson's car?

4 A. That is correct.

5 Q. When you saw that car that day where was it parked?

6 A. To be honest I don't know where it was parked because
7 I never seen him have - with the car. I seen him as he was
8 leaving off of Allen Road onto Marshland Road.

9 Q. All right. So Robinson's at your house, he leaves.

10 A. He didn't have a car when he was to my house.

11 Q. He was walking?

12 A. That is correct.

13 Q. All right. And so he leaves on foot with the gun and
14 he - and ten to fifteen minutes go by?

15 A. That is correct.

16 Q. And you hear another set of shots?

17 A. That is correct.

18 Q. Okay. And then the next thing I think you say you
19 hear is or see is other than the yelling or what is the next
20 thing you hear or see?

21 A. After we heard the second round of shots like I stated
22 that's when we told the kids to come in the house.

23 Q. Yes, ma'am.

24 A. After that took place we heard the last three shots.

25 Q. Let me stop you there.

CHARLESE MITCHELL: CROSS BY MR. VAUX

1 A. Okay.

2 Q. So you hear the second set of shots.

3 A. Uh-huh.

4 Q. And then you tell the kids to come in the house?

5 A. That is correct.

6 Q. All right. Now, do you - How far after the kids come
7 in the house do you see or hear the grey truck?

8 A. After. We heard the grey truck after.

9 Q. After what?

10 A. After the last - -

11 Q. Yes, ma'am, how close to when you tell the kids to
12 come in the house do you hear or see the grey truck?

13 A. As soon as we heard the first - the first sets of
14 shots we yelled at the kids to come inside.

15 Q. Okay. That's actually the second shots. The rapid
16 fired shots.

17 A. The second shots, right.

18 Q. Okay. And so you ask the kids to come in the house or
19 tell the kids to come in the house?

20 A. Yes, sir.

21 Q. All right. And you all almost immediately is that
22 you see or hear the grey truck?

23 A. I didn't see the grey truck after the second round
24 of shots.

25 Q. All right. The second or third?

1 A. The second. The third shots is when we seen the last
2 - the last three shots ---

3 Q. Okay.

4 A. --- they came by.

5 Q. So you hear the second set of shots?

6 A. That is correct.

7 Q. All right. And you tell the kids to come in the
8 house?

9 A. That is correct.

10 Q. And then you hear screaming?

11 A. We heard the screaming after the last three shots.

12 Q. Okay. Do you see the truck before the last three
13 shots?

14 A. We seen the truck before the last three shots.

15 Q. Okay. And where were you standing when you - when you
16 heard ---

17 A. When I heard the last three shots?

18 Q. --- heard the last three shots?

19 A. I was right here in the door. This is my front door
20 right here.

21 Q. Okay.

22 A. And that's when I was looking out the front door and
23 that's when the three shots came but as the three shots came
24 the grey truck was already coming down the road the last
25 three shots came out.

- 1 Q. Okay. And did you see the truck come down Allen Road?
- 2 A. I didn't see the truck until after the truck sped off.
- 3 Q. Okay.
- 4 A. And that's the last set round of shots.
- 5 Q. Okay. So you don't - I mean the truck could have
- 6 come from here, it could have come from anywhere?
- 7 A. I seen the truck sped out of Allen Road.
- 8 Q. Oh, you did?
- 9 A. Yes.
- 10 Q. Okay.
- 11 A. The truck came speeding out, came speeding out off
- 12 Allen Road and came straight this way.
- 13 Q. All right. So - Let me borrow your pointer just a
- 14 second. Make sure I got your testimony right.
- 15 A. Okay.
- 16 Q. You see or hear, you're standing here.
- 17 A. That is correct.
- 18 Q. Okay. So you see or hear and from there the truck
- 19 would be in this area somewhere's?
- 20 A. Yes cause the truck came speeding out of Allen Road.
- 21 Q. It comes down here?
- 22 A. That's right.
- 23 Q. And it comes across here?
- 24 A. That is correct.
- 25 Q. Right. And approximately where is it when you hear

1 the second ---
 2 A. The last three shots?
 3 Q. --- the last three shots?
 4 A. The truck was right up in here.
 5 Q. All right. In this area in here?
 6 A. That is correct.
 7 Q. Okay. Excuse me. What is - This is a driveway?
 8 A. That is a driveway.
 9 Q. Okay. How long is it between the time of the second
 10 set of shots and the third set of shots? Approximate. The
 11 best you can guesstimate.
 12 A. I'd say maybe within maybe ten, ten minutes maybe.
 13 Q. Okay. All right. So there's ten minutes between the
 14 second set of shots and the last three shots?
 15 A. The last three shots was different.
 16 Q. A different sounding?
 17 A. Yes, sir, they were different sounding.
 18 Q. Okay. And when did you first realize that Khalil had
 19 been killed after the three shots?
 20 A. After the last three shots and after the last three
 21 shots is like I said my bathroom is here.
 22 Q. Uh-huh.
 23 A. And that's when I heard somebody screaming.
 24 Q. Okay. Now after all of this has gone on did you ever
 25 inspect this - Whose house is this?

CHARLESE MITCHELL: CROSS BY MR. VAUX

1 A. That's my ---

2 Q. Aunt?

3 A. --- Aunt Shirley.

4 Q. Aunt Shirley.

5 A. That is correct.

6 Q. Is that Shirley

7 A. Yes, sir.

8 Q. Okay.

9 A. That is her house.

10 Q. Now, did you ever come over here and inspect this
11 house?

12 A. No, sir.

13 Q. So you don't know if it had been shot up or hadn't
14 been up or if Tyrone's car had been there?

15 A. No, sir.

16 Q. All right. Now do you know Aaron Young, Junior?

17 A. Yes, sir.

18 Q. Okay. How do you know him?

19 A. That's my cousin.

20 Q. Okay. On September the 1st of 2012, did you see him
21 shoot a gun?

22 A. No, sir.

23 Q. On September the 1st, 2012, did you see him attempt
24 to kill Tyrone Robinson?

25 A. No, sir.

1 Q. On - When you saw Mr. Robinson I believe you said
2 he had a gun on him?

3 A. Yes, sir, I seen the black handle in his red shorts.

4 Q. Okay. Did you see anyone fire a gun that day?

5 A. I did not.

6 Q. I believe you said you saw the grey truck and you saw
7 Aaron Young, Senior driving the truck?

8 A. That is correct.

9 Q. Did you see Aaron Young, Junior in the truck?

10 A. No, sir. I don't - Like I said there was another
11 person in the truck. I don't know the other person in the
12 truck was.

13 Q. Okay. And - So you can't identify Junior as having
14 been in the truck that day?

15 A. No I don't know who the other person was inside of the
16 truck.

17 Q. All right. Did - After Khalil was shot did you see
18 Tyrone Robinson?

19 A. Not after.

20 Q. Not after?

21 A. No, sir.

22 Q. Thank you, ma'am.

23 MR. VAUX: I have nothing further.

24 THE COURT: Thank you. Redirect, Mr. Stone?

25 SOLICITOR STONE: Just briefly.

CHARLESE MITCHELL: REDIRECT BY SOLICITOR STONE

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REDIRECT EXAMINATION

CHARLESE MITCHELL BY SOLICITOR STONE:

Q. How many times did you see that truck that day?

A. Briefly the time I seen it pass by the first and that was the last time after the last sets of shots.

Q. Okay. So you saw it pass by once or twice?

A. I seen it pass by the first time when it passed by and then the last time after the last three shots.

Q. But that's what I wanted to make sure I was clear about because I thought I picked that up. So you saw it pass by after the first set of shots and then you saw it also pass by after the ---

A. The last three shots.

Q. --- second and third - The last three shots; is that correct?

A. The last three shots.

Q. Okay. So actually you saw it go by your house twice that day?

A. That was twice.

Q. Twice; is that right?

A. That is correct.

Q. Aaron Young, Junior, do you see Aaron Young, Junior in the courtroom?

A. Yes, sir.

Q. Could you point him out for me?

CHARLESE MITCHELL: REDIRECT BY SOLICITOR STONE
RECROSS BY MR. VAUX

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1 A. Yes, sir.

2 Q. Okay. Please let the record reflect that she
3 identified the defendant.

4 (WITNESS INDICATED TOWARD DEFENDANT AT DEFENSE TABLE.)

5 THE COURT: Okay. Mr. Vaux, any followup?

6 MR. VAUX: Yes, sir.

7 RECROSS-EXAMINATION

8 CHARLESE TAYLOR-MITCHELL BY MR. VAUX:

9 Q. Did you see anybody in the grey truck fire a gun that
10 day?

11 A. I did not.

12 Q. Thank you.

13 THE COURT: Thank you. Please step down. Thank you,
14 ma'am.

15 (WITNESS LEAVING WITNESS STAND.)

16 SOLICITOR STONE: The state calls Tyrone Delaney.

17 THE COURT: Mr. Delaney, come forward please and be
18 sworn.

19 (WHEREUPON, TYRONE DELANEY,
20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 MADAM CLERK: Please be seated and please state your
22 full name.

23 A. Tyrone Delaney.

24 DIRECT EXAMINATION

25 TYRONE DELANEY BY SOLICITOR STONE:

TYRONE DELANEY: DIRECT BY SOLICITOR STONE

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1 Q. All right, Mr. Delaney, I ask if you could pull that
2 microphone to you so that I can hear you, sir.

3 What do you do, sir?

4 A. I work at OC Welch.

5 Q. Okay. How long you worked at OC Welch?

6 A. Fourteen years.

7 Q. What do you do there?

8 A. I'm a technician.

9 Q. September the 1st, 2012, were you at that time living
10 over near the Allen Road area or staying over there?

11 A. Yes, sir.

12 Q. And who was that with?

13 A. Charlese Mitchell.

14 Q. Charlese Mitchell?

15 A. Yes, sir.

16 Q. Okay. And although she testified earlier and I know
17 you've seen this model, is it this house that you were
18 staying in?

19 A. Yes, sir.

20 Q. Okay. September the 1st, 2012, sometime around four
21 or five in the afternoon tell me what happened?

22 A. I was driving down Spanish Wells at Marshland when a
23 grey F 150 came over in my lane. I had to pull over so he
24 wouldn't hit me head on.

25 Q. All right. Now let me back you up. When you go -

1 You're coming from - Were you coming from OC Welch?

2 A. Yes, sir.

3 Q. So you're coming down Highway 278?

4 A. Yes, sir.

5 Q. All right. Let me ask you if you'd come down off the
6 stand. But I'm gonna ask you to keep your voice up if you
7 could.

8 (WITNESS LEAVES WITNESS STAND.)

9 Q. All right, let me show you, this is - I'm referring to
10 State's Exhibit One which is the map of the Hilton Head
11 area. And if you need to get closer and see it that's fine.
12 But what we've already had testimony is that this is
13 actually Highway 278. Do you see where we are here?

14 All right. Let me get you to keep your voice up a
15 little bit.

16 This is Spanish Wells here, this road going on here; is
17 that right?

18 A. Yes, sir.

19 Q. And is this the curve that you're describing here when
20 it curves in, is that Marshland Road that it curves into?

21 A. Yes, sir.

22 Q. Okay. And at that point what do you see?

23 A. A grey truck coming into my lane.

24 Q. So you're on the - I guess right lane, you're taking
25 a left turn?

1 A. Uh-huh.

2 Q. And it's coming around that same curve area?

3 A. Yes, sir.

4 Q. Okay. Now, let me show you what's been marked State's
5 Exhibit - I guess I can refer you to the monitor behind you.

6 This is State's Exhibit Twelve. And I will also go to
7 State's Exhibit Four. Is that the grey F150 that you saw
8 that day?

9 A. Yes, sir.

10 Q. And this is - You see that and I don't want you to
11 run into it, but you actually passed here at this curve here
12 going onto Marshland Road as you're heading towards Allen
13 Road and toward Charlese's house; is that correct?

14 A. Yes, sir.

15 Q. Okay. Go ahead and ask you to take the stand.

16 (WITNESS RETURNS TO WITNESS STAND.)

17 Q. Now as you - After the - After you go by the truck,
18 what do you do; do you continue on down to Charlese's
19 house?

20 A. Yes, sir.

21 Q. And that's near the Allen Road area. Is that the
22 Allen Road neighborhood?

23 A. Yes, sir.

24 Q. Tell me what happens when you get to Charlese's
25 house.

1 A. When I pull in the yard that's when Tyrone ask me if
2 I saw a grey truck.

3 Q. All right, now, when you say Tyrone, Tyrone who?

4 A. Robinson.

5 Q. Okay. And he was at Charlese's house when you get
6 there?

7 A. Yes, sir.

8 Q. And what is he -- What's he wearing? What's he looking
9 like when you get --

10 A. He's wearing a red short pants and socks and a pair
11 of shoes.

12 Q. Okay. And what condition is he in? Is he excited is
13 he --

14 A. He's excited about something.

15 Q. Okay. Tell me what happens against this conversation
16 that you have here?

17 A. He ask me he said have you seen a grey truck? I said
18 yeah they almost hit me head on. He was like yeah they was
19 shootin at me so I shoot back at them.

20 Q. Okay. What happens after that? This conversation is
21 taking place where, out in the front yard here at the house?

22 A. Out in the yard. Yeah, out in the yard by my truck.

23 Q. Okay. And you parked I guess in front of this
24 house here?

25 A. Yes, sir.

1 Q. All right. And the conversation at this point how
2 far are you away from Tyrone Robinson when he's asking you
3 about the truck and saying that they were shooting at him?

4 A. He was like close, real close.

5 Q. Okay. Like just conversational length? In other
6 words say for instance --

7 A. Right there.

8 Q. Right here?

9 A. Uh-huh.

10 Q. Okay. All right. What do you do after that?

11 A. I went in the house and tell Charlese that to tell-
12 ask her to tell him to leave cause he's got a gun.

13 Q. Tyrone Robinson had a gun?

14 A. Yes.

15 Q. And you saw the gun?

16 A. Yes.

17 Q. Okay. And did Tyrone Robinson leave?

18 A. Yes, he did leave.

19 Q. What happens after Tyrone Robinson leaves?

20 A. After he left I heard some semi shots.

21 Q. What do you mean semi shots?

22 A. Semi automatic.

23 Q. Okay. How would you describe that?

24 A. Real rapid.

25 Q. Rapid fired shots?

1 A. Yes, sir.

2 Q. Okay. And what did you do or what happened after
3 that?

4 A. Charlese went outside to tell the kids to come in the
5 house. My son came in and the other two went the other way,
6 that's where he lived, I'm not sure, I'm not familiar with
7 the area but then after that we heard three more shots.

8 Q. Were the three shots that you heard after you heard
9 what you described as semi - semi shots or semi automatic
10 shots or rapid fired shots were they the same sound as the
11 three shots that you heard?

12 A. No, sir.

13 Q. Okay. And what was the difference between the two?

14 A. The three I heard was like pow pow pow after the semi.

15 Q. Did it sound to you like they were coming from two
16 different guns?

17 A. Yes, sir.

18 Q. And your son is Xavier; is that correct?

19 A. Yes, sir.

20 Q. And he came into the house?

21 A. Yes, sir.

22 Q. The other two, I think that was Jontu Singleton,
23 Junior and as well as Khalil Singleton, they were out -
24 still outside; is that right?

25 A. Yes, sir.

TYRONE DELANEY: DIRECT BY SOLICITOR STONE
CROSS BY MR. VAUX

1 Q. They went the other way?

2 A. Yes, sir.

3 Q. When they went the other way when did you hear, did
4 you hear the three shots after they started going off the
5 other way?

6 A. Yes, sir.

7 Q. Can you tell me what happens after that?

8 A. That's when we heard screaming somebody help me. And
9 that's when Charlese went outside and I came later and I saw
10 Everett trying to bring him back.

11 SOLICITOR STONE: All right, Tyrone, if you will answer
12 any questions that Mr. Vaux may have for you.

13 A. Yes, sir.

14 THE COURT: Mr. Vaux, cross examine?

15 CROSS-EXAMINATION

16 TYRONE DELANEY BY MR. VAUX:

17 Q. Mr. Delaney, do you know Aaron Young, Junior?

18 A. No, sir.

19 Q. On September the 1st, 2012, did you see him shoot a
20 gun?

21 A. No, sir.

22 Q. Did you see or hear him say anything about trying to
23 kill Tyrone Robinson?

24 A. No, sir.

25 Q. On September the 1st, 2012, did you see Tyrone

1 Robinson?

2 A. Yes.

3 Q. And you know him of your own knowledge?

4 A. Yes, sir.

5 Q. Did you see Mr. Robinson have a gun on him?

6 A. Yes, sir.

7 Q. Did you see anyone fire a gun that day?

8 A. No, sir.

9 Q. Did you see Aaron Young, Junior, in possession of a
10 gun that day?

11 A. No, sir.

12 Q. Did you see Aaron Young, Junior as a passenger or
13 driving in a grey truck that day?

14 A. No, sir.

15 Q. Did you see anyone in the grey truck firing a gun
16 that day?

17 A. No, sir.

18 Q. Now, if you will please come down from the stand.

19 (WITNESS LEAVING WITNESS STAND.)

20 Q. Okay. If you would, after you hear the second round
21 of gun shots, about how long is it - I'm sorry, strike that.
22 After the second round of rapid gun shots, what did you do?

23 A. I'm in the house.

24 Q. You're in the house here?

25 A. Yes, sir.

- 1 Q. Okay. And what did you do at that point?
- 2 A. My old lady come and I told her to - -
- 3 Q. Ms. Mitchell?
- 4 A. Yes, sir.
- 5 Q. Okay.
- 6 A. I told her to tell the kids to come in this house.
- 7 Q. Okay. And so the kids came in?
- 8 A. My son came in.
- 9 Q. Right. And then what happened at that point?
- 10 A. That's when we heard screaming. After the first gun
- 11 shots I heard and told the kids to come in then we heard
- 12 three more shots.
- 13 Q. Okay. After you hear the first gun shots that you
- 14 hear, the rapid shots?
- 15 A. Yes, sir.
- 16 Q. Okay. And you told the kids to come in?
- 17 A. Yes, sir.
- 18 Q. And your son came in the house?
- 19 A. Yes, sir.
- 20 Q. Okay. And then you hear people screaming. Then what
- 21 happens?
- 22 A. I heard the third gun shots.
- 23 Q. Okay. Now, did you see or hear the grey truck between
- 24 the second - between the first set of gun shots that you
- 25 heard and the last three shots?

1 A. No, sir.

2 Q. Did you ever see the grey truck again that afternoon?

3 A. No, sir.

4 Q. All right. Now, did you go outside the house after
5 the rapid fire shots?

6 A. After the third.

7 Q. After the third you went out?

8 A. After the three gun shots.

9 Q. All right. And you never saw the truck?

10 A. No, sir.

11 Q. Okay. Was Ms. Mitchell with you that entire time?

12 A. No, sir. She was outside.

13 Q. Before you went outside?

14 A. Yes, sir.

15 Q. Okay. So after you hear the screaming Ms. Mitchell
16 comes out - Move that just a little bit for me - Ms.
17 Mitchell comes out of this house and is standing in this
18 area. Is that correct?

19 A. Yes, sir.

20 Q. Okay. And sometime after that you come by it?

21 A. Yes, sir.

22 Q. Okay. So if the grey truck had come down here she
23 could have seen it without your ever seeing it?

24 A. Yes, sir.

25 Q. Okay. Go back on the stand for me, please.

(WITNESS RETURNS TO WITNESS STAND.)

MR. VAUX: Nothing further.

THE COURT: Thank you. Redirect, Mr. Stone?

SOLICITOR STONE: I don't think so. I ask that this witness be -

THE COURT: Thank you, Mr. Delaney, you can step down.

Thank you, sir.

(WITNESS LEAVING WITNESS STAND.) --

SOLICITOR STONE: May we approach, Your Honor?

THE COURT: Yes, sir.

(BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF THE JURY AT 11:29 A.M..)

THE COURT: Ladies and gentlemen, this is a good time for the morning recess. I'm gonna send you to your jury room. We'll take about a fifteen, maybe twenty minute recess. Remember please do not discuss this case among yourselves while you're in the jury room. Thank you.

(JURY EXITS COURTROOM AT 11:29 A.M..)

THE COURT: All right, folks, we'll stand down for about fifteen minutes. Thank you.

(COURT IN RECESS AT 11:30 A.M..)

(COURT BACK IN SESSION AT 11:53 A.M..)

THE COURT: Thank you, folks, please be seated.

Folks, are both sides ready for the jury?

SOLICITOR STONE: Yes, sir.

DOMINIQUE GRIFFIN: DIRECT BY SOLICITOR STONE

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1 MR. VAUX: Yes, sir.

2 THE COURT: You can bring your next witness into the
3 courtroom if you'd like.

4 SOLICITOR STONE: Tell them to bring Dominique Griffin
5 in, please.

6 (JURY REENTERS COURTROOM AT 11:54 A.M..)

7 THE COURT: Ladies and gentlemen, we now continue with
8 the state's presentation of testimony in the case.

9 Mr. Stone.

10 SOLICITOR STONE: The state calls Dominique Griffin.

11 THE COURT: Mr. Griffin, come forward please and be
12 sworn.

13 MADAM CLERK: Place your left hand on the Bible and
14 raise your right hand. Stand up please. Raise your right.

15 (WHEREUPON, DOMINIQUE GRIFFIN,
16 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 MADAM CLERK: Okay. Please state - You can be seated.

18 Please state your full name.

19 A. Dominique Griffin.

20 DIRECT EXAMINATION

21 DOMINIQUE GRIFFIN BY SOLICITOR STONE:

22 Q. Mr. Griffin, where do you live now, sir?

23 A. Uh - In Bridgetown in Hilton Head.

24 Q. And on September of 2012 where were you living?

25 A. Uh - 215 Marshland.

DOMINIQUE GRIFFIN: DIRECT BY SOLICITOR STONE

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1 Q. 215 Marshland is off of the Allen Road area in Hilton
2 Head; is that right?

3 A. Yes.

4 Q. You have seen this model before have you not?

5 A. Yes.

6 Q. We've gone over it. All right, let me ask you if you
7 could if you could come down but I'd like you to keep your
8 voice up so that the court reporter as well as the jury can
9 hear you. And I believe the judge wants you on this side.

10 THE COURT: Maybe it would be better that way his back
11 would not be to the court reporter.

12 SOLICITOR STONE: So come to where I am if you
13 don't mind.

14 (WITNESS LEAVING WITNESS STAND.)

15 Q. Or I can do this, turn if you will so they can hear
16 you as well. All right, you were living in what type in
17 what house in what area?

18 A. This house right off of Marshland on Allen Road.

19 Q. That house right there?

20 A. Yes.

21 Q. And who were you living there with?

22 A. Me and my fiancé Ms. Simmons and two kids.

23 Q. Okay. Were any of those kids your kids?

24 A. Yes.

25 Q. And what kid? Who is that?

1 A. Damian and Griffin.

2 Q. Okay. And how old was Damian at the time?

3 A. About three weeks to a month old.

4 Q. Okay. So are you at home sometime in the afternoon
5 around four o'clock with your three - is it three? I'm
6 sorry, you said three weeks? Three week old?

7 A. Yeah about three weeks to a month.

8 Q. Okay. Were you at home with your child sometime
9 during that day that afternoon?

10 A. Yes.

11 Q. All right. And where were you in the house?

12 A. Uh - In this room right here where the front porch is.

13 Q. And that's - Yeah, that's what I was gonna - That is
14 a- That's a front porch here and then there's a room behind
15 it?

16 A. Yeah. There's a room window right here to the
17 left when you enter the front porch.

18 Q. And that is in - I guess you got separated from the
19 front part of the house?

20 A. Uh-huh.

21 Q. Okay. Tell me what you hear?

22 A. Uh --

23 Q. What do you - Go ahead, I'm sorry.

24 A. From one - I mean from one minute went to another I
25 heard random machine gun fire riding sound like it's going

DOMINIQUE GRIFFIN: DIRECT BY SOLICITOR STONE

1 down towards - that's I think Indigo Plantation ---

2 Q. All right.

3 A. --- down there.

4 Q. All right.

5 A. I heard random gun shots and I dropped to the floor on
6 top of my son.

7 Q. Okay. All right, and at that - I think Indigo runs is
8 gonna be probably this direction, this goes all the way down
9 and going toward the Cross Island Expressway on this.

10 A. Yes.

11 Q. So Indigo is gonna be on that way. Right?

12 A. Yes.

13 Q. So you hear somewhat what sounds like machine gun
14 fire somewhere along here?

15 A. Yes.

16 Q. All right. And you are with your child at this time?

17 A. Yes. I was on top of him.

18 Q. Okay. What were you doing prior to hearing the gun
19 shots? Were you all asleep or awake?

20 A. Watching TV really.

21 Q. Watching TV?

22 A. Watching TV.

23 Q. All right. What do you do at that point? You roll
24 over on top of him. What do you do?

25 A. I waited until the gun shots stopped.

1 Q. Okay.

2 A. And then when they stopped I went to the back door
3 because my step son was outside playing and so I went
4 outside to check -

5 Q. Who is your step son?

6 A. Jontu Singleton, Junior.

7 Q. Okay. He was outside playing?

8 A. Yes.

9 Q. All right. So sometime after you hear the rapid fire
10 you go out the back. Why do you go out the back as opposed
11 to the front?

12 A. Because we never use the front door.

13 Q. When you go out of the back of the yard - Let me first
14 show you what's already been put into evidence as State's
15 Exhibit Seven. Can you identify that?

16 A. Yeah. That's the car that was parked outside the
17 house.

18 Q. All right. And this is a - it's a model of that car.
19 It was parked where in here?

20 A. Its between the den - this is the den area right here.

21 Q. Okay.

22 A. It was parked right here beside the house.

23 Q. As I'm putting it right here?

24 A. Yes.

25 Q. All right. And let me also show you what's been

1 marked as State's Exhibit Sixteen. Do you recognize that?

2 A. I recognize it.

3 Q. Okay.

4 A. Yeah, I recognize the car.

5 Q. All right. Now, State's Exhibit Sixteen - and we've
6 already shown this - has a window I guess broken out. Was it
7 like that when you originally saw it?

8 A. No.

9 Q. Okay. Tell me how - Tell me what happened.

10 A. There was a few bullet holes intact inside the back
11 window.

12 Q. You saw bullet holes in the window?

13 A. Yeah.

14 Q. Okay. What did you see as you're going out on the
15 back porch then?

16 A. Uh - My step son was actually run to me pointing to
17 the guy saying he shot Khalil, he shot Khalil.

18 Q. And your step son is Jontu Singleton?

19 A. Yes, sir.

20 Q. Okay. And you see the guy he's pointing to. Who is
21 the guy he's pointing to?

22 A. Mr. Robinson.

23 Q. Tyrone Robinson?

24 A. Yeah.

25 Q. What does Tyrone Robinson do?

1 A. He - I mean he actually practically just get in his
2 vehicle and backed up and left like he had to go somewhere,
3 you know what I'm saying.

4 Q. In a hurry?

5 A. Yeah, yeah. We had a four by four pole holding up
6 a fig tree in the back yard.

7 Q. Okay. So there is somewhere along this area there is
8 a post coming up; is that right?

9 A. Yes, sir, a post against the fig tree.

10 Q. All right. And when he hit the post is that when
11 the glass fell out of the car?

12 A. Yeah.

13 Q. And let me ask you, State's Exhibit Eight, is that a
14 fair and accurate depiction of the back yard?

15 A. Yeah.

16 Q. Okay.

17 SOLICITOR STONE: At this time, Your Honor, we move
18 State's Exhibit Eight into evidence.

19 MR. VAUX: No objection.

20 THE COURT: Thank you. Without objection State's
21 Eight.

22 (WHEREUPON, STATE'S EXHIBIT NUMBER EIGHT PREMARKED FOR
23 IDENTIFICATION, IDENTIFIED AND RECEIVED INTO EVIDENCE.)

24 Q. And I'll show that State's Exhibit Eight to the jury.

25 (STATE'S EXHIBIT NUMBER EIGHT PUBLISHED TO THE JURY AT

DOMINIQUE GRIFFIN: DIRECT BY SOLICITOR STONE

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1 12:01 P.M.)

2 Q. Tell me where that is in relation to this photograph
3 that's up on the monitor? Where is that in relation to this
4 model?

5 A. That's between the shed and the trees right here.
6 That's right here.

7 Q. All right. So the car is parked as it is in this
8 model when you originally see it?

9 A. Yes.

10 Q. Robinson gets in it and pulls out and that's when the
11 glass falls out. But it's already been shot at the time
12 when you see it?

13 A. It was still intact with bullet holes in it.

14 Q. Okay. All right.

15 SOLICITOR STONE: I don't have any further questions
16 for you. Go ahead and take the stand and answer any
17 questions --

18 MR. VAUX: Actually stay there for me --

19 SOLICITOR STONE: Okay.

20 MR. VAUX: -- if you will please.

21 If you will help me turn this thing around so that they
22 can see what we're talking about. I don't think they're
23 gonna be able to but, Your Honor, may the jury --

24 Here's my problem, Your Honor. If you can stand the
25 cars on the back side of the house and you can't as you're

1 face it from that way you can't see where the car is.

2 THE COURT: Right.

3 MR. VAUX: Unless they stand up and take a look at it
4 and I turn it around. Is it all right if they stand up?

5 THE COURT: Sure. The jury can stand up but I'm not
6 sure whether that -

7 SOLICITOR STONE: Your Honor, I have a better
8 suggestion. Phil, come here a minute. Take Mr. Vaux's
9 position. Shawn, just pull this out and put it flat and
10 maybe they will be able to see it that way. Okay. Take
11 this thing out.

12 (STATE'S EXHIBIT MODEL REARRANGED FOR BETTER VIEWING.)

13 SOLICITOR STONE: Thank you. And does that help?

14 MR. VAUX: Okay. Thank you.

15 CROSS-EXAMINATION

16 DOMINIQUE GRIFFIN BY MR. VAUX:

17 Q. Good morning.

18 A. Good morning.

19 Q. All right. So now I think your testimony is that you
20 live here?

21 A. Exactly.

22 Q. Okay.

23 A. But I have to come on the front porch in order to be
24 in the front of the window of the room.

25 Q. Okay. So you were somewhere's in this part here with

DOMINIQUE GRIFFIN: CROSS BY MR. VAUX.

1 your son?

2 A. Exactly.

3 Q. Okay.

4 THE COURT: Mr. Vaux, can I get you and Mr. Singleton
5 - Mr. Griffin to switch places. That way if you don't mind
6 so he would more or less facing the court reporter. Thank
7 you.

8 MR. VAUX: Yes, sir. I apologize.

9 THE COURT: That's okay.

10 BY MR. VAUX:

11 Q. All right. So you are here with your young son?

12 A. Yes, sir.

13 Q. Where is Jontu?

14 A. Out playing with the little boy Khalil.

15 Q. Now how long had you been home that day?

16 A. Maybe like - Since I probably got off the bus at 7:01
17 that morning.

18 Q. All right. But you had been home all day?

19 A. Uh-huh.

20 Q. Okay. So you're watching television with your young
21 son?

22 A. Uh-huh.

23 Q. And you hear rapid shots?

24 A. Yeah.

25 Q. Approximately how many shots did you hear?

1 A. Like a machine gun.

2 Q. Like with a machine gun. Just fast - -

3 A. Like a machine gun.

4 Q. A machine gun?

5 A. Yeah.

6 Q. Okay. Excuse me. Now at that time that you hear the
7 shots was Mr. Robinson's car parked here?

8 A. I don't know.

9 Q. All right. Did you ever hear Mr. Robinson or see Mr.
10 Robinson park his car there?

11 A. No.

12 Q. When did you first realize that the car was there?

13 A. After the gun shots stopped and I got up and ran to
14 the back door to check on my step son Jontu.

15 Q. Okay. So you hear the gun shots and you run to the
16 back door.

17 A. No. I hear the gun shots and run to the back door
18 after they stop.

19 Q. Okay. You hear the gun shots they stop you run to the
20 back door?

21 A. Yep.

22 Q. Okay. And you see the car?

23 A. Yep.

24 Q. Okay. Was the car shot up at that time?

25 A. Yep.

DOMINIQUE GRIFFIN: CROSS BY MR. VAUX

1 Q. Okay. And do you know if the car was shot up when it
2 got there?

3 A. Don't know.

4 Q. You don't know. So somebody drove that car in and
5 parked it there and you didn't know it?

6 A. Exactly.

7 Q. Okay.

8 A. No one never parks in the yard right there.

9 Q. Nobody does?

10 A. Never.

11 Q. Why?

12 A. It's actually not a parking space.

13 Q. Okay.

14 A. You got a separate tape right there.

15 Q. Oh, okay. Now, was the car headed in this direction
16 or in that direction?

17 A. I don't know the position it was in.

18 Q. Okay. So you come out the back door here and you see
19 Jontu Junior?

20 A. Yeah.

21 Q. Okay. And where approximately is Jontu here?

22 A. Exactly where your finger is with the marker.

23 Q. Right here?

24 A. In yellow.

25 Q. Okay. Do you see Khalil lying on the ground?

- 1 A. No, sir.
- 2 Q. Okay. What does Jontu say to you?
- 3 A. He was pointing to Mr. Robinson saying he shot Khalil.
- 4 Q. All right. Where is Mr. Robinson?
- 5 A. Actually in this shade right here coming.
- 6 Q. Coming this way towards his car?
- 7 A. Yes.
- 8 Q. Okay. Did you see a grey truck?
- 9 A. No.
- 10 Q. Okay. Have a seat for me.
- 11 (WITNESS RETURNS TO WITNESS STAND.)
- 12 Q. So you were home all day?
- 13 A. Ever since the - let's see, the LRT actually lets us
- 14 off exactly in front of Station One at 7:01 on the dot.
- 15 Q. Okay. So it took you what ever time to get home so -
- 16 A. Maybe five to forty minutes to walk there.
- 17 Q. So certainly by eight o'clock you're home?
- 18 A. Exactly.
- 19 Q. Okay. And you're home all day?
- 20 A. Yeah.
- 21 Q. And you heard one series of what you described as
- 22 machine gun fire?
- 23 A. Random.
- 24 Q. Random. Do you hear any other gun fire all day?
- 25 A. No.

1 Q. Okay. You didn't hear three shots?

2 A. No.

3 Q. Okay. Do you know Aaron Young, Junior?

4 A. No. Know of him.

5 Q. Okay. On September the 1st, 2012, did you see him
6 shoot a gun?

7 A. No.

8 Q. Did you see or hear him exhibit any behavior towards
9 killing Tyrone Robinson?

10 A. No.

11 Q. On September the 1st, 2012, did you see Tyrone
12 Robinson?

13 A. Yes.

14 Q. Did he have a gun on him?

15 A. I did not see.

16 Q. Did he have any beer in his hand?

17 A. I did not see none of that.

18 Q. Okay. And you saw no grey Ford?

19 A. No I didn't see a grey Ford.

20 Q. And you heard one set of gun fire?

21 A. Random gun fire.

22 Q. What do you mean by random?

23 A. Machine gun simultaneously.

24 Q. All of 'em - all of the sounds are the same?

25 A. No.

1 Q. The guns are -

2 A. It was all the same.

3 Q. All the same?

4 A. All the same.

5 MR. VAUX: I have nothing further.

6 THE COURT: Thank you. Redirect, Mr. Stone?

7 SOLICITOR STONE: Nothing else, Your Honor. Thank you.

8 THE COURT: Mr. Griffin, you can step down. Thank you.

9 (WITNESS LEAVING WITNESS STAND.)

10 MR. VAUX: Your Honor, I have no objection to any of
11 these witnesses being excused.

12 SOLICITOR STONE: That's fine. Thank you.

13 THE COURT: Thank you.

14 SOLICITOR THORNTON: Jontu Singleton.

15 MR. VAUX: Senior or Junior?

16 SOLICITOR THORNTON: Senior.

17 THE COURT: Come forward please, sir, and be sworn.

18 MADAM CLERK: Stand up please. Left hand on the

19 Bible, raise your right.

20 (WHEREUPON, JONTU SINGLETON,

21 SENIOR, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
22 FOLLOWS:)

23 MADAM CLERK: Thank you. You need to speak up and
24 please state your full name.

25 A. My full name is Jontu Burgeo Singleton, Senior.

JONTU SINGLETON: DIRECT BY SOLICITOR THORNTON

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DIRECT EXAMINATION

JONTU SINGLETON BY SOLICITOR THORNTON:

Q. Mr. Singleton, where do you live currently, sir?

A. I live at Number 8 Buerito Drive off of Gumtree Road, Hilton Head, South Carolina.

Q. All right. So you live in Hilton Head?

A. Yes, sir.

Q. All right. Did you live here in Beaufort County on or about September the 1st of 2012?

A. Did I live here at that time?

Q. Did you live in Beaufort County ---

A. Oh, yes, sir.

Q. --- in September of 2012?

A. Yes, sir.

Q. All right. And are you familiar with a man named Tyrone Robinson?

A. Yes, sir.

Q. And did you testify previously at a trial involving Tyrone Robinson right here in this very courthouse?

A. Yes, sir.

Q. Now that was about the murder of Khalil Singleton; is that correct?

A. Yes, sir.

Q. Let me ask you this. On September the 1st, 2012, and I realize, Mr. Singleton, you and I have talked and this is

1 gonna be a lot of the same thing, but this is what we need
2 to do today. On that day September the 1st, 2012, did you
3 see Tyrone Robinson?

4 A. Yes, sir.

5 Q. That morning?

6 A. No I seen him I believe it was that afternoon.

7 Q. Okay. So sometime in the afternoon of September the
8 1st, 2012, you saw Tyrone Robinson; is that right?

9 A. Yes, sir.

10 Q. And where did you see him at?

11 A. Off of Wild Horse Road at 215 Wild Horse Road.

12 Q. And whose house is that?

13 A. Darrell Ferguson.

14 Q. All right. So you went to Mr. Ferguson's house. Now
15 did you drive to Mr. Ferguson's or did you walk?

16 A. I walked, sir.

17 Q. I see. You walked over to 215 you said Wild Horse
18 Road and was Mr. Robinson, Tyrone Robinson was he already
19 there?

20 A. He was already there, sir, yes, sir.

21 Q. And did he have a vehicle? Was he in his car?

22 A. He was outside of his vehicle with the music playing
23 loud and his car was backed up and Mr. Ferguson knocked on
24 115 Wild Horse Road.

25 Q. All right. And without telling me specifically

JONTU SINGLETON: DIRECT BY SOLICITOR THORNTON

1 what you all talked about, did you at some point talk to
2 Tyrone Robinson?

3 A. I ask Mr. Ferguson is here to see me and he told me
4 no not really. And that's when Tyrone had talked to me.

5 Q. Okay. And were you all talking? At some point did
6 you have a conversation with Mr. Robinson?

7 A. He did ask me if I wanted a beer yes, sir.

8 Q. Okay. And did you have a beer?

9 A. I went to his vehicle and got a beer.

10 Q. And when you say you went to the vehicle, whose
11 vehicle did you go to?

12 A. Mr. Tyrone Robinson.

13 Q. And what happened after - By the way, had you known
14 Tyrone Robinson before then? Did you know who he was to see
15 him?

16 A. Yeah I seen him, you know, around a few times. I know
17 him.

18 Q. About how long?

19 A. How long did I know him?

20 Q. Yeah.

21 A. I know of him. I don't know him like that.

22 Q. That's what I mean. How long did you know of him, a
23 month, two months, six months, a year, two years?

24 A. A couple of years.

25 Q. A couple of years?

1 A. Like about fifteen years or so you know. I know of
2 him. I don't viewed him like that.

3 Q. I understand. But you knew who he was?

4 A. I knew who he exactly was.

5 Q. Have you caught rides with him before?

6 A. Yes, sir.

7 Q. Okay. And had you drank beer with him before?

8 A. Yes, sir.

9 Q. So this wasn't - This particular afternoon wasn't
10 anything unusual?

11 A. No, sir.

12 Q. Now did you leave at some point from Darrell
13 Ferguson's house with Tyrone Robinson?

14 A. Uh - After I had got to Darrell after Tyrone offered
15 me a beer I went to his car and got the beer. About a
16 couple of minutes later he ask if I wanted to ride with him.
17 I told him yeah I'd go to the store with you but I ask him
18 could we stop and I can get some change from Aaron Young,
19 Senior so I can buy some cigarettes.

20 Q. All right. You ask him at some point to stop on the
21 way to the store to get some money you were gonna get some
22 from Aaron Young, Senior, is that correct?

23 A. Yes, sir.

24 Q. And did you go to Aaron Young, Senior's house?

25 A. Yes, sir.

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1 Q. And what area is that in in Beaufort County?

2 A. It's off of Wild Horse Road. Wild Horse Road.

3 Q. Okay. And did you see Aaron Young, Senior there?

4 A. When I got out the vehicle they was - he was standing
5 outside, sir.

6 Q. All right. And by the way let me ask you a question.

7 Do you know the defendant in this case seated with
8 Mr. Vaux?

9 A. Oh, yes, sir.

10 Q. Okay. I'm sorry, if you need to stand up and look at
11 him you can. Do you know who that is?

12 A. Yes, sir.

13 Q. Who is it?

14 A. That's Aaron Young, Junior.

15 Q. All right. And so the person you were going to see
16 you mentioned earlier was Aaron Young, Senior. What
17 relation is he to Aaron Young, Junior? Is that his father?

18 A. That's his father, sir.

19 Q. So when you get there you said you saw Aaron Young,
20 Senior. Was Aaron Young, Junior, did you see him when you
21 all first got there?

22 A. When Mr. Robinson pulled to the under the road where
23 his yard is yes, sir, both of 'em was standing outside.

24 Q. All right. And when you say both of 'em, I know you've
25 already testified, both of who was standing outside?

1 A. Aaron Young, Senior and Aaron Young, Junior.

2 MR. VAUX: Excuse me, Your Honor.

3 THE COURT: Yes. I'm sorry.

4 MR. VAUX: Could you ask the witness that he speak
5 up. Maybe it's been my age but I can't hear him.

6 THE COURT: All right. Excuse me, Mr. Singleton, if
7 you could kind of get a little closer to that microphone it
8 might help a little bit. Thank you. And if you'd speak up
9 as well. Thank you.

10 SOLICITOR THORNTON: Did you get it pulled down a
11 little bit? All right.

12 Q. Mr. Singleton, let me ask you this. Just so we can
13 go back over it, you said you went to Aaron Young, Senior's
14 house to get some change to go to the store. You basically
15 ask for money; is that correct?

16 A. Yes, sir.

17 Q. All right. Now who was there when you got there with
18 - And you were riding with who now?

19 A. Mr. Tyrone Robinson.

20 Q. All right. And who was there at Aaron Young, Senior's
21 house? Who was there when you got there?

22 A. Aaron Young, Senior and Aaron Young, Junior was
23 standing outside when Mr. Robinson pulled up to the front of
24 the driveway in Aaron Young, Senior's yard.

25 Q. All right. And what happened after you all pulled

JONTU SINGLETON: DIRECT BY SOLICITOR THORNTON

1 up?

2 A. I got out the vehicle to go walk to Aaron Young,
3 Senior to ask him for the change and he told me no because
4 of Tyrone. Tyrone got out the car and was approaching his
5 son with a gun.

6 Q. All right. So Tyrone to be Tyrone Robinson, you said
7 he had a gun?

8 A. Yes, sir.

9 Q. And he approached who?

10 A. Aaron Young, Senior, sir. I mean Junior.

11 Q. All right. Now that's what I want to get straight
12 because you said he approached his son. So do you mean the
13 defendant in this case Aaron Young, Junior?

14 A. Yes, sir.

15 Q. And is that who Tyrone Robinson approached with a gun?

16 A. Yes, sir.

17 Q. All right. What happened next?

18 A. Mr. Aaron Young, Senior walked off from me and tried
19 to help his son at the moment they was wrestling with the
20 gun Mr. Robinson and Mr. Senior. The gun went off Mr.
21 Senior Young backed up and he shot at him, you know, like
22 the ground wise.

23 Q. All right. Hang on just a second and slow down for
24 a second. So you see Aaron Young, Senior, the father of the
25 defendant in this case Aaron Young, Junior, you see him and

1 Tyrone Robinson tussling over a gun and the gun goes off; is
2 that correct?

3 A. Yes, sir.

4 Q. And don't let me put words in your mouth, I'm just
5 trying to recap what you just testified to. And then you
6 see - You said he shoots. Who is he when you say you saw
7 him shoot - I think you said at the ground - who is he?

8 A. Tyrone Robinson.

9 Q. All right. So he fires another round?

10 A. Yes, sir.

11 Q. And he fires it where, where does it shoot it?

12 A. Towards down towards Mr. Aaron Senior's feet.

13 Q. All right. And what happens after that?

14 A. After that I like duck for cover and after that Mr.
15 Robinson told me to come on he was leaving. I told him no
16 cause I didn't bring you here for that.

17 Q. Okay. So at the time this next shot was fired at
18 Aaron Young, Senior's feet you said Tyrone Robinson ask you
19 what, or told you what?

20 A. To come on let's go, go get in the car let's go. I
21 told him I didn't bring - came down here because I didn't
22 bring you here for that. I didn't came here for that.

23 Q. So did you go with Tyrone Robinson or did you stay
24 there at Aaron Young, Senior's?

25 A. I stayed there at Aaron Young, Senior's house at the

1 time.

2 Q. Then does Tyrone Robinson does he stay or does he get
3 in his vehicle and leave?

4 A. He got in his vehicle and left.

5 Q. And what did you do if anything, what did you do after
6 that, what happened after that?

7 A. After that Mr. Aaron Young, Senior walked off and went
8 and, you know, to the house. He went to his house and Mr.
9 Aaron Young, Junior was behind him as well. I stood outside
10 and they came back from out of the house with a bag.

11 Q. All right, let me stop you there real quick.

12 I'm gonna hand you what's been marked as State's
13 Exhibit Twenty-seven, and ask you if you can identify if
14 that's the bag that you were talking about?

15 A. Yes, sir.

16 SOLICITOR THORNTON: Your Honor, has it been --

17 q. I know you've seen it before but has this been changed
18 or altered in any way? Or does it appear the same as it did
19 on that day?

20 A. It appears the same that it was on that day, sir.

21 SOLICITOR THORNTON: I ask that State's Exhibit Twenty-
22 Seven be put into evidence, Your Honor.

23 MR. VAUX: Did I understand State's Exhibit Twenty-
24 seven is a black bag?

25 SOLICITOR THORNTON: It is.

1 MR. VAUX: No objection.

2 THE COURT: Thank you. Without objection.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-SEVEN,
4 PREMARKED FOR IDENTIFICATION, IDENTIFIED AND RECEIVED INTO
5 EVIDENCE.)

6 BY SOLICITOR THORNTON:

7 Q. Mr. Singleton, what if anything did you see pulled
8 out of that black bag?

9 A. At the time - At the time he walked out the door I
10 didn't know what was in the bag, sir.

11 Q. Understood. Did you at some point find out what was
12 in the bag?

13 A. Yes, sir.

14 Q. And what was in the bag?

15 A. It was a gun.

16 Q. I'm gonna show you what's been marked as State's
17 Exhibit Twenty - It's actually three exhibits. Twenty-eight
18 - twenty-eight, twenty-nine, - twenty-six, twenty-eight,
19 twenty-nine. Now I ask you if you can identify these items?
20 Is that the gun you saw Aaron Young, Senior and Junior with?

21 A. Yes, sir.

22 Q. Has it been changed or altered in any way?

23 A. I don't - It don't - It doesn't look changed to me,
24 sir.

25 Q. All right. Does it appear the same as it did

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1 assembled in this manner?

2 A. Yes, sir.

3 SOLICITOR THORNTON: Your Honor, at this time I'd ask
4 that State's Exhibit Twenty-six, --

5 THE COURT: Twenty-eight and Twenty-nine.

6 SOLICITOR THORNTON: Yes, sir, twenty-eight and twenty-
7 nine be moved into evidence.

8 THE COURT: Any objection?

9 MR. VAUX: No objection.

10 THE COURT: Thank you. Without objection.

11 SOLICITOR THORNTON: Your Honor, for the court's
12 information it has been pursuant to a Supreme Court rules
13 made safe.

14 THE COURT: All right.

15 (WHEREUPON, STATE'S EXHIBITS TWENTY-SIX, TWENTY-EIGHT,
16 TWENTY-NINE PREMARKED FOR IDENTIFICATION, IDENTIFIED AND
17 RECEIVED INTO EVIDENCE.)

18 Q. So this is the gun that Aaron Young, Junior and Aaron
19 Young, Senior had on that day; is that correct?

20 A. Yes, sir.

21 Q. What happened when they came out with the gun in the
22 bag? What happened next? And when is say they, you said it
23 was Aaron Young, Senior and Aaron Young, Junior. Did you go
24 anywhere with them or did they leave or did they stay right
25 there at their house?

1 A. No. We was - Once they came off their porch we went
2 to - I was already standing outside when they went inside
3 the house.

4 Q. Yes, sir.

5 A. And Mr. Aaron Young, Senior came back with the bag and
6 that's when we got in his truck and left.

7 Q. All right. When you say we got in his truck, who all
8 got in the truck?

9 A. It was me, Mr. Jontu Singleton, Mr. Aaron Young,
10 Senior and Mr. Aaron Young, Junior.

11 Q. All right. Did you all three get in the pickup truck?

12 A. Yes, sir.

13 Q. I'm gonna show you what's been marked as State's
14 Exhibit Number Four. And this is already in evidence.

15 Is that Aaron Young's truck?

16 A. Yes, sir.

17 Q. And that's Aaron Young, Senior; is that correct?

18 A. Yes, sir.

19 Q. What happened once you all got in the truck with the
20 gun that came out of that black bag?

21 A. We went down Spanish Wells Road towards - We went
22 down Spanish Wells Road like towards Marshland and Allen
23 Road - down Allen Road but toward Oak View, towards Oak
24 View.

25 Q. All right, let me stop you for a second. Who was

1 driving?

2 A. Mr. Aaron Young, Senior.

3 Q. So who had the gun?

4 A. Mr. Aaron Young, Junior.

5 Q. All right. Go ahead. What happened next?

6 A. We went off of Wild Horse Road down Spanish Wells
7 Road going towards Oak View and Mr. Aaron Young, Senior
8 thought he seen Tyrone car. But when we went down Oak View.

9 --
10 Q. All right. Now let me ask you a question. When Aaron
11 Young, Senior thought he saw Tyrone's car, what if anything
12 did he do?

13 A. At the time he was heading down Spanish Wells Road
14 Mr. Aaron Young, Junior and Senior was talking about getting
15 the gun out the bag and I didn't know what was in the bag so
16 I really didn't care at that moment. I said I
17 didn't --

18 Q. I understand. But did the gun come out of the bag?

19 A. The gun did come out the bag.

20 Q. Was it already assembled or were they loaded or
21 was somebody loading it?

22 A. Aaron Young, Junior was trying to put the gun
23 together, sir.

24 Q. Was he being very successful at it?

25 A. No, sir.

1 Q. All right. And who was helping him get it together?

2 A. No one helped him get it together cause Aaron Young,
3 Senior was driving, sir.

4 Q. Was Aaron Young, Senior giving him any instructions?

5 A. No, sir.

6 Q. Okay. So he was trying to put the - he being Aaron
7 Young, Junior, was trying to put the gun together. Did he
8 get it together at some point?

9 A. No, sir, not while I was in that vehicle.

10 Q. All right. What happened when they saw - thought they
11 saw Tyrone Robinson?

12 A. Went down Oak View but never seen the vehicle thought
13 Mr. Robinson.

14 Q. All right. So did they change direction is what
15 I'm asking?

16 A. Went all the way down Oak View and the way you can
17 go down Oak View you can come back out on Spanish Wells
18 Road off of Oak View on Spanish Wells Road towards like
19 where Muddy Creek is at. That's the end that we came out
20 on.

21 Q. All right. And what happened then? Did you go any
22 where else?

23 A. We took a left on Spanish Wells Road and they went
24 down - we went down Marshland where Tyrone always lived at
25 or, you know, he's down there. But when we got down on

JONTU SINGLETON: DIRECT BY SOLICITOR THORNTON

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1 Allen Road we never seen him.

2 Q. Now did you at some point get out of the truck on

3 Allen Road?

4 A. I don't definitely recall because my son do stay down
5 there. They got out on the porch where my son was on the
6 porch.

7 Q. Okay. You think you got out on - at your son's
8 mother's house?

9 A. Yeah.

10 Q. All right. And what is your son's name?

11 A. My son's name is Jontu Singleton, Junior.

12 Q. All right. And where - Who was is he living with if
13 it's his mother?

14 A. His mother.

15 Q. And what is her name?

16 A. Savoria Simmons.

17 Q. All right. And does she have a boyfriend or fiancé
18 that she at that time was staying with?

19 A. Yes.

20 Q. And who was that?

21 A. Uh - I think his - They call him Diamond.

22 Q. Okay.

23 A. I don't know his full name.

24 Q. All right. Is that Dominique - Dominique Griffin?

25 A. Yes, sir.

1 Q. All right. Now, Mr. Singleton, what happened after
2 that? Did you go - Did you go anywhere else before - I
3 mean obviously - I'm sorry, let me rephrase that. That's a
4 horribly phrased question. At some point did you leave the
5 Allen Road area?

6 A. When I got back in the truck from my son's porch,
7 mother's porch -

8 Q. Would you if I showed you on this model, if I showed
9 you the model would be able to recognize your son's house
10 where he lived do you think?

11 A. Yes. Yes, sir.

12 Q. All right. I'm gonna ask you, you don't have to come
13 down, just stand up if you would and identify which house is
14 it, if you can?

15 THE COURT: If he isn't over there to see that before
16 you might want to identify the streets or the roads.

17 Q. Yeah, you've got Marshland Road right here and you've
18 got Allen Road right here. And if you can't that's fine.

19 A. I believe it's this house right here.

20 Q. This one?

21 A. Yes, sir.

22 Q. All right. So that would be the house where Dominique
23 Griffin and Savoria Simmons and your son Jontu, Junior would
24 have been living at the time; is that correct?

25 A. You're correct about that, sir.

1 Q. All right. Now so after you leave the front porch of
2 where your son stays at, did you by the way did you get
3 anybody to come to the door at that time?

4 A. I don't recall anybody coming to the door. I'm not
5 sure.

6 Q. Okay. After you left there, where if anywhere did
7 you all go?

8 A. Back to Wild Horse, Old Wild Horse Road at Aaron,
9 Senior's house.

10 Q. All right. Now, did they drop or did you get out of
11 the truck at that point?

12 A. Yes, sir.

13 Q. And did you get dropped off right at the house or did
14 you have to walk there part of the way?

15 A. I had -- It was down the road like where his father's
16 club is.

17 Q. All right.

18 A. It's on Old Wild Horse Road as well.

19 Q. Is that pretty close to Aaron Young, Senior's house on
20 Wild Horse?

21 A. It's right -- It's real close to Aaron Young Senior's
22 house.

23 Q. Once you were let out, what did you do?

24 A. I walked up to Aaron Young Senior's house after I got
25 out the vehicle Aaron Young, Senior and Junior I was talking

1 to Ebony -

2 Q. All right. Now, let me stop you for a second. Who
3 is Ebony?

4 A. Ebony is Aaron Young, Senior's girlfriend at that
5 time.

6 Q. Now, excuse me, was Aaron Young, Junior and Senior
7 there at that time? Did you see them or were they not there
8 when you were talking to Ebony after they dropped you off?

9 A. At that moment they was leaving.

10 Q. They were leaving their house?

11 A. Yes, sir.

12 Q. All right.. And was anyone in the vehicle with him or
13 was it just them?

14 A. Uh - At that moment at that time I think - No, Ebony
15 wasn't in that vehicle at the time after I walked up there.

16 Q. Did you speak with Ebony?

17 A. Yes, sir, I did.

18 Q. Now after you walked up to Mr. Aaron Young, Senior's
19 house, and they are leaving, did you have any other contact
20 with them that day?

21 A. No, sir.

22 SOLICITOR THORNTON: Your Honor, the court's indulgence
23 please.

24 THE COURT: Okay.

25 (PAUSE.)

JONTU SINGLETON: DIRECT BY SOLICITOR THORNTON

1 Q. All right. When you - Just a couple of more things,
2 Mr. Singleton. When you - You testified that you got out
3 and went to where your son was staying. Did they - Did they
4 being Aaron Young, Junior and Senior, did they stay in the
5 vehicle or did they go up with you?

6 A. They stayed in the vehicle, sir.

7 Q. All right. And you were just talking about Ebony
8 Campbell. Now when you were talking with her was she inside
9 the truck with them or outside?

10 A. She was outside the truck, sir.

11 Q. All right. And did she stay there or did she - Are
12 you saying that you saw her get in the vehicle and drive
13 away with them or do you remember?

14 A. I did see her get in the vehicle with them and they
15 drove away to Aaron Young, Senior's dad's road which is I
16 believe Mustang Lane ---

17 Q. Okay. Is that --

18 A. --- which is like to go to Aaron Young, Senior's
19 house.

20 Q. All right. Thank you very much.

21 SOLICITOR STONE: I have nothing further.

22 THE COURT: Cross examine, Mr. Vaux?

23 MR. VAUX: Just a minute please, Your Honor.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 JONTU SINGLETON BY MR. VAUX:

2 Q. Mr. Singleton, how are you doing today?

3 A. I'm doing fine. How you doing?

4 Q. I'm fine thank you. It's nice to see you again.

5 A. Nice to see you again as well.

6 Q. On September the 1st of 2012, do you remember walking
7 up to Darrell Ferguson's house on Wild Horse Road?

8 A. Yes, sir.

9 Q. Okay. And is his house next door to Jake Washington's
10 house?

11 A. Yes, sir, it is.

12 Q. Okay. Was that shortly before four o'clock in the
13 afternoon?

14 A. If I'm correct I'm not -- I'd say around that time, sir.

15 Q. Okay. Between three thirty and four or so?

16 A. Yes, sir.

17 Q. Okay. Now, did you see Tyrone Robinson at that time?

18 A. Yes, sir, I did.

19 Q. I'm sorry?

20 A. Yes, sir, I have.

21 Q. Okay. Now, how was Mr. Robinson behaving?

22 A. He was very loud and rude at the time.

23 Q. And arguing? Was he arguing?

24 A. Well he was arguing with Jake at the time and Darrell
25 Ferguson.

JONTU SINGLETON: CROSS BY MR. VAUX

1 Q. Okay. Now, did you see a .38 revolver at that time?

2 A. I don't recall, sir.

3 Q. Okay.

4 A. No, sir. No, sir, not at that time at Darrell
5 Ferguson's house no, sir.

6 Q. Okay. Do you recall saying that Tyrone Robinson was
7 drunk up as a bitch?

8 A. Yes, sir.

9 Q. And was that true?

10 A. Yes, sir.

11 Q. Now you said you only had five dollars and you were
12 gonna try and borrow or get Mr. Young to loan you a couple
13 of dollars?

14 A. I didn't have no money on me, sir. I never said that.

15 Q. You never said you had five?

16 A. No, sir.

17 Q. You didn't have any money?

18 A. No, sir.

19 Q. Now how much beer did Mr. Robinson have in his car
20 with him?

21 A. At the time when I went to Mr. Robinson's vehicle to
22 get the beer that he offered to me he only had two quarts of
23 beer.

24 Q. Two quarts of beer?

25 A. Yes, sir.

1 Q. Okay. Now, when you got to - You and Mr. Robinson
2 go down to Mr. Young's house and you get out of the car;
3 is that correct?

4 A. Yes, sir.

5 Q. Okay. And at that time is it true that Aaron Young,
6 Senior was standing out on the porch of the steps of his
7 house?

8 A. He was outside in the yard, sir.

9 Q. Okay. Where was Aaron Young, Junior?

10 A. Standing outside in the yard by the road.

11 Q. By the road?

12 A. Yes, sir.

13 Q. Okay. Now, at - Did at some point Tyrone Robinson get
14 out of his car?

15 A. Yes, sir, he did.

16 Q. Okay. And what frame of mind or - Strike that.
17 What was - What behavior did he exhibit at that point?

18 A. He had the same behavior that he had when he left out
19 214 - No, 215 Wild Horse Road at Darrell Ferguson's house.

20 Q. Was he argumentative?

21 A. Yes, sir.

22 Q. Was he loud and cussing?

23 A. Yes, sir.

24 Q. Okay. And who was he loud and cussing at? Was it
25 Aaron Young, Junior and Senior?

JONTU SINGLETON: CROSS BY MR. VAUX

1 A. Aaron Young, Junior at that time.

2 Q. At that time?

3 A. Yes, sir.

4 Q. All right. And how many shots did you say he fired in
5 Mr. Young's yard?

6 A. I believe it was two shots and maybe three.

7 Q. Okay. Now, and you say you and Aaron Young, Senior
8 and Aaron Young, Junior get in the truck and go to - down
9 to Spanish Wells?

10 A. Yes, sir.

11 Q. Okay. Now on September the 1st, 2012, how long would
12 you say that you were in the company of Aaron Young, Junior?
13 How long were you all together?

14 A. Probably no longer than ten minutes, sir.

15 Q. All right. So he comes up in the yard, you and
16 Robinson, the gun is fired and Robinson leaves; is that
17 correct?

18 A. Yes, sir.

19 Q. Okay. And then you get in the grey truck with Aaron
20 Junior and Aaron Senior?

21 A. Yes, sir.

22 Q. Okay. And so how long does it take the two - the
23 three of you to drive down to Spanish Wells?

24 A. About ten minutes, sir, I said.

25 Q. Okay. Excuse me. And then from - As I understand it.

JONTU SINGLETON: CROSS BY MR. VAUX

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1 you all - Is Spanish Wells this way or this way? It doesn't
2 really matter. Did you all come in - -

3 A. I believe towards you, sir.

4 Q. Towards me? Okay. So you all come down Marshland
5 Road from Spanish Wells; is that correct?

6 A. Yes, sir.

7 Q. Okay. And you stop somewhere's around this house?

8 A. We at that time stopped where like it's a driveway
9 that goes right beside that little shed right there and
10 we -

11 Q. You talking about this shed?

12 A. Yes, sir.

13 Q. Okay. So it was at this driveway you're talking about?

14 A. Yes, sir.

15 Q. Okay.

16 A. Again it's something like that, yeah.

17 Q. Okay. So you all come in here and you park and you
18 stop?

19 A. Yes, sir.

20 Q. And you get out?

21 A. Yes, sir.

22 Q. Okay. Do you knock on the door?

23 A. Yes, sir.

24 Q. Okay. Does anybody answer the door?

25 A. I don't recall.

JONTU SINGLETON: CROSS BY MR. VAUX

1 Q: Okay: And then you leave here?

2 A: Yes, sir.

3 Q: And do you come around this way and come back out
4 this way?

5 A: Can I see you do that again, sir?

6 Q: Yes, sir. So you come in here you pull up you knock
7 on the door, you come around and come down Allen Road to
8 turn back onto Marshland.

9 A: Yes, sir. It looks right to me.

10 Q: Okay.

11 A: Yes.

12 Q: All right. Now, did at any time did - Well, did at
13 any time did you see Aaron Young, Junior get out of this
14 truck?

15 A: No, sir.

16 Q: Okay. At the time that you - At the time that you
17 came through here and got out and knocked on the door was
18 this little blue car parked there or green car?

19 A: I don't recall.

20 Q: You don't recall seeing it?

21 A: No, sir.

22 Q: Okay. All right. Have a seat.

23 (WITNESS RETURNS TO WITNESS STAND.)

24 Q: So you and the two Young's drive around to the back of
25 the house, you get out you knock on the door, no answer you

1 get back in the truck and you get back out on Marshland
2 Road?

3 A. Yes, sir.

4 Q. And then you drive back to Wild Horse Road?

5 A. Old Wild Horse Road, sir, yes.

6 Q. Old Wild Horse Road. Okay.

7 A. Yes.

8 Q. Now, and then I think you said the Young's left and
9 went to Mustang Lane; is that correct?

10 A. Yes, sir.

11 Q. Okay. And Mustang Lane is where Benny Young, the
12 father of Aaron, Senior and the grandfather or Aaron Junior
13 live?

14 A. Yes, sir.

15 Q. Okay. Now, on that day in question, September the 1st,
16 2012, during the period of time that you were with Aaron
17 Young, Junior other than the time that you saw him take this
18 out of the bag did you see him with any other gun?

19 A. No, sir.

20 Q. Okay. Now, at any time on that day did you see him
21 fire that gun?

22 A. No, sir.

23 Q. Okay. At any time that day did you see him pull the
24 trigger on that gun and aim it at Tyrone Robinson?

25 A. No, sir.

JONTU SINGLETON: CROSS BY MR. VAUX

1 Q. Okay. At any --

2 A. I was not with them, sir, at that time.

3 Q. Just while you were with him, while you were with
4 Junior did you see him take that gun, or any other gun, and
5 point it at Tyrone Robinson?

6 A. When I was with Aaron Young, Senior --

7 Q. Just answer the question yes or no.

8 A. No, sir.

9 Q. Okay.

10 A. No, sir.

11 Q. Now if you want to explain go ahead and explain.

12 A. That's all right, sir.

13 Q. Okay. Now, so you didn't see him shoot the gun, you
14 didn't see him aim and point the gun?

15 A. No, sir.

16 Q. Okay. Did you ever see him - Did you ever see him
17 try and kill Mr. Robinson in any fashion that day?

18 A. No, sir.

19 Q. Was Ebony in the yard that day when you and Robinson
20 drove up to the house and Robinson started shooting his gun?

21 A. Yes, sir.

22 Q. Did Robinson have any reason or provocation, any
23 justification, for coming up in somebody's yard and start
24 shooten a gun?

25 A. No, sir.

JONTU SINGLETON: REDIRECT BY SOLICITOR THORNTON.

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1 MR. VAUX: Nothing further.

2 THE COURT: Thank you. Redirect, Mr. Thornton?

3 SOLICITOR THORNTON: Just briefly.

4 REDIRECT EXAMINATION

5 JONTU SINGLETON, SENIOR, BY SOLICITOR THORNTON:

6 Q. Mr. Singleton, when you and the Young's went out
7 looking for Tyrone after he left, was it just y'all in the
8 truck?

9 A. Yes, sir.

10 Q. All right. And when they went out again were you in
11 the truck with 'em? You said that you saw them drive away
12 again. You were not in the truck at that time; is that
13 right?

14 A. No, sir.

15 SOLICITOR THORNTON: I don't have anything further.

16 Thank you, Your Honor.

17 THE COURT: Thank you. You can step down, Mr.
18 Singleton, thank you.

19 MR. SINGLETON: Thank you, sir.

20 THE COURT: How long will your next witness take?

21 SOLICITOR STONE: Its fairly short, Your Honor, but we
22 have a series of them that go together so we can do it
23 either way. It's gonna be smooth one way or the other.

24 THE COURT: Okay. Why don't we stop now and take the
25 lunch break rather than get into that next series -

1 SOLICITOR STONE: Yes, sir.

2 THE COURT: --- and have to interrupt half way through.

3 Thank you. Folks, we'll stop now and take the midday
4 lunch break, an hour and twenty minutes, it's a little bit
5 longer. Most of the time we try to get about an hour and a
6 quarter but that extra five minutes is not gonna hurt a
7 thing. Please be back in the jury room at two o'clock we'll
8 resume the trial then. And I remind you as always not to
9 talk about the case among yourselves or with anybody else.
10 I'll see you back at two o'clock. Thank you.

11 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:42 P.M..)

12 THE COURT: All right, folks, anything further before
13 we break, Mr. Stone?

14 SOLICITOR STONE: No, sir.

15 THE COURT: Thank you. Mr. Vaux?

16 MR. VAUX: No, sir, thank you.

17 THE COURT: Two o'clock then, folks.

18 (COURT IN LUNCH RECESS AT 12:43 P.M..)

19 (COURT BACK IN SESSION AT 02:11 P.M..)

20 THE COURT: Thank you, folks, you all can be seated.
21 Gentlemen, before we bring the jury out, it's been
22 brought to my attention that there is one of our juror's,
23 Ms. Williams, Juror Number 437, she's the lady who sits in
24 the middle and ask to sit on the back, that was an issue
25 that occurred during the day, this morning. She sent word

1 to me during the break that, was it okay for her to sit on
2 the back because she would prefer not to sit in the midst of
3 folks, you know, felt perhaps being crowded in because of
4 that.

5 During the lunch break before she left she talked to
6 Ms. Jessica and said that she knows Mr. Griffin and she did
7 not know name but after he testified she recognized him and
8 she knew him. That's all the information that I have about
9 that, of course, I intend to inquire of her in what capacity
10 she knows him, how well she's known him and all that sort of
11 stuff and whether it would make - have any impact on her
12 decision, but I wanted you all to know about that before I
13 brought her out. And I'll be glad to make further inquiry
14 in that regard if you all have any suggestions that you
15 would like for me to inquire further about that.

16 Mr. Stone, what's the State --

17 SOLICITOR STONE: No, sir, I think your normal
18 questioning that you did individually up here at side bar is
19 the appropriate questions ask.

20 THE COURT: All right, Mr. Vaux.

21 MR. VAUX: Your Honor, I would agree. Is she the lady
22 that got up this morning and moved into the back row?

23 THE COURT: That's right. Would you - Would you ask
24 Ms. Williams I believe, she didn't sign this, but I think
25 it's Ms. Williams - Jessica knows which one she is.

(JUROR NUMBER 437 ENTERS COURTROOM.)

THE BAILIFF: Come stand right here, please, and face the judge.

THE COURT: Hey, Ms. Williams. If you could come up - You can have her come up and have a seat if you'd like to and sit down.

MS. WILLIAMS: Thank you.

THE COURT: Good. Ms. Williams, we got the note that you know MR. Dominique Griffin, or you found out you knew him when he took the stand; that you did not recognize his name but you recognized his face. That's not unusual in a case with as many witnesses as we have. How long have you known Mr. Griffin?

MS. WILLIAMS: I don't know him like very well but I seen him like over the last maybe couple of years a couple of times.

THE COURT: And in what capacity or how have you known him?

A. MS. WILLIAMS: I've talked to him like maybe once or twice but he sometimes he was at my neighbor's house.

THE COURT: At your neighbor's house? And it's your next door neighbor or close neighbor?

MS. WILLIAMS: Yeah. They're right next door to me.

THE COURT: I see. And have you known him in any other capacity other than the fact that he visits your next door

1 neighbor from time to time?

2 MS. WILLIAMS: I've seen him like maybe talk to my
3 husband but that was about it.

4 THE COURT: Right. Do you know what he does for a
5 living?

6 MS. WILLIAMS: No.

7 THE COURT: Okay.

8 MS. WILLIAMS: I don't know him very well at all.

9 THE COURT: And does your husband know him or do you
10 know?

11 MS. WILLIAMS: I think my husband knows him but I'm not
12 really sure.

13 THE COURT: Okay. And has your conversation with him
14 or your connection with him in any of the - other than the
15 casual relationship that you just told me a minute ago?

16 MS. WILLIAMS: No, that's it.

17 THE COURT: That's it? Now that you of course know
18 him now by name as well as by face -

19 MS. WILLIAMS: Uh-huh.

20 THE COURT: --- would the fact that he has testified
21 in this case and that you have some passing acquaintance
22 with him, would that have any bearing on your ability to be
23 fair and impartial as a juror on this case?

24 MS. WILLIAMS: No, sir.

25 THE COURT: Could you continue to set that relationship

1 aside and decide this case based on the evidence that would
2 be presented without regard to the fact that you have this
3 passing acquaintance with Mr. Griffin?

4 MS. WILLIAMS: Yes, sir.

5 THE COURT: You'll do that?

6 MS. WILLIAMS: Yes, sir.

7 THE COURT: Thank you, ma'am, you can go back in.
8 Thank you.

9 (JUROR NUMBER FOUR THIRTY-SEVEN EXITS COURTROOM.)

10 THE BAILIFF: The juror is clear and the door's closed,
11 Your Honor.

12 THE COURT: Thank you. Mr. Stone.

13 SOLICITOR STONE: Nothing from the State, Your Honor.

14 I think - I don't think there's any issue here.

15 THE COURT: All right. Mr. Vaux.

16 MR. VAUX: No issue on behalf of the defense, Your
17 Honor.

18 THE COURT: Very good. Thank you.

19 All right, are both sides now ready for the jury?

20 SOLICITOR STONE: Yes, sir, the State's ready.

21 MR. VAUX: Yes, sir.

22 THE COURT: Bring us the jury please.

23 (JURY REENTERS COURTROOM AT 02:18 P.M.)

24 THE COURT: Ms. Wanda.

25 MADAM COURT REPORTER: Yes, sir.

1 THE COURT: If you'll mark that as a Court's Exhibit.
2 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND
3 MARKED, RECEIVED INTO EVIDENCE.)

4 (JURY REENTERS COURTROOM AT 02:18 P.M..)

5 THE COURT: Good afternoon, folks. I apologize - I
6 can't apologize for the weather cause I'm not in charge of
7 that but I am in charge of getting you here and sending you
8 back out into it in the day so I'm hopeful that this winter
9 storm will pass. I would imagine with a peaceful and Boston
10 thought that we were describing this as a winter storm
11 warning they would laugh at us but - and with good reason
12 but it's still bad to be out in it and I appreciate your
13 good humor in doing what you're doing.

14 We continue now as the state continues to offer
15 evidence and testimony in this case.

16 Mr. Stone.

17 SOLICITOR THORNTON: Investigator Doug Seifert.

18 THE COURT: Mr Seifert, come forward please and be
19 sworn.

20 (WHEREUPON, DOUG SEIFERT,
21 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 MADAM CLERK: Please be seated. State your full name.

23 A. Investigator Doug Seifert.

24 DIRECT EXAMINATION

25 DOUG SEIFERT BY SOLICITOR THORNTON:

1 Q. Investigator Seifert, what is your current rank?

2 A. I'm a Sergeant for - in investigation South.

3 Q. All right. Investigation south, who do you work
4 for, what agency?

5 A. Beaufort County Sheriff's Office.

6 Q. And you said investigation south, what is it that you
7 do for the sheriff's office?

8 A. Mostly what I usually do is I do all different kinds of
9 crime, things like that. But my expertise that we usually
10 do is violent crimes, things like that.

11 Q. All right. Well let me ask you maybe a better
12 question. Are you a road officer, are you a detective,
13 what is it that best describes your position?

14 A. Detective. A detective.

15 Q. Okay. And did you work as a detective with the
16 Beaufort County Sheriff's Office on or about September the
17 1st of 2012?

18 A. Yes, sir.

19 Q. And did you have an occasion on 2012 to go out to the
20 scene where there was a Ford F150 stopped?

21 A. Yes, sir.

22 Q. I'm gonna show you what's already been entered into
23 evidence as State's Exhibit Twelve and ask you if you can
24 identify that truck?

25 A. Yes, sir.

1 Q. All right. And is that the truck that you went out to
2 that day?

3 A. That is correct, sir.

4 Q. Who was in this Ford F150 when you arrived?

5 A. There was - It was just like what it appears to be
6 when I pulled up just like that.

7 Q. And who were the people that were pulled out of it
8 that were waiting on you when you got there?

9 A. It was Aaron Young, Junior, Aaron Young, Senior, and
10 Ebony Campbell.

11 Q. And - I'm turning this around so it's probably a
12 little bit easier to see. So go back over those three
13 people again.

14 A. Aaron Young, Senior, Aaron Young, Junior and Ebony
15 Campbell.

16 Q. And is that Aaron Young, Junior you described do you
17 see him in the courtroom?

18 A. Yes, sir.

19 Q. And where is he?

20 A. Sitting there with the white shirt on.

21 (WITNESS INDICATED TO DEFENDANT AT DEFENSE TABLE.)

22 Q. Now what did you do when you got to - And where is
23 this scene by the way? Where is the truck stopped at?

24 A. The truck stopped on US 278 which is facing east bound
25 which is at the Guntree Road light.

INVESTIGATOR DOUG SEIFERT: DIRECT BY SOLICITOR THORNTON

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1 Q. And what did you do if anything when you got there?

2 A. Once I got there I talked to the road officer which is
3 Corporal Evans and talked to him about what was - what was
4 going on at the time.

5 Q. All right. Let me ask you a question. I'm gonna ask
6 you if you can identify what's been marked for
7 identification as State's Exhibit Number Thirty-one. Can
8 you identify State's Thirty-one for identification?

9 A. Yes, sir.

10 Q. And what are those?

11 A. They're three shell casings of a .9 millimeter.

12 Q. And where did you find those three shell casings?

13 A. They were laying in the back of the truck that of the
14 Ford truck.

15 Q. Let me show you what's been marked as State's Thirteen,
16 Fourteen and Fifteen for identification. Can you identify
17 Thirteen, Fourteen and Fifteen?

18 A. Yes, sir.

19 Q. And what are those - Obviously they're photographs.
20 What are they photographs of?

21 A. These are the shell casings that I collected at the
22 scene.

23 Q. And are those photographs an accurate depiction of
24 what appeared in the bed of the truck occupied by Aaron
25 Young, Junior?

1 A. Yes, sir.

2 Q. And have they been altered or changed in any way?

3 A. No sir.

4 SOLICITOR THORNTON: Your Honor, at this time I'd move
5 State's Thirteen, Fourteen and Fifteen into evidence.

6 MR. VAUX: Without objection.

7 THE COURT: Thank you. Without objection.

8 (WHEREUPON, STATE'S EXHIBITS THIRTEEN, FOURTEEN AND
9 FIFTEEN PREMARKED FOR IDENTIFICATION, IDENTIFIED AND
10 RECEIVED INTO EVIDENCE.)

11 (EXHIBITS PUBLISHED ON THE COURTROOM MONITOR.)

12 BY SOLICITOR THORNTON:

13 Q. And I'm gonna ask you if you would look at the monitor.

14 Technology sometimes is wonderful but is the shell
15 casings one of the three that you speak of is it right next
16 to the pebble there that's in the bed of the truck?

17 A. Yes, sir.

18 Q. I'm gonna show you, these are a little bit closer up.

19 And can you - Would this be one of the other shell
20 casings right here?

21 A. Yes, sir.

22 Q. And finally, is this one of the shell casings?

23 A. Yes, sir.

24 Q. And you've already identified what's been marked as
25 State's Exhibit Thirty-one for identification. Who if

1 anybody did you turn those over to? What did you do with
2 them?

3 A. Once I collected those I turned them over to
4 Investigator Corporal Conant.

5 Q. All right. While these three shell casings pulled
6 out of the truck that Aaron Young, Junior was in, after you
7 had retrieved those were they altered or changed in any way
8 while they were in your custody?

9 A. No, sir.

10 Q. And did you turn them over then to who you said?

11 A. It was at the time Investigator Corporal Wendy Conant.

12 Q. All right. And she at that time did she work for the
13 Beaufort County Sheriff's Office?

14 A. Yes, sir.

15 Q. Did you have an occasion to speak with Aaron Young,
16 Junior while you were at the scene?

17 A. Yes, sir.

18 Q. And before you spoke to him did you advise him of
19 what everybody sees on television as Miranda rights?

20 A. Yes I did.

21 Q. And did you do that by memory or did you use a
22 form or did you do it - How did you do it?

23 A. I did it by a card.

24 Q. And do you have the same card with you?

25 A. I do, sir.

1 Q. All right. And would you please take your card out
2 and read the rights that you gave to Aaron Young, Junior
3 on that date?

4 A. "You have the right to remain silent anything you say
5 can and will be used against you in a court of law. You
6 have the right to an attorney and if you can't afford an
7 attorney one will be provided for you. Do you understand
8 these rights that I just read to you?"

9 Q. And are those the rights that you read to Aaron
10 Young, Junior on September the 1st of 2012?

11 A. Yes, sir.

12 Q. And did he appear to understand those rights that you
13 read to him?

14 A. Yes, sir.

15 Q. And did he appear to be under the influence of any
16 alcohol or drugs to the extent that he didn't understand
17 what was going on?

18 A. No, sir.

19 Q. And were you able to - After you read him those rights
20 were you able to then ask him any questions about the death
21 of Khalil Singleton and the shooting on Allen Road?

22 A. Yes, sir.

23 Q. And what did you ask him?

24 A. I ask him about the shooting incident that occurred
25 down Allen Road.

1 Q. Did he give you any response?

2 A. He did. At first Mr. Aaron Young, Junior stated that
3 he was being dropped off at work by his father first and
4 then once he then stated that about the shooting he stated
5 that it was just a thing.

6 Q. All right. And did you understand exactly what that
7 meant?

8 A. No, sir.

9 Q. Did you ask him another question?

10 A. I ask him what that meant and he stated that it was
11 between him and Tyrone Robinson.

12 Q. And at that point did you continue - continue your
13 interview with him or did you ask that he be transported
14 somewhere?

15 A. I ask for him to be transported.

16 Q. And where was he to be transported to?

17 A. That was the Beaufort County Sheriff's Office which
18 is our branch office at 70 Shelter Cove Lane.

19 Q. And was he going to be interviewed or do you know
20 whether he was interviewed by anyone in particular?

21 A. Over at the Hilton Head office?

22 Q. Yes.

23 A. Yes. Captain Bromage and Laurel Albertin.

24 Q. All right. And was Laurel Albertin the person who
25 spoke the majority of the time?

INVESTIGATOR DOUG SEIFERT: DIRECT BY SOLICITOR THORNTON
CROSS BY MR. VAUX

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1. A. Yes, sir.

2 Q. You also mentioned Captain Bromage?

3 A. Yes, sir.

4 Q. Now, while you were on scene did anyone threaten
5 Aaron Young, Junior and try to get him to talk to you or
6 promise him anything to get him to talk to you?

7 A. No, sir.

8 Q. All right. And did you yourself threaten or promise
9 him anything to get him to talk to you?

10 A. No, sir.

11 Q. Did he again seem to understand your questions and
12 he was able to respond to them?

13 A. Yes, sir.

14 Q. All right.

15 SOLICITOR THORNTON: Your Honor, the Court's
16 indulgence, please.

17 THE COURT: All right.

18 SOLICITOR THORNTON: I have no further questions.
19 Please answer any questions Mr. Vaux has.

20 THE COURT: Mr. Vaux, cross-examine.

21 MR. VAUX: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 INVESTIGATOR DOUG SEIFERT BY MR. VAUX:

24 Q. Mr. Seifert, what time do your records show that the
25 sheriff's department pulled Mr. Aaron Young, Junior, Senior.

INVESTIGATOR DOUG SEIFERT: CROSS BY MR. VAUX

1 and Ms. Ebony Campbell over on the side of Highway 278 at
2 the Gumtree Road light which is also is it not Spanish Wells
3 intersection?

4 A. Uh - As far as what intersection. I'm sorry.

5 Q. Were they pulled over at the corner of Gumtree Road
6 and Spanish Wells?

7 A. It was Gumtree Road and US 278.

8 Q. 278?

9 A. Yes, sir.

10 Q. Now, what time were they pulled over?

11 A. I don't have the exact time in front of me. I had
12 the time when I actually arrived.

13 Q. What time did you arrive?

14 A. Approximately 17:30 hours which would be about 5:30
15 P.M.

16 Q. Do you know how long they had been on the side of the
17 road at that point?

18 A. If I had to guess ---

19 Q. Five what?

20 A. --- between twenty, twenty minutes, thirty minutes if
21 I could guess.

22 Q. So they were stopped somewhere shortly after five
23 o'clock?

24 A. I would say so yes, sir.

25 Q. Were they in handcuffs?

1 A. Yes, sir.

2 Q. Okay. And you said you saw three -

3 Can you put the picture back up with the - Number
4 Thirteen?

5 All right. Looking at this red pencil and my fingers
6 you see that casing there?

7 A. Yes, sir.

8 Q. That's one. And then there's another one here?

9 A. Yes, sir.

10 Q. All right. And there's one more is there not?

11 A. Yes, sir.

12 Q. All right. Now can you tell the jury who put those
13 there?

14 A. No, sir.

15 Q. Can you tell when they were put there?

16 A. No, sir.

17 Q. Can you tell how they were put there?

18 A. No, sir.

19 Q. Can you tell how long they had been in the back of
20 the truck?

21 A. No, sir.

22 Q. Okay. Did - -

23 MR. VAUX: I don't have anything further.

24 THE COURT: Thank you. Redirect?

25 SOLICITOR STONE: None, Your Honor. We'd ask that

⑥
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Appellant.

RECORD ON APPEAL - VOLUME II

Jennifer K. Dunlap
F. Elliott Quinn IV
200 Meeting St., Ste. 301
Charleston, South Carolina 29401
(843) 727-2650

Robert M. Dudek
Chief Appellate Defender
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211
(803) 734-1330

ATTORNEYS FOR APPELLANT

Alan Wilson
Attorney General

John W. McIntosh
Chief Deputy Attorney General

Donald J. Zelenka
Senior Assistant Deputy Attorney General

Margaret G. Boykin
Assistant Attorney General
P.O. Box 11546
Columbia, SC 29211-1549

Isaac McDuffie Stone, III
Solicitor, Fourteenth Circuit
P.O. Box 1880
Bluffton, SC 29910

Attorneys for Respondent

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CAPTAIN ROBERT BROMAGE: DIRECT BY SOLICITOR THORNTON

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1 he be excused.

2 MR. VAUX: No objection.

3 THE COURT: Thank you. Mr. Seifert, you can step down.
4 Thank you, sir.

5 (WITNESS LEAVING WITNESS STAND.)

6 SOLICITOR THORNTON: Captain Bob Bromage.

7 THE COURT: Captain Bromage, come forward please and
8 be sworn.

9 (WHEREUPON, ROBERT BROMAGE, BEING
10 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 MADAM CLERK: If you'd be seated. State your full
12 name.

13 A. Robert Bromage. B-r-o-m-a-g-e.

14 DIRECT EXAMINATION

15 CAPTAIN ROBERT BROMAGE BY SOLICITOR THORNTON

16 Q. Captain Bromage, who do you work for?

17 A. Beaufort County Sheriff's Office.

18 Q. And did you work for the Beaufort County Sheriff's
19 Office on or about September the 1st of 2012?

20 A. I do.

21 Q. And did you have an occasion to work on the murder
22 of Khalil Singleton the case that we're here about today?

23 A. Yes, sir.

24 Q. And did you have an opportunity to - Obviously you
25 were in here and you heard Sergeant Seifert who indicated he

1 had done some preliminary questioning of Aaron Young, Junior
2 at the scene. Did you have an occasion to attempt to speak
3 to Aaron Young, Junior?

4 A. I did.

5 Q. And where was that at, sir?

6 A. At the Hilton Head office substation in Hilton Head
7 70 Shelter Cove Lane.

8 Q. And is that what was referenced earlier by Sergeant
9 Seifert?

10 A. It was.

11 Q. Did you remirandize him or did you know that he had
12 already been mirandized?

13 A. I was advised he was already mirandized.

14 Q. And did you attempt to speak with Aaron Young, Junior,
15 sir?

16 A. I did briefly.

17 Q. And what did you ask him if anything?

18 A.. I ask him what happened down on Allen Road.

19 Q. And did he give you any response?

20 A. He said he wasn't even down there.

21 Q. And did - Is it a fair characterization to say that
22 he denied any involvement?

23 A. Yes, sir.

24 Q. Without going into specifics on what anybody told you,
25 as a result of your investigation did you receive a tip

1 about the gun, one of the guns used in this incident?

2 A. I did.

3 Q. And where did that information come from?

4 A. It came from Aaron Young, Senior.

5 Q. And did you followup on that information?

6 A. I did.

7 Q. And where did it lead you if anywhere?

8 A. 52 Redtip Lane which is off of Old Wild Horse Road.

9 Q. And who lives at 52 Redtip Lane off of Old Wild Horse
10 Road?

11 A. I know him as Benny Young. It's Aaron Young, Senior's
12 father.

13 Q. So how would he be related to Aaron Young, Junior the
14 defendant in this case?

15 A. He would be his grandfather.

16 Q. I'm gonna show you what's been marked as State's
17 Exhibit Nine, Ten and Eleven for identification and ask you
18 if you can identify those three photographs.

19 A. This is the bag containing the submachine gun, the
20 .9 millimeter submachine gun that Aaron Young, Senior
21 brought myself and another officer to.

22 Q. And was the black bag - Is the black bag also in -
23 Actually it appears to be in all three pictures; is that
24 correct?

25 A. Yes, sir.

1 Q. Now these photographs been altered or changed in any
2 way?

3 A. No. That's exactly how I found the bag right there.

4 Q. And is this an accurate depiction as to both - as to
5 all three photographs as to the contents, the bag itself and
6 the contents in the bag on September the 1st or early
7 morning hours September the 2nd of 2012?

8 A. Yes, sir.

9 SOLICITOR THORNTON: And, Your Honor, at this time I'd
10 ask State's Nine, Ten and Eleven be moved into evidence.

11 MR. VAUX: Those three pictures? No objection.

12 THE COURT: Thank you. Without objection.

13 (WHEREUPON, STATE'S EXHIBITS NINE, TEN AND ELEVEN,
14 PREMARKED FOR IDENTIFICATION, IDENTIFIED AND RECEIVED INTO
15 EVIDENCE.)

16 BY SOLICITOR THORNTON:

17 Q. All right, if you can describe - I'm gonna put up
18 State's Nine. Try to get this in some type of - We got it
19 now. Can you go ahead now that I've it oriented properly
20 describe what's in State's Nine?

21 A. That's the black bag that contained -

22 Q. And is this the bag that you're referring to?

23 A. Yes, sir.

24 Q. All right, sir. Go ahead.

25 A. The black bag that contained ammunition, the .9

1 millimeter submachine gun, and some lubricant.

2 Q. And State's Ten, is that a closer view of the bag with
3 what appears to be the can of lubricant in it?

4 A. Yes, sir.

5 Q. State's Eleven.

6 A. Yes, sir.

7 Q. All right. And what appears to be - Do you by the
8 way, Captain Bromage, if you know, do you know what this is?

9 A. It's a flash suppressor or a silencer.

10 Q. All right. A flash suppressor is that what goes on the
11 end of -

12 A. It would screw on the end of that submachine gun.

13 Q. So you found what appears to be all of these items as
14 well as a can of lubricant and what is the red box?

15 A. It's a red box of ammunition.

16 Q. And what if anything did you do with these items?

17 A. I turned over that scene to Corporal Cooler, he
18 actually photographed and processed.

19 Q. And then he would have turned it into evidence or
20 wherever it would have went after that?

21 A. That's correct. I did not take custody of the evidence.

22 SOLICITOR THORNTON: Thank you very much, Captain
23 Bromage.

24 Please answer any questions that Mr. Vaux has.

25 CROSS-EXAMINATION

CAPTAIN ROBERT BROMAGE: CROSS BY MR. VAUX

CAPTAIN ROBERT BROMAGE BY MR. VAUX:

Q. Captain Bromage, how long you been working Hilton Head?

A. Twenty-five years now.

Q. You're pretty familiar with it?

A. I am.

Q. You remember that Wild Horse Road they now call it Old Wild Horse road because when they put the road straight ahead at Spanish Wells they put it around and closed it off; isn't that right?

A. Its extremely confusing yes, sir.

Q. So Old Wild Horse Road now runs from 278 to New Wild Horse Road; is that right?

A. Right. It kind of goes - -

Q. Comes around makes a little bow?

A. It does.

Q. Okay. And if I go basically if I leave 278 on Old Wild Horse Road I'd be going north to get towards New Wild Horse Road would I not?

A. Ask that question again please.

Q. All right, if I'm on 278 --

A. Right.

Q. I'll tell you what, let's look at this map of the State's. If you'd come down for me and see if we can find Wild Horse Road here.

(WITNESS LEAVING WITNESS STAND.)

1 Q. That's it right there, that's Old Wild Horse Road right
2 there isn't it?

3 A. That's correct.

4 Q. And this is New Wild Horse Road?

5 A. That is.

6 Q. And somewhere's behind this yellow circle is - would
7 you agree that's Mustang Lane?

8 A. It's actually on there.

9 Q. Is it?

10 A. I think it is. I can't really see it but - -

11 Q. Neither can I. Both that are - -

12 A. Mustang Lane, I see it.

13 Q. Yeah. All right. And so to get to Mustang to - -
14 Get back on the stand. Thank you.

15 (WITNESS RETURNS TO WITNESS STAND.)

16 Q. To get to Mustang Lane from Wild Horse Road or from
17 where Mr. - the two Mr. Young's live they go up Old Wild
18 Horse Road till they got to Mustang Lane, turn onto Mustang
19 Lane go down Mustang Lane which is a dirt road.

20 A. Right.

21 Q. As I recall Mustang Lane is you go up that you then
22 make a hard turn to the right and then a hard turn back to
23 the left to get to Mr. Benny Young's house don't you?

24 A. That sounds right.

25 Q. That's what I thought.

1 A. Yes.

2 Q. All right. So if the two Mr. Young's and Ebony
3 Campbell were going to leave their house and go to their
4 father - grandfather's house, they would to get to Redtip
5 where you found the gun they would go on Mustang Lane as Mr.
6 Jontu Singleton said would they not?

7 A. That sounds reasonable.

8 Q. Okay. Now, What is the flash suppressor?

9 A. Well it's to keep - if I put it on the end of the gun
10 and I fired the gun it would just keep the flame from
11 bolting out of the gun basically. It'd keep the flame from
12 bolting out of the gun.

13 Q. And it's a suppressor of the flame and not a suppressor
14 of the sound. It's not a sound suppressor.

15 A. I haven't fired that gun, Mr. Vaux. It looks like a
16 silencer but --

17 Q. But it's a suppressor isn't it, Captain?

18 A. Right. That's what it looks like.

19 Q. Okay.

20 MR. VAUX: May I have just a moment please, Your Honor.

21 THE COURT: Yes, sir.

22 (PAUSE AT 02:40 P.M.)

23 Q. Now, Captain, are you fairly familiar with that gun?

24 A. It looks sort of like an Uzi submachine gun type
25 thing.

1 Q. In fact it's a .9 millimeter pistol isn't it?

2 A. It's a semi-automatic pistol, yes.

3 Q. Now, how long have you been in law enforcement?

4 A. Twenty-five years.

5 Q. Okay. So you're pretty familiar with the gun laws of
6 this state?

7 A. I am.

8 Q. Okay. That's not the machine gun is it?

9 A. No.

10 Q. That's not a submachine gun is it?

11 A. It looks like a submachine gun.

12 Q. I didn't ask you if it looked like it. I ask if it
13 was.

14 A. It would qualify as a pistol I believe.

15 Q. Thank you. Okay. Now you referred to it in front of
16 the jury as a machine gun didn't you?

17 A. It looks like a submachine gun.

18 Q. I didn't ask you that. I ask if it was.

19 THE COURT: You ask him how he referred to it so I
20 think that was the answer that he gave.

21 MR. VAUX: Okay.

22 Q. You referred to as a machine gun?

23 A. Yes, sir, submachine gun.

24 Q. Submachine gun?

25 A. Yes, sir.

CAPTAIN BOB BROMATE: CROSS BY MR. VAUX
SERGEANT BRANDON COOLER: DIRECT BY SOLICITOR THORNTON

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1 Q. And it's not one is it?

2 A. No, sir.

3 Q. Thank you.

4 THE COURT: Redirect, Mr. Thornton?

5 SOLICITOR THORNTON: None, Your Honor.

6 THE COURT: Thank you, Captain. You can step down.
7 Thank you.

8 (WITNESS LEAVING WITNESS STAND;)

9 SOLICITOR THORNTON: Brandon Cooler.

10 THE COURT: Come forward please and be sworn.

11 (WHEREUPON, THE WITNESS BEING

12 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 MADAM CLERK: Please be seated and state your full
14 name.

15 A. It's Brandon Cooler.

16 DIRECT EXAMINATION

17 SERGEANT BRANDON COOLER BY SOLICITOR THORNTON:

18 Q. Mr. Cooler, what is your current rank, sir?

19 A. Sergeant.

20 Q. All right. Sergeant Cooler, let me ask you a question.
21 Who do you work for?

22 A. The Beaufort County Sheriff's Office.

23 Q. And did you work for the Beaufort County Sheriff's
24 Office on or about September the 1st of 2012?

25 A. I did.

1 Q. And did you have a chance to respond out to - I want
2 to say it's 52 Redtip Lane here in the county of Beaufort?

3 A. I did.

4 Q. And I want to direct your attention, sir, to what's
5 already been introduced into evidence as State's Exhibit
6 Number Eleven. Do you recognize that photograph?

7 A. I do.

8 Q. And did you actually take that photograph?

9 A. Yes I did.

10 Q. And obviously it's already been introduced into evidence
11 but can you describe just basically what the contents of
12 that photograph are?

13 A. It's a photograph of a back storage area at the
14 location 52 Redtip. It's a firearm, MAC-10 style firearm, a
15 thirty round magazine, a box of Federal ammunition and an
16 all purpose lubricant in a black bag.

17 Q. Now, as to the lubricant did you notice anything
18 about the firearm itself?

19 A. That it appeared to be covered in some type of
20 lubricant that I assume was from the can.

21 Q. And the - Were there bullets loaded into - I call it
22 a clip, magazine which has already been introduced as
23 State's Exhibit Number Thirty-eight.

24 I'm sorry, you say there were bullets loaded into it?

25 A. Yes there were bullets in the magazine.

1 SOLICITOR THORNTON: Your Honor, the Court's indulgence
2 please one moment.

3 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-TWO,
4 PREMARKED FOR IDENTIFICATION.)

5 Q. I'm gonna hand you what's been marked for
6 identification as State's Exhibit Number Thirty-two and ask
7 you if you can identify the contents of that bag?

8 A. Inside the bag are the white box and I'm not sure
9 what's in it and some fired - It says unfired RWS .9
10 millimeter Luger.

11 Q. And is that initialed by DD, Dan DeFreese from SLED?

12 A. Yes. I believe so, yes.

13 Q. Okay. Other than that box, the bullets in that bag as
14 well as the box of Federal ammunition, is that what was
15 recovered by you from the scene that day?

16 A. It is. Plus the box of Federal ammunition that was
17 in the bag as well as the loose rounds.

18 Q. And with the exception of what Dan DeFreese appears to
19 have initialed has that been altered or changed in any way?

20 A. It has not.

21 Q. All right. And let me ask you a quick question.

22 You said that - Where did those rounds come from, the
23 loose rounds in the plastic bag?

24 A. There was one round - When I located the firearm one
25 round in the chamber and then there were - I'd have to look

1 at my report but I believe nine that came out of the
2 magazine itself.

3 Q. Came out of State's Twenty-eight, this magazine?

4 A. Yes.

5 Q. Now, again have these been altered or changed in any
6 way?

7 A. They have not.

8 Q. All right.

9 SOLICITOR THORNTON: Your Honor, at this time I would
10 move State's Exhibit Thirty-two into evidence.

11 MR. VAUX: No objection.

12 THE COURT: Without objection Thirty-two.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-TWO,
14 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

15 Q. What if anything did you do - Oh, by the way let me
16 ask you a quick question. State's Twenty-eight, this
17 magazine, do you know approximately how many rounds this
18 holds?

19 A. I believe thirty approximately.

20 Q. And what if anything did you do with the pistol that is
21 State's Twenty-six, the suppressor that's Twenty-seven, the
22 magazine that is Twenty-eight, and then the bullets which
23 I've just introduced as Thirty-two, what if anything did you
24 do with those items?

25 A. I processed the firearm and the magazine for touch

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1 DNA.

2 Q. And did you turn those items over to evidence?

3 A. I turned them - the firearm magazine and I had to look
4 at the bag and I believe the muzzle suppressor, the flash
5 suppressor, I turned it over to Investigator Conant at the
6 time.

7 Q. All right. And I'm sorry, who is that? Investigator
8 who?

9 A. Investigator Conant.

10 Q. Is that Wendy Conant?

11 A. That is Wendy Conant.

12 Q. All right. And other than that that did you have anything
13 else to do with these items?

14 A. No.

15 Q. Thank you very much.

16 SOLICITOR THORNTON: I have no further questions.
17 Please answer any questions Mr. Vaux has.

18 THE COURT: Mr. Vaux:

19 CROSS-EXAMINATION

20 SERGEANT BRANDON COOLER BY MR. VAUX:

21 Q. Mr. Cooler, the bullets that - I call them bullets,
22 cartridges, whatever you call 'em. Number Thirty-two. I
23 can walk into Walmart or any store that sells gun bullets
24 and buy bullets?

25 A. Yes, sir.

1 Q. Okay. Now did you also conduct a search of the
2 residence of Mr. Aaron Young, Junior and Mr. Aaron Young,
3 Senior?

4 A. I did.

5 Q. Did you find any drugs in that house?

6 A. No, sir.

7 Q. Did you find any guns of any kind in that house?

8 A. No, sir.

9 Q. And isn't it true, Mr. Cooler, that almost immediately
10 after the shooting of the child by Mr. Robinson that the
11 sheriff's department sent officers to the Young's house to -
12 my term -- keep control of it until you could get a search
13 warrant and go there?

14 A. I'm not sure about that. I didn't respond out there
15 until later on in the evening.

16 Q. Okay. Were the officers there when you got there?

17 A. There were officers there when I got there.

18 Q. And what was their purpose?

19 A. I believe they were there to secure the house.

20 Q. Okay. Do you know how long they had been there?

21 A. I do not.

22 Q. Okay.

23 MR. VAUX: Give me just one second please, Your Honor.

24 THE COURT: Yes, sir.

25 Q. Oh, did you take a statement from Ebony Campbell?

1 A. I did.

2 Q. You did?

3 A. Yes.

4 Q. When did you take the statement from Ebony Campbell?

5 A. On the first of September.

6 Q. Did she - Now Ebony Campbell is the girlfriend of
7 Aaron Young, Senior?

8 A. I believe so.

9 Q. You didn't find that out during your investigation?

10 A. I'd have to look at my report.

11 Q. Well why don't you get your report if you could please?

12 MR. VAUX: Is that a problem, Your Honor? Could we
13 take a recess while he gets his report?

14 THE COURT: Where is the report? Sir, where would it
15 be?

16 A. I'd have to see if they have it.

17 THE COURT: They're looking through his notebook now.

18 MR. VAUX: That's okay. Let me - I'll just keep going.
19 I'll try and not hold it up here.

20 Q. Did Ms. Campbell tell you -

21 SOLICITOR THORNTON: Objection, Your Honor, that would
22 be hearsay.

23 THE COURT: All right. How would you avoid the hearsay
24 objection?

25 MR. VAUX: I'm sorry, Your Honor.

1 THE COURT: How would you avoid the hearsay objection?

2 MR. VAUX: Well, Your Honor, he took a written
3 statement. Let me rephrase it, Your Honor.

4 THE COURT: Okay.

5 Q. Did you take a written statement from Ms. Campbell?

6 A. I'd have to double check that. I remember speaking to
7 her and taking a verbal statement but I'm not sure if she
8 wrote one for me.

9 Q. Okay. Well why don't you - but you interviewed?

10 A. Yes, sir.

11 Q. And she gave you a statement?

12 SOLICITOR THORNTON: Objection, Your Honor. I'm sorry,
13 I'm trying to avoid this, Judge. It doesn't matter whether
14 the statement is written or verbal it's all hearsay.

15 MR. VAUX: I'm not asking him that far, Your Honor.

16 THE COURT: That questions fine. You can ask the
17 question.

18 BY MR. VAUX:

19 Q. Did you take a statement from her?

20 A. Yes, her own.

21 Q. A verbal statement?

22 A. I believe.

23 Q. And do you know if that statement was transcribed?

24 A. I could not say.

25 Q. Okay. And do you know where Ms. Campbell lives?

1 A. I do not.

2 Q. At the time of September the 1st, 2012, did she live
3 in Beaufort County?

4 A. I believe so.

5 Q. Did you conduct any gunshot residue test?

6 A. Not to my recollection.

7 Q. Do you recall if any gunshot residue test were
8 performed on either Mr. Young, Junior or Mr. Robinson?

9 A. I couldn't say.

10 Q. Now I think you said you tried to take fingerprints
11 on the gun but couldn't get any because of the gun oil or
12 some substance on it?

13 A. No. I didn't try to take fingerprints from the gun
14 due to the fact that there was a oil base covering the gun.

15 Q. Okay. Did you try and take any DNA samples from the
16 gun?

17 A. I did swab the firearm and the magazine I believe.

18 Q. And what did you do with that swab and all of that,
19 that testing paraphernalia?

20 A. It was all turned over to Investigator Conant.

21 Q. To Investigator Conant?

22 A. Uh-huh. And then several items were turned over to
23 her and the rest were turned into the evidence division.

24 Q. So she would know what happened to the DNA samples
25 that you took or whatever you call it?

1 A. I'm sorry?

2 Q. You - She would know what happened to the DNA testing
3 that you did?

4 A. Yeah, she should taken it from it.

5 MR. VAUX: Nothing further.

6 THE COURT: Thank you. Redirect?

7 SOLICITOR THORNTON: Your Honor, the court's
8 indulgence, please.

9 THE COURT: Okay.

10 SOLICITOR THORNTON: Nothing further, Judge. Thank you.

11 THE COURT: Thank you. Mr. Cooler, you can step down.
12 Thank you.

13 MR. VAUX: No objection to his being excused.

14 THE COURT: Thank you.

15 (WITNESS LEAVING WITNESS STAND.)

16 SOLICITOR STONE: Derrick Nelson.

17 THE COURT: Come forward please and be sworn.

18 (WHEREUPON, THE WITNESS BEING FIRST
19 CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

20 MADAM CLERK: Please be seated and state your full
21 name.

22 A. My name is Sergeant Derrick Nelson. I'm with the
23 Beaufort County Sheriff's Office.

24 DIRECT EXAMINATION

25 SERGEANT DERRICK NELSON BY SOLICITOR STONE:

1 Q. All right, now I'm gonna move that back where I can
2 see you first and I'm gonna get you to come down.

3 You are with the Beaufort Sheriff's Office?

4 A. Yes, sir.

5 Q. How long have you been with the Beaufort County
6 Sheriff's Office? You're fine there right now.

7 A. I've been with the sheriff's office since 2010.

8 Q. And what capacity - What's your job with the sheriff's
9 office?

10 A. I'm a criminal investigator for the Southern Division.

11 Q. September the 1st, 2012, you were an investigator at
12 that time as well?

13 A. That's correct.

14 Q. And did you do any type of processing - and I'm gonna
15 ask you that question and then ask you to explain - of
16 Tyrone Robinson's vehicle?

17 A. I did.

18 Q. And what I'm asking you about processing, exactly
19 what did you do?

20 A. We determined - basically took photographs of the
21 entire vehicle and processed the interior of the vehicle,
22 collected some evidence and were able to use trajectory rods
23 to apply - to try and apply the trajectory for the
24 projectile that we recovered from inside the vehicle.

25 Q. And we have already put into evidence - And I will

1 call your attention to the monitor - State's Exhibit Seven
2 and State's Exhibit Sixteen. Is this the vehicle that you
3 processed?

4 A. That is.

5 Q. All right. If I could I would like you to come down
6 from the stand at this point and I need you to keep your
7 voice up.

8 SOLICITOR STONE: And, Judge, you need him on this side
9 or this side?

10 THE COURT: Which - The other side is better because
11 he's facing the court reporter if you don't mind.

12 SOLICITOR STONE: Yes, sir. Perfectly fine.

13 (WITNESS LEAVES WITNESS STAND.)

14 Q. First let me show you what's been marked as State's
15 Exhibit Twenty-one and ask if you can identify that please?

16 A. That is the photo I took while I processed the
17 vehicle.

18 Q. Is that a fair and accurate depiction of the -
19 Tyrone Robinson's Acura at the time of the processing?

20 A. It is.

21 Q. And this is taken where, where are we here?

22 A. That is the Beaufort County impound lot on Shanklin
23 Road.

24 Q. Okay.

25 SOLICITOR STONE: Your Honor, at this time we move

1 State's Exhibit Twenty-one into evidence.

2 THE COURT: I understand without objection.

3 MR. VAUX: Without objection.

4 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-ONE PREMARKED
5 FOR IDENTIFICATION, IDENTIFIED AND RECEIVED INTO EVIDENCE.)

6 SOLICITOR STONE: Now, if you will show that to the
7 jury. I want to make sure that everybody can see that.

8 See it? Okay.

9 Q. That is at the - That is at the impound lot; is that
10 correct?

11 A. That's correct.

12 Q. And the sticks that we see in this photograph, what
13 are those exactly?

14 A. Those are wooden dowels that we use to help plot the
15 trajectory of the projectile.

16 Q. All right. When you say trajectory what do - like
17 the path of the bullet?

18 A. The path of a bullet.

19 Q. If we were to use --

20 MR. VAUX: Your Honor, I have a matter of law to take
21 up out of the presence of the jury.

22 THE COURT: All right. Ladies and gentlemen, let me
23 send you to your jury room for just a moment, I've got to
24 take up a matter of law. As you recall I told you this
25 morning I'm the judge of the law I have to deal with those

1 issues and this is a matter I have to deal with outside of
2 your presence. Thank you.

3 Please don't discuss this case among yourselves.

4 (JURY EXITS COURTROOM AT 02:58 P.M..)

5 THE BAILIFF: The jury is clear, Your Honor.

6 THE COURT: Thank you. Mr. Vaux.

7 MR. VAUX: Your Honor, the witness is an investigator
8 with the sheriff's department but I don't know that he has
9 any kind of experience, expertise, education necessary to be
10 qualified to express an opinion as to the trajectory or
11 anything else that might come from these photographs.

12 THE COURT: I recall the photograph from the earlier
13 trial. Now certainly if this were an autopsy or something
14 of that nature medical expert testimony would be required.
15 As I understand this indicates that apparently they went to
16 a bullet hole put a dowel in it and I take it connected it
17 to some other evidence in the car which would indicate that
18 that same bullet went to that same two points. I take it
19 that - Is that fair to say?

20 SOLICITOR STONE: Yes, sir. That's what these pictures
21 - I think all of the pictures. I'll go ahead and hand and
22 I'll try not to get 'em out of order but all these
23 photographs are either photographs of the --

24 THE WITNESS: Yes, sir.

25 SOLICITOR STONE: They're all the same thing. They're

1 basically various views of this. I'll hand you up State's
2 Exhibit Twenty-one since you can see.

3 THE COURT: All right.

4 SOLICITOR STONE: And then let me hand you another one
5 that shows you the inside which is where the bullets are
6 actually coming through the door, in some of the cases
7 certainly not everyone of them.

8 THE COURT: All right.

9 MR. VAUX: Judge, that wouldn't tell me this is not in
10 everyone of 'em then they can't connect the two points.

11 SOLICITOR STONE: Well that's not at all what I'm
12 talking about, but anyway, the State's Exhibit Nineteen is
13 where the bullets in this particular door came through.
14 They obviously all the bullets were not shot into that same
15 door and all of them didn't come through the same way. But
16 that's those that did and that's how the sticks actually
17 continued on through.

18 MR. VAUX: Your Honor, to note the substance of my
19 objection is not that he went to the car. It's not that he
20 stuck a dowel in there.

21 THE COURT: Right.

22 MR. VAUX: It's the conclusions that he draws from
23 that.

24 THE COURT: Right.

25 MR. VAUX: And any opinions that he expresses about

1 that.

2 THE COURT: The point is whether or not - To over
3 simply things it takes an expert in this case to connect the
4 dots cause that's what this is is connecting of the dots.

5 They see a hole in the door and inside they see a hole
6 in the floor and the dowel goes from one to the other. And
7 in apparently everyone of these cases that's the - is a
8 finding. Granted if it is a hole in the wall - a hole in
9 the door or a hole in the back and that's all they got then
10 all that indicates is where the bullet went in and not the
11 trajectory out.

12 But as long as there are two dots or a path that the
13 dowel can follow all the way through from one side of the
14 door to the other, for example, the doors two or three
15 inches thick, and if there is a hole on one side and a hole
16 on the other that's really not rocket science there. You
17 and I can figure that out by putting a pencil through it.

18 So I don't think that it requires an expert testimony
19 to establish the path of the bullet in that regard. And
20 I'll count on either Sergeant Nelson or Solicitor Stone to
21 keep me on track and make sure that we do - we are talking
22 about two points forming a certain line if you don't have
23 but one point then I'm not gonna let the straight line.

24 And the point can be on one side of the door or the
25 other as I've said.

1 SOLICITOR STONE: Yes, sir.

2 THE COURT: All right.

3 MR. VAUX: Your Honor, if an expert - If an expert
4 opinion is not necessary then the jury's perfectly capable
5 of drawing their own conclusion.

6 THE COURT: Sure. Exactly.

7 MR. VAUX: And you should not necessarily feel I have
8 to comment on the facts of it.

9 THE COURT: I'm sorry, say that again now.

10 MR. VAUX: Well, if it's an opinion you don't need to
11 be an expert on it.

12 THE COURT: That's right. And he hadn't been qualified
13 as an expert.

14 MR. VAUX: Okay.

15 THE COURT: That's right.. He's a fact witness and he
16 can explain to the jury I guess like he explained to me and
17 the jury's not convinced that that's a good way of
18 determining where the bullet went they can just disregard
19 his testimony.

20 MR. VAUX: Okay. Thank you, Your Honor.

21 THE COURT: I'll note - And the objection will continue
22 throughout this line of testimony, Mr. Vaux, ---

23 MR. VAUX: Thank you.

24 THE COURT: --- to preserve the record.

25 MR. VAUX: So I don't need to interrupt too much.

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1 THE COURT: See if they're ready to come back?

2 (COURT AT EASE.)

3 (JURY REENTERS COURTROOM AT 03:07 P.M..)

4 THE COURT: Thank you. Mr. Stone.

5 DIRECT EXAMINATION - CONTINUES

6 SERGEANT DERRICK NELSON BY SOLICITOR STONE:

7 Q. Let me ask you to come back down if you will, please.

8 (WITNESS LEAVES WITNESS STAND.)

9 Q. I'm gonna ask you to stand there. Let me go back
10 to this. This is State's Exhibit Twenty-one which we've
11 already put into evidence. These sticks, I guess you call
12 them dowels; is that correct?

13 A. Correct.

14 Q. Do you place these into the car in the various bullet
15 hole areas?

16 A. That's correct.

17 Q. And they are placed in areas - When you stick these
18 in are they - How do you determine how they go in? Do you
19 just put the stick in and see if it hits the other side?
20 How does that work?

21 A. No. As we - We'll put 'em in the exterior. The path
22 of the bullet will actually go through the interior also so
23 we'll connect the dots through the holes that it leaves as
24 the path of the bullet goes.

25 Q. The - I'll show you what's been marked State's Exhibit

1 Nineteen. I ask if you can identify that?

2 A. That is a photo taken from the interior of this
3 vehicle.

4 Q. Okay. And is this a fair and accurate depiction of
5 the inside of the vehicle after the series of those dowels
6 have been placed through?

7 A. It is.

8 Q. Okay. All right.

9 SOLICITOR STONE: At this time, Your Honor, we move
10 State's Exhibit Nineteen into evidence.

11 THE COURT: Subject to the previous objection Nineteen
12 into evidence.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER NINETEEN, PREMARKED
14 FOR IDENTIFICATION, IDENTIFIED AND RECEIVED INTO EVIDENCE.)

15 Q. Now is this what you're talking about when you were
16 just talking about in some cases the dowels actually go
17 through. These sticks are coming inside here showing the
18 path I guess through; is that correct?

19 A. That's correct.

20 Q. And these are - I keep calling 'em sticks but these
21 are the dowels?

22 A. This is the dowels that is the continuation of this
23 dowel on the exterior showing the path the bullet went
24 through here, through here and then through the bottom of
25 the car.

1 Q. All right. I show you what's been marked as State's
2 Exhibit Twenty-two and ask if you can identify that please?

3 A. That is a photo taken from the lower portion of the
4 driver's door.

5 Q. Is that a fair and accurate depiction of how that
6 door looked?

7 A. It is.

8 Q. All right.

9 SOLICITOR STONE: And this is State's Exhibit Twenty-
10 two, Your Honor, we move that into evidence.

11 MR. VAUX: Without objection.

12 THE COURT: Thank you. Without objection.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-TWO,
14 PREMARKED FOR IDENTIFICATION, IDENTIFIED AND RECEIVED INTO
15 EVIDENCE.)

16 Q. Now what I'd like for you to do - and the reason I
17 moved the model over here - We go back to this model to the
18 car here that has already been identified as Tyrone
19 Robinson's car. Where on this car is this mark? First of
20 all, where is this mark on this car?

21 A. It is --

22 Q. Let me hand you the dowel and I'll quit.

23 A. At this particular -- This is an enlargement of this
24 particular little grey dot right here on the driver door.

25 Q. Okay.

1 A. This is just an enlarged photo of that.

2 Q. On the model as the car sits there now behind that
3 house, where would that mark be?

4 A. It would be right here just below like the side mirror
5 on the little model car.

6 Q. And you're pointing to the left side of the car, the
7 driver's side?

8 A. The driver side of the car.

9 Q. All right. Thank you, sir.

10 (WITNESS RETURNS TO WITNESS STAND.)

11 Q. I show you what's been marked as State's Exhibit
12 Twenty, ask if you can identify that please?

13 A. That is also a picture of the same vehicle. This is
14 just a better shot of the rear of the vehicle.

15 Q. Okay. And is that a fair and accurate depiction of
16 how the scene looked after you placed the dowel - after the
17 dowels were placed in?

18 A. Yes, sir. Correct.

19 Q. All right.

20 SOLICITOR STONE: At this time, Your Honor, we move
21 State's Exhibit Twenty into evidence.

22 MR. VAUX: No objection.

23 THE COURT: Thank you.

24 (WHEREUPON, STATE'S EXHIBIT TWENTY, PREMARKED FOR
25 IDENTIFICATION, IDENTIFIED AND RECEIVED INTO EVIDENCE.)

1 Q. Okay. And using - Now if you'll just show the jury
2 what that - the jury what that depicts.

3 A. This is the back side of - a better angle on the back
4 of the vehicle to show the additional bullet strikes on the
5 back of the car.

6 Q. I'm gonna show you what's been marked first as SLED
7 Item Number 14, and for that matter I'm gonna hand you both
8 SLED Item Number 14 and SLED Item Number 16. That would be
9 State's Exhibit - I don't think they've been marked.

10 Excuse me just a moment. Sorry, I thought I'd already
11 marked all of these.

12 THE COURT: Okay.

13 SOLICITOR STONE: These are all marked together but I
14 think for the purpose of the record it might be better if we
15 marked them individually. They were premarked but they were
16 all as a group.

17 THE COURT: All right.

18 (WHEREUPON, STATE'S EXHIBIT NUMBERS THIRTY-FOUR,
19 THIRTY-FIVE, PREMARKED FOR IDENTIFICATION.)

20 Q. I show you what's marked State's Exhibit Thirty-three
21 and State's Exhibit - Well let me stay with that.

22 State's Exhibit Thirty-three, could you tell me what's
23 in that package first of all?

24 A. Inside this package is a spent projectile that was
25 recovered from the inside area of the trunk that was from

1 this particular penetration at this wooden dowel right here.

2 Q. And you collected that?

3 A. I did.

4 Q. All right. And when you collected this what did you
5 do with it?

6 A. It was preserved inside the envelop and turned into
7 evidence.

8 Q. And this is - You preserved it in the --

9 A. In the little brown envelop.

10 Q. Brown envelop in here, and then that was placed into
11 evidence?

12 A. Yeah. It's in this bag and then given to our evidence
13 custodian.

14 Q. Okay. All right. And did you give this to Wendy
15 Conant or did you just put it straight into evidence?

16 A. I gave it to Corporal Padgett who is our evidence
17 technician.

18 Q. All right. So basically you took this straight to
19 evidence?

20 A. I did, yes.

21 Q. When it goes to evidence what happens to it?

22 A. After evidence I believe another officer has taken
23 it to SLED.

24 Q. Was - Did you change or alter this in any way?

25 A. No.

1 Q. Now when you put it in this envelop, it's hard to say
2 without pulling it out, but when you put in there do you do
3 anything, initial or anything like that or is that your
4 writing?

5 A. It's here on the outside on the - this envelop here,
6 not on the interior one.

7 Q. Okay. Let me start that over. So you actually put
8 it in this plastic bag?

9 A. Yes.

10 Q. Oh, I apologize. Okay. So you put it in the yellow
11 bag and then you also put in the plastic bag?

12 A. Put it in the plastic bag.

13 Q. Okay. Then once you do that is it sealed?

14 A. Yes.

15 Q. All right. And once you handle it you just hand
16 the sealed envelop --

17 A. To the evidence technician.

18 Q. Okay. And in that process do you change or alter
19 it in any way?

20 A. No, sir.

21 Q. All right, sir. Let me hand you what's been marked
22 State's Exhibit Thirty-four.

23 I ask if you can tell me what that is?

24 A. This is another projectile recovered from inside of
25 the car and it's gonna correspond to this particular dowel.

1. here through the truck area and it lodged. It found itself
2. - We found it lodged in the area between the passenger seat
3. and the truck itself.

4. Q. Did you - And you took - You took custody of this.

5. Did you also put it in an envelop, this envelop?

6. A. That envelop and then inside that evidence bag and
7. turned it into evidence.

8. Q. Did you change or alter it in any way?

9. A. No, sir.

10. Q. All right, sir. I show you what's been marked as
11. State's Exhibit Twenty-three, ask if you can identify that ?

12. A. This is another photo from the vehicle depicting the
13. introductory of this - the driver side of the vehicle.

14. Q. Okay. Now this was taken at a different time than
15. this; is that correct?

16. A. That's correct.

17. Q. You went back out to the scene for these particular
18. photographs?

19. A. That's correct.

20. Q. All right. And this is going -

21. SOLICITOR STONE: Well first of all, Your Honor, at
22. this time we move State's Exhibit Twenty-three into
23. evidence.

24. MR. VAUX: Without objection.

25. THE COURT: Thank you. Without objection.

1 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-THREE,
2 PREMARKED FOR IDENTIFICATION, IDENTIFIED AND RECEIVED INTO
3 EVIDENCE.)

4 Q. This photograph here actually corresponds with State's
5 Exhibit Number --

6 MR. VAUX: Objection. He's leading the witness.

7 SOLICITOR STONE: Absolutely leading the witness, Your
8 Honor, this is just on a preliminary matter. I'm trying
9 just to establish these photographs.

10 THE COURT: Okay. He can lead.

11 BY SOLICITOR STONE:

12 Q. Are these two related at this time?

13 A. Yes. Those two pictures are taken of the defendant.

14 Q. We pull this down. All right. And when were these
15 taken as opposed to - Which were taken first?

16 A. These up here.

17 Q. Okay. What was necessary in order to get the dowels
18 all the way through the door?

19 A. In this particular picture you can see that the window
20 is half way down and that this original dowel was meeting
21 with the window while the partition was coming down. To get
22 the - To make it to get to the final - the interior hole
23 here we had to break this window to get the wood dowel
24 completely through the door to show the - to plot the two
25 points on the door.

1 Q. And that's what this State's Nineteen Exhibit
2 indicates; is that correct?

3 A. That's correct.

4 Q. Let me show you what's been marked - Let me mark these
5 again, sir.

6 Three more.

7 (WHEREUPON; STATE'S EXHIBIT NUMBER THIRTY-FIVE, THIRTY-
8 SIX, THIRTY-SEVEN, PREMARKED FOR IDENTIFICATION.)

9 Q. I show you what's marked as State's Exhibit Thirty-
10 ive, ask if you can identify that please?

11 A. This is the projectile that was recovered from - that
12 corresponds to this particular dowel here, and on this photo
13 the interior dowel here, and it lodged in the passenger side
14 door or the door handle. It would have been equivalent to
15 right in this area but on the passenger side of the vehicle.

16 Q. And did you secure this - And you say projectile. Is
17 that the bullet?

18 A. Bullet. Excuse me.

19 Q. And you put this in the bag and sealed it in the
20 plastic bag?

21 A. I did.

22 Q. And you submitted it to evidence?

23 A. I did.

24 Q. Did you change or alter it in any way when you did
25 that?

1 A. No, sir.

2 Q. All right, sir. Item Number 36, I ask you if you could
3 identify that please?

4 A. This corres - This is also a bullet that was collected
5 from this headrest right here. And it corresponds with this
6 dowel which went through the side frame of the window and
7 the - a jam here in the passenger - Excuse me, the driver
8 side, the driver and rear passenger headrest and came to
9 rest inside the headrest.

10 Q. All right. And you collected that as well?

11 A. I did.

12 Q. And did you put it in this envelop and seal it?

13 A. I did.

14 Q. Turned it into evidence?

15 A. Yes, sir.

16 Q. Did you change or alter it in any way?

17 A. No, sir.

18 Q. Finally, let me hand you State's Exhibit Thirty-seven.
19 I ask if you can identify that please?

20 A. This corresponds to this particular dowel here. And it
21 was the bullet that was lodged just inside the door way. It
22 was still in the door jam and the car chase where the door
23 meets the actual door car frame and it was lodged there.

24 Q. And you collected that as well?

25 A. We did.

SERGEANT DERRICK NELSON: DIRECT BY SOLICITOR STONE
CROSS BY MR. VAUX

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1 Q. What did you do with it?

2 A. I put it into the envelop and put it in the evidence
3 bag and turned it into evidence.

4 Q. Did you seal it prior ---

5 A. I did.

6 Q. --- after you put it in there?

7 A. I did.

8 Q. Did you change or alter it in any way?

9 A. No, sir.

10 Q. Okay. Have a seat back up there.

11 A. All right.

12 (WITNESS RETURNS TO WITNESS STAND.)

13 SOLICITOR STONE: That's all I have, Your Honor.

14 THE COURT: Thank you. Mr. Vaux, cross-examine.

15 CROSS-EXAMINATION

16 SERGEANT DERRICK NELSON BY MR. VAUX:

17 Q. Mr. Nelson, did you process the car for blood?

18 A. Yes, sir.

19 Q. You did?

20 A. We processed it for touch DNA evidence.

21 Q. For what?

22 A. Touch DNA evidence.

23 Q. What does touch DNA evidence mean?

24 A. Any - Touch DNA is essentially sort of like skin
25 cells or things like that that would be coming off.

1 Q. Would blood be a type of DNA?

2 A. Yes, sir.

3 Q. Okay. Did you find any touch DNA evidence?

4 A. I do not know. I did not see the lab report.

5 Q. Okay. But you gathered it together?

6 A. Yes, sir.

7 Q. Okay. And how do you gather it together?

8 A. We use a Q-tip that has a plastic cover on the top,
9 we put a little bit of distilled water and then we swab the
10 area particularly that we want to try and collect the
11 evidence from and then we seal it and put it in an evidence
12 bag and turn it into the lab.

13 Q. And you did that?

14 A. Yes, sir.

15 Q. Okay. Who did you turn it over to?

16 A. It went into the same batch with Corporal Padgett,
17 all the things collected from that particular day.

18 Q. Okay. Did you run that - and I don't know the name,
19 I've seen it on the TV where they flash a light to see if
20 there's any blood?

21 A. No, sir.

22 Q. You didn't do that?

23 A. I did not.

24 Q. Did you see any evidence of any blood stain in the car?

25 A. No, sir.

1 Q. Okay. Do you know when any of these bullet holes were
2 made in the car?

3 A. I'm sorry?

4 Q. Do you know when any of the bullet holes were made
5 in the car?

6 A. I can't date them.

7 Q. Okay. Do you know who put 'em in there?

8 A. No, sir.

9 MR. VAUX: If I may have just a second please, sir?

10 THE COURT: Yes, sir.

11 Q. Now, I won't to ask you subject to my objection.

12 THE COURT: Yes, sir.

13 Q. Let me - You went back out to the car in February -
14 Well, I guess this is February, a couple of weeks ago, a week
15 ago?

16 A. It was the eleventh yes, sir.

17 Q. Two weeks ago?

18 A. Two weeks ago.

19 Q. Okay. And you took these two pictures that are down
20 below?

21 A. Yes, sir.

22 Q. You want to come down so you can - - -

23 A. Sure.

24 Q. I don't want to mislead you with the jury.

25 (WITNESS LEAVES WITNESS STAND.)

SERGEANT DERRICK NELSON: CROSS BY MR. VAUX

1 Q. Okay. Now, Exhibit Twenty-one up here is the car as
2 you saw it. When did you take that picture?

3 A. That was on September 4th.

4 Q. September, so that was three days after the shooting?

5 A. Three days..

6 Q. Okay.. And the window is half way down in this picture?

7 A. That's correct.

8 Q. And the rear passenger side, driver's side?

9 A. Rear passenger.

10 Q. Okay. Now, and it's your testimony that this dowel
11 that's on the top is the same dowel that's on the top in
12 State's Number Twenty-three?

13 A. That one right there, yes, sir.

14 Q. Okay. Now, and you went out as I understand your
15 testimony to adjust the window here?

16 A. Well because the window was half way down it was
17 covering the actual hole where the path where the projectile
18 bullet went through.

19 Q. Okay.

20 A. So we wanted to secure the path that way we could
21 connect the two dots on the exterior and interior of the
22 door.

23 Q. Okay. Now when the bullet - assuming it was a bullet -
24 I guess it was a bullet - that was fired that shows the hole
25 and the dowel up here on the passenger side of the

SERGEANT DERRICK NELSON: CROSS BY MR. VAUX

1 passenger's door driver side on Number Twenty-one, this one.
2 up here, is the same one as this one here; is that correct?

3 A. It's the same hole.

4 Q. Same hole? Okay. Now, and as I understand it your
5 testimony up here in Twenty-one this dowel didn't go all the
6 way through to show you the trajectory; is that correct?

7 A. In this particular photo?

8 Q. Number Twenty-one,

9 A. Yes, sir.

10 Q. Okay. And so you - What did you do, put the window
11 down or put it up?

12 A. No we had to break it.

13 Q. Oh, you broke it.

14 A. We did.

15 Q. Was there a hole already in the window?

16 A. No there was not.

17 Q. How did the bullet get through?

18 A. We were operating on the window was already all the
19 way up or all the way down at the time.

20 Q. Okay. Thank you. But it had been changed from this
21 condition?

22 A. From this one to this one, sir? Is that what you -

23 Q. Well my point is this. If the window had been here
24 wouldn't the bullet have made a hole in the window?

25 A. If it was still at that with the time the projectile

1 probably went through then yes.

2 Q. Okay. So the point is, somebody played with is
3 window, put it up or put it down, whatever between the time
4 the bullet or whatever was fired through this hole and the
5 time this picture was taken?

6 A. That's a logical conclusion.

7 Q. Okay. Any other way it could have happened?

8 A. Not that I'm aware of.

9 Q. Okay. So somebody tampered with it, they moved it,
10 they changed it?

11 A. Yes, sir.

12 Q. Thank you. Nothing further.

13 MR. VAUX: Excuse me, one second, Your Honor.

14 Just one second.

15 Q. It could have been a hole from a previous gun shot
16 could it not?

17 A. It was consistent with the other defects on the vehicle
18 meaning the fresh paint, the paint was freshly sort of
19 chipped away. Also the metal primer was still in really new
20 shape underneath it so, no we believe it was consistent with
21 being shot with the other ones.

22 Q. Okay. So it's just the window that had been changed or
23 tampered with or adjusted?

24 A. Just the window was the only one.

25 Q. Okay. Thank you.

1 THE COURT: All right. Mr. Stone?

2 SOLICITOR STONE: Nothing further.

3 THE COURT: Thank you, sir. You can step down, sir,
4 thank you.

5 (WITNESS LEAVING WITNESS STAND.)

6 SOLICITOR STONE: The State calls Sergeant Wendy
7 Conant.

8 THE COURT: Come forward, Sergeant, please be sworn.

9 (WHEREUPON, WENDY CONANT,
10 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 MADAM CLERK: Please be seated and state your full
12 name.

13 A. Wendy Conant: C-o-n-a-n-t.

14 DIRECT EXAMINATION

15 SERGEANT WENDY CONANT BY SOLICITOR STONE:

16 Q. You were at - Let me go back to September of 2012.

17 You are currently working with Sea Pines; is that
18 correct?

19 A. Correct.

20 Q. And what do you do with Sea Pines?

21 A. I'm a Sergeant in their security operations department.

22 Q. In September of 2012 were you with the Beaufort County
23 Sheriff's Office?

24 A. Yes I was.

25 Q. And what job did you hold then?

1 A. I was a corporal in investigations.

2 Q. In the - As far as the investigations are concerned
3 what were your duties? What did you do?

4 A. Generally we would be assigned cases and we would
5 investigate leads and followup, interview people. We were
6 trying to solve whatever the crime was that had occurred.

7 Q. Now, on September the 1st were you involved in the
8 investigation of the death concerning Khalil Singleton?

9 A. Yes I was.

10 Q. And as one of your duties was it to handle evidence
11 and take evidence from one area to another one?

12 A. Yes it was.

13 Q. And what was your job exactly in that rhem?

14 A. In that particular instance I had evidence that was
15 turned over to me and I took it to our evidence division
16 over in Beaufort where it was put into the system and then I
17 transported it on two different occasions of it up to SLED
18 to expedite the items being processed by SLED.

19 Q. All right. Let me show you what's first been marked.
20 as State's Thirty-one and ask if that was an item that you
21 dealt with in this case?

22 A. Yes it was.

23 Q. And was it - And in what condition was it in when you
24 received it?

25 A. It would be in this exact condition. These items had

1 been placed into an evidence bag. The investigator who
2 collected the items filled the bag out with the information
3 about what was in it and then he signed his name to it and I
4 signed that I received it from him and he sealed it and it's
5 still in the condition that I accepted it in.

6 Q. All right. And then does he initial that or how does
7 that work?

8 A. Correct. He initials the seal on both sides and that
9 allows us to know if somebody tampered with it cause if you
10 peel this particular type of evidence bag our evidence tape
11 is going to break apart his signature and they won't be able
12 to put it back together and make it match up. And some of
13 the color also comes off so you can tell if it's been
14 tampered with and this has not.

15 Q. Now this item obviously goes to SLED and gets tested
16 and then gets put back in the bag. Is that how that works?

17 A. That's correct.

18 Q. All right. So when you received it was it sealed?

19 A. Yes it was.

20 Q. Did you break the seal? Did you do anything with it
21 other than transport it?

22 A. I did not touch the seal. My job at that point is
23 just to sign that I received it and take it to evidence and
24 you can see on here that I did because I sign it over to our
25 evidence department and they say that they can accept it

SERGEANT WENDY CONANT: DIRECT BY SOLICITOR STONE.

1 from me.

2 Q. Let me show you what's been marked as State's Exhibit
3 Thirty-three. Ask if you recognize that?

4 A. I do.

5 Q. And explain to me what the process - Is that the
6 same process that you just described with the previous -

7 A. This looks fairly similar. Again the investigator
8 collected this piece of evidence, he completed the bag. In
9 this case the investigator was Corporal Nelson and when he
10 turned it into evidence instead of turning it over to me
11 first he turned it directly to evidence so Corporal Padgett
12 signed that he received it into our evidence division.

13 I received this at a later point to take it up to SLED
14 to be processed once again.

15 Q. Okay. And did you change it or alter it in any way?

16 A. I did not.

17 Q. And State's Exhibit Thirty-one, did you change and
18 alter that in any way?

19 A. I did not.

20 Q. Okay. And both of these were sealed when you took
21 them from Beaufort County to SLED; is that correct?

22 A. Yes, sir.

23 Q. All right. Let me show you what's been marked as
24 State's Exhibit Thirty-four and Thirty-five. Ask if you
25 can identify those for me please?

1 A. Again these are items, both of them are projectiles
2 that Corporal Nelson collected and he turned them over to
3 our evidence division in the sealed condition that they're
4 in and I transported them to SLED.

5 Q. And did you change or alter them in any way?

6 A. I did not.

7 Q. And finally let me hand you State's Exhibit Thirty-
8 seven and Thirty-six.

9 A. Again two more items that were collected by Corporal
10 Nelson and he transferred them over to Corporal Padgett in
11 our evidence division and he completed the bag and sealed
12 them. These were later turned over to me once again to go
13 up to SLED for processing.

14 Q. Okay. And did you change or alter these in any way?

15 A. I did not.

16 Q. And I believe that this has been marked as State's
17 Exhibit Twenty-six, you also handled this as well; is that
18 correct?

19 A. Yes I did.

20 Q. All right. And you also took this to SLED?

21 A. Yes I did.

22 Q. Did you change or alter this in any way?

23 A. I did not.

24 Q. Okay.

25 SOLICITOR STONE: No further questions, Your Honor.

SERGEANT WENDY CONANT: CROSS BY MR. VAUX

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1 THE COURT: Thank you. Mr. Vaux.

2 CROSS-EXAMINATION

3 SERGEANT WENDY CONANT BY MR. VAUX:

4 Q. Is it Sergeant Conant?

5 A. Yes, sir.

6 Q. Okay. Sergeant, you said you basically had three
7 roles in this investigation. You took evidence to SLED and
8 to the evidence locker and then you interviewed witnesses?

9 A. I had interviewed one of the defendants in the case.

10 Q. Which one?

11 A. Tyrone Robinson.

12 Q. Okay. And then you also said you took GSR?

13 A. Correct.

14 Q. What is GSR?

15 A. I took GSR on one person, again, that was Tyrone
16 Robinson but that's a Gunshot Residue Evidence Collection
17 Kit.

18 Q. Okay. And how do you do that?

19 A. It comes in a little prepackaged paper envelop that
20 has a bunch of viles in it and a set of instructions, cotton
21 swabs, and a little bit of a water based liquid and you
22 follow the instructions you actually start with the left
23 hand and then you do the right hand and then you dip and
24 swab it and you use different - It would be easier to show
25 if I had a sample. But it's like a little sticky container

1 that you use and that will pick up particles on the hand and
2 then you also swab the hands and those get sealed and they
3 go in that bag and that bag gets sealed. And you sign the
4 seal so that nobody can tamper with it.

5 Q. Okay. Did you do that to Tyrone Robinson?

6 A. To Tyrone, correct.

7 Q. All right. Do you have that sample?

8 A. I don't have that here.

9 Q. Okay. Do you know if a report came back?

10 A. I believe a report came back but I couldn't say a
11 hundred percent what --

12 Q. Have you ever seen the report?

13 A. Have I seen it?

14 Q. Yes, ma'am.

15 A. Not that I recall.

16 Q. Okay. So a gun shot residue report came back on
17 Tyrone Robinson?

18 A. I know that a gunshot residue evidence kit was
19 submitted to SLED for processing. If it came back it would
20 usually be given to the lead investigator.

21 Q. Who would have been?

22 A. Sergeant Albertin.

23 Q. Okay. Now do you know if a gunshot residue test was
24 done on the defendant Aaron Young, Junior?

25 A. Yes.

1 Q. You do know?

2 A. I know that I transported them to SLED so I have
3 one for Junior.

4 Q. As well?

5 A. Yes.

6 Q. Okay..

7 A. I did not perform it but it was submitted.

8 Q. Okay. Do you know if a DNA analysis paraphernalia
9 - the stuff you gather together for DNA on Tyrone Robinson
10 was taken to Columbia?

11 A. Uh - If you could clarify? You don't mean gunshot ---

12 Q. But you --

13 A. --- residue?

14 Q. No. I'm now talking about DNA. So we know that the
15 gunshot residue test on both Robinson and Young, Junior,
16 were taken?

17 A. Correct..

18 Q. And we know that you transported those to Columbia?

19 A. Correct.

20 Q. Okay. So we've got the chain of custody if you will
21 for those two to SLED?

22 A. Uh-huh..

23 Q. Okay. Now lets talk about DNA for a minute. Do you
24 know if they took any DNA samples from Young?

25 A. I'm not aware of any.

1 Q. Okay. Do you know if they took any DNA samples from
2 Tyrone Robinson?

3 A. Again I'm not aware of any.

4 Q. Do you know if you transported any?

5 A. To the best of my knowledge I did not transport any
6 DNA. Just the three GSR kits.

7 Q. Okay. Would - Did anybody else in the sheriff's
8 department transport stuff to SLED other than you that
9 you're aware of?

10 A. To my knowledge there was one other person that brought
11 up an item.

12 Q. Who was that?

13 A. It was one of the assistants in the solicitor's
14 office.

15 Q. Okay. Now do you know if the sheriff's office can
16 run it's own DNA analysis?

17 A. Now we have a lab.

18 Q. Did you at that time?

19 A. I believe we did.

20 Q. So if a DNA analysis was taken the sheriff's
21 department could have run their own DNA analysis and they
22 would a had that result?

23 A. I can't guarantee that the lab was functioning and
24 ready for that at that time but, you know, they can now.

25 Q. Okay.

AGENT DAN DEFREESE: DIRECT BY SOLICITOR STONE

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1 MR. FAUX: I have nothing further.

2 THE COURT: Thank you.

3 MR. FAUX: No objection to her being excused.

4 SOLICITOR STONE: Nothing else, Your Honor.

5 THE COURT: Thank you. I'm sorry, you can go ahead
6 and step down. Thank you.

7 (WITNESS LEAVING WITNESS STAND.)

8 SOLICITOR STONE: The state calls Dan DeFreese.

9 THE COURT: Come forward please, sir, and be sworn.

(WHEREUPON, DAN DEFREESE, BEING

10 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11
12 MADAM CLERK: Please be seated and state your full
13 name.

14 A. My name is Frank Dan DeFreese. Its D-e Capital F-r-e-
15 e-s-e.

16 DIRECT EXAMINATION

17 AGENT DAN DEFREESE BY SOLICITOR STONE:

18 Q. Mr. DeFreese, what do you do, sir?

19 A. I work for the South Carolina Law Enforcement Division
20 in the Forensic Services Laboratory in Columbia.

21 Q. And that's commonly known I guess as SLED; is that
22 correct?

23 A. It is.

24 Q. And in the forensic department how long have you
25 worked in the forensics department at SLED?

1 A. - I'm in my forty-ninth year.

2 Q. Okay. And what do you do with the forensics
3 department?

4 A. I'm assigned to the part of the laboratory where we
5 do the analysis of firearm and tool mark evidence.

6 Q. And firearm and tool mark evidence, what is tool
7 mark evidence?

8 A. Tool mark evidence can be any kind of a mark left on
9 some object by a harder object. Typically in most tool mark
10 analyses we're looking at marks left on some sort of,
11 compromised physical security device like a lock or a gate
12 or something that's been attacked by a tool. And when the
13 object is struck by a harder tool it can leave a unique mark
14 that can be identified back to the particular tool that made
15 it. And firearm's identification is a subspeciality of tool
16 mark identification in that we can associate fired
17 ammunition components, a bullet or a cartridge case, back to
18 the gun that fired 'em. In that case the gun becomes the
19 tool and the bullet or cartridge case is the object that's
20 marked by the tool.

21 Q. Okay. Now every bullet or I don't know if every bullet,
22 bullets have bullets in casings and things like that; is
23 that correct?

24 A. They do.

25 Q. And the casing itself, let me just slip to it and go

1 straight to State's Exhibit Thirty-one. Are those casings,
2 is that what we're talking about?

3 A. Yes. State's Exhibit Thirty-one are three fired
4 cartridge cases; that's the part of the cartridge into which
5 the bullet and the powder is loaded.

6 Q. Gotcha. All right. And then I'll get you to open
7 these up in just a minute, but State's Exhibit Thirty-three
8 which is Item Number 14 for SLED, is that the actual bullet
9 that would go inside a casing like that?

10 A. It is.

11 Q. From the standpoint of tool marks and - I hear the
12 term ballistics. Is that just a bad term; is that the same
13 type of thing, or what?

14 A. It's frequently used almost interchangeably with
15 firearms identification. Ballistics actually is the study
16 of objects in flight.

17 Q. Okay.

18 A. And it can incorporate a great many more things than
19 just firearms identification. What we're looking to do
20 principally is identify a particular bullet back to the gun
21 barrel in which it was fired or a fired cartridge case back
22 to the gun in which it was fired.

23 Q. You have testified before concerning that have you
24 not?

25 A. I have.

1 Q. Identifying not only guns, bullets, and cartridge
2 cases and various things fired from particular guns; is that
3 correct?

4 A. Yes, sir.

5 Q. And I guess even from the ballistic standpoint have
6 you testified as to that as well?

7 A. Yes. So far as like bullet path and bullet flight and
8 that sort of thing I have so testified.

9 Q. All right. And we use that from the standpoint
10 I guess of trajectory. Is that the same type thing?

11 A. Yes.

12 Q. Have you been qualified in the past in these particular
13 areas?

14 A. I have.

15 Q. Roughly how many times?

16 A. I really don't know. I estimate at something
17 between six hundred and seven hundred times.

18 Q. Okay.

19 SOLICITOR STONE: At this time, Your Honor, I'd offer
20 Dan DeFreese as an expert in the field of firearm's marks
21 and ballistics.

22 THE COURT: All right.

23 MR. VAUX: Without objection.

24 THE COURT: Thank you. Without objection Mr. DeFreese
25 is so qualified. Thank you.

1 SOLICITOR STONE: Thank you.

2 Q. All right. Let me ask you if you can if you will -

3 Let me show you what's been marked as State's Exhibit
4 Twenty, Twenty-one, and Twenty-three. These three
5 photographs here that we've already put into evidence.

6 Could you tell me what those are?

7 A. These are dowels which go through penetrations in this
8 car, through bullet holes in this car.

9 Q. Now, when these dowels were placed, were you - Were you
10 present when these dowels were placed in the car?

11 And let me refer first to State's Exhibit Twenty-three.

12 A. Yes.

13 Q. And - I'll show the jury what we're talking about.

14 State's Exhibit Twenty-three. You were present when
15 these dowels - I keep using dowels - These stakes were
16 actually placed in these holes?

17 A. Right. Actually all of them are wooden dowels except
18 for one in the rear passenger door which is actually a
19 carbon fiber arrow.

20 Q. Which I believe is that one; is that correct?

21 A. It has a piece of paper towel on it to make it
22 stand out against the color of the car.

23 Q. Are these dowels placed correctly to show trajectory?

24 A. They are, or they were.

25 Q. All right. Let me show you what's been marked State's

1 Exhibit Twenty-two. I ask if you can identify that?

2 And I will show you what's also been entered into
3 evidence as State's Exhibit Twenty-one in reference to that
4 flight evidence tag there on the left door.

5 A. Yes, sir. This is a defect in the left front door of
6 the car.

7 Q. Okay.

8 A. It appears to be a glancing. It appears to have been
9 caused by a glancing bullet.

10 Q. Okay. And this is State's Exhibit Twenty-two.

11 And this is on the driver's side?

12 A. Driver's side front door.

13 Q. Okay. Now, what is - Could I get you to come down
14 cause I keep moving you back and forth.

15 (WITNESS LEAVES WITNESS STAND.)

16 Q. What is the orange here?

17 A. Rust.

18 Q. Okay. And what is any of this marking in here?

19 A. Its broken paint and it's where the metal is actually
20 pushed in from what would have been the surface of the door.

21 Q. Okay. And you say it appears to be a glancing bullet.

22 How can you tell that?

23 A. The shape of it. Essentially it appears to be a
24 bullet that was coming at a fairly shallow angle from behind
25 that struck the door and did not penetrate it but damaged

1 the door.

2 Q. Okay. And of course you cannot date that. You can't
3 tell us when that happened?

4 A. No. But I mean it's long enough to go to rust form.

5 Q. Gotcha. Okay.

6 (WITNESS RETURNS TO WITNESS STAND.)

7 Q. All right. Let me show you now what has been offered
8 as State's Exhibit Thirty-one. First of all the packaging
9 itself, is that the packaging that you received the items
10 in?

11 A. It is.

12 Q. And we have some sealing and I think there's some
13 evidence tape, signatures, and all of that. Was it sealed
14 when you received it?

15 A. It was.

16 Q. And did you open the seal?

17 A. I did.

18 Q. And did you test those shells inside of those?

19 A. Yes, sir, I did.

20 Q. Okay.

21 SOLICITOR STONE: At this time, Your Honor, we would
22 move State's Exhibit Thirty-one into evidence.

23 MR. VAUX: Without objection.

24 THE COURT: Without objection, Thirty-one.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-ONE PREMARKED

1 FOR IDENTIFICATION, IDENTIFIED AND RECEIVED INTO EVIDENCE.)

2 Q. And I am at this point going to hand you Items Number
3 Thirty-seven, State's Exhibit Thirty-seven, State's Exhibit
4 Thirty-six, State's Exhibit Thirty-five, Thirty-four and
5 Thirty-three. Ask if you could identify those items for me
6 please, sir?

7 A. Yes, sir. I can identify them as to the packaging. I
8 can't actually see the items because they're inside an
9 envelop.

10 Q. Go ahead and we can - Well first of all, when you
11 received the packages all of these packages were sealed when
12 you received them?

13 A. They were all sealed and they all bear my markings, my
14 case number and my item number.

15 Q. Okay. And then you opened them and tested them?

16 A. I did.

17 Q. Okay.

18 A. And the individual objects would also have my case
19 number, item number, and initials engraved on 'em.

20 Q. Okay.

21 SOLICITOR STONE: At this time, Your Honor, I'm gonna
22 go ahead and move in State's Exhibit Thirty-three, Thirty-
23 four, Thirty-five, Thirty-six, and Thirty-seven.

24 MR. VAUX: Without objection.

25 THE COURT: Thank you. Without objection.

1 (WHEREUPON, STATE'S EXHIBIT NUMBERS THIRTY-THREE
2 THROUGH THIRTY-SEVEN, IDENTIFIED AND MARKED, RECEIVED INTO
3 EVIDENCE.)

4 Q. And I hand you pair of scissors and ask if you'd go
5 ahead and open those up for me.

6 A. State's Exhibit Thirty-seven is a fired bullet received
7 in a container marked projectile lodged in driver's
8 side door frame.

9 Q. And what SLED Item is that?

10 A. The SLED Item Number is 13.

11 Q. Okay.

12 A. It would be Item 13.

13 Q. I'm showing you State's Exhibit Twenty-one. I believe
14 that is where actually the officer is holding the dowel at
15 that point, is that correct?

16 A. That's correct that would - it was the one that was -
17 that lodged in the door frame and it actually penetrated
18 both sides of the door and was sort of guided in an upward
19 motion by the shape of the door frame.

20 Q. Okay.

21 A. Where it finally came to rest.

22 Q. And this is also depicted I believe in State's
23 Exhibit Twenty-three, as here in this lower right ---

24 A. Yeap.

25 Q. --- part. And these were - In Twenty-three that

1 was at least the dowels that you were there present when
2 they were placed as well; is that correct?

3 A. Correct.

4 Q. And again, that is the correct - I guess the term is
5 trajectory from that dowel how it shows out; is that
6 correct?

7 A. Yes, sir, in that one it is.

8 Q. Now let me before we move to the next one in SLED
9 Item Number 13, and let me also show you what has been
10 entered into evidence as State's Exhibit Twenty-six which is
11 the gun in this case.

12 A. Yes, sir.

13 Q. All right. I'll also hand you State's Exhibit Twenty-
14 eight. Okay, first of all I'm handing you State's Exhibit
15 Twenty-eight. What is that?

16 A. State's Exhibit Twenty-eight is a .9 millimeter
17 magazine and it is the magazine that fits the pistol,
18 State's Exhibit Twenty-six.

19 Q. Okay. And what - The magazine holds the bullets, I
20 guess; is that correct?

21 A. It does.

22 Q. Does it also hold one in the chamber in addition to
23 what's in that in the magazine?

24 A. Yes.

25 Q. And do you recall or do you know how many that

1 magazine holds?

2 A. This magazine actually will hold thirty-three rounds.

3 It is the magazine for a Sten Submachine Gun which it
4 also happens to fit this pistol. But nominally it's
5 supposed to hold thirty-two rounds. I could actually get
6 thirty-three rounds into it.

7 Q. Now does that also include the one that's in the
8 chamber?

9 A. No. You could get a maximum of thirty-four rounds
10 loaded into the gun without re - Well you can fire thirty-
11 four times without reloading.

12 Q. Okay. Item Number 27, I'm sorry, 29. State's Exhibit
13 Twenty-nine, I hand you that. Can you tell me what that is?

14 A. This is - I refer to it as a fake suppressor. It's
15 actually called by the manufacturer a safety extension and
16 it's a piece of machined aluminum with a hole in it. It's
17 made to look like a suppressor but it doesn't do that. It
18 doesn't mitigate the noise at all. And it has female
19 threads on the backside that will screw on the pistol. By
20 so doing it it gives you something else you can hold on to.

21 Q. Okay. Now, you - Did you operate that gun, did you
22 fire it?

23 A. I did.

24 Q. And obviously with the clip in it. Correct?

25 A. Yes.

1 Q. Holding and pointing it. How - It is not an
2 automatic weapon, it is just - it's a pistol?

3 A. It's a semi automatic pistol.

4 Q. Okay. What do you mean by semi automatic?

5 A. By semi automatic I mean it shoots one time for each
6 pull of the trigger.

7 Q. And how quickly does it shoot?

8 A. It - As fast as you can pull the trigger which is
9 really pretty fast.

10 Q. Gotha. And again, you fired that as well?

11 A. I did.

12 Q. You tested it against - And let me go back to what
13 was - what you just referred to I think was SLEP's 13 which
14 is the bullet pulled out of the left bottom quarter paneling
15 of the car. Did you test this against the - against this
16 gun?

17 A. Well I test fired the pistol and I obtained bullets
18 and cartridge cases that I then compared them with the fired
19 bullets and fired cartridge cases under the comparison
20 microscope.

21 Q. I see. So you actually fired it and then take it and
22 compare it with what you found?

23 A. Right.

24 Q. And did you do that for the casings as well?

25 A. I did. I did it for all of the items of evidence.

1 Q. Okay. All right. Let me go ahead and ask you to look
2 through the other items as well. Do you still have the
3 scissors?

4 A. I do. State's Exhibit Thirty-five is my Item Number
5 12 and it's a fired jacketed bullet marked as being
6 recovered - It says projectile lodged in rear passenger-side
7 armrest.

8 Actually at the time I received it it was still
9 physically stuck into this piece of the armrest. I removed
10 it from the piece of the armrest.

11 Q. Now was that in the inside of the car or the outside?

12 I guess it was in the inside of the armrest?

13 A. The inside.

14 Q. It's in what's marked State's Exhibit Number Nineteen.

15 Is it shown in this photograph or is it another?

16 A. No. That's a shot of the inside of the driver's side.

17 Q. Oh, I'm sorry. Okay.

18 A. This one was from the inside of a passenger side door.

19 Q. Okay. All right. And could you tell where that came
20 from, how it got into that armrest?

21 A. There is a path through the door on the driver's side,
22 the rear door on the driver's side that ultimately tracks to
23 where this bullet was recovered.

24 Q. Okay. I show you what's been marked as State's Exhibit
25 Twenty-three. Is it on that photograph?

1 A. Yes I believe it would be the upper dowel in ---

2 Q. In the top one here on the --

3 A. --- the top dowel in the rear.

4 Q. And that trajectory actually matches with the bullet
5 that you're talking about here?

6 A. They're -- They're in a line.

7 Q. Gotcha.

8 A. You know an object line and stretching forward.

9 Q. Okay.

10 A. State's Exhibit Thirty-four is my Item 16. This one
11 is marked as projectile lodged in back seat. And it also is
12 a fired jacketed bullet.

13 Q. Is there anyway to tell where that came from or
14 what the trajectory from that was?

15 A. I don't know.

16 Q. Okay.

17 A. I did not track that particular one.

18 Q. Okay.

19 A. State's Exhibit Thirty-six is my Item 15. It's marked
20 as projectile lodged in rear driver's side headrest, and it
21 also is a fired jacketed bullet.

22 Q. Driver's side front or back seat?

23 A. It said projectile on rear driver's side headrest.

24 Q. I think we have State's Exhibit Twenty, showing the
25 trajectory into that; is that correct?

1 A. Yes, sir.

2 Q. Okay. And that's up here. Right?

3 A. That's correct. State's Exhibit Thirty-three is my
4 Item 14, it also is a fired jacketed bullet marked as
5 projectile lodged near spare tire in trunk.

6 Q. Is that the last one?

7 A. I think so.

8 Q. Let me make sure. Okay. Now the casings which are
9 the outer, I guess, shell of the bullet for lack of a better
10 term. The bullets which are the projectiles that comes out
11 that and the gun, could you form any conclusion as to those
12 items?

13 A. I did.

14 Q. And what are those conclusions?

15 A. Well, the three fired cartridge cases in State's
16 Exhibit Thirty-one, which are my Item's 4, 5, and 6, are
17 fired .9 millimeter Luger caliber cartridge cases. I found
18 matching individual markings on the breach face of these
19 three cartridge cases and on the test cartridge cases that I
20 fired in the pistol, to State's Exhibit Twenty-six. From
21 this I concluded that these three cartridge cases were fired
22 by this pistol.

23 Q. As to the bullets?

24 A. With respect to the bullets which are in State's
25 Exhibit Thirty-five, Thirty-six, Thirty-four, and Thirty-

AGENT DAN DEFREESE: DIRECT BY SOLICITOR STONE
CROSS BY MR. VAUX

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1 seven and Thirty-three, I did a similar comparison between
2 each of these bullets and test bullets that I had fired from
3 the State's Exhibit Twenty-six pistol, I found the same
4 general rifling characteristics and matching individual
5 striated marks on all of these bullets from which I
6 concluded that all the bullets were fired by this pistol.

7 Q. All right, sir.

8 SOLICITOR STONE: Excuse me just a moment.

9 THE COURT: All right.

10 (PAUSE.)

11 SOLICITOR STONE: I don't have any further questions.
12 Please answer any questions Mr. Vaux has.

13 Thank you, sir.

14 THE COURT: Mr. Vaux, cross-examine?

15 MR. VAUX: Yes, sir.

16 CROSS-EXAMINATION

17 AGENT DAN DEFREESE BY MR. VAUX:

18 Q. When did you first look at the mark on the car that
19 you said was made by a glancing bullet?

20 A. I think it was February the 9th. Just a couple of
21 weeks ago.

22 Q. Of this year?

23 A. Yes.

24 Q. Okay. So two years plus after the September the 1st,
25 2012?

1 A. Yeah. Some period of time yes, sir.

2 Q. Okay. Did you take any analysis of the door or take
3 any scrapings or anything like that?

4 A. I didn't scrape it no. Obviously whatever residue
5 there may have been at the time of the shooting is probably
6 completely oxidized by now but no I didn't.

7 Q. Okay. So you couldn't come to any conclusions about
8 that?

9 A. Only as to the shape of the defect in the door that
10 it's shape was consistent with a glancing shot from the
11 rear.

12 Q. Now, do you know that whether or not any - there was
13 any blood on any of the projectiles that you recovered? I
14 think those are Thirty-three, four, five, six and seven.

15 A. I saw no obvious residue that looked like biological
16 residue. I did see some other trace residue like pulverized
17 glass and foam cushion material and that sort of thing, but
18 I saw no obvious biological material.

19 Q. Okay. Do you know if a DNA analysis was run on the
20 gun itself?

21 A. I do not know.

22 Q. Would that have been or could that have been run by
23 SLED?

24 A. Sure.

25 Q. Okay. Do you have any way to tell whether anyone

1 was in the car when the shots were fired?

2 A. No.

3 Q. Do you have any way to tell when these shots were
4 fired?

5 A. No.

6 Q. And do you have any way to tell who fired the shots?

7 A. No.

8 MR. VAUX: Nothing further, Your Honor. I have no
9 objection that he be excused.

10 THE COURT: Thank you.

11 SOLICITOR STONE: Not at all. I think he is needed
12 in another trial in fact.

13 THE COURT: I'm sure. Thank you for coming. Good to
14 see you.

15 (WITNESS LEAVING WITNESS STAND.)

16 THE COURT: Folks, we'll take a brief afternoon recess.
17 The jury's had a brief one and we have not so we will
18 take one.

19 Ladies and gentlemen, we're gonna send you to your
20 jury room for a few moments. We'll take about fifteen
21 minutes and we'll resume the trial at that time. Please
22 don't talk about the case while you're in the jury room.

23 (JURY EXITS COURTROOM AT 04:21 P.M..)

24 THE COURT: All right, folks, fifteen minutes.

25 (COURT IN RECESS AT 04:04 P.M..)

(COURT BACK IN SESSION AT 04:21 P.M..)

THE COURT: Please be seated. Ready for the jury?

SOLICITOR STONE: The state's ready, Your Honor.

MR. VAUX: The defense is ready, Your Honor.

SOLICITOR STONE: Just for your knowledge, Your Honor, this is the statement, I expect this to be fairly lengthy and that's all we would offer today. We have a forensic pathologist coming in tomorrow morning; I had not brought her in for today but honestly you know the time on this so it should take part of that.

THE COURT: Okay.

SOLICITOR STONE: Just for your knowledge.

THE COURT: Okay. Appreciate it.

SOLICITOR STONE: Yes, sir.

THE COURT: How long does it take to get through the statement, about an hour?

SOLICITOR STONE: Probably.

SOLICITOR THORNTON: If you played it straight through with no stop just the tape itself I think it's close to right at twenty minutes.

THE COURT: Okay.

(JURY REENTERS COURTROOM AT 04:22 P.M..)

THE COURT: Thank you, ma'am.

SOLICITOR THORNTON: Thank you, Your Honor.

Laurel Albertin please.

SERGEANT LAUREL ALBERTIN: DIRECT BY SOLICITOR THORNTON

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1 THE COURT: Ms. Albertin, come forward please, ma'am,
2 and be sworn.

3 (WHEREUPON, THE WITNESS BEING
4 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 MADAM CLERK: Please be seated and state your full
6 name.

7 A... Sergeant Laurel Albertin.

8 DIRECT EXAMINATION

9 SERGEANT LAUREL ALBERTIN BY SOLICITOR THORNTON:

10 Q. Sergeant Albertin, who do you currently work for?

11 A. Beaufort County Sheriff's Office.

12 Q. And did you work for the Beaufort County Sheriff's
13 Office on September the 1st of 2012?

14 A. Yes, sir.

15 Q. Did you work at all on the case involving the death
16 of Khalil in this case?

17 A. Yes I did.

18 Q. And is that where the defendant in this case one of
19 the three defendant's in that case is Aaron Young, Junior;
20 is that correct?

21 A. Yes, sir.

22 Q. Did you have an occasion to interview Aaron Young,
23 Junior?

24 A. Yes I did.

25 Q. And explain to me where your interview of him took

1 place? Is it in a particular area or room?

2 A. Yes. It took place at the Hilton Head Substation on
3 Hilton Head Island. It was our interview room which is
4 equipped with audio and video recording.

5 Q. And at my request have you examined clips or parts of
6 that interview?

7 A. Yes I have.

8 Q. Now let me ask you a question before we play those.

9 First of all I ask you to examine for me what's been
10 marked as - for identification State's Exhibit Number
11 Thirty-eight. Do you recognize that disc?

12 A. Yes, sir, it's the interview clips from the video.

13 Q. All right. And is that or did you review those
14 clips at my request?

15 A. Yes I did.

16 Q. And did you also review an accompanying transaction?

17 I'm sorry, transaction, an accompanying transcription
18 of those clips?

19 A. Yes, sir.

20 Q. And was all of that to the best of your hearing and
21 recollection accurate?

22 A. Yes.

23 Q. And did it look like it had been altered and
24 modified in any way?

25 A. No, sir.

1 SOLICITOR STONE: Your Honor, at this time I would
2 move State's Exhibit Thirty-eight into evidence.

3 THE COURT: Subject to previous objection?

4 MR. VAUX: Yes, sir.

5 THE COURT: Thank you.

6 (WHEREUPON, STATE'S EXHIBIT THIRTY-EIGHT, IDENTIFIED
7 AND MARKED, RECEIVED INTO EVIDENCE.)

8 Q. Now the clips that - Obviously these interviews
9 sometimes take place over an extended period of time; is
10 that correct?

11 A. Yes they do.

12 Q. And all these clips that are gonna be played, is it
13 fair to say that they are all - in addition they hadn't been
14 modified - they are all chronological throughout the
15 interview; is that correct?

16 A. Yes, that's correct.

17 Q. Now when you first started talking to Aaron Young,
18 Junior, did he come right out and confess involvement in
19 this case?

20 A. No he didn't and initially he denied involvement.

21 Q. And the first clip that we're going to see that you
22 reviewed for me earlier, does that take place at some point
23 after he is initially denied any involvement?

24 A. Yes.

25 Q. And right before - right before the start of this

1 clip had he been told anything about the gun that he was
2 accused of having?

3 A. Yes, he was told that they were going to get the gun.

4 Q. And who did - Was there anybody specifically said
5 somebody was going to take law enforcement to the gun?

6 A. Sheriff Tanner.

7 Q. All right. Let me rephrase that, that's probably a
8 poorly phrased question. Was Aaron Young, Junior told who
9 was going to lead the law enforcement to the gun?

10 A. Yes. He was told his father was going to. Aaron
11 Young, Senior.

12 Q. Now is there a reference in parts of this first clip
13 to someone named T?

14 A. Yes.

15 Q. And who do you understand that to be from Aaron Young,
16 Junior?

17 A. When he says T he's referring to Throne Robinson.

18 SOLICITOR THORNTON: Your Honor, at this time I'd ask
19 to publish to the jury pursuant to the Court's instructions.

20 THE COURT: Do you want to cover the issue of Miranda?

21 SOLICITOR THORNTON: I can, Your Honor, yes, sir.

22 Q. Did you remirandize him at all?

23 A. I did not mirandize him.

24 Q. And is that because you - Were you informed of
25 whether or not he had already been mirandized?

1 A. Yes. I was informed that he had mirandized prior to
2 my interview.

3 SOLICITOR THORNTON: Your Honor, as you will recall
4 Doug Seifert indicated that.

5 THE COURT: Yeah. I remembered it but the jury hadn't
6 heard it.

7 SOLICITOR THORNTON: Yes, sir. Other than Doug
8 Seifert I believe did testify to that, Your Honor.

9 THE COURT: He did. That's right.

10 BY SOLICITOR THORNTON:

11 Q. So there is no remiranda - remirandizing by you or
12 anyone else, that was covered by Doug Seifert who testified
13 earlier; is that correct?

14 A. That's correct.

15 SOLICITOR THORNTON: Thank you, Your Honor.

16 THE COURT: Good.

17 SOLICITOR THORNTON: Your Honor, pursuant to the
18 court's instructions we're gonna play the exerts.

19 Go ahead with the first one.

20 THE COURT: Play this for me.

21 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-EIGHT
22 PUBLISHED TO THE JURY AT 04:27 P.M..)

23 SOLICITOR THORNTON: Pause it for a second.

24 Q. Let me ask you a quick question before we continue.
25 Who is that seated in the chair on camera?

- 1 A. That's Aaron Young, Junior.
- 2 Q. And do you see him in the courtroom?
- 3 A. Yes, sir.
- 4 Q. And where is he?
- 5 A. Sitting right there.
- 6 Q. Is that - You've indicated the defendant in this case?
- 7 A. Yes, sir.
- 8 Q. Is he currently in the room by himself?
- 9 A. He is.
- 10 Q. All right. And are there times where you are in the
- 11 room asking questions and other times when he is talking
- 12 basically without anybody in the room with him?
- 13 A. Yes. I periodically leave the room and he is by
- 14 himself and he continues to talk.
- 15 Q. And is he talking right now without you in the room?
- 16 A. He is alone in the room at this time.
- 17 Q. Okay. Thank you very much.
- 18 (STATE'S EXHIBIT THIRTY-EIGHT CONTINUES TO BE PUBLISHED
- 19 TO THE JURY.)
- 20 Q. All right. And it's about to say we came down the
- 21 road. When he says we came down the road or he's about to,
- 22 who is he referring to?
- 23 MR. VAUX: Your Honor.
- 24 THE COURT: I'm sorry.
- 25 MR. VAUX: Unless she has knowledge of her own

1 knowledge -

2 THE COURT: Unless there was some contact provided
3 when she was there -

4 SOLICITOR THORNTON: Yes, sir.

5 Q. Based on your entire conversation with Aaron Young,
6 Junior; do you know who's he talking about when he says "We
7 came down the road"?

8 A. He's talking about himself and Aaron Young, Senior.

9 Q. Okay. Thank you very much.

10 (STATE'S EXHIBIT NUMBER THIRTY-EIGHT CONTINUES TO BE
11 PUBLISHED.)

12 Q. Now again, based on your entire discussion with
13 Aaron Young, Junior, when he's talking about the dude - the
14 dude parked his car as a set up, do you know who he is
15 referring to since he doesn't refer to them by name in this
16 clip?

17 A. Yes. He's referring to Tyrone Robinson.

18 Q. Thank you.

19 (STATE'S EXHIBIT NUMBER THIRTY-EIGHT CONTINUES TO BE
20 PUBLISHED.)

21 Q. Now let me ask you a question. He's now not on
22 camera, is he still in the room? In other words is he still
23 there in the room?

24 A. Yes he is. He's standing near the door that goes into
25 the room.

1 Q. And -

2 A. There's one door and there's a window there.

3 Q. And is that another occasion when you are not in the
4 room with him?

5 A. Yes I'm not in the room.

6 Q. All right. And the other voice that we heard on there
7 was Investigator Alvertin. Is that you that was talking to
8 him?

9 A. Yes.

10 Q. All right.

11 (STATE'S EXHIBIT NUMBER THIRTY-EIGHT CONTINUES TO BE
12 PUBLISHED.)

13 Q. I want to stop here for just a second. I know I've
14 already ask this but let me ask you again, and is these
15 clips of this interview that we're showing are they all
16 chronological?

17 A. Yes they are.

18 Q. All right. So when he says psych you'll never get
19 the real story out of me - and I know I'm paraphrasing - but
20 that comes after he's told you some of his involvement?

21 A. Yes, that's right.

22 Q. And originally of course he said he didn't know
23 nothing and denied any involvement?

24 A. That's correct. At the very beginning of the interview
25 he denied everything.

1 (STATE'S EXHIBIT NUMBER THIRTY-EIGHT CONTINUES TO BE
2 PUBLISHED.)

3 SOLICITOR THORNTON: The court's indulgence, Your
4 Honor, please.

5 (PAUSE.)

6 SOLICITOR STONE: Thank you very much, Detective
7 Alvertin. No further questions. Please answer any
8 questions Mr. Vaux has.

9 THE COURT: Mr. Vaux, cross-examine.

10 CROSS-EXAMINATION

11 SERGEANT LAUREL ALBERTIN BY MR. VAUX:

12 Q. Is it Lieutenant?

13 A. Sergeant.

14 Q. Sergeant. You're most effective and I suggest that
15 they give you a raise too. Did you take any DNA samples?

16 Madam Clerk, you got the --

17 Did you take any DNA samples from inside Tyrone
18 Robinson's car?

19 A. No, sir.

20 Q. Did anybody in the sheriff's department take any
21 DNA samples from the inside of Tyrone Robinson's car?

22 A. I believe it was Corporal -- or Sergeant Nelson was
23 involved in processing the vehicle.

24 Q. Okay.

25 A. Staff Sergeant Chapman.

SERGEANT LAUREL ALBERTIN: CROSS BY MR. VAUX

1 Q. Were you the lead investigator on this?

2 A. Yes, sir.

3 Q. Okay. What was the result of that DNA process of
4 Tyrone Robinson's car?

5 A. I would have to go back in my notes.

6 Q. Okay. Did you do any DNA analysis on State's Exhibit
7 Number Twenty-six, the gun? And I guess the suppressor is
8 all one exhibit.

9 A. I did not do any no, sir.

10 Q. Did the sheriff's department do any DNA analysis?
11 Or have any done on the gun?

12 A. The gun was sent to SLED for analysis.

13 Q. Okay. Did you take or did the sheriff's department
14 take any DNA analysis off the gun?

15 A. I believe Sergeant Cooler swabbed the gun.

16 Q. Okay. Do you have that DNA analysis?

17 A. Do I have it?

18 Q. Yes, ma'am. Is it in your file?

19 SOLICITOR THORNTON: Objection, Your Honor. She can't
20 testify to somebody else's report.

21 MR. VAUX: Your Honor, if she has a report in her file
22 that's a part of her business records then I'm entitled to
23 it.

24 THE COURT: That's right. Yes, that's right. If it's
25 a part of the investigative files, part of the report.

1 SOLICITOR THORNTON: Which has already been turned over
2 to MR. Vaux, Your Honor.

3 THE COURT: All right.

4 MR. VAUX: Fine. I'm not saying they kept it from me.

5 I'm just trying to find out the results of the DNA
6 analysis on - that was performed on the gun.

7 THE COURT: Well, is she knows certainly she can answer
8 the question. If she doesn't then she can't.

9 A. I can go back through my notes if you'd like me to and
10 find the DNA analysis.

11 Q. Did you do or have performed under as a part of this
12 investigation a gunshot residue test on Tyrone Robinson?

13 A. I did not perform the gunshot residue test.

14 Q. Did the sheriff's department have a gunshot residue
15 test performed on Tyrone Robinson?

16 A. Investigator Conant did.

17 Q. Okay. And what was the result of that test?

18 A. There was gunshot residue found on his hands.

19 Q. Okay. Did you have a gunshot or did the sheriff's
20 department - see if I phrase this right - during the course

21 of this investigation did the sheriff's department have a
22 gunshot residue test done on Aaron Young, Junior?

23 A. Yes they did.

24 Q. And what was the result of that analysis?

25 A. I'd have to go back through my report but I don't

1 believe there was gunshot residue found on his hands.

2 Q. Okay. If you know, what does gunshot residue analysis
3 tell you?

4 A. It would tell me that if he had recently used - fired
5 a weapon, a gun.

6 Q. Okay. Now, did you interview an Ebony Campbell?

7 A. I did not interview Ebony.

8 Q. Did you go out to Wild Horse Road with Ebony Campbell?

9 A. I went out to Wild Horse Road and removed a projectile
10 from the residence there.

11 Q. And was Ebony Campbell there?

12 A. She was there.

13 Q. And did - Was her picture taken showing you or
14 somebody with you where the bullet hole was in the house
15 next door to Mr. Young?

16 A. Yes.

17 Q. Okay. And did Ebony Campbell cooperate with you and
18 tell you all this stuff?

19 A. Yes she did.

20 Q. Okay. And did she give you a full statement?

21 A. She did not give me a statement.

22 Q. Did she give the sheriff's department a statement?

23 A. Yes, sir.

24 Q. Okay. And I apologize. When I say you, if you're
25 the lead investigator - That's my fault. I'll correct that.

1 So she gave the sheriff's department a full statement?

2 A. Yes she did.

3 Q. Okay. Is that a part of your record?

4 A. Yes.

5 Q. And is that record - Was that record kept in the
6 normal course of your investigation?

7 A. Yes.

8 Q. Now, you had this interview with Aaron Young, Junior
9 transcribed did you not? Or somebody did within the
10 sheriff's department, solicitor's office.

11 A. It was transcribed by the solicitor's office.

12 Q. And have you seen that?

13 A. Yes, sir.

14 Q. Okay. Were you in and out of the room when Captain
15 Bromage here was there?

16 A. Yes.

17 MR. VAUX: Your Honor, may I have just a minute. I may
18 - Let me see if I can do without having to take a break.

19 THE COURT: Okay.

20 Q. Do you recall on the first of September, 2012 where
21 Captain Bromage -- What Captain Bromage says in Aaron Young,
22 Junior's statement about there being three different
23 projectiles in the car from three different guns?

24 A. I'm not sure.

25 Q. Okay. It's highlighted. Would you read for me

1 please what Captain Bromage said beginning on Line 17,
2 through the end of Line 22?

3 A "If you didn't hit the kid you need to tell us where
4 your gun is so we can prove you didn't do it. I don't care
5 about Tyrone's car getting shot up. Who the hell does?
6 Straight up man that was bound to hell man and there's
7 probably been - there's probably three different projectiles
8 in that car from three different guns."

9 Q. That's Captain Bromage speaking?

10 A. That's what ---

11 Q. It says --

12 A. --- it says in the transcription yes, sir.

13 Q. Is that what it says?

14 A. Yes.

15 SOLICITOR THORNTON: Your Honor, may we approach?

16 THE COURT: Okay.

17 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
18 OF THE JURY AT 04:56 P.M.)

19 THE COURT: Folks, I apologize. From time to time
20 we go and whisper rudely behind your back and that's because
21 we're dealing with matters of law outside your presence.
22 But I always tell juror's if you're real curious about what
23 we're whispering about behind your back, in your role as
24 juror's in this case when it's over if you want to know and
25 you're that curious you come to me and ask me and if I can

1 remember what we were talking about I'll be glad to tell
2 you. Thank you.

3 SOLICITOR THORNTON: Thank you, Your Honor.

4 BY MR. VAUX:

5 Q. Through your investigation did you discover whether
6 or not Tyrone Robinson came to Mr. Young's house on
7 September the 1st and fired one or more shots?

8 A. Yes he did initially go to his house.

9 Q. During the investigation did you discover any blood
10 in Tyrone Robinson's car?

11 A. No, sir.

12 Q. Do you have any evidence that when Tyrone - when
13 Aaron Young, Junior went down to Allen Road that he saw
14 Tyrone Robinson?

15 A. To Allen Road or between ---

16 Q. At Allen Road.

17 A. --- White Horse Road and Allen Road?

18 Q. The Allen Road where the child was killed?

19 A. Not on Allen Road.

20 Q. Thank you. Do you have any evidence that indicates
21 that Aaron Young, Junior pointed the gun at - a gun at
22 Tyrone Robinson?

23 A. Not - He stated that he tried to use the weapon
24 on Tyrone.

25 Q. I ask you if he pointed a gun at Tyrone Robinson. If

1 you have any evidence to that? Did he tell you that?

2 A. If he pointed at Tyrone Robinson?

3 Q. Yes, ma'am.

4 A. No, sir, not point it.

5 Q. Now, isn't it a fact, Officer, that he indicated to
6 you he did not point the gun and gave you a reason why he
7 didn't point the gun?

8 A. I don't recall him giving a reason why he didn't
9 point the gun at him.

10 Q. Isn't it a fact he told you that he didn't even
11 bother to point the gun because it jammed and it wouldn't
12 shoot?

13 A. I do remember him saying the gun jammed and it wouldn't
14 shoot.

15 Q. Okay. Let me show you a sheet of paper that came
16 out of the transcript of what the solicitor played.

17 A. Okay.

18 Q. And ask if that's a - Without saying what it is, if
19 that in fact came out of the script.

20 A. Yes.

21 SOLICITOR THORNTON: May I see it?

22 MR. VAUX: Sure. That's a copy of one of the sheets
23 you gave me.

24 SOLICITOR THORNTON: Okay.

25 MR. VAUX: Okay.

1 Q. Now, would you read that to the jury please? And
2 before you do, I believe - Is this Aaron Young, Junior,
3 speaking?

4 A. Yes, sir.

5 Q. Okay. And just read it for me please.

6 A. It says, he states "That." And I said "Did you point
7 it at him?" And he interrupts and says, "What?" "Did he
8 see you point a gun at him or something?" And he says "I
9 didn't even point the gun at him because the gun wouldn't go
10 off."

11 Q. Does that refresh your memory?

12 A. Yes, sir. Thank you.

13 Q. Okay. You're welcome. Officer do you have any
14 evidence that Aaron Young, Junior shot a gun at Tyrone
15 Robinson?

16 A. No, sir.

17 Q. Not even when Tyrone Robinson shot at him in their
18 own yard?

19 A. That's correct.

20 MR. VAUX: Your Honor, may I have just a minute,
21 please?

22 THE COURT: Yes, sir.

23 (PAUSE AT 05:06 P.M.)

24 Q. Did you have an occasion to inspect Tyrone Robinson's
25 car?

SERGEANT LAUREL ALBERTIN: CROSS BY MR. VAUX

1 A. I photographed his vehicle. I didn't inspect his
2 vehicle.

3 Q. But you photographed it?

4 A. I photographed it, yes.

5 Q. In this huge number of photographs the solicitor has
6 got here, somewhere's - Let me show you - I want you to look
7 at the back rear window on Twenty-one. What does that show
8 you? Is that halfway down?

9 A. Yes, sir.

10 Q. Okay. Can you see through the window to the
11 dashboard?

12 A. Yes you can.

13 MR. VAUX: And, Solicitor, I apologize, I've take - I
14 got these out of order I'm sure.

15 Q. And Twenty-three, is that sort of the little fixed
16 window in the left passenger side?

17 A. I'm sorry, is it what?

18 Q. Is it the fixed window in the passenger side?

19 A. Yes, sir.

20 Q. Okay. And then you can see through that to the back
21 headrest?

22 A. Yes.

23 Q. And Twenty-seven, I'm sorry, plain Seven. That's the
24 windshield of the car?

25 A. Yes it is.

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SERGEANT LAUREL ALBERTIN: CROSS BY MR. VAUX
REDIRECT BY SOLICITOR THORNTON

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Q. And it's clear?

A. Yes, sir.

Q. Its not tinted in any way?

A. Yes.

Q. And does it also fairly well show that the light is coming through all the various windows of the car into the car?

A. Yes, sir.

Q. Okay. The car interior of that is bright and clear?

A. Yes, sir.

Q. So then it would be safe to say, Officer, that the car didn't have tinted windows?

A. That's correct.

MR. VAUX: Nothing further.

THE COURT: Thank you. Redirect?

SOLICITOR THORNTON: Please, Your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

SERGEANT LAUREL ALBERTIN BY SOLICITOR STONE:

Q. Lieutenant Albertin, let me ask you a couple of questions. You were ask earlier about gunshot residue results. What happens if you wash your hands before a gunshot residue test?

MR. VAUX: Objection, Your Honor.

SOLICITOR THORNTON: He ask her about the results of

1 the test that she didn't do, Judge.

2 MR. VAUX: Your Honor, if I may, I ask her what the
3 report said.

4 THE COURT: And you also ask her what were the - what
5 would gunshot residue on somebody's hands indicate -

6 SOLICITOR THORNTON: Yes, sir.

7 THE COURT: --- and she said that they had fired a gun.

8 MR. VAUX: Yes, sir.

9 THE COURT: So she's capable of asking what the
10 converse of that might be.

11 MR. VAUX: Okay.

12 BY SOLICITOR STONE:

13 Q. Can washing your hands have an effect on gunshot
14 residue test?

15 A. Yes.

16 Q. What about having a weapon covered in oil? Might that
17 affect the gunshot residue test?

18 A. Yes it would.

19 Q. Was it my imagination or did Aaron Young, Junior just
20 admit to shooting a firearm?

21 A. Yes he did.

22 Q. Okay. Now earlier Mr. Vaux ask you whether you had
23 any evidence - Now let's make sure we're clear, we're not
24 just talking about what Aaron Young, Junior said on the tape
25 cause he ask any evidence. Do you remember we've already

1 had Tyrone Robinson and you were present at that or you were
2 working for the sheriff's department were you not when
3 Tyrone Robinson was prosecuted also for this case?

4 A. Yes I was.

5 Q. Now did Tyrone Robinson provide information that
6 Aaron Young, Junior was shooting at him?

7 MR. VAUX: Your Honor, I object.

8 A. Yes he did.

9 THE COURT: I'll -

10 MR. VAUX: I ask that it be struck -

11 THE COURT: That frankly I think goes beyond, surely
12 the door could have been open in that regard. Whether it
13 could come in through this or whether you're gonna have to
14 get it in through some other. ---

15 SOLICITOR STONE: That's fine, Your Honor.

16 THE COURT: --- avenue. But I instruct the jury to
17 disregard Sergeant Albertin's statement about what Tyrone
18 Robinson may have said in another proceeding. The door may
19 be open, but if it had a place to come in, but now not
20 through -

21 SOLICITOR STONE: Yes, sir. Understood, Your Honor.

22 Q. Were you present in the courtroom when the other people
23 testified today?

24 A. No, sir.

25 Q. All right. Are you aware of Charlese Mitchell who

1 testified earlier, and I don't mean what she said, but are
2 you aware of her as a witness in this case?

3 A. Yes.

4 Q. All right. And also Tyrone Delaney?

5 A. Yes.

6 Q. And so if they testified in here as to information
7 that they received from Tyrone Robinson that would be
8 evidence in this case would it not?

9 A. Yes it would.

10 Q. And you weren't present for that testimony were you?

11 A. I was not.

12 Q. So anything that they indicated that was heard from
13 this witness stand that said what Tyrone Robinson had
14 indicated about Aaron Young, Junior or about the folks in
15 the grey F150 that would be evidence wouldn't it?

16 A. Yes it would.

17 Q. Is it fair to say that while Mr. Young, Junior denied
18 in several places pointing a gun and denied other things
19 that a lot of his story and statements throughout the course
20 of this interview was inconsistent?

21 MR. VAUX: Your Honor, I object.

22 THE COURT: I'll sustain that objection as to the
23 characterization of it. The jury has heard what they've
24 heard; they'll have to decide the inconsistencies of it.

25 SOLICITOR THORNTON: Yes, sir.

1 THE COURT: Thank you.

2 SOLICITOR THORNTON: The court's indulgence, Your
3 Honor, one moment.

4 THE COURT: Yes, sir.

5 (PAUSE.)

6 SOLICITOR STONE: And, Your Honor, I know the jury has
7 already heard this.

8 Q. Did he say on the tape - I know Mr. Vaux pointed it out
9 and had you read something from it - Did he also say, he
10 being Aaron Young, Junior, "You'll never get the full story
11 out of me"?

12 A. Yes he did.

13 SOLICITOR THORNTON: I don't have anything further,
14 Your Honor. Thank you very much.

15 THE COURT: Thank you. Mr. Vaux, any followup on those
16 narrow points?

17 MR. VAUX: No, sir.

18 THE COURT: Thank you. Sergeant Albertin, you can step
19 down. Thank you, ma'am.

20 (WITNESS LEAVING WITNESS STAND.)

21 THE COURT: Folks, this is obviously a good time to
22 stop for the day and so we will. We're gonna start back
23 again in the morning at nine thirty, so if you'll be back in
24 the jury room tomorrow morning at nine thirty. I remind you
25 as always not to talk about this case among yourselves or

1 with anybody else or try to expose yourself to any
2 information about the case from any source at all.

3 Thank you so much, I'll see you at nine thirty. Have a
4 safe trip home.

5 (JURY EXITS COURTROOM AT 05:14 P.M.)

6 THE COURT: All right, Mr. Stone, Mr. Thornton,
7 gentlemen, anything further from the state before we break
8 for the day?

9 SOLICITOR STONE: I would like to put the matter that
10 we approached on on the record, Judge, just so it's clear

11 ---
12 THE COURT: Yes, sir.

13 SOLICITOR THORNTON: --- for appellate purposes.

14 THE COURT: That's right. Thank you. I forgot.

15 SOLICITOR THORNTON: The case that I referred to, Your
16 Honor, and I'll make sure Mr. Vaux gets an additional copy
17 is the State versus Jaquawn Brewer. It is actually out of
18 Beaufort County, that's why I'm familiar with it.

19 THE COURT: Right.

20 SOLICITOR THORNTON: And in that case one of the things
21 that the court feels - I think feels very strongly about
22 would be an understatement, is that the state should not
23 attempt to burden shift on the defendant. And this Brewer
24 deals with a confession and in the confession the - or
25 statement against interest - the officers are heard saying

1 you know you need to tell us this so you can prove your
2 innocence -

3 THE COURT: Right.

4 SOLICITOR THORNTON: --- which is the exact quote
5 elicited by Mr. Vaux. I just wanted it clear for the record
6 purposes that neither the state nor any of their witnesses
7 volunteered any information regarding his statement in that
8 regard.

9 THE COURT: Right.

10 SOLICITOR THORNTON: Unfortunately Mr. Vaux brought it
11 out and had Albertin read it and I believe the quote was
12 from Captain Bromage "give us the gun" and so you can prove
13 your innocent. And we left all that out specifically
14 because of Brewer.

15 THE COURT: Right.

16 SOLICITOR THORNTON: So I just wanted it clear for the
17 record, Judge, that that was not elicited by the state nor
18 the state's witness and, you know, just so we're protected
19 for later purposes, Your Honor.

20 THE COURT: I think the record is clear. And of course
21 I'm certain that Mr. Vaux has some strategic reasons for
22 that to come in but burden shifting of course would not been
23 one of those and certainly that does not --- the state in
24 anything.

25 SOLICITOR THORNTON: Thank you, Your Honor.

1 THE COURT: Thank you. All right, Mr. Vaux; anything
2 from the defense before we break for the day?

3 MR. VAUX: No, sir.

4 THE COURT: Thank you.

5 MR. VAUX: Thank you.

6 THE COURT: Nine thirty tomorrow, folks. Thank you.

7 (COURT IN RECESS AT 05:20 P.M..)

8 (COURT BACK IN SESSION WEDNESDAY, FEBRUARY 25, 2015

9 AT 09:42 A.M..)

10 THE COURT: Thank you, folks, please be seated.

11 Good morning.

12 SOLICITOR STONE: Good morning, Your Honor.

13 THE COURT: All right, folks, are both sides ready for
14 the jury, Mr. Solicitor?

15 SOLICITOR STONE: Yes, sir, the state's ready.

16 THE COURT: Thank you. Mr. Vaux?

17 MR. VAUX: Yes, sir.

18 THE COURT: Thank you. If you can bring us a jury.

19 MR. VAUX: Would you poll the jury as to publicity and
20 talking about it?

21 THE COURT: I'll be glad to do that.

22 MR. VAUX: There was some more evidence - not evidence.
23 - some more comment in the newspaper this morning about a
24 drug deal and stuff like that.

25 THE COURT: Okay. I hadn't seen that.

1 MR. VAUX: Regrettably. No testimony to that effect.

2 THE COURT: Well it's a part of the news.. Just as long
3 as it's not a part of the trial or at least that the jury's
4 actually.

5 (JURY REENTERS COURTROOM AT 09:45 A.M.)

6 THE COURT: Thank you, ma'am.

7 Good morning, folks. I wanted to inquire just to make
8 sure that none of you were inadvertently exposed to any
9 publicity about the case over night. Of course you've been
10 under instructions not to do that and I know that you
11 intentionally would not have done that, but there was some
12 news reports that contained some background information
13 that's not relevant to this particular case about the
14 parties themselves. As I said that does not have anything
15 to do with the charges here. And did any of you happen to
16 see that? I know it would have been inadvertent or any
17 exposure to anything like that?

18 (NO RESPONSE FROM THE JURY.)

19 THE COURT: All right. Thank you, folks.

20 We are now ready to proceed with the trial. The state
21 is contending to offer evidence and testimony in this case.

22 Mr. Stone.

23 SOLICITOR STONE: Doctor Lee Marie Tormos,

24 THE COURT: Come forward please, Doctor, and be sworn.

25 (WHEREUPON, LEE MARIE TORMOS, BEING

1 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

2 MADAM CLERK: You can be seated and please state your
3 full name. Make sure you talk loud in the microphone,
4 please.

5 A. My full name is Doctor Lee Marie Tormos, T-o-r-m-o-s.

6 DIRECT EXAMINATION

7 DOCTOR LEE MARIE TORMOS BY SOLICITOR STONE:

8 Q. Doctor Tormos, what do you do, ma'am?

9 A. I am a forensic pathologist at the Medical University
10 of South Carolina.

11 Q. And what exactly is - Let me get you to pull that
12 microphone a little bit closer to you. What is a forensic
13 pathologist?

14 A. A forensic pathologist is a doctor that performs
15 examinations on a deceased body to determine the cause and
16 manner of death.

17 Q. What is the - What is the difference I guess between
18 cause and manner? What are we talking about when we say
19 cause of death versus manner of death?

20 A. The cause of death is the actual mechanism that brings
21 about the final derangement that when the person stops
22 living. The manner of death actually takes into
23 consideration the circumstances of that bring this about.

24 Q. So the first, the cause, is actually the medical aspect
25 of what caused the body to shut down. The manner is how

1 that happened, how that came about; is that right?

2 A. Yes.

3 Q. All right. You have been doing this for how long?

4 A. I have been doing this for six and a half years.

5 Q. What kind of training and education have you received
6 in order for you to be a forensic pathologist?

7 A. Okay. After I graduated high school I completed a four
8 year college degree in general sciences. Then I went on to
9 medical school where I completed an M.D. degree. Then I did
10 a speciality training in pathology, anatomic and clinical
11 pathology. After that I actually worked for a few years
12 before doing my sub-speciality training here in South
13 Carolina at the Medical University of South Carolina and I
14 did my sub-speciality training in forensic pathology.

15 Q. Now have you testified in courts before as an expert
16 in forensic pathology?

17 A. Yes I have.

18 Q. And you were qualified as such at that time?

19 A. Yes I have.

20 SOLICITOR STONE: All right, at this time, Your
21 Honor, we would offer Doctor Tormos as an expert in the
22 field of forensic pathology.

23 THE COURT: Thank you.

24 MR. VAUX: Without objection.

25 THE COURT: Without objection.

DOCTOR LEE MARIE TORMOS: DIRECT BY SOLICITOR STONE

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1 BY SOLICITOR STONE:

2 Q. Doctor Tormos, did you perform an autopsy on Khalil
3 Singleton?

4 A. Yes I did.

5 Q. Do you recall when that was?

6 A. I did the autopsy on September 2nd at nine o'clock in
7 the morning.

8 Q. And that was at the Medical University of South
9 Carolina?

10 A. Yes.

11 THE COURT: That would have been in 2012, Doctor?

12 A. Yes. I'm sorry, 2012. Thank you.

13 THE COURT: Thank you.

14 BY SOLICITOR STONE:

15 Q. And as a result of your autopsy did you come to a
16 conclusion as to cause and manner of death?

17 A. Yes I did.

18 Q. First let me show you what's been marked as State's
19 Exhibit Twenty-five and State's Exhibit Twenty-four.

20 And I'll just ask you at this point if you could tell
21 me do you recognize these and are these fair and accurate
22 depictions?

23 A. Yes. These are x-rays that were taken during the
24 course of the autopsy.

25 Q. Okay. And let me show you what's been marked - That

DOCTOR LEE MARIE TORMOS: DIRECT BY SOLICITOR STONE

1 was State's Exhibit - I believe - Twenty-five. Let me show
2 you what's marked State's Exhibit Twenty-four. Could you
3 tell us what that is?

4 A. This is another x-ray and this one depicts a bullet.
5 It was also taken during the course of the autopsy.

6 Q. And these are parts of your actual autopsy, is that
7 correct?

8 A. Yes.

9 SOLICITOR STONE: At this time, Your Honor, we offer
10 State's Exhibit Twenty-four and Twenty-five into evidence.

11 MR. VAUX: Without objection.

12 THE COURT: Thank you.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-FOUR AND
14 TWENTY-FIVE PREMARKED FOR IDENTIFICATION, IDENTIFIED AND
15 RECEIVED INTO EVIDENCE.)

16 Q. All right, Doctor Tormos, what I'd like you to do is
17 if you could come down off the stand and show the jury this
18 and explain your findings as to Khalil Singleton. I'm gonna
19 ask you to keep your voice up. And I believe the judge
20 wants you on this side so if you'll come down here.

21 (WITNESS LEAVES WITNESS STAND.)

22 Q. And I will hand you both of these exhibits but let me
23 to get you to stand here. I hand you both of the exhibits.

24 First, let me hand you State's Exhibit Twenty-five and
25 ask you, show the jury what that is and explain it please.

1 A. Okay. This is a chest x-ray of the decedent. Now
2 you have to visualize that this is a child; this is not an
3 adult. This is an eight year old boy, he is a young African
4 American male, he's relatively thin. He's just over four
5 feet tall and fifty-five pounds so this is actually a pretty
6 good rendition of the actual size of the decedent. Okay.

7 In this x-ray you can see that this is the neck and
8 this is the chin up here. The head is tilted to the left.
9 This is the rotary column. This grey area is the cardiac
10 silhouette, the long part in this dark area over here. This
11 is the diaphragm this is the liver and this is the abdomen.

12 Okay. When I examined the body externally I found that
13 there was an entrance gunshot wound to the left side of the
14 chest, so it would be right here, right in the middle of the
15 torso and there is no exit wound, therefore, we proceed to
16 do x-rays to locate the bullet. Okay. And when we do the
17 x-ray of the chest we find that the bullet is not in the
18 chest.

19 Q. Let me hand you then State's Exhibit Twenty-four.

20 A. The bullet is actually in the right arm. So this is
21 the chest that is the midline and you can see the vertebrae
22 and this is actually the bullet ends up traveling through
23 the arm pit and to the proximal right arm. And this is the
24 bullet that is recovered during the course of the autopsy.

25 Q. Now going back to State's Exhibit Twenty-five and.

1 with Twenty-four can you tell us basically the path of the
2 bullet what happened?

3 A. The path of the bullet, the bullet enters through this
4 dark area right here which is the seventh rib.

5 Q. Which is somewhere right in here?

6 A. Which is somewhere right in the middle of the chest
7 on the lateral side. It's actually six and a half inches
8 below the shoulder for this particular child. And then it
9 goes in a slightly upward trajectory. It actually goes in
10 between the upper lobe and the lower lobe of the left lungs
11 so it actually lacerates both before hitting the heart where
12 it is attached to the veins that drain all the blood from
13 the head - the sphere mentum column. It goes through the
14 hilum of the lungs.

15 The hilum of the lungs is where all the blood vessels
16 and the breathing tubes, the bronchi, are holding the lung
17 up so it actually lacerates both the vessels and the bronchi
18 of the lungs.

19 It actually goes through the left side and the right
20 side, proceeds through the upper lobe of the right lung,
21 exits the chest cavity of the third and the costal space so
22 right around here it travels through the soft tissues of the
23 arm pit and it's recovered under the sphere as - of the
24 right arm. Okay.

25 And the process, the disruption of the vessels, causes

1 accumulation of blood in the right and left lower cavity. It
2 causes accumulation of blood in the heart sac at -

3 Q. Where is the blood? I'm sorry to interrupt you. Where
4 is the blood coming from? You're saying its accumulating,
5 where is it coming from?

6 A. It is coming from the perforation of the sphere of the
7 head column of the heart. It's also lacerated the vessels
8 that feed the lungs and so the blood is going outside the
9 vessels into the bronchi and it's also going outside the
10 lungs and into the chest cavity. So it is exiting the
11 circulation system both in the heart and at the attachment
12 on the lungs.

13 Q. And as the blood is accumulating what's happening to
14 the body at this point?

15 A. The heart pumping it still beat, the myocardium, the
16 heart muscle itself was not perforated, just the vessels
17 that attach to it. Therefore the heart pumping still beat
18 and the blood and the circulation system is slowly draining
19 out of the system into the chest.

20 Q. So this is not immediate death I guess there is a time
21 to it?

22 A. There is some time to it. Yes it is not an immediate
23 death.

24 Q. Okay. All right. And then the bullet I would assume
25 begins here.

1 A. Uh-huh.

2 Q. In the arm?

3 A. And actually you can see right here, one, two, three,
4 I don't know if you can see those two tiny white specks,
5 those actually belong to the bullet and that's actually
6 where the exit is on the third intercostal space. You can
7 see that the arm pit is right here and it travels in this
8 direction before stopping at this right bone - the humerus -
9 it does not break it. But the bullet is recovered right
10 there in the right arm.

11 Q. All right. Go ahead and I ask you to take the stand.

12 (WITNESS RETURNS TO THE WITNESS STAND.)

13 Q. So, Doctor Tormos, as to your findings on Khalil
14 Singleton what was the cause and manner of death?

15 A. The cause of death was determined to be a gunshot
16 wound to the left lateral chest. And the manner of death is
17 listing homicide.

18 SOLICITOR STONE: Thank you, Doctor Tormos. Please
19 answer any questions Mr. Vaux has.

20 THE COURT: Mr. Vaux.

21 CROSS-EXAMINATION

22 DOCTOR LEE MARIE TORMOS BY MR. VAUX:

23 Q. Doctor, did you remove the bullet, the projectile?

24 A. Yes I did.

25 Q. And what was it?

DOCTOR LEE MARIE TORMOS: CROSS BY MR. VAUX.

1 A. It is a - It is a relatively intact non-jacketed
2 grey metal projectile that measured five sixteenth inch at
3 the base and eleven sixteenth inch in length.

4 Q. Was it .38 caliber?

5 A. I am not a ballistic's expert, I would not know.

6 MR. VAUX: Madame Court Reporter, did they introduce
7 the bullet into evidence?

8 MADAM COURT REPORTER: Thirty. Yes, sir, bullet
9 analyzed by SLED previously marked, is that what you would
10 be interested in?

11 MR. VAUX: No. I don't think it would be - That was
12 the first day.

13 Q. What did you do with the projectile?

14 A. I take a picture and I put it in an envelop and I sent
15 it over to law enforcement.

16 Q. Do you remember - Do your records show who you sent it
17 over to?

18 A. Yes. It was submitted to Investigator Jeffrey Moran of
19 the Beaufort County Sheriff's Office on September 2nd, 2012,
20 at the conclusion of the autopsy.

21 Q. Okay. So the Beaufort County Sheriff's Department
22 has custody or possession of the bullet?

23 A. Yes, sir.

24 Q. Okay.

25 MR. VAUX: Nothing further.

1 THE COURT: Thank you. Redirect?

2 SOLICITOR STONE: Nothing. Thank you, Doctor.

3 THE COURT: Doctor, you can step down. Thank you,
4 ma'am, for coming.

5 (WITNESS LEAVING WITNESS STAND.)

6 THE COURT: Mr. Stone.

7 SOLICITOR STONE: With that, Your Honor, the state
8 rest.

9 THE COURT: Thank you. Ladies and gentlemen, the state
10 has rested its case, that means that you have heard all of
11 the evidence and testimony that you will hear from the state
12 in the presentation of it's case in chief. Necessarily at
13 this juncture of every trial of this nature I have to take
14 up some matters of law outside of your presence and I'm
15 gonna do that now. I'm going to send you to your jury room;
16 This may be longer than just a usual break because sometimes
17 these things take a little longer than a normal break would
18 take. But we'll get you out of here as soon as we can to
19 continue the mornings work. Please do not discuss this case
20 among yourselves. Thank you.

21 (JURY EXITS COURTROOM AT 10:01 A.M.)

22 THE BAILIFF: The jury is clear, Your Honor.

23 THE COURT: Thank you. Mr. Vaux.

24 MR. VAUX: Your Honor, we make a motion at this point
25 for a directed verdict and there are a couple of parts to

1 it.

2 THE COURT: All right.

3 MR. VAUX: Your Honor, as a general premise of law I
4 think it's fair to say that the trial judge should grant a
5 directed verdict where the evidence clearly raises a
6 suspicion that the accused is guilty. In this case the lead
7 investigator to the case indicated there was no evidence the
8 defendant - and this is to both charges, Your Honor.

9 THE COURT: All right.

10 MR. VAUX: No evidence the defendant pointed a gun at
11 Tyrone. There is no evidence that the defendant fired a gun
12 at Tyrone and I assume that Tyrone is the person whose been
13 attempted to kill.

14 THE COURT: Right.

15 MR. VAUX: There is no evidence that he beat him with
16 a stick or otherwise try to kill him. Mr. Delaney testified
17 and said that the M F'ers in the grey truck shot at him,
18 Tyrone, so he shot back. The M F'ers were never identified.
19 Mr. Delaney specifically said he didn't even recognize
20 Junior in the courtroom.

21 Now the other evidence - other testimony shows that the
22 Young's went after Tyrone and took a gun. But it is not
23 illegal to do that unless you actually act on it and point
24 the gun and try and fire the gun to shoot Tyrone.

25 The windows were not tinted in Tyrone's car and they

1 were down so it's obvious the car was unoccupied. There was
2 no blood found in the car.

3 Now, in a 2014 case of *State versus Hepburn* that they
4 are relying on in *State versus Bostic and Hepburn* is 753
5 S.E. 2d 402, applying *Bostic* at 708 S.E. 2d 774 a 2011 case
6 and *State versus Odoms* 720 S.E. 2d 48. The appellate
7 contended that the trial court erred in finding that the
8 state presented substantial circumstantial evidence
9 sufficient to deny the appellate's motion for a directed
10 verdict.

11 In *Hepburn* as in *Bostic* a case where the state
12 presented entirely circumstantial evidence that the
13 defendant committed murder. The trial court denied the
14 defendant's directed verdict motion based on the state's
15 presentation of the following evidence. One: The victim's
16 personal items were found in the burn pile in a neighboring
17 home owned by the defendant's mother.

18 Two: A heavy petroleum product was used as an
19 accelerate in the burn pile and the defendant's mother
20 testified she was afraid to use such accelerates and did not
21 use them. Three: A pattern of gasoline was found on the
22 defendant's shoes and was used as an accelerate to start a
23 fire in the victim's home after assailant struck her.

24 Four: Blood was found on the defendant's jeans and the
25 DNA expert testified that while she could not conclusively

1 state the blood was found on the defendant's jeans was the
2 victim's she could exclude ninety-nine percent of the
3 population of the world. On this evidence the court
4 reversed the trial court finding that the state did not
5 present it's substantial circumstantial evidence sufficient
6 to submit the case to a jury.

7 Likewise in *Odums* the defendant was convicted of first
8 degree burglary, grand larceny, criminal conspiracy,
9 malicious injury to electrical utilities system, and the
10 court reversed the trial court after it denied the
11 defendant's directed verdict motion. In that case the state
12 presented the following circumstantial evidence.

13 One: Less than ninety minutes after the burglary,
14 police found the petitioner, the defendant, in the get-away-
15 car with the burglar's and the stolen goods.

16 Two: The petitioner fled from law enforcement.

17 And Three: Petitioner ask an uninformed person to lie
18 for him. The court said to the contrary other evidence
19 presented tend to aviate the petitioner's guilt in that the
20 sole eye witness saw only two people at the crime scene. A
21 forensic investigator collected twelve sets of fingerprints
22 from the crime scene none of which matched the petitioners
23 fingerprints. And a co-defendant testified during the
24 state's case in chief that the petitioner did not
25 participate in the crime but was present in the car after he

1 offered him a ride. The court reversed finding that was not
2 substantial circumstantial evidence on which to base a
3 conviction and therefore the trial court errored in
4 directing a verdict.

5 In the case of *State versus Lewis* from Court of Appeals
6 in 2013 the rule set forth that if there's any direct
7 evidence or substantial circumstantial evidence reasonably
8 can prove the guilt then it must go to the jury. But the
9 trial judge should grant a directed verdict when the
10 evidence merely raises suspicion that the accused is guilty.
11 And it defines suspicion as an in-physic able even for a
12 period as to guilt based upon factual circumstances which do
13 not amount to proof.

14 And, Your Honor, with regard to mutual combat, we have
15 been and continued to be on the horns of a dilemma in that
16 mutual combat really is not defined in any case law that we
17 can find in any specific sense. It's given in your Brown
18 case as an example when people get into a fight. And the
19 language obviously that Your Honor has cited is that
20 everyone is presumed to know the consequences of his act and
21 if one voluntarily enters a mutual combat where deadly
22 weapons are used knowing that they are being used and death
23 results to one of the participating parties, and, Your
24 Honor, I understand Your Honor has explained + expanded
25 participating parties in a logical sense to include the

1 world at this point.

2 But, Your Honor, there is no evidence of mutual combat
3 here that we have found. The evidence is - the only
4 evidence of guns literally is evidence that - from Jontu
5 that they came in Mr. Young's yard and he came in Mr.
6 Young's yard and shot up the house and the yard. And
7 evidence that there were - that Junior shot the car. And
8 then evidence that Tyrone killed the little boy.

9 There has been on evidence of back and forth or a
10 running gun battle or any kind of mutual combat. We don't
11 know that for that matter that Tyrone was firing the gun at
12 the car. I mean I think we've all jumped to that conclusion
13 but I don't know that there has been any evidence that
14 anything was - -

15 THE COURT: Mr. Young was firing the gun at the car?

16 MR. VAUX: I'm sorry.

17 THE COURT: Mr. Young was firing the gun at the car?

18 MR. VAUX: No. I said that Mr. Robinson was firing at
19 the Young's. I thought I said Mr. Robinson.

20 THE COURT: You did say Mr. Robinson but obviously I've
21 lost the context of it because the car that was shot up was
22 Mr. Robinson's.

23 MR. VAUX: No. Mr. Young shot the - Mr. Robinson's
24 car.

25 THE COURT: That's right.

1 MR. VAUX: But he never saw Mr. Robinson. You don't
2 see somebody you can't be running a gun battle.

3 THE COURT: Right.

4 MR. VAUX: Then the testimony is that the next thing
5 we know about they hear three gun shots from a different
6 gun.

7 THE COURT: Right.

8 MR. VAUX: And then little Jontu Singleton says he shot
9 meaning Mr. Robinson shot my friend. But we don't know that
10 Mr. Robinson was shooting at the Young's. He could have
11 been shooting a squirrel for that matter. We don't know
12 whether there's been no testimony to any of that effect.

13 And that makes it purely hypothetical or circumstantial
14 and not substantial circumstantial evidence. And on that
15 bases we ask that you - that you grant the motion for a
16 directed verdict.

17 THE COURT: Thank you, Mr. Vaux.

18 MR. VAUX: Thank you.

19 THE COURT: All right. Let's hear the state.

20 SOLICITOR STONE: As to the attempted murder, Your
21 Honor, you have Tyrone Robinson making a statement to
22 Charlese who is his cousin in an excited utterance that says
23 they're shooting at me. You have Tyrone Robinson in a
24 separate event but relatively close in time making the same
25 statement using more foul language but to Tyrone Delaney

1 they're shooting at me after he specifically ask about a
2 Ford F150 truck that is identified by Charlese as being
3 driven by Aaron Young, Senior.

4 You also have I believe testimony as well, Your Honor,
5 from - If you look at the 911 tape you actually have a
6 witness who calls in that describes two - a shoot out that a
7 car, a green Lexus, is shooting with a grey truck and that
8 they are shooting back and forth and we have that testimony
9 as well, so from the standpoint of having evidence
10 indicating that there is an attempted murder you have at
11 least three pieces there.

12 Other than quite frankly I think it's also reasonable
13 to infer that when Aaron Young says I tried to kill him but
14 the gun jammed would also indicate that there was some
15 effort on his part to kill Tyrone Robinson.

16 As far as mutual combat, Your Honor, that would - I
17 think there's ample evidence of a mutual combat. Both are
18 armed, Robinson's armed, Young is armed, they both know each
19 other is armed, they both - Young chases Robinson through
20 two neighborhoods and in fact into Allen Road twice and as a
21 result of that Khalil Singleton is dead. I think that is
22 exactly the language that Brown uses when they describe and
23 define mutual combat.

24 THE COURT: The Brown case does contain a limited.
25 definition of mutual combat and it just says if you got

1 participating parties who enter the combat they don't have
2 to have a positive agreement to do it, its enough if they
3 willfully enter into the conflict under the impulse of the
4 moment and so there is - there is no technical legal
5 definition that we normally try to apply to things to set us
6 apart as lawyers I guess from the rest of the world.

7 Its sort of a common sense definition but I think it
8 first of all we know what combat generally is. It's a
9 physical conflict for the most part - generally.

10 Mutual means it's back and forth, reciprocal between
11 the two. And here we have that sort of conflict which is
12 entered into by two sides without any necessary positive
13 agreement but it's a willful entering into the conflict upon
14 the impulse of the moment, so I do - Granted it's a - it's
15 not technical but it does define I think as a matter of
16 common sense and of law what this is all about.

17 Mr. Vaux, you raised an interesting point when you talk
18 about circumstantial evidence any more. All of us at the
19 trial level have struggled with some of the opinions that
20 have come down defining that and what is actually enough.
21 We are - At this level we seem to be on I won't say on the
22 horns of a dilemma cause I think that a dilemma lies at a
23 higher level, but we're told here that when we are dealing
24 with Rule 19 Motions that we are not concerned with the
25 weight of the evidence; we are only concerned with the

1 existence of the evidence. There is a long line of cases of
2 course that hold that.

3 And of course we have to take that evidence, whatever
4 evidence exist, in the light most favorable to the non-
5 moving party and at that point it's pretty simple. But then
6 we move to the definition of circumstantial evidence.

7 And to juked the position of circumstantial evidence
8 upon the rule that I just cited, that is, we're not
9 concerned with the weight but only the existence of it.

10 When we define for a jury circumstantial evidence we
11 say that circumstantial evidence is good evidence, that it
12 does not require a greater degree of proof of circumstantial
13 evidence than of direct evidence. That the jury in other
14 words is to treat them equally and not require a greater
15 degree of proof one than of the other.

16 But at the trial court level I guess us as the gate
17 keeper's are charged with being concerned about the weight
18 of the circumstantial evidence. It frankly is a
19 contradiction. On the one hand we're told that we're not
20 concerned about anything other than the existence of the
21 evidence, we're not concerned with it's weight and then
22 we're told but wait a minute when it's circumstantial
23 evidence we want you to weigh it and decide whether they are
24 substantial or not.

25 And I've seen the cases that you've seen and we wonder

1 at what point that substantial requirement has been met.
2 And you've outlined cases of course which would appear on
3 their face to be substantial but the court has held that
4 they were not.

5 In this particular case based on the evidence before
6 us, it may be limited in scope, that is, to say there's not
7 a lot of it but it comes from Mr. Robinson's own mouth
8 primarily to two witnesses who testified under the excited
9 utterances a list of what Robinson had told them about
10 they're trying to kill me, and we put that in the context of
11 the chase itself. Some of it it came from Mr. Young's own
12 mouth as he was talking about where he had been and what
13 they had been doing and how the conflict started at his home
14 and it went from that point on.

15 I think there is substantial enough circumstantial
16 evidence for this jury to conclude that this was a running
17 argument at the very least a gun battle of some nature
18 between these two folks. And that the attempted murder of
19 Mr. Robinson is borne out by his own statement. Naturally
20 Mr. Young of course did not admit to shooting at him. He
21 said as a matter of fact he couldn't shoot at him cause his
22 gun wouldn't work.

23 But Mr. Young also mentioned out of the presence of the
24 officer on the interview that he was not being completely
25 straight in all that he had told those folks so I don't

1 think we depend on him and certainly don't depend on his own
2 statement to convict him in that regard.

3 I think there is sufficient evidence in this regard of
4 a circumstantial and a direct nature to survive the motion
5 for a directed verdict as well of the attempted murder. And
6 then the murder of course as you said comes in under the
7 mutual combat thing. That's the only thing that ties him to
8 that.

9 MR. VAUX: Well, Your Honor, if I may, the problem in
10 the next step of mutual combat --

11 THE COURT: Right.

12 MR. VAUX: --- is that obviously when you begin to
13 retreat it ends the mutual combat.

14 THE COURT: All right.

15 MR. VAUX: And in this instance clearly the evidence is
16 that they drove the truck down Allen Road, took a left on
17 Marshland Road and were some considerable distance away at
18 the time the three shots were fired.

19 THE COURT: Right.

20 MR. VAUX: And therefore the mutual combat had been
21 ended. But the problem is obviously or the dilemma the
22 third form of this dilemma --

23 THE COURT: Right.

24 MR. VAUX: --- is that normally the breaking off of
25 the mutual combat then gives rise to self-defense and in

1 essence reestablish or establish a self-defense defense.

2 THE COURT: Right.

3 MR. VAUX: We don't claim self-defense in this instance
4 and so normally that charge would not be included.

5 THE COURT: Right.

6 MR. VAUX: But, Your Honor, because this is such new
7 ground, and because we haven't to our abilities to find any
8 case law in South Carolina or frankly elsewhere that talks
9 about what happens when you have mutual combat. If the
10 Court's gonna make that charge then what happens when you
11 break the mutual combat off and how do you then end it
12 perhaps not with a self-defense charge but you would then
13 have to instruct the jury - we would ask that you would
14 instruct the jury that they have ended the mutual combat but
15 at least in their mind by leaving the scene. And while I
16 say the terms perhaps self-defense then certainly think they
17 ended the mutual combat.

18 THE COURT: All right. The case law in mutual combat
19 and ending a mutual combat requires that the ending of the
20 combat and the breaking off be clear and unequivocal; that
21 it be more than just an escape or trying to avoid the
22 consequences of the continuing battle.

23 This battle had been back and forth, of course, Mr.
24 Young, Junior in his statement referred to the fact that we
25 went back home talking about him and his father. And he was

1 like blank that I'm going back and I was like man I got to
2 get back to work. I'm paraphrasing. But my dad was like he
3 just never had anybody point a gun at his face before. So
4 he was just being in some of way we gonna deal with this now
5 or he's gonna come deal with us another way either way. And
6 that's the reason they went down to the house of course, not
7 to shoot the car but that's just all that there was there to
8 shoot, and they shot and they left in a hurry.

9 As a matter of fact I'm not even sure that they knew
10 that Mr. Robinson was there until they were riding away and
11 heard the shots. And because I don't - I'm trying to find
12 out, I don't think that Mr. Young said that they even saw hi
13 there,

14 MR. VAUX: They said he didn't see him.

15 THE COURT: I'm sorry.

16 MR. VAUX: At that point I think the testimony was that
17 they didn't see him.

18 THE COURT: All right. And so I think - I'm not
19 thinking that they were necessarily at that point in time
20 breaking off the combat, they were just going to live to
21 fight another day because he was not there and he was not
22 there to carry it on and they left, or they were leaving at
23 the time that the fatal shots occurred.

24 I don't think that leaving the scene under those
25 circumstances indicates clear and unequivocally the breaking

1 off of this given the extent of the chase and the level that
2 they had gone to try to get to him before then is unlikely
3 that the shooting of the car and then leaving is a signal
4 that they have chosen at this point in time to fold their
5 tents and move away and that the battle is over and truce
6 has been declared.

7 I don't think that the retreat ends it. I don't think
8 that there is a clear and unequivocal breaking of the
9 conflict such that the law requires to indicate that the
10 mutual combat no longer exist.

11 MR. VAUX: Your Honor, and just before you start to
12 charge and we start final arguments -

13 THE COURT: Right.

14 MR. VAUX: --- I would ask that the solicitor consider
15 very carefully making any reference as Your Honor did to the
16 defendant's statement about not telling the whole story ---

17 THE COURT: Right.

18 MR. VAUX: --- cause that could easily come in if the
19 defendant does not take the stand to testify.

20 THE COURT: Right.

21 MR. VAUX: That could easily be a comment and construed
22 by the jury as a comment on his failure to testify.

23 THE COURT: Right.

24 MR. VAUX: And would be an exceedingly contexted
25 appellate issue.

1 THE COURT: Right. I trust that we won't go into it.

2 I think they're entitled to say that, he, whatever his
3 language was about I'm not giving them anything he's
4 certainly to comment upon whether they can take that into
5 account as to the credibility of what he did say. But
6 certainly they cannot expand that to the fact that there are
7 other things that he did not say I grant you that, all
8 right.

9 Now, Mr. Vaux, do you wish for me to inquire of Mr.
10 Young about his understanding of his right to testify or not
11 to testify?

12 MR. VAUX: Yes, sir, please.

13 THE COURT: Okay. Mr. Young, will you please stand
14 where you are and raise your right hand? Right hand. There
15 you go.

16 ((WHEREUPON, AARON YOUNG,
17 JUNIOR, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
18 FOLLOWS:))

19 THE COURT: Thank you. You can put your hand down.
20 You can sit down. Mr. Young, the state has rested its case
21 in chief and now you have the opportunity but you don't have
22 the obligation to present evidence and testimony, you can
23 choose not to do it. Under our law you cannot be forced to
24 testify. The Fifth Amendment of our Constitution of the
25 United States and a similar counter part of our state

1 constitution says that no person in a criminal charge can be
2 forced to testify against himself.

3 That means that you cannot be required to take the
4 stand and testify in your own behalf. Do you understand
5 that?

6 MR. YOUNG: Yes, sir.

7 THE COURT: You have the right to testify but you
8 cannot be made to testify. And if you chose to exercise the
9 right not to testify I will tell the jury that they cannot
10 take that into account and that they can't even consider
11 that when they're considering whether you're guilty or not.
12 guilty of these charges. They will be told that they cannot
13 even discuss among themselves the fact that you did not
14 testify in their consideration of your guilt or your
15 innocence. Do you understand that?

16 MR. YOUNG: Yes, sir.

17 THE COURT: But if you choose to testify you give up
18 your right to remain silent and you will take the stand and
19 under oath you will be ask questions not only by Mr. Vaux
20 but also by Mr. Stone. And you can be impeached, you can be
21 cross-examined on any issues that are relevant to this case.
22 Do you understand that?

23 MR. YOUNG: Yes, sir.

24 THE COURT: Have you understood those rights that I've
25 explained to you, Mr. Young?

1 MR. YOUNG: Yes, sir.

2 THE COURT: Do you have any questions that you want to
3 ask me about those rights?

4 MR. YOUNG: No, sir.

5 THE COURT: So I can assume then from that that whether
6 you choose to testify or not to testify that you will do it
7 with a full understanding of your rights; is that correct?

8 MR. YOUNG: Yes, sir.

9 THE COURT: All right. Thank you.

10 MR. VAUX: Thank you, Your Honor.

11 THE COURT: Mr. Vaux, have the decision been made
12 regarding putting up a defense in that regard?

13 MR. VAUX: Yes, sir. We are not going to put up a
14 defense.

15 THE COURT: All right. So that means momentarily -
16 Well not momentarily, it will take a few more minutes. When
17 the jury does come back in I will allow you to rest in the
18 presence of the jury and we'll go immediately into final
19 arguments.

20 Mr. Stone, of course you will present the first of the
21 arguments and then Mr. Vaux, you will have the right to
22 reply. Now, yesterday when we were having a side bar
23 discussion about charges and lesser included's and things of
24 that nature, I think because of the relatively new state of
25 the law on attempted murder we were uncertain as to what.

1 lesser included's there might be. However there is a lesser
2 included in a case very similar to this one. As a matter of
3 fact it was tried in Colleton County. Mr. Thornton, you may
4 have tried it, I'm not sure, *State versus Middleton*.

5 It was a case where I think the guy was on a moped and
6 ran around a car just filling it up with bullets.

7 SOLICITOR THORNTON: That was Tamelika we had with our
8 office, Your Honor.

9 THE COURT: Okay. That's right. It was a case where
10 it was a shooting in a vehicle and the vehicle was occupied
11 and the defendant was charged with the attempted murder I
12 think maybe two counts of attempted murder and they
13 requested a lesser included of assault and battery in the
14 first degree. The trial judge denied that request I think
15 as any of us would have done at the time because there was
16 no battery, there was no assault there was no battery,
17 nobody got hit. Some glass fell on somebody but nobody got
18 hit.

19 Well in *State versus Middleton* the first case decided
20 under the new law that I can find held that assault and
21 battery in the first degree is a lesser included with
22 respect to those victims who suffered no injury in spite of
23 the fact that they suffered no injury and therefore in my
24 view it has to be instructed in this regard as well. It's a
25 very similar case as far as that's concerned and so I will

1 instruct then on the attempted murder assault and battery in
2 the first degree as a lesser included.

3 As to the murder charge I don't think there are any
4 lesser included's as to that.

5 What says the state to that, Mr. Stone?

6 SOLICITOR STONE: I agree, Your Honor.

7 THE COURT: All right. Mr. Vaux?

8 MR. VAUX: I agree, Your Honor.

9 THE COURT: All right. Good. Gentlemen, if you all
10 will give me a few minutes then to put the verdict forms
11 together and then you can be getting your final notes in
12 place for the final arguments and I'll try to get somebody
13 here who adept with a typewriter to type up those verdict
14 forms and get 'em to you. I don't think - Normally I
15 inquire about folks who I have never tried cases before how
16 long you're gonna take. I know that you all will take as
17 long as you need but no longer so I'm not concerned about
18 that. All right.

19 SOLICITOR STONE: Your Honor, may I ask you real quick
20 before you go, the jury charge, are you ready or do you know
21 what your jury charge is gonna be, in particular on mutual
22 combat cause I think I would like to discuss that in closing
23 and I think I know what it is but I want to make sure before
24 I do?

25 THE COURT: Okay. I will charge in essence the charge

1 that you have given me but I will get a preliminary charge
2 or an introductory portion of the charge will be the
3 definition of mutual combat. And that also comes from
4 Brown. It's a paraphrase of the statement.

5 To constitute mutual combat it is not necessary that
6 there is a positive agreement between the participating
7 parties to enter in the combat. It is enough if they
8 willfully enter into the conflict upon the impulse of the
9 moment. And then I will go on with everyone is presumed to
10 know the consequences of those acts and take it from that
11 point on.

12 SOLICITOR STONE: You know this actually favors I think
13 part of the defense more of it but I want to make sure that
14 we've covered it. I know that Chief Justice Toal in the
15 2003 case actually put two more limitations on mutual
16 combat, one being that the parties had to know the other
17 parties were armed. And I will pull that but I thought
18 about that last night. And it probably favors the defense

19
20 THE COURT: Okay.

21 SOLICITOR STONE: --- but I want to make sure we cover
22 that base. And I think the second limitation that she put
23 on there is that there was a - there had to be a previous
24 issue which I think you covered in that first part of your
25 charge.

1 THE COURT: All right. Okay. Let me see if I've got -
2 Did you give me that case the other day?

3 SOLICITOR STONE: I did. Its not Porter, it is -

4 THE COURT: I got it. It's Taylor.

5 SOLICITOR STONE: Its not Brown. Taylor, State versus
6 Taylor.

7 THE COURT: Okay.

8 SOLICITOR STONE: And I think the only addition to your
9 charge would be that the parties had to know that the other
10 parties were armed.

11 THE COURT: Right. Okay. All right, thank you.

12 SOLICITOR STONE: Thank you.

13 THE COURT: I will look those portions out and include
14 them as well. We'll stand down for a few minutes. It's
15 gonna be at least fifteen minutes before I can where I can
16 work and get these things typed.

17 SOLICITOR STONE: Thank you, Your Honor.

18 (COURT IN RECESS AT 10:32 A.M..)

19 (COURT BACK IN SESSION AT 11:00 A.M..)

20 THE COURT: Thank you, folks, you all can be seated.

21 Gentlemen; these are the possible verdict forms; I want
22 you to look at 'em and make sure there are no problems with
23 'em.

24 SOLICITOR STONE: Thank you, Your Honor.

25 THE COURT: All right, thank you.

1 All right, folks, are both sides now ready for the
2 jury, Mr. Stone?

3 SOLICITOR STONE: The state's ready, Your Honor.

4 THE COURT: Thank you.

5 MR. VAUX: The defense is ready, Your Honor.

6 THE COURT: Thank you. Bring us the jury.

7 Mr. Vaux, in the presence of the jury you will be
8 allowed to rest and we'll proceed immediately to final
9 argument.

10 MR. VAUX: Thank you, Your Honor.

11 THE COURT: Thank you.

12 (JURY REENTERS COURTROOM AT 11:02 A.M..)

13 THE COURT: Ladies and gentlemen, if you recall the
14 state had rested its case in chief before the recess. The
15 defense now has the opportunity to present evidence and
16 testimony but as you know is under no obligation to do that.

17 Mr. Vaux.

18 MR. VAUX: Your Honor, the defense rest.

19 THE COURT: Thank you. Ladies and gentlemen, the
20 defense has now rested its case and that means that you
21 have now heard all of the evidence and testimony that you
22 will hear in this trial. So now we proceed to the final
23 phase of the trial of this case which will consist of the
24 arguments that will be presented. The state will present
25 the first of the final arguments, Mr. Stone, on behalf of

CLOSING ARGUMENT: BY SOLICITOR STONE

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1 the state. And when he has completed the final argument on
2 behalf of the state, Mr. Vaux, on behalf of Mr. Young will
3 present that final argument. And then I will instruct you
4 as to what the law is in this case. And then you will be
5 able to go back to your jury room and start talking about
6 this case among yourselves.

7 You have been attentive throughout the trial of this
8 case. It has not been a lengthy trial, it's a serious trial
9 as you all know, but it has not been a lengthy trial but
10 you've given the attention throughout - throughout the trial
11 that you know issues of this seriousness deserve.

12 I'm certain that you will give the final arguments and
13 the instruction on the law which I will give you that same
14 attention, ladies and gentlemen. Incidentally as a matter of
15 interest, your lunch will be provided for you. It's being
16 ordered and it will be brought in perhaps before you get to
17 your jury room or certainly during your deliberations.
18 That's the best way to use your time. I didn't want you to
19 be concerned about that, we're not gonna starve you into a
20 decision in this case, it will be provided for you.

21 Thank you. Thank you, ladies and gentlemen.

22 Mr. Stone.

23 SOLICITOR STONE: May it please the court, Your Honor.

24 THE COURT: Yes, sir.

25 SOLICITOR STONE: There are two charges in this case.

1 One is murder charging Aaron Young with the murder of Khalil
2 Singleton. And the theory that the judge will explain to
3 you is mutual combat. The second charge is attempted murder
4 in the attempted murder by Aaron Young of Tyrone Robinson.

5 What I want to talk to you about first very briefly is
6 what we know, the facts that you've heard, the facts that
7 are all pretty much sit here and think of and listen to from
8 the witness stand and know to be true. Here's what we know.

9 That on September the 1st Tyrone Robinson was armed.
10 We know that because he fired the bullet that killed Khalil
11 Singleton. We know Aaron Young was armed. How do we know
12 that? Well we know it from a number of different ways. One
13 is we know it from Aaron Young's friend, Jontu Singleton,
14 who says when I got in the truck the Young's came out with
15 this bag and in this bag was this gun. Who had it? Aaron
16 Young, Junior had it. That's from Jontu Singleton.

17 Where did we find the gun? Law enforcement found the
18 gun in Aaron Young's grandfather's house where Aaron Young's
19 father took law enforcement. The same gun that these shells
20 match which were found in the back of the Ford F150 driven
21 by Aaron Young, Senior in which Aaron Young, Junior was a
22 passenger. And there are the shells, the bullets that match
23 the shooting of the car also from that gun, the gun that was
24 in Aaron Young's hand.

25 And the clip and Aaron Young's own statement that I had

1 a gun, it was a .9 millimeter. How many shots did it hold?
2 Enough according to Aaron Young... We know Aaron Young was
3 armed not just because Jontu Singleton says so, not just
4 because Aaron Young's father took them to the gun but
5 because Aaron Young himself admits it. And while I
6 recognize the defense has made a big deal out of there's no
7 fingerprints, there's no DNA, there's no question Tyrone
8 Robinson was armed, Aaron Young was armed.

9 We know that Aaron Young chased Tyrone Robinson into at
10 least two neighborhoods. We know the original fight started
11 up here at Old Wild Horse Road where the Young's live. We
12 know that they chased Tyrone Robinson again with Aaron
13 Young, Senior driving and Aaron Young, Junior with the gun
14 in his hand into this neighborhood down here, Oakview,
15 Spanish Wells, Muddy Creek. We knew that because Aaron
16 Young, Junior said they did it. In fact we also know that
17 at that time Aaron Young, Junior said I tried to kill him, I
18 tried to shoot him there but the gun wouldn't go off. The
19 gun jammed. Something that made him so angry that as he's
20 sitting by himself not even being questioned he yells the
21 gun jammed. I know how to work a gun. I now how to work
22 that real well.

23 This was the first time that Aaron Young says he tried
24 to kill Tyrone Robinson then but the gun wouldn't work. We
25 know they chased them here. We know that Robinson got away

1 and went down here to Allen Road. Right here where Charlese
2 Mitchell hears the shots. We know that when they go down
3 there the truck goes down there the first time because when
4 the truck is leaving the neighborhood it almost runs Tyrone
5 Delaney off the road. And that's before the second rapid
6 fired shots, before the three shots that came after before
7 Khalil Singleton was killed. We know they chased Tyrone
8 Robinson into Allen Road not once, twice, they were down
9 there.

10 We know it because Charlese Mitchell, who is related to
11 both, sees the truck leave. We know there was a shooting,
12 we know that Tyrone Robinson as the truck gets here, is
13 somewhere in this area here, and fires back at the Young's
14 hitting Khalil Singleton and we know that bullet cut his
15 heart and he bled to death. These are the facts that we
16 know. They're not disputed. No reasonable alternative than
17 those facts that we absolutely know:

18 The judge is gonna charge you the law in South Carolina
19 concerning mutual combat. And if he tells you anything
20 different than I do please take what he says as reliable.
21 But I would submit to you this is exactly what you're gonna
22 hear from the judge when it comes to the law in South
23 Carolina. That everyone is presumed to know the
24 consequences of his act if one voluntarily enters a mutual
25 combat where deadly weapons are used, knowing that they are

1 being used, and death results to one of the participating
2 parties everyone engaged in such combat is equally guilty
3 regardless of whether a deadly weapon was used or not.

4 I know the defense has made a good point of well
5 there's no actual evidence that he actually pointed it at
6 Tyrone Robinson. And I would submit to you that him saying
7 I tried to kill him but the gun jammed. Generally guns jam
8 when you try to pull the trigger. I don't know what he
9 would a been shooting at to see inside the truck in order
10 for the gun to jam. But it doesn't matter because as far as
11 mutual combat is concerned it doesn't matter whether the gun
12 was used or not for the law in South Carolina somebody has
13 to voluntarily enter into mutual combat they have to be
14 armed and they have know the other person's armed and we
15 know that.

16 Not only did Aaron Young know that Tyrone Robinson was
17 armed, if you remember his tape he actually tells you what
18 the gun was. He compares the shot of a .9 millimeter to a
19 .38 caliber and says the .38 caliber is gonna kill you much
20 quicker than the .9 millimeter. He knew. He said it's T's
21 gun. You don't have T's gun and it's a .38. He knew he was
22 armed because Tyrone Robinson came to his house and shot at
23 him right before they got that gun and went chasing after
24 him.

25 For mutual combat, ladies and gentlemen, they enter

1 into mutual combat, they're armed, they know the other one's
2 armed, and death results. There's no question about that
3 either. Taking what you know with the law as the judge is
4 going to instruct it what you know is Aaron Young and Tyrone
5 Robinson entered into mutual combat, that child is dead and
6 they are both equally responsible for the murder of Khalil
7 Singleton. That's the law and that's what you know.

8 There's one other thing about this. In the concept of
9 mutual combat there's a recognition that it involves
10 participating parties. Obviously Khalil Singleton his only
11 crime was playing in the neighborhood. He wasn't involved
12 as a participating party. What the judge will tell you
13 about that is the law of what's called transferred intent.

14 And what's relevant is not, in determining mutual
15 combat the victim, the identity of the victim, but the mind
16 set of the defendant. What was Aaron Young thinking? How
17 was he thinking? All of that is relevant because it tells
18 you whether or not he voluntarily entered into this gun
19 battle. Let's take a look at some of what Aaron Young said,
20 and I'd ask you to look at the monitor, and see if you can
21 determine from this his mind set.

22 (STATE'S EXHIBIT NUMBER THIRTY-EIGHT PUBLISHED TO THE
23 JURY.)

24 SOLICITOR STONE: The last clip I want to talk to you
25 about very briefly. He's describing as they're leaving, as

1 they are in this truck going by and he hears the three
2 shots, having already seen the children when they go into
3 the neighborhood, seeing the children as he's coming out of
4 the neighborhood, hearing three shots, what does he say to
5 his dad? "Man, turn around."

6 When you're determining whether or not Aaron Young
7 mutually agreed or got involved in this running gun battle,
8 ask yourself that. What's the mentality? There's just been
9 a shooting right in the middle of children and what's his
10 mentality? "Turn around."

11 The defense makes the offer to you that quote unquote
12 run, they were fleeing, they were leaving the neighborhood,
13 this was over. Ask yourself they didn't go down that
14 neighborhood just once they went down twice. They went down
15 they didn't find what they were looking for. They weren't
16 able to kill Tyrone Robinson they went back to their house
17 more likely than not greasing up the gun so it wouldn't jam
18 this time and then went back down there a second time. And
19 even after that, even after when they see the kids going
20 there and they had all stopped when they see the kids going
21 back and they hear the three shots what does Aaron Young
22 say? "Man, turn around." Is he finished? Has he
23 concluded this mutual combat? No. Never. You know why?
24 Because of all those things he just said. "You don't come
25 to my house and do that and then walk away free. How did he

1 know I was coming back down there? Cause he knows me.
2 Cause he knows me."

3 They fought, they had guns, and the feeling was mutual.
4 Aaron Young didn't like Tyrone Robinson and Tyrone Robinson
5 didn't like him and they took their fight into the
6 neighborhoods. They took it into the neighborhoods. And
7 the state law says as it should you're all responsible.

8 Now I've also charged Aaron Young with attempted
9 murder. The attempted murder of Tyrone Robinson. And we
10 get that from three sources. You hear it from Tyrone
11 Robinson who tells Charlese when he gets to the house
12 "They're shooting at me." At a separate time you hear him
13 tell Tyrone Delaney outside of the presence of Charlese
14 using vulgar language "they're shooting at me." So you hear
15 it from Tyrone. But you also hear it from Aaron Young
16 because in his statement he messes up a couple of times and
17 he gives you a pretty good idea that he did some shooting at
18 Tyrone himself. I'm gonna ask you to go back to the
19 monitor.

20 (STATE'S EXHIBIT NUMBER THIRTY-EIGHT PUBLISHED TO THE
21 JURY.)

22 SOLICITOR STONE: So what were you shooting at?

23 (STATE'S EXHIBIT NUMBER THIRTY-EIGHT PUBLISHED TO THE
24 JURY.)

25 SOLICITOR STONE: He made a mistake. What were you

1 shooting at? Him. Now he backed up on that. He was pretty
2 quick to say "you know what the gun didn't go off I take it
3 back." But what else did he say in that interview? And I
4 don't have to play that for you cause I imagine you remember
5 it. Recite, y'all are never gonna get the whole story out
6 of me." He didn't tell the whole story. He left some stuff
7 out.

8 You hear it the attempted murder that he wanted to kill
9 him but the gun didn't go off. And you hear it from him
10 that he said "who were you shooting at?" "Him." You hear
11 it from Tyrone Robinson, "they're shooting at me." He says
12 it in an excited state. Why would he be excited unless they
13 were in fact shooting at him? And here's another thing.

14 That truck is speeding out in the neighborhood to some
15 extent that it almost ran Tyrone Delaney off the road. What
16 are they excited about unless they're shooting at him?

17 As to the attempted murder charge you hear it from
18 Robinson, you hear it from Young, and you also hear it from
19 the witnesses at the scene and the 911 tape.

20 (STATE'S EXHIBIT NUMBER TWO PUBLISHED TO THE JURY.)

21 SOLICITOR STONE: Three pieces of evidence. Tyrone
22 Robinson, "They're shooting at me." Young, "I shot at him I
23 missed." And in fact if you recall Albertin actually ask
24 him "Did you intend to shoot at Tyrone?" And she was trying
25 to give him an out. "Did you really mean to shoot at

CLOSING ARGUMENT: BY SOLICITOR STONE

1 Tyrone?" Did he say no? No. That's all he said. You have
2 that. Play that. What did he say?

3 (STATE'S EXHIBIT NUMBER THIRTY-EIGHT PUBLISHED TO THE
4 JURY.)

5 SOLICITOR STONE: "Don't like that do you? Don't like
6 that do you? "Did you really mean to shoot Tyrone?" The
7 short answer is, yes, yes, and if I could have I would have.
8 And there's something else too. Dan DeFreese a forty-nine
9 year expert at the State Law Enforcement Division in
10 ballistics and tool mark identifications and bullet
11 trajectories testified yesterday that the trajectories put
12 into this car were accurate. They were in the right angle
13 to show how the bullets entered into the car.

14 If you look very closely at this picture there's got to
15 be a question. Item Number 13 which matched by the way to
16 that gun pulled out of this door panel does that look like
17 that's coming from the same angle that these two are?
18 According to Young the car's parked behind the house and he
19 shoots at the car. And quite frankly these shots right here
20 probably look just like somebody shooting down from a truck.
21 But not that one. Not that one. Young got a shot off.

22 And that one indicates that that's different, that
23 that's in a different place than these. And different from
24 the ones that were in the back of that car. Probably from a
25 further distance and p probably in this neighborhood right

1 here where he says the gun jammed. And that's physical
2 evidence and that's as to the attempted murder.

3 Now, it is in many ways not our job, not my job, not
4 your job, and even the judge's job to explain why the law is
5 as it is in South Carolina. Why is somebody responsible,
6 why is everybody responsible when only one person could
7 possibly have fired the fatal bullet? Why do we say that
8 there is such a thing as mutual combat? Why do I come in
9 here and yesterday when I explained to you what I would be
10 asking you I said I'm going to ask you to do one thing, to
11 give us a verdict that speaks the truth but not just the
12 truth, the whole truth. Cause part of the truth is already
13 been spoken from a jury sitting right where you're sitting
14 that said Tyrone Robinson is responsible for the killing of
15 Khalil Singleton. That's part of the truth.

16 The other part of the truth that I'm asking you for is
17 the whole truth which is its not just Tyrone Robinson is
18 responsible for Khalil Singleton's death, it is also Aaron
19 Young. And for that matter Aaron Young, Senior who is not
20 before you right now.

21 That's the whole truth. And I want you to think just a
22 moment about how much Aaron Young, Junior and Tyrone
23 Robinson have in common when it comes to this case. Tyrone
24 Robinson was armed. Aaron Young was armed. Tyrone Robinson
25 went to Aaron Young's house with a gun. Aaron Young went to

1 Tyrone Robinson's house with a gun. He didn't find him, he
2 found his uncle but that's where he went cause he said
3 straight to his house.

4 They both used that car. Aaron Young said, You know
5 what? Tyrone is using that car as a set up. He put it
6 there cause he knew I was coming back and he knew I would go
7 there and he would be able to see me. He was using it as a
8 set up. So is Aaron Young. Why do you think he was
9 shooting the car? He wasn't mad at the car, he was trying
10 to flush out Tyrone Robinson. Tyrone Robinson didn't shoot
11 Khalil Singleton. Neither did Aaron Young. Tyrone Robinson
12 intended to shoot that truck to kill Aaron Young just like
13 Aaron Young intended to kill Tyrone Robinson.

14 Tyrone Robinson, "Oh I didn't mean for Khalil Singleton
15 to die." Neither did Aaron Young. The both of 'em killed
16 him just as surely as we're sitting here, both of 'em did.
17 A part of this truth has already been told. Tyrone Robinson
18 is responsible. The rest of the truth is, is so is Aaron
19 Young. And why is the law like it is? It goes back to the
20 two lines in this that I haven't talked about. Everyone is
21 presumed to know the consequences of his act. Everyone
22 presumes to know the consequences of their act. And
23 everybody is equally responsible for the natural
24 consequences.

25 Let's talk about the natural consequences. They're

1. going through neighborhoods. Is it a natural consequence if
2. you take a gun like this and you go chasing somebody through
3. neighborhoods that at some point they might turn around and
4. shoot back? You know they're armed. Is that a natural
5. reaction? Certainly. And at some point Tyrone Robinson was
6. bound to turn around and shoot back and he did. Was it a
7. natural consequence that somebody would get hurt if you're
8. shooting in a neighborhood with a car that is parked up
9. against the house? Aaron Young went to a lot of trouble
10. saying you know what I never hit the house. But that's good
11. because there was a one month old child in the house. We're
12. lucky - I guess we're lucky - that we only had one dead
13. child instead of two. Right there right where Aaron Young
14. was shooting in a neighborhood with kids.

15. And by the way, in case Aaron Young said well I knew
16. where my shots were going. Remember this item here that our
17. expert from ballistics testified this is a glancing bullet,
18. a bullet that hit the side of the car and went from back to
19. front. Bullet hits this car right here on the side going
20. this way going towards the children. The glancing blow that
21. goes off is it a natural consequence that somebody in this
22. neighborhood is going to get hurt when you're shooting at
23. cars behind a house?

24. And by the way, take a look at these pictures. How
25. many shots are in that car? If you add them up you're

1 gonna find about seven. The clip holds thirty-four and
2 there were ten left. Where are the bullets, where did they
3 go? They went one of three places. One, he's sprayed this
4 whole neighborhood when he missed the car. Two, he actually
5 got off a lot more shots than he's willing to tell us about
6 over in the Oakview Spanish Wells area. Or three, he's -
7 they're shooting back at each other and he's shooting when
8 Charlese hears the first set of shots prior to the truck
9 leaving the first time.

10 Where are the other bullets? The natural consequences
11 of somebody would get hurt in these neighborhoods? That's
12 why the law is what it is. That's they way of this. That's
13 why in mutual combat everybody is responsible for their acts
14 and the natural consequences that come from them because
15 when you take guns and you leave and instead of calling the
16 police you decide to do it yourself and you chase them
17 through two neighborhoods, seven miles of Hilton Head,
18 people are gonna get hurt. And in this case a child died.

19 That's why the law is what it is. That's the why. And
20 we know it not because the judge is gonna tell us that. Not
21 because the statute tells us, not because this board tells
22 you that. You know you're responsible for your acts because
23 it's in your heart and you know that. You know that. And
24 it doesn't matter who fired the fatal bullet cause they're
25 all fatal. It doesn't matter whose gun shot it cause every

1 gun is fatal. That's why the law is but we all know that.

2 If you have any questions think back on that 911 call
3 when you heard those people in that community on the phone.
4 And you heard 'em crying and screaming as they were trying
5 to breathe life into this eight-year-old child who was
6 literally drowning in his own blood. Do you think they care
7 where the fight started? Do you think they care which gun
8 fired it? Do you think they care what Tyrone did to deserve
9 it or why he made Aaron mad or why Aaron made Tyrone mad?
10 Do the people in that community care? They care that they
11 lost a child.

12 Parents lost a child that's what they care about. And
13 was that the natural consequence? Think back on the very
14 last 911 call you heard, the very last one. The lady called
15 in and said I heard rapid shots, definitely gun shots.
16 What's the very last thing she said? There are children
17 down there, children down there. That's what this case is
18 about. Thank you.

19 THE COURT: Thank you, Mr. Stone. Can we take the
20 exhibits down please, sir.

21 SOLICITOR STONE: I'm sorry. Yes, sir.

22 THE COURT: Thank you.

23 MR. VAUX: May it please the court.

24 THE COURT: Yes, sir, Mr. Vaux.

25 MR. VAUX: Thank you. If you would just leave that

1 right there. Thank you.

2 Good morning again, ladies and gentlemen. Representing
3 a defendant in a criminal case as an attorney is probably
4 the highest compliment that a trial attorney can be given.
5 because the defendant puts his life in our hands. You see
6 our job is two fold. Our job is to see and insure that the
7 defendant receives a fair trial and that the state proves
8 the defendant guilty beyond a reasonable doubt. We have no
9 obligation to do anything. So let's take a look at what the
10 state has established thus far leaving the hysterics aside.

11 The state established that Khalil Singleton an eight
12 year old little boy, was shot to death by Tyrone Robinson.
13 We know that Tyrone Robinson by virtue of their witness was
14 quote drunk as a bitch dressed in mismatched socks, in red
15 shorts about three thirty in the afternoon. That he goes to
16 Darrell Ferguson's house which is next to Jake Washington's
17 house still dressed in his shirtless and his red shorts,
18 mismatched socks, a couple of quarts of beer, driving drunk,
19 and gets into an argument with Jake Washington. Gets into
20 an argument with Darrell Ferguson. Gets back in his car
21 driving drunk goes to the Young's house gets out at the
22 Young's house according to the state's witness unprovoked
23 and starts shooting.

24 Shoots in the ground, shoots at the house next door.
25 And we know that they got the bullet out of the house next

1 door. Do the Young's shoot back? No.

2 Stupidly and as I indicated in the opening comment a
3 lifestyle mistake they didn't call 911. The Young's
4 sometimes after that cause Jontu again testifies that the
5 that Tyrone leaves, that they get in the truck, Jontu the
6 state's witness gets into the truck with the Young's and
7 they go looking for him.

8 Now while Jontu, the state's witness, is in the truck,
9 no gun is pointed at Robinson, no gun is fired at all, and
10 that's the time that the solicitor would have you believe
11 they sped up a few roads and all the rest of it. But did
12 the state produce any evidence to that effect other than
13 what Mr. Stone said? And the answer to that is no.

14 They go home and they drop off Jontu. Jontu sees them
15 get back into the truck with Ebony Campbell and they go
16 towards Mr. Benny Young's house off of Redtip or Mustang
17 Lane. In the meantime Ms. Mitchell is at home, Charlese
18 Mitchell, and is visited by Mr. Robinson who's still dressed
19 in his red shorts and his pistol. She's concerned enough
20 that after letting him use the phone she and her boyfriend
21 ask him to leave for whatever reason we don't know.

22 She says there are ten to fifteen minutes between the
23 shots but there is no evidence that the shots came from the
24 same kind of gun. There is no evidence who fired the first
25 set of shots. There's nothing. We don't know that and the

1 state conveniently in their 911 tape we don't know what
2 order they came in. There's no time established. There's
3 no time on any of that evidence. That could have been
4 twenty minutes, thirty minutes apart. We have no idea.
5 Now, what also is important is that nobody puts either
6 Tyrone Robinson or the Young's at the house at the time of
7 the first set of shots. Certainly Ms. Mitchell doesn't.
8 She hears the shots and it's after the first set of shots
9 that Mr. Robinson comes to her house. After hearing the
10 second set of shots Ms. Mitchell calls the boys into the
11 house. Then she sees a grey truck drive by and it's
12 somewhere's in this area and hear's three shots. She then
13 hears screaming and there's a little boy dead on the ground.
14 That truck is leaving the area. It is retreating. At
15 that point Mr. Delaney is now home, he had seen a grey
16 truck. He didn't see who was in the truck, he didn't see
17 who was driving the truck and he sees the truck somewhere
18 other than Marshland Road. He sees the truck -
19 I'm not - Frankly I don't remember where he saw the
20 truck but it was not near the house. And I don't recall
21 what direction it was going in. He was going towards
22 Marshland Road but if he was on the Cross Island that truck
23 could have been any truck going either way. If it was on
24 Spanish Wells it would have been going towards Wild Horse
25 Road.

1 Now, Tyrone Robinson says to him those blank blank's
2 shot at me. Well I submit to you that could have been most
3 anybody given Mr. Robinson's conduct, Mr. Robinson's - just
4 behavior on Hilton Head with Mr. Ferguson, with Mr.
5 Singleton, with Mr. Washington, any of those people, half of
6 Hilton Head could have felt that way. And I'm gonna get to
7 more of that in a second. So we don't know who Mr. Robinson
8 - You know, language obviously was not a consideration to
9 Mr. Robinson but don't you think that if Mr. Robinson felt
10 that it was Young who shot at him he would have said those
11 blank blank blank Young's or that whatever Aaron shot at me.
12 Why would you just say those M F'ers?

13 You would identify who they were and we're gonna talk
14 about this in a second. We'll never know who they were.
15 Dominic Griffin - And every time you try a case and I been
16 doing this forty something years now - Every time you try a
17 case there's something in here in the case that's not a
18 great deal of relevance but it just makes you wonder.

19 Mr. Griffin is at home in this house and he's specific
20 that he's in this area of the house. And the car is back
21 here. Now from Jontu we know that they go by there and
22 Jontu knocks on the door to visit with his stepson.

23 Now is that really relevant? No. But doesn't it tell
24 you something? If you're running around in the neighborhood
25 shooting people having an ongoing mutual combat and gun.

1 battle when in the world do you say whoa, everybody stop,
2 time out, I want to go visit with my son? Does that make a
3 lot of sense? You're driving around the neighborhood and
4 you're shootin up the neighborhood which of course Jontu
5 says that it happened when do you state time out to go have
6 a visitation?

7 Now times important because we know that Tyrone
8 Robinson arrived at the Young's house about four o'clock or
9 a little bit after. And we know that this whole thing is
10 over with and done with and Robinson is stopped by and
11 yelling - is stopped on the side of the road before five
12 thirty so there's not a lot of time. But Dominic is at home
13 and he doesn't hear Jontu knock on the door, he doesn't hear
14 the first set of gunshots. He hears the second set of gun
15 shots, he doesn't hear the third set of gunshots and he does
16 hear his stepson say Tyrone Robinson killed my friend.

17 Now Mr. Seifert testified that he has a conversation
18 with Junior on the side of the road and that establishes the
19 time. We know what time that it was over with and by that
20 point we know that the Young's had taken the gun to the
21 grandfather's house which simply shrinks the time that's
22 involved for all this to have taken place as the solicitor
23 would have you believe.

24 We know that Captain Bromage identifies the gun and we
25 know that Captain Bromage exaggerates to try and influence

1 you by calling it a submachine gun. Now is that really
2 important? No. Except for the fact that it gives you the
3 mind set. Why would he mislead you? You know that's a
4 tantamount to not telling the truth. When you misstate
5 something like that you finally give it up on cross-
6 examination and then you fight with a defense lawyer about
7 it that's just not right. So Brandon Cooler he ID's the gun,
8 he carries out the search warrant on the Young's house.

9 Now do they find drugs in this house? No. Had they
10 guarded the house from the time of the shooting until they
11 carried out the search warrant? Yes. Did they find any
12 more guns in the house or ammunition or anything else? No.
13 And he took a statement from Ebony Campbell. Derrick Nelson
14 processed the truck. He matched up the wooden sticks with
15 the bullet holes. The windows were clear. Remember I went
16 to some trouble to show that you could see in the car to be
17 sure there was nobody in the car. I still don't understand
18 why you had to break the window if the window hadn't been
19 tampered with in some way but maybe I'll just never
20 understand that.

21 Wendy Conant testified about receiving evidence
22 transporting evidence and performing certain test. I'm
23 gonna come back to the test in a second. Now Mr. DeFreese
24 forty-nine years which is even longer than I practiced law
25 testified about casings and bullets and found in the car but

1 found no blood. Now don't you think it's convenient that he
2 doesn't testify about the bullet that killed the child?

3 Forty nine years he doesn't forget about something like
4 that.

5 The lead investigator, Albertin, she interviewed Junior
6 who denied ever pointing the gun at Tyrone. He denied
7 shooting the child and he indicated that Tyrone had broken
8 into his home previously. Now you know where I come from
9 when I said to you in my opening statement about terrorism.
10 You know this guy had broken into the Young's house, he
11 comes into the yard starts shooting up the yard.

12 Now, the problem that I have with this case as a
13 defense lawyer other than the fact that what they've
14 produced to you is purely circumstantial is the absence of
15 any real proof. Now it's emotional. You can't kill an
16 eight year old child without being emotional, all right. I
17 got four children, I got a son, he sits there. If you kill
18 that child when he was eight I'd gone crazy with emotion
19 with grief. But that's not the basis on which you make a
20 decision.

21 I want you to think why the state didn't put up the
22 evidence that it has within it's control. Now unlike us
23 they have an obligation to do that. We have no obligation.
24 They're obligated by law and they're obligated by their
25 responsibility to you. Not only don't I have an obligation

1 but the judge will instruct you to that effect. Remember
2 that it's the state's job. So let me ask a couple of
3 questions.

4 They collected evidence. Where is it? Why is it that
5 I have to drag out of the witnesses about the DNA? Why is
6 it that I have to drag out from the witnesses about the
7 blood - I mean the gunshot residue? Why is that I have to
8 drag out about the blood? If you're being fair, if you are
9 being forthright you don't hide that stuff.

10 Two: Where is Tyrone Robinson? Now, I concede to you
11 that he is a convicted murderer. He had been found guilty
12 of that and he's serving a life sentence. But hadn't the
13 state called him as a witness? He's certainly within their
14 control. I mean he's in the prison system somewhere's. If
15 they can subpoena all the rest of these people and produce
16 the sheriff's department people they certainly ought to be
17 able to produce somebody that is in the prison system.

18 His only comment is that the M F'ers shot at him. But
19 we don't know which and who they're talking about. But he
20 could identify Aaron Young, Junior unlike Charlese Mitchell,
21 unlike Mr. Griffin or unlike anybody else. He could have
22 gotten on that witness stand and say, ladies and gentlemen,
23 that blank blank blank blank blank that's right there shot
24 at me and tried to kill me. What do we hear? Silence is
25 deafening. Okay. That man is responsible for not doing

1 that. He didn't call Tyrone and I submit to you that he
2 didn't call him because he was scared of what he was gonna
3 say and the state didn't want you to have the whole story.

4 Where is the statement by Ebony Campbell? Albertin
5 said she took it. Didn't produce it. Where is the
6 statement from Ms. Washington? We heard her on the 911.
7 Where is the mutual combat? Where is the running gun
8 battle? Where are the witnesses who saw the running gun
9 battle? Where are the witnesses who heard the running gun
10 battle? And where is the bullet that Moran takes to or
11 whoever takes it and goes up to the Medical University?
12 Where is the results of the analysis by the forty-nine year
13 old man, forty-nine year old experienced man?

14 Now you know it's the little things in a trial that
15 tell the tale. Little things like why Bromage exaggerated
16 and tried to mislead you. Why is that the state didn't tell
17 the whole tale? Why didn't the state put up all of the
18 evidence? We'll never know. Now you're entitled to
19 construe those intentional misstatements, those omissions,
20 and the reluctance to disclose the contents of the file.
21 And you heard Albertin when I ask you about the contents of
22 the file. I don't have it with me I'll have to go get it.
23 I have to look it up to give you the truth of the matter
24 against the statement in favor of the defendant Mr. Young.

25 Now as I said in my opening statement I can't condone

1 the lifestyle, and I don't condone the language, but is that
2 enough to convict this young man of murder and attempted
3 murder?

4 Ladies and gentlemen, I submit to you that Aaron Junior
5 was mad and he was mad with provocation. He shot up the
6 car, we admit that. But he's not charged with shooting up
7 the car. He vented his anger in the wrong way grant you
8 that. But then he retreated. As a passenger in the car
9 they come down here and they turn and they go over here.
10 They're leaving.

11 Now Solicitor Stone would have you believe that they're
12 simply going back to fight another day. We'll never know
13 that. We know they didn't start this fight. We know that
14 regardless of what the past history was the Young's didn't
15 go looking for Mr. Robinson the Young's were defending
16 themselves. Now, if you wanted to get into a running gun
17 battle, and you wanted to get into mutual combat, he had a
18 gun that held thirty something bullets, he had a box of
19 ammunition, and Robinson had a six shot revolver. I mean
20 the odds are strongly in his favor. Why would he retreat?
21 He wouldn't have. That makes no sense.

22 Now you know juries like you come into the courtroom
23 and they have the job that you all have today and you
24 probably have very little experience. You remember Your
25 Honor said to you it's doubtful any of you all have served

1 on a jury before. Well it's doubtful that you have. And so
2 you come in and this whole thing revolves around what is
3 reasonable doubt.

4 And so you would think that somehow or another you're
5 supposed to have an answer to that. And let me show you
6 that lawyers have probably used billions of words trying to
7 define it and written hundreds of items trying to explain it
8 but sometimes the simplest approach is the best and that is
9 reasonable doubt is a doubt for which you can give a reason.
10 Okay. So let's look for a reason for a second.

11 I submit to you that reasonable doubt is doubt when the
12 lead investigator for the entire sheriff's department for
13 this entire case who takes statements who takes physical
14 evidence who supervises the whole thing when she testifies
15 under oath - let me make sure I get this right - that she
16 does not have a single piece of evidence that Aaron Young,
17 Junior shot at Tyrone Robinson or even pointed the gun at
18 Tyrone Robinson, or engaged in mutual combat, and with that
19 I submit to you that Tyrone - that Aaron is guilty only of
20 vandalism stupid as that sounds but that is he shot up the
21 car. Not charged with it but that's what it is.

22 Now, the solicitor gives you this piece of commentary
23 here and let's look at it. Everyone is presumed to know the
24 consequences of his act and if one voluntarily enters into
25 mutual combat - and we maintain that we don't have mutual

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1 combat here but we'll talk about that. Is it the natural
2 consequence - is it to know the consequence of your act when
3 after committing vandalism here you drive around and you
4 come down here and you get out on a public highway and you -
5 I don't know how far that is but it's a pretty good distance
6 - that somebody is gonna start shooting at children. Okay.

7 Don't think so. And look at this. And death results
8 to one of the participating parties. We have that.

9 Now, I submit to you that based on what I've said about
10 Tyrone Robinson, the lack of introducing collected evidence,
11 the comments and the testimony of the lead investigating
12 officer about the lack of evidence, has got to supply you
13 with reasonable doubt as to murder and as to attempted
14 murder. And we ask that you bring back a verdict while it
15 may be painful while it may not make you - no verdict in
16 this case after sitting here for two days is gonna make you
17 happy, but that it's right. Not necessarily fair but is
18 right in accordance with the law. It speaks the truth as to
19 the fact that Tyrone Robinson started this mess and he ended
20 it when he shot and killed that child and not Aaron Young,
21 Junior. Thank you.

22 THE COURT: Thank you, Mr. Vaux.

23 Now, ladies and gentlemen, you have been very patient
24 and attentive throughout the arguments presented by Mr.
25 Stone and Mr. Vaux and I ask you now to please give that

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1. same attention to me as I instruct you or charge you as to
2. what the law is.

3. Let me tell you at the outset before I begin these
4. instructions, they are scripted and I can tell you it's
5. gonna take about thirty-five to forty minutes. If any of
6. you feel that you need to have a break so that you can be
7. attentive throughout that thirty-five or forty minutes I can
8. declare a brief recess and let you do that right now. And
9. this is a decision that does not have to be unanimous, if any
10. one of you needs a break then all of you will get the break.
11. Anybody need one just raise your hand?

12. (NO RESPONSE.)

13. THE COURT: All right. Thank you. I appreciate that
14. and we'll proceed on.

15. As I said it now becomes my duty as the trial judge in
16. this case to instruct you or charge you as to what the law
17. is. And it is your duty as jurors to accept the law as I
18. tell it to you now and to apply the law to the facts of the
19. case that you find to exist, because as jurors it is your
20. duty to decide all issues of fact in the case and for that
21. reason you have to determine the effect, the purpose, the
22. value, the weight and the truth of the evidence that has
23. been introduced in this trial.

24. Both the state and the defendant have the right to
25. expect that you will conscientiously consider and evaluate

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1 the evidence and that you will apply the law of the case to
2 that evidence to the end that both the state and the
3 defendant will receive a fair and impartial trial at your
4 hands.

5 Throughout the course of this charge when I use the
6 word defendant I'm referring to Mr. Aaron Scott Young,
7 Junior. Mr. Young has been indicted by the Grand Jury of
8 Beaufort County and charged in this indictment with murder.
9 This indictment says that in Beaufort County on or about
10 September the 1st of 2012 Aaron Scott Young, Junior did
11 willfully, unlawfully and with malice aforethought, engage
12 in mutual combat with Tyrone Robinson and thereby caused the
13 victim Khalil Singleton to be shot and killed in the area of
14 Marshland Drive and Allen Road in Hilton Head Island, and
15 that Khalil Singleton did die in Beaufort County as a result
16 thereof in violation of the law.

17 The next indictment charges Mr. Young with attempted
18 murder and that indictment says on the same date September
19 the 1st, 2012, here in Beaufort County the defendant Aaron
20 Young, Junior with the intent to kill and with malice
21 aforethought, either expressed or implied, attempted to
22 murder the victim Tyrone Robinson in violation of the law.

23 I remind you again as I told you before this trial
24 began that the indictments are not evidence nor are they
25 proof of the charges that they contain, they are simply

1 charging documents, legal documents, that tell us, you and
2 me, what these charges are all about. And as you know Mr.
3 Young has entered pleas of not guilty to the charges
4 contained in the indictment.

5 The plea of not guilty by a defendant to a criminal
6 charge places the burden of proof on the state to prove the
7 guilt of the defendant beyond a reasonable doubt before you
8 as a jury can convict him and find him guilty. Mr. Young is
9 presumed in law to be innocent of the charges contained in
10 these indictments. It is a fundamental rule of our law of
11 evidence that a defendant regardless of the nature of the
12 charges, the number of the charges, the seriousness of the
13 charges against him, will always be presumed innocent of the
14 charges for which he has been indicted unless and until his
15 guilt has been proven by evidence, evidence that satisfies
16 you as a jury of his guilt beyond a reasonable doubt.

17 The presumption of innocence is not an empty legal
18 theory. It is not a mere phrase. The presumption of
19 innocence is a substantial right. It is like a robe of
20 righteousness that is placed about the shoulders of a
21 defendant and it assigns to that defendant the class of the
22 innocent. And that presumptive robe of righteousness
23 considers - continues to rest about the shoulders of a
24 defendant throughout the course of the trial. It even
25 follows him through your deliberations as you go into your

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1 jury room and begin to talk about this case.

2 The presumption of innocence continues to exist to the
3 benefit of the defendant until you are satisfied that his
4 guilt has been proven by evidence that satisfies you of that
5 guilt beyond a reasonable doubt. So, the state has that
6 burden then of proving the defendant guilty beyond a
7 reasonable doubt.

8 Some of you may have served as jurors in civil cases
9 before and if you did serve as a juror in a civil case the
10 judge told you that it is only necessary that the party who
11 has the burden of proof produce evidence to you that is more
12 convincing on that side of the argument than the evidence is
13 on the other side of the argument. But in criminal cases
14 the state's proof has to be more powerful than that. Here
15 it must be beyond a reasonable doubt. So what then is proof
16 beyond a reasonable doubt?

17 Proof beyond a reasonable doubt is proof that leaves
18 you firmly convinced of the defendant's guilt. Now there
19 are very few things in this world that you and I know with
20 absolute certainty and in criminal cases the law does not
21 require proof that over comes every possible doubt, and so
22 if based on your consideration of the evidence you are
23 firmly convinced that the defendant is guilty of the crime
24 charged you must find him guilty.

25 If on the other hand you think there is a real

1 possibility that he is not guilty you must give him the
2 benefit of the doubt and find him not guilty. I tell you
3 that reasonable doubt could arise from evidence in the case
4 or it might arise from the lack of evidence in the case. But
5 you as a jury must determine whether or not reasonable doubt
6 exist as to the guilt of this defendant.

7 I tell you that he is entitled to every reasonable
8 doubt which arises in the case. And so if on any issue of
9 fact which is necessary to a conviction you have a
10 reasonable doubt as to how that issue should be resolved it
11 is your duty to resolve that reasonable doubt in favor of
12 the defendant, because the defendant is never required to
13 prove his innocence; but the state is required in law to
14 prove every essential element of the offense charged against
15 him by evidence that satisfies you of his guilt beyond a
16 reasonable doubt before you could convict him and find him
17 guilty.

18 And in that regard I tell you now and I emphasize to
19 you that the fact that the defendant in this case did not
20 himself testify in his own behalf is not a factor to be
21 considered by you in any way in your deliberations and in
22 your consideration on the question of his guilt or
23 innocence. It must not be considered by you in any manner
24 whatsoever against him or militate against him in any
25 respect whatsoever because the defendant has a

1 constitutional right to remain silent. And if he chooses to
2 assert that constitutional right that fact cannot and must
3 not be used against him and must not be considered by you in
4 your deliberations.

5 And so under your oath then you are to reach no
6 inference and draw no conclusion whatsoever from the fact
7 that Mr. Young did not himself testify in this case. That
8 should not even be discussed by you in the jury room. The
9 burden of proof as I've told you is upon the state to prove
10 guilt beyond a reasonable doubt and the fact that the
11 defendant did not testify is not a factor to be considered
12 by you in determining his guilt or his innocence.

13 And so, ladies and gentlemen, if then upon the whole
14 case you have a reasonable doubt as to the guilt or the
15 innocence of the defendant, he is entitled to that
16 reasonable doubt and would be entitled to an acquittal and a
17 verdict of not guilty.

18 But if on the other hand upon the whole case you find
19 that the state has proven by evidence that satisfies you as
20 a jury of the guilt of the defendant beyond a reasonable
21 doubt then as such circumstances it is equally your duty to
22 convict the defendant and to find him guilty.

23 Now, ladies and gentlemen, during the trial each of us,
24 you and I, have our separate duties to perform. As the
25 trial judge it's my job to preside over the trial of this

1 case and I also have the duty to rule upon or pass upon the
2 admissibility of the evidence which has been introduced and
3 you are to consider only the competent evidence before you
4 in this case as I've instructed you earlier. The testimony
5 which has been offered from the stand and the items or the
6 documents which have been offered into the trial of this
7 case under our rules.

8 I have the additional duty to then charge you as to
9 what the law is in this case. As the presiding judge I am
10 made the sole judge of the law of the case and it is your
11 duty to accept the law as I charge it to you now to be the
12 correct law. You might have brought some preferences about
13 the law with you into your service this week. You might
14 have some ideas about what you think the law ought to be.
15 You might not like the law that I instruct you in this
16 regard.

17 But I tell you if you've got some preferences or some
18 preconceived ideas about what the law is or what it ought to
19 be you're obligated under your oath to forget what you think
20 the law is or what you would like for it to be because
21 you're obligated by the oath that you took to accept the law
22 as I charge it to you now to be the correct law.

23 Now when ever case tried in our courts before a jury
24 you as the jury as I have told you before the sole and
25 exclusive judge of the facts of the case. You're the judge

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1 of the facts and I'm the judge of the law. Our constitution
2 has said that a trial judge can't comment upon the facts of
3 the case, I can't innovate or state or hint to you how I
4 might feel about the facts of the case. Since you're the
5 sole judge of the facts of the case I don't have a right to
6 have any opinion about the facts of the case, and so you're
7 not to infer from anything that I have said to you during
8 this trial, or, anything that I am saying to you now during
9 this charge that I have an opinion about the facts of the
10 case. The law does not permit that. So it's solely a
11 matter then for you as the jury to determine the facts of
12 the case and in doing that you have to decide the effect,
13 the value, the weight, and the truth of the evidence that
14 has been presented in this trial.

15 Now as you consider what the facts of the case are
16 there are a lot of things that you can take into account.
17 You have to pass upon the credibility or the admissibility -
18 Excuse me, the credibility or the believability, the
19 credibility or the believability of the testimony that
20 you've heard and the witnesses who have offered that
21 testimony. You and you alone have to decide the force and
22 the effect and the truth of the testimony that you've heard.

23 Now there are a lot of things that you can take into
24 account and when you consider that matter of truth. You can
25 take into account the appearance, the manner of the witness

1 as he or she testified from the witness stand. You have the
2 right to ask yourself whether the witness is forthright or
3 hesitant. Was a witnesses testimony consistent or did it
4 contain discrepancies? What was the ability of a witness to
5 know the things that he or she was telling you about? Did
6 the witness have an interest to be served by the testimony
7 that was being offered in this case? Was the testimony of a
8 witness made stronger by other evidence or was it made
9 weaker by other evidence in the case?

10 You have heard in this particular case witnesses who
11 have been qualified as expert witnesses. Normally lay
12 witnesses, that is normal people like you and me, can
13 express their opinions about things that they have seen or
14 heard. They can tell you what they saw or what they heard
15 as some of the witnesses have done in this case. But they
16 can't tell you what conclusions or what opinions they
17 reached as a result of what they saw or heard.

18 But expert witnesses are different from that. Expert
19 witnesses are people who have been trained or have
20 experience in certain fields and they are qualified in those
21 fields. And once they're qualified as experts in those
22 fields they're allowed to give you their opinions about
23 those matters in which they have been qualified. But you're
24 not bound by the testimony of an expert witness. You can
25 accept or reject the testimony of an expert witness just

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1 like you can any witness. Because as jurors, ladies and
2 gentlemen, you've got the right to believe a small part of
3 what a single witness tells you and to disbelieve the larger
4 part of the testimony of that same witness.

5 Or you can do it the other way around. Believe the
6 larger part and disbelieve the smaller part. Or you can
7 believe everything that a witness tells you or none of what
8 a witness tells you. But you don't exercise those
9 considerations arbitrarily. There's got to be some reason
10 for you to do it and so what we ask you to do then in
11 determining the issue of truth is to exercise your mental
12 processes.

13 And as you determine what you consider to be true we
14 ask you to use your good judgment, your common sense, your
15 sense of logic and reason, and your experiences in life.
16 And you apply these abilities that each of you has that you
17 have brought into your service this week from your separate
18 and distinct walks of life, to bear on what you have heard
19 in this courtroom and once you have done that you will be
20 able to determine the truth. And once you have found the
21 truth you take that truth and you wrap it in the mantle of
22 the law that I am now giving you. And those two things will
23 come together, the truth that you find and the law that I
24 give you, to result in a verdict which will speak the truth
25 of this case.

1 Now, ladies and gentlemen, I want to instruct you as to
2 the law of the case as it bears on the separate charges
3 which are brought in these indictments. I charge you first
4 as to the law for the crime of murder.

5 Murder is defined in our law as the killing of any
6 person with malice aforethought either expressed or implied.
7 In order for the state to prove the defendant guilty of
8 murder, it must be proven beyond a reasonable doubt that the
9 defendant killed or caused the death of a person, and the
10 killing was done with malice aforethought. The state does
11 not have to require any motive for the killing but it is
12 required to prove malice.

13 So what is malice in the eyes of the law as an
14 essential element of the crime of murder? Malice is the
15 intentional doing of a wrongful act without just cause or
16 excuse and with the intent to inflict injury. Malice
17 aforethought is the deliberate and willfully on purpose to
18 do the unlawful act.

19 Aforethought means that the intention to do the
20 unlawful act was conceived or planned sometime before the
21 actual commission of the unlawful act but it does not need
22 to exist for any particular length of time prior to the act
23 in order to be malice. Malice is a word that suggest a
24 wickedness, or a hatred, or a determination to do what one
25 knows to be wrong without just cause or legal provocation.

1 As I've said malice need not be in the mind of the killing
2 or the one causing the death at any particular length of
3 time before the act in order to render the killing murder.
4 If it is present in the mind of the one doing the killing or
5 causing it at any length of time prior to the act then it's
6 presence would be sufficient to render the killing murder.

7 Malice can be expressed or inferred. Malice is said to
8 be expressed when there is shown a violent deliberate
9 intention to unlawfully take away the life of another human
10 being. Malice can be inferred where there's no excuse or
11 legal provocation for the killing and when circumstances
12 surrounding the killing show an abandoned heart, a malignant
13 heart, malice then is a hatred, it's an ill will, it is
14 hostility toward another person. It is the intentional
15 doing of a wrongful act without just cause or excuse and
16 with an intent to inflict an injury or under circumstances
17 under which the law would infer an evil intent.

18 I tell you, ladies and gentlemen, that the defendant is
19 not required to prove the absence of malice. But the state
20 is required to prove the presence of malice beyond a
21 reasonable doubt.

22 Now, Ladies and gentlemen, as you have heard throughout
23 the trial of this case it is undisputed that Mr. Young did
24 not fire the fatal bullet that killed Khalil Singleton. And
25 so the state seeks and ask for a conviction at your hands

1 under the theory of mutual combat. Now I tell you that
2 mutual combat exist when there is a mutual intent and
3 willingness to fight between persons or groups of people.

4 Mutual intent is shown by acts and conduct of the
5 parties and circumstances attending and leading up to the
6 combat. The circumstances necessary to establish mutual
7 combat include whether there is any evidence of preexisting
8 evil or ill will between the parties, or, any dispute
9 between the parties, and whether the combatants agree to be
10 armed because the history of ill will and an agreement to be
11 armed are necessary before a defendant is engaged or deemed
12 to have been engaged in mutual combat.

13 Now if you find that mutual combat exist in this
14 particular case I tell you that everyone is presumed to know
15 the consequences of his acts. And if one voluntarily enters
16 a mutual combat where deadly weapons are used, knowing that
17 they are being used, and if death results to one of the
18 participating parties, everyone engaged in such combat is
19 equally guilty. Regardless of whether he used a deadly
20 weapon or not and regardless of whether he was on one side
21 or another, that is, on the side of the one who fires the
22 shot or not, all are equally responsible for the act where
23 all are participating in mutual combat.

24 I tell you that in this charge and in every charge
25 criminal intent is a necessary element of the crime that has

1 to be proven by the state beyond a reasonable doubt.
2 Criminal intent is always a matter that has to be determined
3 by you as a jury from the circumstances surrounding the
4 situation. There is no way to prove intent to a
5 mathematical certainty, there is no way medical science can
6 dissect a person's brain and determine what he had in mind,
7 and so the law says that criminal intent may be inferred
8 from the circumstances which were shown to have existed at
9 the time, and that's how you decide whether criminal intent
10 was actually present..

11 Criminal intent then is a state of mind and it operates
12 jointly with an act in the commission of a crime. It is a
13 mental state, it is a conscious wrong doing, and it's up to
14 you as a jury to determine what the defendant intended to do
15 based on the circumstances shown to have existed. I tell
16 you that the state has to prove criminal intent beyond a
17 reasonable doubt just as it has to prove every other element
18 beyond a reasonable doubt as I have explained that to you.

19 And on the question of intent, ladies and gentlemen, we
20 deal with what we call in the law transferred intent because
21 once again it is undisputed that Mr. Robinson fired the shot
22 that killed Khalil Singleton. It is also undisputed that
23 Mr. Robinson had no intent of killing Khalil Singleton. Mr.
24 Robinson was found guilty of the crime under the law of
25 transferred intent because if a defendant with malice

1 aforethought tries to kill another person, but by mistake
2 injures or kills a different person, the defendant still has
3 the intent to kill. The intent to kill is merely
4 transferred from the original person that the defendant
5 intended to kill to the actual person who was killed or
6 injured.

7 Now in this particular case you have to decide whether
8 or not the transferred intent that followed Mr. Robinson in
9 that case also followed to Mr. Young under the mutual combat
10 theory that all who are involved are equally responsible for
11 the acts of anyone. That's a decision that you, ladies and
12 gentlemen, have to decide.

13 Now, ladies and gentlemen, I next instruct you on the
14 other charge in the indictment and that is attempted murder
15 because Mr. Young is also charged with the attempted murder
16 of Tyrone Robinson. And under our law the statute says that
17 a person who with the intent to kill attempts to kill
18 another person with malice aforethought, either expressed or
19 implied, that person is guilty of attempted murder.

20 So, what do we mean by an attempt in the eyes of the
21 law? An attempt is an act which is done in partial
22 execution of a design to commit a crime. There has to be
23 an intent as I have just described that to you that the act
24 shall be committed. And an act not done not in full
25 execution of the crime but in pursuance of the intent, that

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1 is, some act acting toward the act which is intended.

2 Now an attempt is different from the preparation to
3 commit the crime. It is also different from the intent, the
4 sole intent to commit a crime because the law does not
5 punish one for the mere entertainment of a criminal intent
6 for thinking about committing a crime. To bring the law
7 into action it is necessary that some act must be done in
8 pursuant to the intent. Immediately and directly tending to
9 the commission of the crime an act which should the crime
10 had been carried out which constitute a part and a partial
11 of the crime itself. But it doesn't reach to the
12 accomplishment of the original intent because it is
13 prevented or it's voluntarily abandoned.

14 And so attempted murder then is the attempt with malice
15 aforethought as I have just described that to you in
16 connection with murder the description is the same. To
17 commit the crime of attempted murder the state has the
18 burden of proving that the defendant had the intent to kill,
19 that he attempted to kill, and that he had malice
20 aforethought in connection with the crime of attempted
21 murder in so far as Mr. Robinson is concerned.

22 Now, ladies and gentlemen, by operation of law there is
23 included in that greater crime of attempted murder what we
24 call a lesser and included offense of assault and battery in
25 the first degree, so, I now instruct you on the offense of

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1 assault and battery in the first degree.

2 The law says that if a person - that a person commits
3 the offense of assault and battery in the first degree if
4 the person unlawfully offers, or attempts, to injure another
5 person with the present ability to do it, and that the act
6 or the attempt is accomplished by means likely to produce
7 death or great bodily injury. Obviously you know what we
8 mean by death. Let me define for you what great bodily
9 injury means. Great bodily injury means bodily injury which
10 causes a substantial risk of death, or, which causes serious
11 permanent disfigurement or protracted loss or impairment of
12 a function of a bodily member or organ.

13 So to recap that, the lesser included offense of
14 assault and battery in the first degree would require proof
15 beyond a reasonable doubt that the defendant offered or
16 attempted to injure Tyrone Robinson and he had the present
17 ability to do it and the act was accomplished by means
18 likely to produce death or great bodily injury as I have
19 defined that to you.

20 Now, ladies and gentlemen, the state attempts to meet
21 its burden of proof in this case by offering both direct
22 and circumstantial evidence. There are two types of
23 evidence which are generally presented during the trial.
24 Direct evidence is evidence that directly proves the
25 existence of a fact and doesn't require any conclusions on

1 your behalf. Of course direct evidence of an eye witness
2 who takes the stand and tells you what he or she saw or what
3 he or she heard. That's direct evidence. Somebody comes in
4 and says I saw it or I heard it and here it is. It doesn't
5 require you to conclude anything about what was seen or
6 heard, you were told what was seen or heard.

7 Now circumstantial evidence on the other hand is proof
8 of a chain of facts and circumstances that leads to the
9 existence of another fact. In other words it requires some
10 deduction on your part. A simplistic example which I use
11 and have used over the years doesn't have anything to do
12 with crime, it has to do with the weather which I suppose
13 the way we're surrounded these days is probably appropriate,
14 a cold winter night like we've been having you look out
15 across your lawn and you see the dry brown dead grass of
16 winter and you go to bed. And you wake up the next morning
17 and you look out across your lawn and you see it's covered
18 with snow and you see in that snow footprints or tracks that
19 go up to your front door.

20 Well what can you conclude from that? Quite simply you
21 can conclude that after you went to bed last night it
22 snowed. You didn't see a single flake fall but you know it
23 did. And you know that sometime after it snowed somebody
24 came to your front door. You didn't see them but you know
25 that they came there. And you did all those things of

1 course by using your simple powers of deduction. And the
2 law says that crimes can be proven by circumstantial
3 evidence. The law makes no distinction between the weight
4 or the value that you give to either direct evidence or
5 circumstantial evidence.

6 However to the extent that the state relies on
7 circumstantial evidence all the circumstances must be
8 consistent with each other; and, when taken together they
9 must point conclusively to the guilt of the accused beyond a
10 reasonable doubt. If these circumstances merely portray the
11 defendant's behavior suspicious then the proof has failed.

12 The state has the burden of proving the defendant
13 guilty beyond a reasonable doubt and the burden rest on the
14 state regardless of whether it relies on direct evidence or
15 circumstantial evidence or some combination of the two.

16 Ladies and gentlemen, there has been offered into the
17 record of this case a statement made by the defendant in
18 this case. You saw it on the screen, you saw the transcript
19 as you followed it. You have to decide whether or not the
20 statement was made, and if you decide that it was made, then
21 you have to decide whether he made the statement
22 voluntarily. And then you will have to decide the weight
23 that you will give to the statement. You have to decide
24 whether that statement was a product of the free will and
25 the free choice of Mr. Young. The state has to prove that

1 the statement was voluntary and they have to prove that
2 beyond a reasonable doubt.

3 If you determine that the statement was given freely,
4 and voluntarily, then you can give it what weight that you
5 think it should receive. If you determine that it was not
6 the free and voluntary will of Mr. Young, then you should
7 not consider it as evidence. And when you decide whether
8 the statement was free and voluntarily given you have to
9 decide the totality of the circumstances. You can consider
10 his age, his educational background if you know it, his
11 mental ability and things of that nature.

12 And when you decide whether it's been voluntarily given
13 or not you should consider whether he was advised of and
14 understood his constitutional rights because our law says
15 that before any questions can be ask of someone who is in
16 custody they have to be advised, that they have the right to
17 remain silent, that if they use the statement it can be used
18 - if they make a statement it can be used against them, that
19 they have the right to have a lawyer present, if they can't
20 afford one one will be appointed to represent them free of
21 charge.

22 You can determine the place, the length of the
23 incarceration, the nature of the questioning and all of
24 those things. You must consider all of the circumstances
25 that are surrounding this statement before you can give any

1 weight to it and if you are satisfied beyond a reasonable
2 doubt that it was made by Mr. Young uninfluenced by a
3 promise of reward or threat of harm, if you find beyond a
4 reasonable doubt that it was given voluntarily, if you find
5 that he had received his rights in those regards and
6 understood them, then you can give it the weight that you
7 think it should receive.

8 If you find that the state has not met its burden in
9 that regard then you cannot give it any weight whatsoever.

10 Now, ladies and gentlemen, finally, that's a word you
11 been hanging on for a while to hear finally. Let me tell
12 you that you don't serve as jurors in this or in any case as
13 partisans or advocates either for the State of South
14 Carolina or for the defendant. You don't serve as jurors to
15 punish your enemies nor to reward your friends. Obviously
16 that would be a perverted system of justice and would not be
17 justice at all.

18 You have been selected by both the state and the
19 defendant to serve as fair and impartial jurors. It is your
20 duty then by your joint deliberations to determine the truth
21 of this case giving to this defendant the benefit of every
22 reasonable doubt on each and every issue. And then to the
23 facts which you determine to be true, you apply the law
24 which I have just given you and thus arrive at a verdict
25 which will speak the truth of this case. That's what the

1 word verdict means. It comes from a Latin phrase, it means
2 a truthful saying. And once you have done that you will
3 have discharged your duty as jurors and you will have
4 carried out the oath that you took yesterday to well and
5 truly try this case and render a true verdict according to
6 the law and the evidence so help you God. We have every
7 reason to know that you will do just that and we have every
8 reason to expect that you will do nothing less than that.

9 Now, ladies and gentlemen, I'm going to instruct you
10 now as to what the forms of the verdict are in this case. I
11 have written them down on this sheet of paper. They are
12 written in a certain order, that order doesn't have anything
13 to do with an inference of a conclusion that can be drawn by
14 you as to whether the defendant is guilty or not guilty. I
15 simply write them down here in the order that I find easiest
16 to explain.

17 There are two separate charges, murder and attempted
18 murder. You will write a separate verdict for each of those
19 two charges. Your verdict on one charge does not
20 necessarily control your verdict on another charge. Mr.
21 Young can be convicted or acquitted of either or both of
22 these charges depending upon your view of the evidence and
23 the law that you have heard. I've given the verdict to the
24 Forelady cause she's got to fill it out.

25 Madam Forelady, the first possible verdict form as to

1 the charge of murder is, "we the jury find the defendant
2 Aaron Scott Young" and the first possible verdict form is
3 guilty of murder. That's the verdict that you will arrive
4 at if you find that the state has met it's burden of proof
5 on each of those elements as I have instructed you beyond a
6 reasonable doubt. If that's the verdict form that you
7 arrive at, Madam Forelady, you will indicate that by putting
8 an X or a check mark in the space you see provided.

9 The second possible form of verdict on that charge is
10 "We the jury find the defendant on the charge of murder not
11 guilty". That's the verdict that you will arrive at if you
12 find that the state has failed to meet its burden of proof
13 as to any of those elements of the charges as I have
14 instructed you and if that's the verdict that you arrive at
15 as to the charge of murder, likewise, you will indicate that
16 by putting an X or a check mark there.

17 As to the charge of attempted murder there are three
18 possible verdict forms because as I just told you there is a
19 lesser included charge there. As well as to the charge of
20 attempted murder the possible verdict forms are guilty of
21 attempted murder. If the state has met it's burden of proof
22 as to each of the elements of the crime of attempted murder
23 as I have instructed you beyond a reasonable doubt that
24 would be your verdict and you would indicate that by putting
25 an X or a check mark there.

1 If you find that the state has not met it's burden of
2 proof in that regard you would consider the crime of assault
3 and battery in the first degree. If the state has met it's
4 burden of proof as to each of the elements of assault and
5 battery in the first degree that would be your verdict and
6 you would indicate that by putting a check mark there.

7 If you find that the state has failed to meet it's
8 burden of proof as to those other two charges beyond a
9 reasonable doubt the verdict would be not guilty and you
10 would indicate that in the space provided.

11 I've given the verdict form to the Forelady because
12 she's the person that's got to fill it out but it's not
13 gonna her verdict. The verdict has to be unanimous, all
14 twelve of you have to agree to what the verdict is, Madam
15 Forelady, before you could fill that out and sign that form.

16 I'm gonna send you to your jury room now. I ask that
17 you wait just a moment before you begin your deliberations.
18 As hard as you might find it to believe I may have left
19 something out of what I've been telling you. Or I may have
20 misstated something and if I have I have to bring you back
21 out and correct that. But if I don't have to bring you back
22 out to correct anything we will send in these items of
23 evidence and once the items of evidence have been brought
24 into you then you can begin your deliberations but not
25 before. The sketch here is demonstrative evidence, it

1 cannot go into the jury room so take a good look at it
2 before you go in there.

3 The rest of these items are items of evidence and they
4 will be introduced to you. So please now go to your jury
5 room, wait to begin your deliberations. Your food might
6 already be there, it's supposed to be there, if it is you
7 can just chow down. And you can - While you're eating you
8 can deliberate or if you choose not to discuss this case
9 while you're eating that's up to you. You've been on our
10 time all week now we're gonna be on your time. Go to your
11 jury room; wait until you hear further before you begin your
12 deliberations..

13 Mr. Bittick, Ms. Michels, if you will stay right where
14 you are. You can take your notebooks - your notes back with
15 you, yes.

16 (JURY EXITS COURTROOM TO DELIBERATE AT 12:30 P.M..)

17 THE COURT: Can we have a separate jury - Do we have a
18 separate room that we can put these folks in, a separate
19 jury room that's not being used?

20 THE BAILIFF: We can put them in another one.

21 THE COURT: Good. Mr. Bittick, Ms. Michels, you all
22 were alternate jurors and it appears that we're not gonna
23 need your services but we can't tell right this minute -
24 You have been ask to serve as alternates because if any of
25 these original twelve hadn't showed up today for example and

1. you were not there we would have to start this whole case
2. over, everything done is wasted. But the fact that you were
3. here gave us the peace of mind to know that we were gonna be
4. able to conclude this trial today. And you're just as
5. capable of reaching a verdict as they were.

6. You've paid as good attention as they were but the fact
7. is right now it looks like all of them are in good health
8. and they're gonna be able to survive until a verdict is
9. arrived at in this case. So I'm gonna send you to an
10. alternate jury room down there and ask that you wait there.
11. Well your food will be brought into you for one thing and
12. there are magazines in there and you can make yourself as
13. comfortable as you can in that jury room. And if it looks
14. like we're not gonna need you I will excuse you later but
15. I'm asking you to stay with us for a while. Okay. Thank
16. you, folks.

17. (ALTERNATE JURORS EXIT COURTROOM AT 12:32 P.M.)

18. THE COURT: Folks, other than previously - Excuse me.

19. Other than previously noted are there any exceptions or
20. request for additional charge from the state, Mr. Stone?

21. SOLICITOR STONE: No, sir.

22. THE COURT: Mr. Vaux?

23. MR. VAUX: No, sir.

24. THE COURT: Thank you. All right. Folks, if you all
25. will confer about the evidence and its all together and when

1 that's done we can send those items in. And Ms. Nelson can
2 run up to the hotel and discharge herself while the jury is
3 deliberating. Okay.

4 (COURT IN RECESS AT 12:33 P.M..)

5 (COURT BACK IN SESSION AT 01:21 P.M..)

6 THE COURT: Thank you, folks. Please be seated.
7 I'm sorry. Folks, we have a question from the jury. As a
8 matter of fact they took this question with them into the
9 jury room and I obviously did not do a good job of
10 explaining the offenses. They say "Can we have the
11 definitions of murder, attempted murder, assault and battery
12 first degree, mutual combat definitions?" As I say before
13 they sat down they wrote these questions so they hadn't
14 given a whole lot of thought to it.

15 What ever you read into that you can read into it I'll
16 just tell you. Let me take a minute to get those things
17 back together. Thankfully I have not put all this up..

18 Okay, I'm prepared to recharge on those. Everybody
19 ready?

20 SOLICITOR STONE: Yes, sir.

21 MR. VAUX: Yes, sir.

22 THE COURT: Okay. You can bring in the jury.

23 Mike, if you'll ask them to bring in the two alternates
24 as well.

25 THE BAILIFF: Do you want the two alternates to come in

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1 too, Judge?

2 THE COURT: Yeah. Sorry I didn't tell you earlier.

3 Wanda, you want to go ahead and mark this and give it
4 back to me?

5 MADAM COURT REPORTER: Yes, sir.

6 THE COURT: Thank you.

7 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO, IDENTIFIED AND
8 MARKED, RECEIVED INTO EVIDENCE.)

9 (JURY REENTERS COURTROOM AT 01:25 P.M..)

10 THE BAILIFF: The jury is seated, Your Honor.

11 THE COURT: Thank you. Ladies and gentlemen, you have
12 ask to get the definition again of murder, attempted murder,
13 assault and battery in the first degree and mutual combat.

14 I will now recharge you on those particular
15 definitions. I had to send back into the chambers to get a
16 book that I carried back there. I forgot it was back there
17 so it might be a slight delay but in part of this but I
18 think we can put it all together in the same order that I
19 gave it to you earlier. Let's begin with murder.

20 Murder is the killing of any person with malice
21 aforethought either expressed or implied. In order for the
22 state to prove the defendant guilty of murder, it must be
23 proven beyond a reasonable doubt that the defendant killed a
24 person, or in this case under the state's theory, caused the
25 death of a person with malice aforethought. The state is

1 not required to prove any motive for the killing but it is
2 required to prove malice so then a key element is malice.

3 Malice is the intentional Malice is the intentional
4 doing of a wrongful act without just cause or excuse and
5 with the intent to inflict injury. Malice aforethought is
6 the deliberate and willfully on purpose to do the unlawful
7 act.

8 Aforethought means that the intention to do the
9 unlawful act was conceived or planned sometime before the
10 actual commission of the unlawful act, but it need not exist
11 for any particular length of time prior to the act.

12 Malice is a word that suggest a wickedness, or a
13 hatred, or a determination to do what one knows to be wrong
14 without just cause or excuse or legal provocation. Malice
15 need not be in the mind of the one doing the act for any
16 particular length of time before the act of killing in order
17 to render the killing murder. If it is present in the mind
18 of the one doing the killing or causing the death any length
19 of time before the act then it's presence would be
20 sufficient to render the killing murder.

21 Malice can be expressed or it can be inferred. Malice
22 is said to be expressed when there is shown a violent
23 deliberate intention to unlawfully take away the life of
24 another human being. It can be inferred when there is no
25 excuse or legal provocation for the killing and when the

1 circumstances surrounding the killing show an abandoned
2 heart, a malignant heart bent upon this type of mischief.

3 Malice then is a hatred, it is a hostility or an ill
4 will toward another person. It is the intentional doing of
5 a wrongful act without just cause or excuse and with an
6 intent to inflict an injury or under circumstances that the
7 law will infer an evil intent.

8 The state is required to prove the presence of malice
9 beyond a reasonable doubt. The defendant is not required to
10 prove the absence of malice.

11 Now, ladies and gentlemen, as we know and has been
12 apparent throughout the trial of this case the defendant Mr.
13 Young is not charged with firing the shot that killed Khalil
14 Singleton. As the indictment indicates he is charged under
15 a theory surrounding mutual combat. And so mutual combat
16 exist when there is a mutual intent and a willingness to
17 fight. Mutual intent is manifested or shown by acts and
18 conduct of the parties and the circumstances attending and
19 leading up to the combat itself. The circumstances
20 necessary to establish mutual combat include whether there
21 is any evidence of preexisting ill will or dispute between
22 the two parties, that is, Mr. Young in this case and Mr.
23 Robinson, and whether the combatants agreed to be armed.
24 It requires a history of ill will and an agreement to be
25 armed before a defendant is deemed to have engaged in mutual

1 combat.

2 Because under the law of mutual combat everyone is
3 presumed to know the consequences of his acts. And if one
4 voluntarily enters into a mutual combat where deadly weapons
5 are used, knowing that they are being used, and death
6 results to one of the participating parties, or in this case
7 under the state's theory an innocent third party, everyone
8 engaged in such combat is equally guilty. Regardless of
9 whether he used a deadly weapon or not and regardless of
10 whether he was on one side or another it makes no difference
11 where all are participating in mutual combat all are equally
12 responsible for the natural consequences that are incurred.

13 Criminal intent is a necessary element of these crimes
14 and it has to be proven beyond a reasonable doubt. Criminal
15 intent is always a matter that has to be determined by the
16 jury from the circumstances surrounding the situation.

17 There is no way to prove intent to a mathematical certainty,
18 there is no way that medical science can dissect a person's
19 brain and determine what he had in mind, so the law says
20 that criminal intent may be inferred from the circumstances
21 which were shown to have existed, and that's how you make a
22 determination as to whether criminal intent was present.

23 Criminal intent then is a state of mind and it operates
24 jointly with an act in the commission of a crime. Criminal
25 intent is a mental state, it is a conscious wrong doing, so

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1 it's up to you as a jury to determine what the defendant
2 intended to do based on the circumstances which are shown to
3 have existed. I tell you that the state has to prove
4 criminal intent beyond a reasonable doubt as it has to prove
5 every other element beyond a reasonable doubt.

6 Now once again, ladies and gentlemen, as we know in
7 this case Mr. Tyrone Robinson who fired the shot that killed
8 Mr. Singleton did not intend to kill - Excuse me - Yeah -
9 did not intend to kill Khalil. But under a theory of
10 transferred intent if a defendant, in this case Mr.
11 Robinson, with malice aforethought tries to kill another
12 person, but by mistake injures or kills a different person,
13 Khalil, the defendant still has the intent to kill. The
14 intent to kill is simply transferred from the original
15 person who the defendant intended to kill to the actual
16 person who was killed or injured. That is the doctrine of
17 transferred intent.

18 Now you, ladies and gentlemen, have to determine beyond
19 a reasonable doubt first of all whether there was mutual
20 combat because that is an essential element of the state's
21 proof in regard to this, not only that the young man was
22 murdered with malice aforethought, but in this particular
23 case that there was mutual combat between Mr. Robinson and
24 Mr. Young which made the acts of one of them attributable to
25 the acts of the other, and that the transferred intent that

1 applied to Mr. Robinson in the death of Khalil Singleton
2 also applied to Mr. Young. All right.

3 Now the next charge is attempted murder. Under our law
4 a person who with the intent to kill attempts to kill
5 another person with malice aforethought, either expressed or
6 implied, commits the offense of attempted murder. I had
7 previously defined for you intent. I have also previously
8 defined for you malice. So what you have to determine is
9 whether or not Mr. Young with the intent to kill Mr.
10 Robinson and with malice attempted to kill Robinson.

11 So, what is an attempt in the eyes of the law? An
12 attempt is an act which is done in partial execution of a
13 design or a plan to commit a crime. There has to be an
14 intent that the act shall be done. And there has to be an
15 act but not the completion of the act but an act done in
16 pursuance or in partial completion of the intent. So an
17 attempt is different from preparation to commit a crime, and
18 it is also different from the intent to commit a crime
19 because it is not against the law to prepare to commit a
20 crime or even to think about committing a crime. So the
21 mere entertainment of a criminal intent is not in and of
22 itself an attempt to commit a crime. That is, some act
23 acting toward the act which is intended.

24 To bring the law of attempt to commit a crime into
25 action it is necessary that some act should be done in

1 pursuant to the intent which immediately and directly
2 tending toward the commission of the crime. An act in other
3 words that if the crime had actually been perpetrated it
4 would constitute a part and a partial of the crime itself.
5 But it doesn't reach to the accomplishment of the crime
6 obviously in that case it would not be an attempt, it would
7 be a completed act. It does not reach the accomplishment or
8 the completion of the act because its prevented or it's
9 voluntarily abandoned. That's the law on intent.

10 And as I told you here is included in that law or in
11 that charge a lesser included charge of assault and battery
12 in the first degree. In other words if you find that the
13 state has failed to meet it's burden of proof as to the
14 elements of attempted murder, then you may consider the
15 offense of assault and battery in the first degree. Or you
16 can consider it separately if you choose to.

17 A person commits the offense of assault and battery in
18 the first degree if the person unlawfully offers, or
19 attempts, as I've just described that to you, to injure
20 another person with the present ability to do it, and the
21 act is accomplished by means likely to produce death or
22 great bodily injury. And so the state has to prove in this
23 regard to sustain a conviction on the charge of assault and
24 battery in the first degree that Mr. Young offered or
25 attempted to injure another person. In this case Mr.

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1 Robinson and he had the present ability to carry out that
2 injury and the act or the attempt was accomplished by means
3 that were likely to produce death or great bodily injury:

4 Of course we know what death is, I need not define
5 that. But great bodily injury means bodily injury which
6 causes a substantial rise of death, or, which causes serious
7 permanent disfigurement or protracted loss or impairment of
8 the function of a bodily member or organ.

9 Ladies and gentlemen, I think I have answered all of
10 the definitions that you sent out for me. I will ask you to
11 go back in and continue to deliberations please. Thank you.

12 MADAM FORELADY: Thank you.

13 THE COURT: Thank you. And, folks, if you will go back
14 to your alternate jury room please as well. Thank you.

15 (JURY EXITS COURTROOM AT 01:38 P.M..)

16 THE BAILIFF: The jury is clear, Your Honor.

17 THE COURT: Thank you. Mr. Stone, exceptions or request
18 for additional charge?

19 SOLICITOR STONE: No, sir.

20 THE COURT: Thank you. Mr. Vaux?

21 MR. VAUX: Yes, sir.

22 THE COURT: Yes, sir.

23 MR. VAUX: First, Your Honor, I would ask that you
24 preinstruct them on intent and malice. Without doing so you
25 omit a key part of the charge of murder. Second, - -

1 THE COURT: I'm sorry, say that again now.

2 MR. VAUX: Without including the definition of intent
3 and malice you said as I previously had instructed you about
4 malice you leave out the two key elements of the - of
5 murder. Second -

6 THE COURT: Did I not completely charge them on malice
7 this time?

8 SOLICITOR STONE: You did. I understand what Mr. Vaux
9 is saying but what you did is you said previously when you
10 were doing attempted murder ---

11 THE COURT: Yes.

12 SOLICITOR STONE: --- you had just got through giving
13 charges on malice as well as intent ---

14 THE COURT: Right.

15 SOLICITOR STONE: --- at the murder charge. So when
16 you said previously you weren't talking about the first
17 charge, you were talking about --

18 MR. VAUX: I took it - I didn't take it that it was the
19 complete charge on intent and malice..

20 THE COURT: No. I had - When I was charging murder I
21 gave the same malice charge that I gave before.

22 MR. VAUX: Right. Okay.

23 THE COURT: I chose not to give the malice charge when
24 I was charging attempted murder cause I had just given it
25 once already. I mean just two seconds before. And actually

1 that's the same way I did it when I charged them the first
2 time I think.

3 MR. VAUX: Then this time you added in the portion
4 about mutual combat you added portions of third party which
5 I don't believe you included the first time.

6 THE COURT: I did not. I did not.

7 MR. VAUX: And I think that's a comment on the facts
8 and it's an unfair burden if you will on the defendant and I
9 would take exception to that.

10 THE COURT: I understand. And I know that you're
11 right, I did add it this time. I added it for clarification
12 because the charge on - from Brown refers to - refers to a
13 death of one of the participants. And of course that is not
14 the theory that we're operating under in this particular
15 case and I don't think it's a correct statement of the law
16 as I had previously held the law to be in my previous
17 rulings pretrial. Because if the mutual combat applies only
18 to the circumstances where in this case Mr. Robinson or Mr.
19 Young were killed then I would have granted your motion to
20 quash the indictment initially.

21 But as you recall I denied that motion on the basis of
22 the fact that I held that the transferred intent is a matter
23 of law for these purposes would transfer into an innocent
24 third party for the reasons I put on the record at that
25 time. But you're right, I did add it and if I got it wrong

1 in pretrial I got it wrong again but I think it's a correct
2 statement of the facts and the law.

3 MR. VAUX: Can I have one second?

4 THE COURT: All right.

5 MR. VAUX: My only other comment is that the parties
6 took no exception to your beginning instructions and to
7 change it now is confusing to the jury and misleading to
8 them.

9 THE COURT: I understand. Of course its not unusual
10 when we recharge to try to make it a little plainer than we
11 did before to avoid confusion. But you're right it's
12 different, there's no question about that and I trust it was
13 not misleading but if it was I'll be corrected by somebody
14 else I'm sure.

15 MR. VAUX: Yes, sir.

16 THE COURT: Thank you.

17 MR. VAUX: Thank you.

18 THE COURT: Thank you. All right.

19 SOLICITOR STONE: Thank you, Your Honor.

20 THE COURT: Thank you all.

21 (COURT IN RECESS AT 02:00 P.M..)

22 (COURT BACK IN SESSION AT 03:20 P.M..)

23 THE COURT: Thank you, folks, you all can be seated.

24 The question from the jury ask for a copy of the
25 transcript of Mr. Young's interview. And as it was

1 correctly pointed out at side bar the transcript itself is
2 not in evidence. The video is, the transcript is an aide and
3 therefore the only way to do this within the rules is to
4 replay the video with the transcription below it. I do
5 think the transcription is necessary to assist the jurors
6 understanding some of it. The jury will be preinstructed of
7 course that they're ear is as good as the transcriber's and
8 they are to resolve any differences between what they think
9 it says and what it says in favor of what they think it
10 says. All right, are both sides ready for the jury?

11 SOLICITOR STONE: Yes, sir, the state's ready.

12 MR. VAUX: Yes, sir.

13 THE COURT: Good. Bring us the jury please.

14 (JURY REENTERS COURTROOM AT 03:25 P.M.)

15 THE COURT: Ladies and gentlemen, you had ask for us to
16 send in a copy of the transcript of Mr. Aaron Young's
17 interview. The transcript itself is not in evidence and so
18 I could not send the transcript in. The transcript as I
19 told you earlier is an aide to assist you if it provides
20 assistance and understanding what the audio actually says
21 and so I brought you back out so that you could hear it
22 replayed. You can hear what he's saying you can see what
23 the transcriber says. I remind you again that the
24 transcriber is just typing what he or she thought Aaron
25 Young was saying.

1 Now if your hearing says that he was saying one thing.
2 and the transcription says something else, you go with your
3 hearing cause your hearing is just as good as the
4 transcribers. But if it serves as an aide to you of course
5 you can follow it, so that's the reason we're going to
6 replay the transcription and of the video and the audio of
7 Mr. Young's statement. Okay.

8 Yes, sir.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-EIGHT,
10 PUBLISHED TO THE JURY AT 03:28 P.M..)

11 THE COURT: Ladies and gentlemen, that completes the
12 interview. I'm gonna ask you to go back to your jury room
13 and continue deliberations. Let us know if you need
14 anything further. Thank you.

15 (JURY EXITS COURTROOM AT 03:44 P.M..)

16 THE COURT: Thank you. Mr. Stone, anything further
17 from the state?

18 SOLICITOR STONE: No, sir.

19 THE COURT: Mr. Vaux, from the defense?

20 MR. VAUX: No, sir.

21 THE COURT: All right. Thank you. Folks, we'll
22 continue to stand at ease until we hear from the jury.
23 Thank you.

24 (WHEREUPON, COURT'S EXHIBIT NUMBER THREE, IDENTIFIED
25 AND MARKED, RECEIVED INTO EVIDENCE.)

1 (COURT AT EASE AT 03:45 P.M.)

2 (COURT BACK IN SESSION AT 03:58 P.M.)

3 THE COURT: Thank you, folks, please be seated.

4 Ladies and gentlemen, we are advised that the jury has
5 reached a verdict. Are both the state and the defense ready
6 to receive the verdict?

7 SOLICITOR STONE: The state's ready, Your Honor.

8 MR. VAUX: The defense is ready.

9 THE COURT: Thank you. Folks, those of you who have
10 been here following this case for the last couple of days
11 with considerable interest, I appreciate very much the
12 dignity and the respect that you have shown these
13 proceedings throughout. As the verdict is announced there
14 may be some emotional feelings that whel up in you; I
15 understand that. It will be expected. There might be
16 relief there might be disappointment.

17 I don't know what its gonna be and I don't want to
18 prolong this any longer other than to ask you to please
19 continue to use the same respect, dignity, the decorum and
20 restraint that you have used throughout these proceedings.
21 But if you feel like you might not be able to control your
22 emotions when the verdict is announced, whatever it is, I'd
23 be glad to give you this opportunity to leave the courtroom.
24 If you remain here I will expect you to abide by those
25 instructions. Thank you.

VERDICT:

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1 Bring us the jury.

2 THE BAILIFF: The jury is entering the courtroom, Your
3 Honor.

4 THE COURT: Thank you, ma'am.

5 (JURY REENTERS COURTROOM AT 04:00 P.M..)

6 THE COURT: Thank you. Madam Forelady, have you
7 reached a verdict?

8 MADAM FORELADY: Yes we have.

9 THE COURT: Is it a unanimous verdict?

10 MADAM FORELADY: It is.

11 THE COURT: Will you please hand it to the bailiff
12 please, ma'am?

13 (VERDICT RECEIVED UP BY THE COURT.)

14 THE COURT: Thank you. Madam Clerk, you may publish
15 the verdict.

16 MADAM CLERK: As to Indictment of 2012-GS-07-1932 the
17 charge of murder we the jury find the defendant Aaron Scott
18 Junior guilty of murder.

19 As to Indictment Number 2014-GS-07-1940 the charge of
20 attempted murder we the jury find the defendant Aaron Scott
21 Junior guilty of attempted murder.

22 THE COURT: Now you can ask the question.

23 MADAM CLERK: Madam Forelady, ladies and gentlemen of
24 the jury, if this is the decision of each and everyone of
25 you please indicate so by raising your right hand?

VERDICT:

-570-

1. (ALL JURORS AFFIRMED BY RAISING THEIR RIGHT HANDS.)

2. (OUTBURST FROM THE COURTROOM.)

3. A. No. No. No. No. No. No.

4. MADAM CLERK: Put your hands down.

5. THE COURT: We will give just a moment to let them deal
6. with her.

7. A. Oh, no, not my -- You all wrong, you all is wrong.

8. He's not guilty. He ain't guilty. Not my brother.

9. Oh, you all can't do this.

10. (BLACK FEMALE ESCORTED FROM THE COURTROOM.)

11. THE COURT: Mr. Vaux, does the defense desire polling
12. the jury?

13. MR. VAUX: Yes, sir, Your Honor.

14. THE COURT: Ladies and gentlemen, you are now going to
15. be polled by the clerk. That means your names are gonna be
16. called individually. As your names are called if you will
17. please stand in place right where you are she will ask you
18. is this your verdict, was this your verdict, and is it still
19. your verdict or questions to that effect, and please give
20. whatever the appropriate answer is.

21. Madam Clerk:

22. MADAM CLERK: Juror 123, please stand.

23. (ASIAN MALE STOOD.)

24. MADAM CLERK: Is this your verdict?

25. JUROR ONE TWENTY-THREE: Yes.

VERDICT:

-571-

1 MADAM CLERK: Is this still your verdict?
2 JUROR ONE TWENTY-THREE: Yes.
3 MADAM CLERK: You may be seated.
4 Juror two eighty-five.
5 (BLACK FEMALE STOOD.)
6 MADAM CLERK: Is this your verdict?
7 JUROR TWO EIGHTY-FIVE: Yes.
8 MADAM CLERK: Is this still your verdict?
9 JUROR TWO EIGHTY-FIVE: Yes.
10 Juror forty-one.
11 (WHITE MALE STOOD.)
12 (DISTURBANCE AND OUTBURST FROM THE COURTROOM HALLWAY.)
13 MADAM CLERK: Is this your verdict?
14 JUROR FORTY-ONE: Yes, ma'am.
15 MADAM CLERK: Is it still your verdict?
16 JUROR FORTY-ONE: Yes, ma'am.
17 MADAM CLERK: Juror four thirty-seven.
18 (HISPANIC FEMALE STANDS.)
19 MADAM CLERK: Is this your verdict?
20 JUROR FOUR THIRTY-SEVEN: Yes.
21 MADAM CLERK: Is this still your verdict?
22 JUROR FOUR THIRTY-SEVEN: Yes.
23 MADAM CLERK: Juror one twenty-four.
24 (WHITE FEMALE STANDS.)
25 MADAM CLERK: Is this your verdict?

VERDICT:

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1 JUROR FOUR THIRTY-SEVEN: Yes.
2 MADAM CLERK: Is this still your verdict?
3 JUROR FOUR THIRTY-SEVEN: Yes.
4 MADAM CLERK: Juror forty-five.
5 (WHITE FEMALE STOOD.)
6 MADAM CLERK: Is this your verdict?
7 JUROR FORTY-FIVE: Yes.
8 MADAM CLERK: Is this still your verdict?
9 JUROR FORTY-FIVE: Yes.
10 MADAM CLERK: Juror Fifty-nine.
11 (WHITE FEMALE STOOD.)
12 MADAM CLERK: Is this your verdict?
13 JUROR FIFTY-NINE: Yes.
14 MADAM CLERK: Is this still your verdict?
15 JUROR FIFTY-NINE: Yes.
16 MADAM CLERK: Juror three sixty-seven.
17 (BLACK FEMALE STOOD.)
18 MADAM CLERK: Is this your verdict?
19 JUROR THREE SIXTY-SEVEN: Yes.
20 MADAM CLERK: Is this still your verdict?
21 JUROR THREE SIXTY-SEVEN: Yes.
22 MADAM CLERK: Juror nineteen.
23 (WHITE FEMALE STANDS.)
24 JUROR NINETEEN: Yes.
25 MADAM CLERK: Is this still your verdict?

VERDICT:

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1 JUROR THREE SIXTY-SEVEN: Yes.
2 MADAM CLERK: Juror four one one.
3 (WHITE FEMALE STANDS.)
4 MADAM CLERK: Is this your verdict?
5 JUROR ONE-ELEVEN: Yes, ma'am.
6 MADAM CLERK: Is this still your verdict?
7 JUROR ONE-ELEVEN: Yes, ma'am.
8 MADAM CLERK: Juror three eighty-six.
9 (WHITE FEMALE STANDS.)
10 MADAM CLERK: Is this your verdict?
11 JUROR THREE EIGHTY-SIX: Yes.
12 MADAM CLERK: Is this still your verdict?
13 JUROR THREE EIGHTY-SIX: Yes.
14 MADAM CLERK: Juror three sixty.
15 (WHITE FEMALE STANDS.)
16 MADAM CLERK: Is this your verdict?
17 JUROR THREE SIXTY: Yes.
18 MADAM CLERK: Is this still your verdict?
19 JUROR THREE SIXTY: Yes.
20 THE COURT: Thank you.
21 MADAM CLERK: You're welcome.
22 THE COURT: Is there anything further before the jury
23 is dismissed, Mr. Vaux?
24 MR. VAUX: No, Your Honor.
25 SOLICITOR STONE: No, sir.

(DEFENDANT REMOVING BRAIDS FROM HIS HAIR.)

THE COURT: Thank you. Ladies and gentlemen, I want to thank you for your service this week. The emotions which you have heard expressed in this courtroom today are understandable. You heard on September the 1st of 2012 the emotions that were expressed over the 911 call when the event that set all of these proceedings into motion began.

Those were heart felt emotions as well for obvious reasons. Because that was a tragic event lives were taken, a life was taken, all lives were changed including lives in this courtroom today. But none of that, none of that falls at your feet, none of that is your responsibility. You have done what you were ask to do. You have listened to the evidence and the testimony and you have rendered a verdict which you found to be true according to your view of the evidence and the law.

You don't have to answer to anyone except your own conscious for the verdict that you have reached. I have sat here today and yesterday and I have heard the evidence in this case. I was a trial judge in the earlier trial. I heard the evidence in that trial as well. And I can tell you, ladies and gentlemen, that you don't need to have any fear of your conscious for the decision that you have reached in this particular case.

Ladies and gentlemen, you're gonna be excused now.

1 There is still a matter of sentencing that's my
2 responsibility not yours. You are free to stay for that if
3 you want to but if you've had all of this you want to you're
4 free to go.

5 Madam Forelady, I'm gonna ask that you remain in the
6 jury room for just a moment. The Clerk has to bring the
7 indictments down there for you to sign those. You've signed
8 the sentence sheet but there's a place on the indictment
9 that has to be signed as well. That can be done in the jury
10 room, she'll bring that down there to you.

11 You were exposed this week to a side of life that is
12 foreign to you all and we understand that and we apologize
13 for that. We have to deal with those things in this court
14 more often than we would like. I appreciate the fact that
15 you have given this attention and that you have given
16 thoughtful deliberation. I never comment upon the verdicts
17 which jurors reach. I'm glad that those are your decisions
18 and not mine.

19 But I do comment upon the quality of your service. You
20 have been thoughtful, you have been attentive, you have been
21 prompt, you have been thorough and deliberate in your
22 evaluations. You did not rush to judgment. You have ask
23 for more about the law, you have ask for more about the
24 facts, you did not make a decision in this case until you
25 were sure it was the right decision and that's the way this

1 process should work. And we appreciate the thoroughness
2 that you have brought to it.

3 Let me tell you that I hope you never find yourself
4 caught up in this situation. I hope you never find yourself
5 seated over here where the Singleton family is seated, the
6 family of the victim. I hope you never find yourself seated
7 over here where the relatives of Mr. Young who were so
8 emotional and understandably so were seated. I hope you
9 never find yourself or any relatives of yours that are dear
10 to you caught up in a situation like this. But let me tell
11 you, you don't have to volunteer to get caught up in this
12 situation. These folks didn't volunteer to get caught up in
13 it either.

14 And while I hope that that never happens to you, or to
15 any family member, if it ever does and if you ever find
16 yourself seated in this courtroom, or one like it, where
17 these folks are seated, where these folks are seated, when
18 the jury comes in on Monday morning like you all did Monday
19 morning, it's gonna be the jury that's gonna be selected to
20 try your case and when you turn and you look into the faces
21 of those jurors you're gonna hope that you look into faces
22 of people just like yourselves. People who have better
23 things to do and who would rather be doing those things but
24 who have been willing to set those things aside and help us
25 do the things that we have to do, unpleasant things

SENTENCING:

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1 sometimes, but necessary things, things that cannot be done
2 without your services.

3 The last thing that you want us to do to try a case
4 that you have a personal interest in is to wonder around the
5 streets of Beaufort to see if we can't scrape up twelve
6 people who don't have a better thing in the world to do than
7 to come in this courtroom and decide your case.

8 Nobody wants that kind of juror. They want folks like
9 you. These folks wanted folks like you and you have given
10 that sort of jury and we are all grateful for that. You are
11 now free to talk about this case with anybody that you want
12 to if you care to but you don't have to.

13 And so if someone should ask you about how you did what
14 you did why you did what you did what went on in the jury
15 room, what your impression was of this proceeding, you don't
16 have to talk about those matters if you don't want to. You
17 are free to say anything that you would like to however if
18 you care to.

19 Ladies and gentlemen, I won't belabor the point any
20 more. Bad weather's coming in and I'm gonna let you go with
21 our thanks for what you've done in this case. Thank you.

22 (JURY DISMISSED AT 04:10 P.M.)

23 THE COURT: Mr. Vaux, I'll be glad now to hear motions.

24 MR. VAUX: Your Honor, we ask that you act as the
25 thirteenth juror and to basically either grant a new trial

SENTENCING:

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1 or to act as the thirteenth juror.

2 THE COURT: Thank you, Mr. Vaux. I find that this was
3 throughout a quintessential jury question. All of the
4 issues were presented to the jury, the issue of guilt and
5 innocence of course obviously always. The issue of whether
6 mutual combat applied, or whether transferred intent
7 applied. Those matters which are obviously are now issues
8 for Appellate review or will be as they should be.

9 The jury heard everything that we've heard. The
10 verdict of the jury was supported by the evidence in this
11 case, once again taking that evidence in the light that it
12 needs to be taken in. It is supported by the evidence and
13 for that reason I must respectfully deny your motion for a
14 new trial. I decline to act as a thirteenth juror in this
15 case. The twelve jurors who did act I felt acted within the
16 facts and the law and so the motions are respectfully
17 denied.

18 MR. VAUX: Thank you, Your Honor.

19 THE COURT: All right. Is the state ready to proceed
20 to sentencing?

21 SOLICITOR STONE: The state is ready, Your Honor. If I
22 could have just a moment to speak to the family for just a
23 moment.

24 THE COURT: All right. Thank you.

25 Mr. Vaux, is the defense ready to proceed to

SENTENCING:

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1 sentencing?

2 MR. VAUX: Yes, sir.

3 THE COURT: Thank you.

4 MR. VAUX: Your Honor, may Mr. Young, Senior, the
5 grandfather come forward?

6 THE COURT: I'll be glad to hear from him. You talking
7 about Mr. Benny Young?

8 MR. VAUX: Yes, sir.

9 THE COURT: Yeah. I'll be glad to. What does security
10 say to that, gentlemen? I'm gonna leave that up to you all.
11 I can hear - I'll be glad to hear him if he wants to stay.
12 outside behind the bar. I'll leave those questions up to
13 the folks who are in charge of security. I never usurp
14 their responsibilities in that regard.

15 (MR. VAUX AND DEFENDANT AARON YOUNG STAND.)

16 THE COURT: You ready, Ms. Wanda?

17 Mr. Solicitor.

18 SOLICITOR STONE: Your Honor, his prior record is a
19 disturbing school for 19 - from 2011 a few months prior to
20 this incident taking place, and I think in fact that there
21 was actually some reference to that in his statement that we
22 had taken out to make sure that the jury did not have any of
23 that information. I've spoken to the family, the family
24 does not wish to address you. Of course, Your Honor, as you
25 know they addressed you after the Tyrone Robinson case and

SENTENCING;

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1 that was certainly a difficult ordeal. But from that
2 standpoint, Your Honor, you are more than familiar with the
3 facts of the case and the circumstances and so from that
4 standpoint that is our position. We will leave that to you.

5 THE COURT: Thank you. Mr. Vaux, I'll be glad now to
6 hear from you, from Mr. Young, or anyone on his behalf.

7 MR. VAUX: Your Honor, I'd like for Benny Young to
8 speak, the grandfather.

9 THE COURT: All right. Mr. Benny Young, I'll be glad
10 to hear from you, sir.

11 BENNY YOUNG: Judge, ever since this thing happened our
12 family they emotionally tore up from both parts. They have
13 been here, my grandson and everything but, Your Honor, in
14 all fairness we feel and more than we feel like the people
15 in the community also felt that if the law enforcement had
16 dealt with Mr. Tyrone Robinson when he was on this rampage
17 tearing up Hilton Head, tearing up Spanish Wells, tearing up
18 Marshland Road we would still have Khalil. Now you're
19 blaming it all on little Aaron. But they took a stand
20 because nobody else wouldn't take a stand against Tyrone
21 Robinson.

22 (BENNY YOUNG SLAPPED HAND ON COURTROOM BAR/DIVIDER AND
23 POINTING.)

24 BENNY YOUNG: Law enforcement, you know this too but
25 Khalil had to die and --

SENTENCING:

-581-

1 (EMOTIONAL OUTBURST FROM COURTROOM.)

2 THE COURT: Mr. Young.

3 THE DEFENDANT: They don't care, y'all, I don't care,
4 y'all, they already convicted me so there ain't nothing you
5 can tell me, brother, that's all right.

6 Bob Bromage, you all know and all that stuff you all
7 did you all promised me I wouldn't be tried y'all and y'all
8 know this and you all didn't bring this up and you sat right
9 here and --

10 BENNY YOUNG: Aaron. Aaron.

11 (SHOUTING FROM DEFENDANT AND PERSON IN COURTROOM.)

12 THE DEFENDANT: Nothing, nothing, mother fucker, you
13 all better remember my face fuckin nigger.

14 BENNY YOUNG: Aaron.

15 THE DEFENDANT: You know you did that files stuff, man.
16 Khalil brother ---

17 (OUTBURST FROM DEFENDANT AND MULTIPLE PARTIES IN
18 COURTROOM.)

19 THE COURT: You can take Mr. Young, take Mr. Young.

20 THE DEFENDANT: --- that's why I say that in my
21 testimony right or wrong. Everything you all, you all, you
22 all, say nothin, nothin, we gave up them --

23 (DEFENDANT ESCORTED FROM COURTROOM TO HOLDING CELL.)

24 (LOUDER OUTBURST/DISTURBANCE FROM THE COURTROOM.)

25 THE COURT: Folks.

1 (COURT STANDING AND STRIKING THE BENCH.)

2 THE COURT: Let me tell you, this is not a circus.

3 BENNY YOUNG: I understand.

4 THE COURT: This is not Marshland Road. This is a
5 court of law.

6 BENNY YOUNG: Yes, sir.

7 THE COURT: And if I hear another outburst like that
8 unfortunately other members of Aaron Young's family is gonna
9 spend the night in jail. I don't want to do that. I've got
10 all that I need to do in dealing with this case. I'll be
11 glad to hear anything positive that you want to say on
12 behalf of your relatives so I can take that into account in
13 passing sentence.

14 I will not hear another word of condemnation against a
15 police officer or court officials or anybody else who make
16 up a part of this process. This jury has spoken, his guilt
17 has been determined. Tyrone Robinson is spending the rest
18 of his life in jail. They have dealt with him and now I'm
19 going to deal with Aaron Young, Junior. I do not want to
20 have to put you all in jail either.

21 And, Mr. Benny Young, you brought that on by your own
22 outburst and I can appreciate your emotion. I understand
23 that. I'm a grandfather myself but I want you to know that
24 that sort of outburst over in that neighborhood is the sort
25 of thing and that temperate by everybody on both sides of

SENTENCING:

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1 this is what leads to events like this in the first place.

2 BENNY YOUNG: Yes, sir, Your Honor.

3 THE COURT: Now if there's anything else you want to
4 tell me about your grandson ---

5 BENNY YOUNG: Yes, Your Honor.

6 THE COURT: --- I'll be glad to hear from you but I'm
7 not gonna hear another word of condemnation about these
8 folks.

9 BENNY YOUNG: I understand that, Your Honor, that's
10 just the way it happened. I may have said something
11 disrespectful to the courts and I'm sorry about that but
12 that's just the way it happened. And I can't change that,
13 Your Honor.

14 THE COURT: All right, sir. I understand that.

15 BENNY YOUNG: And I appreciate the court going through
16 the decision of all this and I would really appreciate
17 lenience on my grandson.

18 THE COURT: I understand that, Mr. Young. Thank you.
19 Does anybody else wish to be heard on this matter?

20 MR. VAUX: No, sir, other than me.

21 THE COURT: All right. Mr. Vaux, I'll be glad now to
22 hear from you, sir.

23 MR. VAUX: Yes, sir. I just need a second.

24 THE COURT: I understand.

25 MR. VAUX: Your Honor, this is a unique situation.

SENTENCING:

-584-

1 THE COURT: Right.

2 MR. VAUX: Obviously from a law point of view and the
3 new law but it's also - People know it's wrong to kill
4 somebody.

5 THE COURT: Right.

6 MR. VAUX: And I mean we don't need to presuppose that,
7 we've learned that. But I'm not sure that within society
8 that the business about mutual combat is fully understood
9 and appreciated as I think Your Honor said the or the
10 solicitor said the case has been on the books since 1918 and
11 as the Chief Justice said it ain't used very often.

12 THE COURT: Right.

13 MR. VAUX: I can tell you it's the first time it's been
14 used in Beaufort County in forty-two and a half years. Your
15 Honor I think was a year or two ahead of me in law school
16 and you've tried a lot more criminal cases than I have and
17 maybe you tried a mutual combat case before ---

18 THE COURT: No, sir.

19 MR. VAUX: --- But I think if you had I'd heard about
20 it.

21 THE COURT: It's the first one here.

22 MR. VAUX: And so, Your Honor, from that point of view
23 I'd ask that you not give him the maximum. I think you can
24 send a message that you need to send.

25 THE COURT: Right.

SENTENCING:

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1 MR. VAUX: Not saying obviously that I agree with the
2 jury's verdict, I understand it. But you - And I think, - I
3 don't think the solicitor would disagree with me - the point
4 of the - in addition to the death of Khalil which was a
5 tragedy he has handled that from the point of view of the
6 person who pulled the trigger.

7 THE COURT: Right.

8 MR. VAUX: I think part of the reason that he's taken
9 the stand he's taken is to send a message ---

10 THE COURT: Right.

11 MR. VAUX: --- to St. Helen, to Bluffton. We've had a
12 couple of shootings this year in Bluffton which are group
13 mob, gag, whatever you want to call it.

14 THE COURT: Right.

15 MR. VAUX: You can send that message without dropping
16 the bomb imposing a life sentence. I don't think frankly as
17 a biased attorney that it's fair to sentence him to the same
18 thing that you sentenced Tyrone to.

19 THE COURT: I don't disagree with that.

20 MR. VAUX: And that's what I'd ask and I'd ask that you
21 - And he's a young man. He can be rehabilitated I hope
22 after this afternoon. Thank you.

23 THE COURT: Thank you. I understand that not only the
24 death Khalil and everything that's happened since that time
25 my understanding is that most of these folks are related.

SENTENCING:

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1 Some are Robinson's and some are Young's are related. As a
2 matter of fact we had the one juror who was related to
3 everybody on both sides. And so I can appreciate the fact
4 that that even adds to the emotional terror for both
5 families and make it probably more difficult for those folks
6 to deal with each other in the future.

7 And, Mr. Benny Young, I appreciate the emotions that
8 you have. I can understand that. What I was talking to you
9 about was the venting of those emotions in such a way that
10 it created a disturbance here in the courtroom when it did.
11 I would expect you to have the feelings that you had. I
12 understand that.

13 BENNY YOUNG: Thank you, Your Honor.

14 THE COURT: Okay. Thank you. I appreciate where
15 you're coming from and I'm sorry that you as an innocent
16 party as innocent as the parties are caught up in this.
17 Victims in your own rights of some sort. Family members all
18 have to suffer loss as their loss is permanent. Your loss
19 thankfully is not that same but its still a severe loss.

20 Do we have sentencing sheets here?

21 Would you all check and see if Mr. Young wishes to come
22 out for the sentencing and if he wishes to say anything? If
23 he does not he does not have to.

24 MR. VAUX: Your Honor, may I be excused just a second?

25 THE COURT: Sure.

SENTENCING:

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1 (DEFENDANT REENTERS COURTROOM.)

2 THE COURT: Mr. Vaux, do you know if Mr. Aaron Young,
3 Junior has anything he wants to say at this time?

4 MR. VAUX: He does not, Your Honor.

5 THE COURT: Thank you.

6 MR. VAUX: Now he says he wishes to say something, Your
7 Honor.

8 THE COURT: All right. Mr. Young, I'll be glad to hear
9 from you. Understand that the jury has spoken and I accept
10 the jury's verdict. What I want to hear from you is there
11 anything that you feel I should take into account in
12 deciding whether to sentence you to thirty years in jail or
13 life imprisonment. Those are - Or anything in between of
14 course. Those are the choices that I have and that's what
15 I'm trying to decide right now. So anything that you can
16 tell me that will help me make that decision I'll be glad to
17 hear from you.

18 MR. VAUX: He says he has nothing to say, Your Honor.

19 THE COURT: All right. Thank you.

20 (PAUSE.)

21 THE COURT: Mr. Young, on the charge of murder under
22 Indictment Number 1932 and the charge of attempted murder
23 under Indictment Number 1940 the sentences are the same, you
24 are to be committed to the State Department of Corrections
25 for a period of thirty years. The sentences run concurrent

1 to each other, get credit for time served.

2 SOLICITOR STONE: Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. VAUX: Thank you, Your Honor.

5 THE COURT: Thank you all.

6 (DEFENDANT ESCORTED FROM THE COURTROOM.)

7 THE COURT: All right, folks, we're still in session
8 please. Thank you.

9 Mr. Solicitor, I take it that concludes the work of the
10 court?

11 SOLICITOR STONE: I apologize, Your Honor. Yes, sir.

12 SOLICITOR STONE: Yes, sir.

13 THE COURT: All right. Thank you. Thank you ladies
14 and gentlemen, court is adjourned. Sine die. Thank you.

15 (COURT ADJOURNED AT 04:15 P.M.)

16 (END OF TRANSCRIPT OF RECORD.)
17
18
19
20
21
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23
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25

CERTIFICATE OF REPORTER

State of South Carolina .)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 23rd, 24th, 25th, days of February, 2015.

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

Wanda Nelson

Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: *June 17, 2015*

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.

Aaron Scott Young Jr.

AKA:

Race: AFRICAN AME Sex: M Age: 21

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder / Murder

INDICTMENT/CASE#: 2012GS0701932

A/W#: 2012A0720300113

Date of Offense: 9/1/2012

S.C. Code §: 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED ON or ☐ PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Spawson, Hunter

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GHD ☐

Attend Voc, Rehab, or Job Corp.

May serve W/B beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd, in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

State's Exhibit No. 1
photo.

(Transported to the Appellate Court)

State's Exhibit No. 2
CD – 911 audio

(Transported to the Appellate Court)

State's Exhibit No. 3
photo

(Transported to the Appellate Court)

State's Exhibit No. 4
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State's Exhibit No. 23
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State's Exhibit No. 38
CD — Aaron Young, Junior — interview
(Transported to the Appellate Court)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.



Jennifer K. Dunlap
F. Elliotte Quinn IV
Parker, Poe, Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

Attorneys for Appellant

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FINAL BRIEF OF APPELLANT

Jennifer K. Dunlap
F. Elliott Quinn IV
200 Meeting St., Ste. 301
Charleston, South Carolina 29401
(843) 727-2650

Attorneys for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN RECOGNIZING MUTUAL COMBAT AS A BASIS FOR A MURDER CHARGE AND DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT ON THE MURDER CHARGE?
2. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S REQUEST FOR A JURY CHARGE ON THE END OF MUTUAL COMBAT?
3. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S DIRECTED VERDICT MOTION ON THE ATTEMPTED MURDER CHARGE?

STATEMENT OF THE CASE

Appellant Aaron Scott Young, Jr. ("Appellant") was indicted for the offenses of murder (2012-GS-07-1932) and attempted murder (2014-GS-07-1940) in the Beaufort County Court of General Sessions. (R. P. 28.) On February 23-25, 2015, the case was tried by the Honorable Thomas W. Cooper, Jr. before a jury which found Appellant guilty on both charges. (R. P. 598.) The trial court sentenced Appellant to concurrent thirty year sentences on the murder and attempted murder charges. (R. pp. 616-617.) On March 6, 2015, Appellant served a Notice of Appeal.

FACTS

This case arises from four different incidents that occurred at four different locations on Hilton Head Island over the course of the afternoon of September 1, 2012. Viewing the evidence in the light most favorable to the State due to Appellant's challenge to the denial of his directed verdict motion, the evidence introduced regarding each of those incidents was as follows.

A. Wild Horse Road Incident

Around 3:30 to 4:00 p.m., Tyrone Robinson ("Robinson") drove his vehicle, with Jontu Singleton ("Jontu")¹ as a passenger, to Appellant's home off of Wild Horse Road. (R. pp. 359, 375.)

¹ Because the victim in this case was Khalil Singleton, Appellant's Brief refers to Jontu Singleton

Appellant, his father, Aaron Young, Sr. ("Young, Sr."), and Young, Sr.'s girlfriend Ebony Campbell ("Campbell") were talking in the yard as Robinson's vehicle pulled in. (R. p. 360.) Jontu exited the vehicle and spoke to Young, Sr., and Robinson exited the vehicle with a pistol in his hand, began screaming profanities at Appellant, and moved towards Appellant. (R. pp. 362, 377-378.) Young, Sr. rushed over and wrestled with Robinson for the gun, and as the two struggled, the gun fired. (R. pp. 362-363.) Young, Sr. backed away, and Robinson fired the pistol at Young, Sr.'s feet. (Tr. 334.) Robinson then got into his vehicle and drove away. (R. p. 364.)

Young, Sr. and Appellant went inside the home and returned with a black bag. (R. p. 364.) Appellant, Young, Sr., and Jontu got into Young, Sr.'s pickup truck, with Young, Sr. driving, and drove around Hilton Head Island looking for Robinson's vehicle, including driving down Spanish Wells Road, Oakview Road, Marshland Road, and Allen Road. (R. pp. 367-368.) While Young, Sr. drove, Appellant removed pieces of a gun from the black bag and began assembling the gun. (R. p. 368.) After driving for approximately ten minutes, the three stopped at Jontu's son's home on Allen Road, and Jontu exited the truck and knocked on the door, but no one answered. (R. pp. 370-372, 374, 378.) They then drove back to Young, Sr.'s home off of Wild Horse Road, where Jontu exited the truck and Campbell got into the truck, and Appellant, Young, Sr., and Campbell drove off. (R. pp. 372-374.)

B. Bryant Road

Appellant and Young, Sr. then traveled to Robinson's home on Bryant Road where they found Robinson. (State's Ex. 38, Video 7; R. p. 635.) Appellant's gun was jammed at that point, and he did not try to shoot at Robinson or even point the gun at him. (State's Ex. 38, Video 7; R. p.

and Khalil Singleton by their first names.

635.) After Robinson fled, Young, Sr. drove them back to their homes on Wild Horse Road where they debated whether to continue searching for Robinson and ultimately decided to search more. (R. pp. 485-486; State's Ex. 38, Video 7; R. p. 635.)

C. First Allen Road Incident

Appellant and Young, Sr. traveled to Allen Road where they found Robinson's vehicle, but did not see Robinson. (R. p. 485; State's Ex. 38, Videos 1 & 2; R. p. 635.) Around 4:00 p.m., witnesses heard a series of rapid gunshots in the area of Allen Road. (R. pp. 300-301.) The gunshots heard were Appellant firing a magazine of bullets from his handgun into Robinson's unoccupied vehicle. (State's Ex. 38, Videos 2, 3, & 6; R. p. 635.) The windows of Robinson's vehicle were not tinted and a person could see through the windows to see if anyone was in the car. (R. pp. 488-529.)

After the gunfire ended, Robinson, with the handle of a pistol visibly sticking out of his pants pocket, knocked on the door of Charlese Mitchell and Tyrone Delaney's home on the corner of Marshland Road and Allen Road. (R. pp. 309-321, 334.) Mitchell let Robinson into her home where the two spoke, and Robinson told her that "those M F was shooting at him." (R. pp. 309-310, 321.)

Around the same time and between 4:00 and 5:00 p.m., Tyrone Delaney was driving from work to his home on Allen Road. (R. pp. 330-332.) At the intersection of Spanish Wells Road and Marshland Road, he passed a grey F-150 truck headed the opposite direction, away from Allen Road. (R. pp. 330-332.) As Delaney arrived at his home, Robinson was walking out, and the two met in the yard. (R. pp. 304, 310, 333.)

Delaney and Robinson spoke in the yard for approximately ten minutes, and during their conversation, Robinson asked Delaney if he saw a grey truck on his way home from work. (R. pp. 311, 333.) When Delaney responded that he saw a grey truck, Robinson stated: "yeah they was

shootin' at me so I shoot back at them." (R. p. 333.) Delaney observed that Robinson had a gun and asked that he leave. (R. pp. 311, 334.)

Robinson left, and ten to fifteen minutes after he left and twenty to thirty minutes after the first round of rapid gunshots, Mitchell and Delaney heard a second round of rapid gunshots. (R. pp. 301, 320, 334.) Several children playing in their yard scattered at the sound of the gunfire. (R. p. 311.)

D. Second Allen Road Incident

Approximately ten minutes after the second round of rapid gunshots, Young, Sr.'s grey truck sped down Allen Road and began turning onto Marshland Road. (R. pp. 302-303, 322-325.) As the truck reached the end of Allen Road and began to turn, Robinson fired three times from a location near the intersection of Allen Road and Marshland Road. (R. pp. 322-325, 335; State's Ex. 38, Videos 1 & 3; R. p. 635.)

A child who had been playing in Mitchell's yard ran toward his home pointing at Robinson and screaming to his step-father that Robinson shot Khalil Singleton. (R. p. 346.) Robinson quickly got into his vehicle and drove away from Allen Road, and Khalil was found lying in the yard with a fatal gunshot wound. (R. pp. 312-314, 336-337, 505.)

E. Investigation and Interrogation

Young, Sr.'s truck was stopped by police between 5:00 and 5:30 p.m., and Appellant, Young, Sr., and Campbell were removed from the vehicle. (R. p. 391.) Appellant was taken to the police station where he was interviewed on videotape and eventually described the events of the day. (R. p. 396; State's Ex. 38; R. p. 635.) Young, Sr. was also interviewed and he directed the police to a home off of Wild Horse Road and a black bag in the home containing a handgun. (R. p. 402). The police

recovered a round lodged in Robinson's car, compared it to rounds fired from the recovered gun, and determined the round in Robinson's car was fired from the recovered gun. (R. pp. 466-467.)

F. Trial, Conviction, and Sentencing

Appellant was subsequently indicted and tried for murder and attempted murder. Prior to the jury being sworn, Appellant moved to quash the murder indictment on the grounds the indictment did not allege he shot the victim, it was undisputed that Robinson shot the victim, the indictment alleged only that he engaged in mutual combat with Robinson, and mutual combat is not a criminal offense under South Carolina law. (R. pp. 211-237.) Appellant further argued that under South Carolina law mutual combat is exclusively a limitation on the doctrine of self-defense, cannot be combined with the doctrine of transferred intent, and is not a basis for a murder conviction. (R. pp. 211-237.) The trial judge denied Appellant's motion to quash, ruling that mutual combat combined with transferred intent can serve as grounds for a murder conviction. (R. pp. 265-269.)

The jury was sworn, and the State presented its case which included the testimony of several witnesses to the events of September 1, 2012, testimony from law enforcement officers regarding their investigation, portions of the videotaped interview of Appellant, and recordings of 911 calls related to the events. Upon the close of the State's case, Appellant moved for a directed verdict on both the murder and attempted murder charges. (R. p. 507.) As to the murder charge, Appellant asserted three bases for his directed verdict motion: (1) that Appellant did not shoot the victim and the State's mutual combat theory is legally insufficient to hold Appellant criminally responsible for Robinson's acts; (2) that even if the State's mutual combat theory was legally valid, there was no evidence of mutual combat between Appellant and Robinson; and (3) that even if there was any mutual combat, the evidence established it had ended at the time Robinson fired the fatal shot. (R.

pp. 511-513, 518-519.) As to the attempted murder charge, Appellant asserted there was no evidence that Appellant attempted to kill Robinson. (R. pp. 508-511.) The trial judge denied the motion, and Appellant presented no additional evidence. (R. pp. 514-521, 524.)

Appellant then asked the trial judge to charge the jury on when mutual combat ends, and the judge denied this request. (R. pp. 519-521.) The judge then charged the jury on murder, mutual combat, and attempted murder. The court specifically included in its jury charge that Appellant did not fire the shot that killed the victim and could only be convicted through a mutual combat theory, charging: "Now, ladies and gentlemen, as you have heard throughout the trial of this case it is undisputed that [Appellant] did not fire the fatal bullet that killed Khalil Singleton. And so the state seeks and ask for a conviction at your hands under the theory of mutual combat." (R. p. 568.) In addition to his existing objection to the State's mutual combat theory, Appellant objected to the jury charge as erroneously stating mutual combat extends to third-party, non-combatants, and the trial judge denied Appellant's objection. (R. pp. 592-594.)

The jury convicted Appellant of murder and attempted murder. (R. p. 598.) Appellant moved to have the conviction set aside under the thirteenth juror doctrine or alternatively for a new trial, and the judge denied both motions. (R. pp. 606-607.) The judge sentenced Appellant to concurrent thirty year sentences for the two charges. (R. p. 616.)

ARGUMENTS

I. BECAUSE THE SOLE BASIS FOR APPELLANT'S MURDER CONVICTION WAS A "MUTUAL COMBAT" THEORY NOT RECOGNIZED BY SOUTH CAROLINA LAW AND NOT SUPPORTED BY THE EVIDENCE AT TRIAL, THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT ON THE MURDER CHARGE.²

The trial judge's denial of Appellant's motion for a directed verdict on the murder charge was erroneous and should be reversed for three reasons: (1) mutual combat is not recognized as creating criminal liability under South Carolina law; (2) even if mutual combat were a valid basis for a murder conviction, the evidence introduced at trial did not support a finding of mutual combat; and (3) even if Appellant had engaged in mutual combat, any mutual combat had ended at the time Robinson fired the fatal shot.

Appellant's murder conviction rises and falls with the mutual combat theory of criminal liability invented by the State. It is undisputed that Robinson, not Appellant, shot and killed Khalil, and the State presented no evidence or argument to suggest Appellant was engaged in any conspiracy with or otherwise aiding Robinson in his criminal acts. (R. pp. 234-235, 242.) Rather, as acknowledged by the trial judge, the State's murder charge was based entirely on a theory of "mutual combat" combined with the doctrine of transferred intent (R. p. 518.), and the State explicitly disavowed any other legal basis for the murder charge. (R. pp. 219, 235-236.) Appellant moved for a

² Appellant also moved to quash the indictment because mutual combat is not a valid basis for a murder conviction under South Carolina law and moved for a new trial following the jury's verdict on the same grounds as his motion for a directed verdict. While Appellant submits the trial court erred in denying his motion for a directed verdict on all charges and his convictions should be reversed, Appellant further submits that the trial court erred in denying the motion to quash and motion for a new trial for the reasons set forth herein and incorporates those motions as alternative bases for relief. See *State v. Smith*, 316 S.C. 53, 56, 447 S.E.2d 175, 176 (1993) (affirming trial court's grant of a new trial based on a lack of evidence to support the jury's verdict where the

directed verdict on the murder charge at the close of the State's evidence on the grounds asserted above, and in his ruling denying the motion, the trial judge stated: "[T]he murder of course as you said comes in under the mutual combat thing. That's the only thing that ties [Appellant] to that." (R. pp. 507-521.)

On the appeal of a denial of a directed verdict motion, the Court views the evidence in the light most favorable to the State. *State v. Copeland*, 321 S.C. 318, 326, 468 S.E.2d 620, 625-26 (1996). Where there is no direct evidence or substantial circumstantial evidence in the record reasonably tending to prove the guilt of the accused, the trial court erred in denying the motion for a directed verdict and the defendant's conviction must be reversed. *See State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001); *Copeland*, 321 S.C. at 326, 468 S.E.2d at 625-26.

A. The Trial Court Erred in Denying Appellant's Directed Verdict Motion on the Murder Charge Based on a Mutual Combat Theory that South Carolina Law Does Not, and Should Not, Recognize

South Carolina has never recognized, nor should it recognize, the mutual combat theory espoused by the State as a basis for a murder conviction. Because South Carolina law does not recognize "mutual combat" as a basis for a murder conviction and it was the sole basis for the State's murder charge, the trial court erred in denying Appellant's motion for a directed verdict on the murder charge.

The South Carolina Code defines murder as "the killing of any person with malice aforethought either express or implied," S.C. Code Ann. § 16-3-10, but the crime remains a common law offense, *see State v. Wilson*, 104 S.C. 351, —, 89 S.E.2d 301, 301 (1916). Reviewing the common law of murder in South Carolina, our courts have never recognized mutual combat as a basis for a murder charge. Rather, the doctrine of mutual combat is a limitation on self-defense, and every South Carolina appellate court decision discussing mutual combat considered it only in

defendant failed to appeal the denial of his motion for a directed verdict).

relation to self-defense.³

As the legal basis for the mutual combat theory applied at Appellant's trial, the State and the trial judge primarily relied on language in *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003), where the Court quoted language in its earlier opinion in *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1906), and language in *State v. Brown*, 108 S.C. 490, 95 S.E. 61 (1918). In *Taylor*, the Court quoted the following language from *Andrews*:

Where two persons mutually engage in combat, and one kills another, and at the time of the killing it be maliciously done, it is murder; if it be done in sudden heat and passion upon sufficient provocation without premeditation or malice, it would be manslaughter.

Taylor, 356 S.C. at 232, 589 S.E.2d 3-4 (quoting *Andrews*, 73 S.C. at —, 53 S.E. at 424). The State's reading of this language as suggesting the presence of mutual combat alone can support a murder conviction is misplaced. This quotation is the third and final sentence in a paragraph where it is preceded by the following two sentences that provide the necessary context for the quotation:

If the defendant is engaged in mutual combat, self-defense is unavailable unless the defendant withdraws from the conflict before the killing occurs. A finding that a defendant was engaged in mutual combat does not preclude the jury from convicting the defendant of manslaughter as opposed to murder.

Id. at 232, 589 S.E.2d at 3. The first sentence in the paragraph makes clear that mutual combat is a component of the doctrine of self-defense and acts to exclude certain conduct from that defense. The second sentence makes clear that because mutual combat removes the potential defense of self-

3 A search of South Carolina caselaw produced the following cases discussing "mutual combat" or its equivalent, all of which discuss it in relation to defenses to criminal charges: *Jackson v. State*, 355 S.C. 568, 586 S.E.2d 562 (2003); *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003); *State v. Porter*, 269 S.C. 618, 239 S.E.2d 641 (1977); *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973); *Nauful v. Milligan*, 258 S.C. 139, 187 S.E.2d 511 (1972); *State v. Mathis*, 174 S.C. 344, 177 S.E. 318 (1934); *State v. Jones*, 113 S.C. 134, 101 S.E. 647 (1919); *State v. Brown*, 108 S.C. 490, 95 S.E. 61 (1918); *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1906); *State v. Beckham*, 24 S.C. 283 (1886); *State v. Dickey*, 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008); *State v. Barksdale*, 311 S.C.

defense, a jury can convict a defendant engaged in mutual combat for murder or manslaughter upon a showing of the elements of those crimes. The acknowledgment that a defendant can be convicted for manslaughter clarifies that mutual combat with a death resulting from the combat does not automatically establish the crime of murder. Rather, the State still must prove the elements of murder or manslaughter to obtain a conviction on one of those charges.

In short, as recognized by the *Taylor* decision and all of the other South Carolina decisions discussing mutual combat, mutual combat merely bars the defense of self-defense thereby permitting a conviction for murder should the State present the required proof to establish the elements of murder. Accordingly, even if Appellant was engaged in mutual combat with Robinson at the time of Robinson's death, that fact alone would be an insufficient basis for a murder conviction. The State would need to present evidence to satisfy some other doctrine—for example conspiracy, aiding and abetting, or the felony murder rule—which would permit Appellant to be convicted for murder when another party undertook the fatal act.

In their reliance on the *Brown* opinion, the State and the trial judge latched onto small, select portions of a jury charge quoted in that opinion, and the trial judge treated that language as stating South Carolina law on mutual combat. (R. pp. 220, 224, 267-270, 514-515, 526-527.) However, the language relied upon in the *Brown* opinion comes from a much larger quotation of a jury charge given by the trial court, and the Court did not express any holding as to whether the quoted jury charge correctly stated South Carolina law on mutual combat. *See Brown*, 108 S.C. at —, 95 S.E. at 63. The Court's succinct holding related to the charge was that "[i]nstead of being prejudicial to the appellants, the charge was too favorable to them." *Id.* Additionally, even if the jury charge quoted in the *Brown* opinion was a correct statement of South Carolina law, the quoted charge contains

210, 428 S.E.2d 498 (1993).

language ignored by the State and the trial judge which directly conflicts with the trial judge's understanding of mutual combat as expressed in his denial of Appellant's motion to quash and motion for a directed verdict. Specifically, the quoted charge provided:

When no conspiracy has been shown to have existed between the actual perpetrators and the one charged with aiding, it is essential to the guilt of the latter that he should not only have been present when the killing was done, but should have actually participated in the crime. Although it may be positively proven that one or two or more persons committed a crime, yet if it is uncertain which is the guilty party, all must be acquitted. No one can be convicted till it is established that he is the party who committed the offense.

Id. Finally, like all of the South Carolina caselaw on mutual combat, the jury charge in the *Brown* opinion discusses mutual combat in the context of whether a defendant can claim self-defense, stating that "[i]f one comes to the assistance of his friend . . . he enters the combat upon the same footing of the person to whose assistance he comes," "[o]ne who sees another attacked . . . has a right to interfere," and "[i]f one lawfully interferes . . . , inadvertently strikes a bystander, and death results . . . such person would not be guilty of any crime." *Id.*

Not only does South Carolina law not support the trial court's use of mutual combat as a stand-alone basis for a murder conviction, other jurisdictions around the United States recognize that the fact that two parties engaged in mutual combat is not alone sufficient to establish murder, and rather, treat mutual combat as potentially relevant to a murder charge only to the extent it supports proximate causation or an aider and abettor theory. *See State v. Spates*, 779 N.W.2d 770, 776–78 (Iowa 2010) (discussing decisions). Here, the trial court erroneously determined only that there was evidence from which a jury could find Appellant was engaged in mutual combat and failed to make any finding as to how evidence of mutual combat, or any other evidence presented at trial, established the elements of murder.

Moreover, unlike other jurisdictions that view mutual combat as potentially relevant to proximate causation or aider and abettor status, the trial court erroneously further complicated matters by tacking the concept of transferred intent onto mutual combat despite Appellant's arguments that transferred intent cannot apply in a mutual combat situation. (Tr. 194-95.) The doctrine of transferred intent holds that where a person intends to kill one person, but actually kills another, the actor's intent to kill the intended victim is transferred to the actual victim. *See, e.g., State v. Gandy*, 283 S.C. 571, 573-74, 324 S.E.2d 65, 67 (1984); *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984). Thus, the doctrine of transferred intent only serves to expand the concept of malice, is limited to the malice issue, and does not expand the criminal liability of one actor to include the results of another person's actions. *See, e.g., Gandy*, 283 S.C. at 573-74, 324 S.E.2d at 67; *Horne*, 282 S.C. at 446, 319 S.E.2d at 704.

The facts of this case are a textbook example of why South Carolina law should not recognize a mutual combat combined with transferred intent theory of murder. Here, at the time Robinson fired the fatal shots, Appellant did not see Robinson, did not even know Robinson was in the area, and could not have foreseen that Robinson was hiding and waiting to ambush him in the vicinity of the children. If the legal theory advanced by the State and accepted by the trial court were the law in South Carolina, any time an individual fought with an opponent, the individual would be criminally responsible for any harm caused by his opponent's conduct, even if that harm occurred at a time and place remote from the initial fight and even if the individual would not and did not chose to engage in combat at that time and place.

Therefore, because the trial court created and applied a mutual combat theory of murder not recognized by South Carolina law and relied on that theory as the sole basis for denying Appellant's

directed verdict motion, the court erred in denying Appellant's motion and Appellant's conviction should be reversed.

B. The Trial Court Erred in Denying Appellant's Directed Verdict and New Trial Motions Because There Was no Evidence From Which a Jury Could Find Appellant Engaged in Mutual Combat

Even assuming mutual combat can alone support a murder conviction under South Carolina law, no evidence was presented at trial to support a finding that Appellant and Robinson engaged in mutual combat at any time on September 1, 2012. Robinson and Appellant did not engage one another in combat during any of the four incidents that took place that day. Additionally, while Robinson attacked Appellant and Young, Sr., he then fled and acted only to ambush Appellant and his father as they left the scene, all of which evidences an *unwillingness* to engage in mutual combat.

Lacking any South Carolina caselaw on mutual combat as a basis for a murder conviction and therefore turning to South Carolina caselaw on the relationship between mutual combat and self-defense, our courts define mutual combat as requiring a "mutual agreement to fight" or "mutual intent and willingness to fight" and a "resulting fight." *Taylor*, 356 S.C. 227, 232–35, 589 S.E.2d 1, 3–5 (2003). A mutual agreement and intent to fight "is manifested by the acts and conduct of the parties attending and leading up to the combat." *Jackson v. State*, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003). Jurisdictions utilizing the concept of mutual combat as relevant to establishing the elements required for a murder conviction employ the same definition, holding mutual combat requires a "mutual intention, consent or agreement preceding the initiation of hostilities," *People v. Ross*, 66 Cal. Rptr. 3d 438, 447 (Cal. Ct. App. 2007), or requires that "the combatants are armed with deadly weapons and mutually agree to fight," *Sanders v. State*, 659 S.E.2d 376, 380 (Ga. 2008).

Here, no evidence was presented from which a jury could conclude Appellant and Robinson

mutually agreed or intended to engage in combat or actually *engaged in* combat. At the Wild Horse Road incident, the uncontroverted testimony at trial was that Robinson, without provocation, began shouting angrily at, advanced towards, and drew a weapon and pointed it at Appellant. Appellant's father attempted to wrestle the gun away from Robinson, but the gun went off during the struggle. Regaining control over the gun, Robinson then shot at Young, Sr.'s feet and fled. Young, Sr. acted in self-defense by attempting to gain control of the gun and never engaged in combat with Robinson. While Robinson acted aggressively, the evidence does not show he had an intent to fight. There was no evidence he had any reason to believe Appellant or Young, Sr. were armed or that Appellant and Young, Sr. were actually armed, and the Court has held that "mutual combat arises only when the parties are armed with deadly weapons." *Taylor*, 356 S.C. 227, 233, 589 S.E.2d 1, 4 (2003). There also was no evidence from which a jury could conclude that Robinson expected Appellant and Young, Sr. to respond to his provocation by fighting. Additionally, the struggle on Wild Horse Road was between Robinson and Young, Sr., and there was no evidence that Appellant was physically involved in the struggle. Thus, the evidence at trial showed the Wild Horse Road incident consisted of an unprovoked and unexpected attack by Robinson and defensive efforts by Appellant's father, and thus, there was no mutual agreement or intent to fight.

The limited evidence as to the incident on Bryant Road established only that Appellant found Robinson there. No evidence introduced showed that Robinson, Appellant, or Young, Sr. engaged or attempted to engage in any combat on Bryant Road. Additionally, the fact that Robinson fled rather than attack Appellant and Young, Sr. further shows his lack of an agreement or intent to fight.

The next incident occurred when Appellant and Young, Sr. arrived on Allen Road where they found Robinson's car. The uncontroverted evidence at trial showed that Robinson was not present

during this first Allen Road incident. Rather, this incident consisted solely of Appellant firing a weapon at Robinson's unoccupied car. While Appellant's actions in firing at Robinson's car were certainly destructive, they do not evidence a mutual agreement or intent to engage in combat. Robinson fled following the Wild Horse Road incident, thereby indicating his desire to end the altercation he initiated, and he was not present on Allen Road when Appellant began firing at his vehicle and did not come to the scene to fight once Appellant began firing. Appellant did not know where Robinson was, Appellant fired exclusively at Robinson's car, and Robinson did not come to the scene.

Finally, approximately ten minutes after Appellant ceased firing at Robinson's vehicle, Young, Sr., with Appellant as his passenger, sped out of Allen Road. As the truck reached the end of Allen Road, Robinson fired three shots, one of which struck and killed the victim. Again, the evidence regarding this incident would not allow a jury to conclude that there was a mutual agreement or intent to fight nor would it permit a jury to conclude Appellant engaged in combat with Robinson. The evidence shows that when Robinson fired, Appellant was leaving the scene and had no knowledge of Robinson's whereabouts. There also was no evidence presented to show that Robinson was firing at Appellant and Young, Sr. when he fired the fatal shot. Finally, there was no evidence that Appellant fired at or took any other action towards Robinson during this incident.

In short, the evidence does not support either of the two elements required to establish mutual combat. Robinson displayed a willingness to attack Appellant only when he believed Appellant could not respond as shown by his first attacking unexpectedly on Wild Horse Road and later attempting to ambush Appellant and Young, Sr. as they left Allen Road. Neither of these acts are indicative of an agreement or intent to engage in combat by Robinson. Moreover, Appellant never

engaged in combat with Robinson. The lead police investigator, Laurel Albertin, admitted at trial that she had no evidence that Appellant ever pointed or fired a weapon at Robinson. (R. p. 487.) Appellant fired at Robinson's unoccupied vehicle which, while reprehensible, is not combat between two persons. Accordingly, because the evidence would not permit a jury to conclude there was a mutual agreement or intent among the parties to fight and because the evidence would not permit a conclusion that the parties engaged in combat, the trial court erred in denying Appellant's directed verdict motion and his conviction should be reversed.

C. The Trial Court Erred in Denying Appellant's Directed Verdict Motion Because The Evidence Established Any Mutual Combat Ended Prior to Robinson Firing the Fatal Shot

Even if mutual combat was a sufficient legal basis for a murder conviction and the State had presented evidence that Appellant engaged in mutual combat, Appellant was still entitled to a directed verdict because any mutual combat ended prior to Robinson firing the fatal shot. Appellant moved for a directed verdict on that ground, and the trial court erred in denying the motion based on the erroneous conclusion that there was evidence of ongoing mutual combat at the time of the fatal shot. (R. pp. 518-521.) Contrary to the trial court's ruling, all of the evidence presented at trial established that any mutual combat had ended when Robinson fired on Allen Road because Appellant and Young, Sr. were leaving Allen Road and had no knowledge that Robinson was even present in the area.

Mutual combat ends and a person's right to engage in self-defense is restored when the person withdraws from the combat and makes his withdrawal known to his adversary. *See Taylor*, 356 S.C. 227, 232, 589 S.E.2d 1, 3 (2003); *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); *State v. Graham*, 260 S.C. 449, 451, 196 S.E.2d 495, 496 (1973); *State v. Santiago*, 370 S.C.

153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). In *Bryant*, the Court indicated that a person leaving the scene of the combat with his adversary's knowledge of his departure can satisfy both elements of withdrawing from the combat and communicating his withdrawal to his adversary. See *Bryant*, 336 S.C. at 346, 520 S.E.2d at 322; *Santiago*, 370 S.C. at 161, 634 S.E.2d at 28. There the defendant argued he was entitled to a jury charge on self-defense because he had withdrawn from the conflict, and in support, he offered a statement he gave to the police that he dropped his knife, although without the victim's knowledge, before he then engaged in a fatal struggle with the victim. *Bryant*, 336 S.C. at 344-46, 520 S.E.2d at 321-22. The Court rejected the argument, stating that if the defendant "truly intended to withdraw he could have easily left the open parking lot," and thus, indicated that leaving the scene of the conflict would have been sufficient to establish withdrawal. *Id.* at 346, 520 S.E.2d at 322.

Here, the uncontroverted evidence presented at trial established that Appellant had withdrawn from any combat at the time Robinson fired the fatal shot and that his withdrawal was known to Robinson. A significant period of time elapsed between when Appellant fired at Robinson's vehicle and when Robinson fired the fatal shot. Witness testified that Robinson fired his weapon approximately *ten minutes after* Appellant ceased firing at Robinson's vehicle. (R. pp. 302-303, 322-325.) When Robinson fired, Appellant was in his father's truck traveling away from where Robinson's vehicle was parked and had already traveled the length of Allen Road. (R. pp. 322-325, 335; State's Ex. 38, Videos 1 & 3; R. p. 635.) If Robinson fired at Young, Sr.'s truck, he knew that Appellant and Young, Sr. were speeding away from Allen Road. No evidence was presented to show that Appellant saw Robinson in the area or had any reason to know Robinson was hiding off of Allen Road. The State's witness, Sergeant Laurel Albertin, testified that there was no evidence to

suggest Appellant saw Robinson on Allen Road, (R. p. 485), and in ruling on Appellant's directed verdict motion on this issue, the trial judge stated: "I'm not even sure that they knew Mr. Robinson was there until they were riding away and heard the shots," (R. p. 520). Additionally, there was no evidence presented to show that Appellant or Young, Sr. were engaged in any combative or threatening act at the time Robinson fired the fatal shot. To the contrary, the evidence presented indicated Appellant and Young, Sr. were fleeing based on witness testimony that they were "speeding up out of Allen Road onto Marshland Road," (R. p. 302), and the trial judge acknowledged this in his statement that "they shot and they left in a hurry" (R. p. 520). Therefore, the uncontroverted evidence at trial established that any mutual combat had ended at the time Robinson fired the fatal shot because Appellant was withdrawing from the scene and Robinson knew Appellant was withdrawing and had no reason to believe Appellant was engaged in combat with him.

Not only did the trial court err in denying Appellant's directed verdict motion because all of the evidence established that the mutual combat had ended, the court also erred in denying the motion because the denial was based on an incorrect legal standard. The court denied the motion on the basis that the evidence did not show "a clear and unequivocal breaking of the conflict such that the law requires to indicate that the mutual combat does not exist." (R. p. 521.) As previously discussed, the law requires only that a party withdraw from combat and that his opponent know of the withdrawal and does not require a "clear and unequivocal breaking of the conflict." The court also ruled that leaving the scene did not establish the end of mutual combat because Appellant was "just going to live to fight another day" and it did not show that a "truce has been declared." (R. pp. 520-521.) To the contrary, as discussed in relation to the *Bryant* decision, the law recognizes that leaving the scene can end mutual combat and there is no requirement that the parties agree that any

animosity between them has been permanently resolved. Were the law to require combatants to resolve their animosity such that they would not fight again over the same issue at a later time for mutual combat to have ended, such a rule would yield absurd results. Under such a rule, a defendant could engage in combat with another person and then cease fighting and leave the scene. If the other combatant ambushed the unaware defendant months later because the parties had not resolved their animosity towards one another and the ambush resulted in the death of a bystander, the death would be a murder for which the defendant would be criminally responsible.

In conclusion, for three reasons, any of which is alone sufficient for a reversal, the denial of Appellant's motion for a directed verdict and his murder conviction should be reversed and vacated. First, his murder conviction rests on an invalid mutual combat theory of criminal liability, and the trial court erred in not granting Appellant's motion for a directed verdict, or alternatively granting his motion to quash the indictment, on this ground. Second, even if mutual combat were a valid basis for a murder conviction, the evidence at trial established that Appellant was not engaged in mutual combat, and accordingly, the trial court erred in denying his motion for a directed verdict. Third, even if Appellant did engage in mutual combat with Robinson, any mutual combat had ended by the time Robinson fired the fatal shot. For any or all of these reasons, the trial court's denial of Appellant's directed verdict motion should be reversed and his murder conviction should be vacated.

II. THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUEST FOR A JURY CHARGE ON THE END OF MUTUAL COMBAT

In addition to moving for a directed verdict on the murder charge in part on the ground that any mutual combat had ended at the time Robinson fired the fatal shot, Appellant also requested a jury charge on the end of mutual combat and the trial judge erred in refusing the request. (R. pp. 520-521.)

A trial judge must give a requested jury charge if there is any evidence to support the charge. See *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). A trial judge's refusal to give a requested jury charge supported by some evidence is a reversible error. *Id.*

As set forth in the previous section, the evidence presented at trial supported a conclusion that any mutual combat had ended at the time Robinson fired the fatal shot. Moreover, the trial judge acknowledged there was some evidence from which a jury could find the mutual combat had ended by stating in his ruling on the directed verdict motion: "given the extent of the chase and the level that they had gone to try to get to him before then [it] is *unlikely* that the shooting of the car and then leaving is a signal that they have chosen at this point in time to fold their tents and move away and that the battle is over and truce has been declared." (Tr. 492 (emphasis added).) Given that there was, at a minimum, some evidence to support a conclusion that any mutual combat had ended, the trial judge's failure to give the requested charge constitutes reversible error, and because Appellant's murder conviction turned on whether the parties were engaged in mutual combat, the failure to give the charge was prejudicial. Accordingly, while Appellant contends the denial of his motion for a directed verdict on the murder charge should be reversed and his conviction vacated, should the Court disagree, the error in the trial court's jury charge should result in a new trial.

III. THE TRIAL COURT ERRED IN DENYING APPELLANT'S DIRECTED VERDICT MOTION ON THE ATTEMPTED MURDER CHARGE

The Supreme Court "has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). Specifically, the trial court "should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty." *Id.* (internal citation omitted). In this case, even

when viewed in the light most favorable to the State, the evidence presented in support of the attempted murder charge merely raises a suspicion and falls far short of reasonably tending to prove guilt. Accordingly, the trial judge erred in denying Appellant's motion for a directed verdict on the charge.

At trial, the State failed to produce a single witness who saw Appellant fire, or even point, a gun at Robinson.⁴ To the contrary, the evidence showed Appellant's gun was jammed and *he did not try to shoot at Robinson or even point the gun at him.* (State's Ex. 38, Video 7; R. p. 635.) Moreover, Sergeant Albertin testified that she had no evidence that Appellant ever pointed a gun or shot at Robinson. (R. pp. 486-487.)

Although Appellant admittedly shot at Robinson's car, the record is clear that Robinson was not in the car at the time and the car's windows were not tinted so Appellant could see that there were no occupants. (R. pp. 488-529.) Additionally, Sergeant Albertin confirmed that she had no evidence that Appellant even saw Robinson on Allen Road. (R. p. 485.)

The scant circumstantial evidence the State presented as to Appellant's guilt on attempted murder consists only of the following: (1) Robinson's statement to Mitchell that "those M F was shooting at him" (R. p. 310); (2) Robinson's statement to Delaney that "yeah they was shootin' at me so I shoot back at them" (R. p. 333); and (3) the 911 call from an unidentified woman who stated that two vehicles, a grey truck and grey Lexus,⁵ were shooting at each other (R. p. 624). First, although Robinson clearly knew Appellant, he never identified Appellant by name or otherwise in statements to Mitchell and Delaney. The fact that Robinson referred to "they" and "those M F" indicates he

⁴ Notably, the State chose not to call Robinson who presumably may have been the only person who could have corroborated its theory that Appellant tried to kill him.

⁵ Robinson was driving a green Acura that day. (R. pp. 312-313, 345-347, 419-420; R. p. 624; R. p. 629.)

may not have known who was shooting at him. Regardless, to conclude from that limited evidence that Robinson was referring to Appellant would require to the jury to make an unsupported inference. The evidence did not provide any context for Robinson's statements as to when "they" or "those M. F." allegedly shot at him or where the shooting took place. Without additional evidence to identify the shooter or evidence regarding when the alleged shooting took place, anyone could have been in the truck shooting at Robinson and the evidence introduced at trial established that other than Appellant, at least three other individuals were in the truck that day: Young, Sr., Jontu, and Campbell.

Second, with respect to the 911 call, the caller stated that two vehicles were shooting at each other, but the caller did not identify or provide any description of the person shooting from the grey truck. The caller also identified the two vehicles involved as a grey truck and a "grey Lexus," but Robinson was driving a green Acura. The caller also did not identify when or where the shooting occurred. Given that the evidence showed there were at least three other persons in Young, Sr.'s grey truck that day other than Appellant, the caller's statement cannot serve as substantial circumstantial evidence to support a conclusion that Appellant fired at Robinson.

As in this case, in *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2001), the State presented entirely circumstantial evidence that the defendant committed murder. 392 S.C. at 140, 708 S.E.2d at 777. The trial court denied the defendant's directed verdict motion, based on the State's presentation of the following evidence: (1) the victim's personal items were found in a burn pile in a neighboring home owned by the defendant's mother; (2) a heavy petroleum product was used as an accelerant in the burn pile and the defendant's mother testified that she was afraid to use such accelerants and did not use them; (3) a pattern of gasoline was found on the defendant's shoes and

was used as an accelerant to start a fire in the victim's home after her assailant struck her; and (4) blood was found on the defendant's jeans and the DNA expert testified she could not conclusively state that the blood found on the defendant's jeans was not the victim's, even though she could exclude 99 percent of the population. *Id.* at 141-42, 708 S.E.2d at 778. On this evidence, which is far more substantial than the evidence presented against Appellant in this case, the Court reversed the trial court, finding the State had not presented substantial circumstantial evidence sufficient to submit the case to the jury. *Id.* at 142, 708 S.E.2d at 778.

Similarly, in *Odems*, the South Carolina Supreme Court reversed the trial court after it denied the defendant's directed verdict motion based on the lack of circumstantial evidence on which to base a conviction. 395 S.C. at 592, 720 S.E.2d at 53. In *Odems*, the defendant was convicted of first degree burglary, grand larceny, criminal conspiracy, and malicious injury to an electrical utility system. *Id.* at 582, 720 S.E.2d at 48. The circumstantial evidence was as follows: (1) the defendant was found in a car with the burglars and the stolen goods; (2) the defendant fled from police, and (3) the defendant "asked an uninvolved person to lie for him" to the police. *Id.* The unconvincing reason the defendant supposedly fled was because the driver told him that he had a suspended license. *Id.* at 585, 720 S.E.2d at 49. Nevertheless, the Court held the State presented no evidence that placed the defendant at the scene of the crime and reversed his conviction. *Id.* at 592, 720 S.E.2d at 53.

More recently, in *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013), the Court found the State did not present substantial circumstantial evidence sufficient to warrant the denial of the defendant's mid-trial directed verdict motion. In *Hepburn*, the defendant was convicted of homicide by child abuse for the death of her sixteen-month-old daughter. *Id.* at 418, 753 S.E.2d at 403. The

defendant and her co-defendant boyfriend were the only two people who could have killed the victim because they were the only people with access to the victim in the time period during which she sustained her fatal injuries. *Id.* The trial court denied the defendant's directed verdict motion based on circumstantial evidence regarding the defendant's state of mind, medical testimony, and testimony from her co-defendant. *Id.* at 440, 753 S.E.2d at 414-15. The Court, disregarding the co-defendant's testimony under the co-defendant exception to the waiver rule, held that the other circumstantial evidence did not present substantial evidence that the defendant killed the victim. *Id.* at 440, 753 S.E.2d at 415. In so holding, the Court stated that, "[w]hile undoubtedly present at the scene, the only inference that can be drawn from the State's case is that one of the two co-defendants inflicted the victim's injuries, but not that [*this defendant*] harmed the victim . . . [t]hus . . . the State did not put forward sufficient direct or substantial circumstantial evidence of [defendant's] guilt." *Id.* at 440, 753 S.E.2d at 415.

Here, as in *Hepburn*, if we assume Robinson's statements and the 911 call to be true, the only inference is that either Appellant or his father, who was with him in the truck, shot at Robinson. In his statements to Mitchell and Delanfe, Robinson never specifically identifies Appellant as the shooter. Instead he refers to the shooter as "they" or "those M F." Similarly, the 911 caller never identifies Appellant as the person shooting at Robinson. Instead, she merely stated that the two vehicles were shooting at each other. Thus, as the Court held in *Hepburn*, *Bostick*, and *Odems*, the State has not put forward sufficient circumstantial evidence of Appellant's guilt on the attempted murder charge. For this reason, the trial court's ruling on Appellant's directed verdict motion should be reversed.

CONCLUSION

For the reasons stated herein, this Court should reverse and vacate Appellant's convictions.

December 6, 2016

Respectfully submitted,



Jennifer K. Dunlap
F. Elliotte Quinn IV
200 Meeting St., Ste. 301
Charleston, South Carolina 29401
(843) 727-2650

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

SC Court of Appeals

Thomas W. Cooper, Jr., Circuit Court Judge

Case No. 2012-GS-07-1932 & 2014-GS-07-1940
Appellate Case No. 2015-0000508

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that the Final Brief of Appellant complies with Rule 211(b), SCACR.

December 6, 2016



Jennifer K. Dunlap
F. Elliotte Quinn IV
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

Attorneys for Appellant

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AARON SCOTT YOUNG, JR.,

APPELLANT,

Appellate Case No. 2015-000508

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MARGARET G. BOYKIN
Assistant Attorney General
S.C. Bar No. 101017
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Circuit
P.O. Box 1880
Bluffton, SC 29910
(843) 255-5880

ATTORNEYS FOR RESPONDENT

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ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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Senior Assistant Deputy Attorney General

MARGARET G. BOYKIN
Assistant Attorney General
S.C. Bar No. 101017
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Circuit
P.O. Box 1880
Bluffton, SC 29910
(843) 255-5880

ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in recognizing mutual combat as a basis for a murder charge and denying Appellant's motion for a directed verdict on the murder charge?
- II. Did the trial court err in denying Appellant's request for a jury charge on the end of mutual combat?
- III. Did the trial court err in denying Appellant's directed verdict motion on the attempted murder charge?

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial judge abused his discretion in finding that the theory of mutual combat could form a basis for a murder charge and thereby deny Appellant's motion for a directed verdict because the direct and circumstantial evidence, viewed in the light most favorable to the state, reasonably tended to prove his guilt of the offense under a mutual combat theory.
- II. Whether the trial judge abused his discretion by denying Appellant's request to charge the withdrawal from mutual combat when no evidence existed to support such a charge.
- III. Whether the trial judge abused his discretion in denying Appellant's motion for a directed verdict on the charge of attempted murder because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt of this offense.

RESPONDENT'S STATEMENT OF THE CASE

A Beaufort County Grand Jury indicted Appellant, Aaron Scott Young, Jr., in October 2014 for the murder of Khalil Singleton (Indictment Number 2012-GS-07-1932) and for the attempted murder of Tyrone Robinson (Indictment Number 2014-GS-07-1940).

On February 23, 2015, Appellant's case was called to trial before the Honorable Thomas W. Cooper. (R.p. 11). Roberts Vaux, Esquire, represented Appellant during the trial. (R. 12). Solicitor Isaac McDuffie Stone and Deputy Solicitor Sean P. Thornton represented the State. (R. 12). On February 25, 2015, the jury returned verdicts of guilty on both charges. (R. 598, lines 18-21). Judge Cooper sentenced Appellant to incarceration for thirty (30) years on the murder conviction and to incarceration for thirty (30) years on the attempted murder conviction. (R. 616, line 21- p. 617, line 1). The sentences were set to run concurrently. (R. 616, line 21- p. 617, line 1).

Appellant filed a timely notice of appeal. (Notice of Appeal).

RESPONDENT'S STATEMENT OF FACTS

On the afternoon of September 1, 2012, eight-year-old Khalil Singleton's life abruptly ended. Khalil Singleton¹, an innocent bystander, was shot to death in the midst of an ongoing gun battle. One of the three men responsible for taking the child's life was the Appellant, Aaron Young, Jr. Within the course of an hour, a volatile conflict between Appellant, Aaron Young, Sr., and Tyrone Robinson traversed several different locations on Hilton Head Island, eventually ending in front of a group of children jumping on a trampoline.

Jontu Singleton² and Tyrone Robinson were socializing at a mutual friend's house on September 1, 2012. (R.p. 357, line 2 – p. 358, line 12). Around 4:00 p.m., Jontu decided to ride with Robinson to the store. (R.p. 359, lines 16-17; p. 375, lines 12-13). On the way, the two stopped by the house of Aaron Young, Sr., Appellant's father, on Wild Horse Road because Jontu needed money. (R.p. 359, line 14 – p. 360, line 2). Both Appellant and Young, Sr. were outside in the yard when Jontu and Robinson drove up. (R.p. 361, lines 22-24). Robinson and Appellant had animosity towards each other due to prior altercations (State's Ex. 38, Video 4). They exited the car and Jontu spoke with Young, Sr. while Robinson approached Appellant with a .38 caliber gun in his hand. (R.p. 362, lines 2-5; State's Ex. 38, Intro Video at 2:55-3:39). After seeing Robinson with a gun, Young, Sr. moved towards Robinson and tried to take the gun away but it accidentally fired. (R.p. 362, lines 18-22). Young, Sr. backed away as Robinson fired one or two more shots into the ground near Young Sr.'s feet. (R.p. 362, line 18 – p. 363, line 12; p. 378, lines 4-6). Robinson then got into his vehicle and drove away while Jontu stayed with Appellant and Young, Sr. (R.p. 363, line 25 – p. 364, line 4).

¹ Respondent will refer to Khalil Singleton as "Khalil" in this section for clarity.

² Respondent will refer to Jontu Singleton as "Jontu" in this section for clarity.

Moments after Robinson left, Appellant and Young, Sr. went inside their house and emerged with a black bag containing a 9MM semi-automatic pistol, a thirty round magazine, and a box of ammunition. (R.p. 364, lines 7-10; p. 408, lines 1-2; p. 410, lines 13-16). The three men got into Young, Sr.'s grey truck and began searching for Robinson. (R.p. 367, lines 5-12).

Young, Sr. drove the truck while Appellant and Jontu were in the passenger seats. (R.p. 368, lines 1-4). They drove down Spanish Wells Road and veered off on Oak View Road after Young, Sr. thought he saw Robinson driving down the road. (R.p. 368, lines 6-9). Appellant then pulled the contents out of his black bag and began assembling his weapon. (R.p. 368, lines 13-25). Unable to find Robinson, they continued their search and headed towards Robinson's house on Allen Road off of Marshland Road. (R.p. 369, lines 23-25). When they arrived, Robinson was nowhere to be found. (R.p. 370, line 1). Jontu got out of the car on Allen Road to talk to his son who lived in that neighborhood but no one was home so the three men left Allen Road. (R.p. 370, line 2 – p. 372, line 9). They drove back to Young, Sr.'s house and Jontu exited the car while Appellant and Young, Sr. drove off. (R.p. 372, line 8 – p. 373, line 21).

Minutes later, Appellant and Young, Sr. finally tracked down Robinson on Bryant Road. (State's Ex. 38, Video 7 at 00:23-00:36). Appellant pulled out his weapon and tried to shoot Robinson but the gun jammed. (State's Ex. 38, Video 7 at 1:10-1:17). Robinson fled and the two men decided to continue the pursuit and drive back to Robinson's home on Allen Road. (State's Ex. 38, Video 7 at 2:00-2:50).

While driving down Allen Road, Appellant saw a group of children playing on a trampoline a short distance away from where they spotted Robinson's car. (State's Ex. 38, Video 1 at 00:10-1:00; Video 1 at 1:39-1:41). Appellant drew his weapon and began firing bullets into Robinson's car. (State's Ex. 38, Video 2 at 00:10-00:21). Appellant boasted that he shot the car

twenty times and when he was done it looked like "swiss cheese". (State's Ex. 38, Video 3 at 00:08-00:20; Video 6 at 00:55-00:59). Appellant got back into the truck and they began to drive away down Allen Road. (State's Ex. 38, Video 3). Within moments, Robinson fired three shots back at Appellant and Young, Sr. as they turned onto Marshland Road. (State's Ex. 38, Video 3 at 00:45-00:55). The bullets did not hit their intended targets, but instead one found its way to eight year old Khalil. Robinson fled in his bullet-riddled car and Appellant and Young, Sr. absconded in the other direction. (R.p. 347, lines 1-6; State's Ex. 38, Video 3). Immediately, 911 dispatch began fielding reports of the incident. (State's Ex. 2). Khalil was struck in the chest and died within minutes. (R.p. 502, lines 12-14; p. 504, lines 20-23).

One witness that called to report the crime told the 911 dispatcher that two cars were shooting at each other near Spanish Wells Road. (State's Ex. 2). She identified the two cars involved as a grey truck and a grey Lexus. (State's Ex. 2). The woman told the dispatcher that the man driving the Lexus was Tyrone Robinson. (State's Ex. 2).

Between 5:00 and 5:30 p.m. that same day, Appellant, Young, Sr., and his girlfriend, Ebony Campbell, were pulled over by police in Young, Sr.'s grey truck. (R.p. 391, lines 1-10; p. 398, lines 13-24). While on the side of the road, Officers located spent shell casings matching a 9 MM firearm in the back of the truck. (R.p. 392, lines 11-13). The two men were then taken to the police station where they were Mirandized and interviewed. (R.p. 394, line 15 – p. 396, line 15). Young, Sr. told officers where they could retrieve the black bag containing the gun and ammunition. (R.p. 401, line 24 – p. 403, line 8). Appellant gave a statement to Investigator Albertin admitting to the shootout with Robinson, firing numerous bullets into Robinson's vehicle, and his failed attempt to kill Robinson. (R.p. 471-493; State's Ex. 38, Introduction Video – Video 8).

After officer's located and arrested Robinson, they processed his vehicle for evidence. (R.p. 419, lines 14-24). They were able to locate numerous bullets that were lodged in Robinson's car. (R.p. 430, line 22 – p. 431, line 3). These bullets, along with Appellant's weapon and shell casings, were sent off for examination. (R.p. 431, lines 12-23). Agent Frank DeFreese, an expert of firearm's marks and ballistics with the South Carolina Law Enforcement Division, was able to determine that the bullets in Robinson's car originated from Appellant's 9 MM semi-automatic pistol. (R.p. 466, line 15 – p. 467, line 6).

At Appellant's trial for the murder of Khalil, numerous witnesses testified to what they observed on September 1, 2012. Charlese Mitchell, a woman who lived in the neighborhood off Allen Road, testified that she heard three sets of gunshots around 4:00 p.m. that afternoon. (R.p. 300, line 23 – p. 329, line 15). After the first round of shots, she saw a grey truck driven by Young, Sr. speeding down the road. (R.p. 328, lines 3-21). Robinson, a relative of Mitchell's, came to her door after she heard the first round of gun shots. (R.p. 309, lines 5-17). She let him inside the house and observed a gun sticking out of his pocket. (R.p. 309, line 19 – p. 310, line 7). Robinson, who appeared scared, told Mitchell, "those M. F. was shooting at me". (R.p. 310, lines 8-11). At that point, Mitchell's fiancé, Tyrone Delaney, came home and the two men stepped outside to talk. (R.p. 310, lines 14-25). Robinson left the yard and minutes later Mitchell heard another set of rapid gunshots. (R.p. 311, lines 1-13). A few minutes after the second round of shots, Mitchell heard three more shots and again observed Young, Sr. speeding down Allen Road. (R.p. 323, line 22 – p. 325, line 14).

Tyrone Delaney testified he was driving down Spanish Wells Road between 4:00 and 5:00 p.m. on his way home when a grey truck sped towards him and forced him to pull over to the side of the road. (R.p. 330, line 20 – p. 332, line 14). When he arrived home, Robinson was

there and asked Delaney if he had seen a grey truck. (R.p. 333, lines 1-2). Delaney told Robinson of his encounter with the grey truck. (R.p. 333, lines 17-18). Robinson replied, "yeah they was shootin at me so I shoot back at them". (R.p. 333, lines 18-19). Delaney testified that he heard rapid gun shots after Robinson left their house. (R.p. 334, lines 20-25). Minutes later, he heard three gunshots that seemed to have come from a different type of weapon. (R.p. 335, lines 5-17).

The last witness to testify at Appellant's trial was Dr. Lee Tormos, the forensic pathologist who performed the autopsy on Khalil. (R.p. 500, lines 2-12). She observed that one bullet had entered into Khalil's chest, piercing his lungs and heart, before coming to rest in his arm. (R. p. 502, line 1 - p. 503, line 24). Dr. Tormos concluded that the cause of death was a gunshot wound to the left lateral chest and the manner of death was homicide. (R.p. 505, lines 15-17).

The bullet was removed and turned over to the Beaufort County Sheriff's Office for analysis. Indisputably, the bullet recovered from Khalil's body was fired from Tyrone Robinson's gun. (R.p. 281, lines 11-12; p. 568, lines 22-24).

ARGUMENT

- I. The trial judge did not abuse his discretion in finding that the theory of mutual combat could form a basis for a murder charge and thereby properly denied Appellant's motion for a directed verdict because the direct and circumstantial evidence, viewed in the light most favorable to the state, reasonably tended to prove his guilt of the offense under a mutual combat theory.

Notwithstanding Appellant's argument to the contrary, Respondent submits that the trial judge did not abuse his discretion in holding that mutual combat was a valid legal theory on which to base a murder charge. (R.p. 266-69). Furthermore, the trial judge properly denied Appellant's motion for a directed verdict because the State presented both direct and circumstantial evidence that Appellant and Robinson were engaged in mutual combat when Khalil was killed. (R.pp. 314-518). Additionally, Appellant's argument that the mutual combat had ended, and thus a directed verdict should have been granted, is not preserved for review. Regardless, this argument is without merit since no evidence was presented that Appellant withdrew from the conflict. Accordingly, the trial judge did not abuse his discretion in denying the motion for directed verdict. This issue must be dismissed.

Relevant Facts and Proceedings

Motion to Quash the Indictment

After jury selection, Appellant made a motion to quash the murder indictment. (R.p. 211, lines 22-25). Appellant claimed the indictment provided inadequate notice and was improper because of the included language regarding mutual combat. (R.p. 212, lines 9-13). The indictment read that Appellant was engaged in mutual combat with Tyrone Robinson and thereby caused the death of Khalil Singleton. (R.p. 212, lines 9-18). Specifically, Appellant argued that mutual combat was not a criminal offense, but rather a bar to self-defense. (R.p. 212, lines 13-18). In response, the State argued that the indictment was sufficient under current case

law and provided more notice than what was actually required. (R.p. 219, lines 11-18). Additionally, the State argued that mutual combat was a recognized theory under which one could be charged of murder. (R.p. 219, lines 19-21; p. 220, line 8-p. 222, line 10). Citing numerous South Carolina cases³, the State asserted that mutual combat was a valid legal theory in South Carolina despite the fact it had fallen out of common use. (R.p. 221, lines 12-23). The State conceded mutual combat was a bar to a self-defense claim, but explained that the theory was not limited to that one purpose. (R.p. 222, lines 1-10). The State argued *State v. Brown* used mutual combat to convict multiple defendants for the death of one of the combatants⁴. (R.p. 220, lines 14-16). Finally, the State argued that transferred intent would be applicable to Appellant's case since an innocent bystander was killed, instead of a combatant. (R.p. 222, line 24 - p. 223, line 12).

After reviewing all the case law from the parties, the judge denied Appellant's motion to quash the indictment. (R.p. 269, lines 6-7). The judge considered three legal theories in concluding the charge was proper. (R.p. 266, line 1). The first was the theory of accomplice liability. The judge stated, "those who are aiding and abetting each other, all [are] responsible for the act of a shooter...All then are equally at fault whether they actually were the agent that caused the harm or just an accomplice to the one that did." (R.p. 266, lines 1-7). The second theory considered was transferred intent. (R.p. 266, lines 8-21). According to the trial judge, the doctrine of transferred intent would hold the shooter and the accomplices liable for the harm caused to an innocent bystander. (R.p. 266, lines 8-12). "The state of mind of the individual and not the identity of the victim controls." (R.p. 266, lines 13-15).

³ The State cited the following case law: *State v. Brown*, 108 S.C. 490, 95 S.E. 61 (1918); *State v. Taylor*, 356 S.C. 227 (2003); *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973); *State v. Andrews*, 73 S.C. 257, 53 S.E. 423 (1906).

⁴ *Brown*, 108 S.C. 490, 95 S.E. 61.

Finally, the judge discussed the theory of mutual combat. (R.p. 267, line 1). At the onset, the judge explained the relationship between mutual combat and self-defense. (R.p. 267, lines 8-11). "Mutual combat has its most significant application in the law in that it denies anybody who is involved in mutual combat the defense of self-defense because none of them can claim to be without fault in bringing about the incident." (R.p. 267, lines 8-11). Citing to *State v. Brown*⁵, the judge recited the current law on mutual combat⁶. (R.p. 267, lines 12-22). He then explained that if Young, Sr. had been killed, instead of an innocent bystander, the law makes clear that Appellant and Robinson would both be guilty. (R.p. 268, lines 1-8). Linking mutual combat to transferred intent, the judge illustrated Robinson's intent to shoot Appellant would transfer to Young, Sr. in this scenario. (R.p. 268, lines 8-12). The judge concluded:

"Here an innocent person, not a combatant, was killed. The question is whether the law relieves the mutual combatants of the responsibility of that. The responsibility of which had been of their's if they had killed an equally guilty party involved, are they now not responsible because an innocent party was involved. And I hold that they would be responsible."
(R.p. 268, line 19 – p. 269, line 1).

In denying Appellant's motion, the judge reiterated that "it is not the identity of the victim that controls, it is the intent, the state of mind which led to the mutual combat in the first place and the consequences that followed from that." (R.p. 269, lines 2-5).

⁵ *Brown*, 108 S.C. 490, 95 S.E. 61.

⁶ Specifically, in reciting the law on mutual combat, the judge stated:

"Everyone is presumed to know the consequences of his act and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used and death results to one of the participating parties, everyone engaged in such combat is equally guilty. Regardless of whether he used the deadly weapon or not and regardless of whether he was on one side or the other makes no difference. And where all are participating in the mutual combat all are equally guilty for the natural consequences."
(R.p. 267, lines 12-22).

Motion for Directed Verdict

At the close of the State's case, Appellant made a motion for a directed verdict on both charges. (R.p. 507, lines 24-25). Particularly to the murder charge, Appellant argued that no evidence was presented of a mutual combat between Appellant and Robinson. (R.p. 512, lines 2-3). Appellant claimed there was no evidence of a running gun battle. (R.p. 512, lines 9-10). In response, the State asserted that there was ample evidence of mutual combat. (R.p. 514, line 17). "Both are armed..., they both know each other is armed..., Young chases Robinson through two neighborhoods and in fact into Allen Road twice and a result of that Khalil Singleton is dead. I think that is exactly the language that *Brown*⁷ uses when they describe and define mutual combat." (R.p. 514, lines 17-23).

In denying Appellant's motion for a directed verdict, the judge correctly stated that he was not concerned with the weight of the evidence but only its existence. (R.p. 516, lines 8-9). The judge explained the primary evidence of mutual combat came from the combatants own statements. (R.p. 517, lines 5-14). In concluding, the judge stated that there was substantial circumstantial evidence from which the jury could conclude Appellant and Robinson were involved in a running gun battle. (R.p. 517, lines 15-19).

Jury Instructions

After the State and defense rested, the judge gave the following instruction regarding the theory of mutual combat:

And so the state seeks and ask[s] for a conviction at your hands under the theory of mutual combat. Now I tell you that mutual combat exist[s] when there is a mutual intent and willingness to fight between persons or groups of people. Mutual intent is shown by acts and conduct of the parties and circumstances attending and leading up to the combat. The circumstances necessary to establish mutual combat include whether there is any evidence of preexisting evil or ill will

⁷ *Brown*, 108 S.C. 490, 95 S.E. 61.

between the parties, or, any dispute between the parties, and whether the combatants agree to be armed because the history of ill will and an agreement to be armed are necessary before a defendant is engaged or deemed to have been engaged in mutual combat. Now if you find that mutual combat exist[s] in this particular case I tell you that everyone is presumed to know the consequences of his acts. And if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and if death results to one of the participating parties, everyone engaged in such combat is equally guilty. Regardless of whether he used a deadly weapon or not and regardless of whether he was on one side or another, that is, on the side of the one who fires the shot or not, all are equally responsible for the act where all are participating in mutual combat...

...And on the question of intent, ladies and gentlemen, we deal with what we call in the law transferred intent because once again it is undisputed that Mr. Robinson fired the shot that killed Khalil Singleton. It is also undisputed that Mr. Robinson had no intent of killing Khalil Singleton. Mr. Robinson was found guilty of the crime under the law of transferred intent because if a defendant with malice aforethought tries to kill another person, but by mistake injures or kills a different person, the defendant still has the intent to kill. The intent to kill is merely transferred from the original person that the defendant intended to kill to the actual person who was killed or injured.

Now in this particular case you have to decide whether or not the transferred intent that followed Mr. Robinson in that case also followed to Mr. Young under the mutual combat theory that all who are involved are equally responsible for the acts of anyone. That's a decision that you, ladies and gentlemen, have to decide...

(R.p. 568, line 24 – p. 571, line 12).

Standard of Review

In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. *State v. Walker*, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. *Id.* The court must concern itself solely with the existence of evidence from which a jury could reasonably infer guilt. *State v. Bennett*, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). This objective test is founded upon reasonableness. *Id.* "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to

prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury.” *State v. Weston*, 625 S.E.2d 641 (S.C. 2006).

The “any evidence” standard also requires that “the existence of ‘any direct evidence’ proving the defendant’s guilt mandates the denial of a directed verdict motion.” *State v. Phillips*, 411 S.C. 124, 133, 767 S.E.2d 444, 448 (Ct. App. 2014), *reh’g denied* (Jan. 27, 2015). Direct evidence is based on personal knowledge or observation which, “*if true*, proves a fact without inference or presumption.” *Id.* (quoting *State v. Rogers*, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013) (internal quotation marks and citation omitted) (alteration in original)). This is because “[t]he presentation of direct evidence ‘immediately establishes the main fact to be proved.’” *Phillips* at 133, 767 S.E.2d at 448 (quoting *State v. Salisbury*, 343 S.C. 520, 524 n. 1, 541 S.E.2d 247, 249 n.1 (2001)).

Moreover, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354. Recently, in *State v. Pearson*, our Supreme Court made it clear the State need not present evidence sufficient to exclude every other hypothesis at the directed verdict stage. *State v. Pearson*, 783 S.E.2d 802 (S.C. 2016).

Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. *State v. Robinson*, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing *Jackson v. Virginia*, 443 U.S. 307 (1979)). The United States Supreme Court noted the following:

[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, **and to draw reasonable inferences from basic facts to ultimate facts.**

Jackson, at 319 (second emphasis added).

Discussion

A. Mutual combat is a valid legal theory under South Carolina law to form the basis of a murder charge.

The doctrine of mutual combat has existed in South Carolina law since 1843. *Taylor*, 356 S.C. at 231. The Supreme Court in *Taylor* acknowledged the doctrine had “fallen out of common use in recent years” but still found it to be binding law. *Id.* The escalating urban warfare in present-day society has resurrected the need for the doctrine of mutual combat. Here, the State took the long-standing and viable theory of mutual combat and applied it to modern day facts. Appellant argues that the doctrine of mutual combat can only be used for the sole purpose of barring a plea of self-defense. This is an incorrect limitation of the law on mutual combat. Although mutual combat is commonly analyzed when a claim of self-defense is raised⁸, that is not its only application.

Numerous South Carolina cases have used the theory of mutual combat to hold a defendant guilty of murder. “Where two persons mutually engage in combat, and one kills the other, and at the time of the killing it be maliciously done, it is murder. If, on the other hand, it be done in sudden heat and passion on sufficient provocation without premeditation, or malice, it would be manslaughter.” *Andrews*, 53 S.E. at 424; *see also State v. Hammond*, 36 S.C.L. 91, 102 (S.C. App. L. 1850) (“Even in cases of mutual combat, if one begin the fight with a mortal

⁸ “Whether or not mutual combat exists is significant because the plea of self-defense is not available to one who kills another in mutual combat.” *Taylor*, 356 S.C. at 232; *Graham*, 260 S.C. at 450, 196 S.E.2d at 495.

weapon, it is murder..."); *State v. Turner*, 63 S.C. 548, 41 S.E. 778 (1902) ("Where there is evidence from which a jury may infer that there was mutual combat, on a trial for murder an instruction as to such combat is not error."); *State v. Mathis*, 177 S.E. 318, 319 (S.C. 1934) ("There was evidence of threats which, if true, justified a verdict of premeditated murder. There was testimony that the appellant and the deceased were on the lookout for each other; that they were armed in anticipation of a combat; that each drew his pistol and each fired upon the other. There was no error in charging and arguing the law of mutual combat.").

The 1918 case of *State v. Brown* utilized the doctrine of mutual combat to hold multiple defendants accountable for the death of one of the combatants. 108 S.C. 490, 95 S.E. 61. Much like the facts of Appellant's case, all of the defendants were held responsible for the death of the victim even though only one of them had inflicted the fatal injury. In *Brown*, many employees at a local mill began to strike and picket after the mill organized a labor union. *Id.*, 95 S.E. at 62. One morning, a fight erupted between current employees and strikers. *Id.* One of the men involved in the melee pulled out a knife and killed David Freize, another participant in the fight. *Id.* Two of the strikers and three of the employees were indicted for the murder of the Freize. *Id.* On appeal, the defendant's alleged that it was improper to charge the law of mutual combat. *Id.* at 61. The Supreme Court affirmed the convictions and held, "That everyone is presumed to know the consequences of his act, and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and death results to one of the participating parties, every one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not. And regardless of whether he was on one side or the other makes no difference, and where all are participating in the mutual combat, all are equally responsible for the natural consequences." *Id.* at 63.

In order for the doctrine of mutual combat to be asserted and an instruction on the law given to the jury, multiple factors must be shown. In determining whether mutual combat exists, there must be evidence of a "mutual intent and willingness to fight." *Jackson v. State*, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003), *quoting Graham*, 260 S.C. at 450, 196 S.E.2d at 495. One looks to the "acts and conduct of the parties and circumstances attending and leading up to the combat" to determine mutual intent. *Id.* Also, there must be an antecedent agreement to fight. *Taylor*, 356 S.C. at 234, 589 S.E.2d at 4. This agreement can be shown by evidence of "ill-will between the parties", threats, and an "apparent willingness of each to engage in an armed encounter with the other" *Id.* The parties must also be armed and know the other to be armed. *Id.*

As discussed below in sub-issue B, the State presented evidence of all the factors for mutual combat and thus the theory was appropriately applied to this case. Appellant contends that it was error for the State to use the theory of mutual combat to prove murder. Specifically, Appellant claims that the State must prove the elements of murder in general. Respondent submits that the jury was instructed on the law of murder and they found that the State had met its burden of proof in establishing the elements of murder. The judge explained, "Murder is defined in our law as the killing of any person with malice aforethought either express or implied." (R.p. 567, lines 5-12). The judge then defined the terms "malice" and "aforethought". (R.p. 567, line 13 – p. 568, line 17). Furthermore, he instructed the jury, "the state is required to prove malice beyond a reasonable doubt". (R.p. 568, lines 19-21). Thereafter, the judge explained to the jury that the murder charge rested on the theory of mutual combat. (R.p. 568, line 24 – p. 569, line 1). Therefore, the jury was well aware that not only must mutual combat be proven, but the elements of murder as well.

Next, Appellant asserts that it was error for the trial judge to include the theory of transferred intent in the jury instructions. Respondent submits the trial judge properly charged the law of transferred intent during the instruction on Appellant's criminal intent. (R.p. 569, line 24 – p. 571, line 12). The law on mutual combat in South Carolina has yet to address the scenario where an innocent bystander is killed instead of a combatant. Nevertheless, it is only logical that transferred intent would apply in such a situation. Transferred intent applies to cases where an innocent bystander is killed, rather than the intended victim. South Carolina recognizes that "if there was malice in [defendant's] heart, he was guilty of the crime charged, it matters not whether he killed his intended victim or a third person through mistake." *State v. Heyward*, 197 S.C. 371, 377, 15 S.E.2d 669, 672 (1941). Thus, transferred intent holds the defendant liable for the harm caused to an innocent bystander. See, e.g., *State v. Fennell*, 340 S.C. 266, 272, 531 S.E.2d 512, 515 (2000) (A person who, acting with malice, unleashes a deadly force in an attempt to kill or injure an intended victim should anticipate that the law will require him to answer fully for his deeds when that force kills or injures an unintended victim.).

The California Supreme Court upheld a murder conviction based on the theories of mutual combat and transferred intent in a similar setting. *People v. Sanchez*, 26 Cal. 4th 834, 29 P.3d 209 (2001). In referencing the concurring opinion's analysis of transferred intent, the majority opinion stated in a footnote:

For purposes of applying the rule of transferred intent, it does not matter whether defendant himself fired the fatal shot or instead induced or provoked another to do so; in either situation, defendant's culpable mental state is determined as if the person harmed were the person defendant meant to harm.

26 Cal. 4th at 850, 29 P.3d at 220.

In concluding that each defendant was equally liable for the innocent bystander's death, the Court stated:

Because defendant and co-defendant, rival gang members, had equally culpable mental states and engaged in precisely the same conduct at the same time and place in exchanging shots in a gun battle, it was not unfair to hold them equally responsible for an innocent bystander's death, without regard to which of them actually fired the bullet

26 Cal. 4th at 854, 29 P.3d at 144.

Accordingly, the doctrine of transferred intent was properly applied to Appellant's case. As the trial judge stated, if Young, Sr. had been killed, then there would be no question that both Appellant and Robinson would be responsible for his death under mutual combat. Since an innocent bystander was killed rather than one of the combatants, the doctrine of transferred intent was properly utilized to transfer Appellant's and Robinson's criminal intent to the unintended victim. Hence, there was no error in charging the jury on the law of transferred intent.

Additionally, Appellant argues that the State must present evidence of some doctrine that would allow for one defendant to be responsible for another defendant's actions. Appellant's examples of such doctrines are conspiracy, accomplice liability, and felony murder. However, much like the above theories, mutual combat is a recognized doctrine in which a defendant can be held accountable for the actions of another defendant. *See Brown*, 95 S.E. at 63 (“[E]very one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not.”); see also, *Taylor*, 356 S.C. at 235, 589 S.E.2d at 5 (“The mutual combat doctrine is triggered *when both parties contribute* to the resulting fight.”).

To further counter Appellant's argument, Respondent submits a review of other states' case law on mutual combat with relation to other theories of culpability is beneficial. *See State of Iowa v. Spates*, 779 N.W.2d 770, 779 (Iowa 2010) (“Our cases support a conclusion that the acts of a defendant engage in mutual combat can be the proximate cause of injury to an innocent bystander that directly results from the act of another combatant.”); *Roy v. United States*, 871 A.2d 498, 509 (D.C. 2005), *cert. denied*, 547 U.S. 1162 (2006) (“While the evidence was unclear

as to whether Roy's or Settles' bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun battle where it was clearly foreseeable that others would be endangered."); *Alston v. State*, 662 A.2d 247, 254 (Md. 1995) ("Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved heart murder, each group aided, abetted, and encouraged the other to engage in urban warfare."). See also *Reyes v. State*, 783 So.2d 1129, 1133 -1134 (Fla.App. 3 Dist. 2001) (noting *Alston* and adopting logic citing other jurisdictions with similar holdings). The logic of these cases are instructive.

In *State v. Spates*, 779 NW.2d at 772, the Supreme Court of Iowa reviewed a murder conviction where the victim had been a bystander killed "during a gun battles between rival groups...." The state court considered both theories of aiding and abetting and mutual combat. In light of the applicability of those theories, the court concluded:

We agree with those courts that have concluded participants in mutual combat encourage each other to engage in the potentially lethal conduct that leads to the injury of innocent bystanders, thereby supporting liability as an aider and abettor.

779 N.W.2d at 780.

The Iowa courts had previously reached a similar conclusion in *State v. Brown*, 589 N.W.2d 69 (Iowa App. 1998), *reversed on other grounds*, *State v. Reeves*, 636 N.W. 2d 22 (Iowa 2001). In that case, the victim was killed when she unwittingly drove between rival gangs in the midst of a shootout. However, a rival gang member, not Brown, actually fired the fatal bullet. Brown contested his second degree murder conviction as there was no evidence connecting him

personally to the fatal bullet.⁹ The appeals court, considering proximate cause, rejected Brown's assertion finding:

Brown's engagement in conduct that created a very high risk of death or serious bodily injury to others was a proximate cause of Davis's death. *See State v. Marti*, 290 N.W.2d 570, 579 (Iowa 1980). This is true whether it was the defendant or another participant in the shoot-out who fired the shot that killed the innocent bystander. *See id.* ("It is not essential for conviction in all cases that the accused actively participated in the immediate physical impetus of death").

589 N.W.2d 69, 74 -75.

A Maryland Court of Appeals considered similar circumstances in regard to a conviction for a "depraved murder"¹⁰ conviction, and reasoned as follows:

The "bottom line" is that when a group, or two groups, of hoodlums deliberately engage in a gang-war style of shoot-out in a crowded urban area, they collectively trigger an escalating chain reaction creating a high risk to human life. When instead of taking their gunslinging vendetta to an uninhabited island or some remote spot in the desert, they arrogantly indulge in their homicidal insanity in the middle of a crowded block of residences, each participant in such collective madness displays a wanton and depraved indifference to any human life that

⁹ Though "second degree murder," the malice requirement is substantially the same. In Iowa, "[m]alice is required for both degrees of murder. *See Iowa Code § 707.1* (1997) ('A person who kills another person with malice aforethought either express or implied commits murder.'). However, first-degree murder requires proof of deliberation and premeditation in addition to malice aforethought. *See Iowa Code §§ 707.1, 707.2(1)*. Second-degree murder, on the other hand, does not require deliberation and premeditation; it requires only proof of malice aforethought. *Compare Iowa Code § 707.2(1) with § 707.3.*" *Reeves*, 636 N.W.2d at 25. Thus, it appears that the charge would be in definition, though not statutory structure, comparable to the murder charge in this State.

¹⁰ Again, though we have no such offense, this charge appears similar to the "second degree murder" charge in Iowa, and omits only an otherwise required deliberation or premeditation element of first degree. *See Owens v. State*, 906 A.2d 989, 1026 (Md. App. 2006) (describing one way of proving second degree murder as "what has become known as depraved heart murder--a killing resulting from 'the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not.'"). It is not, however, limited to unintentional acts, but apparently professed unintentional results. *Robinson v. State*, 307 Md. 738, 745-746, 517 A.2d 94, 98 (Md. 1986). The inclusion of the "depraved heart" and "reckless and wanton" aspect, however, places the charge on similar footing with our requirement of malice. *State v. Wilds*, 355 S.C. 269, 276-277, 584 S.E.2d 138, 142 (Ct.App. 2003) ("Implied malice is when circumstances demonstrate a 'wanton or reckless disregard for human life').

might randomly fall within their overlapping and deadly enfilades. Should death to one of the innocent bystanders or homeowners ensue, each participant in the lethal encounter has exhibited the *mens rea* that qualifies him for depraved-heart murder.

Alston v. State, 643 A.2d 468, 469 (Md. App.1994). The affirmance was upheld on appeal, with the higher court noting: "Though the groups were adversaries at one level of analysis, at the level of analysis relevant to depraved heart murder, each group aided, abetted, and encouraged the other to engage in urban warfare." *Alston v. State*, 662 A.2d 247, 254 (Md. 1995). *See also Reyes*, 783 So.2d at 1133 -1134 (noting *Alston* and adopting logic citing other jurisdictions with similar holdings).

Similarly, in a 2005 case, the court in the District of Columbia, in reviewing a causation charge, reasoned that "while proximate causation as a theory of second-degree murder liability has been recognized in our case law for some time, the factual scenario of a 'gun battle' on city streets, as in this case, is relatively new." *Roy v. United States*, 871 A.2d 498, 507 (D.C. 2005), *cert. denied*, 547 U.S. 1162, 126 S.Ct. 2346 (2006). The court easily acknowledged the "the application of proximate cause liability to those participants who willfully choose to engage in these battles." *Id.* In upholding the application in that specific case as reflected in the contested charge on causation, the court reasoned: "While the evidence was unclear as to whether Roy's or Settles' bullet was responsible for the fatal shot, such a determination is unnecessary if both men prepared for and undertook to participate in the gun battle where it was clearly foreseeable that others would be endangered." 871 A.2d at 509.

Therefore, under the law of South Carolina and many other states, if both parties contributed to the mutual combat (which by definition they must), then both parties are actors in the gunfire and both parties are culpable for the resulting injury.

Finally, Appellant argues that South Carolina should not allow for a murder conviction to rest upon the legal theories of mutual combat and transferred intent because, if the legal theory was accepted, any time an individual fought with an opponent, the individual would be criminally responsible for the harm caused by his opponent's conduct. Respondent submits that is the precise reason it can be and should be used for a murder conviction. Much like accomplice liability¹¹, both parties should be held equally accountable for the consequences that result from creating a zone of danger. Mutual combatants' activities are comparable to those of aiders and abettors because they encouraged each other to engage in an urban conflict. *Reyes*, 783 So.2d at 1133-1134. Here, Appellant and Robinson encouraged each other to engage in a lethal gun battle that resulted in the death of an innocent child. Even though Robinson fired the bullet that killed Khalil, it is just as probable that one of Appellant's bullets could have injured or killed an innocent bystander who was merely caught in the crossfire of the havoc the two men created. Therefore, not to hold Appellant accountable for the death of Khalil would be an injustice, for this case and future cases.

In conclusion, the deep-rooted doctrine of mutual combat is valid theory on which to base a murder charge. Here, Appellant and Robinson mutually engaged each other in an armed conflict in which it was reasonably foreseeable that someone could be killed. The fact that an eight year old child was killed, instead of Appellant or Robinson, does not excuse the combatants of their culpability. The State properly prosecuted Appellant of murder under the theory of mutual combat and the trial judge correctly instructed the jury on that theory. Therefore, the trial

¹¹ "Under the 'hand of one is the hand of all' theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense." *State v. Gibson*, 701 S.E.2d 766, 769 (S.C. App. 2010).

judge did not abuse his discretion in holding that mutual combat was a valid legal theory on which to base Appellant's murder charge. The motion for directed verdict was appropriately denied, and thus, this issue must be dismissed.

B. Overwhelming direct and circumstantial evidence of mutual combat was presented at trial to withstand a directed verdict motion.

Appellant argues that no evidence was produced at trial that Appellant and Robinson were engaged in mutual combat on the incident date. In failing to view the evidence in the light most favorable to the State, Appellant's argument is wholly without merit. At trial, the State produced ample direct and circumstantial evidence showing Appellant and Robinson were engaged in mutual combat on the afternoon of September 1, 2012.

As previously stated, there must be a "mutual intent and willingness to fight" to constitute mutual combat. *Taylor*, 589 S.E.2d. at 3. The required mutual intent can be inferred from the parties' acts and conduct, and the circumstances of the combat. *Id.* Mutual combat also requires the combatants to be armed and know the other to be armed with deadly weapons. *Id.*; see also *State v Mathis*, 174 S.C. 344, 177 S.E. 318 (1934) (finding mutual combat charge proper based on testimony that appellant and deceased were on the lookout for each other, that each was armed in anticipation of meeting the other, and that each drew and fired his pistol at the other); *Brown*, 95 S.E. at 63 ("That everyone is presumed to know the consequences of his act, and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and death results to one of the participating parties, every one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not. And regardless of whether he was on one side or the other makes no difference, and where all are participating in the mutual

combat, all are equally responsible for the natural consequences.”). In finding that evidence of mutual combat existed to submit the issue to the jury, the Court in *Graham* held:

“There was ill-will between the parties. They had threatened each other and it is inferable that they had armed themselves to settle their differences at gun point. Under these circumstances, the apparent willingness of each to engage in an armed encounter with the other, sustained an inference that they were engaged in mutual combat at the time of the killing, and required that the issue be submitted to the jury for determination.”

260 S.C at 452, 196 S.E.2d at 496.

Mutual intent and willingness to fight

The State presented direct and substantial circumstantial evidence that Appellant and Robinson mutually intended to fight. At trial, the chain of events surrounding Appellant and Robinson’s extensive armed chase were presented to the jury by numerous witnesses.

Robinson approached Appellant with a .38 caliber gun in his hand. (R.p. 362, lines 2-5; State’s Ex. 38, Intro Video at 2:55-3:39). Young, Sr. tried to take the gun away but it accidentally fired. (R.p. 362, lines 18-22). Young, Sr. backed away as Robinson fired another shot into the ground. (R.p. 362, lines 18-22). Robinson then got into his vehicle and drove away. (R.p. 363, line 25 - p. 364, line 4). Seconds after Robinson left, Appellant and Young, Sr. retrieved a black bag containing a 9MM semi-automatic pistol, a thirty round magazine, and a box of ammunition. (R.p. 364, lines 7-10; p. 408, lines 1-2; p. 410, lines 13-16). In Young Sr.’s grey truck, Appellant and Young, Sr. began searching for Robinson. (R.p. 367, lines 5-12).

After one failed attempt at locating Robinson, Appellant and Young, Sr. finally tracked him down on Bryant Road. (State’s Ex. 38, Video 7 at 00:23-00:36). Appellant pulled his weapon out and tried to shoot Robinson but the gun jammed. (State’s Ex. 38, Video 7 at 1:10-1:17). Robinson fled and the two men decided to continue the pursuit and drive back to Robinson’s home on Allen Road. (State’s Ex. 38, Video 7 at 2:00-2:50). After spotting

Robinson's vehicle, Appellant began firing bullets into the car. (State's Ex. 38, Video 2 at 00:10-00:21). Appellant boasted that he shot the car "twenty damn times" and when he was done it looked like "swiss cheese". (State's Ex. 38, Video 3 at 00:08-00:20; Video 6 at 00:55-00:59). Appellant got back into the truck and began to drive away when Robinson fired three shots at Appellant and Young, Sr. (State's Ex. 38, Video 3 at 00:45-00:55).

Delaney testified Robinson approached him during the conflict and told him "yeah they was shootin at me so I shoot back at them". (R.p. 333, lines 18-19). A woman who called 911 dispatch reported that a grey truck and Robinson were shooting at each other. (State's Ex. 2)

Appellant and Robinson's actions and conduct that afternoon indisputably prove the required mutual intent and willingness to fight for mutual combat. This intent is further demonstrated by Appellant's own admission to participating in a gun battle with Robinson. (State's Ex. 38, Intro Video - Video 8).

Pre-existing ill will

The State presented direct evidence of Appellant and Robinson's animosity towards each other. Appellant had the following conversation with Investigator Albertin discussing his relationship with Robinson:

Investigator Albertin: When it came down to it, did you really wanna shoot Tyrone?

Appellant: Man, Tyrone tried to kill me in the gardens a couple of days ago, man...I don't like that dude, man.

Investigator Albertin: I've been hearing you boys have been going at it.

Appellant: He crazy. Something wrong with that boy. He think he the shit or something. I don't know. He thinks he got power around here. Cause people scared...I'm little? But I'm not scared of you big dude...Ever since I knocked him out that one time he don't like me. Me and him got in a fight, I knocked his ass out right there. I swear to God. Ask everybody. I knocked that bitch clean out.

(State's Ex. 38, Video 4).

This colloquy, coupled with the chain of events on September 1, 2012, clearly shows Appellant and Robinson had ill-will towards each other.

Armed and knew the other to be armed

The State presented direct and circumstantial evidence that Appellant was armed with a 9MM semi-automatic pistol. During Appellant's interview with Investigator Albertin, Appellant admitted to using his 9MM handgun to shoot Robinson's car. According to Appellant, **"Boy, I swiss cheese that car...I swear I did."** (State's Ex. 38, Video 3 at 00:20). Appellant bragged, **"I mean shit, I shot the car a good, what, twenty damn times."** (State's Ex. 38, Video 6 at 00:55). Additionally, Appellant admitted he attempted to shoot Robinson with the gun but it jammed. **"The first time we caught his ass, but the shit wouldn't shoot...It Wouldn't shoot...No, it wouldn't shoot"** (State's Ex. 38, Video 7 at 00:25). The State presented circumstantial evidence that Appellant was armed through Jontu's testimony. According to Jontu, Appellant pulled a gun out of a black bag and began assembling the weapon while they were searching for Robinson. (R.pp. 364-68). Agent DeFreese's testimony corroborated Jontu's testimony and Appellant's admission in determining that the bullets in Robinson's car originated from Appellant's 9 MM semi-automatic pistol. (R.p. 466, line 15 – p. 467, line 6).

Also, the State introduced direct evidence that Appellant knew Robinson was armed with a weapon. During Appellant's interview, he discussed knowing what type of gun Robinson used during the conflict:

"Cause at the end of the day, Y'all still don't got T's shit...T's shit is a revolver, man. That's the most important gun. Fuck a automatic and a hand gun is nothing 'cause it automatically drop shells. But nigga if he got a revolver, how the fuck y'all gonna get his gun casings? ...You know how many people done got hit with a nine millimeter and ain't die, but bitch you get hit with a 38 your ass is dead."

(State's Ex. 38, Intro Video at 2:55-3:39)

Furthermore, the State produced circumstantial evidence that Appellant knew Robinson was armed. Jontu testified that Robinson approached Appellant with a gun in his hand off Wild Horse Road. (R.p. 362, lines 2-22). Robinson then fired the gun twice in front of Appellant. (R.p. 362, lines 2-22).

Natural Consequences

Additionally, the State presented direct evidence Appellant knew Khalil and the other children were playing outside. During Appellant's interview, he admitted multiple times to engaging in a gun fight with children present:

"We came down the road. There was children outside playing already..." (State's Ex. 38, Video 1 at 00:11-00:28); **"The little children was the ones who saw us 'cause they was pointing at us...they was pointing at us...I saw the trampoline and all, that's the crazy thing about it"** (State's Ex. 38, Video 1 at 1:10-1:16); **"In order to ride up the road, you gotta pass by the children"** (State's Ex. 38, Video 1 at 1:39-1:41).

While discussing seeing the children, Appellant stated, **"We got there and all hell broke loose"** (State's Ex. 38, Video 1 at 00:34-00:37). This evidence clearly demonstrated that Appellant was aware that innocent bystanders were in the vicinity. But this fact did not stop Appellant from continuing the conflict with Robinson. Accordingly, it is reasonable to presume Appellant knew the natural consequences of his actions could lead to Khalil's death.

In conclusion, overwhelming direct and circumstantial evidence was presented to the jury tending to prove Appellant was engaged in mutual combat with Robinson. The State introduced evidence Appellant and Robinson had a mutual intent to fight, they had ill-will between each other, and both came to the fight armed and knew the other to be armed. The elements of mutual combat have clearly been established. Thus, the trial court did not abuse his discretion in denying Appellant's motion for directed verdict on the murder charge, and this Court should affirm the trial court's ruling.

C. This issue is not preserved for review since Appellant did not request a directed verdict on the basis of a withdrawal from mutual combat, but also, there was no evidence presented at trial that Appellant had withdrawn from the mutual combat that would warrant a directed verdict.

As a preliminary matter, it appears from a review of the trial record that this issue is not preserved for review. Appellant only discussed the end of mutual combat when he requested a jury instruction on the law after he had already argued his motion for a directed verdict. The judge properly denied the request for such an instruction, which is discussed further in Issue II. Even so, this argument is easily dispatched as there was no evidence that Appellant withdrew from the conflict.

In reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review. *State v. Kennerly*, 503 S.E.2d 214, 221 (S.C. App. 1998), aff'd, 524 S.E.2d 837 (S.C. 1999); *State v. Jordan*, 255 S.C. 86, 177 S.E.2d 464 (1970). A defendant cannot argue on appeal an issue in support of his directed verdict motion when the issue was not presented to the trial court below. *See State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal."). Here, Appellant did not argue that the mutual combat ended when he made a motion for a directed verdict. The trial judge only had the opportunity to consider this issue when Appellant asked for a jury charge on the law of withdrawal. Therefore, Appellant is barred from asserting this point as a basis for a directed verdict in his appeal.

Regardless, Appellant would not be entitled to relief even if he raised this issue at trial. In order to bring mutual combat to an end, one of the combatants must withdraw from the conflict

in good faith and make that fact known to his adversary. *Graham*, 260 S.C. at 451, 196 S.E.2d at 495–96. Here, there was no evidence presented at trial that would allow for the jury or the judge to deduce that Appellant withdrew from the conflict. This matter is discussed in much greater detail in Issue II. Appellant’s action of driving away after firing multiple bullets into Robinson’s car must be taken in context with entire conflict. The chain of events that unfolded on September 1, 2012, included numerous instances of Appellant and Robinson driving to and away from multiple locations. Appellant’s other comings and goings were not viewed as withdrawals because they were simply in furtherance of his pursuit of Robinson. This instance should not be viewed as any different. Also, Appellant’s recorded statements that were published to the jury directly show he did not intend to withdraw. When Appellant was discussing his driving away after firing shots into Robinson’s car, he stated, **“the dude knew we were gonna come back for him”**. (State’s Ex. 38, Video 1 at 1:10). Also, Appellant stated he told his father **“man, turn around”** after he heard Robinson’s gun shots. (State’s Ex. 38, Video 3 at 00:45). Both of these statements undoubtedly show Appellant’s intent was not to withdraw but to continue fighting. Thus, Appellant’s own words completely contradict his assertion that he withdrew from the conflict.

Therefore, this issue is not preserved for appellate review. The result would be the same had the issue been preserved because there was no evidence presented at trial that tended to prove he withdrew in good faith from the combat. This issue is without merit and must be dismissed.

II. The trial judge did not abuse his discretion in denying Appellant's request to charge withdrawal from mutual combat because no evidence existed to support such a charge.

Appellant contends the trial court erred in denying Appellant's request for a jury charge on the end of mutual combat¹². This claim is not supported by a review of the trial record. Absolutely no evidence was produced at trial tending to show that Appellant withdrew from the combat in good faith. Thus, Appellant was not entitled to a jury charge on withdrawal from mutual combat and the judge did not abuse his discretion in declining to give such an instruction.

Discussion

Motion for Jury Charge

After Appellant's directed verdict motion was denied, Appellant then requested a jury instruction on the ending of mutual combat. According to Appellant, the actions of Appellant and Young, Sr. driving down the road after shooting Robinson's car constituted an end to the mutual combat. Essentially, Appellant's position was that driving away should be viewed as a withdrawal from the conflict. The judge found there was no evidence of a withdrawal that would warrant such an instruction and denied Appellant's request. In explaining his reasoning, the judge stated:

The case law in mutual combat and ending a mutual combat requires that the ending of the combat and the breaking off be clear and unequivocal; that it be more than just an escape or trying to avoid the consequences of the continuing battle. This battle had been back and forth...

...I'm not thinking that they were necessarily at that point in time breaking off the combat, they were just going to live to fight another day because he was not there and he was not there to carry it on and they left, or they were leaving at the time the fatal shots occurred.

¹² Appellant uses the language "ending mutual combat" in his argument. However, mutual combat case law uses the term "withdraw" when discussing this issue. *See Graham*, 260 S.C. at 451, 196 S.E.2d at 495-96. Therefore, Respondent shall use "withdraw" when addressing Appellant's argument on "ending mutual combat".

I don't think leaving the scene under those circumstances indicates clear and unequivocally the breaking off of this given the extent of the chase and the level that they had gone to try to get him before then is unlikely that the shooting of the car and then leaving is a signal that they have chosen at this point in time to fold their tents and move away and that the battle is over and truce has been declared.

I don't think that the retreat ends it. I don't think that there is a clear and unequivocal breaking of the conflict such that the law requires to indicate that the mutual combat no longer exists.

(R.p. 519, line 18 – p. 521, line 10)

Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Consequently, an appellate court is bound by the circuit court's factual findings unless they are clearly erroneous. *Id.* "An appellate court will not reverse the trial judge's decision absent an abuse of discretion." *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2008). If there is any evidence to support a charge, the circuit court should grant the request. *State v. Brandt*, 393 S.C. 526, 549-550, 713 S.E.2d 591, 603 (2011); *State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004). "The purpose of a jury instruction is 'to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury.'" *State v. Blurton*, 352 S.C. 203, 207-208, 573 S.E.2d 802, 804 (2002) (quoting *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)). Specifically, "providing instructions to the jury which do not fit the facts of the case may tend to confuse the jury." *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 836 (1989). Here, there was no abuse of discretion, and no error in rejecting the request to charge, as the request was not warranted on the facts.

Analysis

"Where a person voluntarily participates in mutual combat for purposes other than protection, he cannot justify or excuse the killing of his adversary in the course of such conflict

on the ground of self-defense, regardless of what extremity or imminent peril he may be reduced to in the progress of the combat, unless, before the homicide is committed, he **withdraws and endeavors in good faith to decline further conflict, and**, either by word or act, **makes that fact known to his adversary.**”; *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). Thus, two elements must be satisfied in order to successfully withdraw from mutual combat. Here, neither of these elements have been met.

Appellant argues that he withdrew from the conflict when he drove away from the scene, thereby ending the mutual combat. However, the key component to withdrawal from a conflict is that it must be done in **good faith**. In order to actually withdraw in good faith from a conflict, the aggressor must have truly desired to withdraw from or abandon the conflict, and must not have merely paused in his assault. *Comment Note: Withdrawal, After Provocation of Conflict, As Reviving Right Of Self-Defense*, 55 A.L.R.3d 1000, 1003 (1974). Thus, there is no withdrawal where he simply steps back to assume a better strategic position or if he leaves and then returns to the scene with the same threatening or hostile intentions. *Id.* An aggressor does not abandon a conflict if he merely leaves to obtain a weapon, to wait for his adversary in ambush elsewhere, or because he is convinced that he has disabled or killed his adversary. *Id.*

Although South Carolina case law maintains that a withdrawal must be done in good faith, it does not specifically address what constitutes a “good faith withdrawal”. However, other states have addressed this very issue. In addressing this issue, the Supreme Court of Missouri explained the difference between a good faith withdrawal and a mere retreat. “There is a wide difference between a withdrawal and a mere retreat. A retreat may be and often is a continuance of hostilities. A withdrawal is the abandonment of the struggle by one of the parties, and such

abandonment must be perceived by the other.” *State v. Heath*, 237 Mo. 255, 141 S.W. 26, 29 (1911).

Additionally, the Kentucky Court of Appeals in *Hellard v. Commonwealth* rejected the defendant’s assertion that he withdrew from the combat in good faith. *Hellard v. Commonwealth*, 84 S.W. 329, 329 (Ky. 1905). The court held, “A retreat is not necessarily an abandonment. It may be only the falling back on a better position, or for strategic reasons, with intention to continue the battle when the advantage warranted it.” *Id.* Also, the Supreme Court of Louisiana, in *State v Kellogg*, analyzed the reinstatement of a claim of self-defense if the defendant withdrew from the combat in good faith. *State v. Kellogg*, 29 So. 285 (La. 1901). The court stated that self-defense could not be asserted under the basis of withdrawal if the conduct was “a mere momentary cessation of hostilities, with no bona fide, clearly expressed intention to withdraw from the conflict”. *Id.* at 291.

Here, there was certainly no evidence presented at trial that indicated Appellant withdrew or desired to withdraw from the conflict in good faith. Appellant’s act of driving away moments after firing multiple bullets into Robinson’s car was not a desire to end the fighting. Appellant’s actions were not a withdrawal or a retreat, but a continuation of the hunt for Robinson. His act of driving away must be viewed in relation to the whole incident. The entire conflict revolved around Appellant and Robinson chasing after each other. Appellant traveled down numerous roads and made many stops in his search for Robinson. These other comings and goings were not withdrawals but rather mere continuations of Appellant’s pursuit of Robinson. Appellant’s act of driving down the road after shooting Robinson’s vehicle should not be viewed as any different.

Additionally, Appellant’s statements introduced at trial further support that he did not withdraw in good faith. During the interview with law enforcement, Appellant disclosed that

after hearing Robinson shoot at Young, Sr.'s truck, he told his father, **"man turn around"**. (State's Ex. 38, Video 3 at 00:45). Also, when discussing driving away after shooting Robinson's car, Appellant told investigators, **"The dude knew we were gonna come back for him. He already knew. I know he knew. Cause he know me. I don't play like that."** (State's Ex. 38, Video 1 at 1:10). Appellant's admissions that he intended to return to the fight directly refute any intent to withdraw.

Assuming Appellant intended to withdraw, which the evidence suggests otherwise, neither his words nor actions communicated this intent to Robinson. The Court in *Graham* explained that a withdrawal must be "communicated to the victim by word or act". 260 S.C. at 451, 196 S.E.2d at 496. Appellant did not attempt to verbally communicate a desire to end the conflict with Robinson. Moreover, Appellant's act of driving down the road would not have been reasonably interpreted by Robinson that Appellant intended to cease fighting. As stated above, the conflict included multiple instances of driving to and from different locations that did not amount to a withdrawal. It would be unreasonable to assume Robinson viewed this instance as anything different.

Therefore, since Appellant did not withdraw from the conflict in good faith or inform Robinson of an intended withdrawal, a jury instruction on the ending of mutual combat would be improper.

As stated above, a judge's refusal to give a requested charge will not be reversed unless appellant shows an abuse of discretion. *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). Here, there was no abuse of discretion, and no error in rejecting the request to charge, as the request was not warranted on the facts. If, however, any error did occur, such error would be harmless in light of the remainder of the charge and specifically the carefully

crafted charge on mutual combat. *See, e.g., State v. Logan*, 405 S.C. 83, 94, 747 S.E.2d 444, 449 (2013) (“erroneous jury instructions are subject to a harmless error analysis”); *Mattison*, 388 S.C. at 478, 697 S.E.2d at 583 (“A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.”) (*quoting State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct.App. 2003)). Yet, a review of the record undoubtedly shows the requested charge was not warranted. Therefore, there was no error. Appellant’s argument to the contrary should be rejected.

III. The trial judge did not abuse his discretion in denying Appellant's motion for a directed verdict on the charge of attempted murder because the direct and circumstantial evidence, viewed in the light most favorable to the State, reasonably tended to prove his guilt of this offense.

In this appeal, Appellant contends that the State failed to present evidence tending to prove Appellant's guilt of attempted murder. Specifically, Appellant asserts that the evidence was "scant" and merely raised a suspicion of guilt. However, Appellant's argument is without merit when not only was there significant circumstantial evidence introduced; there was direct evidence from Appellant's own admissions. As there was substantial circumstantial and direct evidence presented by the State to the jury proving Appellant's guilt, the trial court properly denied Appellant's motion for directed verdict at the conclusion of the State's case. (R.pp. 514-518).

Discussion

Directed Verdict Motion

After the State rested its case, Appellant moved for a directed verdict on the murder and attempted murder charges. With regard to the attempted murder charge, Appellant argued that there was no evidence presented that showed Appellant attempted to kill Tyrone Robinson. Specifically, Appellant argued the State offered no evidence that Appellant pointed a gun at Robinson. (R.p. 508, lines 10-13). Furthermore, Appellant alleged it was never confirmed that Robinson was referring to Appellant when he stated "those M.F. was shooting at me". (R.p. 508, lines 16-20). The State responded that there was in fact at least three pieces of evidence presented during trial proving Appellant's attempted murder of Robinson. (R.p. 514, lines 9-11). These three pieces of evidence were: (1) Robinson's statement to Mitchell, "those M.F. was shooting at me", (2) Robinson's statement to Delaney, "yeah they was shootin at me so I shoot back at them" after asking about a grey truck, and (3) the 911 call reporting a shootout between a

grey Lexus driven by Robinson and grey truck. (R.p. 513, line 20 – p. 514, line 11). The State further argued that Appellant's admission to attempting to kill Robinson but failing because the gun jammed was an important indication that Appellant intended to kill Robinson. (R.p. 514, lines 12-15).

Correctly reviewing the evidence in the light most favorable to the State, the trial judge held that there was substantial circumstantial and direct evidence introduced at trial. Specifically, the court emphasized "that the attempted murder of Mr. Robinson is borne out by [Appellant's] own statement". (R.p. 517, lines 18-19). Accordingly, the trial judge denied Appellant's motion for a directed verdict on attempted murder.

Standard of Review

As stated above, when ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. *Weston*, 367 S.C. at 292, 625 S.E.2d at 648. "When reviewing a denial of a directed verdict, the appellate court views the evidence and all reasonable inferences in the light most favorable to the state." *Id.* at 292-93, 625 S.E.2d at 648. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury." *Id.*

"[A]lthough the *jury* must consider alternative hypotheses, the *court* must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." *Bennett*, 415 S.C. at 237, 781 S.E.2d at 354.

The "any evidence" standard also requires that "the existence of 'any direct evidence' proving the defendant's guilt requires the denial of a directed verdict motion." *Phillips*, 411 S.C. at 133, 767 S.E.2d at 448. Direct evidence is based on personal knowledge or observation

which, “*if true*, proves a fact without inference or presumption.” *Id.* (quoting *Rogers*, 405 S.C. at 563, 748 S.E.2d at 270). This is because “[t]he presentation of direct evidence ‘immediately establishes the main fact to be proved.’” *Phillips* at 133, 767 S.E.2d at 448 (quoting *Salisbury*, 343 S.C. at 524 n. 1, 541 S.E.2d at 249 n.1).

Analysis

Once again, Appellant's brief fails to view the evidence in the light most favorable to the State. Furthermore, Appellant's brief completely omits reference to Appellant's statements to police that illustrate his intent to kill Robinson. Contrary to Appellant's assertion, there is ample direct and circumstantial evidence supporting the trial judge's denial of Appellant's directed verdict motion on the attempted murder charge, and his ruling should be affirmed.

Attempted murder is defined as “a person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied”. S.C. Code Ann. § 16-3-29. Respondent submits that substantial circumstantial and direct evidence was presented at trial showing Appellant intended to and attempted to kill Robinson with malice aforethought. The following are the key pieces of direct and circumstantial evidence from the trial record, that when taken together, unmistakably point to Appellant's guilt of attempted murder:

Witness Testimony

- Jontu's testimony about Appellant retrieving a gun and looking for Robinson. (R.p. 364, lines 7-10; p. 367, lines 5-8).
- Jontu's testimony about Appellant assembling the gun while looking for Robinson. (R.p. 368, lines 13-25).
- Robinson's statement to Mitchell “those M.F. was shooting at me”. (R.p. 310, lines 8-11).

- Robinson's statement to Delaney "yeah they was shootin at me so I shoot back at them" after Robinson asked Delaney if he had seen a grey truck. (R.p. 333, lines 1-19).
- The 911 recording from a witness stating there was a shootout between a grey Lexus, driven by Robinson, and a grey truck¹³. (State's Ex. 2).

Appellant's Admissions

- Appellant's statement "Should've never moved my ass from Ridgeland. Could've killed any nigga I wanted to and nobody'd ever fucking find out." (State's Ex. 38, Intro Video at 4:01).
- Appellant's statement when he was talking about driving away after shooting Robinson's car: "The dude knew we were gonna come back for him. He already knew. I know he knew. Cause he know me. I don't play like that." (State's Ex. 38; Video 1 at 1:10).
- Appellant's statement "Boy, I swiss cheese that car...I swear I did." (State's Ex. 38, Video 3 at 00:20).
- Appellant's statement to Young, Sr. after Robinson shot at them in the truck, "man turn around" (State's Ex. 38, Video 3 at 00:45).
- Appellant's statement "I mean shit, I shot the car a good, what, twenty damn times." (State's Ex. 38, Video 6 at 00:55).
- Appellant's statement "The first time we caught his ass, but the shit wouldn't shoot...It Wouldn't shoot...No, it wouldn't shoot" (State's Ex. 38, Video 7 at 00:25).
- Appellant's statement "It didn't go down like we wanted it to...If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing, 'cause it

¹³ Appellant argues in his brief that the caller referred to the car as a "grey Lexus", but that Robinson was driving a green Acura on the incident date. Respondent submits that this argument is meritless because the caller positively identifies the driver of the car as Tyrone Robinson. Therefore, the color of the car is insignificant.

was a dead road, nobody would've knew nothing...But the gun just wouldn't go off"
(State's Ex. 38, Video 7 at 2:11).

- Investigator Albertine's question "So what were you shooting at then?" and Appellant's response "**Him**" (State's Ex. 38, Video 7 at 1:10).

The chain of events evidences that the Appellant clearly intended and attempted to kill Tyrone Robinson with malice aforethought. Appellant's intent was unmistakably illustrated by eyewitness testimony about Appellant obsessively chasing Robinson down numerous roads in Hilton Head while armed with a semi-automatic weapon. Moreover, Appellant's admission that he attempted to kill Robinson but the gun was inoperative further supports his guilt. Even though Appellant does not specifically state he pointed the gun at Robinson, he admitted he was shooting at "**him**". (State's Ex. 38, Video 7 at 1:10). This admission constitutes direct evidence of the Appellant's involvement in the crime, "immediately" establishing his intent to murder Robinson. *Phillips, supra*. If Appellant's statements were not persuasive enough, Robinson's statements about Appellant shooting at him surely aided the jury in their determination of Appellant's guilt beyond a reasonable doubt. Although Appellant argues that Robinson's statements could have meant someone besides Appellant was shooting at him, the statements must be taken in the context of the events that afternoon. This was a question for the jury to decide and the only reasonable inference was that Robinson was referring to Appellant in his statements. Accordingly, the State did indeed present substantial direct and circumstantial evidence, when viewed in the light most favorable to the State, proving Appellant's guilt of the attempted murder of Robinson.

The Appellant's apparent reliance on various state cases is grossly misplaced. Appellant seeks to compare his case to the following cases: *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774

(2011); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011); and *State v. Hepburn*, 409 S.C. 416, 753 S.E.2d 402 (2013). In each of those cases, the South Carolina Supreme Court found that a directed verdict was warranted based on the evidence presented by the State at trial. However, the instant case is distinguishable from all of those cases. *Accord State v. Bratschi*, 413 S.C. 97, 106-14, 775 S.E.2d 39, 44-48 (Ct. App. 2015).

The Court in *Bostick* and *Odems* held a directed verdict was proper because the State had failed to present evidence placing the defendant at the scene of the crime. *Bostick*, 392 S.C. at 141, 708 S.E.2d at 778; *Odems*, 395 S.C. at 592, 720 S.E.2d at 53. Here, there is no question Appellant was present at the crime. Not only do multiple witnesses place him at the scene, he places himself there by his own admission. Therefore, both of these cases cited by Appellant are inapplicable to the case at hand.

Also, Appellant's contention that his case is comparable to *Hepburn* is erroneous. The Court in *Hepburn* held that the State failed to present substantial circumstantial evidence that the defendant killed the victim, and thereby a directed verdict was warranted. *Hepburn*, 406 S.C. at 440, 753 S.E.2d at 415. The Court emphasized that while the State presented substantial evidence the defendant was at the scene, it failed to present evidence tending to prove that this defendant, rather than the codefendant, inflicted the harm on the victim. *Id.* Thus, unlike this case, the underlying issue was "who" committed the crime. Here, there is no question about "who" attempted to kill Robinson. Undoubtedly, it is known that Appellant was the person who tried to kill Robinson due to his own confessions. Appellant admitted to being the person that attempted to shoot Robinson but the gun jammed. (State's Ex. 38, Video 7). Appellant admitted to being the person who shot Robinson's car to the point it looked like "swiss cheese". (State's Ex. 38, Video 3 at 00:20). Also, witness testimony corroborates Appellant's own statements that

he was the shooter. Jontu testified Appellant was assembling a gun while chasing after Robinson in Young, Sr.'s truck. (R.p. 368, lines 13-25). Mitchell testified seeing Young, Sr. speeding down the road where Robinson's car was shot. (R.p. 328, lines 3-21). Since the identity of the person who committed the crime is not at issue in this case, *Hepburn* is not appropriate for comparison.

Respondent submits that the evidence presented in this case is akin to evidence presented by the State in *State v. Lane*, where the South Carolina Supreme Court reversed the Court of Appeal's reversal of the trial judge's denial of the defendant's motion for a directed verdict. *State v. Lane*, 765 S.E.2d 557, 557 (S.C. 2014). In reversing the Court of Appeals decision, the Court held "in viewing the evidence in the light most favorable to the State, which we are constrained to do, the State presented substantial circumstantial evidence of Respondent's guilt." *Id.* In that case, the State presented evidence of the following: eyewitness testimony observing a red Mitsubishi parked in the victim's driveway on the afternoon of the burglary, a piece of paper found in victim's driveway after the burglary that was later identified as belonging to the defendant, officer testimony that they observed a red Mitsubishi in the driveway when they went to interview the defendant at his girlfriend's house, and defendant's admission to driving a red Mitsubishi on the day of the burglary and ownership of the piece of paper. *Id.*

Here, the State presented evidence regarding Appellant's ill-will towards Robinson, Appellant and Robinson's confrontation earlier in the day, Appellant's actions in retrieving and assembling a weapon, Appellant hunting down Robinson in a grey truck, eyewitness testimony placing Young, Sr.'s grey truck near the scene, officers testimony that they pulled over Appellant in Young, Sr.'s grey truck shortly after the shooting, eyewitness testimony about a shootout between a grey truck and grey Lexus shooting at each other near the scene, Appellant's own

admission of his chasing down Robinson while riding in his father's grey truck, and Appellant's admission of his intent and attempt to shoot Robinson. (R.pp. 287-506; State's Ex. 38, Intro Video to Video 8; State's Ex. 2). Indeed, there was exceedingly more evidence presented in this case than in *Lane* to withstand a directed verdict motion.

Respondent submits that the State presented substantial circumstantial evidence in the instant case of the same caliber, if not more, as the evidence presented in *Lane*, and Respondent asks the Court to find, just as the Court did in *Lane*, that "the aforementioned evidence was sufficient to withstand Respondent's motion for a directed verdict." *Id.* Respondent submits that the State presented direct and substantial circumstantial evidence of Appellant's guilt at trial and the State further excluded other reasonable hypotheses through its presentation of the evidence. Therefore, the trial judge did not abuse his discretion in denying Appellant's motion for directed verdict on the attempted murder charge, and this Court should affirm the trial court's ruling.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MARGARET G. BOYKIN
Assistant Attorney General

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Circuit

BY: 
MARGARET G. BOYKIN
SC Bar No. 101017

South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ATTORNEY FOR RESPONDENT

November 30, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Thomas W. Cooper, Jr., Circuit Court Judge

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NOV 30 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

AARON SCOTT YOUNG, JR.,

APPELLANT,

Appellate Case No. 2015-000508

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014 Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."


MARGARET G. BOYKIN
Assistant Attorney General

November 30, 2016

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

Respondent,

v,

Aaron Scott Young, Jr.,

Appellant.

FINAL REPLY BRIEF OF APPELLANT

Jennifer K. Dunlap
F. Elliotte Quinn IV
200 Meeting St., Ste. 301
Charleston, South Carolina 29401
(843) 727-2650

Attorneys for Appellant

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DEC 07 2016

SC Court of Appeals

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ARGUMENTS

Appellant's convictions for murder and attempted murder result from gross overcharging to the point of pushing the boundaries of South Carolina law beyond its breaking point. While Appellant may have committed a criminal act, for example by shooting Robinson's unoccupied vehicle, Appellant *did not* kill, *did not* proximately cause the death of, and *did not* attempt to kill anyone. Regardless, the Solicitor chose to charge Appellant with murder and attempted murder on legally tenuous and factually unsupported theories and forego charging Appellant with charges, for example destruction of property,¹ that may have a legal and factual relationship to Appellant's actions.

The State now incredibly asserts Appellant's convictions and the underlying distortion of South Carolina law are necessary given the "escalating urban warfare in present-day society." To the contrary, the State has not shown any "escalating urban warfare" necessitating a change in South Carolina law, and South Carolina law has adequately addressed, and will continue to adequately address, the public use of firearms and the death of bystanders through the felony murder, accomplice liability, and transferred intent theories of criminal liability.

Moreover, not only is there no need to recognize a mutual combat theory of murder in South Carolina, recognizing mutual combat as a stand-alone basis for a murder conviction for the death of a bystander creates legal problems as highlighted by the use of the theory in this case. The harms resulting from recognizing such a theory include:

- The theory would conflict with the requirement that a defendant proximately cause a death to be held criminally responsible for that death.

- The theory would conflict with the settled law of transferred intent which serves only to expand the malice element of a murder charge and does not serve to expand the criminal liability of one actor to include the results of another person's actions.

Not only is the State's attempt to expand South Carolina law unnecessary, ill-advised, and legally tenuous, the facts of this case fall outside the State's proposed theory of mutual combat. Thus, even were the State's theory legally valid, this is not the case to recognize such a theory. Appellant and Robinson never engaged in mutual combat on the day in question, much less engaged in mutual combat at the time Robinson fired the shot that killed Khalil. Therefore, even were South Carolina to recognize the State's mutual combat theory, Appellant could not be convicted for murder under such a theory.

To stretch the State's mutual combat theory to affirm Appellant's murder conviction would create absurd results. Were the facts of this case sufficient for a murder conviction under a mutual combat theory, a person could be convicted of murder regardless of the facts that the person's "combatant" hides to avoid actual combat, the combatant ambushes the person at a time and place of the combatant's choosing, and the passage of days, weeks, or months since the last interaction between the person and the combatant. In short, if ill-will and any violence or threat of violence occurs between a person and another, the State's theory would permit the person to be held criminally responsible for the other's violent acts at any future time or place.

The State may contend that a person should be held responsible for any criminal act that occurs as a result of his engaging in mutual combat, but the criminal law exists to punish offenders for prohibited conduct and harms that were the foreseeable result of such conduct. *See, e.g., 1 Wharton's Criminal Law* § 26 (15th ed.). Here, Appellant could not reasonably foresee that

¹ *See, e.g., S.C. Code Ann. § 16-11-510* (malicious injury to personal property).

Robinson would fire a weapon at him with children in the line of fire, and thus, even if engaged in mutual combat, the law should not hold Appellant criminally responsible for Robinson murdering Khalil. Appellant had no control over Robinson's actions, had no control over where and when Robinson chose to fire his weapon, and thus, had no control over Khalil's death.

Appellant, as seen in the videotaped interviews admitted at his trial, acknowledged that his actions were rash and expressed his anguish that Khalil died as a result of Robinson's actions. However, Robinson is the party responsible for Khalil's death, and he has been held accountable for his actions. Appellant may have acted foolishly and even criminally that day, but during the one instance when Appellant fired his weapon that day—when he shot Robinson's car—he knew that there were no children around the vehicle or in the direction he fired. (State's Ex. 38, Videos 1, 2, & 7; R. p. 635.) Robinson, however, chose to ambush Appellant resulting in Khalil's death. Robinson chose not only to fire at Appellant, but he chose the time and place at which to do so. Thus, even were the State's mutual combat theory a valid legal basis for a murder conviction, the facts of this case do not support a conviction under such a theory.

Finally, the State fails to point to any evidence from which a jury could reasonably conclude that Appellant attempted to murder Robinson. The State mischaracterizes Appellant's statements to the police as an admission that Appellant attempted to shoot Robinson on Bryant Road, but a full consideration of those statements shows Appellant clearly stated he never tried to shoot Robinson. The State also points to two statements Robinson made to witnesses on September 1, 2012, and to a 911 telephone call recording, but none of those items of evidence identify Appellant as firing a weapon at or even pointing a weapon at Robinson. Therefore, because there was no evidence that Appellant tried to fire a weapon at Robinson, there was no evidence from which a jury could

reasonably find Appellant attempted to murder Robinson and the trial court erred in denying Appellant's directed verdict motion on the attempted murder charge.

I. MUTUAL COMBAT ALONE DOES NOT SUPPORT A MURDER CONVICTION

Appellant asserts that South Carolina law *does not* recognize mutual combat as a basis for a murder conviction and South Carolina *should not* recognize mutual combat as such. The State contests both of these assertions, but the State's arguments on each ground are flawed.

Rather than supporting its contention that mutual combat is recognized in South Carolina as a basis to hold a defendant guilty for murder, and to the contrary, the decisions cited by the State show that South Carolina recognizes mutual combat only in relation to self-defense. As discussed in detail in Appellant's Brief, all of the decisions cited by the State employ mutual combat in its role as a bar on a claim of self-defense.

The State also cites decisions from other jurisdictions as supporting the recognition of a mutual combat theory in South Carolina, but does not address the distinctions between the use of mutual combat in other jurisdictions and the theory advanced here. The State also fails to address the problems with the theory applied by the trial court and advanced on appeal. Other jurisdictions use mutual combat as a relevant to establishing the elements of murder, whereas here the trial court used mutual combat as a *stand-alone* basis for a murder conviction.

The mutual combat theory used by the trial court and advanced by the State on appeal here is problematic in ways that the use of mutual combat by other jurisdictions as merely relevant to establishing the elements of murder is not. Recognizing the State's mutual combat theory would conflict with the proximate causation requirement for a murder conviction. *See, e.g., State v. Fields*, 314 S.C. 144, 146 n.1, 442 S.E.2d 181, 182 n.1 (1994) ("Where two persons combine to commit an unlawful act and in its execution a homicide is committed as a probable or natural consequence

thereof, all present and participating in the unlawful act are as guilty as the one who committed the fatal act.”); *State v. Des Champs*, 126 S.C. 416, —, 120 S.E. 491, 492 (1923) (“The law applicable in ascertaining and appraising the consequential damage resulting from such criminal act is the familiar law of proximate cause.”); *State v. McCall*, 304 S.C. 465, 469–70, 405 S.E.2d 414, 416 (Ct. App. 1991) (“Except in rare situations, a person committing an unlawful act is legally responsible for all natural or necessary consequences thereof.”), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999). All that would be required for a murder conviction using the State’s mutual combat theory would be for two parties to engage in mutual combat and the acts of one of the two parties results in the death of a bystander. As shown by the facts of this case, this theory is problematic because it makes Appellant criminally liable for the death of a bystander even when Appellant had no control over where and when his alleged combatant fired and was not able to reasonably foresee that his alleged combatant would fire his weapon with children in the line of fire.

The State’s mutual combat theory is also problematic due to its misapplication of the doctrine of transferred intent. Under the State’s theory, the doctrine of transferred intent is absorbed into the mutual combat theory so that a mutual combatant is responsible for any death of a bystander resulting from his combatant’s actions. However, the doctrine of transferred intent operates so that “the actor’s intent to kill his intended victim is said to be transferred to his actual victim.” *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984). Thus, the doctrine of transferred intent operates to constructively shift an actor’s malice, not as a doctrine for holding an actor criminally liable for the acts of another person.

Because South Carolina does not recognize mutual combat as a basis for a murder conviction, the recognition of mutual combat as a basis for a murder charge conflicts with South Carolina law,

and South Carolina law already addresses the death of a bystander, the Court should not recognize mutual combat as a basis for Appellant's conviction and should reverse Appellant's murder conviction.

II. THERE WAS NO MUTUAL COMBAT

Even could mutual combat support a murder conviction under South Carolina law, no evidence was presented at trial from which a jury could find Appellant and Robinson engaged in mutual combat. As acknowledged by the State, for mutual combat to exist: (1) the parties must have a mutual intent and willingness to fight, (2) the parties must be armed with deadly weapons, and (3) the parties must engage in mutual combat with deadly weapons. (State's Resp. at 24; Appellant's Br. at 13.) No evidence was introduced at trial to establish that these requirements for mutual combat existed at any time on September 1, 2012, as shown by considering the evidence presented as to each of the four incidents of that day.

A. Wild Horse Road Incident

During the first incident at Appellant's home on Wild Horse Road, Robinson confronted Appellant and his father with a pistol, but there was no evidence of any of the three elements required for mutual combat. First, there was *no* evidence that Robinson intended to and was willing to engage in mutual combat with Appellant or his father at that time. Rather, the only evidence presented was that Robinson exited the vehicle with a pistol, approached Appellant, was "argumentative" and "loud and cussing," (R. p. 377), and after regaining control of the gun from Appellant's father and firing at his feet, Robinson drove away rather seeking combat with Appellant (R. pp. 363-364). The State offers nothing further as evidence to show Robinson had an intent and willingness to engage in mutual combat. (State's Br. at 25.) There also was *no* evidence that Appellant intended to or was willing to fight with Robinson. Rather, the evidence showed only that

Appellant was standing in his yard as Robinson approached him, and the State presents nothing further. (State's Br. at 25.)

Second, there was *no* evidence that Appellant, or anyone other than Robinson, was armed with a deadly weapon at the time of this incident.

Third, there was *no* evidence that Appellant engaged in mutual combat with Robinson. Robinson approached Appellant with a pistol, Appellant's father interceded and wrestled with Robinson for control of the gun, Robinson gained control of the gun, and Robinson fired at Appellant's father's feet and fled. (R. pp. 362-378.) There is no evidence that Appellant and Robinson ever came into physical contact with or fired at the other, and the State fails to point to any such evidence. (State's Br. at 25.)

B. Bryant Road

There also was no evidence of mutual combat on Bryant Road. First, when Appellant arrived on Bryant Road, Robinson fled. (State's Ex. 38, Video 7; R. p. 635.) Robinson fleeing indicates he did *not* intend to and was *not* willing to engage in mutual combat with Appellant. Second, Appellant and Robinson did not engage in combat on Bryant Road. There is no evidence that the two, or any other person, made physical contact with or fired at the other. The State fails to point to any evidence to the contrary. (State's Br. at 25.)

C. First Allen Road Incident

Similarly, there was no evidence of mutual combat at the first incident on Allen Road. First, *no* evidence was introduced to show that Robinson was even present when Appellant fired his weapon at Robinson's car. With Robinson not present at the scene, there is no evidence that he intended to or was willing to engage in combat with Appellant at that location and time.

Second, there was *no* evidence that Appellant and Robinson engaged in combat during the

first incident on Allen Road. Again, Robinson was not present, and Appellant fired only at Robinson's vehicle. The State fails to point to any other evidence as showing mutual combat at that time. (State's Br. at 26.)

D. Second Allen Road Incident

For the second incident on Allen Road, when Robinson fired from an unobserved position at the corner of Allen Road and Marshland Road and his bullet struck and killed Khalil, there was no evidence of mutual combat. First, there was no evidence that Appellant was even aware that Robinson was present at the intersection of Allen Road and Marshland Road, and Robinson fired at Appellant's father's vehicle from a hidden position. Therefore, while Robinson may have been willing to ambush from a hidden position, Robinson did not intend to and was not willing to engage in combat with Appellant.

Second, Appellant and Robinson did not engage in mutual combat during this incident. Robinson fired at Appellant's father's truck from a hidden position as it was driving away from Allen Road. Appellant did not fire at Robinson at this time. Again, the State fails to point to any other evidence to satisfy the missing elements of mutual combat. (State's Br. at 26.)

E. There Was No Mutual Combat at Any Other Time on September 1, 2012

The State points to two items of evidence—Robinson's statement to Delaney and a 911 telephone call—presumably to support an argument that there is evidence that at some time on September 1, 2012, other than the four incidents discussed above, Robinson and Appellant engaged in mutual combat. (State's Br. at 26.) However, as discussed in relation to the attempted murder charge, these two items of evidence do not establish that Appellant fired a weapon at or otherwise engaged in mutual combat with Robinson.

Robinson told Delaney: "[Y]eah they was shootin at me so I shoot back at them." (R. p. 333.)

Robinson never identified who "they" was. He did reference a grey truck and Appellant's father's truck was grey, but Robinson did not identify the grey truck as Appellant's father's truck and did not identify who in a grey truck fired at him. Robinson also did not state when "they" allegedly shot at him. The evidence presented at trial indicated there had been previous incidents between Robinson and Appellant, and Robinson's statement to Delaney does not provide any indication as to whether he was referring to shots fired at him on September 1, 2012, or on some previous day. One logical interpretation, consistent with the evidence presented at trial, is that someone in or connected to Appellant's father's truck fired a weapon at Robinson on a previous date, and Robinson's aggression and firing a pistol on Wild Horse Road on September 1, 2012, were in response to the earlier event.

F. There Was Not One Continuous Instance of Mutual Combat

The State may suggest that the four incidents during the afternoon of September 1, 2012, constitute one continuous mutual combat between Appellant and Robinson. If this is the State's position, it too is unavailing. For there to be mutual combat, there must have been some point in time at which all three elements of mutual combat contemporaneously existed. To the contrary and as discussed previously, at no point in time were Robinson and Appellant both willing to engage one another in combat, both armed, and actually engaged in combat. At every point in time that afternoon, one or more of these elements were missing. Most importantly, at no point in time did Robinson ever exhibit an intent or willingness to engage in combat with Appellant. At all times, Robinson was only willing to attack when the attack could not result in mutual combat, *i.e.*, on Wild Horse Road, Appellant and his father were not armed and Robinson fled before they could obtain a weapon, and on Allen Road, Robinson attacked from a hidden position as Appellant and his father drove away. Therefore, there was no point in time at which mutual combat could have begun and continued from, and thus, there cannot have been one continuous instance of mutual combat.

III. THE END OF MUTUAL COMBAT AS A BASIS FOR A DIRECTED VERDICT WAS PRESERVED

Appellant preserved as a basis for a reversal the argument that any mutual combat had ended at the time Robinson fired the fatal shot and thus the trial court erred in not granting Appellant a directed verdict on the murder charge.

To preserve an error at trial, a party must raise the issue to and obtain a ruling from the trial court. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). However, the issue preservation rule does not require a party to use a specific phrase or exact legal terminology to raise an issue to the trial court. See, e.g., *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 902, 907 (2007) (finding argument preserved despite not being phrased "in the exact terms" used on appeal because the objection was stated at trial with "sufficient specificity to allow the trial court to rule on the issue"); *State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001) (finding argument preserved despite failure to use exact words in objecting because it was clear from the record that the argument was made on that ground). A party preserves an issue for appeal whenever the trial judge would have been reasonably able to understand the nature of the error alleged. See, e.g., *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) ("[T]he issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge.").

In support of his motion for a directed verdict on the murder charge, Appellant raised the argument that to the extent there was any mutual combat, it ended before Robinson fired the fatal shot:

- Appellant argued there was "no evidence of mutual combat" (R. p. 512) and "no evidence of back and forth or a running gun battle or any kind of mutual combat" (R. p. 512), thus

arguing there was no mutual combat at the time Robinson fired the fatal shot.

- Appellant also more specifically argued that at the time Robinson fired the fatal shot, Appellant did not even know Robinson was there—that “he never saw Mr. Robinson”—and that therefore there was no mutual combat at that time—“You don’t see somebody you can’t be running a gun battle.” (R. p. 513.)
- Upon the trial court rejecting Appellant’s argument that there generally was no mutual combat between Appellant and Robinson, Appellant then continued his directed verdict argument as to mutual combat. Appellant argued that even accepting the trial judge’s ruling that there was evidence of mutual combat, “the problem in the next step of [the] mutual combat” analysis “is that obviously when you begin to retreat it ends the mutual combat.” (Tr. 489.) Appellant more specifically argued: “And in this instance clearly the evidence is that [Appellant’s father and Appellant] drove the truck down Allen Road, took a left on Marshland Road and were some considerable distance away at the time the three shots were fired. . . . And therefore the mutual combat had ended.” (R. p. 518.)
- After arguing that any mutual combat ended before Robinson fired the fatal shot, the colloquy between the trial court and Appellant’s counsel blurred into a discussion of both the directed verdict motion and the jury charges to be given. However, despite the blurred discussion, the trial court found there was no evidence to support Appellant’s argument that any mutual combat had ended and therefore rejected both the directed verdict argument and the argument for a jury charge on the end of mutual combat without the trial judge ever specifying that the ruling was specifically as to either the directed verdict argument, the jury charge argument, or both. (R. pp. 519-521.)

Accordingly, Appellant raised to the trial court the argument that any mutual combat ended before Robinson fired the fatal shot, the trial court refused to grant a directed verdict on that ground, and the issue is preserved for appeal.

IV. ANY MUTUAL COMBAT ENDED BEFORE ROBINSON FIRED THE FATAL SHOT

The State conflates the legal doctrine of withdrawal *from a conflict* with an idea that any animosity between the parties or any intent to cause future harm to an adversary must have dissipated for a conflict to end. South Carolina caselaw instructs that mutual combat ends when “the defendant withdraws from the conflict,” *State v. Taylor*, 356 S.C. 227, 232, 589 S.E.2d 1, 3 (2003); “after a withdrawal from the initial difficulty . . . if that withdrawal is communicated . . . by word or act,” *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); and when the defendant “withdraws from the conflict and communicates that decision to his adversary,” *State v. Santiago*, 370 S.C. 153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). Thus, while two persons may still have a personal conflict—for example, animosity towards one another or a desire to cause harm to one another—their physical conflict and combat may have come to an end for purposes of mutual combat. Despite this legal standard, the State contends Appellant and his father driving away from Allen Road was not a withdrawal but was “a continuation of the hunt for Robinson” and was part of a plan to find and attack Robinson at a later time. (State’s Br. at 36.)

The law only requires that Appellant withdrew from the conflict and that Robinson knew of the withdrawal for any mutual combat to have ended. While the State intimates that Appellant needed to verbally communicate the withdrawal to Robinson, the law does not require a statement of an intent to withdraw and a person leaving the scene with his adversary’s knowledge is sufficient for withdrawal. *See Bryant*, 336 S.C. at 346, 520 S.E.2d at 322. Appellant and his father drove away

from the location of Robinson's vehicle and did not see Robinson. Thus, there was no ongoing conflict or combat at that time. Robinson was not being attacked, was safe in his hiding place, and saw Appellant and his father driving away as evidenced by him shooting. Yet Robinson decided to initiate a conflict by firing upon Appellant and his father from his hidden position.

Furthermore, the State's conception of withdrawal would render it impossible for a person to withdraw from combat in such a situation. If Appellant decided that shooting Robinson's car was enough and quit looking for Robinson after his father drove them away from Allen Road, under the State's theory this still would not constitute withdrawal, and the alleged mutual combat would be ongoing if Robinson and Appellant saw each other a week or month later and Robinson began firing a weapon at Appellant. There has to be some point at which mutual combat ends, and South Carolina law defines that point as when a combatant withdraws from the scene of combat with his adversary's knowledge of the withdrawal. Here, Robinson made the choice to ignore Appellant and his father departing from the area and his safety in a hidden position, and instead chose to fire a weapon at them while they departed. Robinson made a terrible and unnecessary choice to fire at Appellant in an area where children were in the line of fire, and Robinson, not Appellant, should be held responsible for that act.

V. THE TRIAL COURT ERRED IN REFUSING TO GIVE A JURY CHARGE ON THE END OF MUTUAL COMBAT

As accepted by the State, a trial court must give a requested jury charge if there is *any* evidence to support the charge and a refusal to give a charge supported by some evidence is a reversible error. See *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). The State asserts the trial court did not err in failing to give the requested charge on the end of mutual combat on the basis that there was *no* evidence to support such a charge, but the State's brief establishes that

there was at least *some* evidence to support a charge on the end of mutual combat.

The State first argues that Appellant and his father driving away from Allen Road "was not a desire to end the fighting" and thus was not a withdrawal from the conflict. (State's Br. at 35.) In doing so, the State implicitly acknowledges that Appellant and his father driving away from Allen Road is evidence that could support a finding of withdrawal. The State goes on to characterize the act of driving away as "a continuation of the hunt for Robinson" and states the "act of driving away must be viewed in relation to the whole incident." (State's Br. at 35.) Again, the State's argument acknowledges that whether Appellant and his father leaving the scene constituted a withdrawal from and the end of mutual combat requires an assessment of their driving away in relation to the other evidence presented in the case, and thus, the State's argument shows that this is a factual issue to be determined by the jury.

VI. THE TRIAL COURT ERRED IN DENYING APPELLANT'S DIRECTED VERDICT MOTION ON THE ATTEMPTED MURDER CHARGE

The State points to four items of evidence as permitting a jury to reasonably infer that Appellant attempted to murder Robinson: (1) Appellant's statements to the police about the events on Bryant Road; (2) Robinson's statement to Mitchell that "those M.F. was shooting at me"; (3) Robinson's statement to Delaney that "yeah they was shootin at me so I shoot back at them"; and (4) a 911 recording. Those items of evidence are insufficient for a jury to reasonably conclude that Appellant shot at or tried to shoot at Robinson, and accordingly, the trial court erred in denying Appellant's directed verdict motion on the attempted murder charge.

First, the State relies on a critical misstatement of the record in relation to Appellant's statements to the police about the events on Bryant Road. The State repeatedly asserts Appellant "tried to shoot Robinson [on Bryant Road] but the gun jammed" and that "Appellant admitted he

attempted to shoot Robinson [on Bryant Road] with the gun but it jammed." (State's Br. at 4, 25 27, 39, 42). To the contrary, Appellant made clear in his statement to the police that the gun was jammed when he and his father were on Bryant Road and because he knew the gun was jammed *he did not point the gun at or try to shoot Robinson on Bryant Road*, as made clear by reviewing his statement:

Appellant: What you mean the first time we caught his ass? But the shit wouldn't shoot. It wouldn't shoot. It wouldn't shoot.

Investigator Albertin: So you saw him on Bryant?

Appellant: That's how we knew where he was at. Cause, alright.

Investigator Albertin: Alright, let's try to figure this out.

...

Investigator Albertin: Did you come across him over there?

Appellant: Yeah we did, but that shit wouldn't shoot. It wouldn't, the gun wouldn't shoot.

Investigator Albertin: So what were you shooting at then?

Appellant: Him, but I didn't shoot. It didn't go off. The gun didn't go off.

Investigator Albertin: Ok, so did you point it at him and he might of . . . Did he see you point a gun at him or something?

Appellant: *I didn't even point the gun at him.* The gun just wouldn't go off. I knew it wasn't, cause when you cocked it back it wouldn't . . . It jammed up on me. So that shit was a no go. . . .

...

Appellant: The first time we went down there ain't nothing happened cause we saw him but it didn't go down like wanted it to. If it would have went down like that we wouldn't even be here and nobody would know nothing cause it was a dead road and nobody would've knew nothing but the gun just didn't go off.

(State's Ex. 38, Video 7; R. p. 635 (emphasis added).) Contrary to the State's assertions, Appellant's statement was that he did not attempt to shoot Robinson. While he may have wanted to shoot at Robinson, he knew the gun was jammed when he saw Robinson on Bryant Road so he did not try to shoot at Robinson and did not even point the gun at Robinson.

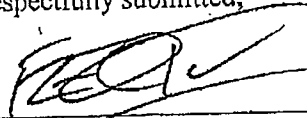
For the remaining three items of evidence the State relies on, as discussed in Appellant's brief, none of those items of evidence identify Appellant as shooting at Robinson. Robinson never identified who "those M.F." or "they" were. Additionally, the 911 caller only stated that two vehicles shot at each other and did not identify Appellant as having fired a weapon at Robinson.

CONCLUSION

For the reasons stated herein, this Court should reverse and vacate Appellant's convictions.

December 6, 2016.

Respectfully submitted,



Jennifer K. Dunlap
F. Elliotte Quinn IV
200 Meeting St., Ste. 301
Charleston, South Carolina 29401
(843) 727-2650

Attorneys for Appellant.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY-
Court of General Sessions

SC Court of Appeals

Thomas W. Cooper, Jr., Circuit Court Judge

Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940
Appellate Case No. 2015-0000508

The State,

Respondent,

v.

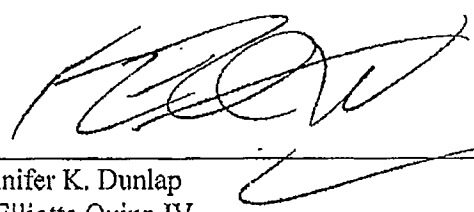
Aaron Scott Young, Jr.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that the Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

December 6, 2016



Jennifer K. Dunlap
F. Elliotte Quinn IV
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

Attorneys for Appellant

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Aaron Scott Young, Jr., Appellant.

Appellate Case No. 2015-000508

Appeal From Beaufort County
Thomas W. Cooper, Jr., Circuit Court Judge

Opinion No. 5592
Heard June 6, 2018 – Filed August 22, 2018

AFFIRMED

Jennifer Kirk Dunlap and Frederick Elliotte Quinn, both
of Parker Poe Adams & Bernstein, LLP, of Charleston,
and Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, Assistant
Attorney General Margaret Graham Boykin, all of
Columbia, and Solicitor Isaac McDuffie Stone, III, of
Bluffton, for Respondent.

HUFF, J.: Aaron Young, Jr. appeals his convictions of murder and attempted murder. On appeal, Young, Jr. argues the trial court erred in denying: (1) his motion for a directed verdict on the murder charge because the State's mutual

combat theory was not supported by South Carolina law or the evidence at trial; (2) his request for a jury charge on the end of mutual combat; and (3) his motion for a directed verdict on the attempted murder charge. We affirm.

FACTS AND PROCEDURAL HISTORY

In October 2014, Young, Jr. was indicted for the murder of Khalil Singleton (Victim) and the attempted murder of Tyrone Robinson. The indictment arose out of a September 1, 2012 conflict between Young, Jr. and Robinson, which culminated in the death of Victim, a minor who was playing outside on a trampoline during the incident. The State's theory of prosecution was that Young, Jr. engaged in mutual combat with Robinson and thereby caused Victim's death.¹

Prior to trial, Young, Jr. moved to quash the murder indictment, arguing mutual combat is not a criminal offense in South Carolina. Young, Jr. further argued the doctrine of transferred intent does not apply in the context of mutual combat. The trial court deferred ruling on the motion until it could "get some sensible legal theory on one side of that issue or another which makes the transferred intent doctrine applicable in mutual combat."

Jontu Singleton testified he met with Robinson on the afternoon of the incident at a house in Hilton Head. The two men decided to drive Robinson's car to the Youngs' residence. When Robinson and Singleton arrived at the house, Young, Sr. and Young, Jr. were both outside. Robinson exited his vehicle carrying a .38 caliber revolver and began yelling at Young, Jr. Young, Sr. saw the gun and immediately began to struggle with Robinson. Robinson fired the gun during the struggle, and Young, Sr. backed away; Robinson proceeded to fire one or two more shots at the ground. Robinson then returned to his vehicle and sped away; Singleton remained with the Youngs. Immediately after Robinson fled the yard, the Youngs went into their house and retrieved a semi-automatic pistol and ammunition. The Youngs and Singleton then entered Young, Sr.'s gray pickup truck and began to search for Robinson. Young, Sr. drove the truck, and Young, Jr. assembled the pistol in the passenger seat. The three men drove around their neighborhood for approximately ten minutes, but they could not find Robinson. Singleton then exited the vehicle and left the area.

Charlese Mitchell, Robinson's neighbor, testified she was home alone on the day of the incident and heard several rounds of gunshots around 4:00 p.m. After the

¹ It is undisputed that Robinson fired the shot that killed Victim.

gunfire stopped, Robinson came to her door "hyped up" and carrying a gun. Robinson entered Mitchell's trailer and stated "those [people were] shooting at me." At that time, Tyrone Delaney, Mitchell's fiancé, came home and spoke with Robinson for no more than ten minutes. Delaney told Robinson to leave, and shortly after Robinson left, Mitchell and Delaney heard another series of rapid gunfire. Mitchell testified that she saw Young, Sr. and a passenger she could not identify speeding down the road in a gray truck when she went outside to tell her son and stepsons to come inside the trailer. After retuning indoors with her children, Mitchell heard three final gunshots followed by screaming. Mitchell went outside to see Victim lying on the ground.

Delaney testified he observed the Youngs' gray truck speeding out of Mitchell's neighborhood at approximately 4:00 p.m. When Delaney arrived at Mitchell's trailer, Robinson explained he and the occupants of the truck had exchanged gunfire. At that point, Delaney asked Robinson to leave. Shortly after Robinson left, Delaney heard a burst of semi-automatic gunfire, and he and Mitchell brought their children inside. A few minutes later, Delaney heard three more gunshots, of a different type than the semi-automatic shots. When the gunfire ceased, Delaney heard Victim screaming for help.

The State also published Young, Jr.'s police interview to the jury. In his interview, Young, Jr. stated, "The first time we caught [Robinson] ... the [pistol] wouldn't shoot. It wouldn't shoot." Young, Jr. continued, "It didn't go down like we wanted it to. If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing [because] it was a dead[-end] road.... But the [pistol] just wouldn't go off." Later in the interview, when an investigator asked Young, Jr. who he was shooting at, he indicated Robinson was his target.

Young, Jr. did not testify in his own defense, and the jury found him guilty of both charges. The trial court sentenced Young, Jr. to concurrent terms of thirty years' imprisonment. This appeal followed.

DIRECTED VERDICT - MUTUAL COMBAT THEORY

First, Young, Jr. argues the trial court erred in denying his motion for directed verdict because South Carolina law does not support a murder conviction under a mutual combat theory. Young, Jr. asserts South Carolina does not recognize mutual combat as a basis for a murder conviction, and the law of mutual combat is only a limitation on self-defense.

"A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *State v. McHoney*, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight. *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

When a motion for a directed verdict is made in a criminal case where the State relies exclusively on circumstantial evidence, "[t]he trial [court] is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."

State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001) (quoting *Mitchell*, 341 S.C. at 409, 535 S.E.2d at 127). "On appeal from the denial of a directed verdict, this [c]ourt must view the evidence in the light most favorable to the State." *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999). "If there [was] any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [this court] must find the case was properly submitted to the jury." *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006).

"The doctrine of mutual combat has existed in South Carolina since at least 1843, but has fallen out of common use in recent years." *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003). To constitute mutual combat, there must exist a mutual intent and willingness to fight. *State v. Graham*, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973). The intent to fight may be manifested by the acts and conduct of the parties and the circumstances surrounding and leading up to the combat. *Id.*, 196 S.E.2d at 495-96. In addition, there must be an antecedent agreement to fight, which may be shown by evidence establishing a pre-existing dispute or ill will between the combatants. *See Taylor*, 356 S.C. at 233-34, 589 S.E.2d at 4-5. Finally, the combatants must be armed and know the other party is armed. *Id.*, 589 S.E.2d at 4-5.

In *State v. Andrews*, our supreme court upheld a jury charge which stated, "[W]here two persons mutually engage in combat, and one kills another, and at the time of the killing it be maliciously done, it is murder; if it be done in sudden heat and passion upon sufficient provocation without premeditation or malice, it would be manslaughter." 73 S.C. 257, 260, 53 S.E.2d 423, 424 (1906).

In *State v. Brown*, our supreme court relied on the doctrine of mutual combat to uphold the manslaughter convictions of multiple defendants. 108 S.C. 490, 95 S.E.2d 61 (1918). In *Brown*, approximately ten men engaged in a fight and as a result, one of the combatants died from knife wounds. *Id.* at 494, 95 S.E.2d at 62. At least five of the combatants were charged with murder in relation to the fight. *Id.* at 490, 95 S.E.2d at 62. On appeal, three defendants argued the trial court erred in charging the jury that all combatants could be convicted under a theory of mutual combat. *Id.* at 493, 95 S.E.2d at 61. The supreme court affirmed the convictions and approved the following jury charge:

That every one is presumed to know the consequences of his act, and if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and death results to one of the participating parties, every one engaged in such combat is equally guilty, regardless of whether he used a deadly weapon or not. And regardless of whether he was on one side or the other makes no difference, and where all are participating in the mutual combat, all are equally responsible for the natural consequences.

Id. at 499, 95 S.E.2d at 63.

In *State v. Mathis*, a defendant was indicted for murder. 174 S.C. 344, 345, 177 S.E.2d 318, 318 (1934). The evidence showed "the [defendant] and the deceased were on the lookout for each other; that they were armed in anticipation of a combat; that each drew his pistol and fired upon the other." *Id.* at 348, 177 S.E.2d at 319. The State proceeded on the theory of mutual combat, and the trial court instructed the jury on the law of mutual combat. *Id.* On appeal, our supreme court found there was no error because the evidence surrounding the mutual combat "justified a verdict of premeditated murder." *Id.* at 348-49, 177 S.E.2d at 319.

Although we acknowledge the doctrine of mutual combat has "fallen out of common use in recent years," we find South Carolina law still recognizes mutual combat as a basis for a murder charge. See *Taylor*, 356 S.C. at 231, 589 S.E.2d at 3. Our supreme court has repeatedly recognized mutual combat as a basis for a murder charge. See *Andrews*, 73 S.C. at 260, 53 S.E. at 424 (upholding jury instructions stating "where two persons mutually engage in combat, and one kills another, and at the time of the killing it be maliciously done, it is murder; if it be

done in sudden heat and passion upon sufficient provocation without premeditation or malice, it would be manslaughter."); *Mathis*, 174 S.C. at 348-49, 177 S.E.2d at 319 (holding a murder charge was proper where evidence showed the defendant and the deceased engaged in mutual combat). Specifically, in *Brown*, our supreme court upheld a trial court's ruling that multiple defendants involved in mutual combat could be charged with murder for the death of a participating party. 108 S.C. at 499, 95 S.E.2d at 63. Based on the foregoing, we find the trial court did not err in finding mutual combat a viable theory of prosecution for the murder charge.

Second, Young, Jr. argues the trial court "erroneously further complicated matters" by combining the issue of transferred intent with the theory of mutual combat. Unlike the victims in *Andrews*, *Mathis*, and *Brown*, here, Victim was an innocent bystander rather than a combatant, and thus, Young, Jr. asserts he cannot be held criminally responsible because Robinson fired the fatal shot.

We find the trial court did not err in applying the doctrine of transferred intent to Young, Jr.'s case. It is undisputed Robinson fired the final three shots at the Youngs as they fled his neighborhood for the final time; one of those three shots fatally struck Victim. Because Robinson fired at Young, Jr. with the intent to kill, this intent transferred to Victim. Thus, Robinson was criminally responsible for Victim's death under the doctrine of transferred intent. See e.g., *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984) ("If there was malice in [the actor's] heart . . . it matters not whether he killed his intended victim or a third person through mistake. . . . [T]he actor's intent to kill his intended victim is said to be transferred to his actual victim."). Furthermore, under the theory of mutual combat, all combatants are deemed "equally responsible for the natural consequences" of their actions during combat, and all may be held equally guilty of murder when a combatant dies, regardless of which combatant fired the fatal shot. See *Brown*, 108 S.C. at 499, 95 S.E.2d at 63. Therefore, despite the fact that Victim was a bystander rather than a combatant, we find Young, Jr. could still be found guilty for Victim's death as a "natural consequence" of the combat with Robinson. This is especially true under the instant facts because Young, Jr. admitted to police that he knew children were bystanders during the combat; specifically, Young, Jr. stated, "I saw the [children playing on the] trampoline and all. . . . In order to ride up the road, you [have to] pass by the children." The Youngs chased Robinson into his neighborhood while firing shots, including shots from the semi-automatic weapon Young, Jr. retrieved and assembled for use in the pursuit. Robinson fired his shots at the Youngs as they fled when Young, Jr.'s weapon jammed—after Young, Jr.'s rapid firing of some twenty shots to "swiss cheese" Robinson's car. Accordingly, we find the trial court did not err in allowing

the State to proceed under the theory of mutual combat even where Young, Jr. did not fire the shot that killed Victim, a bystander.

Finally, Young, Jr. argues no evidence at trial supported a finding of mutual combat. Here, Young, Jr. asserts there was no mutual agreement or willingness to fight, but rather a string of shootings over the course of approximately one hour, in which Young, Jr. and Robinson never engaged in combat at the same time. We find the State presented direct and substantial circumstantial evidence of each of the necessary elements of mutual combat. *See Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 ("If there [was] any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [this court] must find the case was properly submitted to the jury.").

To constitute mutual combat, there must exist a mutual intent and willingness to fight. *See Graham*, 260 S.C. at 450, 196 S.E.2d at 495. The intent to fight may be manifested by the acts and conduct of the parties and the circumstances surrounding and leading up to the combat. *Id.* at 450, 196 S.E.2d at 495-96. We find there was evidence of a mutual intent and willingness to fight. Robinson first fired two or three shots at the Youngs' feet, and the Youngs retrieved a weapon and gave chase. Although Young, Jr. did not shoot Robinson during the conflict, he did shoot Robinson's parked vehicle approximately twenty times. Moreover, Robinson admitted to Mitchell and Delaney that he shot back at the Youngs as they pursued him in their vehicle. Robinson also fired the final three shots at the Youngs' vehicle as they fled the neighborhood for the final time. Based on these circumstances, we find there was evidence showing Robinson and Young, Jr. had a mutual intent to engage in combat.

In addition, there must be an antecedent agreement to fight, which may be shown by evidence establishing a pre-existing dispute or ill will between the combatants. *See Taylor*, 356 S.C. at 233-34, 589 S.E.2d at 4-5. In the police interview, Young, Jr. explained he and Robinson did not like each other and had been involved in numerous previous altercations. Young, Jr. specifically recalled that Robinson attempted to kill him a few days prior to the instant conflict. Viewing Young, Jr.'s admissions in a light most favorable to the State, we find this second element satisfied.

Finally, the combatants must be armed and know the other party is armed. *Id.* Here, the evidence showed both Young, Jr. and Robinson were armed and knew the other to be armed. Singleton testified Robinson carried a .38 caliber revolver, which he shot at the Youngs' feet. Soon after, Young, Jr. retrieved a semi-

automatic pistol and ammunition. Mitchell and Delaney each testified Robinson excitedly told them that he and the Youngs exchanged gunfire as the Youngs drove their truck around in search of Robinson. Young, Jr. admitted he was armed with the semi-automatic pistol when he cornered Robinson on a dead-end road and later shot Robinson's vehicle. Young, Jr. further stated he was aware Robinson fired three shots in his direction as the Youngs fled the scene for the final time. Viewing this testimony in a light most favorable to the State, we find this third element satisfied.

Accordingly, because the doctrine of mutual combat is a proper basis for a murder charge and the State presented substantial circumstantial evidence showing Young, Jr. engaged in mutual combat, we find the trial court properly submitted the case to the jury. *See Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 ("If there [was] any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [this court] must find the case was properly submitted to the jury.").

JURY CHARGE - END OF MUTUAL COMBAT

Young, Jr. argues the trial court erred in denying his request for a jury charge on the end of mutual combat. Young, Jr. asserts the evidence at trial supported such a charge because Young, Jr. fled the scene after shooting Robinson's vehicle, and the jury could have found this ended the mutual combat. We disagree.

Where a person voluntarily participates in . . . mutual combat for purposes other than protection, he cannot justify or excuse the killing of his adversary in the course of such conflict on the ground of self defense . . . unless, before the homicide is committed, *he withdraws and endeavors in good faith to decline further conflict, and, either by word or act, makes that fact known to his adversary*

Graham, 260 S.C. at 451, 196 S.E.2d at 495-96 (emphasis added) (quoting 40 C.J.S. Homicide § 122, p. 496).

We find the trial court did not abuse its discretion in declining to charge the jury on the end of mutual combat. *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) ("An appellate court will not reverse the trial [court]'s decision regarding a jury charge absent an abuse of discretion.").

First, the evidence did not show Young, Jr. withdrew from the conflict and in good faith declined further conflict. Young, Jr. and Robinson engaged in a shoot-and-flee conflict that began when Robinson fired several shots at the ground in the Youngs' yard. The conflict continued as the Youngs drove around two neighborhoods searching for Robinson. Over the course of the search, Young, Jr. cornered Robinson on a dead-end road but did not shoot him because Young, Jr.'s weapon jammed; Young, Jr. also shot Robinson's unoccupied vehicle over twenty times while Robinson hid nearby. Moreover, both Mitchell and Delaney testified Robinson excitedly told them he shot back at the Youngs during this time period. Furthermore, Young, Jr. admitted in his police interview that he intended to continue the conflict, stating, "[Robinson] knew we were [going to] come back for him. He already knew. I know he knew.... He know[s] me. I don't play like that." Young, Jr. further told Young, Sr. to "turn around" after hearing Robinson fire the final three shots toward their vehicle. Based on the unique nature of the shoot-and-flee conflict Young, Jr. and Robinson engaged in, we find the evidence did not show Young, Jr. withdrew from the combat by fleeing the neighborhood before Robinson fired the fatal shots.

Second, no evidence suggested Young, Jr. made his withdrawal known to Robinson, either by word or act. Here, no evidence showed Young, Jr. and Robinson communicated verbally at any point in the conflict after the initial encounter in the Youngs' yard. Moreover, because we find the combat did not end when Young, Jr. fled the scene after shooting Robinson's unoccupied vehicle, we similarly find Young, Jr.'s act of fleeing before Robinson fired the fatal shots did not make known to Robinson any intent to withdraw.

Because the evidence did not show Young, Jr. withdrew from the combat in good faith or make any withdrawal known to Robinson, we find a charge on the end of mutual combat was not warranted. *See State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001) ("The law to be charged must be determined from the evidence presented at trial."). Accordingly, we find no abuse of discretion by the trial court.

DIRECTED VERDICT - ATTEMPTED MURDER

Young, Jr. argues the trial court erred in denying his motion for a directed verdict on the attempted murder charge. Young, Jr. asserts the State failed to produce substantial circumstantial evidence showing he attempted to murder Robinson. Specifically, Young, Jr. asserts the evidence at trial showed Robinson was not

present when Young, Jr. shot Robinson's car, and there was no evidence Young, Jr. ever pointed his gun at or tried to shoot Robinson. Young, Jr. therefore concludes the trial court should have granted his motion for a directed verdict. We disagree.

"A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *McHoney*, 344 S.C. at 97, 544 S.E.2d at 36. In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight. *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

The trial court properly denied Young, Jr.'s motion for a directed verdict on the attempted murder charge because the State presented substantial circumstantial evidence demonstrating Young, Jr.'s guilt. See *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999) ("On appeal from the denial of a directed verdict, this [c]ourt must view the evidence in the light most favorable to the State."); *Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 ("If there [was] any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [this court] must find the case was properly submitted to the jury.").

Here, Singleton testified after Robinson first fired his revolver at the ground near the Youngs, the Youngs went into their house and retrieved a semi-automatic pistol. Thereafter, Singleton and the Youngs drove around their neighborhood searching for Robinson, and Young, Jr. assembled the pistol during the search. Mitchell testified Robinson came to her door and excitedly told her the Youngs were shooting at him. Delaney also testified Robinson told him about an exchange of gun fire with the Youngs. Moreover, the State published Young, Jr.'s police interview to the jury. In the interview, Young, Jr. explained, "The first time we caught [Robinson] ... the [pistol] wouldn't shoot. It wouldn't shoot." Young, Jr. continued, "It didn't go down like we wanted it to. If it wouldn't went down like that, we wouldn't even be here and nobody would know nothing [because] it was a dead[-end] road.... But the [pistol] just wouldn't go off." Young, Jr. also clarified Robinson was his intended target. Viewing this evidence in the light most favorable to the State, we find there was substantial circumstantial evidence tending to prove Young, Jr. attempted to murder Robinson. See *Lollis*, 343 S.C. at 584, 541 S.E.2d at 256 ("When a motion for a directed verdict is made in a criminal case where the State relies exclusively on circumstantial evidence, the trial [court] is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." (quoting *Mitchell*, 341 S.C. at 409,

535 S.E.2d at 127)). Thus, we find the trial court properly denied Young, Jr.'s motion for a directed verdict.

CONCLUSION

Accordingly, Young Jr.'s convictions are

AFFIRMED.

GEATHERS and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

RECEIVED
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SC Court of Appeals

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Aaron Scott Young, Jr. respectfully petitions the Court for a rehearing of its Opinion No. 5592, filed on August 22, 2018, based upon the following points overlooked or misapprehended by the Court:

I. THE DECISION MISAPPREHENDS SOUTH CAROLINA LAW IN HOLDING THAT "SOUTH CAROLINA LAW STILL RECOGNIZES MUTUAL COMBAT AS A BASIS FOR A MURDER CHARGE."

Mutual combat is only a component of the doctrine of self-defense, and the Court misapprehends South Carolina law in relying on *State v. Brown*, *State v. Mathis*, *State v. Taylor*, and *State v. Andrews* as supporting mutual combat serving as a stand-alone basis for a murder conviction. All of the decisions relied on by the Court discuss mutual combat in relation to *defenses* to criminal charges and *not* as a basis for a murder charge.

Appellant does not dispute that an individual engaged in mutual combat can be convicted of murder or manslaughter for the death of one of the participants in the mutual combat. Rather,

the issue in this case, and the issue overlooked by the Court, is that the State must still prove the elements of murder or manslaughter in such an instance. The fact that mutual combat exists serves only to remove the defense of self-defense. As made clear by the decisions relied on by the Court, the existence of mutual combat does not alone establish guilt for murder or manslaughter.

II. THE DECISION MISAPPREHENDS AND OVERLOOKS SOUTH CAROLINA LAW ON TRANSFERRED INTENT AND MUTUAL COMBAT.

In relation to transferred intent, the Court first overlooks that transferred intent only relates to the malice element and does not expand the criminal liability of one actor to include the results of another person's actions. See *State v. Gandy*, 283 S.C. 571, 573-74, 324 S.E.2d 65, 67 (1984); *State v. Horne*, 282 S.C. 444, 446, 319 S.E.2d 703, 704 (1984). The Court combines Robinson's intent toward Appellant and Robinson shooting the victim with language from mutual combat decisions referring to mutual combatants being responsible for the "natural consequences" of the combat. However, the Court overlooks that those decisions referring to mutual combatants being responsible for the "natural consequences" are referring to the death of one of the combatants as the "natural consequences." Those decisions do not address the death of an innocent, unintended bystander.

Moreover, not only has South Carolina law on mutual combat not been extended, through the use of transferred intent or otherwise, to include the death of an innocent, unintended bystander within the "natural consequences" of mutual combat, South Carolina law should not recognize such as one of the "natural consequences" of mutual combat. If mutual combat existed between Robinson and Appellant here, which Appellant contests, the facts of this case are a perfect example of why the death of an innocent, unintended bystander is not one of the "natural consequences" of mutual combat for which all mutual combatants are responsible. Here, Robinson chose to fire shots at Appellant at a time and place of his choosing. Robinson chose to fire shots at a location

where children were playing in his line of fire. Appellant had no control over and no role in Robinson firing shots at that location. Therefore, Appellant cannot be held responsible for the death of the victim as a "natural consequence" of his actions. Appellant had no way to foresee or control whether his actions would result in Robinson firing with children in the line of fire.

III. THE DECISION MISAPPREHENDS THE EVIDENCE AND MISAPPLIES SOUTH CAROLINA LAW ON MUTUAL COMBAT IN HOLDING THAT MUTUAL COMBAT EXISTED BETWEEN APPELLANT AND ROBINSON.

The Court acknowledges that the three elements of mutual combat are: (1) the parties must have a mutual intent and willingness to fight, (2) the parties must each be armed with and know the other party is armed with a deadly weapon, and (3) the parties must engage in mutual combat with the deadly weapons. See *Taylor*, 356 S.C. 227, 232–35, 589 S.E.2d 1, 3–5 (2003). However, the Court overlooked that for there to have been mutual combat, there must have been some point in time at which all three elements of mutual combat contemporaneously existed.

There was no such point in time. At no time were Robinson and Appellant both willing to engage one another in combat, both armed, and actually engaged in combat. The Court holds that there was a *mutual* intent and willingness to fight evidenced by: (1) Robinson firing at the Youngs' feet on Wild Horse Road, (2) Appellant shooting Robinson's car, (3) Robinson stating he shot at the Youngs, and (4) Robinson firing at the Youngs as they left Allen Road. However, none of those incidents evidences a *mutual* intent and willingness to fight. At the most basic level, each incident evidences that Robinson had *no* intent to engage in mutual combat and instead wanted only to ambush the Youngs. When Robinson fired at the Youngs' feet on Wild Horse Road, Robinson fled when the Youngs responded. Robinson then remained hidden through when he fired the fatal shots as the Youngs left Allen Road. A person who is hiding from his supposed "combatants" cannot be said to have a willingness to fight. Hiding from your opponent is the antithesis of being willing to fight.

Additionally and for similar reasons, the Court's decision overlooks that Robinson and Appellant never engaged in mutual combat with deadly weapons. On Wild Horse Road, Robinson approached the Youngs, he was the only person armed at that time, and he fled when the Youngs tried to defend themselves. Thereafter and until when he fired the fatal shots, Robinsons fled and remained hidden from the Youngs. As stated previously, hiding from your opponent is the antithesis of engaging in combat with your opponent. When Robinson fired the fatal shot, it was not in response to any act of combat by the Youngs. At that time, the Youngs were leaving Allen Road, the Youngs did not know where Robinson was, and Robinson was in a hidden position. Therefore, there was no time that day at which Robinson and Appellant had a mutual intent to fight, were both armed, and engaged in combat.

Furthermore, the Court's decision overlooks the distinction between circumstances where parties engage in mutual combat and circumstances where two parties have ill will towards one another and one attacks and kills the other in an act of murder. Under the Court's holdings in this decision, mutual combat would always exist when two persons have animus towards one another and one attacks the other. For a viable distinction between murder, self-defense, and mutual combat to exist, the facts of this case cannot constitute mutual combat. Were the facts of this case to constitute mutual combat, any incident in which one person attacks another who shares feelings of ill will and in which the two parties then exchange gunfire would be mutual combat. However, that clearly is not the case under South Carolina law. If one person attacks another, the person attacked has a right to engage in self-defense, even if there was a pre-existing ill will between the persons.

IV. THE DECISION OVERLOOKS AND MISAPPLIES SOUTH CAROLINA LAW ON THE CESSATION OF MUTUAL COMBAT.

Even if the facts were sufficient to establish mutual combat existed at some point on the day in question, the Court overlooks South Carolina law establishing that any such mutual combat ended prior to when Robinson fired the fatal shot. South Carolina caselaw makes clear that the withdrawal from difficulty and communication of that withdrawal necessary to end mutual combat are both satisfied by leaving the scene of the difficulty. *See State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); *State v. Santiago*, 370 S.C. 153, 161, 634 S.E.2d 23, 27 (Ct. App. 2006). South Carolina law establishes that the key to whether mutual combat ended, or in the related context whether the right to self-defense has been restored, is whether the adversary is placed in a safe position in which there is no imminent threat of further violence.

The Court here acknowledges that Appellant was “fleeing the neighborhood before Robinson fired the fatal shots” and had “fled the scene.” However, the Court holds that Appellant doing so was not sufficient to constitute a withdrawal because of the “unique nature of the shoot-and-flee conflict.” The Court’s holding overlooks that South Carolina law only requires that an adversary leave the scene and place his opponent in a safe position. Here, Appellant left the scene and left Robinson in a safe, hidden position. Given that he did not know where Robinson was and that Robinson was hiding, Appellant could not do anything more to withdraw from the conflict than what Appellant did by leaving the scene. The Court also did not find, nor is there any evidence that would support a finding, that Robinson could reasonably expect that further violence was imminent. To the contrary, Robinson was able to call the police from his position. If an adversary is able to call the police and involve law enforcement in the process of ending a conflict, the law cannot reasonably expect that anything more be done to end a conflict. Were the law to be otherwise, mutual combat would never end and a mutual combatant could be held responsible for

the acts of his opponent when his opponent unilaterally reinitiates violence days, weeks, or months after the combatant previously withdrew from the scene of combat.

V. THE DECISION MISAPPLIES THE STANDARD ON WHEN A FAILURE TO GIVE A JURY CHARGE IS REVERSIBLE ERROR AND OVERLOOKS THE EVIDENCE WHICH REQUIRED THE TRIAL COURT TO GIVE A JURY CHARGE ON THE END OF MUTUAL COMBAT.

The decision applies an abuse of discretion standard to the issue of whether the trial court erred in not giving a requested jury charge on the end of mutual combat and holds that “the trial court did not abuse its discretion in declining to charge the jury on the end of mutual combat.” In support, the Court cites to *State v. Mattison*, 388 S.C. 469, 697 S.E.2d 578 (2010), and language therein holding that a trial court’s decision regarding a jury charge will be reversed on appeal only when there is an abuse of discretion.

However, *Mattison* provides the standard where a party requests specific jury charge language and the trial court declines the request but uses other language addressing the issue of law the requested charge was to address. *See Mattison*, 388 S.C. at 479, 697 S.E.2d at 583–84 (“However, if the trial judge refuses to give a *specific* charge, there is no error *if the charge actually given covers the substance of the request*. . . . Failure to give requested jury instructions is not prejudicial error *where the instructions given afford the proper test for determining the issues*. (emphasis added and internal quotations and citations omitted)). In other words, the abuse of discretion standard set forth in *Mattison* applies to the *content* of a jury charge a trial court gives on a particular point of law. That scenario is not the issue before the Court. The issue before the Court in this case is the trial court’s refusal to give *any* charge on when mutual combat ends.

The standard governing a trial court’s refusal to give *any* charge on a particular point of law is the standard supplied by *State v. Burriss*: “It is well-settled the law to be charged is determined from the evidence presented at trial, and if any evidence exists to support a charge, it

should be given. The trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence." *Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). In *Burriss*, the Court applied that standard to reverse the appellant's conviction because the trial court refused to charge on the law of accident and involuntary manslaughter, *i.e.*, refused to give a jury charge on a point of law, and some evidence was presented at trial that supported the appellant's claims as to accident and involuntary manslaughter. Accordingly, the abuse of discretion standard applied in the Court's decision is not the proper standard for assessing whether the trial court erred in giving a jury charge on the end of mutual combat as requested by Appellant. Rather, the proper analysis is whether any evidence was presented at trial to support a charge on the end of mutual combat.

Applying the any evidence standard set forth in *Burriss*, there was at a minimum some evidence to support a charge on the end of mutual combat. As discussed previously herein, the Court's decision acknowledges that Appellant was fleeing the scene at the time Robinson fired the fatal shots. The evidence that Appellant was fleeing and was not firing at or engaged in any other violence at the time Robinson fired the fatal shots is some evidence from which a jury could conclude that any mutual combat had ended and which supports giving a charge on the end of mutual combat.

VI. THE DECISION OVERLOOKS SOUTH CAROLINA LAW ON THE LEVEL OF CIRCUMSTANTIAL EVIDENCE REQUIRED TO OVERCOME A MOTION FOR A DIRECTED VERDICT AND MISAPPREHENDS THE LACK OF SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE IN RELATION TO THE ATTEMPTED MURDER CHARGE.

The decision holds that substantial circumstantial evidence existed to support the charge that Appellant attempted to murder Robinson based solely on:

- (1) the Youngs armed themselves and searched for Robinson,
- (2) Robinson's statements to Mitchell and Delaney, and

(3) Appellant's statements to the police.

Those three items provide *no* circumstantial evidence, much less substantial circumstantial evidence, that Appellant shot at or attempted to shoot Robinson.

As set forth in *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013); *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011); and *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2001); a trial court must grant a directed verdict when there is no evidence to support an element of a charge or only evidence which "merely raises a suspicion that the accused is guilty." *Odems*, 395 S.C. at 586, 720 S.E.2d at 50. South Carolina's appellate courts have found insufficient to overcome a directed verdict motion evidence significantly more substantial than the evidence relevant to the attempted murder charge here. *See Hepburn*, 406 S.C. 416, 753 S.E.2d 402; *Odems*, 395 S.C. 582, 720 S.E.2d 48; *Bostick*, 392 S.C. 134, 708 S.E.2d 774.

Appellant arming himself and searching for Robinson is not an act of attempted murder. Similarly, while Appellant made statements to the police regarding being armed and his desire to harm Robinson, Appellant stated that he never shot at or attempted to shoot at Robinson.

Finally, the decision misapprehends the evidence regarding Robinson's statements to Mitchell and Delaney. First, the decision states that "Mitchell testified Robinson came to her door and excitedly told her the Youngs were shooting at him." This statement misapprehends the evidence. Mitchell did *not* testify that Robinson said the Youngs were shooting at him, much less that Appellant was shooting at him. Robinson stated to Mitchell that "those MF was shooting at him." (R. 310.) The decision also states that Delaney testified "Robinson told him about an exchange of gun fire with the Youngs." Again, this statement misapprehends the evidence. Delaney did *not* testify that Robinson said he exchanged gun fire with the Youngs, much less with Appellant specifically. Instead, Delaney testified that Robinson asked if Delaney had seen a grey

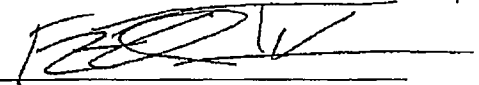
truck, and when Delaney responded that he had seen a grey truck, Robinson responded: "yeah they was shootin' at me so I shoot back at them." (R. 333.) Robinson never identified Appellant by name or otherwise in his statements to Mitchell or Delaney. While he did identify a grey truck and Appellant and his father were driving around in a grey truck, he did not identify the grey truck as the Youngs' truck, much less identify who was in the grey truck at the time he was referring to.

Additionally, Robinson's statements to Mitchell and Delaney do not provide the context necessary for a jury to make anything more than an unsupported inference from those statements. Robinson's statements do not identify when or where the purported shooting took place. The evidence at trial established that there had been previous confrontations between Robinson and Appellant as acknowledged by the Court's decision stating: "Young, Jr. specifically recalled that Robinson attempted to kill him a few days prior to the instant conflict." Robinson's statements also do not permit a jury to determine whether Robinson is referring to the shots Appellant fired at Robinson's car or to some other instance of gun fire that day.

In the *Hepburn* decision, the Court found the evidence clearly supported an inference that either the appellant or one other person caused the victim's death, but because there was no evidence to conclude that the appellant rather than the other person caused the victim's death, there was not substantial circumstantial evidence to overcome a directed verdict motion. *Hepburn*, 406 S.C. 416, 440, 753 S.E.2d 402, 415. Similarly, even were the necessary context available to infer that Robinson was referring to shots fired at him from the Youngs' grey truck and on the day in question, the evidence makes clear there were at least three other people in the Youngs' truck that day, and the evidence does not support an inference that Appellant rather than one of the other occupants fired any shots at Robinson.

For the reasons set forth herein, Appellant respectfully requests rehearing in this case.

Respectfully submitted,



F. Elliotte Quinn IV
The Steinberg Law Firm, LLP
103 Grandview Drive, Ste. A
Summerville, SC 29484
(843) 871-6522

Jennifer K. Dunlap
Parker Poe Adams & Bernstein, LLP
200 Meeting St., Ste. 301
Charleston, SC 29401
(843) 727-2650

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

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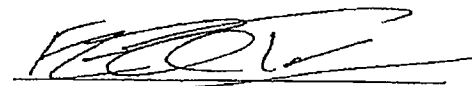
CERTIFICATE OF SERVICE

The undersigned certifies on September 5, 2018, he caused a copy of the foregoing Petition for Rehearing to be served on all parties of record by placing copies in the U.S. Mail, first class, postage prepaid, and addressed as follows:

Hon. Alan McCrory Wilson
Donald J. Zelenka
Melody Jane Brown
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Robert Michael Dudek
S.C. Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

Solicitor Isaac McDuffie Stone III
P.O. Box 1880
Bluffton, SC 29910



F. Elliotte Quinn IV
The Steinberg Law Firm, LLP
103 Grandview Drive, Ste. A
Summerville, SC 29484
(843) 871-6522

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
MICHAEL J. JORDAN
BENJAMIN W. AKERY



CATHERINE D. MEEHAN
KELLY M. ALFREDS
F. ELLIOTTE QUINN IV
TAYLOR L. GROOMS
CHARLES S. GOLDBERG, LLC, OF
COUNSEL
HUGO M. SPITZ (1927-2018)
IRVING STEINBERG (1902-1980)

103 Grandview Dr, Suite A | P.O. Box 2670 | Summerville | SC | 29484 | (843) 871-6522 | (843) 871-8565 fax | steinberglawfirm.com

September 5, 2018

The Hon. Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
SEP 06 2018
SC Court of Appeals

Re: State v. Aaron Young, Jr.
Appellate Case No.: 2015-000508

Dear Ms. Kitchings,

Enclosed for filing please find an original and one copy of the Petition for Rehearing of Appellant in connection with the above-referenced matter. Please file the original and return a file-stamped copy to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,

Elliotte Quinn
equinn@steinberglawfirm.com
843-871-6522

FEQ/EQ
Enclosures (as stated)

Cc: Alan M. Wilson
Donald J. Zelenka
Melody J. Brown
Robert M. Dudek
Isaac M. Stone III

The South Carolina Court of Appeals

The State, Respondent,

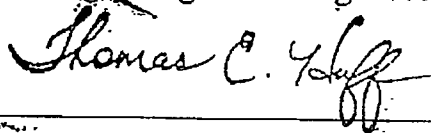
v.

Aaron Scott Young, Jr., Appellant.

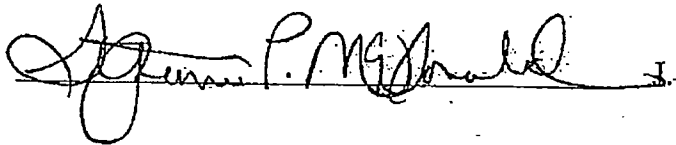
Appellate Case No. 2015-000508

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.


_____ J.


_____ J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
Jennifer Kirk Dunlap, Esquire
Frederick Elliott Quinn, IV, Esquire
Donald J. Zelenka, Esquire

FILED

Sept. 20, 2018

APP 765

Margaret Graham Boykin, Esquire
Isaac McDuffie Stone, III, Esquire
Melody Jane Brown, Esquire
The Honorable Thomas W. Cooper, Jr.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Beaufort County
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000508
Case Nos. 2012-GS-07-1932 & 2014-GS-07-1940

The State,

Respondent,

v.

Aaron Scott Young, Jr.,

Petitioner.

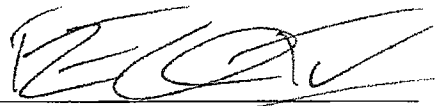
CERTIFICATE OF SERVICE

The undersigned certifies on October 18, 2018, he caused a copy of the foregoing Appendix to be served on all parties of record by placing copies in the U.S. Mail, first class, postage prepaid, and addressed as follows:

Hon. Alan McCrory Wilson
Donald J. Zelenka
Melody Jane Brown
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Robert Michael Dudek
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Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

Solicitor Isaac McDuffie Stone III
P.O. Box 1880
Bluffton, SC 29910


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Summerville, SC 29484
(843) 871-6522