

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEE COUNTY
Howard P. King, Circuit Court Judge

THE STATE.....Respondent

v.

JEREMY MCMILLIAN.....Appellant

RECORD ON APPEAL

VOLUME II

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VI. CERTIFICATE OF COUNSEL

1 Witness is sworn in

2 Bailiff: State your full name for the record

3 A: Herbert Mazingo.

4 Direct Examination of Mr. Mazingo by Mr. Fata

5 Q: You're Captain Herbert Mazingo, is that correct?

6 A: Yes sir, it is.

7 Q: And what is your occupation Captain?

8 A: Deputy Sheriff of Lee County Sheriff's Department.

9 Q: And how long have you been a Deputy Sheriff for the
10 Sheriff's Department?

11 A: Twenty-six years.

12 Q: Were you on duty April 29, 2006?

13 A: That's right.

14 Q: In Lee county?

15 A: Yes sir.

16 Q: Did you receive a call in the early morning hours?

17 A: Yes sir, approximately about three a.m.

18 Q: And what was that call regarding?

19 A: A shooting at Mr. C's Night Club.

20 Q: Okay, and where is Mr. C's Night Club located?

21 A: Just outside city limits in Lynchburg. On Highway
22 76.

23 Q: That is in Lee County South Carolina?

24 A: Yes sir it it.

25 Q: What did you do?

1 A: I helped secure the scene. I put the Sheriff's tape
2 up right around the building area crime scene.

3 Q: The Sheriff's tape being?

4 A: Yellow tape.

5 Q: This State's exhibit number 3. Is that what you're
6 talking about, yellow tape?

7 A: Yes sir, crime scene.

8 Q: And the purpose of that is to do what?

9 A: To keep, to secure the crime scene and not let
10 anybody that shouldn't be in or anybody that's
11 already in there to.

12 Q: Okay and you, as the Captain, were you the ranking
13 officer?

14 A: At that time, yes sir.

15 Q: You secured the scene and did what, waited on
16 investigations?

17 A: Waiting on investigation and SLED.

18 Mr. Fata: All right. Answer any questions Mr.
19 McKnight may have.

20 The Court: Cross examination Mr. McKnight

21 Mr. McKnight: Thank you Your Honor, may it please
22 the Court.

23 Cross examination of Mr. Mozingo by Mr. McKnight:

24 Q: Captain Mozingo good morning. You were the --- were
25 you the first officer on the scene?

1 A: No sir, I wasn't the first.

2 Q: Who was the first officer on the scene?

3 A: Probably Sargent Tash Runnels.

4 Q: You said his name is Tash Runnels?

5 A: Tash Runnels.

6 Q: When you and Runnels were --- help me understand.

7 Runnels was the first officer on the scene, naturally

8 I believe you would outrank Mr. Runnels is that

9 correct?

10 A: I would.

11 Q: Is that a yes?

12 A: I do outrank him.

13 Q: Yes sir, so do you recall who responded after officer

14 Runnels or was it you?

15 A: I was right behind him.

16 Q: Who did you relinquish control of command of the

17 scene to?

18 A: To investigations.

19 Q: And who are the investigators.

20 A: My immediate supervisor is Major Simon, also Captain

21 Dellinger.

22 Q: Are they here today?

23 A: Yes sir.

24 Q: Where are they?

25 A: Sitting right there.

1 Q: Which one is Mr. Dellinger?

2 A: White officer, black jacket purple shirt.

3 Q: And Major Simon is who?

4 A: Sitting at the other table.

5 Q: Okay what other investigator was present at the scene

6 at that time?

7 A: The whole investigative unit came out from the

8 Sheriff's office. We also identified SLED.

9 Q: Okay was Investigator Webb there as well?

10 A: Yes sir. He's seated right there beside them.

11 Q: That's the gentleman with the black and gold tie,

12 right?

13 A: Yes sir.

14 Q: So these three officers, yourself and I would imagine

15 a good portion of the Sheriff's Department were

16 present at the scene right?

17 A: They weren't present when we got there. We notified

18 them to come. We secured the scene and they came

19 after we had already arrived.

20 Q: Okay how long after you got there did they come?

21 A: Probably twenty minutes.

22 Q: Okay and you, but, it's my understanding, so the jury

23 can understand, you went, you relinquished command of

24 control of the scene to them?

25 A: Yes sir, I stayed there to help control the scene.

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(803) 436-2150

1 Q: Right. You basically made sure nobody unauthorized
2 came across the yellow tape?

3 A: That's correct.

4 Q: And you made sure nobody tampered with any evidence
5 that you might have observe right?

6 A: That is correct.

7 Mr. McKnight: Thank you, no further questions.

8 Re Direct of Mr. Mozingo by Mr. Fata

9 Q: And the SLED agent who testified yesterday, Agent
10 Green went through and collected all of the evidence,
11 which would be all of the bullets fragment casings,
12 all the bullets, guns and so forth, GSR kits, swabs.
13 Agent Green was in charge of collecting all of that
14 information?

15 A: Yes sir. We notified our investigators first and
16 they notified SLED to come process the scene.

17 Q: Now just so we're clear on this, you as a Captain
18 were in charge of the scene and SLED came and
19 investigated the incident?

20 A: Yes sir.

21 Q: Other officers responded?

22 A: Yes sir, they responded.

23 Q: But SLED was in charge of the scene?

24 A: Yes sir.

25 Q: Agent Green?

1 A: Yes sir.

2 Mr. Fata: That's all.

3 The Court: Thank you sir, you may step down.

4 Mr. McKnight: Your Honor?

5 The Court: Oh excuse me, I'm sorry I thought you
6 were through.

7 Mr. McKnight: May I?

8 The Court: Yes sir.

9 Re-Cross of Mr. Mozingo by Mr. McKnight

10 Q: You're not testifying to us that the Lee County
11 Sheriff's Department had no part in this
12 investigation after the shooting?

13 A: All I did sir was the crime scene.

14 Q: Okay.

15 A: I witnessed, while I was there with the crime scene
16 SLED collecting all the evidence.

17 Q: Do you know whether or not the investigators from the
18 Lee County Sheriff's Department investigated this
19 crime?

20 A: My job was crime scene.

21 Q: So you don't know?

22 A: My job was crime scene. Security and crime scene. I
23 did not go on any other investigation part.

24 Q: So you don't know whether or not they investigate
25 homicide or investigated the crime after the scene?

1 A: SLED was in charge of the investigation sir at that
2 point.

3 Q: SLED was in charge okay. No further questions.

4 The Court: All right, thank you Mr. Mozingo, you may
5 step down.

6 Mr. Fata: Your Honor the State calls Agent John G.D.
7 Roberts from SLED.

8 The Court: All right.

9 **Witness is sworn in**

10 Bailiff: State your full name for the record

11 A: My name is John G.D. Roberts.

12 Direct examination of Mr. Roberts by Mr. Fata:

13 Q: Agent Roberts, what is your occupation?

14 A: I'm a forensic scientist for State Law Enforcement
15 Division also known as SLED.

16 Q: And do you have a specialty in that area, forensic
17 science?

18 A: Yes sir, my specialty is trace evidence.

19 Q: Trace evidence?

20 A: Yes sir.

21 Q: Which includes what?

22 A: Trace evidence is the analysis of evidence that is
23 generally too small to be seen with the naked eye.
24 It involves use of microscopes and a lot of chemical
25 equipment. In our trace lab we do gun shot residue,

1 bullet hole analysis, which is mostly target distance
2 determination and investigate arson and accelerates,
3 paints, fibers, glass, duct tape, evidence like that.

4 Q: Okay. Tell us what your training and background is?

5 A: I have a Bachelor's of Science degree in Chemistry
6 from Texas. After I got that degree I went to work
7 for SLED. I've been through our In-house training
8 program, gun shot residue analysis, which involves
9 working underneath the supervisor who is qualified.
10 At the same time I did gun shot residue I also did
11 chemical analysis. They kind of go hand in hand.
12 After I finished my training regimen, I took cases
13 for my supervisor, I helped him work cases and then I
14 was put through a mock court and cleared by my other
15 co-workers to do gun shot residue which I did for
16 about a year and a half. After that I did in-house
17 arson, a training program for about a year and a half
18 as well.

19 Q: So you're certified in several areas, but more
20 particularly in this case, you're certified in gun
21 shot residue analysis?

22 A: Yes sir.

23 Q: Have you ever testified regarding gunshot residue
24 analysis?

25 A: Yes sir I have.

1 Q: And have you ever been qualified as an expert in the
2 area of gun shot residue analysis?

3 A: Yes sir I have.

4 Mr. Fata: Your Honor we would submit Mr. Roberts as
5 an expert in the area of gun shot residue analysis.

6 The Court: Voir Dire, Mr. McKnight?

7 Mr. McKnight: Your Honor, very briefly.

8 Voir Dire Questions by Mr. McKnight:

9 Q: Officer Roberts how many times have you qualified as
10 an expert in trial as an expert in the area of gun
11 shot residue analysis?

12 A: Nineteen before this one.

13 Q: Nineteen before this one. And your first one occurred
14 in what year?

15 A: 2005 I believe.

16 Q: 2005 okay, have you ever been disqualified?

17 A: No sir.

18 Q: Thank you.

19 The Court: You don't contest his qualifications?

20 Mr. McKnight: No, Your Honor.

21 The Court: All right, the Court will find then that
22 Mr. Roberts is qualified as an expert in the field of gun
23 shot residue analysis and may testify as to that field.

24 Ladies and Gentlemen of the jury, you will recall as I
25 told you once a witness is qualified as an expert he is

1 able to give an opinion. All right Mr. Fata you may
2 proceed.

3 Q: Thank you Your Honor. Let me show you what's been
4 marked as State's exhibit 72, 73, 74, 75 and 76. If
5 you recognize these, tell the jury what they are if
6 you do recognize them.

7 A: 72 is what remains of a gun shot residue kit. It has
8 my initial on it. 73 is also a gun shot residue kit
9 that has my initials on it. 74 is the remains of a
10 gun shot residue kit that has my initials on it. 75
11 is the remains of a gun shot residue kit has my
12 initials on it. 76 is the remains of a gun shot
13 residue kit also has my initials on it.

14 Q: Would you mind opening one of those and one of them I
15 think is already opened.

16 A: 75.

17 Q: Open it and show the jury what it consists of and how
18 it's used.

19 A: A gun shot residue kit that we give out to SLED are
20 composed of two different types of samples or
21 techniques. The first one that we say to use are
22 particle lifts. Particle lifts are illuminun tabs
23 with sticky tape on them. What you do is you open,
24 take the clear plastic top off of this and on the
25 inside there is a black and you all can't see this

1 from there. There's a black sticky pad. Hold it in
 2 your fingers like this and keep your fingers away
 3 from the tab and you-this goes on the back of the
 4 left hand and you just press it against the back of
 5 the left hand like this. Covers with your fingers,
 6 cover the thumbs. When you're done with that put the
 7 top back on it and put it in the bag left palm, the
 8 right palm. After that's done, in these kits there
 9 are cotton swabs and nitre acid. Those are used for
 10 determining concentration of metal contained to present
 11 on the hands from shooting a gun on being near when
 12 it goes off. What you do with that is you put the
 13 nitre acid onto one of the cotton swabs and you apply
 14 it in a rubbing motion on the area, the same with
 15 particle lifts there are four tubes. Right palm,
 16 right back of the hand, left palm, left back of the
 17 hand. The swab is put in those tubes and sent off to
 18 us for testing.

19 Q: All right, I'm going to show you the other parts of
 20 the kit I believe, which are marked as 68 excuse me
 21 67, 68, 69, 70 and 71 and see if you recognize those
 22 items.

23 A: 67 is a container that was used to hold the gun shot
 24 residue kit. It's empty except for the little bottle
 25 of nitric acid. This has the swabs and the evidence

1 that is contained in the analysis. This is one of
2 the gun shot residue kits that were submitted to me.
3 68 is also submitted to me, 69 submitted to me 70 was
4 submitted to me and 71 was also submitted to me.
5 This one has swabs and the nitric acid still in it.
6 And the reason this one still has everything in it is
7 because it was taken six hours after the incident had
8 occurred. Our protocol for doing analysis of a gun
9 shot residue is six hours. We found that after six
10 hours the metals that are present when the firearm
11 has been fired, disappear from your hands, your body
12 being able to absorb.

13 Q: So you're looking for stuff that's on the outside of
14 the hands?

15 A: Yes sir.

16 Q: Nothing that's under the skin?

17 A: No sir.

18 Q: What are you looking for?

19 A: What we're looking for is the metals that are present
20 in the firearm of the cartridge when you load a
21 cartridge into a gun it goes into the chamber. You
22 squeeze the trigger and if it's a revolver the hammer
23 strikes the primer. Of course, for a semi-automatic,
24 excuse me, when the primer is struck, it has metals
25 in it, the metals are used to fuel that primer charge

1 to light up the powder that's inside the cartridge
2 case which forces the bullet and out the barrel of
3 the gun. The metals in that primer are forced under
4 pressure into small droplets that are blown out of
5 the front of the gun and out of the injector or out
6 of the cylinder gap. The droplets then land on your
7 hand.

8 Q: And it comes out of the gun when it's fired and where
9 does it normally, it lands on the hands? Where can
10 it land?

11 A: It can land on anything that is very near the gun
12 when it goes off. If you're holding the weapon and
13 shooting, it's going to get on mainly your right hand
14 if you're shooting like this and on it will get on
15 the back of your hands. If it's a fired weapon,
16 that's been fired previously it will have that
17 material on it as well. So, we can look at the
18 metals on the palm of your hand and on the back of
19 the hands if you're shooting two handed we'll look
20 forward it to be on all four areas. Or simply
21 standing near it or standing there with your hands
22 down by your sides you may not get it on you. If
23 you're standing we're going to look for material to
24 be present in large amounts on your hands. A lot of
25 that material comes out of the muzzle of that gun.

1 If you've ever fired a gun you can see the flames and
2 smoke and everything come out of the gun. All of
3 that is gun shot residue and if you're holding your
4 hands like this on that barrel you're going to get it
5 all on the palms of your hands.

6 Q: What affects the amount of gun shot residue to be
7 present on your hands, either on the backs or the
8 palms?

9 A: Sometimes the position of the firearm when it's fired
10 can effect how much gets on your hands if you're
11 firing it upside down this stuff is lighter than air
12 so it's going to sink. You may not get it on the
13 back of your hand. Air, if you're firing up or out a
14 car we may not see as much. The other thing that
15 would affect it is the caliber of the gun. If you're
16 firing a small .22 we're not going to see much
17 residue on your hand as if you're firing a 44 Magnum
18 or something like that.

19 Q: You mentioned that the window, there's a six hour
20 window to collect the kits. Why a six hour window?

21 A: What we've found is that the body absorbs this
22 material and after six hours it has absorbed so much
23 that we can't call a positive call. It may be
24 present, but it's present in such small amounts that
25 there's nothing we can conclude from the presence of

1 this.

2 Q: What else has an effect on the amount of and you said
3 the position of firing the gun, the way you fire it.
4 What about rubbing your hands, wiping your hands,
5 sticking your hands in your pocket? Does that have
6 an effect or could that have an effect?

7 A: It does. The material is fairly easy to remove. If
8 anybody has ever done any cooking with flour; If you
9 dust your hands with flour and stick it under running
10 water for just a couple of seconds a lot of that is
11 gone. The water's cut tracks down your hands for
12 moving the flour. That's what this material is like,
13 all you have to do is wipe your hands off a couple of
14 times on something and the majority of it gets it
15 off.

16 Q: If I shoot a gun and put it down and stick my hands
17 in my pockets and pull them out, would that have an
18 effect on it?

19 A: It would. You could remove a lot of that material
20 from your hands.

21 Q: All right, in this case, what were your-you did
22 several-you analyzed several kits and were you able
23 to make any determinations, indications about whether
24 somebody had this material on their hands?

25 A: Excuse me. Yes sir I have received several gunshot

1 residue kits. The first one, and I'll just start
2 from my report.

3 Q: That's fine.

4 A: I received a GSR kit from Ishmeal Lane and on the
5 right palm, right back, left palm and left back I
6 found quantities of metals detected that do not
7 indicate the presence of gun shot residue. That's
8 just basically a negative. The second kit I had, a
9 GSR kit from Ricardo Sinclair. On the right palm,
10 right back, left palm, left back I found quantities
11 of metal detected that do not indicate the presence
12 of gun shot residue. Next item is a GSR kit from Pat
13 Hood.

14 Q: And he was one of the victims?

15 A: Okay. On his right palm, left palm and left back I
16 found quantities of metal detected that did not
17 indicate the presence of gun shot residue. On the
18 right back I found no gun shot residue at all. What
19 that means is that, on the right back when I ran
20 swabs there was an indication of metals that are
21 present. There was not enough to call as being
22 positive for metals consistent with gunshot residue.
23 There was enough for me to take it to microscope,
24 which is where the particles come in ...

25 Q: Go ahead, I'm sorry. I didn't mean to interrupt.

1 A: The particles what we do is we put them under a
2 powerful microscope and look for the particles of the
3 gun shot residue themselves. And in this case I did
4 not find any gun shot residue particles. So,
5 negative.

6 Q: Let me ask you this. Mr. Hood was one of the victims
7 and was deceased.

8 A: Yes sir.

9 Q: Does that have an effect on the six hours?

10 A: No sir, as long as the kit is taken within six hours
11 of the incident on a living person we'll run the kit.
12 On a person who is deceased the body stops
13 processing, stops absorbing this material so we can
14 run the kit, that has been processed off a deceased
15 person for any amount of time. However, if they were
16 exposed to the elements, if they are left out in the
17 rain, if the body is washed, that would remove these
18 materials. So, there is that caveat.

19 Q: Okay. Who would you do one on next?

20 A: The next gunshot residue kit was on Nathaniel McEwen.
21 On the right palm I found gunshot residue that means
22 that I took it to microscope and found actual
23 particles of gunshot residue on the right palm. On
24 the right back I found one prime lead particle. I
25 had concentrations not detected to a microscope, but

1 I could only find one round lead particle, round lead
2 particle is also a component of gun shot residue.
3 It's not completely a unique gun shot residue but it
4 is a component. On the left palm, left back I found
5 lead particles. The next gunshot residue kit was from
6 Tremaine Lee.

7 Q: And he was the other victim.

8 A: On the right palm, right back and left back I found
9 quantities of metals detected did not indicate the
10 presence of gunshot residue. On the left palm
11 however, I found quantities of metals that may be
12 associated with gunshot residue.

13 Q: Now what does that mean, associated with gunshot
14 residue?

15 A: Associated with means that I found concentrations
16 that would indicate metals that we find normally in
17 gunshot residue not high enough to be called positive
18 for gunshot residue, but kind of in the middle
19 between negative and positive.

20 Q: Could that mean he handled the gun?

21 A: It could. Based on the area where we find these
22 metals we can make an estimation of whether somebody
23 handled a weapon or fired a weapon or were just near
24 when it was fired.

25 Q: And what would be your estimation in this case?

1 A: In this estimation, just based on where we found it,
2 on the palm, it would indicate the handling of the
3 gun.

4 Q: Okay.

5 A: The next gunshot residue kit was from Jerry Durant.
6 On the right palm, the right back and the left back,
7 quantities of metal detected did not indicate the
8 presence of gunshot residue. On the left palm the
9 quantities of metal detected may be associated with
10 gunshot residue.

11 Q: Tell me about it and it was just on the palm? Just
12 been handling the gun?

13 A: Just on the palm could have been just handling the
14 firearm.

15 Q: And not firing it.

16 A: And not firing it.

17 Q: Okay.

18 A: The next one is a gunshot residue kit from Cory Rush.
19 The right palm, right back, left palm and left back
20 quantities of metal detected did not indicate the
21 presence of gunshot residue.

22 Q: Okay.

23 A: The next gunshot residue kit was from John Fulmore
24 and on the right palm, right back, left palm, left
25 back the quantities of metal were detected did not

1 indicate the presence of gunshot residue. Next GSR
2 kit was from Stephanie McGill and on the right palm,
3 the right back, left palm and left back quantities of
4 metals detected did not indicate the presence of
5 gunshot residue. And the last kit was from Keith
6 Robinson and no analysis was performed on this
7 gunshot kit because it exceeded the six hour time
8 frame.

9 Q: And again all this tells you is somebody may have
10 handled a gun, somebody may have fired a gun?

11 A: Yes.

12 Q: In the case of the two that you found on the palm,
13 it's your opinion that they just handled the gun?

14 A: That's a possibility; yes, sir.

15 Q: Okay, other than, I think you've already answered,
16 but it just shows that somebody handled the gun, it
17 doesn't show- what- anything else, whether they, it
18 just shows whether they handled a gun or shot a gun
19 right?

20 A: Yes sir, handled the weapon, fired weapon or was near
21 it when it went off. We can't tell what caliber it
22 was, we can't tell how many times they fired.

23 Q: And you can't tell what kind of weapon it is?

24 A: No sir we cannot.

25 Q: Let me ask you; If I'm being shot and I'm holding my

1 hands up like this, how close do I have to be to get
2 material on my hands?

3 A: Within six feet.

4 Q: Within six feet. Answer any questions Mr. McKnight
5 has.

6 The Court: Cross examination, Mr. McKnight.

7 Mr. McKnight: Thank you Your Honor, if it please the
8 Court.

9 Cross Examination of Mr. Roberts by Mr. McKnight:

10 Q: Agent Roberts, good morning how are you doing?

11 A: Good morning. I'm doing good.

12 Q: How many total gunshot residue kits did you manage to
13 test?

14 A: I tested nine and did not test one, so I had a total
15 of ten.

16 Q: So the one you didn't test is because it was beyond
17 the six hour window that is normally accepted for
18 gunshot residue testing correct?

19 A: Yes sir.

20 Q: Okay and you believe, and based upon accepted
21 principals in your field of expertise, it wouldn't
22 lend you any evidence that would be fruitful in an
23 investigation correct?

24 A: Yes.

25 Q: Okay, now, Mr. Fata just asked you that, on direct,

1 that the gunshot residue shots that you have, the
2 samples you have, don't indicate that a person was
3 firing a gun?

4 A: It can indicate that.

5 Q: It can indicate, but isn't it safe to say that the
6 more gun powder residue that you find on an
7 individual, the more likely it is that person,
8 particularly on the palms and on the back of the
9 right hand and left hand, that would be safe to say
10 that that indicates that person was firing a weapon?

11 A: It depends on where we find it and how much.

12 Q: Okay, turn in your notes to Mr. Nathaniel McEwen. In
13 your notes you, or in your report, pardon me. In
14 your report you indicate that you found gunshot
15 residue on his right palm, is that correct?

16 A: Yes it is.

17 Q: And what does, and that you also found one round,
18 lead particle on his right back.

19 A: What this was, is when I ran the swabs from this kit
20 he had amounts of lead, barium and antimony on those
21 areas that would indicate the need for further
22 testing.

23 Q: Correct.

24 A: So what I did was take the particle lifts.

25 Q: Okay.

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1 A: Those particles are confirmation tests and what I
2 found with particle lifts was gunshot residue on the
3 right palm, on the right back I only found one
4 element. I can't draw any conclusions about the
5 firing or handling or being near a weapon when it's
6 fired based on particle lifts along. I used the
7 swabs to draw those conclusions.

8 Q: What do you have to have to come to a conclusion that
9 a person fired a weapon, based upon your expertise?

10 A: Based upon my expertise, what I need to have is
11 presence of the metals that I would normally find
12 like barium antimony and in concentrations in a
13 general area that I've seen that I know if he fired
14 the weapons. We fire guns at SLED and we do our own
15 gunshot residue kits on ourselves. That way we know
16 what we're looking for. What we look for is amounts
17 that are high, but not, I can't give you numbers
18 outrageously ...

19 Q: I understand.

20 A: If you know somebody who has stood in front of a gun
21 and gotten shot they just have these metals on their
22 palms because what they've done is they've caught the
23 metals on their palms. They'll have thousand and
24 thousands and thousands.

25 Q: You didn't find any of that did you?

1 A: I didn't find thousands, no sir.

2 Q: So based on your area of expertise there's not

3 somebody there like this getting shot?

4 A: No, this is if you took a swab out of a cartridge

5 case

6 Q: Yes.

7 A: That's what somebody standing in front of a gun looks

8 like.

9 Q: It's almost akin to like tattooing.

10 A: Very close to that, yes sir.

11 Q: Thank you.

12 A: As far as firing the gun, what we look for is medium

13 to high amounts on the backs of the hands because

14 that's also, when you're shooting a gun, the ejector

15 port is right here on a semi automatic and it's going

16 to eject some of that metal out there and it'll land

17 on your hand.

18 Q: Okay.

19 A: Same thing if you're left handed. If it's a revolver

20 there's a small gap in between the cylinder and the

21 barrel that also ejects those particles. So what

22 we're looking for is for somebody who's shooting is

23 the presence of these metals on the backs and on the

24 palms. For somebody who's just handling the weapon,

25 looking for it just basically on the palms.

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1 Q: Let me ask you this question, so if I were right
2 handed and I were to handle a firearm, if I'm right
3 handed and I were to fire it, I'm going to end up
4 with more gun powder residue on my right hand
5 wouldn't I?

6 A: Yes sir, in general.

7 Q: In general and in the case of Mr. McEwen, you found
8 gun powder residue on his right hand did you not?

9 A: I found gunshot residue on the right palm and round
10 lead particles basically on the other three areas.

11 Q: And so, it seems what we can say, definitively, is he
12 handled this weapon or gun more with his right hand
13 than with his left?

14 A: And if you'll let me look at my notes.

15 Q: Go ahead, yes sir.

16 A: What I do when I try to determine which hand, and I
17 try not to determine which hand when somebody is
18 shooting. But I can make a reasonable estimation of
19 handedness based on amounts of metals. I can't base
20 it just solely on particles. The presence of those
21 particles doesn't give me any kind of estimation as
22 to whether somebody was handling or was firing or
23 anything like that. What I use to do that is
24 concentrations. Based on concentrations for this, he
25 does have a very low bit more on the right hand than

1 on the left hand. It is fairly equal. If I had to
2 make an opinion.

3 Q: Which you can.

4 A: I would say that he was right handed, but that's also
5 based on, you know, a normal person doing the
6 shooting. If the gun is turned sideways it effects
7 it. If they're shooting like this, you expect to
8 have more on them two backs.

9 Q: Right, the two backs and actually falling over the
10 top of the hands, right?

11 A: Right if he's doing, I mean it's all based on how
12 they shoot.

13 Q: Yes sir. So, Investigator, based upon your
14 investigation of the gunshot residue kits you weren't
15 able to tell who was shooting and who wasn't?

16 A: I can make a reasonable estimation about who was
17 shooting

18 Q: From your investigation, give us a reasonable
19 estimation as to who was shooting.

20 A: Based solely on the swabs.

21 Q: Yes sir.

22 A: Mr. McEwen, in my opinion, was doing the shooting,
23 the shooter. Mr. Lee had lead on his palms which in
24 general indicates just a handling. I can't say,
25 based on concentrations that I have that he was doing

1 any shooting, just simply handling is what I can
2 estimate. Mr. Durant as well, more than likely just
3 handled it, based on the levels that I have. Nobody
4 else was positive for any other kind of ...

5 Q: One more question. You work for SLED right?

6 A: Yes sir.

7 Q: Were you all, were you, was SLED in a lead
8 investigative capacity or were you supporting and
9 supplementing the Lee County Sheriff's Department?

10 A: I am in the lab is where I am. However our role is a
11 supportive role.

12 Q: Thank you.

13 The Court: Re-direct

14 Re-direct of Mr. Roberts by Mr. Fata:

15 Q: On any of these gunshot residue tests, you can't tell
16 which person, what particular hour, minute that they
17 fired a gun, if they fired a gun?

18 A: No sir, just within the six hours, just, based on the
19 GSR Information Sheet that we have, time that's
20 given, that's all I know.

21 Q: Had, say this gun has been shot, say this gun right
22 here, in here, has been shot one time, ten times,
23 whatever, and I pick it up like this and I simply put
24 it back in without firing it, am I going to get
25 gunshot residue on my palm?

1 A: Yes sir.

2 Q: And depending on how many times that gun's been shot,
3 would that depend on the concentration I'd have on my
4 palm?

5 A: In general yes.

6 Q: Could there be enough left on the stock and on the
7 gun from me handling it with my right hand or my left
8 hand, whichever one I'm dominant, to say, that you
9 could say, well he might have fired that gun?

10 A: Based solely on the palms of your hands, no sir. I'd
11 have to see the backs of your hands as well. That's
12 one of the things we use to indicate the shooter.

13 Q: But I could have gunshot residue on the palm of my
14 hand even though I didn't fire the gun?

15 A: Yes sir you could.

16 Mr. Fata: That's all, Your Honor.

17 The Court: All right thank you, you may step down.

18 May this witness be excused?

19 Mr. Fata: Yes sir

20 The Court: Any objection?

21 Mr. McKnight: Without objection Your Honor

22 The Court: All right, you may step down. All right

23 Mr. Fata call your next witness.

24 Mr. Fata: Yes sir. Your Honor the State would call
25 Jennifer Clayton.

1 **Witness is sworn in**

2 Bailiff: State your full name for the record.

3 A: Jennifer Elaine Clayton, C-L-A-Y-T-O-N.

4 **Direct examination of Ms. Clayton by Mr. Fata:**

5 Q: Ms. Clayton what's your occupation?

6 A:: I am a DNA Analyst with the South Carolina Law
7 Enforcement Division also known as SLED.

8 Q: And would you please give us the benefit of your
9 background and training?

10 A:: I earned a Bachelor's of Science and Biology from the
11 University of North Carolina Chapel Hill I've also
12 taken classes at NC State and USC. My course work
13 includes bio chemistry, micro biology genetics and
14 statistics. I completed an internship with the North
15 Carolina State Bureau of Investigations for merely
16 genetics department. I originally hired on with SLED
17 as a forensic technician in DNA department and then
18 was hired on as a DNA analyst after I was hired on as
19 a DNA Analyst I completed a two year, sorry, one year
20 training program under another qualified analyst in
21 case work under another case worker analysis before I
22 was allowed to do case work on my own.

23 Q: And when you, your occupation with SLED, is it
24 limited to the DNA lab?

25 A: Yes.

1 Q: And, I may have missed it, how many years have you
2 been this work?

3 A: I've been a DNA Analyst for approximately four years.

4 Q: Have you ever testified in court?

5 A: Yes.

6 Q: Have you ever been qualified as an expert in court as
7 a DNA Analyst?

8 A: Yes.

9 Mr. Fata: Your Honor, we would submit Ms. Clayton as
10 an expert in the area of DNA Analyst.

11 The Court: Voir dire Mr. McKnight.

12 Voir Dire Questions of Ms. Clayton by Mr. McKnight:

13 Q: Ms. Clayton, good morning. How many cases have you
14 testified and been certified in as an expert witness?

15 A: I've been qualified as an expert in eleven cases.

16 Q: All within the state of South Carolina?

17 A: Yes.

18 Q: How many cases, have there been any cases in which
19 you have been disqualified?

20 A: No.

21 Mr. McKnight: Without objection, Your Honor.

22 The Court: All right, the Court will qualify as an
23 expert in the field of DNA Analysis, again ladies and
24 gentlemen, you will recall what I told you about expert
25 witnesses, they can testify as to their opinion based upon

1 their experience, education, training and analysis of the
2 evidence in this case.

3 Q: Ms. Clayton, I'm going to submit to you several items
4 marked State's, actually it's 61 through 66 and see
5 if you recognize this 62, excuse me. I'm trying to
6 read the court reporter's writing, I'm sorry Judge.

7 The Court: I am to, I can read it.

8 The Court Reporter: Thank you, Judge.

9 Q: I just read the wrong line, 62 through 66 and see if
10 you recognize them, take your time and go through
11 them.

12 A:: I recognize two of the items.

13 Q: Okay, what two do you recognize?

14 A:: It's State item number 66 which is a standard from
15 Tremaine Lee.

16 The Court: Identify it as an Exhibit, please.

17 A: I believe it's State's exhibit 66. And this is State
18 exhibit number 64, which is a standard from Pat Hood
19 and I recognize these because my initials are on the
20 seal as well as the envelope containing the evidence.

21 Q: Did you compare those with any other items?

22 A: Yes I did.

23 Q: And what items did you compare it with?

24 A: May I refer to my notes?

25 Q: Sure.

1 A: I compared them to swabs found and sent to me swabs
2 from a Toyota Camry, swabs from a Buick and swabs
3 from a Chevy Impala.

4 Q: Okay and what was your analysis? What did you find?

5 A: Blood was identified on all four of those items and
6 then I went on to develop DNA profiles and the DNA
7 profiles that were developed were from unidentified
8 individuals and they did not match either Pat Hood or
9 Tremaine Lee.

10 Q: So the two decedents, Pat Hood and Tremaine Lee their
11 blood samples were nowhere on those cars out front of
12 the club or where the cars were?

13 A: Not from the swabs that I analyzed, no.

14 Q: What does that indicate, does that indicate anything?
15 Did you draw any conclusions from any of that?

16 A: All I can say is that blood on the swabs does not
17 belong to Tremaine Lee or Pat Hood.

18 Q: Let's see, the purpose of DNA is what?

19 A: The purpose of DNA is to develop an inmate profile
20 from evidence and if possible, match it to a standard
21 to determine the source of that DNA.

22 Q: And were you able to tell the source from any of
23 those items that were submitted to you?

24 A: Not from the testing that I did, no.

25 Q: The two tests, from the standards of the victims,

1 didn't match any of the other items?

2 A: It didn't match any of the evidence that I analyzed.

3 Q: So can you draw any conclusions from this evidence?

4 A: No, other then they don't match the evidence.

5 Mr. Fata: Thank you, answer any questions Mr.

6 McKnight has.

7 The Court: Cross examination Mr. McKnight.

8 Mr. McKnight: Thank you, Your Honor.

9 Cross examination of Ms. Clayton by Mr. McKnight

10 Q: Ms. Clayton, how are you?

11 A: I'm well, thank you.

12 Q: Good. The letters DNA stand for Deoxyribonucleic
13 acid correct?

14 A: Deoxyribonucleic acid correct.

15 Q: And that is what we commonly refer to as the building
16 block of all life?

17 A: Yes.

18 Q: It gives us our genetic code?

19 A: Yes.

20 Q: It's what made me short and bald, it's what made you
21 brunette. It's what makes us who we are correct?

22 A: It made me a red head, but yes.

23 Q: From what you were able to deduce, were you able to,
24 you weren't able to match DNA with Mr. McMillan were
25 you?

1 A: No I was not.

2 Q: And the only, and who's exact DNA was it you found?
3 That you were able to find.

4 A: The DNA testing that I did, did not result in a match
5 to anyone.

6 Q: Okay, so from what it is you took, you weren't able
7 to identify, you don't have a DNA sample that you can
8 identify to a specific person? Is that correct?

9 A: Not that I tested. I tested two standards and the
10 evidence did not match either one of those standards.

11 Q: Your samples, where do they come from?

12 A: The samples that I tested?

13 Q: Yes ma'am.

14 A: Were submitted by an agent with the South Carolina
15 Law Enforcement Division.

16 Q: Okay and he, but is it Mr. Green?

17 A: Yes that's correct.

18 Q: He collected the evidence?

19 A: He submitted the evidence on our chain. I can't say
20 if he collected it or not.

21 Q: All right, was your analysis of this DNA, let me ask
22 you this, was this a SLED investigation that was done
23 or was this something that you did at the request of
24 the Lee County Sheriff's office?

25 A: Again, as far as, all I can attest to is that they

1 were submitted by Rob Green and I analyzed them. The
2 report did go to the Lee County Sheriff's Department.

3 Mr. McKnight: Thank you, no further questions.

4 Mr. Fata: No other questions Your Honor, may this
5 witness be excused?

6 The Court: Any objections?

7 Mr. McKnight: Without objections, Your Honor.

8 The Court: All right, thank you, you are excused.
9 Thank you for coming.

10 Mr. Fata: Your Honor may I have one minute? I want
11 to see if my other witness is here.

12 The Court: Yes sir.

13 **Witness is sworn in**

14 **Mr. Nathaniel McEwin - Examination by Mr. Fata:**

15 Bailiff: Please state your full name for the record

16 A: Nathaniel McEwen.

17 Q: Nathaniel where do you live?

18 A: I stay in North Carolina.

19 Q: All right and at one time you lived in South
20 Carolina, didn't you?

21 A: That's correct.

22 Q: What is your occupation?

23 A: At one time I was doing bouncer work. I'm currently
24 a Credit Manager at Rental Center.

25 Q: Bouncing work, tell me what bouncing work is.

1 A: Basically it is entering into a facility to keep
2 order and correctness inside the club. When a male
3 and female decides to come out on Thursday, Friday
4 and Saturday and sometimes on Sunday just to have a
5 good time and listen to the music, mingle with co-
6 workers or whatever.

7 Q: Do you do that a lot?

8 A: I do it often just to make a little extra money to
9 buy shoes, clothes and stuff. Something to do.

10 Q: Credit Manager don't pay a lot does it?

11 A: No sir, you can get along.

12 Q: I notice you've got these things on your arms, what
13 is that?

14 A: Mayo. Last year I was burned, burns on my arms and
15 face. So I stayed in the hospital from May 20th to
16 June 20th

17 Q: All right, how'd you get those burns?

18 A: Those burns came from a radiator hose on a vehicle.

19 Q: A radiator hose?

20 A: It exploded in my face.

21 Q: Now, where are some of the places, you are a credit
22 manager at Rent a Center.

23 A: Yes sir, Laurinburg, North Carolina.

24 Q: Laurinburg, North Carolina. That's your full time
25 job?

1 A: Yes sir.

2 Q: Now your bouncing job, where are some of the places
3 that you enforce the rules?

4 A: I was at Spot Light that burned down, club Hypnotic,
5 Club, Mr. C's now, basically just off on Friday and
6 Saturday nights.

7 Q: Do you have a lot of trouble in places like that?

8 A: Not necessarily being mostly the girls getting mad
9 because their boyfriends talking to other females.
10 Most of it is girls getting mad because their
11 boyfriends talking to other females, not really.

12 Q: Just kind of like spats?

13 A: Yes.

14 Q: A guy gets a few drinks in him and he gets a little
15 rowdy or something like that?

16 A: He gets a little like he's Superman, but normally you
17 can tap them on the shoulder and have them calm down

18 Q: I could, if you came at me I could imagine I would be
19 calm. Now on April 29, 2006 here in Lee County, were
20 you working as a bouncer at Mr. C's night club?

21 A: That is correct.

22 Q: How did you come to be there?

23 A: Through a friend of mine Patrick Hood.

24 Q: Okay.

25 A: Christopher Mack called me up and asked if I could

1 lend a hand for Ishmeal's party they was having.

2 Q: Ishmeal Lane's party?

3 A: Yes sir.

4 Q: Is that typical that somebody would have a party like
5 Ishmeal Lane.

6 A: Yes sir because he is a music promoter. He promotes
7 for DJ B Lorde who's on t.v., on BET, so he calls us
8 up.

9 Q: What time did you get to the club that night?

10 A: After picking up Patrick Hood, Christopher Mack and
11 Jesse Brewer probably about ten thirty.

12 Q: Ten thirty?

13 A: Yes sir.

14 Q: And what did you do? How did you set up?

15 A: Basically we all, before going in the club, we say a
16 little prayer before we go in the Club. We walk
17 around the club.

18 Q: How do you say that prayer?

19 A: Sir?

20 Q: Why do you say a prayer?

21 A: We always say a prayer because you never know
22 whatever going to happen in a club and that's just my
23 belief, you know I started them doing that, it just,
24 wherever you go you need God on your side.

25 Q: Are you armed when you go in that club?

1 A: By law I am certified, I have a concealed weapon
 2 permit, but you're not suppose to take a gun in to a
 3 club. I had my high point .45 in my vehicle, I had
 4 my shotgun in the vehicle. It was not loaded, no
 5 magazine in the clip, no shells in the shotgun.

6 Q: You say you had a high point .45?

7 A: That's my gun right there?

8 Q: Is this it? I'm going to show you State's exhibit
 9 number 87, do you recognize this?

10 A: That's my high point 45.

11 Q: And that was in your truck?

12 A: Yes sir in the glove compartment where State law
 13 requires you to have your weapons.

14 Q: Now you and the rest of your crew get there, what was
 15 your, you had your prayer, what was your plan, what
 16 did you plan to do? How were you all going to handle
 17 this?

18 A: We all normally walk through the club, find our
 19 positions, where we going to set our post up, be at
 20 during the night the party, whatever the event may
 21 be.

22 Q: Your Honor may he come down, please?

23 The Court: Yes, sir.

24 Mr. Fata: You stand on that side so that the court
 25 reporter can hear you.

1 Q: As the night wore on did anything happen? Oh by the
 2 way, where did you park? Point it out on here.

3 A: Parked right here. There was a car here and my truck
 4 was here a white Suburban.

5 Q: All right if you'll make an "I" where you were
 6 parked. That's where you were parked?

7 A: Yes sir, there was a car here.

8 Q: Okay as the night wore on did anything happen?

9 A: Yes sir, some controversy.

10 Q: Tell us about that controversy.

11 A: We started seeing a couple of guys that was over here
 12 in this area, you know start looking over here in
 13 this area acting crazy, bouncing around, throwing up
 14 signs.

15 Q: Signs?

16 A: Yes sir. It's like West side, East side, you know
 17 signs like that. So we all just came out. By that
 18 time the d.j. was playing, which in turn, you know, I
 19 mean pumped up so that's when we all basically got
 20 what we call four back. We all get back to back, so
 21 your eyes this way, your eyes that way. We're all
 22 four corners looking. That's when we noticed that
 23 Ingram and Fulmore ...

24 Q: John Fulmore?

25 A: Yes.

- 1 Q: Toby's brother.
- 2 A: Yes.
- 3 Q: What happened, what did you see?
- 4 A: I, myself, I was right here on the corner so I'm
- 5 looking this direction over here.
- 6 Q: This lady can't see.
- 7 A: Sorry. I, myself, I'm facing, I'm like right here
- 8 where the door and the pool table and all so I could
- 9 see everything. So Ingram and Fulmore are over here.
- 10 Q: All right, so put a circle where the fight is.
- 11 A: The fight is in this area right here.
- 12 Q: All right, what kind of fight is it? A fist fight?
- 13 A: It's like a shuffle, exchanging words, we couldn't
- 14 really hear because of the music is up. And all of a
- 15 sudden we hear "Ah" just so you know, can't say, but
- 16 I know that somebody got stabbed.
- 17 Q: Because of the noise?
- 18 A: Because of the scream. Once the scream outbursts,
- 19 that's when all hell broke loose.
- 20 Q: All right what happened?
- 21 A: Ingram and Fulmore took blows ...
- 22 Q: They still in the corner?
- 23 A: In the corner and everybody saw
- 24 Q: This is John Fulmore?
- 25 A: John Fulmore. I then, me personally, grabbed, started

1 to grab them and chunking them down this way. I
2 threw them, this little bar stool out here, I then
3 had to come out of my nice mode to my protect mode
4 because I was getting blows thrown to me left and
5 right.

6 Q: So people were fighting you?

7 A: Yes, they was basically fighting me. By that time I
8 picked John Fulmore up, feet in the air, this is John
9 Fulmore, eyes blood shot red, he looks at me, I
10 picked him up and I went dead down with him. I went
11 down with so much force I broke the table in half.

12 Q: Was that John?

13 A: John Fulmore.

14 Q: Or Toby?

15 A: Toby, I'm sorry, Toby. Because he had braids. He
16 gets up, he looks at me and he says it's on. So by
17 that time I don't know if it was a bottle pop or
18 whatever, but I heard bow, bow.

19 Q: Where did you hear that sound?

20 A: I'm hearing stuff coming from this direction and all
21 the way in this direction here so then Mack was
22 tussling, I'm tussling, Patrick Hood is tussling,
23 Jesse's tussling. So, Jesse runs out, Patrick Hood
24 runs out and in the mist of Patrick Hood running out,
25 Chris Mack runs, I run in front of Chris Mack and all

1 of a sudden that's when we hear the first {sound
2 effect of gun fire}.

3 Q: And what, what was that?

4 A: That sound right there was a long gun, that was not a
5 hand gun. That shot right there is what took my
6 friend out of this world.

7 Q: And where did that shot come from?

8 A: That shot came from this angle right here by this
9 light pole.

10 Q: So it was about, would you say eleven o'clock, if
11 you're looking from the door at an angle about like
12 that?

13 A: Yes, because, the reason why I know where it came
14 from was because after all the altercation and
15 everybody's running, we go people running everywhere,
16 so I'm okay let me go see what's going on. So we
17 run, Patrick Hood runs by "Pow" and he drops. I was
18 at the door and I'm seeing him go back like this, the
19 second one comes boom he drops.

20 Q: Is this door closed right here?

21 A: The door where they taking money at that first door
22 was closed.

23 Q: All right.

24 A: This door right here this would be the left, yeah,
25 this would be the left door. This right door was

1 kind of like this right here it's kind of slanted.
2 I'm running and all of a sudden I see Patrick fall
3 right here. Hood falls right here. The next shot,
4 whatever shot, I think it was like the third or
5 fourth shot comes in, it comes through me. God
6 blessed me to keep on walking because that shot went
7 through me and went through the young lady and then
8 Mr. Lee, he's running and he's trying to protect her.

9 Q: Is he bent over?

10 A: He's bent over. I'm just like, I like, I just pushed
11 them both back and as I pushed them back the shots
12 rang more.

13 Q: All right, I'm going to ask you this, Lee is bent
14 over ...

15 A: Lee is trying to get out the door.

16 Q: Okay he's bent over?

17 A: He's bent so by the time I see my friend taking these
18 shots and he's going back and I'm like I pushed him
19 back like this and the young lady she spins when she
20 gets shot and the young man takes a shot and all I
21 can see is him do like this, and he just fall back
22 and I'm like oh snap. I just grabbed him, picked him
23 up by his, right here in the middle. I just picked
24 him up, just like this and I just kindly, this table
25 right here and I just kind of like push him up under

1 him and we walked, the table is down.

2 Q: Okay now, Patrick Hood is down, Tremaine Lee is down

3 A: Yeah.

4 Q: What do you do? You said you moved people out of the

5 way, what did you do after that? Do you stay where

6 you are?

7 A: No, I don't stay where I'm at.

8 Q: What did you do?

9 A: The fire was continuing so I do what we call a

10 military roll. I come right here where these bushes

11 is and I'm down and I'm crawling over here to my

12 truck. Before I could even do anything I hear the

13 alarm "door door" and the doors pop open. I grabbed

14 my shot gun.

15 Q: And you fired?

16 A: I fired.

17 Q: Where do you fire the shotgun, it which direction?

18 A: I fired this way right here, from this angle here

19 over to where the shots are coming from.

20 Q: All right I'm going to show you this, I'm going to

21 give it to you, number 87, which is your high point

22 45. You at some point grabbed it?

23 A: Yes sir I do.

24 Q: Okay.

25 A: I dropped the shotgun.

1 Q: What's you do?

2 A: I reach over into the console area, behind, like this
3 is my driver's seat and the little console area right
4 there. I hit the thing and it pops up and I grab the
5 45. You see the clip, the clip is right there. I
6 take it and snap it up and I'm just boom, boom, boom.
7 I'm throwing bullets at this area over here.

8 Q: So you're in this area here?

9 A: I'm right over here. My truck is here and I'm at the
10 driver's side, right here where ya'll see, because
11 you have a picnic table there.

12 Q: And you're firing in one direction?

13 A: I'm firing in this direction right here.

14 Q: Now, one second. Where is 61? The diagram? No sir
15 the diagram of the scene? All right, this is State's
16 exhibit number 82. Now, I'm going to hold this up and
17 everybody can see it. Tell me about, what are these
18 two boxes over here?

19 A: This is my truck.

20 Q: All right this is your truck?

21 A: Yes sir.

22 Q: The square thing here? It's marked Suburban, this is
23 your truck here?

24 A: '93 Suburban.

25 Q: All right all these little dots around the truck are

1 exhibits, well items number 11, 12, 13, 14, 15, 16,
2 17 and 18. Eleven through 16 are 45 caliber shell
3 casings that were found in this area. They were
4 found in this area right here. Who's 45 shell
5 casings are those?

6 A: Mine.

7 Q: And they were fired by this?

8 A: My 45.

9 Q: Exhibit number 87.

10 A: Yes, sir.

11 Q: Now the shotgun, the 12 gauge shot gun spent shells
12 were 17 and 18 which were found by the Suburban and
13 one right here. Whose are those?

14 A: Those are mine.

15 Q: Those are yours. So you were firing a gun that
16 night?

17 A: Yes sir.

18 Q: Why?

19 A: In defense of my best friend and this young man I
20 never met and all these innocent victims that was in
21 this club.

22 Q: Were you worried that the attack would continue on
23 the club?

24 A: Me personally, after seeing all these people coming
25 out wounding, bleeding, shots fired and seeing my

1 friend laying on the ground, I set my life aside
2 because I knew that if I didn't do something, these
3 security guards that was over here in the field and
4 over here, armed security guards wouldn't have done
5 nothing.

6 Q: You did it yourself?

7 A: Yes sir.

8 Q: What my question was, did you perceive, let me back
9 up, did you perceive the club being under attack?

10 A: Yes sir.

11 Q: Did you feel that you had to do something in response
12 to that attack?

13 A: 100%.

14 Q: Do you feel that the attack might have continued had
15 you not done something?

16 A: 300%.

17 Q: The long gun, that you heard fired, who had that?

18 A: Jeremy McMillan.

19 Q: You saw him?

20 A: He looked me in my eyes.

21 Q: And where was it, that long gun?

22 A: Right there at the light pole. Maybe a couple of
23 inches away from the light pole because there was a
24 car right there.

25 Q: And what was he doing with that long gun?

1 A: At first he ran up, he looked, he lifted it up, I
2 guess he wasn't comfortable and he, he ran around
3 right over here behind this other car and let the
4 other three shots off.

5 Q: Did you have a 7.62 rifle of any kind?

6 A: No sir, I have a shotgun and a 45.

7 Q: Did any of your people that were with you in your
8 security detail have a 7.62?

9 A: No sir. I was the only armed one in my group.

10 Q: And your gun was where?

11 A: Inside the vehicle, not loaded, in my Suburban.

12 Q: And you didn't carry the gun inside?

13 A: It's against the law, no sir.

14 Q: Have a seat. Okay I want you to look around the
15 courtroom and see if you see the individual who had
16 the 7.62 firing into the club.

17 A: With a green strap on it?

18 Q: The 7.62 had a green strap on it?

19 A: Uh-huh (affirmative response).

20 Q: Okay. Do you see that individual in the courtroom
21 today?

22 A: How you doing Mr. McMillan?

23 Q: Well, just point him out.

24 A: Right in front of me.

25 Q: What's he got on?

1 A: A suit on.

2 Q: And he's sitting between this lady and Mr. McKnight?

3 A: Yes sir.

4 Mr. Fata: Okay, Your Honor let the record reflect
5 that he has identified the Defendant Jeremy McMillan as
6 the individual shooting the 7.62 into the club on Aril 28,
7 2006.

8 The Court: The record will so reflect.

9 Q: Now, after all this occurred, did you hang around?

10 A: You mean after everything went down?

11 Q: After everything went down and the police got there.

12 A: I had no choice then, they took my truck off.

13 Q: I mean ...

14 A: I stayed until 1 or 2 o'clock.

15 Q: All right. Well I think in fact you're in one of
16 these photographs.

17 A: I'm in several.

18 Q: I know you are.

19 A: Grey Shirt on with Brooklyn, New York across the
20 front of it.

21 Q: Let me see if I can find it. Judge I got these
22 things mixed up yesterday and I had them and I'm
23 going to reorder them.

24 The Court: All right, take your time.

25 Q: Let me show you State's exhibit number 5. Looks like

1 the sun is up in that photograph, is that you?

2 A: That's me.

3 Q: That's you with a grey sweatshirt on.

4 A: That's me and Jesse Beaver.

5 Q: You were there to help the police?

6 A: Yes, sir.

7 Q: One other thing, you said you were lying down that
8 fire from your car across the parking lot, do you
9 recall what kind of vehicle you were shooting at?

10 A: I was shooting at a brandy Blazer.

11 Q: A brandy Blazer.

12 A: Which they later found at McLeod Hospital.

13 Mr. Fata: Okay, answer any questions Mr. McKnight
14 has.

15 The Court: Cross examination Mr. McKnight.

16 Mr. McKnight: If it please the Court.

17 Cross examination of Mr. McEwen by Mr. McKnight

18 Q: Mr. McEwen good morning, how are you?

19 A: I'm excellent.

20 Q: Good, you got a birthday coming up soon, don't you.

21 A: Excuse me.

22 Q: You've got a birthday coming up soon, don't you?

23 A: Yes.

24 Q: If you can't hear me, ask me to speak up and I'll do
25 so okay?

1 A: I can hear you fine.

2 Q: Yes sir. Now, you testified just now with Mr. Fata

3 that you were there to help the police after the

4 shooting took place, right?

5 A: I had no choice because the officer, I don't know if

6 he's a Lieutenant, J.D., asked me, and the SLED

7 officer asked me to step inside, sit down to obtain

8 proper and affirmative motivation and not to leave.

9 Q: What did you give them?

10 A: I gave them my guns and information to Mr. J.D. and

11 also the SLED officer asked me to give ...

12 Q: When you say Mr. J.D., you mean that fellow right

13 there right?

14 A: I have to say Mister because I don't know if he's a

15 Lieutenant or a Sergeant. Mr. J.D. that is sitting

16 right there.

17 Q: That gentleman right there?

18 A: Yes. That gentleman.

19 Q: And did you give a statement?

20 A: I was put into a gold Blazer along with Lieutenant

21 Webb, Mr. J.D. and the SLED officer. I was sitting

22 in the passenger seat and I was put up under

23 questioning.

24 Q: And they questioned you right?

25 A: Yes.

1 Q: When you say Mr. Webb, you're talking about the
2 gentlemen ...
3 A: Lieutenant Webb.
4 Q: ... in the gold and black tie?
5 A: Lt. Webb.
6 Q: In the gold and black tie?
7 A: Lt. Webb.
8 Q: Him? This gentleman?
9 A: Lt. Webb.
10 Q: Is it this gentleman?
11 A: Yes sir that gentleman right there.
12 Q: Thank you. Now, permission to approach the witness,
13 Your Honor?
14 The Court: Yes sir.
15 Q: Do you recognize that document?
16 A: That's the document I signed.
17 Q: What is it?
18 A: It's a voluntary statement that I did inside the
19 vehicle with Mr. J.D. and Mr. Lieutenant Webb.
20 Q: Is that your signature at the bottom of that?
21 A: Of course I am Mr. McEwen.
22 Mr. McKnight: Your Honor it's at this time I'd like to
23 have that marked as Defense exhibit 5 for identification
24 purposes Your Honor.
25 The Court: Defense Number 5 for id purposes?

1 (Defendant's Exhibit Number 5 was marked for
2 identification purposes)

3 Q: Now you gave that statement at what time?

4 A: The paper states 7:15 a.m.

5 Q: Does that match your recollection?

6 A: The paper say 7:15 a.m.

7 Mr. McKnight: Your Honor could you please admonish.

8 The Court: Just answer to your best recollection.

9 A: Yes sir to the best of my recollection.

10 Q: Thank you. So the person that you saw with the AK 47
11 you identified as Mr. McMillan, is that correct?

12 A: Of course.

13 Q: What was his hair like?

14 A: At that point in time it was braided like twists or
15 dread like.

16 Q: Okay what was he wearing?

17 A: That night. I want to say it was like a black shirt
18 and some jeans.

19 Q: Okay and what kind of, you said black shirt and jeans
20 right?

21 A: Yes sir.

22 Q: And how tall is he?

23 A: I can't answer that cause I'm not sure, I say give or
24 take 5'5 or 5'6, somewhere in there.

25 Q: Stand up Mr. McEwen. That's the guy you saw right

1 there? 5'5 or 5'6?

2 A: I'm just guessing.

3 Q: All right I understand. How tall are you?

4 A: Say that again.

5 Q: How tall are you?

6 A: I'm 6'5.

7 Q: Okay now, in your statement there, that you gave to
8 the police while you were in the company of Mr.
9 Dellinger, Lt. Webb and SLED, show me where you
10 indicate that you saw someone firing an AK47

11 A: It's not here.

12 Q: In that statement show me where you saw someone, show
13 me in your statement where you, pardon Court's
14 indulgence for a minute. Isn't it true based upon
15 this statement you didn't see anybody shooting?

16 A: After I made this statement at the scene of the
17 crime, you have to keep in mind I just came through a
18 situation where lots of people was harmed, a man was
19 shot, my adrenalin is high.

20 Q: Yes sir.

21 A: They only asked me to make a statement of what I seen
22 at that point in time. They further then called me
23 in Mr. J.D. and Lt. Webb and asked me for a statement
24 of what went on and what did I see.

25 Q: Yes sir and when you got called in was there a person

1 from SLED there or was it just Mr. Dellinger and Mr.
2 Webb?

3 A: Mr. J.D. and Mr. Webb.

4 Q: Did they take any, did you do a further written
5 statement from them? Did you do another written
6 statement?

7 A: To the best of my ability, no sir.

8 Q: No you didn't. Now it was your testimony just a
9 minute ago that you saw Mr. McMillan, who you
10 identified just now as being 5'5, 5'6.

11 The Court: No comments, please. Just ask the
12 question.

13 Q: As holding an AK 47 and if firing, is that correct?

14 A: That's correct.

15 Q: Could you step down for me please? Now if you're
16 standing at the door of the club, facing the road
17 here, you are, this building right here is going to
18 be on your left side, is that correct?

19 A: This side of the building, that's a piece of empty
20 property.

21 Q: That piece of property, thank you for clarifying
22 that, I appreciate it, but this piece of building
23 here. Or property would be to your left would it not?

24 A: Yeah.

25 Q: Right here?

1 A: Yeah.

2 Q: Okay and so the front door of the building is this

3 long entrance here is it not?

4 A: That's the shade.

5 Q: Where is Mr. C's?

6 A: Mr. C's is right at your hand.

7 Q: Right, what's this?

8 A: That's the shade.

9 Q: Okay, where's the front door? Show me, show me the

10 front door.

11 A: In front of th shade.

12 Q: Please indicate on the board where the front door is

13 A: It's right there, in front of the shade.

14 Q: Thank you. Now, you're facing the road so the shots

15 then that you claim came from the left right?

16 A: Yes.

17 Q: You stated first that you ran out of the club

18 A: I'm in the middle of the hallway. I'm right here in

19 this foyer area.

20 Q: Right and so you can't see outside until you get out

21 the door?

22 A: Yes, I can see outside because this door right here

23 was wide open. Mr. JD and the other investigator's

24 found bullet holes in this door, the other was open.

25 Mr. McKnight: Your Honor please admonish him ...

1 The Court: No, he has a right. You asked him a
2 question and he has a right to answer it.

3 Q: Who fell first, who got shot first?

4 A: My best friend Patrick Hood.

5 Q: Okay, where did he fall?

6 A: He fell right here at this door right here which is
7 closed and locked.

8 Q: Where were you?

9 A: I was right here at this door. I'm eye to eye, just
10 like ... right there.

11 Q: And you can see the person shooting?

12 A: You can see it straight right there in the light
13 pole.

14 Q: But it is still your testimony it was coming from the
15 left right?

16 A: That's where it was coming from because that's where
17 the light pole was at.

18 Q: Thank you.

19 A: That's where the light bulb was at

20 Q: Thank you, you can sit down. What were you shooting
21 at when you ...

22 A: I was shooting at whoever was shooting at us in the
23 club, the innocent people.

24 Q: You said you were shooting at the innocent people?

25 A: I said I was shooting at the people that were

1 shooting at the club to protect the innocent people.

2 Q: And are you a licensed law enforcement officer?

3 A: I have a concealed weapon permit.

4 Mr. McKnight: Your Honor please admonish the witness
5 to answer the question.

6 The Court: Answer the question.

7 Q: Are you a licensed law enforcement officer?

8 A: No.

9 Q: Have you been certified at the South Carolina Police
10 Academy or any police academy?

11 The Court: He answered the question now go on to
12 something else. You asked the question, you got your
13 answer, go on to something else.

14 Mr. McKnight: That's what, I've moved on to
15 something.

16 The Court: He said no. He is not a law enforcement
17 officer so he would not have a certification.

18 Q: Have you ever been certified?

19 A: I have a SLED card, I work for security.

20 Q: I understand that, but you've never been certified to
21 carry a firearm and dispense the laws of any
22 jurisdiction?

23 Mr. Fata: Wait a minute, Your Honor, he's asking two
24 different questions.

25 The Court: That's a compound question, objection

1 sustained.

2 Q: You licensed to carry a firearm?

3 A: You right.

4 Q: Do you have the power to arrest a person?

5 A: No I don't.

6 Q: Thank you. Show me in your statement there where you
7 indicated to the police you were doing all this
8 shooting.

9 A: Repeat the question.

10 Q: Show me in your statement where you indicated that
11 you were doing all the shooting that you told us
12 about on the stand today.

13 A: It wasn't written in the report.

14 Q: Why didn't you put that in there?

15 A: It's not my responsibility, I didn't write the
16 report. I admitted to that when Mr. J.D. pulled up
17 at the scene of the crime I came to his truck
18 immediately and I told him I shot the firearms.

19 Q: Who wrote this?

20 A: Lt. Benny Webb, he was the witness in the vehicle.

21 Q: This gentleman right here wrote this?

22 A: He was a witness, it says witness.

23 Q: I understand but I'm asking you who wrote it.

24 A: I'm not sure who wrote this paperwork.

25 Q: But you, before you signed it, did you read it?

1 A: As I was talking they was writing.

2 Q: I understand that, but before you signed it, did you
3 read it?

4 A: Oh yes I read my paperwork.

5 Q: Okay and so you also read the part at the bottom
6 where it said everything in here is true and correct
7 to ...

8 The Court: If you're going to ask questions about the
9 Statement, it's got to be in evidence.

10 Mr. McKnight: Your Honor it's at this time I move
11 that's State's exhibit into evidence as Defense exhibit 5.

12 The Court: Any objection?

13 Mr. Fata: No objection.

14 The Court: Submitted into evidence, Defense number 5.
15 (Defendant's Exhibit Number 5)

16 Q: Thank you, now in your statement that we now have in
17 evidence, show me where you indicated to the police
18 that you did all the shooting?

19 A: It's not in there.

20 Q: Okay now let me ask you this. The persons who were
21 shooting, were they still shooting at you as you were
22 going to the Suburban?

23 A: It was not, per se, shooting at me, they were
24 shooting at the club.

25 Q: Okay, but were they still shooting when you were ...

1 A: Shots were still firing as I was on the floor
2 crawling to the club, I mean crawling to my vehicle.

3 Q: Right. And you crawled, and that's when you crawled
4 in your vehicle and got the shotgun and started
5 shooting?

6 A: That's right to protect innocent people and the
7 people that had been wounded.

8 Q: And so, let me ask you this. Is the parking lot
9 here? With everybody running around, how many cars
10 are here in front of the club at the time you're
11 doing all your shooting?

12 A: How many cars?

13 Q: Yes sir.

14 A: The same cars that all of them was jumping out of
15 grabbing guns shooting at the club.

16 The Court: No sir, answer the question, please.

17 A: How many cars? Maybe three.

18 Q: There were only three cars in front of the club?

19 A: Three I seen the action was coming from. I'm focusing
20 on where the bullets and firing is coming from.

21 Q: No sir, listen to me very carefully. How many cars
22 were in front of the club while the shooting was
23 going on, in the parking lot, how many were there?

24 A: I can't answer that I plead the fifth.

25 Mr. MCKNIGHT: Your Honor please admonish the witness

1 that he doesn't have the protection of the Fifth Amendment
2 because he's not on trial and he has to answer my
3 question.

4 The Court: if he knows or he doesn't know, he has
5 the right to say he doesn't know.

6 Q: How many cars where there?

7 A: I don't know.

8 Q: Was it more than five?

9 A: I don't know.

10 Q: More than ten?

11 A: I don't know.

12 Q: So you don't know?

13 A: The way my adrenaline was going, trying to protect
14 innocent people, I don't know.

15 Q: Was the club packed?

16 A: The club was packed.

17 Q: I mean, what's the capacity of the club?

18 A: I'm not the State inspection, I don't know.

19 Q: Okay, but it was packed?

20 A: Yes.

21 Q: Did everybody come in one car?

22 A: I don't know.

23 Q: Did they come in more than one car?

24 The Court: He answered he didn't know Mr. McKnight.

25 If he answers it one way, don't ask it another way.

1 Q: Did you see anyone else shooting?

2 A: Say it again?

3 Q: Did you see anyone else shooting?

4 A: To the best of my recollection Toby Fulmore and
5 Jeremy McMillan.

6 Q: You saw Toby Fulmore shooting?

7 A: Toby Fulmore had a gun.

8 Q: What's he look like?

9 A: Toby Fulmore is the one I slammed. He had corn rows
10 in the back, short.

11 Q: Okay and where was he shooting?

12 A: Say that again? I didn't say he shot, I said I saw
13 him with a gun.

14 Q: You didn't see him shooting?

15 A: I said he had a gun I didn't say he shot. The one
16 that I saw took a shot and killed my best friend was
17 Jeremy McMillan.

18 Q: Did you see Toby shooting?

19 A: He had the gun in his hand.

20 Mr. McKnight: Your Honor please admonish the witness
21 to answer the question.

22 The Court: He's already answered the question. You
23 asked a number of times. He said he didn't see him shoot.

24 A: Who Jeremy McMillan, sir?

25 The Court: No, Mr. Fulmore.

1 A: No. I did not see him shot.

2 Q: That's the answer. Thank you. So you saw Mr.

3 Fulmore with a gun right? Okay.

4 The Court: He answered that. Let's quick the

5 repetition.

6 Q: What kind of gun did Toby have?

7 A: I don't recall, I couldn't see, it was dark and I

8 couldn't see. I just know it was a hand gun.

9 Q: You could tell it was a handgun right?

10 A: Yeah.

11 Q: And you were able to make out the shape of the gun

12 that you allegedly saw Mr. McMillan with, right?

13 A: How dumb could you be if you couldn't see a hand gun

14 that you have to reach out like this with. A small

15 hand gun is my 45, you can hold it with one hand.

16 Mr. McKnight: Your Honor ...

17 The Court: Yes. Re-ask him the question.

18 Q: I forgot what I said. Were you able to make out the

19 shape of the weapon that Mr. McMillan had?

20 A: Mr. McMillan looked me dead in my face.

21 The Court: No sir, answer the question. Listen to

22 the question. Ask him again.

23 Q: Were you able to make out the shape of the weapon

24 that you saw Mr. McMillan have in his hand?

25 A: Yes I was, yes I did.

1 Q: You were able to at that time?

2* A: Yes.

3 Q: How many times did you fire your 9 millimeter?

4 A: I used two clips.

5 Q: You used two clips?

6 A: Yeah. If I could have reached my glove compartment I

7 would have emptied two more.

8 Q: Did you give the police both clips?

9 A: Mr. JD removed them and the SLED officer removed both

10 my guns from the vehicle.

11 Q: This is your firearm right?

12 A: That is my baby.

13 Q: This is one clip correct?

14 A: That is my baby, too.

15 Q: Has the police shown you or have you seen the second

16 clip that you had since then?

17 A: No, I have not seen. This is my first time even

18 seeing my gun.

19 Q: So you haven't had your weapon since the time you

20 used it in the club right?

21 A: That is correct.

22 Q: What type of rounds or what brand of rounds did you

23 use?

24 A: I don't shoot nothing but Winchester. Hollow points

25 and straight shot. I switch them up, hollow point,

1 straight shot, hollow point.

2 Q: Now are they copper jacketed?

3 A: What do you mean by that? I buy them at Wal Mart for

4 \$21.65.

5 Mr. Fata: Your Honor ...

6 The Court: Don't remove them.

7 Q: Yes sir. Permission to approach the witness Your

8 Honor? Do you recognize these rounds?

9 A: Those are my babies.

10 Q: Now and just for clarity, you only talked to someone

11 from SLED once right?

12 A: I talked to the gentlemen, yesterday. I talked to

13 him twice because they had to swab me for residue

14 tests. They removed my personal firearms from my

15 vehicle.

16 Q: I understand that. You mean the Caucasian gentlemen

17 that ...

18 A: No, I can't remember his name, but I'm pretty sure

19 Lt. Webb or Mr. Paul can verify.

20 Q: Okay so you talked to the gentleman that took your

21 weapon and took a swab twice but other than speaking

22 to him and maybe the agent that was in the vehicle

23 that night with Mr. Dellinger and Mr. Webb, have you

24 spoken to anyone?

25 A: Nobody has not. The only person I had any contact

1 with was Mr. Paul.

2 Q: Mr. Fata right here?

3 A: That's right.

4 Mr. McKnight: All right thank you. Answer any
5 questions Mr. Fata might have for you.

6 The Court: Re direct?

7 Mr. Fata: None Your Honor.

8 The Court: Thank you. You may step down. Do you
9 wish to have this witness excused?

10 Mr. Fata: Yes sir.

11 The Court: Any objection?

12 Mr. McKnight: Without objection Your Honor.

13 The Court: The witness is excused, thank you.

14 Mr. Fata: Your Honor we may be through.

15 The Court: All right let's take a brief recess at
16 this time. It's about ten after ladies and gentlemen
17 you've been in the court room almost an hour and forty-
18 five minutes. I think it is appropriate to take our
19 morning recess at this time. If you would go to your jury
20 room. Do not discuss this case amongst yourselves. It's
21 still premature for you to begin any discussion of this
22 matter, but just relax for a few minutes and we'll return
23 you to the court room very shortly. Thank you, you may go
24 on back.

25 (Jury break 11:11 a.m.)

1 (Jury enters court room 11:37 a.m.)

2 The Court: All right, thank you very much ladies and
3 gentlemen. Thank you for your patience. We have a couple
4 of matters that we needed to attend to in addition to
5 taking a brief recess and we have done those and we're
6 ready to go forward. The State may call your next
7 witness.

8 Mr. Fata: Thank you, Your Honor. The State calls
9 Captain J.D. Dellinger.

10 The Court: Captain Dellinger come around please.
11 Witness is sworn in

12 Bailiff: Please state your full name for the record

13 Mr. Dellinger: James D. Dellinger

14 Direct examination of Mr. Dellinger by Mr. Fata

15 Q: And Captain what is your occupation?

16 A: I'm an investigator with the Lee County Sheriff's
17 Department.

18 Q: And how long you been doing that?

19 A: I've been with law enforcement since 1989 and been
20 with the Lee County Sheriff's Department since 1995.

21 Q: Are you a certified law enforcement officer?

22 A: Yes sir.

23 Q: And how did you become certified?

24 A: I graduated from the South Carolina Criminal Justice
25 Academy in 1989.

1 Q: And you've been in law enforcement ever since?

2 A: Yes sir.

3 Q: You started out as patrolman?

4 A: A patrol officer with the city of Bishopville.

5 Q: And then later on moved to the Sheriff's office.

6 What did you start out at the Sheriff's office?

7 A: I started off at the Sheriff's department as an
8 investigator.

9 Q: And you've been investigating ever since, your entire
10 time at the sheriff's office?

11 A: Yes sir.

12 Q: All right. Were you with the sheriff's office on
13 April 29, 2006 in Lee County?

14 A: Yes sir I was.

15 Q: Were you called to the club Mr. C's located in
16 Lynchburg in Lee County?

17 A: Yes sir, I received a call from our dispatch
18 center at my residents indicating there was a
19 shooting at Mr. C's club and the officers were
20 requesting that I respond there.

21 Q: Okay, what time did you get there?

22 A: I don't remember exactly what time I got there. It
23 was after Captain Mazingo and Major Simon were
24 already there.

25 Q: Okay and what were your duties at the scene?

1 A: Initially was to just find a thumbnail version of
2 what was going on and try to assess the situation.
3 It was kind of chaotic.

4 Q: All right, when you got there what were you
5 confronted with?

6 A: You had a lot of law enforcement there, you had
7 people going to different hospitals and we were still
8 receiving calls from hospitals. We knew we had these
9 two people deceased who were still there on the
10 scene. There were security people there on the
11 scene.

12 Q: What else, two people deceased? What else?

13 A: There were several shot that had gone to various
14 hospitals in different counties.

15 Q: Did you find out how many?

16 A: I believe the total was nine.

17 Q: Nine people shot and two people dead?

18 A: Yes sir.

19 Q: Was the scene calm?

20 A: No it was rather chaotic at first. Like I said there
21 was a lot going on. There was a lot of people there
22 and we were still getting phone calls. It was rather
23 chaotic initially.

24 Q: So, now you said you initially tried to get a
25 thumbnail sketch, what do you mean by that?

1 A: You want to be briefed by whoever is there or whoever
2 can pass on any information and just give you kind of
3 the jest of what's going on. The basics of what's
4 going on and then you kind of break it down and
5 handle it, you know, section by section. It's too
6 much to deal with everything in all the details at
7 once. You've got to, you know, break it down to
8 smaller sections and do one task at a time.

9 Q: Can you take everybody that's there at the scene and
10 sit them down and leisurely say tell get detail for
11 detail what happened? Do you have time to do that at
12 the scene?

13 A: No. We don't have time at the scene to do that. Lee
14 County doesn't have the manpower to do that and
15 really we don't have the facilities to put that many
16 people, you know, ideally we'd all be in the
17 interview room, talking, sitting at a desk and have
18 access to rest rooms, coffee, things like that. That
19 wasn't the case. Most of these interviews were done
20 in the front seat of a car or with people walking
21 around the crime scene people still there. It was
22 still a fluid situation.

23 Q: It was basically, tell me what you saw and you're
24 scribbling down notes?

25 A: Right.

1 Q: Now later on, do you talk to people as you
2 investigate and get a broader picture of what went
3 on?

4 A: As things calm down and as we get the basic situation
5 down, the crime scene processed, autopsies scheduled
6 and as you start to get more information, then you
7 can go back to follow up with people and compare what
8 they said to what someone else has said versus what
9 your evidence shows or where you found something. So
10 you can do follow ups later on. The most crucial
11 thing is securing that scene to make sure that any
12 evidence isn't lost or damaged. You only have one
13 opportunity to collect, you know, shell casings and
14 find out where they are and those things. So that's
15 the most crucial point I think at first.

16 Q: To make sure everything that's there, stays there?

17 A: It stays there and it's documented where it was and
18 how it was collected and sent to the appropriate
19 labs.

20 Q: What is, what was SLED's role in this situation?

21 A: Well SLED had two roles. One their primary requests
22 was we requested assistance of a SLED crime scene
23 unit, which the Lee County Sheriff's Department does
24 that on virtually every murder that we have. We
25 request the crime scene unit to come. And they

1 document the scene with GSR's, photographs, diagrams,
2 rods whatever techniques they need to use.

3 Q: Okay that', so in other words, they come and like you
4 see on t.v. gather everything that's there?

5 A: Yes sir.

6 Q: And then what's the second role?

7 A: Well in this situation what the Lee County Sheriff's
8 Department was given is this crime happened in our
9 county and the two victims at the scene were in our
10 county. But virtually everything else was outside of
11 Lee County. They went to hospitals in different
12 jurisdictions, they lived in different jurisdictions,
13 the victims stayed in different places. So basically
14 what we had was the crime scene. The victims,
15 witnesses, suspects, everybody else lives somewhere
16 else. So to go interview them or go talk to them we
17 had to go to other jurisdictions and our law
18 enforcement is limited to Lee county so we requested
19 the assistance of SLED which has state wide
20 jurisdiction. That way we could accompany them, and
21 we could go wherever we needed to go in the state to
22 interview witnesses, suspects, victims.

23 Q: And did your office do that?

24 A: Yes sir we did.

25 Q: And what is it, that's what, investigating the case?

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(803) 436-2150

1 A: That's correct.

2 Q: Trying to determine what happened?

3 A: Yes sir.

4 Q: Trying to determine what happened and who did it?

5 A: That's correct.

6 Q: Do you use photo line ups as a tool?

7 A: Yes sir, very often we use photo line ups.

8 Q: I'm going to show you State's exhibit number 77. A
9 photo line up shown to Ishmeal Lane in which he picks
10 out the defendant Jeremy McMillan as being the
11 shooter he saw that night? Tell me how that is. Why
12 do you use photo line ups, how that's gathered and so
13 forth, how it was made.

14 A: We use photo line ups to be specific on the person
15 that they're talking about, so if we're talking about
16 Jeremy McMillan, we're talking about the same Jeremy
17 McMillan and not any other Jeremy McMillan. So we, if
18 they have a photograph available we put that
19 photograph in what we call a line up. We make sure
20 that the line up isn't suggestive and that the
21 pictures of the people look similar and that the one
22 person we're interested in doesn't stand out and
23 isn't the obvious person and we present that line up
24 to our witness or our suspect and ask them if they
25 can identify anybody in the line up.

1 Q: And so in that case, that's part of your, one of your
2 investigative tools and Ishmeal Lane said in that
3 case, that's Jeremy McMillan, the guy I saw shooting?

4 A: That's correct.

5 Q: Okay, now, the defense put in a line up and it's
6 number 1. It's a line up with Toby Fulmore that you
7 showed to Toby Fulmore. Why did you show that line
8 up to Toby Fulmore?

9 A: The name or the nick name Buggaloo came up in this
10 investigation while we were talking to individuals
11 and we did not have that exact name, a real name, in
12 fact, we were given two different names. Taylor Lee
13 Brown and a Terry McFaddin and we were trying to
14 establish who Bugaloo was and put a real name, date
15 of birth, things with him.

16 Q: And is that why you showed Toby Fulmore that photo
17 line up.

18 A: Yes sir.

19 Q: And that was the sole purpose of that?

20 A: Yes sir to establish the identity of this individual
21 Buggalou.

22 Q: And sometimes you do that just to find out who you're
23 talking about?

24 A: That's correct.

25 Q: Doesn't mean they're a suspect does it?

- 1 A: They can be or they can't be. Sometimes we just want
- 2 to make sure that the same person that they're
- 3 talking about is the same person we think they're
- 4 talking about.
- 5 Q: Now, when, other than line ups and stuff, what are
- 6 some of the other things that you did as part of your
- 7 investigation?
- 8 A: We interviewed lots and lots of people. People that
- 9 were there at the scene. Other investigators were at
- 10 the hospital interviewing the victims at the
- 11 hospital. I accompanied the bodies to the autopsy
- 12 and actually witnessed the autopsy procedure.
- 13 Q: And did you take, you collect the stuff from the
- 14 autopsy? The bullets which are State's exhibit
- 15 number 58 and 59?
- 16 A: I did. I collected those things from Dr. Ross as
- 17 well as biological samples and things like that that
- 18 were later submitted to SLED for analysis.
- 19 Q: And got to interviews, you or somebody in your
- 20 department got interviews from the gunshot victims?
- 21 A: Yes sir.
- 22 Q: Did any of the gunshot victims know who shot them or
- 23 where the bullets came from or anything like that?
- 24 A: No sir.
- 25 Q: Okay, so the gunshot victims, what, dead ends?

1 A: Well, they could tell us where they were at, whether
2 they were inside the club and those kinds of things
3 or if there was an altercation before the shooting
4 you know. They could place themselves in a location
5 on an area and we could see if that was consistent
6 with what we already found. As far as them saying
7 this person shot me they weren't able to do that.

8 Q: Now, did you interview Toby Fulmore?

9 A: Yes sir.

10 Q: And what was the result of that, what did he tell you
11 at the time? And when did he tell you? When did you
12 interview him?

13 A: I don't have his statement here with me.

14 Q: It's in here, hold on.

15 A: His statement is dated 6-13-2006.

16 Q: Okay, what was, what did he tell you?

17 A: He indicated that he was at the club. That a fight
18 that broke out upstairs of the club and that he had
19 rode to the club with Jeremy McMillan and mentioned
20 the gun. He also talked about the incident with the
21 house, the shooting the house up previously. That
22 was also in his statement.

23 Q: About McMillan shooting up the house?

24 A: Yes sir. He describes the pistol, the grey and black
25 pistol and he also indicated to us where the guns

1 were kept in his vehicle at his grandmother's house
2 on Hwy. 341.

3 Q: Basically he told you what he testified to?

4 A: Yes sir.

5 Q: The incident about a month before, at the club, the
6 shooting up of the house, is that right?

7 A: Yes sir.

8 Q: And then about how, did he tell you in that statement
9 that McMillan told him that he had taken care of
10 stuff, or whatever, however he characterized it?

11 A: He said in his statement that Jeremy came to him
12 afterwards and said he handled that OG call.

13 Q: Did you know what that meant the OG call?

14 A: Yes sir.

15 Q: What does that mean?

16 A: It's a slang term.

17 Q: Meaning what?

18 Mr. McKnight: Objection Your Honor this calls for
19 speculation.

20 The Court: Lay a foundation.

21 Q: Okay. Are you familiar with street talk?

22 A: Yes sir. In interviewing individuals you have to be
23 familiar with the kind of words that they use and
24 don't use as well as attending training involving
25 this. I know what that term means.

- 1 Q: Okay. And how many interviews have you conducted in
2 which people use, I guess characterized as street
3 talk?
- 4 A: Hundreds. That's very common for them to use their
5 own vocabulary. We ask them to, you know, say it in
6 your own words, you know, we don't want them to sound
7 overly educated or under educated or use a different
8 word that we think may have different meanings. So
9 we ask them tell me, you know, in your own words
- 10 Q: And who's responsible for interpreting that language?
- 11 A: Well, whoever would be receiving that would be
12 responsible for interpreting that.
- 13 Q: Well when you received that statement from an
14 individual, do you interpret that language?
- 15 A: Right, but if there were to be any confusion or I
16 wouldn't know what they were talking about I would
17 just simply ask them, you know, just so we're clear,
18 what does this mean? If I'm not comfortable with
19 what they're saying. And it may be something where I
20 learn a new term.
- 21 Q: Well now this OG, is that something that you've been
22 exposed to before?
- 23 A: Yeah.
- 24 Q: In your training and in your interviews?
- 25 A: Many times.

1 The Court: All right, you want to ask him what it
2 means?

3 Mr. Fata: Yes sir.

4 The Court: And do you object?

5 Mr. McKnight: I still object to it, Your Honor.

6 The Court: Overruled.

7 Q: What does, say it again, what he said?

8 A: Jeremy came to me and said that he had handled that
9 ...

10 The Court: All right. Wait a minute. As I
11 understand your objection it's on the basis of this
12 statement.

13 Mr. McKnight: Correct and I'm also going to object
14 to hearsay.

15 The Court: All right that's a different objection
16 all together.

17 Mr. McKnight: Yes.

18 The Court: All right what about that Mr. Fata?

19 Mr. Fata: Your Honor the witness has testified to it.

20 The Court: I know he has and I've been waiting on an
21 objection and it hadn't come. The fact that the witness
22 has testified doesn't make it corroboration by this
23 witness any less hearsay.

24 Mr. Fata: All right then this witness, Mr. Fulmore,
25 testified that-what I was going to tell you what ...

1 The Court: That's for the jury to remember and for
2 you to argue whether Mr. Fulmore testified to it. What
3 Mr. Fulmore told this witness, as far as I can see, is
4 hearsay, unless you know an exception to the hearsay rule
5 that would make it admissible.

6 Mr. Fata: I do not, Your Honor, other than the fact
7 that he has testified.

8 The Court: Objection sustained.

9 Mr. Fata: All right, that term has been entered into
10 evidence through the form of testimony and I think I
11 should be able to ask him if he's familiar with that term
12 and he can tell me what that term means.

13 The Court: Yes, sir. He can answer that and I will
14 permit you to do that. I'm not going to permit you to say
15 that's what Mr. Fulmore said.

16 Q: Okay, what does I took care of that on the OG mean?

17 A: Original gangster.

18 Q: Original gangster. Does it have any other meaning
19 with that?

20 A: That's it.

21 Q: That's it?

22 A: The definition that I know of that means original
23 gangster.

24 Q: All right. Did you interview anyone else?

25 A: Yes sir.

1 Q: In this matter?

2 A: Yes sir, I interviewed Ishmeal Lane that morning. He
3 sat in my vehicle. Steven Sinclair and I sat in and
4 was in and out of several other interviews. I was
5 moving from vehicle to vehicle to keep some idea of
6 what was going on and who was saying what had
7 happened.

8 Q: Okay, did you participate in an interview of Jeremy
9 McMillan?

10 A: Yes sir I did along with Major Simon.

11 Q: Okay and where was that taken?

12 A: At the Sumter Lee Detention Center in Sumter.

13 Q: And what happened? Tell me about ...

14 Mr. McKnight: Objection, permission to approach,
15 Your Honor.

16 The Court: Yes sir.

17 (Counsel approach Bench)

18 The Court: Objection sustained.

19 Mr. Fata: Can we approach one more time about
20 something else about this thing?

21 Q: Did you interview, other than Mr. McMillan and Mr.
22 Fulmore, did you interview other people?

23 A: Yes, we interviewed lots of people in this case.

24 Q: Okay. In an effort to boil this case down to find
25 out what went on?

1 A: Yes sir.

2 Q: And was this a team effort?

3 A: It was many people involved, many agencies involved.

4 As I said a lot of victims, coming from a lot of

5 different jurisdictions so we had a lot of assistance

6 from a lot of agencies.

7 Mr. Fata: Okay. Answer any questions that Mr.

8 McKnight has.

9 The Court: Cross examination Mr. McKnight?

10 Mr. McKnight: Yes, Your Honor, thank you.

11 Cross examination of Mr. Dellinger by Mr. McKnight

12 Q: Investigator Dellinger, good morning, almost

13 afternoon. How you doing?

14 A: Fine.

15 Q: You've been with the Lee County Sheriff's office for

16 a number of years now, correct?

17 A: Yes sir.

18 Q: In an investigatory, or investigative capacity,

19 right?

20 A: Yes sir.

21 Q: Okay and specifically with regard to this

22 investigation here, you investigated the alleged

23 crime here today, did you not?

24 A: I don't necessarily like your term. I did that, I

25 think Mr. Fata covered better. It was a team effort.

1 I had supervisors and there were many agencies that
2 helped so there were many investigators involved.

3 Q: Yes sir. Who were some of the people that were on
4 your team?

5 A: Major Simon was there, Major Clayborn was there, the
6 Sheriff himself was there, Investigator Shaw was
7 there, Investigator Wingate was there, Investigator
8 Webb was there.

9 Q: Hold on for a second. Let's backtrack. The sheriff
10 is obviously the sheriff of the county right?

11 A: Yes.

12 Q: Investigator Wingate is an officer or a deputy with
13 the Lee County Sheriff's department right?

14 A: Yes.

15 Q: Investigator Webb is with the Lee County Sheriff's
16 Department is that correct?

17 A: Yes it is.

18 Q: And Investigator, is it Captain Simon?

19 A: Major Simon.

20 Q: Pardon me, Major Simon. He's with the Lee County
21 Sheriff's office correct?

22 A: All the investigators were from Lee County Sheriff's
23 Department.

24 Q: So is it safe to say that Lee County Sheriff's
25 Department was the lead investigating agency in this

1 matter?

2 A: I don't ever use that term, lead investigator. It
3 was a team effort. We couldn't have done it without
4 the assistance of other jurisdictions. We needed
5 their assistance. I wouldn't say I was the lead
6 investigator or our agency was the lead
7 investigation. We all worked together.

8 Q: So, who was in charge?

9 A: I don't know what you mean by that term, in charge.

10 Q: I mean if somebody had to make a decision, an
11 ultimate decision in an investigation, who would, in
12 particular this investigation, who would that person
13 be?

14 A: Well it's just like any other decision you know you
15 have two or three or four or five heads are always
16 better than one so often times we discuss that, kick
17 ideas around and again a team effort we could say
18 what do you think about this or that and we would go
19 from there.

20 Q: But if you guys couldn't agree, who would say All
21 right, this is what we're going to do, who's that
22 person?

23 A: I don't know that we ever had that problem in this
24 situation. There was nobody that was territorial
25 saying this is mine, we're going to do it this way.

1 That didn't happen.

2 Q: All right. Fair enough. How many, you came out to
3 the scene of the crime. You had the two dead
4 persons, how many other people were shot?

5 A: I believe it was nine.

6 Q: Okay.

7 A: But I didn't go to the hospital to talk with those.
8 I was receiving information by phone calls and
9 communications.

10 Q: Who briefed you when you got to the scene?

11 A: Captain Mozingo.

12 Q: Okay now, Mr. Fata talked at length about you at the
13 initial scene. Did you have, after you got the
14 initial conversations or interviews with people, did
15 you have an opportunity to follow up with those
16 witnesses?

17 A: Then or at any time?

18 Q: Later on anytime.

19 A: I have always had the opportunity to call somebody
20 back and talk to them if the need arises.

21 Q: Okay, how many interviews of persons did you
22 participate in?

23 A: When Mr. Fata was asking me I was going through my
24 notes and listed off some of them that were jumping
25 out at me. Like I said to Mr. Fata, you know there

1 were other interviews going on in different vehicles
2 in different places and I would move and sometimes
3 sit in on the end of or the beginning of another
4 interview or maybe in there two or three minutes and
5 then stepped out and tried to do something else so
6 it's really hard to say.

7 Q: Yes sir. But you were interested, you had an
8 opportunity to investigate this gentlemen named
9 Buggaloo right?

10 A: We looked into the name of Bugaloo yes sir.

11 Q: Correct and is that the line up you handed Mr.
12 Fulmore?

13 A: I believe this is a copy of the line up.

14 Q: But does it accurately depict it though?

15 A: It accurately depicts the line up that we presented
16 to Mr. Fulmore.

17 Q: Yes sir, okay. How'd you get those pictures on
18 there?

19 A: We got them from Florence County.

20 Q: Okay so did Florence county just send you a bunch of
21 pictures or did they send you those pictures along
22 with names and addresses?

23 A: No we were at Florence county and they were able to
24 select those pictures.

25 Q: Okay and so Florence county gave you a picture of the

1 guy named Bugaloo right? Or identified him as Bugaloo
2 right?

3 A: Yes sir.

4 Q: Did you then ask Florence county what his real name
5 was and address?

6 A: We were given two different names. We knew that the
7 name and the address corresponded to their
8 information for the picture they provided us.

9 Q: Okay. So you had a name and an address for that
10 gentlemen that Mr. Fulmore indicated on that line up
11 right?

12 A: Yes.

13 Q: Didn't Mr. Fulmore tell you that he thought Bugaloo
14 was the shooter?

15 Mr. Fata: Your Honor I think we're in a hearsay
16 area.

17 The Court: All right leave out hearsay.

18 Mr. McKnight: Your Honor it's not hearsay because
19 that's the prior testimony of the declarant here in court
20 under oath.

21 The Court: Well, I don't believe it was --- I'm
22 going to sustain the objection.

23 Q: Okay did he indicate to you that Bugaloo ...

24 Mr. Fata: Your Honor that's the same question.

25 The Court: Let him finish the question.

1 Q: Did he indicate to you that Bugaloo was possibly a
2 shooter?

3 Mr. Fata: Your Honor ...

4 The Court: Sustained.

5 Q: Were you able to get any information from anyone
6 about Bugaloo being a possible shooter?

7 Mr. Fata: Your Honor that's probably all hearsay.
8 Information from anyone? Don't even know who he is.

9 The Court: I will sustain it.

10 Q: Do you have reason to know that Bugaloo might have
11 been a shooter?

12 The Court: Same question, same objection, same
13 ruling.

14 Q: How many types of weapons were the victims shot with,
15 the nine victims?

16 A: I don't recall any projectiles being recovered from
17 those victims and I may be mistaken without actually
18 looking through the reports and the ballistic
19 reports, but I don't recall projectiles being
20 recovered.

21 Q: Was Sylvester Black a victim?

22 A: I don't know.

23 Q: Just take your time checking notes, we'll wait.

24 A: Sylvester Black is listed as a victim.

25 Q: Your investigation led you to determine he was shot

1 with what type of weapon?

2 A: I don't', I can't answer that question.

3 Q: Did you check and see what type of weapon he was shot
4 with?

5 A: Mr. McKnight I can't answer that question. I didn't
6 talk to Mr. Black. Investigator Wingate was at the
7 hospital and I don't know the answer to that.

8 Q: So it's your testimony here today that Investigator
9 Wingate is the person that talked with Mr. Black, is
10 that correct?

11 A: If Mr. Black is one of the individuals at the
12 hospital, then that would be my assumption. I don't
13 know that for sure. I know that I didn't and I don't
14 know of any information that I have or what he was
15 shot with.

16 Q: Didn't you have someone i.d. Toby Fulmore as the
17 killer of Patrick Hood?

18 Mr. Fata: Your Honor I object, hearsay.

19 The Court: What's the question again?

20 Q: Didn't he have someone i.d. Toby Fulmore as the
21 killer of Patrick Hood?

22 The Court: Did he? He who?

23 Q: Did he, I mean the witness on the stand.

24 The Court: All right ask the question of this
25 witness that's sworn.

1 Q: Did, was there someone that identified Toby Fulmore
2 as the killer of Patrick Hood?

3 The Court: As asked I sustain. You can ask another.
4 way.

5 Q: Was Toby Fulmore implicated as the murderer of
6 Patrick Hood?

7 The Court: Again, I'll sustain it. You can ask him
8 if he asked anyone to identify the killer or the shooter
9 and if so who that person is.

10 Q: Did you ask anyone to identify the killer of Patrick
11 Hood?

12 A: Toby Fulmore was identified as being there at the
13 scene and having a gun

14 Q: So it's your testimony under oath that you've not
15 taken a statement from someone that identified him as
16 the shooter?

17 A: I didn't say that. My answer was Toby Fulmore was
18 identified as an individual there at the scene and
19 that Toby Fulmore had a gun.

20 Q: Was he identified as the shooter?

21 The Court: Again, identified by who as the shooter?

22 Q: Who was he identified by as the shooter?

23 Mr. Fata: Your Honor.

24 The Court: No that's not the --- he never said he
25 was identified as the shooter. You've got to ask the

1 question as to what he asked and only what he did, not
2 what was told to him either directly or indirectly.

3 Q: Did you ask --- Court's indulgence Your Honor. Did
4 you ask Christopher Mack to identify the killer of
5 Patrick Hood?

6 A: If you're referring to somewhere on the incident
7 report, you can direct me as to what you're referring
8 to.

9 Q: No, no.

10 The Court: Just answer the question. He's asking you
11 a question about what you did, not what the answer was,
12 but what you did. Ask the question again. Mr. McKnight
13 let's move along.

14 Q: Did you ask Christopher Mack who the killer of
15 Patrick Hood was?

16 A: I don't remember if I asked Mr. Mack that or not.
17 The report does indicate ...

18 The Court: All right don't say what the report says,
19 just say what you remember that you did.

20 Q: Did you ever talk to Mr. Matt?

21 A: I don't remember without seeing Mr. Mack's statement.

22 Mr. McKnight: Court's indulgence Your Honor.

23 Permission to approach the witness, Your Honor.

24 The Court: Yes sir.

25 Q: Do you recognize the document?

1 A: No sir.

2 Q: You've never seen that document before?

3 The Court: He answered the question.

4 Q: Okay. So it's your testimony here under oath that

5 you, Dellinger, investigator for the Lee County

6 Sheriff's Department have never spoken to Christopher

7 Mack?

8 A: That's not my testimony. I said I can't remember

9 specifically interviewing or talking to Christopher

10 Mack. I didn't take that statement and I don't

11 recognize that, my signature is not on it.

12 Q: I understand. So tell us who you specifically

13 interviewed or participated in the interview?

14 A: I know that I interviewed Mr. Fulmore, Toby Fulmore.

15 I was involved in the interview of Jeremy McMillan.

16 I know I interviewed Ishmeal Lane and I know I was

17 involved in the interview of Demetrius Hamm. I was

18 involved in the interview with Adrian Ingram, Steven

19 Sinkler.

20 Q: Yes sir.

21 A: I talked to Mr. McEwen several times that morning at

22 the scene.

23 Q: Yes sir.

24 A: John Fulmore.

25 Q: Okay. Was anybody else present with you during those

1 interviews besides the person you were interviewing?

2 A: Yes there was individuals present. Now with McEwen
3 there at the scene, there may have been times I spoke
4 to him briefly by myself, while the SLED agent was
5 doing something else, but the majority of time there
6 was somebody else to witness.

7* Q: Okay. Did you collect any evidence in this matter?

8 A: I know that I brought the evidence, it was collected
9 at the autopsy back from Dr. Ross.

10 Q: Okay. But at the scene did you collect any evidence?

11 A: I don't remember collecting any evidence at the
12 scene, the crime scene people there they would have
13 collected and documented all of that and submitted it
14 all to the laboratory. I may have been there with
15 them while they were collecting it or may have been
16 discussing it with someone while it was collected,
17 but I wouldn't have actually done it. That was the
18 sole purpose of the crime scene people being there.

19 Mr. McKnight: The Court's indulgence. Mr. Fata's
20 witness Your Honor.

21 Mr. Fata: Your Honor, no questions.

22 The Court: All right thank you Mr. Dellinger you may
23 step down.

24* A: Thank you.

25 Mr. Fata: Your Honor the State rests.

1 Mr. McKnight: Your Honor it's at this time that the
2 Defendant respectfully makes a motion for a directed
3 verdict. We believe that the State has not met its burden
4 and ask that the Court respectfully dismiss the charges
5 against my client.

6 The Court: Mr. Fata.

7 Mr. Fata: Your Honor, of course, the Court is only
8 interested if there is some evidence, but I think there is
9 ample evidence in this case with five eye witnesses
10 picking out the Defendant as the person with the long gun
11 shooting into the club. Several of those witnesses
12 indicating that they saw shots being fired from a long gun
13 and that Patrick Hood fell in front of the club. I think
14 there is overwhelming evidence to support the charges of
15 murder. Those charge and, of course, if that's the case
16 you have the weapon during a violent crime and use of that
17 weapon.

18 The Court: All right. Rule 19 of the S.C. Rules of
19 Criminal Procedure provide that at the close of the
20 State's case if there is an admitted evidence, continuing
21 to prove the charge in the indictment. In ruling on the
22 evidence, the trial Judge can consider only the existence
23 or non existence of the evidence and not it's weight. The
24 weight of the evidence is a matter for the jury. There is
25 evidence in the record of all the elements of both crimes

1 in this case. Murder and also of the possession of a
2 weapon during the commission of a violent crime. And
3 there is evidence in the record and it is for the jury to
4 determine what weight should be given to that evidence. I
5 would there respectfully deny the motion for directed
6 verdict.

7 All right Mr. McKnight if you will ask Mr. McMillan
8 to stand and let's finish advising him of his Fifth
9 Amendment Rights. Mr. McMillan yesterday I explained to
10 you your Fifth Amendment rights and the right to remain
11 silent, the right to testify if you wanted to, but you
12 could not be required to testify. And the fact that if
13 elected not to testify and the jury could not use that as
14 an inference against you. At that time I explained in
15 detail those 5th Amendment rights and you indicated that
16 you understood those rights. Now is that correct?

17 Mr. McMillan: Yes sir.

18 The Court: Have you had a chance to talk with your
19 lawyer about your Fifth Amendment rights?

20 Mr. McMillan: No, sir.

21 The Court: Go ahead, take your time.

22 Mr. McMillan: Excuse me. I apologize to the Court.

23 The Court: That's All right, have you had a chance
24 to talk to him about it?

25 Mr. McMillan: Yes, sir.

1 The Court: Have you understood your discussions with
2 your lawyer about your Fifth Amendment rights?

3 Mr. McMillan: Yes sir.

4 The Court: And do you have any questions of either
5 me or Mr. McKnight regarding your Fifth Amendment rights,
6 that is your right to remain silent or your right to
7 testify or to waive that right to testify, do you have any
8 questions that you want to ask either me or Mr. McKnight
9 regarding those Constitutional rights?

10 Mr. McMillan: No sir.

11 The Court: Have you made a decision as to whether
12 you do or do not wish to testify in this matter?

13 Mr. McMillan: My decision is not to testify.

14 The Court: Have you made a decision?

15 Mr. McMillan: I don't want to testify.

16 The Court: You have made a decision as to whether
17 you do or do not wish to testify, what is that decision?

18 Mr. McMillan: I do not wish to testify.

19 The Court: You do not wish to testify?

20 Mr. McMillan: No.

21 The Court: That's your answer that you do not wish
22 to testify?

23 Mr. McMillan: Yes sir.

24 The Court: Is that decision on your part freely and
25 voluntarily and intelligently made?

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1 Mr. McMillan: Yes sir.

2 The Court: All right the defendant, I think after
3 being advised of his constitutional rights regarding self
4 incrimination by both the Court and by his counsel is made
5 a free and voluntary and knowing an intelligent decision
6 to exercise that constitutional privilege and we will
7 proceed. Thank you sir, you may be seated. All right, we
8 will take a lunch break at this time. Mr. McKnight will
9 you be ready to go forward with -- the Defendant is not
10 going to testify. Is the defense counsel's position to
11 offer any testimony or evidence in this matter?

12 Mr. McKnight: Yes sir Your Honor. We've got some
13 witnesses that we plan to call.

14 The Court: All right, so we'll recess then until one
15 thirty and we'll go forward with the Defense case at that
16 time. In the meantime be sure to give Mr. Fata all the
17 information regarding the witness that the bench warrant
18 is being issued so that law enforcement can see if they
19 can bring him to the court house.

20 Mr. Fata: Yes sir, name, dates of birth.

21 The Court: The names, dates of birth and social
22 security numbers of the witnesses you plan to call also
23 needs to be furnished to the prosecution so that they can
24 run those through NCIC.

25 Mr. McKnight: Yes sir.

1 The Court: All right, anything else before adjourn
2 to lunch?

3 Mr. Fata: Nothing from the State.

4 The Court: All right, one thirty.

5 (Court lunch break)

6 The Court: All right we're back on record regarding
7 the matter of the State versus Jeremy McMillan. He is
8 present in the court room with his counsel Mr. McKnight
9 and the State is represented by Mr. Fata. We're now
10 through with the State's case and legal matters have been
11 attended to and now the defense will have its opportunity
12 to present any testimony he wishes to present. Let me put
13 on the record the Defendant has exercised his Fifth
14 Amendment right not to testify in this matter. Are you
15 prepared to go forward at this time Mr. McKnight?

16 Mr. McKnight: Yes sir Your Honor I am.

17 The Court: All right, Mr. Fata, is the State ready?

18 Mr. Fata: I'm waiting on my officer to be here.

19 The Court: All right bring the jury in.

20 (Jury enters the court room at 1:33)

21 The Court: All right ladies and gentlemen thank you
22 for your promptness in being back here and we are now
23 ready to resume. The State has rested their case and now
24 the defense has the right to present any testimony or
25 evidence to you that they wish to present. Mr. McKnight.

1 Mr. McKnight: Thank you Your Honor, if it please the
2 Court. It's at this time we call Demetrius Ham.

3 The Court: All right Mr. Ham, you've previously
4 testified in this case so you are still under oath. Go
5 ahead Mr. McKnight.

6 Mr. McKnight: Thank you Your Honor, may it please
7 the Court.

8 Direct examination of Mr. Hamm by Mr. McKnight:

9 Q: Mr. Hamm, good afternoon. How you doing?

10 A: All right.

11 Q: Good. Mr. Hamm on yesterday when you testified you
12 indicated that you have a plea agreement with the
13 United States government, is that correct?

14 A: True.

15 Q: And it was during that time that you indicated that
16 you don't recall the terms of that plea, is that
17 correct?

18 A: I sure don't.

19 Q: Your Honor, permission to approach the witness?

20 The Court: Yes sir.

21 Q: Could you please examine that document? Could you
22 look to the second to the last page and tell me if
23 that signature is yours, one with the signature at
24 the top?

25 A: Yes.

1 Q: Does this, does that copy that you have there, fully
2 and accurately reflect the plea agreement that you
3 entered into with the United States government?

4 A: Yes.

5 Q: And you did enter a plea agreement is that correct?

6 A: Yes.

7 Mr. McKnight: Your Honor it's at this time we'd like
8 to have that marked as the Plaintiff's, I'm sorry, the
9 Defendant's exhibit 6 for identification purposes

10 The Court: All right, any objections Mr. Fata.

11 Mr. Fata: No sir, Your Honor.

12 The Court: All right entered into evidence as
13 Defendant's 6.

14 Mr. Fata: It's being admitted as i.d?

15 Q: No i.d.

16 The Court: I'll just enter it in. You want it?

17 Mr. McKnight: Yes sir, thank you Judge.

18 The Court: It will be entered for i.d. purposes.

19 (Defendant's Exhibit Number 6 was marked for
20 identification purposes)

21 Q: Thank you. Could you please Mr. Hamm, turn with me
22 to page number 5. And could you please begin reading
23 paragraph 10 with the word provided and ending on the
24 following page on the word plea?

25 A: Provided.

1 Q: So Mr. Hamm, isn't it true that if you provide
2 substantial assistance in the prosecution of a person
3 who has committed a defense, you can get a reduction
4 in the sentence that you're currently have with the
5 Feds?

6 A: Yes that's true.

7 Q: Okay and that the Feds, so you, what's your sentence,
8 you don't know what your sentence is now?

9 A: Conspiracy.

10 Q: I mean your sentence not your charge. Do you know
11 what your sentence is now? Cause you haven't been
12 sentenced, but for your help in this trial and other
13 trials you're in, you can get a reduction if the
14 government deems so. And when I say government I
15 mean the United States government.

16 A: You're saying this trial?

17 Q: Yes, isn't it true that you can, if the government
18 deems that you provided substantial assistance you
19 can get a reduction in your sentence?

20 A: Yes. That's true.

21 Q: In this trial?

22 A: No sir.

23 Q: Why not?

24 A: Because I haven't spoke with nobody about this trial.
25 Nobody's promised me anything about this trial.

1 Q: I understand that, but you provided help to the
2 government, provided help to the State of South
3 Carolina now haven't you?

4 A: Say that again?

5 Q: You have provided help to the State of South Carolina
6 now haven't you?

7 A: Yes.

8 Q: Okay and you can seek to have the Federal government
9 reduce your sentence based upon that help

10 A: Not that I know of.

11 Q: Oh so you don't, so it's your testimony that you
12 can't file a motion to get your sentence cut for your
13 testimony here today?

14 A: I'm not a legal lawyer, I don't know nothing about
15 that.

16 Q: I understand, but you understand the terms of the
17 plea agreement don't you? And it says you can right?

18 A: Yes, sir.

19 Mr. McKnight: Thank you, your witness.

20 The Court: Mr. Fata.

21 Mr. Fata: Yes sir, thank you Your Honor.

22 Cross of Mr. Hamm by Mr. Fata

23 Q: Mr. Hamm this plea agreement was between you and the
24 United States government isn't it?

25 A: Yes.

1 Q: This plea agreement was arrived at out of some
2 activities that you were involved in prior to any of
3 this happening, prior to this case?

4 A: Say that again.

5 Q: This plea agreement is a result of things that
6 occurred, not associated with this case and happened
7 before this case?

8 A: Yes, that's true.

9 Q: Now when you entered into this plea agreement who
10 were you entering into the agreement with?

11 A: The government.

12 Q: The United States government, Federal government?

13 A: Federal government.

14 Q: Did you at any time have your attorney or did you
15 consult with me or the Lee County Solicitor's office
16 or the Solicitor's office for the Third Circuit when
17 you did this plea agreement?

18 A: No sir.

19 Q: Have I or anyone in the Solicitor's office told you
20 we're going to help you on the Federal level for
21 testifying here?

22 A: No sir.

23 Q: Is there any agreement between the Solicitor's
24 office, me, anyone in the solicitor's office and you
25 regarding your testimony today?

1 A: No sir.

2 Q: What's the only thing I asked you to do.

3 A: Say that again.

4 Q: What did I ask you to do?

5 A: To testify and tell the truth

6 Q: Tell the truth. Now have you asked me to contact the
7 US Attorney on your behalf?

8 A: No sir.

9 Mr. Fata: All right. That's it Your Honor.

10 The Court: Redirect.

11 Mr. McKnight: No redirect.

12 The Court: All right, thank you Mr. Hamm. Can the
13 witness be released, Mr. McKnight?

14 Mr. McKnight: Yes sir.

15 The Court: All right, thank you sir. You may step
16 down and the witness is released. All right Mr. McKnight,
17 you may call your next witness.

18 Mr. McKnight: Your Honor I call Mr. Fred Wilson.

19 The Court: What's his name?

20 Mr. McKnight: Fred Wilson.

21 The Court: All right ladies and gentlemen of the
22 jury. Mr. Wilson's name was not given as a potential
23 witness in this case at time you qualified for court. I
24 want to ask you now if any member of the jury panel is
25 related by blood, related by marriage to Mr. Fred Wilson

1 from ...

2 Mr. McKnight: He's from Kingstree originally.

3 The Court: Kingstree. If you're related, in any way
4 to Mr. Wilson, this is Mr. Wilson, signify by raising your
5 right hand. Is any member of the jury panel acquainted
6 with or have any knowledge or any member of your family
7 acquainted with Mr. Wilson? Does any member of the jury
8 panel know any reason why Mr. Wilson, if Mr. Wilson is
9 allowed to testify in this case, that you would not be
10 able to evaluate his testimony objectively as you would
11 any other witness in this case with bias or prejudice for
12 or against Mr. Wilson. All right, since the purposes of
13 the court is to arrive at the truth, I'm going to allow
14 the witness to testify even though the witnesses name was
15 not given to the Court. It appears that the jury does not
16 have any contact with Mr. Wilson and there's no reason
17 they can't be objective as far as his testimony is
18 concerned. You may swear the witness.

19 **Witness is sworn in**

20 Bailiff: State your full name for the record.

21 A: Frederick Wilson.

22 **Direct examination of Mr. Wilson by Mr. McKnight**

23 Q: Mr. Wilson good afternoon. Where do you live?

24 A: 431 Morris Street, Kingstree, South Carolina

25 Q: How long have you lived there?

- 1 A: Five years.
- 2 Q: And prior to living there, where did you live?
- 3 A: Kingstree.
- 4 Q: Okay and where did you go to high school?
- 5 A: Kingstree High.
- 6 Q: What year did you come out?
- 7 A: 1989.
- 8 Q: Okay now Mr. Wilson, what do you do for a living?
- 9 A: Barber.
- 10 Q: And where do you cut hair primarily?
- 11 A: 477 Church Street.
- 12 Q: Is that in Lake City?
- 13 A: Lake City, South Carolina.
- 14 Q: And how long have you cut hair in Lake City?
- 15 A: Fifteen years.
- 16 Q: Okay, what's the name of your barbershop?
- 17 A: Five Minute Man Barber Shop.
- 18 Q: And why is it called Five Minute Man Barbershop?
- 19 A: You're supposed to be able to get a hair cut in five
- 20 minutes.
- 21 Q: Okay, All right. Mr. Wilson, I need you to be honest
- 22 with me. Have you ever had any run ins with the law?
- 23 A: Few years back.
- 24 Q: What happened?
- 25 A: An assault charge, 1990.

1 Q: Okay, no trouble with the law? Okay, I assumed you're
2 a licensed barber, is that correct?
3 A: Yes sir.
4 Q: Okay. Are you familiar with a gentleman named Jeremy
5 McMillan?
6 A: Yes, sir.
7 Q: Okay, do you recognize him in the courtroom today?
8 A: Yes, sir.
9 Q: Where is he?
10 A: Points to Defendant.
11 Q: Okay will the record reflect that he identified my
12 client Jeremy McMillan.
13 The Court: The record will so reflect.
14 Q: How do you know Mr. McMillan?
15 A: He comes to my barber shop.
16 Q: Okay. Is he a client of yours?
17 A: Yes sir.
18 Q: Okay, now what kind of hair cuts do you specialize
19 in?
20 A: Men hair cuts, men styles.
21 Q: Okay, do you do braids, twists or any of that at your
22 barbershop?
23 A: No, I don't.
24 Q: So is it, would I be correct in saying that your
25 barber shop you just do hair cuts and trims of the

1 mustache?

2 A: Yes, sir.

3 Q: Okay. How long have you been cutting Mr. McMillan's

4 hair?

5 A: For a few years now.

6 Q: Okay, where you cutting it in 2006.

7 A: Yes sir.

8 Q: Okay, are you familiar with, let's go back to the

9 weekend of April the 29th, 2006. Did you have any

10 contact with Mr. McMillan?

11 A: Yes sir.

12 Q: Tell us about that contact.

13 A: He came that Friday night for a hair cut. So, the

14 incident happened that same night and I seen him the

15 following day that Saturday.

16 Q: You can't tell us what he said now. Be careful, but

17 you saw him that Friday?

18 A: Yes sir.

19 Q: Did you cut his hair that Friday?

20 A: Yes sir.

21 Q: What kind of hair cut did you perform on him?

22 A: A low temper fade.

23 Q: Okay, describe for us a ...

24 Mr. Fata: Your Honor what is that? What did he say

25 a low what?

1 A: It's a low temper fade.
2 Q: Exactly what is a low temper fade?
3 A: A low hair cut that's faded on the sides.
4 Q: You see that gentleman there on the right with a
5 black suit on at the prosecution table right here?
6 A: Right here?
7 Q: Yes sir, is that a low tempered fade?
8 A: No, that's just a regular high fade.
9 Q: Okay, and this hair cut right here, what's that?
10 A: That's like a high fade, like a box cut.
11 Q: Okay, Mr. McMillan's hair, what kind of hair cut is
12 that?
13 A: That's a low cut.
14 Q: Okay, is it faded?
15 A: No sir.
16 Q: Okay, was Jeremy's hair approximately this same
17 length on Friday April the 29th when you cut it?
18 A: Yes, sir. That same length or a little bit lower.
19 Q: Okay, prior to cutting his hair, before you did that
20 hair cut on that Friday, how long was his hair?
21 A: No longer than what it is right now.
22 Q: And you're sure about that?
23 A: I'm positive.
24 Q: Okay now. Mr. Wilson, has anybody offered you
25 anything to testify here today?

1 A: No, sir.

2 Q: Has anybody promised you anything to testify here
3 today?

4 A: No, sir.

5 Q: Has anybody threatened you in any way to get you to
6 testify here today?

7 A: No, sir.

8 Q: You're here on your own free will?

9 A: Yes, sir.

10 Q: And your responses to my questions are truthful and
11 accurate based upon your own knowledge.

12 Mr. Fata: I don't understand why ...

13 The Court: Sustained.

14 Mr. McKnight: No further questions, I'm sorry. Your
15 Honor, your witness Mr. Fata.

16 Cross examination of Mr. Wilson by Mr. Fata

17 Q: You've always cut his hair, Mr. McMillan's hair?

18 A: Yes sir.

19 Q: Is that the only style he's ever worn?

20 A: Yes sir.

21 Q: It's the only style he's ever worn?

22 A: Yes, sir.

23 Q: Let me show you a photograph of him and I will tell
24 you number two is Mr. McMillan.

25 A: Yes sir.

1 Q: He's got long, what you call twists in his hair or
2 dreds in his hair?
3 A: Yes, sir.
4 Q: So that's not the only style hair he ever had is it
5 what he's got now?
6 A: As far as that picture.
7 Q: As far as the picture is concerned. You said he
8 never, I think your testimony was that he always had
9 his hair in that fashion. That you always cut his
10 hair and he never had long hair.
11 A: Yes, sir.
12 Q: Okay, but I have a picture of him, a photograph of
13 him, which is in evidence, which shows him with
14 either dreds or twists.
15 A: Before, I'd cut it.
16 Q: Before. You cut it. You said you always cut his
17 hair?
18 A: I do.
19 Q: Okay. He's a good customer of yours?
20 A: Yes sir.
21 Q: He comes everyday or not everyday, but every time he
22 needs a haircut?
23 A: Yes, sir.
24 Q: Do you know his family?
25 A: Not like that.

1 A: Yes, sir.

2 Mr. Fata: No further.

3 The Court: Is that all, Mr. Fata? All right thank you
4 Mr. Wilson you may step down. All right Mr. McKnight you
5 may call your next witness.

6 Mr. McKnight: Yes sir Your Honor. My next witness
7 will be Mr. Terrance Burgess.

8 The Court: All right Mr. Burgess. Come around,
9 please.

10 **Witness is sworn in**

11 Bailiff: State your full name for the record.

12 A: Terrence Burgess.

13 Q: Mr. Burgess good afternoon. State your full name for
14 the record.

15 A: Terrence Burgess.

16 Q: And where do you live?

17 A: Lake City South Carolina.

18 Q: How long have you lived there?

19 A: About seven years.

20 Q: How old are you?

21 A: Twenty-five.

22 Q: What kind of work do you do?

23 A: Construction.

24 Q: Okay are you a carpenter or are you a helper when
25 needed?

1 A: I paved road.

2 Q: Okay so you work with the road crew, is that correct?

3 A: Yes, sir.

4 Q: And how long you been doing that?

5 A: Three years.

6 Q: Okay, where did you go to high school?

7 A: Lake City High School.

8 Q: Have you gone to college?

9 A: No, sir.

10 Q: Have you gone to any technical schools or anything

11 like that?

12 A: No, sir.

13 Q: You just started working there out of high school?

14 Did you ever, I'm sorry.

15 A: Yes, sir.

16 Q: Did you graduate?

17 A: Yes, sir.

18 Q: Terrance have you ever been arrested before?

19 A: Not really. I was but I was about 17 at that time.

20 Q: What happened? What were you arrested for?

21 A: I cut school.

22 Q: You cut school and what did they charge you with?

23 A: I was 17, they thought I was 16.

24 Q: Okay, since that time have you been arrested before

25 and you've never been convicted of a crime to your

1 knowledge.
2 A: No, sir.
3 Q: You're being honest with me?
4 A: Yes sir.
5 Q: Okay. Do you know Jeremy McMillan?
6 A: Yes sir.
7 Q: How do you know him?
8 A: School.
9 Q: Okay and you said school, is that Lake City High
10 School?
11 A: Yes, sir.
12 Q: Are you guys friends?
13 A: I communicate with him ever now and then.
14 Q: Okay, how often do you hang out with him?
15 A: Not to often.
16 Q: Okay do you ever go over to his house?
17 A: No, sir.
18 Q: So he's not one of your boys but you know him?
19 A: Yes, sir.
20 Q: And he's not your favorite person, but you don't have
21 any ill will towards him?
22 A: No, sir.
23 Q: Do you have a reason to lie?
24 A: No, sir.
25 Q: Where were you on the night of April 29, 2006?

1 A: At the club.

2 Q: Which club was that?

3 A: Mr. C's.

4 Q: Mr. C's? Where was it located?

5 A: Lynchburg.

6 Q: And what was going on there that night?

7 A: Party.

8 Q: What kind of Party.

9 A: It been a regular night.

10 Mr. Fata: Your Honor I can't hear what he's saying.

11 The Court: All right, move the mic over a little
12 bit.

13 Q: Was the club crowded? When I say, was the parking lot
14 full?

15 A: That's right.

16 Q: Okay. How would you say, how would you describe the
17 parking, was it big or little?

18 A: Big.

19 Q: And is the club up on the road or does it sit back in
20 the road?

21 A: Sit back.

22 Q: Okay, so let me ask you this. How many cars, was the
23 space empty or full between the club and the road?

24 A: Well, on the side we was on the cars was full up on
25 that side. On the other side was kind of full.

1 A: I seen two of them.
2 Mr. Fata: Please lean up in the microphone.
3 A: Two.
4 Q: Two? Where were they laying?
5 A: One in front of the door and one in front of him.
6 Q: So one in front of the door and one in front of him?
7 A: Something like that.
8 Q: Okay so you had two people right together, laying
9 there, one in front of the other?
10 A: Yes, sir.
11 Q: On the outside of the door?
12 A: Yes, sir.
13 Q: You didn't see anybody shooting?
14 A: No, sir.
15 Q: But you heard gunshots?
16 A: I ain't heard no gunshots.
17 Q: Oh you never heard any gunshots?
18 A: I just saw people running.
19 Q: And you just saw people running? You didn't hear any
20 gunshots?
21 Mr. McKnight: Objection that's asked and answered.
22 The Court: Overruled, cross examination.
23 Q: You say you do not know Toby Fulmore?
24 A: No, sir.
25 Q: You say you don't recall seeing Jeremy McMillan in

1 the club?

2 A: No, sir.

3 Q: You don't recall seeing him running out the door or

4 running toward a door or back door, anywhere?

5 A: I see him jump in the jeep.

6 Q: You remembered him jumping in what looked like a

7 Jeep?

8 A: Yes sir.

9 Q: And tearing out?

10 A: Yes, sir.

11 Q: Now Mark Goldman, tell me about him, where is he?

12 A: At home far as I know.

13 Q: He was with you?

14 A: Yes, sir.

15 Q: Did ya'll run out together?

16 A: Yes, sir.

17 Q: Ya'll had the same opportunity to observe the same

18 thing?

19 A: (inaudible)

20 Q: To see the same thing? Ya'll had the opportunity to

21 see the same thing?

22 A: A lot of people trying to get out that door at the

23 same time. I know he was beside me.

24 Q: He was beside you?

25 A: Yes, sir.

1 Q: So what you saw he probably saw?

2 A: Might have did.

3 Q: Okay. You know Mr. McMillan how?

4 A: From school.

5 Q: School. Ya'll were school buddies?

6 A: He was in my class.

7 Q: He was in your class. Ya'll work together?

8 A: In school.

9 Q: How about --- how about now?

10 A: No, sir.

11 Q: You don't work together now? How often do you see

12 him?

13 A: Maybe about like once a week.

14 Q: Once a week. Where do you see him?

15 A: At his mama's house.

16 Q: At his mama's house. Did you ever see him at The

17 Hole in Lynchburg, I mean in Lake City?

18 A: No, sir.

19 Q: Never seen him there?

20 A: I go there now and then when I get off of work, I

21 probably get a drink or something.

22 Q: Do you ever go there?

23 A: Yeap.

24 Q: To go get a drink? You've never see Mr. McMillan

25 there?

1 A: No, sir.

2 Q: And you don't know Toby Fulmore? You've never seen

3 Toby Fulmore with Mr. McMillan down in Lake City?

4 A: No, sir.

5 Q: I'm sorry I can't hear you.

6 A: No, sir.

7 Q: You don't want to see anything happen to Mr.

8 McMillan, do you?

9 A: I don't want to see nothing happen to nobody.

10 Q: A couple of more questions. You don't remember,

11 stand up Nathaniel, you don't remember this man?

12 A: No, sir.

13 Q: You don't remember him on the dance floor?

14 A: No.

15 Q: You don't. Do you remember a fight inside the club?

16 A: I ain't see the fight, I just remember everybody

17 running.

18 Q: So you were on the dance floor and you just saw

19 everybody running.

20 A: By the pool table. You be standing around, it

21 crowded. People be standing there with their back to

22 you. Where the dance floor the pool tables at.

23 Q: About right next to each other aren't they?

24 A: Yeah. A lot of people be pack up in there.

25 Q: And you don't remember somebody being stabbed?

1 A: No, sir.

2 Q: You don't remember anybody being stabbed?

3 A: No, sir.

4 Q: You don't remember the bouncers throwing people.

5 A: No, sir. I was trying to get out.

6 Q: Trying to get out.

7 A: Yes, sir.

8 Q: So you don't remember anyone being stabbed? You

9 don't remember the bouncers throwing people out? By

10 the time you get to the front door, all the shooting

11 stopped and two men are dead in the doorway?

12 A: I been in the bathroom for about thirty, forty

13 minutes.

14 Q: Where's the bathroom?

15 A: That's when you come off the dance floor you go to

16 the left. The bathroom is on the left side.

17 Q: And you were in the bathroom thirty minutes?

18 A: A lot been going on. I wasn't the only one in the

19 bathroom, a lot of people been in the bathroom.

20 Q: I don't blame you, you were hiding out in the

21 bathroom?

22 A: Yes, sir.

23 Q: And when the shooting stopped you left. So you don't

24 know what happened out side?

25 A: No, sir.

1 Q: And the only thing you know is Jeremy McMillan was
2 jumping into a Jeep and tearing out of there?

3 A: Yes, sir.

4 The Court: Re-direct?

5 Mr. Fata: I've got one other question, Your Honor.

6 The Court: Oh I'm sorry.

7 Q: In 2000, you were convicted of Enticing and enrolled
8 child from a school.

9 A: That what it say.

10 Q: Is that what you were convicted of?

11 A: Yes, sir.

12 Mr. Fata: That's all Your Honor, that's all.

13 The Court: Redirect, Mr. McKnight.

14 Mr. McKnight: Thank you.

15 Re-direct of Mr. Burgess by Mr. McKnight:

16 Q: Terrance were you one of the first persons out of the
17 club when the commotion started?

18 A: No, sir.

19 Q: Were there already a lot of people outside by the
20 club?

21 A: When I got there they was people already to their
22 cars.

23 Q: When you saw Jeremy getting in his vehicle and
24 tearing out, was he one of the first vehicles leaving
25 or were there cars in front of him?

1 A: There were cars in front of him.

2 The Court: Anything further?

3 Mr. Fata: Nothing else Your Honor.

4 The Court: All right, thank you, you may step down.

5 Mr. McKnight: Your Honor may counsel approach the
6 bench?

7 The Court: Yes.

8 The Court: All right ladies and gentlemen for
9 reasons that are beyond anybody's control we are going to
10 have to recess for the afternoon without going any further
11 this afternoon. So I am going to allow you to go back to
12 your homes and families for the rest of the day. As I
13 say, there are certain matters that we have to take up,
14 that we got to take care of and it will be in the morning
15 before we get ready to resume and I don't want to keep you
16 in the jury room while we take care of these matters. So
17 we are going to recess for the rest of the afternoon and
18 I'm going to ask you to be back in the jury room please
19 tomorrow morning at 9:30 promptly at that time. Again, I
20 give you the same admonitions that I have given before.
21 Do not discuss the case with anyone and do not allow
22 anyone to discuss it with you and if anyone should
23 approach you and try to talk to you, get their name and
24 their description and I will take care of it. Also do not
25 read any news stories or listen to any broadcast media

1 reference this matter. Again you've got to decide this
 2 case based on what you hear in this court room. And when
 3 you leave, if you would, give your pads, for those of you
 4 who are taking notes, to the bailiff. He will take charge
 5 of those, no one will see them. They will be returned to
 6 you when you come back in the morning. With that I'm
 7 going to excuse you for the rest of the day and be back
 8 tomorrow at 9:30. Thank you.

9 (Jury excused for the evening 2:16 p.m.)

10 The Court: All right, I did indicate that I would
 11 allow the afternoon for the defendant to try and locate
 12 the witness who has a subpoena and has not appeared. But
 13 I am going to require in the morning, if he's not here to
 14 have a copy of the subpoena to go along with the proof of
 15 service. I'd like to reconvene in the morning at 9:00 so
 16 we'll be ready to start with the jury at 9:30. 9:15
 17 because we got a jury tomorrow at 9:00. So we'll start at
 18 9:15 with this case. Have the jury panel in the morning
 19 at 9:00. In the meantime, in order to try to be ready to
 20 go forward promptly in the morning, let me ask counsel
 21 about special request for charge on behalf of the State.
 22 Mr. Fata anything?

23 Mr. Fata: Nothing, Your Honor. I'm assuming. I've
 24 heard it, the Charge is Murder. Well, that's fine.

25 The Court: As far as the weapons, the general felony

1 charge with presumption of innocence, reasonable doubt
2 burden of proof of the course of this case Mr. McKnight
3 the Defendant not testifying that requires a charge.

4 Mr. McKnight: Yes sir.

5 The Court: What else are you requesting?

6 Mr. McKnight: Your Honor, with regard to your
7 request, specifically the malice in murder, we'd like that
8 charge articulated and request a charge.

9 The Court: Well I use the one out of Judge
10 Anderson's case citations. Look at Judge Anderson's charge
11 I'll more than likely use. Section 2-1 on page 35 of
12 Judge Anderson's charge. All right, what else Mr.
13 McKnight?

14 Mr. McKnight: I believe, well, I haven't consulted
15 Judge Anderson's book, but also the charge on Ervin's 31-5
16 regarding elements of murder. We believe that's a charge
17 that we would need.

18 The Court: Judge Anderson deals with malice and
19 required I don't have Judge Ervin's with me. I sometimes
20 use that, but Judge Anderson's also uses the, I think he
21 covers the murder charge I'll look at. I more than likely
22 will use Judge Anderson's charge. I think Judge Anderson's
23 book is a 2005 book, 2007 so we'll have the latest law on
24 the charge. That's what I'll use.

25 Mr. McKnight: Yes sir.

1 The Court: What else?

2 Mr. McKnight: Nothing further from the defense, Your
3 Honor.

4 The Court: No request for alibi.

5 Mr. McKnight: Yes, pardon me. Thank you, Your Honor,
6 could you please give that charge.

7 The Court: Wait a minute. You are requesting alibi
8 charge?

9 Mr. McKnight: Yes.

10 The Court: All right. I'll hear from you, Mr. Fata:

11 Mr. Fata: Your Honor there's no alibi that has been
12 set forth here. Alibi is I was somewhere else.

13 The Court: Why do you think Mr. McKnight that the
14 alibi charge is appropriate?

15 Mr. McKnight: I think the alibi charge is
16 appropriate Your Honor because there has been testimony
17 that Mr. McMillan was present at the door during the
18 shooting. We've had testimony just now from Mr. Burgess
19 that Mr. McMillan was at or in a vehicle that wasn't
20 anywhere near the door leaving the scene of the shooting.

21 The Court: The testimony of that witness was that he
22 was leaving after the two dead people were already on the
23 floor when he came out and so he saw Mr. McMillan. That's
24 my recollection of the testimony. That's when he saw Mr.
25 McMillan leaving, was after he saw the two people who are

1 the victims who are the victims in this case. That's when
2 he saw him leaving.

3 Mr. McKnight: Yes sir Your Honor. My recollection
4 of the testimony is different while he's there. Now he
5 didn't specify as to whether or not the decedent Mr. Hood
6 or Mr. Lee so ...

7* The Court: He didn't know anybody. If I recall he
8 couldn't remember anybody's name.

9 Mr. McKnight: Right I understand that. But
10 therefore there wasn't any testimony as to the victims.

11 The Court: All right, here's the way I view that.
12 I've listened very carefully and I anticipate this because
13 of the documents you handed up. The question is whether
14 there is a factual question for the jury when there is
15 sufficient evidence to warrant the question to the jury,
16 and whether there is a conflict of evidence of course it's
17 to the jury's determination they deserve some instruction
18 on it; however, to receive alibi instructions a defendant
19 must contend that, not only was he absent from the scene
20 at the time of the events, but he was at another specific
21 and identifiable place. I'm referring to a quotation that
22 I did some research out of South Carolina Juris Prudence.
23 To establish alibi, I think the controlling case has got
24 to be State vs. Robins, 275 SE2d 273. To establish an
25 alibi the defendant must show that he was at another

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1 specific place at the time the crime was committed thus
 2 making it impossible for him to have been at the scene of
 3 the crime. A charges to the defense of alibi is not
 4 required if the Defendant merely denies committing the
 5 criminal act. Alibi means elsewhere. The charge should
 6 be given when the defendant submits he could not have
 7 performed the criminal act because he was at another time
 8 and place at the time of its commission. By alibi the
 9 Defendant attempts to prove he was at a place that is so
 10 distant that his participation in the crime was
 11 impossible. I say all of this is coming from the case, a
 12 reported alibi which leaves it possible for the Defendant
 13 to be guilty is no alibi at all and that's what I think we
 14 have here. I don't think that there has any evidence on
 15 the record that he was other than at the scene of this
 16 crime and by scene I mean, the club and the curbage, the
 17 parking lot, buildings and things in the testimony in the
 18 record is the shots came from the parking lot and by your
 19 own testimony the testimony is that there were two
 20 victims, the two bodies in the door when he, the witness
 21 saw Mr. McMillan leaving, which would have been after the
 22 shooting. I just don't think there's any evidence that he
 23 was not at the scene and I decline to charge alibi.

24 Mr. McKnight: Yes sir.

25 The Court: All right, anything else? All right,

1 talk to me about arguments for just a minute so we can be
2 kind of prepared to go forward in the morning. Since the
3 State has, the Defense has presented any testimony, the
4 State would have the right to make closing argument. Do
5 you waive opening, Mr. Fata?

6 Mr. Fata: Yes sir.

7 The Court: All right, how much time will you need
8 tomorrow Mr. McKnight?

9 Mr. McKnight: Your Honor, about an hour.

10 The Court: I'm going to tell you like I tell my
11 preacher, anything over twenty minutes is lost. I don't
12 think that an hour, I don't think. An hour is too long
13 Mr. Prince, I don't think there's that much. I've tried
14 cases for two weeks where they haven't had arguments that
15 long.

16 Mr. McKnight: Do you know a Mr. Prince, because you
17 keep calling me Mr. Prince?

18 The Court: I know somebody named Cezar Prince. I'm
19 sorry. I apologize.

20 Mr. McKnight: Your Honor, here's my thought. We've
21 had more than ten, eleven, I mean a multitude of witnesses
22 and I need a chance to go through chronical what those
23 witnesses said and didn't say. And that's gonna take
24 about an hour and those aren't the witnesses I called.
25 Those are the witnesses the State called.

1 The Court: How much time do you need Mr. Fata?

2 Mr. Fata: Your Honor I agree with you and your
3 preacher that over twenty minutes is overkill. You really
4 do begin to --- I've seen them go to sleep before. So I
5 ask thirty minutes and I would like for you to knock on
6 the desk at thirty minutes.

7 The Court: Well, thirty is what I would think is
8 plenty, but I will concede and will allow both sides
9 thirty-five minutes. All right, then we'll be in recess
10 then until in the morning. We'll see what the status of
11 the witness is. Be prepared to meet me at 9:45 to see
12 what the status of the witness is. Court personnel at
13 9:00. Be in recess for the afternoon.

14 (Court recessed for evening)

15 The Court: We're back on the record with regard to
16 the matter of The State versus Jeremy McMillan. Mr.
17 McMillan is present and in the courtroom with his attorney
18 Mr. McKnight. The State is also present. Yesterday
19 afternoon we adjourned early to try, have a warrant
20 executed for a failure of a witness to appear. First of
21 all, Mr. McKnight, let me ask you, did you find a copy of
22 the subpoena?

23 Mr. McKnight: I have, Your Honor.

24 The Court: Could you hand it up please? All right
25 I'm going to give this to the Court Reporter. Madam

1 Reporter, I want you to attach it to that return that was
2 also filed and make it a court's exhibit. All right and
3 after a subpoena being issued by the Court and failure of
4 a witness to appear as required. This is a subpoena that
5 was issued for a witness yesterday afternoon I issued a
6 bench warrant for his arrest and that he be brought in at
7 this time. Mr. Fata I'd like to have testimony from the
8 officers involved in the search.

9 Mr. Fata: Yes sir and I think that's Captain
10 Dellinger of the Sheriff's Department, I mean excuse me,
11 Captain Mozingo. I don't think they mind Your Honor.

12 **Witness sworn in**

13 Mr. Fata: Do you want me to do it Your Honor?

14 The Court: I will.

15 Mr. Fata: All right.

16 **Questioning of Mr. Mozingo by The Court**

17 The Court: Mr. Mozingo, yesterday, first of all,
18 tell us your name.

19 A: Herbert Mozingo.

20 The Court: And where do you work Mr. Mozingo?

21 A: Lee County Sheriff's Office.

22 The Court: And yesterday afternoon this court had a
23 bench warrant issued for Ray Harrold who failed to appear
24 here as a result of a subpoena and that bench warrant was
25 given to Lee County Sheriff's Office to try to attempt to

1 serve and bring Mr. Harrold in. Have you made contact and
2 been able to arrest him?

3 A: No sir, we have not

4 The Court: Tell what efforts you made. Try to be
5 brief.

6 A: Yes sir. After receiving the bench warrant from the
7 Clerk of Court's office I took the warrant itself
8 over to our Central dispatch. Entered NCIC
9 #W355633350 that's his NCIC number. I then went back
10 to my office to call warrants division in Florence
11 and Steve Lambert, warrants division Horry County
12 informed both of them what we needed Mister - what's
13 the correct name?

14 The Court: Mr. Harrold.

15 A: Mr. Harold for. I faxed them a copy of the warrant.
16 In reference to Florence county, I found three
17 different addresses that he may be in Lake City,
18 Olanta and I gave those to Miss Amber, also Horry
19 County and I got in this morning at 8:45. I got on
20 the phone with both agencies. Florence county stated
21 they have nobody at any of the addresses. Ms.
22 Lambert informed me that he did not live or work at
23 Best Western.

24 The Court: All right sir. All right, The Court will
25 provide then that there was an effort to locate him to

1 arrest him to come testify in this matter. All right
2 thank you Mr. Mozingo. All right, Mr. McKnight anything
3 you want to put on record as far as this matter.

4 Mr. McKnight: Nothing.

5 The Court: All right so, All right The Court may
6 find that the law enforcement had made good faith effort
7 to locate the defendant, not the defendant, the witness
8 pursuant to the bench warrant for failure to appear. The
9 bench warrant will remain outstanding. The Court will
10 deal with that matter at such time as Mr. Harrold is
11 arrested under the bench warrant. Cannot allow that to
12 effect the trial in this matter and we'll move forward.
13 That being the case then Mr. McKnight ...

14 Mr. McKnight: Yes sir.

15 The Court: All right, is it going to be anything in
16 reply?

17 Mr. Fata: Nothing, Your Honor.

18 The Court: All right then counsel we will be in
19 recess until we get all the jurors here. Get all your
20 exhibits straight and be prepared to go forward with
21 arguments when we get the jury in. Is there anything else
22 important before we bring the jury in that you know of?

23 Mr. McKnight: Nothing for, other than, Your Honor
24 might grant my motion for the directed verdict.

25 The Court: Yeah, I will recognize the fact you've

1 raised it on record. The State has introduced no reply
2 and motions for directed verdict and that you for the
3 record, I will not put that on the record, but the jury,
4 you can rest on the record and I'll ask you any reply and
5 you say no.

6 Mr. McKnight: Your Honor this may be out of place,
7 but remember there was a motion to view the crime scene
8 that we had, you said you'd wait on early on?

9 The Court: Yes.

10 Mr. McKnight: Yes sir.

11 The Court: You brought that up and I think that,
12 I'll recognize that motion as having been made. I will
13 deny that motion.

14 Mr. McKnight: Yes sir.

15 The Court: I view in every situation that I know of
16 except confrontation cases viewing the crime scene would
17 be stretching it out.

18 Mr. McKnight: Yes sir.

19 The Court: Okay, All right counsel, let's get the
20 jury in and ya'll get everything together.

21 Mr. McKnight: Yes sir.

22 The Court: Thank you, you may proceed. All right
23 we're back on record regarding the matter of The State
24 versus Jeremy McMillan. Mr. McMillan is present in the
25 court with his counsel Mr. McKnight. The State is

1 represented by Mr. Fata. All right, bring the jury in
2 please.

3 (Jury enters the court room 9:37 a.m.)

4 The Court: All right, good morning ladies and
5 gentlemen. I thank you for your promptness in being back
6 here as we are now ready to proceed. I want to ask you
7 now, as I have everyday of the trial if anyone has tried
8 to contact you or talk to you about this matter in any
9 manner whatsoever. Okay, no response to that. The other
10 thing that I want to ask you if anyone has read, listened
11 to any broadcast media regarding this matter. Again, no
12 response as to that. All right, yesterday when we
13 adjourned, we were in the process of the Defendant's case
14 and at this time does the defense have any additional
15 testimony or evidence that he wishes to present, Mr.
16 McKnight?

17 Mr. McKnight: Thank you, good morning Your Honor.
18 It's at this time that the defense rest.

19 The Court: All right, the Defense rests. Is there
20 anything in reply?

21 Mr. Fata: Your Honor the State has nothing in reply.

22 The Court: All right ladies and gentlemen, that
23 means that you have heard all of the evidence in this case
24 and for the record, the court will also note that the
25 appropriate matters have been placed on the record. Now

1 you've heard all of the testimony that you will hear in
2 this matter. The only two things that remain to be done
3 is closing arguments from counsel and instructions
4 provided by the Court. I want to tell you now, as I did
5 when we first started this case, arguments of counsel will
6 not help with this case. It's simply the lawyer's views
7 of what they think the evidence shows, but you will decide
8 this case based on the evident that you have heard from
9 this witness stand and in the exhibits that have been
10 referenced. But the lawyers do have a right, and not only
11 a right, but a duty to give you their views of what they
12 think the evidence shows. When they have concluded their
13 closing arguments or summations to you, I will then
14 instruct you on the law in South Carolina as it pertains
15 to the facts of this case as you may find them to be and
16 then you will be allowed to retire to your jury room. You
17 will hear first from Mr. McKnight and then from Mr. Fata.

18 Mr. McKnight: Ladies and gentlemen of the jury, good
19 morning. You are in this jury and I thank you on behalf
20 of my client for your patience and your attentiveness. We
21 appreciate the sacrifice that you have made here today and
22 behalf of my client I want you to know that we appreciate
23 it. We've been together since Monday and here it is
24 Thursday and you all have heard a lot of witnesses. I
25 want to take the time and go over the facts and give you

1 something to think about. When you all stood on Monday
2 and raised your hands, and took that oath the Judge or the
3 Clerk read to you. You promised to do certain things. A
4 part of that promise was to take every piece of evidence
5 that you heard or you saw, take it, look at it, examine
6 it. That was your promise and I trust that you will do
7 so. As I told you, murder is perhaps our society's
8 greatest crime and that's what my client is charged with,
9 the crime of murder. That is the unlawful killing of a
10 human being with malice aforethought. Malice, he has two
11 counts of it. What does that mean, an unlawful killing?
12 Sometimes it can be justified if we're in self defense.
13 In this instance it has to be unlawful where he doesn't
14 have self defense or he's not, that person who is accused
15 of murder had malice and that they had the intent to
16 commit. Now, we heard from a lot of witnesses. Let's
17 consider now who we heard from. We heard first from the
18 stand, from Mr. Ishmeal Lane. There were certain things
19 that I told you you would hear or you wouldn't hear. I
20 told you that you'd hear from witnesses who had cut deals
21 in exchange for their testimony. You heard from witness
22 and the plea statements are in evidence. I told you that
23 there may have been witnesses that identified other
24 shooters or the possibility of other shooters. Toby
25 Fulmore from this stand there was another guy that he

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1 thought was the shooter, Bugaloo. And I also told you that
 2 law enforcement would not, or may have said that Jeremy
 3 McMillan was not at the scene of the crime and I did that.
 4 Terrance Burgess took the stand right here. That's what I
 5 told you. But understand my client didn't have to do or
 6 does not have to do anything. The burden of proof is on
 7 the State and it is beyond a reasonable doubt. My client
 8 sits before you here today, innocent with this innocence
 9 draped about on his shoulders like we told you. And the
 10 only person that can remove his innocence are you twelve
 11 people. Governor Sanford can't remove it. His Honor
 12 cannot remove it. President George W. Bush cannot remove
 13 it. You all can, but I submit to you there is not enough
 14 proof. What is beyond reasonable doubt. There have been
 15 several analogies but I sat down and I thought about what
 16 does it mean, what is supposed to mean to understand this.
 17 To those of us that live in the South, we understand one
 18 thing in common and that's football. And we know that a
 19 football field is made up of a hundred yards and they got
 20 an end zone on one end and they got an end zone on the
 21 other. Well, if we were in Civil Court all you gotta do
 22 is get the football across the fifty yard line. Okay, but
 23 in this world, the burden of proof is beyond a reasonable
 24 doubt. They can't kick a field goal. They can't get a
 25 safety. They have to make a touch down. I submit to you

1 ladies and gentlemen of this jury, this day, 2008 that
2 that has not been done in this trial. Why is that, you
3 may ask. First, you heard from Ishmeal Lane. He
4 identified the shooter as being 5 foot 8 inches tall. You
5 all have seen my client. He stood up in here twice.
6 That's a huge difference in height. And what's
7 interesting is what Ishmeal didn't tell you. Ishmeal says
8 that he was at the door and he saw the shooter. Did you
9 hear any mention that McEwen, that McEwen was shooting.
10 Why didn't he tell us that from the stand? What's most
11 important is and this is something I want to point out to
12 you. Mr. Fata indicated from his position that it looked
13 like this. That the shots came from here, well they did,
14 but when you're looking at it and this is perspective it
15 was like all of the shootings and all of the cars are
16 parked on the right. However, sometimes you've got to
17 turn things on their head like this and apply good old
18 common sense. The right comes from the left. Mr. Lane
19 says that the shots come from the left. Fair enough. He
20 says that. He said that in his statement. You then heard
21 from Toby Fulmore. Ladies and gentlemen of the jury his
22 Honor will instruct you that you can gauge the credibility
23 of the witness on the stand here and that's something
24 that's left to you to decide. Ask yourself, was that
25 young man credible. He's going to sit here and tell that

1 he didn't cut a deal when he was originally charged with
2 murder and now he's charged as an accessory. Ask
3 yourself, is that real. And beyond that, who has a bigger
4 dog in this fight that didn't shoot? What do you mean by
5 that Attorney McKnight. Who's brother was it that got
6 stabbed? Toby Fulmore's brother was the person stabbed.
7 So how is it that his associate of maybe six months prior
8 jumps out and screams OG call and say Toby Fulmore that
9 Jeremy McMillan had handled it for Toby. What's more
10 things you can ask, where's Toby's brother. Why isn't he
11 here?

12 Mr. Fata: Your Honor, a matter to take up with the
13 Court.

14 (Counsel approach Bench)

15 The Court: Objection is sustained.

16 Mr. McKnight: Where is, what is it with Toby all of a
17 sudden he decides I asked him that doesn't ring true, that
18 doesn't ring to be credible. You're going to have his
19 statement here ladies and gentlemen to take back to the
20 jury room with you to consider and when you do, you need
21 to look at it and beyond that, most telling of all, you're
22 going to have this photo lineup that he saw. That's his
23 signature. And that #4 indicates that the fourth person
24 he identifies as the shooter. Now, you realize he had to
25 get it right on the story. So he comes here today and

1 that's the first that I think that might have been the
 2 person that shot him. Doesn't sound right. In his
 3 statement that he wrote he indicates that Mr. McMillan had
 4 what kind of gun? A shot gun. Now do not be fooled by
 5 this of people saying they don't know the difference
 6 between shot gun. Dope dealers know two things, guns and
 7 dope and they know the difference between an AK 47 assault
 8 rifle and a shot gun and people know the difference,
 9 people around guns know the difference. A shot gun is
 10 just that, one shot gun put in pump action, it's a shot
 11 gun. Don't by into this long rifle talk and this sweet
 12 little language they want you to use to cloud the issue.
 13 The issue is what kind of gun did they allege my client
 14 had? A shot gun and nine millimeter. Well, we heard from
 15 the pathologist or forensic pathologist. None of the
 16 victims were killed by a shot gun. Beyond that Ladies and
 17 Gentlemen, the next person you heard from was Keith Rose.
 18 Keith Rose traveled all the way from Florida to testify
 19 today or testify the other day traveled all the way here
 20 in shackles and said oh no, no one's contacted me, no
 21 one's cut a deal with me, I don't get any credit for this.
 22 Then you heard him on the stand say yes admit I get credit
 23 for time cut. You also heard him say on the stand that
 24 he, and you also get to see in evidence he's been writing
 25 letters, where he's been wanting to come and testify, to

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1 testify is a time cut. Credibility ladies and gentlemen.
 2 And where does he say he was parked? He said he was
 3 parked right here. Well, guess what, the other Federal
 4 witness, Mr. Ham says he's parked where, right here.
 5 Well, a coincidence. Two Federally indicted witnesses
 6 facing multiple years in prison, are all of a sudden and
 7 conveniently at the place of a murder, in the same place
 8 at the same time. Right there, and the gun shots all come
 9 from what side? Right over there. The scriptures, Mark,
 10 Matthew, Luke and John, Chronicles, Crucifixion of Jesus
 11 Christ. One of them says Jesus has a robe, one says he
 12 had a crown of thorns, one doesn't even mention a robe or
 13 thorns at all. Now three men, the Gospel can tell you a
 14 different story. What does it say about the people who
 15 come in here with different motives and tell the same
 16 story the same way? They are not telling the truth.
 17 They're not. Now, we have the evidence, the custodian,
 18 the evidence collection person from SLED comes in where
 19 does he tell you all the AK 47 rounds come from? Over here
 20 on the left. Now remember the left because it is
 21 important. He also tells you that there also was 380,
 22 spent 380 shells there that someone had possibly been
 23 shooting a 380 handgun. And he also tells you about the
 24 45 and the pump action shot gun that Mr. McEwen or Mr.
 25 Lane used there too. But you know what's interesting he's

1 telling you four different weapons or five different
2 weapons of shots, but we can only account for four of
3 them. Who's shooting the other? Who's firing the other
4 380? That's an interesting question that you have to ask
5 and beyond that he uses the pictures that indicate, ladies
6 and gentlemen, that the bullets were all coming from the
7 left side. Left side. Left Side. There for you to
8 examine and the dowels are indicating that and the AK 47
9 shots come from the left side. Now beyond that, let's go
10 back to Mr. Ham. Don't by into this business that he
11 didn't know that he had a Rule 35 or bargain on his plea
12* agreement. He knew that. And don't you by this argument
13 that he and Keith Rose are going to make about oh Mr. Fata
14 is not going to call us and tell us and get us a plea
15 agreement. No, you know what happens? They going to sit
16 in their cell with their pencil and their paper and
17 they're going to write their little motion out to the
18 United States Attorney who in turn is going to call Mr.
19 Fata and he will say yeah he testified. And there's there
20 credit and there's their time cut. And Keith Rose told
21 you this ain't the dog and pony show and trial he's been
22 in. He's been testifying, why because he wants to go home
23 and misery loves company and I submit to you ladies and
24 gentlemen that he will say anything to make that 180 month
25 sentence he's got go down. That's what's going on.

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1 That's what's going on. Now, you also heard, ladies and
 2 gentlemen from the pathologist and what the pathologist
 3 told us is extremely important. She indicated to us that
 4 the wounds sustained by both victims came from where?
 5 From right side of their bodies and we heard, undisputed
 6 from all the witnesses that the victims were laying and
 7 facing outward. So how is it possible that shots from the
 8 left strike individuals facing out from on the right side?
 9 Particularly the victim Mr. Lee, who was first struck,
 10 like the doctor told you, in his right side. His right
 11 abdomen she described it. She indicated right here as
 12 indicated there and that the bullet traveled out the left
 13 side, came out the left nipple and was in his pocket.
 14 How's that possible Ladies and Gentlemen that Jeremy
 15 McMillan is shooting here and makes the bullets shoot from
 16 the left and they're facing them and then hits them in the
 17 right? Was it the spin of the bullet? Is he one of the
 18 guys from the movie who twists the gun and makes it spin
 19 around? That's physically impossible in this world. It
 20 cannot happen and I submit to you it did not happen that
 21 way. Because if my client's doing the shooting and even
 22 if he has a AK 47 in his hand, it could not have been the
 23 murder weapon, why, because they weren't in his, what we
 24 call, line of firing. It cannot happen.
 25 Now, beyond that, let's talk about his hair cut.

1 Who's the one person that every witness that testified
 2 about somebody's hairs, dreads and spiral, Toby Fulmore.
 3 Toby Fulmore. That's who they see. You had, you heard
 4 from my client, my client had one or two witnesses come in
 5 but most telling he had his barber come in. What did his
 6 barber tell you? I've been cutting his hair, I sure have
 7 and I cut it that night before, that night of, and he had
 8 a low temple tapered fade. Now, Mr. Fata has put this
 9 picture into evidence, but he didn't tell you, you know
 10 how Paul Harvey would tell you the rest of the story, he
 11 didn't tell you the rest of the story. Ask yourself, when
 12 was this picture taken? Is it possible for a person to
 13 grow that amount of hair in the three or four days it took
 14 for them to apprehend my client. That's a question for
 15 you to decide.

16 Also, ladies and gentlemen, you heard from Terrance
 17 Burgess and Mr. Fata tried to make him look like he was a
 18 criminal by enticing somebody about skipping school, but
 19 that's something that seventeen year olds do. What did he
 20 tell you? He saw Jeremy McMillan leaving the scene with
 21 no gun and Jeremy and then he told you Jeremy and them had
 22 to wait for the cars to move for him to get out the way.
 23 Let's use some good common sense. If somebody's shooting
 24 and getting away, who's the first person to get a head of
 25 everybody? The shooter or shooters. Now let's look at

1 law enforcement. We had Mr. Dellinger on the stand
2 talking about his investigation, which was mostly I don't
3 know. And then when you asked him who was in charge, what
4 did he tell you? Not me. Well who was in charge? Who's
5 responsible for stuff, not me, we're a team or it's SLED's
6 fault. Well this is SLED's investigation? But you heard
7 the SLED investigators, all of them, come up here and say
8 no, we support the Lee County Sheriff's Department.
9 That's who they support. Ask yourselves. Where are, most
10 importantly and I forgot this. Let's go back to Mr.
11 McEwen. Very passionate in his testimony. Remember he
12 compared himself to Samson, shielding people. Bullets
13 passing and striking another young lady that fell.
14 Where's that bullet out, where's that young lady. I mean
15 prosecution went to great lengths to show you that they
16 collected all the evidence, DNA, shell casings, bullets,
17 fragments, everything, pictures, lots of stuff. Where's
18 his bullet or did it just pass through his shirt or did it
19 somehow just vaporize and the bullet went by and it struck
20 her? Where is the evidence of beyond a reasonable doubt
21 required here today? You are left asking questions,
22 Ladies and Gentlemen, who was shooting the 380? How is it
23 possible that Jeremy McMillan if he's got an AK 47 and
24 stands to the left hits people in their right sides almost
25 behind the back. How is that possible? And that shot,

1 ladies and gentlemen, bullets don't hurt, they travel in
2 straight lines. That shot came that way, it went straight
3 that way, meaning that the an AK 47 shooter had to be over
4 here, had to be. Especially the one that killed Tremaine
5 Lee. Now you've got uncontroverted testimony saying my
6 client stands. How was it that everybody that died dies
7 from injuries to the right side. It's not possible and if
8 you've got to ask that question Ladies and Gentlemen,
9 you've got reasonable doubt. Reasonable doubt is like
10 when you iron that shirt either to go to work, got to
11 church or just look good and you know when you about to
12 run out the house and you say oops did I unplug the iron.
13 That's reasonable doubt. That's what you have, that's
14 what you have.

15 Beyond that, you see Mr. McEwen admitted that I was
16 shooting and what did he tell you. I was trying to hit
17 the people that killed by friend and I was standing right
18 in front of him and I had a shot gun and he had his what?
19 His baby. He called it his baby. And I only put
20 Winchester's in. How come he ain't shoot Jeremy? Is he
21 that bad of a shot? He claims he was shooting at people
22 that were shooting at him and if they were right there how
23 did he miss with a shotgun and a 45. And he claims, you
24 know, he went through the whole thing, I'm certified and I
25 got a license to carry and I can do this that and the

1 other. That's what he said, how come he didn't shoot him.
2 And he went to great lengths to tell his story and to
3 dramatize it and to sit here and go "How you doing Mr.
4 McMillan" and to tell him he's 5-8. See they wanted to
5 tell the story the same and they did. The problem is the
6 facts don't match to what happened. It does not add up.
7 Five eight, dreads, the person who was five eight with
8 dreads was on the stand. They didn't charge him with
9 murder. They did, but they let him off. They're trying
10 to pin it all on that fellow right there.

11 Now, his Honor will tell you some things. He has a
12 right to sit there, innocent and not testify. You must
13 not hold that against him. You promised that you would
14 uphold the law, that you would follow the law as his Honor
15 will soon give to you. You cannot hold that against him.
16 He doesn't have to say anything. All the talking, all the
17 showing and all the proving has to come from right here.
18 The witnesses they put it right there. That's where it's
19 got to come from. No police evidence. He doesn't have to
20 show you anything. He doesn't have to call his barber but
21 he did. He didn't have to call, this other thing, what
22 business is it does it do Terrance Burgess to come in
23 here, sit around and tell you that he didn't see Jeremy
24 shooting or that he didn't see mostly importantly with AK
25 47. Saw him leaving behind the crowd. Now, Mr. McEwen

1 also told you that Toby Fulmore told him what? It's on
2 because he slammed him on the table. I tried to break the
3 table with him. That's what he said. And he wasn't even
4 an armed security guard. Where are those witnesses? The
5 people that were trained to carry firearms as law
6 enforcement where are they? How come we haven't heard
7 from them? Why? And beyond that, how come we haven't
8 heard from other investigators of the Lee County Sheriff's
9 Department? They put up two people from Lee County. You
10 got two dead people and nine others shot and they put up
11 two people. Those were the only two that worked on it?
12 Where's the officer when Captain Mozingo got there, who
13 did he tell to tape off the crime scene? Who sequestered
14 the witnesses. Who went to the hospital to talk to the
15 other shot people? If he did, he needs a raise. He's
16 superman. Where is he? This court requires proof, ladies
17 and gentlemen, not a sham, not a rush, not clouding of the
18 issues to murk it up and make you angry with buff words so
19 that you can go back there and do something other than
20 justice. That's not what we're here for today. They
21 come, they bring in the pathologist and I don't know which
22 more of a compelling witness than, oh and the other thing,
23 the gun shot expert. You know, Mr. Fata, you know he
24 asked her the same question, AK 47, an AK 47, an AK 47, no
25 I can't tell you that. There are several weapons that

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1 fire a 7.62 round. Where is it? I guess, you know, Mr.
2 Dellinger by himself couldn't find any or we don't know
3 who's responsible for it because nobody claims it.

4 Ladies and gentlemen of the jury, you're going to
5 have to render a verdict that you're going to have to live
6 with beyond the jury room. You're going to have to live
7 with it beyond the time that you get home. Beyond the
8 time you're home eating Sunday dinner with your kids,
9 wife, family. You're going to have to live with this
10 verdict forever. It's going to stay with you, what you
11 speak is going to echo forever. Are you going to ask
12 yourself are you comfortable coming back here with a
13 guilty verdict based upon what you've heard here today.
14 Are you? Would you be comfortable wit the guilty verdict
15 and maybe running into Mr. McMillan one day at the grocery
16 store, would you be comfortable with that? You're going
17 to have to speak with certainty ladies and gentlemen and
18 you're going to have to speak it loud. We all know about
19 words. Its words that brought the universe into existence
20 and it's words that can bring my client down. What are you
21 twelve persons going to say. Are you going to buy into the
22 speculation and the innuendos and out right lies of some
23 witnesses here, who all say to you the same thing, same
24 time, under the same circumstances of being in Federal
25 custody? And we see this, and it happened, we know it

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1 happened even though it happened it hit him on the side
2 that it couldn't hit him. It's not true ladies and
3 gentlemen, you can't buy that and I ask you not to. When
4 you go in the jury room, the jury room is the one
5 equalizing area. Princes aren't princes there anymore.
6 Doctors aren't doctors anymore, everybody there is on a
7 equal footing and nobody's voice will ring louder than the
8 others. Nobody's opinion matters more than the other, so
9 if you feel something and if you feel like it's not
10 guilty, don't you be persuaded, and don't' you, that's
11 your opinion and you don't have to. You hold on to it. If
12 you're soft spoken, fine. But hold on to it and don't be,
13 if you're soft spoken ... Hold on to your conviction and
14 don't be suade.

15 Now, there's some other evidence missing too. What
16 about that truck that Mr. McEwen told us about? The truck
17 at McLeod Hospital, the SUV they found. They took a whole
18 lot of pictures. Where is the picture of that truck?
19 Where are the rounds of the bullets from that truck?
20 Where is the picture where they put the wooden dowel
21 through it to indicate the trajectory of the bullet?
22 Where is that? What kind of gun did that? Who did that
23 shooting? Now, if Jeremy had a AK 47 and gave Toby the
24 weapon it was hot, how come he never gave it to Toby, if
25 that was the plan. How did these - that's something you

1 got to consider. Ladies and gentlemen, this, and I'm not
 2 minimizing this. This is a tragic situation. We got two
 3 dead people and there is no way to minimize that. And I'm
 4 not going to brush over that, gloss over that, but
 5 somebody - two mothers are without their sons and that sad
 6 and my heart goes out to them, but I'm not going to - as
 7 bad as it is, as wrong as it is, as tragic as it is it is
 8 unfair, it's even more tragic and unfair for you all to
 9 bring back a verdict of guilty for a person to whom facts
 10 don't fit that particular verdict. The evidence speaks
 11 loud. I didn't do, this isn't my doing. I didn't take
 12 this picture here and I didn't draw this fancy diagram.
 13 These aren't my witnesses, or my client's witnesses to
 14 tell you what happened. They came from the prosecution
 15 Mr. Fata and his office. They called the witnesses, they
 16 called the pathologist with the injuries to the right
 17 side, they called these persons of ill repute here who
 18 tell you that my client did the shooting, but the facts
 19 don't add up to it. Ladies and gentlemen, Webster's
 20 dictionary sums up the English language and I think it's
 21 an excellent illustration about what we have here today,
 22 but it's got things in here that we don't have. So, let
 23 me take it out. Like the accuracy in the testimony, the
 24 accuracy in matching the facts. What else? Oh
 25 believability. You don't believe Toby Fulmore who cut a

1 deal to save his life and Keith Rose who cut a deal to get
2 his time cut and Demetrius Ham who did the same thing?
3 Credibility, you going to believe the testimony of
4 witnesses who have demonstrated, provided their testimony
5 that that they don't know the difference in guns when
6 their life has been circled around the trafficking of
7 narcotics, that's what you're going to believe? Look at
8 the facts. We're missing certain facts, like who's 380
9 that was or where that AK 47 or 7.62 weapon that killed
10 the victims in this case? Or the other facts about the
11 car that we don't know. What you're left with Ladies and
12 Gentlemen are lots of speculations, innuendos, but most
13 important two words, my client is not guilty. Thank you.

14 The Court: Mr. Fata.

15 Mr. Fata: Madam Forelady. Ladies and Gentlemen of
16 the jury. Good morning. Again, on behalf of the State, I
17 want to thank you for your attention and presence. As Mr.
18 McKnight said I'm sure there are other places you'd rather
19 be then spending four days here. Rest assured your job
20 today or this week is very important. One of the most
21 important things a citizen can do in the State. The Lee
22 County Sheriff's office, the Solicitor's office thank you
23 for that service. I want to start out by telling you that
24 you may have a question, everybody in this court room is a
25 professional of some kind. Either a lawyer or judge or

1 police officers, talked about certified police officers or
 2 an expert of some kind in weaponry or some kind of test.
 3 We're just citizens. You got to work every day, the way
 4 you come home and take care of families and we go to
 5 church on Sunday, we have friends and associates and so
 6 forth, why are we here trying to decide what the facts of
 7 this case are and that's what we're doing. The reason
 8 that the law, that have all this experience is because the
 9 law wants you to apply your common sense to what's been
 10 presented to you. Massive material, eighty something
 11 exhibits. Several witnesses testified, but each of you
 12 bring to this court room life experiences, common sense,
 13 people you associate with, clubs that you're a member of,
 14 school that you attend, the church that you go to,
 15 organizations and everything, bring you and give you
 16 life's experiences to hear this case. They tell you, they
 17 allow you to take those experiences and apply them to the
 18 fact situation, the evidence and that's what the law wants
 19 you to do, is apply your common sense to what you heard
 20 today, or this week and come up with a verdict.

21 Now, Mr. McKnight harped on reasonable doubt. He
 22 says Oh I think one of his things where is the gun?
 23 That's where you use your common sense. You think a
 24 criminal is going to come up when the investigation starts
 25 and says Oh, by the way officer, here's the gun? Maybe it

1 matches the bullets that I fired to these two people.
 2 Obviously no, they not going to do that. That's not human
 3 nature. That gun is gone somewhere. Destroyed. It may
 4 be in Lynchburg, Pee Dee River, in the swamp somewhere,
 5 but that's an example of using your common sense. You
 6 can't say oh we don't have the gun, reasonable doubt, not
 7 guilty. You have to take this body of evidence, eighty
 8 something exhibits, and the witnesses who testified and
 9 take it as a whole and look at it and decide, using your
 10 common sense what does that tell you. That tells you
 11 Jeremy McMillan did this? I think it does. That's your
 12 decision, not my decision. I'm asking you to use your
 13 common sense and your life's experiences and look at all
 14 of the evidence. Look at all the evidence. If one piece
 15 of evidence would make a difference one way or the other
 16 well then why do we pull everything out. We pull
 17 everything out because we are telling you a story. We're
 18 telling you what happened over time on this date April 29,
 19 2006. That being said, let me tell you about the law.
 20 The charges are murder and use of a weapon during a crime
 21 of violence. Now, Your Honor's going to tell you what
 22 the law is, but just a thumbnail sketch, Murder is defined
 23 in South Carolina, by the Statute, murder is the killing
 24 of any person with malice aforethought either expressed or
 25 implied. What does that mean? Well, malice is the evil

1 heart. It's evil. It's the intentionally doing the evil
2 thing. And doing that and wanting to do that evil thing,
3 not just by accident or it just happened. It's you have,
4 you're mad and you have that hatred in your heart and you
5 intend to act on that hatred. Aforethought is holding
6 that hatred, that evil in your heart prior to the act.
7 Now, it doesn't have to be days and weeks or months you
8 don't have to sit down and right out a plan or create some
9 scheme that plan or that intent to do the act of that
10 malice could be instantaneous. I mean it could take, just
11 like that. Just in the time you pull the trigger of that
12 AK 47 and unleash that bullet into the bodies of Patrick
13 Hood and Tremaine Lee. It can be implied, it can be
14 expressed malice. In other words, I intend to do that,
15 you expressed it someway. It can be implied from your
16 action. From picking up an AK 47 and shooting two people,
17 letting bullets loose and striking their lives. But His
18 Honor is going to tell you what the law is and you take
19 what he tells you. The use of a weapon during a violent
20 crime is simply what it says it is. Murder in this State
21 is a violent crime. If you use that weapon, a AK 47
22 during the commission of that crime that's use of a weapon
23 during the crime of violence. Again, his honor is going
24 to tell you what the law is and you take it as he gives it
25 to you. Now, before I get into the facts of this case, I

1 want you to remember one thing. We're not dealing with
2 choir boys and girls here. My mama always told me that
3 nothing good happens after midnight. Nothing good happens
4 and I believe nothing good happens after midnight
5 especially at a club where you drinking, where you got
6 girls and boys, young men, young women associating packed
7 into a dance floor like we have here. Loud music going and
8 so forth. Nothing good is going to happen there and it's
9 these people who are cream of the crop aren't going to be
10 going there. You just don't have them there. You got
11 what you got. I think Ishmeal Lane says where there ain't
12 no angels there. And there weren't any angels there.
13 There wasn't anybody that deserved to be killed either.
14 This all started about a month prior to this incident
15 itself on April 29, 2006. You remember Toby Fulmore says
16 that we were at Mr. C's and an argument started between
17 Tyce Rose, who was from St. John's, we have the St. John's
18 Community, Olanta, Lake City Community. Tyce was talking
19 with, I believe it was talking with McMillan's girlfriend.
20 Anyway McMillan was mad. McMillan goes out to the car and
21 he gets his gun I'm going to get this guy. The bouncers
22 and Fulmore get in between, he calms down and everybody
23 goes their way. What happened the next day? McMillan
24 tells Fulmore I shot up that guy's house and car last
25 night. You ever have a fever blister, you get that fever

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1 blister on your lip and you pick at it a little bit and it
 2 festers. You pick at it a little bit more at it festers,
 3 festers, your lip gets a little bit bigger. That's what
 4 this case. A member of the St. John's community had
 5 trespassed on a member of the Lake City, Olanta. And
 6 McMillan was going to get revenge. On the night of the
 7 29th, April 29th, what does he do? He persuaders Fulmore
 8 to go with him. They pick up this guy Bugaloo, but what
 9 does McMillan put in the car? He puts in his two pistols
 10 and his long gun. His long gun, shot gun, whatever. A
 11 long gun, shotgun, whatever, a long gun. Nobody in this
 12 case was shot with a shot gun. A long gun, meaning a
 13 rifle. They go to the club, they're in the club on the
 14 dance floor and a fight ensues. A stabbing occurs.
 15 Fulmore and his uncle are trying to get his brother out of
 16 the club because he's wounded and they're going to rush
 17 him to the hospital. He's bleeding bad. They get him out
 18 of the club and into the car, but they leave, McMillan
 19 they throw McMillan the keys to the truck and what does he
 20 see? He sees McMillan in front of the club and I don't
 21 care which way you look at this thing, upside down,
 22 whether this way or that way, it's the same. They see the
 23 gun, right here, Fulmore does, shoot one round, run up and
 24 shoot two other rounds in the doorway as they are pulling
 25 out of the driveway with the long gun. The next day, the

1 next day, McMillan comes to Fulmore and says I took care
2 of it on the OG, which is street slang for Old Gangster,
3 or Old Gang whatever, a code. Why would he tell Fulmore
4 that he took care of it on the OG? He had to tell Fulmore
5 what went on because Fulmore didn't know. Fulmore was
6 taking his brother to the doctor. He gives Fulmore the
7 guns and says put them in the trunk of your car, or put
8 them, hide them, and he puts them in the trunk of the car.
9 The next day the 30th he comes back and says I need the
10 guns back. He takes the two pistols. Well by this time
11 you know, this officer from Lee County the police are
12 investigating Florence all the agents are involved, Sumter
13 County units are involved, SLED's involved, Lee County
14 Sheriff's office is involved. McMillan knows that they
15 are hot on his trail. He goes back and moves that gun.
16 He moves that rifle and puts it somewhere where it can't
17 be found. What about, what about Ishmeal Lane? Mr. Lane
18 is running the club, he is the individual that sets up the
19 party and he says, he has outside security armed and he
20 has inside security so he's got, he's got both places
21 covered. Why did you need all that security. What does he
22 say? At 2:45 I post up, he says I post up right here, by
23 the office. At exactly at 2:45 I go out this door, I come
24 around and I go in here, tell them to close it. I pick up
25 my money box and remember, you see this door? It's a

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1 double door and you can see it in the picture. This door
2 was opened right here, this door was closed. The only way
3 in and out is this way. Because the guy collecting money
4 is right here. I picked up my money, I heard a commotion
5 in here. I go out and what do I see? He says I saw
6 Jeremy McMillan with a long gun, shooting into the club.
7 From over at this direction. Over this direction you're
8 looking out from the left, you looking in from the right.
9 He says I saw him, over here, firing into the club, in the
10 doorway and I saw Patrick Hood falling. What did you do.
11 I don't know I would have got out of there. He did what I
12 would have done. He ran out the Club. But on the 30th,
13 April 30th the next day, what does he do? He cooperates
14 with the police. He picks out Jeremy McMillan out of the
15 photo lineup. What does he say. He twist or dreads, look
16 at the picture. Twist or dreads, short dreads or twists.
17 He picked him out of this picture and said the man doing
18 the shooting had twist or dreads and there it is. You can
19 look at this. This is exhibit number 77. And they even
20 asked him the next day, the 30th. He had no reason to
21 lie. He had no reason to lie. You know Mr. McMillan's
22 lawyer well so and so had a deal and he had a deal and
23 we're going to talk about that in just a minute, but he
24 never asked Ishmeal Lane if he had a deal, but just like
25 everybody else that testified, Ishmeal Lane had no reason

1 to lie and nobody else did either. Keith Rose and
2 Demetrius Ham both in Federal prison, both were at the
3 club that night, both were there when he decided to start
4 shooting. Take one at a time. Keith Rose, says I was right
5 in here around this area. I saw the jeep and there's the
6 jeep right there. And he says I was sitting there waiting
7 on this lady her and I are going to get together and I see
8 these people being bum rushed out of the club. I see
9 Jeremy McMillan go to the truck or the Jeep parked there
10 popped the back and get a long gun. Go up to the front of
11 the club and fire into the club from over here, from over
12 here. Firing into the club. I see Hood fall and I think
13 he said he saw Lee fall inside the club. Demetrius Ham,
14 he says I was inside the club when, you know he says I'm a
15 d.j. and I'm inside the club when this stuff happened.
16 When the fight occurred over here. I'm trying to get out
17 of there. He's doing the same thing I would have done.
18 I'm trying to get out of there. I'm getting out of there.
19 He gets out and he gets to his truck and his truck is
20 parked, I apologize if I'm in anybody's way, right in
21 here. And he says, he says I watched McMillan go to his
22 car, get a long gun and begin to fire into the club. He
23 fired several shots into the club, but I'm getting out of
24 there. I'm getting out of there. The next day, Keith
25 Rose comes to the police department, comes to the

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1 Sheriff's office and gives a statement and says I was
2 there, this is what I saw. And I want to take care of
3 this stuff about ---and the defense can say well Toby
4 Fulmore said I have pled guilty, no promises, I pled
5 guilty to accessory after the fact, no promises have been
6 made to me, by the Solicitor's Office, the Sheriff's
7 Department or anybody, I can get up to thirty years and I
8 have no promises made to me. You had Keith Rose and
9 Demetrius Hamm who are both Federal prisoners, not State
10 prisoners, Federal prisoners and the defense exhibits
11 number 3 and 6 are their Federal plea agreements, not
12 State plea agreements, Federal plea agreements. I asked
13 both of them have I promised you anything? No. Have I
14 told you that I'm going to call the US Attorney for you?
15 No. Has anybody, the Sheriff's office, my office, has
16 anyone said that we're going to help you with these
17 charges? No. Both of them answered no. Now I want you to
18 look at these. Nowhere in there does any State official's
19 name appear. Now, you will recall when I asked have you
20 been prepped by the defense attorney? He said yes he
21 threatened to call either the US Attorney or an FBI Agent
22 or the DEA Agent and get my sentence increased, or get my
23 plea deal voided. And the man continued to testify in the
24 face of a threat by a defense attorney. If in fact, he
25 was testifying for any other reason other than to tell the

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1 truth, that would make him, that would make him not
2 testify. That would have been something that would have
3 been considered detrimental to the witness. But he
4 testified anyway. One other thing, the defense attorney
5 said do you have a Rule 35 and do you have a Rule 51 in
6 your plea agreement? I don't know that is. Well, I'm an
7 attorney, I don't know what that is. It's all in the
8 Federal system. I don't know what that is. Now, we've got
9 Ishmeal Lane, Toby Fulmore, Keith Rose, Demetrius Ham,
10 they said they saw Jeremy McMillan with a long gun in this
11 area right over there beside that firing into the doorway.
12 Let's talk about Nathaniel McEwen. Probably the hero in
13 this case, but you have to think about it. What did he
14 do? He's at the front door. He says gun shots were
15 coming into the doorway, I see my friend Patrick Hood out
16 here. I'm pushing people back and remember this what he
17 said too, remember Tremaine Lee was bent over, remember
18 that? Tremaine Lee gets hit, he says I go back down on my
19 hands and knees, I go to my car and I get my shot gun. I
20 shoot it a couple of times, I get exhibit number 87, my 45
21 and I begin to shoot. I'm over here, right here, his car
22 was here, and I'm over here and I'm shooting back this
23 way. See, he marked where he was and I'm shooting back.
24 Do you think if I called Keith Rose in this case --- do
25 you think that when Jeremy McMillan attacked the front

1 door of that club with his AK 47, long gun, do you think
2 he was going to stop? Or do you think he was going or do
3 you think he's going to go in and clean house? And get
4 the St. John's guys? But for the return of fire, that's
5 exactly what he might have done. That's exactly what he
6 might have done. And I believe, and I really believe
7 this, Nathaniel McEwen saved the day or there may have
8 been more bodies. But what does he say? I looked that
9 man, Jeremy McMillan, right there, eye to eye and I saw
10 him shot the gun. He said, I'm in the doorway right here
11 and I saw him shooting the gun. I saw him shooting the
12 gun. What deal does he have? There's no deal. He has no
13 deal. He's got no charges hanging over him. He's got
14 nothing, no deal. He's here like everybody else, telling
15 you what he saw. Those are the facts that you've got.
16 Now, what does the evidence, you've got Toby Fulmore,
17 Ishmeal Lane, Keith Rose, Demetrius Ham and Nathaniel
18 McEwen. Eyeball McMillan and said he's got a long gun and
19 he's shooting in the door.

20 Now let's look at some of the evidence. You'll have
21 this in the jury room, exhibit number 82. This is the
22 diagram drawn by Agent Green where he picked up the
23 cartridge cases at the scene. Now, up here in the corner
24 he says one through ten are 380's and they're all in this
25 area. Eleven through sixteen are 45's and they're over

1 here. There's where McEwen is. There's a couple of shot
2 gun shells and nineteen which is right here. Twenty two
3 through twenty six was right here are the 762 rounds and
4 they are right here where everybody says McMillan was
5 shooting. They are right there. One here, there's two
6 right here and there's three right here. Looks like he's
7 advancing. Bam, bam, bam, bam and then he's advancing
8 into the club because he's beyond this sidewalk. He's
9 managed to get on the sidewalk. But for Nathaniel McEwen
10 firing back, he was advancing into the door. This is
11 where the spinning rounds were found. But as McEwen is
12 firing in this direction these people hauling out of here.
13 Everybody said he's parked up here, even Burgess. His
14 witness said it. I didn't see him all night and I didn't
15 know he was there until the shooting and Burgess didn't
16 even know anybody was shooting. But he does know one
17 thing, he sees McMillan get into a car. I submit to you
18 that these 380's, he's out of 762s and he's returning fire
19 380s which is a hand gun. As a SLED agent, Suzanne Cromer
20 testified to, is a hand gun like this, but a little
21 smaller. Okay. Now, and that's what it is. And you have
22 these photographs in evidence. These are what I think are
23 the most important. These are the photographs of the door
24 with the dowell stick that the SLED Agent used to show the
25 angle that the bullets came into the door. And if you'll

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1 look at the dowel sticks, this is the door that's closed.
2 You see that the dowell sticks pointing out this way,
3 which means the bullet came in from over this sidewalk.
4 That's State's exhibit number thirty. Again, here's
5 another one. State's exhibit number twenty nine shows the
6 dowel sticks coming off at this angle. Remember, this
7 door's closed. Another one, State's exhibit 33 shows
8 angle, see the angle? Angle is this way, coming across
9 this way. This is State's exhibit number twenty one.
10 This is the other door. This is this door that was open.
11 The dowell stick is like this where it comes through and
12 it hits the frame. And I won't go through each one of
13 these, you can look at them back in the jury room, but the
14 dowel sticks in this case, all indicate that the rounds
15 are coming into the club in this fashion right here. With
16 a 762 round here, where Jeremy McMillan had, firing into
17 the club. Now let's talk about Dr. Ross and Mr. McKnight
18 tells you with bullets coming from this direction, how did
19 somebody get shot on this side? Think about it. Have you
20 ever had your tire blow? What do you do? You look at it
21 don't you? Any kind of loud noise. The alarm clock goes
22 off in the morning, you look at the alarm clock. Any
23 noise that's unexpected, the natural tendency of a person
24 is to turn toward that noise. Especially when that noise
25 sounds like gunshots. Mr. Hood gets shot and the Jeep was

1 right here. The bullet goes up this way, upward fashion.
2 The bullet goes off and he does this way. Remember that,
3 just that one side. He turns in the direction of the fire
4 what's the natural thing to do, turn to the direction of
5 the noise and duck. The gun goes off turns and ducks and
6 the bullets hit him here. Tremaine Lee, Mr. Lee remember?
7 Was bent over, remember Nathaniel McEwen's testimony.
8 He's bent down, gun goes off, now he turns into the
9 direction of the fire, gun going off and tries to dive
10 away and caught it right here in the side and the bullets
11 goes this way. Unfortunately, if Mr. Lee had not ducked,
12 moved out the way that bullet may have just gone right
13 through his side and he might be alive today but in an
14 effort to protect himself he probably got killed. Again,
15 use your common sense, your life experience. A loud
16 noise and you turn to it. If it sounds like a dangerous
17 loud noise you're going to duck. Exhibits eighty and
18 seventy eight are very important. And Dr. Ross classified
19 these crimes or these killings as homicides because of no
20 stippling around the room, it couldn't be suicide or
21 things like that. We talked about this and what he did.
22 All the GSR stuff, and the lady that testified about DNA
23 and that sort of stuff, the only reason why I did that was
24 to tell you that law enforcement was trying to get
25 evidence. Sometimes the GSR are of no value, the DNA are

1 of no value, there were no fingerprints, it's not a case
2 you get fingerprints. Footprints, its not a case you get
3 footprints. I really need to tell you about Suzanne
4 Crawford and the ammunition. These are 762's, I put them
5 in these little plastic bags so that you will have them
6 and they wouldn't get loose. All of them are made by
7 Wolfe firearms. And what did she say Wolfe firearms are a
8 cooper coated steel jacketed bullet. All fired by the
9 same gun, all fired where everybody says that McMillan was
10 shooting from. Items, State's exhibit 58 and 59 are
11 bullet fragments from the two decedents. This one is
12 almost whole. And what is it? It is a cooper coated,
13 steel clad bullet, Consistent with Wolfe ammunition. The
14 fragments taken from the body of Mr. Hood are what?
15 Cooper coated steel clad bullets. Consistent with the
16 ammunition. We also got the other evidence in which are
17 exhibits eighty nine, eighty five and thirty eight. All
18 of those are 45 rounds, the 380 rounds that were found.
19 Now, what did she say. You cannot shoot a 380 in a 45.
20 Cannot shoot 45 in a 380. You cannot shoot 762s, look at
21 the top of this. You can't shoot 762s in a 45 or a 380.
22 It had to be a long gun. A AK 47 or whatever she said it
23 was. Look at that evidence. Ladies and gentlemen there
24 is sufficient evidence here to prove that Jeremy McMillan
25 shot Patrick Hood, shot Tremaine Lee, murdered them on

1 April 29, 2006. Please look at all the evidence. Go
 2 through the photographs, look at the diagrams, this
 3 diagram here. These will be back in the jury room with
 4 you. Mr. McKnight did it this way, fine, talk about it
 5 this way. Put it this way, it's the same. I don't care
 6 which way you look at this board, the bullets came from
 7 over here, gun shot came from over here. The gunshot came
 8 from over here. If you turn it the other way, the gun
 9 shots came from over here, the gun shots came from over
 10 here. Thank you for your attention. In just a minute His
 11 Honor is going to give you the charge on the law, telling
 12 you what the law is. He's going to tell you a little bit
 13 about common sense and so forth. Thank you for your
 14 attention. I know this has been a little difficult four
 15 days. Thank you for your attention.

16 The Court: Gather all the exhibits, Mr. Fata.

17 Mr. Fata: Yes, sir. I will.

18 The Court: All right ladies and gentlemen of the
 19 jury, now comes my instructions on the law, but before I
 20 do so, if anyone needs a break I'll be glad to do that but
 21 if everyone thinks they are comfortable enough to stay
 22 until the charge and send you to your jury room it will
 23 take about thirty minutes. Is everybody comfortable or do
 24 you need to take a break. Does anybody need to take a
 25 break now. All right. Thank you.

1 The Court: All right. Ladies and gentlemen of the
2 jury please give me your attention. You have heard the
3 presentation of the evidence in this case by Solicitor
4 Fata on behalf of the State and Mr. McKnight for the
5 Defendant and I thank you for that. It now becomes the
6 duty of the trial judge under the Constitution of this
7 State to charge and instruct you on the law in this case.
8 And it is your duty as a juror to accept the law as I now
9 charge, as jurors, you exclusively get to decide all the
10 issues and facts in this case and for that purpose to
11 determine the weight or the truth of the evidence
12 presented. Further both the State and the Defendant have
13 a right and expect that you will conscientiously consider
14 and evaluate the evidence in this case and apply the law
15 thereto the end that both the State and the Defendant will
16 receive and obtain a fair and impartial trial. Now when I
17 use the word Defendant, I refer, of course, to Mr. Jeremy
18 McMillan. The State of South Carolina by the bill of
19 indictment in this case, charges the Defendant with three
20 offenses. Two counts of murder and one count of
21 possession of a weapon during the crimes of violence. I'm
22 going to read in part from the I indictment, count one
23 charges that Mr. McMillan did in Lee County on or about
24 April 29, 2006 violate South Carolina law in that he did
25 feloniously, willfully and with malice aforethought kill

1 one Patrick Hood by means of shooting him and Mr. Hood
2 died as a result. The charge is murder. The second
3 indictment is that Mr. McMillan did in Lee County on or
4 about April 29, 2006 violate South Carolina law as amended
5 in that he did with malice and aforethought killed one
6 Tremaine Lee by means of shooting and that Mr. Lee died as
7 a proximate result. Those are the two counts of murder.
8 There is a third count that Mr. McMillan did in Lee County
9 on that day have in his possession and visibly display a
10 firearm during the commission of a violent crime,
11 specifically murder and that is an additional charge of
12 possession of a weapon during the commission of a violent
13 crime. To these charges and to this indictment the
14 Defendant, Mr. McMillan, has entered a plea of not guilty.
15 This plea of not guilty by the Defendant places the burden
16 of proof on the State to prove the guilt of the Defendant
17 beyond a reasonable doubt before you, the jury, can find
18 the Defendant guilty. Again, let me say that again. This
19 plea of not guilty by the Defendant, places the burden of
20 proof on the State to prove by the evidence guilty as
21 beyond a reasonable doubt before you the jury can find the
22 Defendant guilty. The Defendant Mr. McMillan is presumed
23 in the law innocent of the charges contained in the
24 indictment. It is a cardinal and fundamental rule of law
25 that irrespective of the enormity of the charges against

1 him will always be presumed innocent of the charges for
 2 which he is indicted. Unless and until the guilt of the
 3 Defendant has been proven by evidence that satisfies you,
 4 the jury of the guilt of the Defendant beyond a reasonable
 5 doubt. The presumption of innocence is not just a mere
 6 legal theory, it's not just a legal phrase. The
 7 presumption of innocence is a substantial right. Where
 8 the accused is entitled. Our Supreme Court has declared
 9 that the presumption of innocence is like a robe of
 10 righteousness placed about the shoulders of a Defendant
 11 and it remains with him and assigns to him that until the
 12 presumptive robe of righteousness has been stripped off
 13 his person by evidence that satisfies you the jury of his
 14 guilt beyond a reasonable doubt. The presumption of
 15 innocence accompanies the Defendant of the time of his
 16 arraignment and appearance in the court and will continue
 17 with the Defendant until after you retire to the jury room
 18 to deliberate your verdict. The presumption of innocence
 19 continues in existence to the benefit of the Defendant
 20 until you, the jury, reaches the conclusion that the State
 21 has proven the guilt of the Defendant beyond a reasonable
 22 doubt. Now the State is not required to prove the guilt
 23 of the Defendant beyond all doubt or beyond every doubt,
 24 but beyond a reasonable doubt. What is a reasonable
 25 doubt? It is not an imaginary or fanciful doubt or weak

1 doubt. It is a substantial doubt. It is a doubt which
2 the words imply. A doubt for which you can give a reason
3 based on the testimony and evidence in this case. A
4 reasonable doubt is not any sort of doubt. You and I know
5 that everyday life experiences that you may have a sort of
6 a doubt about how any matter that arises. No matter how
7 trivial it may be or how serious it may be. A reasonable
8 doubt is a doubt which makes an honest, sincere,
9 conscientious juror in search of the truth hesitate to
10 act. Proof beyond a reasonable doubt is proof that leaves
11 you firmly convinced of the Defendant's guilt. If you
12 have a doubt which can give a side or reason as to the
13 guilt of the Defendant then he is entitled to a verdict of
14 not guilty. Reasonable doubt may arise from the evidence
15 in the case or from the lack of evidence in the case.
16 You, the jury, must make the determination of whether or
17 not reasonable doubt exists as to the guilt of this
18 Defendant. The very fact, however, that the jury engages
19 in a full and free discussion of the issues of guilt or
20 not guilt in this case with a normal conversational ebb
21 and flow on these issues does not automatically mean that
22 reasonable doubt exists in this case or in any other case.
23 I charge you that the Defendant is entitled to every
24 reasonable doubt arising in the whole case. If upon any
25 issue of fact essential to conviction and a verdict of

1 guilty and you have a reasonable doubt as to how that
2 doubt should be resolved it would be your duty to resolve
3 that doubt in favor of the Defendant. The Defendant,
4 ladies and gentlemen is not required to prove his
5 innocence, but the State is required, by law, to prove
6 every essential element of the offense charged against the
7 Defendant by evidence which satisfies you the jury of
8 guilt beyond reasonable doubt before you can convict him
9 and find him guilty. If then, upon the whole case you
10 have reasonable doubt as to the guilt or innocence of the
11 Defendant he is entitled to that reasonable doubt and
12 would be entitled to an acquittal and a verdict of not
13 guilty. But on the other hand, if upon the whole case you
14 find that the State has proven by the evidence that has
15 satisfied you the jury, the guilt of the Defendant beyond
16 a reasonable doubt then in said circumstances it would
17 equally be your duty to convict the Defendant and find him
18 guilty. I instruct you that the indictment in this case,
19 which I have in my hand is not evidence and cannot be
20 considered by you, the jury, as evidence in this case.
21 The indictment is simply the formal written instrument
22 which contains the charges against the Defendant and it
23 serves as a formal document by which this matter was
24 brought to trial. During this trial each of us, you and I
25 have certain duties to perform. As the trial judge, it is

1 my responsibility to preside over the trial of this case
 2 and I also have the duty to rule upon or pass upon the
 3 admissibility of evidence offered during the course of the
 4 trial. You are to consider only the evidence which has
 5* been admitted into to the record and you are to disregard
 6 or disallow any testimony stricken from the record in this
 7 case during the progress of the trial if there be any.
 8 And you are to consider only the testimony which has been
 9 presented from the witness stand, together with any
 10 exhibits entered into the record in this case and any
 11 stipulations made into the record. I have the additional
 12 duty to charge you the applicable law in this case. As
 13 the presiding judge, I am the sole judge of the law and it
 14 is your duty to accept and apply the law as I now State it
 15 to you. You have a preconceived idea as to what the law
 16 is or what the law ought to be, does not agree with what I
 17 tell you the law is, you are obligated under your role to
 18 abandon this preconception on your part because you are
 19 sworn to accept the law precisely as I charge it to you.
 20 In every case tried in this courtroom before a jury, the
 21 jury conducts the sole and exclusive judge of the facts.
 22 You the jury are the judges of the facts in this case.
 23 The Court is the judge of the law. The Constitution of
 24 this State has declared that the trial Judge shall not
 25 intimate, state, comment upon or make any statement to the

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1 jury about the facts of the case. You are the sole judge
2 of the facts and you are not to infer of anything that I
3 have said during the progress of this trial in ruling upon
4 the admissibility of evidence or otherwise or anything
5 that I say to you now during the course of this charge to
6 yous that I have an opinion about the facts of this case.
7 I do not. The law does not permit me to have an opinion
8 about this facts. That is a matter solely for you the
9 jury to determine. As jurors, it is your duty to
10 determine, as I have stated, it is your duty to determine
11 the effect, the value, the weight and the truth of the
12 evidence presented during the course of this trial.
13 Necessarily then you must assess the credibility of the
14 witnesses who have testified in this case. Credibility is
15 simply a legalistic term meaning believability. It
16 becomes your duty to analyze and evaluate the evidence and
17 to determine that evidence which convinces you of its
18 truth. I charge you in determining the question of
19 credibility or believability of the witnesses you may
20 believe one witness as against several witnesses or
21 several witnesses as against one witness. You may believe
22 in part the testimony of a witness and reject the
23 remaining part of the testimony of that same witness. You
24 may believe the testimony of a witness in its entirety or
25 reject the testimony of a witness in its entirety. You

1 may consider whether any witnesses has exhibited any
 2 interest, any bias, or any prejudice in the case and you
 3 may consider the demeanor of the witness, the appearance
 4 of the witnesses from a witness stand. You may consider
 5 the opportunity for knowledge, concerning those things
 6 about which the witness testified. These considerations
 7 you do not exercise arbitrarily, but in your good judgment
 8 there is sound reason in the record for so doing. Because
 9 your objective ladies and gentlemen is to find the truth
 10 whether it comes from a witness or witnesses from the
 11 State of South Carolina or a witness or witnesses from the
 12 defense. And in doing so, in exercising your mental
 13 processes and in determining what you consider to be true.
 14 The law simply requires that you exercise your good
 15 judgment, your common sense, your sense of logic and
 16 reasoning and your experiences in the law. You then apply
 17 those attributes to the evidence to determine what you
 18 consider to be truthful. And to these true state of
 19 facts, that is determined by you, the jury, you take and
 20 apply the laws as the Court now gives to you and thus
 21 arrive at a true verdict in this case.

22 Now as I said, the Defendant in this case is charged
 23 with two counts of murder and I will now define these
 24 offenses for you. What is murder? Murder is defined as
 25 willful, felonious killing of a human being, by a human

1 being with malice aforethought. That malice being either
2 expressed or implied. Section 16-3-10 of the South
3 Carolina Code defines murder is "the killing of any person
4 with malice aforethought either expressed or implied".
5 The State must prove beyond a reasonable doubt that the
6 Defendant killed another person with malice aforethought.
7 The presence of malice is a required element of Murder.
8 Malice is defined as being hatred or ill-will. Malice in
9 it's legal sense does not necessarily report ill will
10 toward the individual injured but signifies whether the
11 general, malignant recklessness of the lives or the safety
12 of others. The condition of the mind shows a heart
13 regardless of social duty and bent on mischief. Malice is
14 the wrongful intent to injure to another person. It
15 indicates a wickedness, depraved spirit intent on doing
16 wrong. Malice is the legal term implying wickedness and
17 excluding just cause or excuse. It is the doing of a
18 wrongful act intentionally and without just cause or
19 excuse. The term malice indicates a formed purpose and
20 design to do a wrongful act under the circumstances that
21 exclude any legal right to do so. Malice may be either
22 expressed or implied. The words expressed and implied add
23 nothing to the meaning of the word malice. They do not
24 apply different kinds of malice but where the only kind of
25 malice known in the law may be shown to exist, that is

1 either by positive evidence or by inference. Expressed
2 malice is where an intention to unlawful take the life of
3 another is shown. Implied malice is where circumstances
4 demonstrate the wanton or a reckless disregard for human
5 life or a reasonably prudent man would have known that
6 according to experience there was a plain strong
7 likelihood that death would follow.

8 Now, the use of a deadly weapon implies permissive
9 inference of malice. The jury may draw an inference of
10 malice from proof of the use of a deadly weapon. If you
11 conclude such is proper after considering all of the facts
12 and circumstances in evidence. You are free to accept or
13 reject the permissive inference depending on your view of
14 the evidence. The law says that when one intentionally
15 shoots another with a deadly weapon, the implication of
16 malice may arise. If the facts are proven beyond
17 reasonable doubt is sufficient to raise the inference or
18 malice to your satisfaction this inference is to be taken
19 into consideration by you, the jury, along with other
20 evidence in this case and you may give it such weight as
21 you determine he should receive. A deadly weapon is any
22 article, instrument or substance which is likely to cause
23 death or great bodily harm. Whether an instrument or
24 object as been used as a deadly weapon depends on the
25 facts and circumstances of each case. Now although malice

1 must be aforethought, there is no requirement that it must
2 exists for any appreciable amount of time before the
3 commission of the act. It may be conceived in the very
4 moment that the act occurs. There must be a combination
5 of the evil intent and of the act producing the result.

6 Now also, charged in this case as a separate defense
7 is the crime of possession of a fire arm during the
8 commission of a violent crime. Section 16-23-490 of the
9 South Carolina Code of Laws provides, if a person is in
10 possession of a firearm or visibly displays what appears
11 to be a firearm during the commission of a violent crime
12 and is convicted of committing a violent crime then he is
13 guilty of a separate crime of possession of a firearm
14 during the commission of a violent crime. Firearm is
15 defined as any machine gun, automatic rifle, revolver,
16 pistol or any weapon which will or is designed to or may
17 regularly be converted to expel a projectile. Section
18 16-1-60 of the Code of Laws of South Carolina provides
19 that murder is a violent crime. For you to find the
20 Defendant guilty of the separate offense of possession of
21 a firearm during the commission of a violent crime, you
22 must first find the Defendant guilty of committing the
23 violent crime. If you find the Defendant guilty of murder
24 then you would go to the issue of whether he is guilty of
25 possessing a weapon during the commission of the violent

1 crime. And I will explain this to you in more detail when
2 we go over the verdict form. Possession means more than
3 simply having a object in ones possession. Conviction of
4 possession requires proof of possession either actual or
5 constructive coupled with knowledge of the firearms
6 presence. Possession can be shown by either the actual
7 possession or constructive possession.

8 All right now ladies and gentlemen, there are
9 generally two types of evidence which are presented in any
10 case. Direct evidence and circumstantial evidence.
11 Direct evidence is the testimony of a person who asserts
12 or claims to have actual knowledge of the fact such as an
13 eye witness. Circumstantial evidence is proof of a chain
14 of facts and circumstances indicating the existence of a
15 fact. The law makes absolutely no distinction between the
16 weight or value to be given to either direct or
17 circumstantial evidence. Nor is a greater degree of
18 certainty required of circumstantial evidence then of
19 direct evidence. You should weigh all of the evidence in
20 this case and after weighing all of the evidence, if
21 you're not convinced of the guilt of the Defendant beyond
22 a reasonable doubt that you would find the Defendant
23 guilty. On the other hand, if after weighing all of the
24 evidence, if you are convinced of the guilt of the
25 Defendant beyond a reasonable doubt you will find the

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1 Defendant guilty.

2 Now there's also been expert testimony presented in
3 this case and although lay witnesses who testified about
4 the facts which they are within their knowledge not allow
5 to give an opinion, certain witnesses, who by their
6 training, education, experience or knowledge are
7 considered experts in a particular field. Those witnesses
8 may give an opinion. These opinions constitute evidence
9 to be considered by you, the jury in connection with all
10 of the other evidence in this case. You may consider the
11 experts opinion just as you do all of the other evidence.
12 It is for you, the jury to give it such weight as you in
13 your experience and discretion may determine that it is
14 entitled to. You must weigh such evidence, except or
15 reject it in the same matter that you treat all other
16 evidence in this case. The testimony of experts is to aid
17 and assist you as jurors. Not to control you in the
18 decision and questions to the facts. You should give it
19 such weight as you decide it should be entitled.

20 Now ladies and gentlemen, I want to tell you now that
21 the Defendant in this case did not testify. This is his
22 Constitutional right. It is not a circumstance you can
23 take into consideration or allow it to enter into your
24 discussions in the jury room. Under the Constitution of
25 South Carolina of the United States Constitution, it is

1 the Defendant's Constitutional right not to testify. The
2 burden of proof is on the State of South Carolina to
3 establish the guilt by competent evidence beyond a
4 reasonable doubt. The fact that the Defendant did not
5 take the witness stand and testify on his own behalf does
6 not create any inference against him. The jury must not
7 forget that fact or weigh it in the slightest degree
8 against this Defendant. Nor should the fact that the
9 Defendant did not testify enter into the discussions or
10 deliberations of the jury in any manner whatsoever. You
11 should not even discuss this issue in your jury room. Now
12 ladies and gentlemen I have just about finished my
13 instructions to you, but I will tell you that you are not
14 advocates for the State of South Carolina nor for this
15 Defendant. You do not serve on the jury to reward your
16 friends or punish your enemies. Obviously such a
17 perverted system of justice would be hollow. You have
18 been selected by both the State and the Defendant as fair
19 and impartial jurors. It is your duty then, by your joint
20 deliberations to determine the truth of this case. Giving
21 to the Defendant the benefit of every reasonable doubt of
22 each and every and then to the facts that you determine to
23 be true, you then take and apply the law that has been
24 given to you by this Court and apply at a verdict that
25 does speak the truth. The word verdict Ladies and

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1 Gentlemen, comes from the Latin word veridicto, meaning to
2 speak the truth or truth saying. And when you have done
3 that, you have satisfied your oath as jurors and you will
4 have discharged your duty in this court.

5 Now, I'm going to instruct you on the forms of
6 verdict of this case. If the State has proven the guilt
7 of the Defendant beyond reasonable doubt, let me go back.
8 If the State has failed to prove the guilt of the
9 Defendant beyond a reasonable doubt, your verdict would be
10 two words, not guilty. If the State has proven the guilt
11 of the Defendant beyond a reasonable doubt, your verdict
12 will be one word, guilty. The verdict that you render in
13 this case must be the verdict of each and every juror. It
14 must be your unanimous verdict all twelve jurors must
15 agree on the verdict which you authorize your forelady to
16 write. Now, Madam Forelady, I have prepared a verdict
17 form for you to use in the jury room and I will tell you
18 that the order in which I have put the possible verdicts
19 on this verdict form has no significance whatsoever. You
20 should not infer from the order which I have put the
21 verdicts on this verdict form that I have any opinion as
22 to what your verdict should be. I do not. The law does
23 not permit me to have an opinion. But I obviously had to
24 put something down on paper first and then put something
25 second. Across the top up here you simply have The State

1 of south Carolina and the County of Lee, the formalities
 2 of court, the case number, The State of South Carolina
 3 versus Jeremy McMillan verdict. There are three possible
 4 verdicts or three matters that we have addressed here.
 5 The first on the charge of murder of Patrick Hood, we the
 6 jury by unanimous agreement find the Defendant Jeremy
 7 McMillan guilty or not guilty. You either put a check or
 8 x or whatever you want to unanimous verdict of the jury in
 9 one of those two blocks. Then you would go to the second
 10 charge. On the charge of murder of Joshua Lee, we the
 11 jury by unanimous agreement find the Defendant Jeremy
 12 McMillan either guilty or not guilty. Again make a
 13 selection there. And then third, if and only if you find
 14 the Defendant guilty of one of the two, at least one of
 15 the two murders would you go to the third issue. You
 16 cannot make a decision regarding the possession of weapon
 17 during the commission of a violent crime unless you find
 18 the Defendant guilty of that violent crime. So if you
 19 find the Defendant guilty of either one those two murders
 20 you can then go to the third question and you will
 21 consider the next charge only if you find the Defendant
 22 guilty of at least one count of murder. We the jury by
 23 unanimous agreement find the Defendant Jeremy McMillan
 24 guilty of possession of a weapon during the commission of
 25 a violent crime and then guilty or not guilty put a check

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1 next to that. You then sign it Madame Forelady, date it
2 and notify us and we will return them to the courtroom as
3 soon as possible.

4 Now I'm going to send you to your jury room and I'm
5 going to ask that you do not start your deliberations
6 just yet. The law requires that I take up certain matters
7 with the attorneys and I have to do that. If it is not
8 necessary to bring you back to the courtroom, the bailiffs
9 will bring you the exhibits, they will bring this verdict
10 form and they will tell you to begin your deliberations.
11 As you know, we have ordered lunch for you it will be here
12 in about an hour and you can stop if you want to
13 deliberating during that course or just keep working while
14 you eat your lunch that will be strictly up to you. I am
15 going to ask you to go to your jury room now. Please do
16 not begin deliberating just yet. The law does require
17 that I take up certain matters now. You may take your
18 notes with you. Thank you.

19 (Jury exits court room 11:30)

20 The Court: Are there any additions or exceptions on
21 behalf of the State Mr. Fata?

22 Mr. Fata: No sir, Your Honor.

23 The Court: Okay, Mr. McKnight?

24 Mr. McKnight: No Your Honor

25 The Court: All right, counsel check the exhibits.

1 The other thing I was saying was, I had indicated to
2 counsel that I would not allow the bullets to go back to
3 the jury room.

4 Mr. McKnight: Yes sir

5 The Court: What number is that?

6 Court Reporter: Number 86

7 The Court: Okay, that will stay here. Any objection
8 to that?

9 Mr. Fata: No sir

10 Mr. McKnight: None from the defense Your Honor

11 The Court: And also, does counsel know of any reason
12 why the alternate should not be excused at this point?

13 Mr. Fata: I don't have a problem with it, Your
14 Honor.

15 Mr. McKnight: That's fine.

16 The Court: Okay, All right ask the alternate to come
17 back in.

18 (Alternate excused for the week)

19 The Court: All right. She's got all the exhibits
20 together. Mr. Bailiff here is the verdict form, if you'll
21 take all the exhibits to the jury and tell the jury they
22 may begin their deliberations until we hear from the jury.

23 (Jury Deliberations begin 11:36)

24 (Back on)

25 The Court: All right counsel we have a note from the

1 jury. They want to hear the testimony of Susan Cromer,
2 SLED firearms expert and Toby Fulmore. I'll ask the court
3 reporter to locate those and I'll have to bring the jury
4 in for that testimony. I would also tell the jury that
5 when they have reached a point in the testimony where they
6 do not need to hear anymore of the testimony we can stop
7 it. Any objection to the method of the handling of the
8 juries request for playing that testimony on behalf of the
9 State.?

10 Mr. Fata: None from the State Your Honor.

11 Mr. McKnight: None from the Defense Your Honor.

12 The Court: All right, bring the jury in please.

13 **(Jury enters the Courtroom 2:46)**

14 The Court: All right ladies and gentlemen of the
15 jury, I have a note from your Forelady regarding the
16 playing of certain testimony in this case. Somebody had
17 asked the court reporter to locate that recording and we
18 will play that testimony for you. That is the request of
19 testimony of Susan Cromer the SLED firearms expert and
20 Toby Fulmore. I will tell you that if you listen to all
21 of the testimony from the beginning of each witness'
22 testimony or you can hear as much testimony as you like,
23 but if you will let us know we will stop it. So you're not
24 required to hear all of it, just let me know when you've
25 heard what you want to hear and we will stop at that

1 point. All right.

2 (Testimony of Toby Fulmore is replayed for the Jury)

3 Witness is sworn in

4 The Court: All right Mr. Fata, you may proceed

5 Mr. Fata: Thank you Your Honor

6 Direct examination of Mr. Fulmore by Mr. Fata

7 Q: You are Toby Fulmore?

8 A: Yes sir.

9 Q: Okay, you're going to have to lean up to that
10 microphone and speak up so people, so the jury can
11 hear you. Where do you live Toby?

12 A: Olanta, South Carolina.

13 Q: How long have you lived in Olanta?

14 A: All my life.

15 Q: What do you do for a living now?

16 A: Now nothing. I'm working for like construction work.

17 Q: Okay. And how long you been doing that construction
18 work?

19 A: For about seven or eight months.

20 Q: You currently are incarcerated aren't you?

21 A: Yes sir.

22 Q: Incarcerated on these charges?

23 A: Yes sir.

24 Q: And let me ask you, did you, at any one time, did you
25 frequent the club at Mr. C's on a regular basis?

1 understand that you have now heard all of the testimony
2 that you need to hear. I will allow you to go back in the
3 jury room and resume your deliberations, thank you very
4 much. All right madam reporter here is the note. It is,
5 of course, exhibit number two. Any objection to the
6 method of having the jury request for the playing of
7 testimony from the State?

8* (Court's Exhibit Number 2)

9 Mr. Fata: None from the State Your Honor.

10 Mr. McKnight: None from the Defense Your Honor.

11 The Court: Thank you again.

12 (Jury deliberations continue)

13 (Court Break)

14 The Court: All right we're back on the record
15 regarding the matter of the State versus Jeremy McMillan.
16 The Defendant, Mr. McMillan is present in the court with
17 his counsel Mr. Cezar McKnight. The State is also present
18 and represented by Mr. Fata. I have been advised that the
19 jury has reached a verdict. Before we bring the jury in I
20 want to address everyone in the court room for just a
21 moment. All the spectators, members of the families of
22 the victims as well as the Defendant's families. I know
23 that this is an important matter for everyone involved.
24 I'll wait just a minute (Police sirens in background).
25 Both the Defendant and members of his family and members

1 of the victims family, however I am going to have to
 2 require that the order in the courtroom be maintained when
 3 the jury verdict is published. So I will not permit any
 4 kind of clapping or shows of emotions or anything with
 5 regard to the jury's verdict when the jury verdict is
 6 published. If anyone who's present in the court room and
 7 feels that they can not sit quietly while the jury verdict
 8 is published, I would ask that you leave now. All right
 9 thank you. Anything before the jury is brought in Mr.
 10 Fata?

11 Mr. Fata: No sir Your Honor.

12 The Court: Mr. McKnight?

13 Mr. McKnight: Nothing from the Defense Your Honor.

14 The Court: All right, you may bring the jury in.

15 **(Jury enters Courtroom with Verdict at 3:40)**

16 The Court: All right has the jury reached a verdict?

17 Foreperson: It has.

18 The Court: Hand it up to the Bailiff please.

19 (Foreperson complies)

20 The Court: All right, from a standpoint of form the
 21 verdict appears to be correct. Mr. McKnight would you and
 22 your client stand please? Madam clerk you may publish the
 23 verdict.

24 Clerk: The State of South Carolina versus Jeremy
 25 McMillan on the charge of murder of Patrick Hood, we the

1 jury, by unanimous agreement find the Defendant Jeremy
2 McMillan guilty. On the charge of murder of Joshua Lee,
3 we the jury, by unanimous agreement find the Defendant
4 Jeremy McMillan guilty. We the jury, by unanimous
5 agreement find the Defendant Jeremy McMillan guilty of the
6 possession of a weapon during the commission of a crime of
7 violence guilty.

8 The Court: Thank you. Mr. McKnight you may be
9 seated. All right, Mr. McKnight anything before the jury
10 is excused?

11 Mr. McKnight: Your Honor, we ask that you poll the
12 jury

13 The Court: All right. Madam Clerk, poll the jury,
14 please.

15 Clerk: Juror number 57, Deborah Holloman, was this
16 your verdict and still your verdict?

17 Juror: Yes it is.

18 Clerk: Juror number 124, Ms. Cassandra Wilson,

19 The Court: All right, wait just a moment please.
20 Have a seat just a moment please. Deputy assist the
21 individual. Go to the jury room for just a moment please.
22 (Jury excused from the Courtroom)

23 The Court: All right the jury is being excused while
24 the spectator, I don't know who she was, but she was
25 obviously emotional. All right bring the jury back in.

1 (Jury enters Courtroom for polling 3:42)

2 The Court: All right. Thank you very much ladies and
3 gentlemen. I have accepted the verdict and in the process
4 of jury polling.

5 Clerk: Juror number 57 Debra Holloman, is this your
6 verdict and still your verdict?

7 Juror 57: Yes it is.

8 Clerk: Juror number 124 Cassandra Wilson, is this
9 your verdict and still your verdict?

10 Juror 124: Yes it is.

11 Clerk: Juror number 34 James Croft, is this your
12 verdict and still your verdict?

13 Juror 34: Yes.

14 Clerk: Juror number 61, Christian James, is this
15 your verdict and still your verdict?

16 Juror 61: Yes.

17 Clerk: Juror number 191, Willie Price, is this your
18 verdict and still your verdict?

19 Juror 191: (Nods head affirmatively).

20 The Court: All right, Mr. Price let me ask the
21 question again or the clerk is going to ask you the
22 question again and you either say yes or no. Ask the
23 question.

24 Clerk: Willie Price, Juror 191, is this your verdict
25 and is still your verdict?

1 Juror 191: Yes.

2 Clerk: Juror number 90 Cynthia Riley, is this your
3 verdict and still your verdict?

4 Juror 90: Yes it is.

5 Clerk: Juror number 33, Emma Anderson, is this your
6 verdict and still your verdict?

7 Juror 33: Yes.

8 Clerk: Juror number 145 Emma Bradley, is this your
9 verdict and still your verdict?

10 Juror 145: Yes.

11 Clerk: Juror number 19, Freda Bradshaw, is this your
12 verdict and still your verdict?

13 Juror 19: Yes.

14 Clerk: Juror number 94 William Rock, s this your
15 verdict and still your verdict?

16 Juror 94: Yes it is.

17 Clerk: Juror number 40, Patricia DuRant, is this
18 your verdict and still your verdict?

19 Juror 40: Yes it is.

20 Clerk: Juror number 179, Earnestine Lowery, is this
21 your verdict and still your verdict?

22 Juror 179: Yes it is.

23 The Court: All right, thank you very much. Anything
24 before the jury is excused Mr. McKnight?

25 Mr. McKnight: No.

1 The Court: Mr. Fata?

2 Mr. Fata: No sir.

3 The Court: All right, ladies and gentlemen of the
4 jury, this will conclude your services in this matter of
5 this case and I am going to dismiss you and thank you for
6 your services in connection with this matter. There are
7 several things that I want to tell you before I excuse
8 you. First of all, in my view the jury's role and in the
9 fact finding process is so important the trial judge
10 should not comment on the verdict of the jury even after
11 the jury has reached a verdict in the case. I make it a
12 practice and a policy never to comment on the verdict of
13 the jury because I think that the jury's role is very
14 important and the trial judge should not make any comment
15 in that regard even after the jury has returned a verdict.
16 The only thing that I will tell you is there was evidence
17 by which you could have made the decisions that you did.
18 I will also tell you that once you have been excused as a
19 juror in this case then there is nothing illegal about
20 your talking to anyone about your service on this case.
21 There's nothing illegal about anybody talking to you about
22 your service on this case. It is a practice in which I
23 strongly disapprove and strongly discourage, but it's not
24 illegal. You have a right to talk with anyone. You have
25 a right not to talk with anyone, but it's your call. If

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1 someone wants to talk with you about it and you don't want
2 to talk about it and they continue to harass you or bother
3 you then you let court personnel know and I will deal with
4 them. I will also tell you that in just a few minute
5 we're going to go into the sentencing phase in this case
6 and I know that jurors are very often interested in
7 knowing what the outcome is. After I have excused you if
8 you would like to stay in the sentencing phase that we
9 will move to right now. It will take us about ten,
10 fifteen twenty minutes or so. If you would like to when
11 you are excused go out this back door and have a seat in
12 the back of the court room, then when we finish the
13 sentencing phase I will excuse you before anyone else will
14 be allowed to leave the courthouse if you would like to
15 stay. You're certainly welcome to leave if you want to
16 when I excuse you, but you're welcome to come back in and
17 stay for the sentencing phase if you want to. That would
18 be up to you. I want to thank you for your service on
19 this case. I know that it is never convenient to serve on
20 a jury, but it is an important citizenship responsibility
21 to serve on the jury and I know that you're called upon to
22 make very serious decisions and it is an imposition of
23 your time, it is important to our system of government
24 that we have good citizens who are willing to come and
25 serve as jurors and I do appreciate your service and I

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1 appreciate the attention that you have given to this case
2 and the obvious thought that you have given to your
3 deliberations. I would also tell you that by serving on
4 the jury this week you have met your citizenship
5 responsibilities_for jury service for the Circuit Court.
6 Both the civil or for the General Sessions for the next
7 three years. You cannot be required to serve as a juror
8 in the Circuit court more than once every three years. The
9 first year if you were to get a summons from the court we
10 couldn't take you even if you wanted to serve you'd
11 actually be disqualified. The second and third years you
12 have an exemption, which means that you can serve if you
13 want to, but you can't be required to serve. Also, next
14 week you will get a check from the Clerk's office. It
15 will not compensate you for the time that you've spent
16 here this week. That is a small token on behalf of the
17 county for your service this week and I hope that as a
18 result of your service this week that you have a better
19 appreciation of our criminal justice system and that you
20 do understand better the matters that go on in the general
21 sessions courts of this State. Again, thank you for your
22 service, you are welcome to stay and come to the back of
23 the court room if you want to or you are welcome to leave
24 and go about your business, you're excused from this case
25 and from any further service this week. It is not

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1 necessary that you call back or come back in for tomorrow.

2 Thank you very much and have a pleasant evening.

3 (Jury excused from the Court)

4 The Court: Any motions you want to put on the
5 record, Mr. McKnight?

6 Mr. McKnight: Your Honor, the Defendant respectfully
7 move that you set aside the verdict of the jury. We
8 believe that there was not ample evidence in which the
9 jury could reach the verdict that they did.

10 The Court: All right sir. I will respectfully deny
11 that motion. I think there was an issue for the jury's
12 determination and as you indicated in your argument, a
13 large part of this case was the credibility of witnesses.
14 It is a matter for the jury's determination and in my view
15 if I were to grant a motion for new trial or a judgement
16 notwithstanding the verdict then I would be substituting
17 my judgment for that of the jury and I do not believe that
18 I can do that. I respectfully deny the motion.

19 Mr. McKnight: Yes sir.

20 The Court: All right, Mr. Fata do you have the
21 sentencing sheets?

22 Mr. Fata: I do, Your Honor.

23 The Court: Anything else before we go into the
24 sentencing phase?

25 Mr. Fata: Nothing from the State Your Honor.

1 The Court: Mr. McKnight?

2 Mr. McKnight: Nothing from the Defendant.

3 The Court: Mr. McMillan would you all come up,
4 please.

5 Mr. McKnight: Yes sir.

6 The Court: All right, Mr. Fata. I'll be glad to
7 hear from you in regards to any matters the State wishes
8 to present both in the way of criminal record and also
9 will hear from ...

10 Mr. Fata: Yes sir. Your Honor the Defendant has on
11 his record a 2003 CDV; he has a 2004 Disturbing School and
12 malicious injury to property; he has no other convictions
13 on the NCIC report that I have. Your Honor.

14 The Court: State your name.

15 A: My name is Stephanie McGill.

16 Mr. Fata: And she is, let me give you some
17 background about her. She is the lady at the doorway that
18 Mr. McEwen pushed aside. The bullet went through him and
19 went into her back and lodged in her back. She is one of
20 the ABWIKS that we had in this case. Anyway, she's a
21 victim of another ABWIK and she'd like to address the
22 Court.

23 The Court: All right, I'll be glad to hear from her.
24 Are you related to Mr. Lee or?

25 Ms. McGill: My cousin.

1 The Court: All right, go ahead.

2 Ms. McGill: This was something that never should have
3 happened. This was uncalled for. I lost my cousin, I
4 almost lost my life and I don't see how a person can do
5 that. I was shot a half inch away from my heart, a half a
6 inch. We lost my cousin. It could have been me as well.
7 I was supposed to go in the Army, I couldn't go back in
8 the Army because of my injuries. I mean, I still have
9 nightmares. I still can't sleep. I'm considering going
10 back to counseling and I'm ready to close this part of my
11 life. I can't take this anymore. This is awful, this is
12 awful. I need one, an apology would have been greatly
13 accepted. Not even an apology, not even a I'm sorry that
14 I did it. Not nothing.

15 The Court: In all fairness to the Defendant and I'm
16 sure that Mr. McKnight will probably say this. Normally
17 when you've got a criminal charge against you, it's not
18 appropriate for the Defendant to talk to the family until
19 after the case has been heard. He might have advised him
20 not to. I understand how you feel about it.

21 Ms. McGill: Thank you for everything.

22 The Court: Thank you. All right.

23 Mr. Fata: Your Honor Mr. McEwen would like to address
24 the Court. He was the ...

25 The Court: I remember the testimony. Yes, sir.

1 Mr. McEwen: I stand here a thirty year old man come
2 Saturday. I'm an orphan, both of my parents are dead. I
3 took Mrs. Hood's son to the club only to make some money
4 for his newborn kid. I felt totally responsible for Mr.
5 Hood. I knew not of Mr. Lee but he was a friend to me
6 because I saw what I saw as he fell to this earth, fell to
7 the ground and left this earth. He left me with something
8 to tell his mom and I can only feel no braver than to tell
9 her right now what he said. I asked in my heart, Mr.
10 J.D., Mr. Webb, Mr. Paul, I worked with them constantly
11 for the past three years while they did what they. I
12 intend not to hurt nobody in your county Mr. Judge, I was
13 only there to do a bouncing job and go home. To make a
14 little bit of money. I have a full time job, but I hope
15 this day, the day before my birthday that you bring
16 justice for Mrs. Hood and Ms. Lee. I meant not harm.
17 While I'm standing in front of this court room I want to
18 tell her what her son said. All of his little breath of
19 body before that bullet came out, Mom I love you. That's
20 all he could say and he left. That is when I was telling
21 the Court I picked him up and I put him up under the
22 table. I myself was wounded. A bullet went in my side
23 and went over to Ms. Stephanie. I been wondering all
24 these years where did that bullet go and what went on? I
25 may be big and Judge you may look at me like who's this

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1 big guy? I'm not a vigilante. I'm one of fifteen kids on
2 my dad's side and I'm one of eight on my mom. My
3 mom worked third shift, food stamps and all. I have a
4 heart Judge and my heart was with these two parents. I
5 felt responsible and I hope that you find in your heart
6 and the State of South Carolina law in defense of these
7 two parents and I'm grateful for that.

8 The Court: Thank you, sir.

9 Mr. Fata: Your Honor she does not want to speak.
10 Your Honor I will say there were nine ABWIKs, two murders
11 and we did not try the ABWIKs simply because the, to keep
12 the case simple, simpler then the way it was. It was a
13 difficult and convoluted case, but it would have been more
14 so if we'd to try all those ABWIKs along with the murders.
15 So this, and we have two dead bodies, a very serious
16 crime. In my closing argument I said that I believe that
17 this was an attack on the club. I really believe that and
18 I believe that if Mr. McEwen had not got his 45 and began
19 to shoot back towards Mr. McMillan that he might have
20 entered that club and cleaned out all of the St. John's
21 boys. Your Honor, even though he's only being convicted
22 of two murders, I really believe that this and that the
23 State would recommend life without parole and request a
24 sentence for life without parole. But the sentence is
25 within your discrepancy.

1 The Court: All right, thank you Mr. Fata and the
2 victim's families. All right Mr. McKnight.

3 Mr. McKnight: Thank you Your Honor, may it please
4 the Court. As you know I represent the interests of Mr.
5 Jeremy McMillan. He's 23 years old. Life long resident
6 of Lake City, South Carolina, attended Lake City High
7 School. He's the father of two children, well three
8 children now Your Honor. As Mr. Fata correctly indicated
9 to you, he has never, his criminal record that he outlined
10 is true and accurate. I would have some of his family
11 members here, but they are there, they don't, just for the
12 sake of ...

13 The Court: I understand that, in fact, a couple just
14 came in and if you'd like to bring here up, I'll be glad
15 to hear from her.

16 Mr. McKnight: Your Honor, I once heard said that
17 justice without mercy is --- I do not make light and my
18 client does not make light of the fact that there are two
19 dead persons ...

20 The Court: Come around on this side over here. Go
21 ahead.

22 Mr. McKnight: I don't make light that there are two
23 dead persons Your Honor and I do not make light of the
24 fact that there were a number of persons injured, but this
25 is a serious matter, this is a life threatening matter and

1 my client knows that. But Your Honor, he's twenty-three
2 years old and we'd ask the Court that you give him some,
3 or allow him to have some part of his life. There's a
4 thirty year minimum that you can affix to Mr. McMillan on
5 both counts and have that run concurrent. He has to do
6 eighty-five percent of that sentence. If he were to do
7 eighty-five percent of that sentence, thirty years, at my
8 bad math estimate matches up to twenty five years, so he'd
9 come out of prison at forty-eight years old. That's at
10 least a part of his life and we all know that forty-eight
11 is not old, but that would give him some simpliance of
12 life, to come out and make up and be active in his
13 children's life, but they will be grown. Your Honor this
14 is tragic. My client expresses remorse, but he still
15 maintains his innocence. We ask that you be merciful to
16 him. We realize that you have the power to, we ask also
17 that any sentences that you may pronounce upon him, that
18 you will run them concurrent.

19 The Court: State your name ma'am.

20 A: My name is Ms. Gamble, I'm his niece. I would like to
21 say that I apologize for your son and any losses that
22 you got may have occurred, but again Your Honor, this
23 is my uncle and, you know, I'm asking the same thing.
24 He's a young guy. He does have very young children.
25 Again when he do, you know, when he do gets out, you

1 know, they would be adults and it would allow time
2 for him to spend a little time with them. And again,
3 our family, we do apologize for any losses that you
4 guys have. I just ask that you please run these two
5 charges concurrent.

6 The Court: Thank you Mr. McKnight. I'll hear from.
7 I understand he does not want to say anything.

8 Mr. McKnight: Your Honor, my client, based upon any
9 legal ramifications of him talking, respectfully request
10 that he not say anything right now.

11 The Court: Let's take a break.

12 (Court break)

13 The Court: All right. Back on the record. I was
14 told by my colleagues that this is the hardest thing to
15 do. I sympathize with you and your loss and I hope that
16 this brings some closure. Very often the sentence does
17 not satisfy, quite sometimes do not satisfy everybody, but
18 it is something we have to do based upon the fact. The
19 fact that he had two murders in this case. There very
20 well could have been more. These deaths were the result
21 of a shooting that day. I said we are very fortunate that
22 there were not more deaths in this situation. You realize
23 that this type of conduct can not be tolerated. Therefore
24 it is my opinion that the appropriate sentence is life
25 without parole. On the charge of possession of a weapon

1 during the commission of a violent crime is five years.

2 Thank you.

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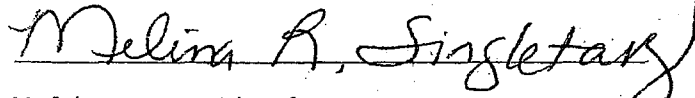
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CERTIFICATE

This is to certify that the copy of the hearing in the matter of State vs. Jeremy McMillan, consisting of Six-Hundred Forty-Four (644) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 30th day of September, 2010.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)
STATE OF SOUTH CAROLINA)
Respondent,)
v.)
JEREMY MCMILLIAN)
Defendant.)

IN THE COURT OF APPEALS

Case No.: 2006-GS-31-100

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SC Court of Appeals

**MOTION FOR REMAND TO
RECONSTRUCT THE RECORD**

COMES NOW the Defendant, Jeremy McMillian, by and through his undersigned attorney, who respectfully moves this Honorable Court to grant this Motion for Remand to Reconstruct the Record and in support of states as follows:

1. The Defendant does not have a due date for his initial brief as it has been postponed due to his Motion to Hold Appeal in Abeyance.
2. Upon information and belief, certain key facts were omitted from the trial transcripts that are necessary for the Defendant's initial brief.
3. A request for the transcript of the entire proceedings was provided to the Clerk of Court and all other parties involved in this action on July 24, 2009.
4. During several instances, Court Reporter Melissa R. Singletary informed the Defendant's counsel that she was experiencing technical difficulties on certain portions of the transcripts. As such, a complete version of the trial transcripts was not received until March 20, 2010, nearly eight (8) months after the initial request.
5. After reviewing said transcripts, Defendant's counsel identified a crucial portion of the proceedings that occurred during the polling of the jury, but had

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SC Court of Appeals

- been omitted from the record.
6. Upon discovering the inconsistency within the transcripts, counsel challenged the accuracy of the trial transcripts pursuant to Rule 607(i) on April 12, 2010. A reply from Court Reporter Melissa R. Singletary was received on April 28, 2010 with the portion of the transcripts in dispute. (*See attached Exhibit "A"*).
 7. The transcripts indicate that Price nodded in the affirmative when questioned by the court and answered "yes" she agreed with the verdict.
 8. However, several witness have indicated that Price stated she did not know if she agreed with the verdict and was forced to answer "yes" or "No."
 9. Willie Price herself stated that she was not sure whether the defendant was guilty. When asked if she agreed with the verdict, she stated in court and on the record, "I don't know." She also asserts that the trial judge stated, "Come on, we need an answer now" and that, "it's getting late." (*See attached Affidavit of William I. Beam, attached as Exhibit "B"*).
 10. She was then told by the judge that she had to say yes or no. After some additional hesitation, she complied with the trial judge's order. This exchange is not present in the transcripts and is extremely important for McMillian's appeal.
 11. Counsel has contacted numerous individuals present and has acquired affidavits in order to demonstrate the necessity in remanding this case to Circuit Court for a reconstruction of the record
 12. Trial counsel stated that he remembered the exchange between Price and the court and that she was emotional. (*See attached Affidavit of Cezar McKnight,*

attached as Exhibit "C").

13. Trial counsel's former paralegal who was also present during the entire trial remembered that Price appeared very hesitant about the verdict and when asked if she agreed with the verdict, she shook her head in a no response and that Price stated she could not answer yes or no to the verdict at that time. (See attached Affidavit of Samantha McCrea, attached as Exhibit "D").

14. The defendant's cousin, who also present throughout the trial stated that Price either informed the court that she "did not know" or "wasn't sure" about the verdict and that Price had tears in her eyes. (See attached Affidavit of Nyedia Page, attached as Exhibit "E").

15. Since the description provided by Court Reporter Melissa R. Singletary and the attached affidavits are contradictory, Defendant would request that this Motion for Remand to Reconstruct the Record be granted.

16. This motion is made in good faith and not for the purposes of unnecessary delay.

17. In support of this motion, the Defendant has incorporated the following Memorandum of Law.

MEMORANDUM OF LAW

~~In the instant case, the Defendant has reason to believe that crucial statements~~
made during the polling of the jury is an important issue on appeal. However, the transcription of the jury polling is contradictory with statements provided by witnesses present at trial. Sworn affidavits containing the statements of said witnesses demonstrate apparent inconsistencies within the transcript below. The court reporter

involved in this action has admitted that she was experiencing technical difficulties in transcribing the record and further stated that two (2) of the tapes in her possession were, in fact, blank. In circumstances where a portion of the court reporters notes were lost, the Court found in *China v. Parrot* that it was proper for the trial judge to consider affidavits from counsel and the court reporter in reconstructing the record. *China v. Parrot*, 251 S.C. 329, 334, 162 S.E.2d 276, 278 (1968). In a more recent decision, the court also determined that it can remand a case to have the record reconstructed where a transcript has been lost or destroyed. *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002).

In *State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (S.C. App. 2007), the South Carolina Court of Appeals held that the reconstructed record was insufficient for meaningful review of the issues on appeal and remanded the case for a new trial. The Court in *Ladson* noted, "the inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal." *Id* at 324; citing *Smith v. State*, 291 Md. 125, 433 A.2d 1143, 1148 (1981); e.g., *Lewis v. State*, 354 Ark. 359, 123 S.W.3d 891, 893 (2003); *Wilson v. State*, 334 Md. 469, 639 A.2d 696, 699 (1994); *State v. Deschon*, 320 Mont. 1, 85 P.3d 756, 760 (2004); *Lopez v. State*, 105 Nev. 68, 769 P.2d 1276, 1280 (1989); *State v. Izaguirre*, 272 N.J.Super. 51, 639 A.2d 343, 346 (App.Div.1994); *People v. Shire*, 23 A.D.3d 709, 803 N.Y.S.2d 309, 310 (N.Y.App.Div.2005); *State v. Quick*, 634 S.E.2d 915, 918 (N.C.Ct.App.2006); *Dickerson v. Commonwealth*, 36 Va.App. 8, 548 S.E.2d 230, 232-33 (2001).

These jurisdictions have concluded that reversible error is established when the petitioning party demonstrates that the missing evidence within the transcript resulted in

prejudice. *Ladson* 373 S.C. at 324; citing *Quick* 634 S.E.2d at 918, *Lewis*, 123 S.W. 3d at 893 [additional citations omitted]. Further, the party must demonstrate prejudice by showing that the reconstructed record "does not allow for meaningful appellate review." *Ladson* 373 S.C. at 324. In the present case, the transcripts show that Willie Price nodded her head affirmatively when asked if this was her verdict, the court then asked her to say yes or no and that she responded "yes." Willie Price herself confirmed that she informed the court she "didn't know" if she agreed with the verdict. This key admission is missing from the transcripts.

Therefore, the current transcripts are prejudicial to the Defendant as it directly conflicts with an issue that is relevant on appeal. It is well-settled that the trial court must be satisfied that the verdict is unanimous and must conduct a poll of the jury at the request of either party. *State v. Kelly*, 372 S.C. 167, 170-71, 641 S.E.2d 468 (S.C. Ct. App. 2007) citing *State v. Linder*, 276 S.C. 304, 309, 278 S.E.2d 335, 338 (1981).

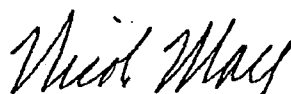
"Polling is a practice whereby the court determines from the jurors individually whether they assented [to] and still assent to the verdict." *Id.* at 308, 278 S.E.2d at 338. "If it is made known to the court when it is time to render the verdict that any juror does not assent to it, the verdict cannot be received and the jury should retire to their room until they have agreed." *Kelly*, 372 S.C. at 171 quoting *State v. Singleton*, 319 S.C. 312, 316, 460 S.E.2d 573, 576 (1995). A judge has a duty to urge the jury to reach a verdict, but he may not coerce them. *Id.* at 316, 460 S.E.2d at 575.

As indicated within the attached affidavits, there is evidence that juror Willie Price did not agree with the verdict and was clearly hesitant about the unanimity of the verdict. Due to the juror's apparent hesitation, a possible appellate issue would be that the trial judge erred in accepting the verdict at that time and should have allowed the jury to deliberate further in order to reach a decision. Defendant views these findings as a non-frivolous issue that could be presented on appeal. As such, the Defendant would

request that the Court review the circumstances presented herein and find that a reconstruction of the record in this matter is necessary for a meaningful appellate review.

WHEREFORE, the Defendant moves for an order granting this Motion for Remand to Reconstruct the Record for the purpose of taking the testimony of a witness and/or witnesses with knowledge in this matter. In addition, the undersigned further moves to have the testimony of such witness and/or witnesses, supplement the record.

Respectfully Submitted,



Nicole Nicolette Mace, Esquire
The Mace Firm
1341 44th Avenue North, Suite 205
Myrtle Beach, SC 29577
843.839.2900 Telephone
843.839.2913 Fax
nen@themacefirm.com

August 13, 2010

April 27, 2010

(Fax 843-839-2913)

Nicole N. Mace, Esquire

THE MACE FIRM

1341 4th Avenue, North, Suite 205

Myrtle Beach, South Carolina 29577

Re: State of South Carolina vs. Jeremy McMillan
Case No.: 06-GS-31-100

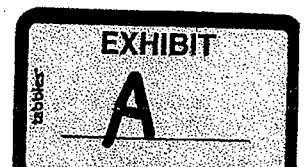
Dear Ms. Mace:

This letter will serve to confirm your letter dated April 22, 2010, which was delivered by U.S. mail to my home on Saturday, April 24, 2010 in which I personally received upon my return to my home on Sunday, April 25, 2010.

I have listened to the portion of the trial where the jury was polled by the Clerk. The record indicates, as was previously transcribed, when the Clerk is proceeding to poll Juror Number 124, Ms. Cassandra Wilson, that before she completes her question there is an interruption from the audience, which is evident by the following statement by The Court wherein the jury was excused from the court room. At that point, we got off the record until the Court instructs the bailiff to return the jury back to the court room. Once again, the clerk starts over with the jury polling. When the Clerk calls out Juror Number 191, Willie Price, and ask her the follow up question, Ms. Price responds by nodding her head affirmatively. It was at that time that The Court instructs Juror 191, Willie Price, that she needs to respond with a yes or no answer and that the Clerk will again ask her the question. The Clerk again ask the question and Ms. Price responds yes. I have attached only that page indicating the only corrections that were found with regard to the jury polling.

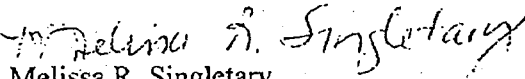
Ms. Mace, in my letter to you dated April 22, 2010, I cited the Rule to you with regard to my releasing the tapes. Please read that Rule if you are unclear. I don't know any other way to say this except to say I apologize to you and Trish for saying that we could make a time for you to come and review my tapes. I was MISTAKEN. I spoke with Ms. Desiree Allen, my Court Administrator, was advised to read the Rule out of our manual, which I did.

You have in your letter dated April 22, 2010 once again requested that I send my tapes to you. Again, I have to advise you that I must follow the Rule and I would think that applies to you as well. I again, apologize for any misleading information that I gave to your office it was not intentional. I think we all learn from our mistakes and I have certainly learn that it's best to follow up everything by letter and although I want to help all I can, I must follow the Rules.



Hopefully, this will clear up any misunderstandings or matters that you and I have and we can both proceed on with whatever warrants our attention next. Have a good day.

Sincerely,


Melissa R. Singletary

mrs

cc: Ms. Desiree Allen (803-734-0269)
South Carolina Court Administrator

HEARING

4

1 Juror 124: Yes it is.

2 Clerk: Juror number 34 James Croft, is this your
3 verdict and still your verdict?

4 Juror 34: Yes.

5 Clerk: Juror number 61, Christian James, is this
6 your verdict and still your verdict?

7 Juror 61: Yes.

8 Clerk: Juror number 191, Willie Price, is this your
9 verdict and still your verdict?

10 Juror 191: (Nods head affirmatively).

11 The Court: All right, Ms. Price let me ask the
12 question again or the clerk is going to ask you the
13 question again. We need to have a yes or no, so I'm going
14 to have her ask the question again. When the question is
15 asked we have to either have a yes or no. Ask the
16 question. Thank you.

17 Clerk: Willie Price, Juror 191, was this your
18 verdict and still your verdict?

19 Juror 191: Yes.

20 Clerk: Juror number 90 Cynthia Riley, is this your
21 verdict and still your verdict?

22 Juror 90: Yes it is.

23 Clerk: Juror number 33, Emma Anderson, is this your
24 verdict and still your verdict?

25 Juror 33: Yes.

THIRD JUDICIAL CIRCUIT

(803) 436-2150

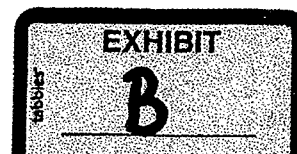
STATE OF SOUTH CAROLINA

AFFIDAVIT OF WILLIAM I. BEAM

COUNTY OF HORRY

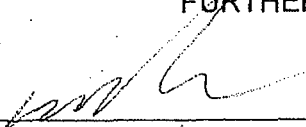
PERSONALLY appeared before me, the undersigned Notary Public, the Affiant, WILLIAM I. BEAM (PI) who being duly sworn stated as follows:

1. My name is William I. Beam and I am over the age of eighteen years.
2. I am a resident of Brunswick County, North Carolina
3. My business office is located in Horry County, South Carolina
4. That this affidavit is true and correct and it is based on my own personal knowledge and information provided to me by those persons named.
5. Your Affiant, William I. Beam (PI) Myrtle Beach, SC is a licensed private investigator in the State of South Carolina with over 20 years of investigative experience in North Carolina and South Carolina.
6. I was retained by The Mace Firm to locate Mrs. Willie F. Price of 959 Woodham Road, Bishopville, SC for the purpose of gathering information from her regarding the trial of Jeremy McMillian. Mrs. Price was one of the jurors who served on Jeremy McMillians' trial.
7. On July 19, 2010 I traveled from Myrtle Beach, SC to 959 Woodham Road, Bishopville, SC. I met with Mrs. Price.
9. Mrs. Price stated that during deliberations, the other eleven jurors were all "on her" to "just vote to convict" because it was getting late and they all [except Mrs. Price] agreed on a guilty verdict.
10. Mrs. Price stated she reluctantly agreed to vote guilty because she felt pressured to, but thought she would be able to say something to the judge to let him know she did not agree with the verdict.
11. She went on to say that when the judge polled the jury and asked her if she agreed with the verdict, she stated she "did not know." She also asserted that the judge then demanded a yes or no answer from her. Mrs. Price stated she felt intimidated at this time and as a result, just



said, "Yes." She further stated the judge told her, "Come on, it's getting late," and "we need an answer now." Mrs. Price was unsure what would happen to her if she stuck with her convictions and had told him, "no" instead of "yes."

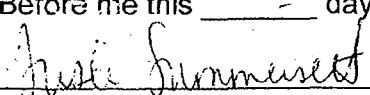
FURTHERMORE THE AFFIANT SAYETH NOT.



WILLIAM I. BEAM

SWORN TO AND SUBSCRIBED

Before me this _____ day of August, 2010



NOTARY PUBLIC

STATE OF SOUTH CAROLINA

My commission expires: 8/6/2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF APPEALS
COUNTY OF LEE	)	Case No.: 2006-GS-31-100
STATE OF SOUTH CAROLINA	)	
Respondent,	)	
v.	)	AFFIDAVIT OF CEZAR MCKNIGHT
JEREMY MCMILLIAN	)	
Defendant.	)	

PERSONALLY APPEARED BEFORE ME, Cezar E. McKnight, who after being duly sworn, states the following:

1. My name is Cezar E. McKnight and I represented the above-referenced Defendant, Jeremy McMillan, for his trial during the week of December 8, 2008. My address is 106 East Main Street, Lake City, South Carolina 29560. I have been made no promises nor given any incentive to provide this affidavit.
2. As the defense counsel in the case of The State of South Carolina v. Jeremy McMillan, I observed the trial in its entirety with The Honorable Judge Howard P. King as the presiding judge.
3. After the guilty verdict was announced, I requested Judge King to poll the jury. The judge granted this request and had the clerk question each juror of their individual verdict answer. Each juror answered affirmatively to their written verdict response.
4. However, while the clerk was questioning each juror, I witnessed a juror by the name of Willie Price. She seemed very hesitant and unsure about the guilty verdict previously announced. She appeared to be extremely shaken as well.

Cezar E. McKnight: CEM

Page 1 of 3

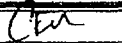


When the clerk questioned her as to whether this was her verdict, she nodded her head in a non-verbal "No" response.

5. After her initial "No" response, Judge King stated that she would have to provide a verbal "yes or no" response and the clerk again asked her if she was satisfied with the verdict as written. She then stated either "I don't know" or "I'm not sure." After the judge heard this response, he practically shouted in a noticeably forceful manner for the juror to answer yes or no to the question. Ms. Price was visibly fearful of the tone that the judge used and also appeared to be intimidated by him. After that, she apprehensively answered in a "yes" response to the clerk's question as to whether the verdict was accurate.
6. Upon witnessing this event and the apparent unwillingness of the juror, Ms. Price, to answer "yes" to the guilty verdict, I immediately requested that the verdict be set aside; however, my motion was denied.
7. I acknowledge that I execute this affidavit voluntarily, of my own free will, and I acknowledge that no undue coercion, threats, or overbearance were placed upon me with respect to its signing and I am not under the influence of drugs or alcohol.
8. I affirm that the above facts are true and correct, and given voluntarily without threat or promise from anyone.

FURTHER AFFIANT SAYETH NOT.

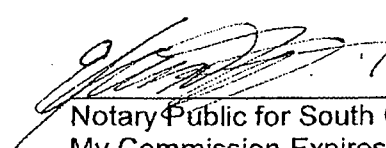
(signature page to follow)

Cezar E. McKnight: 

Page 2 of 3


Cezar E. McKnight

SWORN to before me this
1st day of July, 2010.

 ELAINE EPPS
Notary Public for South Carolina
My Commission Expires: May 7, 2020

Cezar E. McKnight: 

Page 3 of 3

prejudice. *Ladson* 373 S.C. at 324; citing *Quick* 634 S.E.2d at 918, *Lewis*, 123 S.W. 3d at 893 [additional citations omitted]. Further, the party must demonstrate prejudice by showing that the reconstructed record "does not allow for meaningful appellate review." *Ladson* 373 S.C. at 324. In the present case, the transcripts show that Willie Price nodded her head affirmatively when asked if this was her verdict, the court then asked her to say yes or no and that she responded "yes." Willie Price herself confirmed that she informed the court she "didn't know" if she agreed with the verdict. This key admission is missing from the transcripts.

Therefore, the current transcripts are prejudicial to the Defendant as it directly conflicts with an issue that is relevant on appeal. It is well-settled that the trial court must be satisfied that the verdict is unanimous and must conduct a poll of the jury at the request of either party. *State v. Kelly*, 372 S.C. 167, 170-71, 641 S.E.2d 468 (S.C. Ct. App. 2007) citing *State v. Linder*, 276 S.C. 304, 309, 278 S.E.2d 335, 338 (1981).

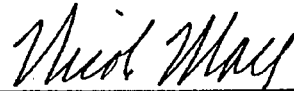
"Polling is a practice whereby the court determines from the jurors individually whether they assented [to] and still assent to the verdict." *Id.* at 308, 278 S.E.2d at 338. "If it is made known to the court when it is time to render the verdict that any juror does not assent to it, the verdict cannot be received and the jury should retire to their room until they have agreed." *Kelly*, 372 S.C. at 171 quoting *State v. Singleton*, 319 S.C. 312, 316, 460 S.E.2d 573, 576 (1995). A judge has a duty to urge the jury to reach a verdict, but he may not coerce them. *Id.* at 316, 460 S.E.2d at 575.

As indicated within the attached affidavits, there is evidence that juror Willie Price did not agree with the verdict and was clearly hesitant about the unanimity of the verdict. Due to the juror's apparent hesitation, a possible appellate issue would be that the trial judge erred in accepting the verdict at that time and should have allowed the jury to deliberate further in order to reach a decision. Defendant views these findings as a non-frivolous issue that could be presented on appeal. As such, the Defendant would

request that the Court review the circumstances presented herein and find that a reconstruction of the record in this matter is necessary for a meaningful appellate review.

WHEREFORE, the Defendant moves for an order granting this Motion for Remand to Reconstruct the Record for the purpose of taking the testimony of a witness and/or witnesses with knowledge in this matter. In addition, the undersigned further moves to have the testimony of such witness and/or witnesses, supplement the record.

Respectfully Submitted,



Nicole Nicolette Mace, Esquire
The Mace Firm
1341 44th Avenue North, Suite 205
Myrtle Beach, SC 29577
843.839.2900 Telephone
843.839.2913 Fax
nen@themacefirm.com

August 13, 2010.

April 27, 2010

(Fax 843-839-2913)

Nicole N. Mace, Esquire

THE MACE FIRM

1341 4th Avenue, North, Suite 205

Myrtle Beach, South Carolina 29577

Re: State of South Carolina vs. Jeremy McMillan
Case No.: 06-GS-31-100

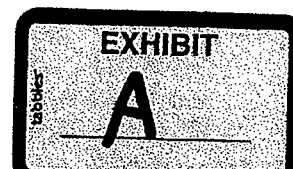
Dear Ms. Mace:

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I have listened to the portion of the trial where the jury was polled by the Clerk. The record indicates, as was previously transcribed, when the Clerk is proceeding to poll Juror Number 124, Ms. Cassandra Wilson, that before she completes her question there is an interruption from the audience, which is evident by the following statement by The Court wherein the jury was excused from the court room. At that point, we got off the record until the Court instructs the bailiff to return the jury back to the court room. Once again, the clerk starts over with the jury polling. When the Clerk calls out Juror Number 191, Willie Price, and ask her the follow up question, Ms. Price responds by nodding her head affirmatively. It was at that time that The Court instructs Juror 191, Willie Price, that she needs to respond with a yes or no answer and that the Clerk will again ask her the question. The Clerk again ask the question and Ms. Price responds yes. I have attached only that page indicating the only corrections that were found with regard to the jury polling.

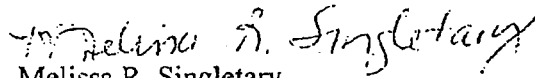
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You have in your letter dated April 22, 2010 once again requested that I send my tapes to you. Again, I have to advise you that I must follow the Rule and I would think that applies to you as well. I again, apologize for any misleading information that I gave to your office it was not intentional. I think we all learn from our mistakes and I have certainly learn that it's best to follow up everything by letter and although I want to help all I can, I must follow the Rules.



Hopefully, this will clear up any misunderstandings or matters that you and I have and we can both proceed on with whatever warrants our attention next. Have a good day.

Sincerely,


Melissa R. Singletary

mrs

cc: Ms. Desiree Allen (803-734-0269)
South Carolina Court Administrator

HEARING

4

1 Juror 124: Yes it is.

2 Clerk: Juror number 34 James Croft, is this your
3 verdict and still your verdict?

4 Juror 34: Yes.

5 Clerk: Juror number 61, Christian James, is this
6 your verdict and still your verdict?

7 Juror 61: Yes.

8 Clerk: Juror number 191, Willie Price, is this your
9 verdict and still your verdict?

10 Juror 191: (Nods head affirmatively).

11 The Court: All right, Ms. Price let me ask the
12 question again or the clerk is going to ask you the
13 question again. We need to have a yes or no, so I'm going
14 to have her ask the question again. When the question is
15 asked we have to either have a yes or no. Ask the
16 question. Thank you.

17 Clerk: Willie Price, Juror 191, was this your
18 verdict and still your verdict?

19 Juror 191: Yes.

20 Clerk: Juror number 90 Cynthia Riley, is this your
21 verdict and still your verdict?

22 Juror 90: Yes it is.

23 Clerk: Juror number 33, Emma Anderson, is this your
24 verdict and still your verdict?

25 Juror 33: Yes.

STATE OF SOUTH CAROLINA

AFFIDAVIT OF WILLIAM I. BEAM

COUNTY OF HORRY

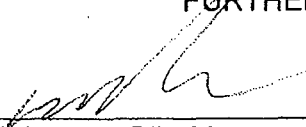
PERSONALLY appeared before me, the undersigned Notary Public, the Affiant, WILLIAM I. BEAM (PI) who being duly sworn stated as follows:

1. My name is William I. Beam and I am over the age of eighteen years.
2. I am a resident of Brunswick County, North Carolina
3. My business office is located in Horry County, South Carolina
4. That this affidavit is true and correct and it is based on my own personal knowledge and information provided to me by those persons named.
5. Your Affiant, William I. Beam (PI) Myrtle Beach, SC is a licensed private investigator in the State of South Carolina with over 20 years of investigative experience in North Carolina and South Carolina.
6. I was retained by The Mace Firm to locate Mrs. Willie F. Price of 959 Woodham Road, Bishopville, SC for the purpose of gathering information from her regarding the trial of Jeremy McMillian. Mrs. Price was one of the jurors who served on Jeremy McMillians' trial.
7. On July 19, 2010 I traveled from Myrtle Beach, SC to 959 Woodham Road, Bishopville, SC. I met with Mrs. Price.
9. Mrs. Price stated that during deliberations, the other eleven jurors were all "on her" to "just vote to convict" because it was getting late and they all [except Mrs. Price] agreed on a guilty verdict.
10. Mrs. Price stated she reluctantly agreed to vote guilty because she felt pressured to, but thought she would be able to say something to the judge to let him know she did not agree with the verdict.
11. She went on to say that when the judge polled the jury and asked her if she agreed with the verdict, she stated she "did not know." She also asserted that the judge then demanded a yes or no answer from her. Mrs. Price stated she felt intimidated at this time and as a result, just



said, "Yes." She further stated the judge told her, "Come on, it's getting late," and "we need an answer now." Mrs. Price was unsure what would happen to her if she stuck with her convictions and had told him, "no" instead of "yes."

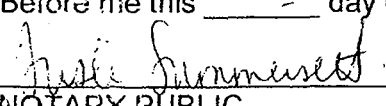
FURTHERMORE THE AFFIANT SAYETH NOT.



WILLIAM I. BEAM

SWORN TO AND SUBSCRIBED

Before me this 5 day of August, 2010



NOTARY PUBLIC

STATE OF SOUTH CAROLINA

My commission expires: 8/6/2014

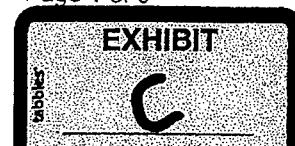
STATE OF SOUTH CAROLINA	)	IN THE COURT OF APPEALS
COUNTY OF LEE	)	Case No.: 2006-GS-31-100
STATE OF SOUTH CAROLINA	)	
Respondent,	)	
v.	)	AFFIDAVIT OF CEZAR MCKNIGHT
JEREMY MCMILLIAN	)	
Defendant.	)	

PERSONALLY APPEARED BEFORE ME, Cezar E. McKnight, who after being duly sworn, states the following:

1. My name is Cezar E. McKnight and I represented the above-referenced Defendant, Jeremy McMillan, for his trial during the week of December 8, 2008. My address is 106 East Main Street, Lake City, South Carolina 29560. I have been made no promises nor given any incentive to provide this affidavit.
2. As the defense counsel in the case of The State of South Carolina v. Jeremy McMillan, I observed the trial in its entirety with The Honorable Judge Howard P. King as the presiding judge.
3. After the guilty verdict was announced, I requested Judge King to poll the jury. The judge granted this request and had the clerk question each juror of their individual verdict answer. Each juror answered affirmatively to their written verdict response.
4. However, while the clerk was questioning each juror, I witnessed a juror by the name of Willie Price. She seemed very hesitant and unsure about the guilty verdict previously announced. She appeared to be extremely shaken as well.

Cezar E. McKnight: CEM

Page 1 of 3



When the clerk questioned her as to whether this was her verdict, she nodded her head in a non-verbal "No" response.

5. After her initial "No" response, Judge King stated that she would have to provide a verbal "yes or no" response and the clerk again asked her if she was satisfied with the verdict as written. She then stated either "I don't know" or "I'm not sure." After the judge heard this response, he practically shouted in a noticeably forceful manner for the juror to answer yes or no to the question. Ms. Price was visibly fearful of the tone that the judge used and also appeared to be intimidated by him. After that, she apprehensively answered in a "yes" response to the clerk's question as to whether the verdict was accurate.
6. Upon witnessing this event and the apparent unwillingness of the juror, Ms. Price, to answer "yes" to the guilty verdict, I immediately requested that the verdict be set aside; however, my motion was denied.
7. I acknowledge that I execute this affidavit voluntarily, of my own free will, and I acknowledge that no undue coercion, threats, or overbearance were placed upon me with respect to its signing and I am not under the influence of drugs or alcohol.
8. I affirm that the above facts are true and correct, and given voluntarily without threat or promise from anyone.

FURTHER AFFIANT SAYETH NOT.

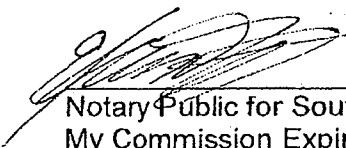
(signature page to follow)

Cezar E. McKnight: 

Page 2 of 3


Cezar E. McKnight

SWORN to before me this
1st day of July, 2010.

 ELAINE EPPS
Notary Public for South Carolina
My Commission Expires: May 7, 2020

Cezar E. McKnight: 

Page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)
STATE OF SOUTH CAROLINA)
Respondent,)
v.)
JEREMY MCMILLIAN)
Defendant.)

IN THE COURT OF APPEALS

Case No.: 2006-GS-31-100

AFFIDAVIT OF SAMANTHA MCCREA

PERSONALLY APPEARED BEFORE ME, Samantha McCrea, who after being duly sworn, states the following:

1. My name is Samantha McCrea and I am thirty-seven (37) years of age. My address is 65 Champion Road, Kingstree, South Carolina. I have been made no promises nor given any incentive to provide this affidavit.
2. I was previously a paralegal for the Law Office of Cezar E. McKnight, LLC and I personally witnessed the trial proceedings in the case of The State of South Carolina v. Jeremy McMillan during the week of December 8, 2008. I observed the trial in its entirety with The Honorable Judge Howard P. King as presiding Judge.
3. During the reading of the verdict, I witnessed Judge King question each juror of their individual verdict answer. Each juror answered the Judge in agreeance to their written verdict response.
4. However, one juror in particular, a middle aged African American female, was very hesitant to answer with a verbal response. This particular female juror

Samantha McCrea: _____



began to shutter cowardlessly at her seat. She also shook her head nervously in a matter of fact way with a non-verbal "No" response.

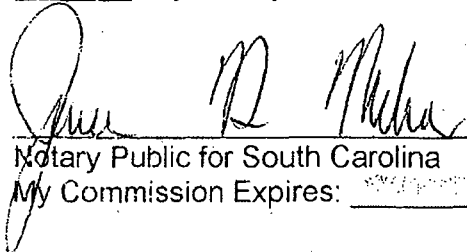
5. Finally, the juror verbally stated to the Judge and the court that she simply could not answer yes or no to her written verdict. She displayed a negative emotional state through non-verbal as well as verbal signals.
6. In doing so, Judge King, forcefully and aggressively ordered the juror to answer yes or no to the question. The juror at that point seemed to be shocked, fearful, and intimidated by the tone in which the Judge used towards her in reference to her indecisiveness.
7. Subsequently, it was at that point, after approximately five to ten minutes, the juror nervously acknowledged her written verdict.
8. I acknowledge that I execute this affidavit voluntarily, of my own free will, and I acknowledge that no undue coercion, threats, or overbearance were placed upon me with respect to its signing and I am not under the influence of drugs or alcohol.
9. I affirm that the above facts are true and correct, and given voluntarily without threat or promise from anyone.

FURTHER AFFIANT SAYETH NOT.

(signature page to follow)


Samantha McCrea

SWORN to before me this
16 day of May, 2010.


Notary Public for South Carolina
My Commission Expires: 05/16/2011

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

STATE OF SOUTH CAROLINA)

Respondent,)

v.)

JEREMY MCMILLIAN)

Defendant.)

IN THE COURT OF APPEALS

Case No.: 2006-GS-31-100

AFFIDAVIT OF NYREDIA PAGE

PERSONALLY APPEARED BEFORE ME, Nyredia Yvonne Page, who after being duly sworn, states the following:

1. My name is Nyredia Yvonne Page of Lake City, South Carolina.
2. I am an immediate relative of the Defendant in the above-entitled action.
3. I have been made no promises nor given any incentive to provide this affidavit.
4. I was personally present at the trial during the jury verdict on December 11th, 2008. During the end of the trial, the judge asked the Clerk to stand and read the verdict of the jury. The Clerk stated that the jury had unanimously decided that the Defendant, Jeremy McMillam, was guilty on the counts of murder and the possession of a weapon during the commencement of a crime. The judge stated that he was going to poll the jury and asked one of the jurors "Is this your verdict and still your verdict?" The juror stated either "I don't know" or "I'm not sure" and appeared to have tears in her eyes. She was noticeably upset and the judge asked the same question a second time. She began to nod her head up and down uneasily. The judge then asked "Is that a yes?" She nodded her head up and down again. On each occasion, she showed an apparent unwillingness to

Nyredia Yvonne Page: N.Y.P.

EXHIBIT

E

state "yes" to the judge's question.

5. I acknowledge that I execute this affidavit voluntarily, of my own free will, and I acknowledge that no undue coercion, threats, or overbearance were placed upon me with respect to its signing and I am not under the influence of drugs or alcohol.

6. I affirm that the above facts are true and correct, and given voluntarily without threat or promise from anyone.

FURTHER AFFIANT SAYETH NOT.

Nyredia Yvonne Page
Nyredia Yvonne Page

SWORN to before me this
4th day of May, 2010.

Army H. Ruffin
Notary Public for South Carolina
My Commission Expires: 6/11/2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)
)
STATE OF SOUTH CAROLINA)
)
Respondent,)
)
v.)
)
JEREMY MCMILLIAN)
)
Defendant.)
_____)

IN THE COURT OF APPEALS

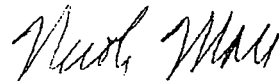
Case No.: 2006-GS-31-100

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion for Remand to Reconstruct the Record in the above-referenced case has been served upon the following, by depositing a copy of the same in the United States mail with proper first-class postage affixed thereon, addressed as follows:

Donald J. Zelenka, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

On the 13 day of August, 2010



Nicole N. Mace, Esq.
The Mace Firm
1341 44th Avenue North, Suite 205
Myrtle Beach, SC 29577
nen@themacefirm.com
843.839.2900 Telephone
843.839.2913 Fax

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from LEE County
Howard KING, Circuit Court Judge

State of South Carolina,

Respondent,

v.

JEREMY McMILLAN,

Appellant.

RETURN TO MOTION FOR REMAND TO RECONSTRUCT THE RECORD

The Respondent State of South Carolina hereby makes a Return to the Motion to Reconstruct the Record of the trial transcript, particularly the polling of the jury after verdict. The Court Reporter has made a response to the Appellant's request and has confirmed her own conclusions after reviewing her records. Respondent asserts the following:

I.

In his Motion, Appellant Jeremy McMillan, though retained appellate counsel Nicole N. Mace, asserts that the record that he received from Court Reporter Melissa Singletary was inaccurate and requests this Court to remand to resolve the alleged discrepancy. In particular, he contends that during the polling of the jury, one juror - Willie Price - stated that she did not know if she agreed with the verdict and stated "I don't know" and an exchange that she had with the

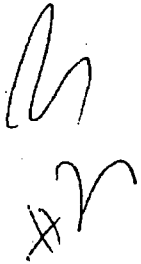
judge was not reported in the provided transcript. Motion, p. 2-3.¹

However, in the motion, the Appellant has attached a review letter by Court Reporter Singletary dated April 27, 2010 consistent with SCACR Rule 607(I). (Exhibit A). In the letter, Court Reporter Singletary confirms the accuracy of her transcription as revealed in the page attached to the letter. In particular, the Court Reporter has concluded the following as the record:

Clerk : Juror 191, Willie Price, is this your verdict and still your verdict?

Juror 191: (Nods head affirmatively).

The Court: All right, Ms. Price let me ask you the question again or the clerk is going to ask you the question again. We need to have a yes or no , so I'm going to have her ask the question again. When the question is asked we have to

¹In her motion, McMillan included a hearsay affidavit from William Beam an investigator who interviewed juror 191, Willie Price. Included in the were hearsay statements from juror Price concerning her deliberations. Beam Affidavit, ¶ 9, 10, 11. These averments are inadmissible and inappropriate under S.C. R.E., Rule 606(b). Rule 606(b) of the South Carolina Rules of Evidence alters this common law rule by allowing a juror to offer testimony as to "whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror." The rule additionally provides:

[A] juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, ... [n]or may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Id. Rule 606 thus draws a distinction between evidence of external influences on the jury's deliberations and comments of jurors occurring during deliberations. While the rule allows evidence of the former to be introduced, it prohibits the introduction of the latter. See, *Shumpert v. State*, 378 S.C. 62, 66, 661 S.E.2d 369, 371 (S.C.,2008)

either have a yes or no. Ask the question, thank you.

Clerk: Ms. Price, Juror 191, was this your verdict and still your verdict?

Juror 191: Yes.

Exhibit A, p. 3. {Tr. P. 4.}.

The Appellant appears to assert that the initial non-verbal response was a no rather than a yes response (McKnight Affidavit ¶4, McCrea Affidavit ¶4, but concurs that the oral response was a "yes." (McKnight Affidavit, ¶ 5, McCrea Affidavit, ¶ 5, ².

II.

Upon information and belief, Respondent submits that the record is an accurate reflection of the trial.

The undisputed point is that juror 191 ultimately gave an affirmative "yes" response to the polling of the verdict as her verdict. This was correctly determined by the Court Reporter and is not contested by either affidavit of McKnight and McCrea. In fact, the Page averment also include that the juror was making affirmative responses.

III.

Respondent submits that the a remand for reconstruction of the record is not necessary where the record conclusively reflects that juror 191 confirmed during the polling that the verdict was her verdict.

²The affidavit of Nyredia Page was consistent that the an unnamed juror nodded in an up and down fashion which is consistent with a yes rather than a negative response. However, unlike the Court Reporter conclusions or the McKnight and McCrea recollections she stated one of the jurors had stated "I don't know" or "I'm not sure" prior to the affirmative non-verbal response. She further asserted it was the trial judge and not the clerk of court who inquired of the juror. However, also unlike the Court Reporter record or the affidavits of McCrea and McKnight, Ms. Page's attestation did not include anything about a verbal "yes" response.

Respondent leaves it to this Court's discretion whether a remand is either necessary or appropriate for the trial court to address the non-verbal aspects of the requests concerning hesitation, tears in the eyes, etc., where upon information and belief, the defense counsel did not make a contemporaneous record of the non-verbal matters or require the trial court to make findings on the record about any non-verbal matter.

WHEREFORE, having made Return, Respondent request that this record be settled consistent with the records of the Court Reporter.

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

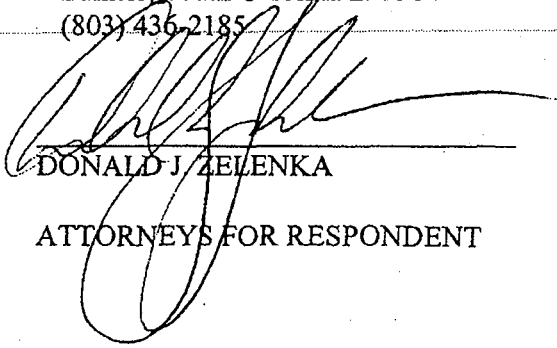
DONALD J. ZELENKA
Assistant Deputy Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

C. KELLY JACKSON
Solicitor, Third Judicial Circuit

141 N. Main Street
Sumter, South Carolina 29150
(803) 436-2185

By:

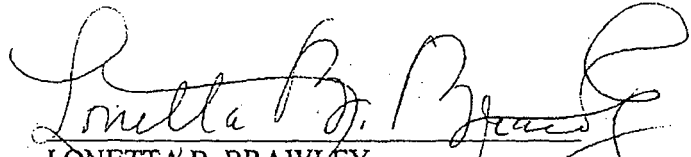

DONALD J. ZELENKA

ATTORNEYS FOR RESPONDENT

September 14, 2010

CERTIFICATE OF SERVICE

I, **Lonetta B. Brawley**, hereby certify that I have served the *Return to Motion for Remand to Reconstruct the Record* in the foregoing action by depositing copies in the United States mail, postage prepaid, to Nicole N. Mace, Esquire, 1341 44th Avenue North, Myrtle Beach, SC 29577 this 14th day of September, 2010.


LONETTA B. BRAWLEY
Legal Assistant to Donald J. Zelenka
Assistant Deputy Attorney General

From: Don Zelenka
To: hkingj@sccourts.gov;
cc: hkinglc@sccourts.gov; C. Kelly Jackson; Nicole Nicolette;
Subject: Re: State v. Jeremy McMillan - Lee County Murder Appeal - Remand for Record Reconstruction - Record, page 628-644 Attached
Date: Tuesday, November 09, 2010 10:45:10 AM
Attachments: [McMillian Transcript 628-644.PDF](#)

Dear Judge King:

Pursuant to the telephone request of this office, please find attached the portion of the transcript prepared by Melissa Singletary, pages 628-644, which include the notice that the jury had reached a verdict through the end of the trial.

If further information is necessary and/or arrangements for a hearing need to be made, please advise.

By copy of this email I am advising appellant's counsel, Ms. Nicole Mace and the Solicitor of this communication.

Please feel free to contact me concerning this matter. My telephone number 803-734-3601.

CC: Ms. Nicole Mace, Esq, Hon. Kelly Jackson

Enclosure: State v. McMillian, pages 628 - 644 and court reporter certificate.

Sincerely,

COUNTY OF LEE

COURT OF GENERAL SESSIONS

PLAINTIFF,

TRANSCRIPT OF RECORD
C/A #: 2006-GS-31-100

V.

DEFENDANT.

LEE COUNTY COURTHOUSE
Monday, December 8, 2008 thru
Thursday, December 11, 2008

BEFORE:

HONORABLE HOWARD P. KING, PRESIDING JUDGE.

VOLUME TWO
PAGES 301 THROUGH 645

1 understand that you have now heard all of the testimony
2 that you need to hear. I will allow you to go back in the
3 jury room and resume your deliberations, thank you very
4 much. All right madam reporter here is the note. It is,
5 of course, exhibit number two. Any objection to the
6 method of having the jury request for the playing of
7 testimony from the State?

8* **(Court's Exhibit Number 2)**

9 Mr. Fata: None from the State Your Honor.

10 Mr. McKnight: None from the Defense Your Honor.

11 The Court: Thank you again.

12 **(Jury deliberations continue)**

13 **(Court Break)**

14 The Court: All right we're back on the record
15 regarding the matter of the State versus Jeremy McMillan.
16 The Defendant, Mr. McMillan is present in the court with
17 his counsel Mr. Cezar McKnight. The State is also present
18 and represented by Mr. Fata. I have been advised that the
19 jury has reached a verdict. Before we bring the jury in I
20 want to address everyone in the court room for just a
21 moment. All the spectators, members of the families of
22 the victims as well as the Defendant's families. I know
23 that this is an important matter for everyone involved.
24 I'll wait just a minute (Police sirens in background).
25 Both the Defendant and members of his family and members

1 of the victims family, however I am going to have to
2 require that the order in the courtroom be maintained when
3 the jury verdict is published. So I will not permit any
4 kind of clapping or shows of emotions or anything with
5 regard to the jury's verdict when the jury verdict is
6 published. If anyone who's present in the court room and
7 feels that they can not sit quietly while the jury verdict
8 is published, I would ask that you leave now. All right
9 thank you. Anything before the jury is brought in Mr.
10 Fata?

11 Mr. Fata: No sir Your Honor.

12 The Court: Mr. McKnight?

13 Mr. McKnight: Nothing from the Defense Your Honor.

14 The Court: All right, you may bring the jury in.

15 **(Jury enters Courtroom with Verdict at 3:40)**

16 The Court: All right has the jury reached a verdict?

17 Foreperson: It has.

18 The Court: Hand it up to the Bailiff please.

19 (Foreperson complies)

20 The Court: All right, from a standpoint of form the
21 verdict appears to be correct. Mr. McKnight would you and
22 your client stand please? Madam clerk you may publish the
23 verdict.

24 Clerk: The State of South Carolina versus Jeremy
25 McMillan on the charge of murder of Patrick Hood, we the

1 jury, by unanimous agreement find the Defendant Jeremy
2 McMillan guilty. On the charge of murder of Joshua Lee,
3 we the jury, by unanimous agreement find the Defendant
4 Jeremy McMillan guilty. We the jury, by unanimous
5 agreement find the Defendant Jeremy McMillan guilty of the
6 possession of a weapon during the commission of a crime of
7 violence guilty.

8 The Court: Thank you. Mr. McKnight you may be
9 seated. All right, Mr. McKnight anything before the jury
10 is excused?

11 Mr. McKnight: Your Honor, we ask that you poll the
12 jury

13 The Court: All right. Madam Clerk, poll the jury,
14 please.

15 Clerk: Juror number 57, Deborah Holloman, was this
16 your verdict and still your verdict?

17 Juror: Yes it is.

18 Clerk: Juror number 124, Ms. Cassandra Wilson,

19 The Court: All right, wait just a moment please.
20 Have a seat just a moment please. Deputy assist the
21 individual. Go to the jury room for just a moment please.
22 (Jury excused from the Courtroom)

23 The Court: All right the jury is being excused while
24 the spectator, I don't know who she was, but she was
25 obviously emotional. All right bring the jury back in.

1 (Jury enters Courtroom for polling 3:42)

2 The Court: All right. Thank you very much ladies and
3 gentlemen. I have accepted the verdict and in the process
4 of jury polling.

5 Clerk: Juror number 57 Debra Holloman, is this your
6 verdict and still your verdict?

7 Juror 57: Yes it is.

8 Clerk: Juror number 124 Cassandra Wilson, is this
9 your verdict and still your verdict?

10 Juror 124: Yes it is.

11 Clerk: Juror number 34 James Croft, is this your
12 verdict and still your verdict?

13 Juror 34: Yes.

14 Clerk: Juror number 61, Christian James, is this
15 your verdict and still your verdict?

16 Juror 61: Yes.

17 Clerk: Juror number 191, Willie Price, is this your
18 verdict and still your verdict?

19 Juror 191: (Nods head affirmatively).

20 The Court: All right, Mr. Price let me ask the
21 question again or the clerk is going to ask you the
22 question again and you either say yes or no. Ask the
23 question.

24 Clerk: Willie Price, Juror 191, is this your verdict
25 and is still your verdict?

1 Juror 191: Yes.

2 Clerk: Juror number 90 Cynthia Riley, is this your
3 verdict and still your verdict?

4 Juror 90: Yes it is.

5 Clerk: Juror number 33, Emma Anderson, is this your
6 verdict and still your verdict?

7 Juror 33: Yes.

8 Clerk: Juror number 145 Emma Bradley, is this your
9 verdict and still your verdict?

10 Juror 145: Yes.

11 Clerk: Juror number 19, Freda Bradshaw, is this your
12 verdict and still your verdict?

13 Juror 19: Yes.

14 Clerk: Juror number 94 William Rock, is this your
15 verdict and still your verdict?

16 Juror 94: Yes it is.

17 Clerk: Juror number 40, Patricia DuRant, is this
18 your verdict and still your verdict?

19 Juror 40: Yes it is.

20 Clerk: Juror number 179, Earnestine Lowery, is this
21 your verdict and still your verdict?

22 Juror 179: Yes it is.

23 The Court: All right, thank you very much. Anything
24 before the jury is excused Mr. McKnight?

25 Mr. McKnight: No.

1 The Court: Mr. Fata?

2 Mr. Fata: No sir.

3 The Court: All right, ladies and gentlemen of the
4 jury, this will conclude your services in this matter of
5 this case and I am going to dismiss you and thank you for
6 your services in connection with this matter. There are
7 several things that I want to tell you before I excuse
8 you. First of all, in my view the jury's role and in the
9 fact finding process is so important the trial judge
10 should not comment on the verdict of the jury even after
11 the jury has reached a verdict in the case. I make it a
12 practice and a policy never to comment on the verdict of
13 the jury because I think that the jury's role is very
14 important and the trial judge should not make any comment
15 in that regard even after the jury has returned a verdict.
16 The only thing that I will tell you is there was evidence
17 by which you could have made the decisions that you did.
18 I will also tell you that once you have been excused as a
19 juror in this case then there is nothing illegal about
20 your talking to anyone about your service on this case.
21 There's nothing illegal about anybody talking to you about
22 your service on this case. It is a practice in which I
23 strongly disapprove and strongly discourage, but it's not
24 illegal. You have a right to talk with anyone. You have
25 a right not to talk with anyone, but it's your call. If

1 someone wants to talk with you about it and you don't want
2 to talk about it and they continue to harass you or bother
3 you then you let court personnel know and I will deal with
4 them. I will also tell you that in just a few minute
5 we're going to go into the sentencing phase in this case
6 and I know that jurors are very often interested in
7 knowing what the outcome is. After I have excused you if
8 you would like to stay in the sentencing phase that we
9 will move to right now. It will take us about ten,
10 fifteen twenty minutes or so. If you would like to when
11 you are excused go out this back door and have a seat in
12 the back of the court room, then when we finish the
13 sentencing phase I will excuse you before anyone else will
14 be allowed to leave the courthouse if you would like to
15 stay. You're certainly welcome to leave if you want to
16 when I excuse you, but you're welcome to come back in and
17 stay for the sentencing phase if you want to. That would
18 be up to you. I want to thank you for your service on
19 this case. I know that it is never convenient to serve on
20 a jury, but it is an important citizenship responsibility
21 to serve on the jury and I know that you're called upon to
22 make very serious decisions and it is an imposition of
23 your time, it is important to our system of government
24 that we have good citizens who are willing to come and
25 serve as jurors and I do appreciate your service and I

THIRD JUDICIAL CIRCUIT
(803) 436-2150

1 appreciate the attention that you have given to this case
2 and the obvious thought that you have given to your
3 deliberations. I would also tell you that by serving on
4 the jury this week you have met your citizenship
5 responsibilities_for jury service for the Circuit Court.
6 Both the civil or for the General Sessions for the next
7 three years. You cannot be required to serve as a juror
8 in the Circuit court more than once every three years. The
9 first year if you were to get a summons from the court we
10 couldn't take you even if you wanted to serve you'd
11 actually be disqualified. The second and third years you
12 have an exemption, which means that you can serve if you
13 want to, but you can't be required to serve. Also, next
14 week you will get a check from the Clerk's office. It
15 will not compensate you for the time that you've spent
16 here this week. That is a small token on behalf of the
17 county for your service this week and I hope that as a
18 result of your service this week that you have a better
19 appreciation of our criminal justice system and that you
20 do understand better the matters that go on in the general
21 sessions courts of this State. Again, thank you for your
22 service, you are welcome to stay and come to the back of
23 the court room if you want to or you are welcome to leave
24 and go about your business, you're excused from this case
25 and from any further service this week. It is not

THIRD JUDICIAL CIRCUIT

(803) 436-2150

1 necessary that you call back or come back in for tomorrow.
2 Thank you very much and have a pleasant evening.

3 (Jury excused from the Court)

4 The Court: Any motions you want to put on the
5 record, Mr. McKnight?

6 Mr. McKnight: Your Honor, the Defendant respectfully
7 move that you set aside the verdict of the jury. We
8 believe that there was not ample evidence in which the
9 jury could reach the verdict that they did.

10 The Court: All right sir. I will respectfully deny
11 that motion. I think there was an issue for the jury's
12 determination and as you indicated in your argument, a
13 large part of this case was the credibility of witnesses.
14 It is a matter for the jury's determination and in my view
15 if I were to grant a motion for new trial or a judgement
16 notwithstanding the verdict then I would be substituting
17 my judgment for that of the jury and I do not believe that
18 I can do that. I respectfully deny the motion.

19 Mr. McKnight: Yes sir.

20 The Court: All right, Mr. Fata do you have the
21 sentencing sheets?

22 Mr. Fata: I do, Your Honor.

23 The Court: Anything else before we go into the
24 sentencing phase?

25 Mr. Fata: Nothing from the State Your Honor.

1 The Court: Mr. McKnight?

2 Mr. McKnight: Nothing from the Defendant.

3 The Court: Mr. McMillan would you all come up,
4 please.

5 Mr. McKnight: Yes sir.

6 The Court: All right, Mr. Fata. I'll be glad to
7 hear from you in regards to any matters the State wishes
8 to present both in the way of criminal record and also
9 will hear from ...

10 Mr. Fata: Yes sir. Your Honor the Defendant has on
11 his record a 2003 CDV; he has a 2004 Disturbing School and
12 malicious injury to property; he has no other convictions
13 on the NCIC report that I have. Your Honor.

14 The Court: State your name.

15 A: My name is Stephanie McGill.

16 Mr. Fata: And she is, let me give you some
17 background about her. She is the lady at the doorway that
18 Mr. McEwen pushed aside. The bullet went through him and
19 went into her back and lodged in her back. She is one of
20 the ABWIKS that we had in this case. Anyway, she's a
21 victim of another ABWIK and she'd like to address the
22 Court.

23 The Court: All right, I'll be glad to hear from her.
24 Are you related to Mr. Lee or?

25 Ms. McGill: My cousin.

1 The Court: All right, go ahead.

2 Ms. McGill: This was something that never should have
3 happened. This was uncalled for. I lost my cousin, I
4 almost lost my life and I don't see how a person can do
5 that. I was shot a half inch away from my heart, a half a
6 inch. We lost my cousin. It could have been me as well.
7 I was supposed to go in the Army, I couldn't go back in
8 the Army because of my injuries. I mean, I still have
9 nightmares. I still can't sleep. I'm considering going
10 back to counseling and I'm ready to close this part of my
11 life. I can't take this anymore. This is awful, this is
12 awful. I need one, an apology would have been greatly
13 accepted. Not even an apology, not even a I'm sorry that
14 I did it. Not nothing.

15 The Court: In all fairness to the Defendant and I'm
16 sure that Mr. McKnight will probably say this. Normally
17 when you've got a criminal charge against you, it's not
18 appropriate for the Defendant to talk to the family until
19 after the case has been heard. He might have advised him
20 not to. I understand how you feel about it.

21 Ms. McGill: Thank you for everything.

22 The Court: Thank you. All right.

23 Mr. Fata: Your Honor Mr. McEwen would like to address
24 the Court. He was the ...

25 The Court: I remember the testimony. Yes, sir.

1 Mr. McEwen: I stand here a thirty year old man come
2 Saturday. I'm an orphan, both of my parents are dead. I
3 took Mrs. Hood's son to the club only to make some money
4 for his newborn kid. I felt totally responsible for Mr.
5 Hood. I knew not of Mr. Lee but he was a friend to me
6 because I saw what I saw as he fell to this earth, fell to
7 the ground and left this earth. He left me with something
8 to tell his mom and I can only feel no braver than to tell
9 her right now what he said. I asked in my heart, Mr.
10 J.D., Mr. Webb, Mr. Paul, I worked with them constantly
11 for the past three years while they did what they. I
12 intend not to hurt nobody in your county Mr. Judge, I was
13 only there to do a bouncing job and go home. To make a
14 little bit of money. I have a full time job, but I hope
15 this day, the day before my birthday that you bring
16 justice for Mrs. Hood and Ms. Lee. I meant not harm.
17 While I'm standing in front of this court room I want to
18 tell her what her son said. All of his little breath of
19 body before that bullet came out, Mom I love you. That's
20 all he could say and he left. That is when I was telling
21 the Court I picked him up and I put him up under the
22 table. I myself was wounded. A bullet went in my side
23 and went over to Ms. Stephanie. I been wondering all
24 these years where did that bullet go and what went on? I
25 may be big and Judge you may look at me like who's this

1 big guy? I'm not a vigilante. I'm one of fifteen kids on
2 my dad's side and I'm one of eight on my mom. My
3 mom worked third shift, food stamps and all. I have a
4 heart Judge and my heart was with these two parents. I
5 felt responsible and I hope that you find in your heart
6 and the State of South Carolina law in defense of these
7 two parents and I'm grateful for that.

8 The Court: Thank you, sir.

9 Mr. Fata: Your Honor she does not want to speak.
10 Your Honor I will say there were nine ABWIKs, two murders
11 and we did not try the ABWIKs simply because the, to keep
12 the case simple, simpler then the way it was. It was a
13 difficult and convoluted case, but it would have been more
14 so if we'd to try all those ABWIKs along with the murders.
15 So this, and we have two dead bodies, a very serious
16 crime. In my closing argument I said that I believe that
17 this was an attack on the club. I really believe that and
18 I believe that if Mr. McEwen had not got his 45 and began
19 to shoot back towards Mr. McMillan that he might have
20 entered that club and cleaned out all of the St. John's
21 boys. Your Honor, even though he's only being convicted
22 of two murders, I really believe that this and that the
23 State would recommend life without parole and request a
24 sentence for life without parole. But the sentence is
25 within your discrepancy.

1 The Court: All right, thank you Mr. Fata and the
2 victim's families. All right Mr. McKnight.

3 Mr. McKnight: Thank you Your Honor, may it please
4 the Court. As you know I represent the interests of Mr.
5 Jeremy McMillan. He's 23 years old. Life long resident
6 of Lake City, South Carolina, attended Lake City High
7 School. He's the father of two children, well three
8 children now Your Honor. As Mr. Fata correctly indicated
9 to you, he has never, his criminal record that he outlined
10 is true and accurate. I would have some of his family
11 members here, but they are there, they don't, just for the
12 sake of ...

13 The Court: I understand that, in fact, a couple just
14 came in and if you'd like to bring here up, I'll be glad
15 to hear from her.

16 Mr. McKnight: Your Honor, I once heard said that
17 justice without mercy is --- I do not make light and my
18 client does not make light of the fact that there are two
19 dead persons ...

20 The Court: Come around on this side over here. Go
21 ahead.

22 Mr. McKnight: I don't make light that there are two
23 dead persons Your Honor and I do not make light of the
24 fact that there were a number of persons injured, but this
25 is a serious matter, this is a life threatening matter and

1 my client knows that. But Your Honor, he's twenty-three
2 years old and we'd ask the Court that you give him some,
3 or allow him to have some part of his life. There's a
4 thirty year minimum that you can affix to Mr. McMillan on
5 both counts and have that run concurrent. He has to do
6 eighty-five percent of that sentence. If he were to do
7 eighty-five percent of that sentence, thirty years, at my
8 bad math estimate matches up to twenty five years, so he'd
9 come out of prison at forty-eight years old. That's at
10 least a part of his life and we all know that forty-eight
11 is not old, but that would give him some simpliance of
12 life, to come out and make up and be active in his
13 children's life, but they will be grown. Your Honor this
14 is tragic. My client expresses remorse, but he still
15 maintains his innocence. We ask that you be merciful to
16 him. We realize that you have the power to, we ask also
17 that any sentences that you may pronounce upon him, that
18 you will run them concurrent.

19 The Court: State your name ma'am.

20 A: My name is Ms. Gamble, I'm his niece. I would like to
21 say that I apologize for your son and any losses that
22 you got may have occurred, but again Your Honor, this
23 is my uncle and, you know, I'm asking the same thing.
24 He's a young guy. He does have very young children.
25 Again when he do, you know, when he do gets out, you

1 know, they would be adults and it would allow time
2 for him to spend a little time with them. And again,
3 our family, we do apologize for any losses that you
4 guys have. I just ask that you please run these two
5 charges concurrent.

6 The Court: Thank you Mr. McKnight. I'll hear from.
7 I understand he does not want to say anything.

8 Mr. McKnight: Your Honor, my client, based upon any
9 legal ramifications of him talking, respectfully request
10 that he not say anything right now.

11 The Court: Let's take a break.

12 (Court break)

13 The Court: All right. Back on the record. I was
14 told by my colleagues that this is the hardest thing to
15 do. I sympathize with you and your loss and I hope that
16 this brings some closure. Very often the sentence does
17 not satisfy, quite sometimes do not satisfy everybody, but
18 it is something we have to do based upon the fact. The
19 fact that he had two murders in this case. There very
20 well could have been more. These deaths were the result
21 of a shooting that day. I said we are very fortunate that
22 there were not more deaths in this situation. You realize
23 that this type of conduct can not be tolerated. Therefore
24 it is my opinion that the appropriate sentence is life
25 without parole. On the charge of possession of a weapon

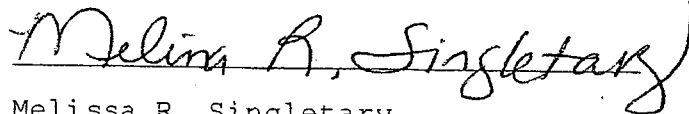
1 during the commission of a violent crime is five years.
2 Thank you.
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CERTIFICATE

This is to certify that the copy of the hearing in the matter of State vs. Jeremy McMillan, consisting of Six-Hundred Forty-Four (644) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 30th day of September, 2010.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEE COUNTY
Howard P. King, Circuit Court Judge

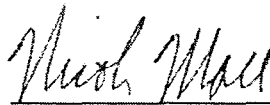
THE STATE.....Respondent

v.

JEREMY MCMILLIAN.....Appellant

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by
both parties and not any other material.



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