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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO ORANGEBURG COUNTY
D. Craig Brown, Circuit Court Judge

Appellate Case No: 2020-000896

JULIAN YOUNG, RESPONDENT,

v.

STATE OF SOUTH CAROLINA, PETITIONER.

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF Orangeburg)
STATE VS.)
Julian C Young)
AKA:)
Race: B Sex: M Age: 18)
DOB: [redacted]94 SS#: [redacted])
Address: 151 Haggerty Street)
Holly Hill, SC 29059)
DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS38-1833
A/W#: M805407
Date of Offense: 4/15/2011
S.C. Code § : 16-3-10
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder

in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. ____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Sorenson, Donald N. 9512 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 35 ~~days/months~~/years or ☐ under the Youthful Offender Act not to exceed — years
and/or to pay a fine of $ — ; provided that upon the service of — days/months/years and/or payment
of $ — ; plus costs and assessments as applicable*; the balance is suspended with probation for —
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ____
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ ____ plus 20% fee: $ ____
Payment Terms: ____
☐ set by SCDPPPS ____
Recipient: ____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
§ 47.12 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$100	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
§ 90.7 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP ____
____ days/hours Public Service Employment
Obtain GED ____
Attend Voc. Rehab. or Job Corp. ____
May serve W/E begining ____
Substance Abuse Counseling ____
Random Drug/Alcohol testing ____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ____ beginning ____
$ ____ paid to Public Defender Fund
Other: ____

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk V. Otero
Court Reporter: Harry Dot Walker
PRESIDING JUDGE ____
Judge Code: 2153
Sentence Date: August 18, 2012

SCCA/217 (06/2009)

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-1833
Appellate Case No. 2012-213006

STATE OF SOUTH CAROLINA,

RESPONDENT

v.

JULIAN C. YOUNG,

APPELLANT.

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

STATE OF SOUTH CAROLINA)
)
versus)
)
JULIAN C. YOUNG,)
)
DEFENDANT)

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT
CASE NO. 2011-GS-38-1833

TRANSCRIPT OF RECORD

DATE:

AUGUST 14 - 16, 2012

BEFORE:

HONORABLE EDGAR W. DICKSON, PRESIDING JUDGE

APPEARANCES:

DONALD SORENSON, ESQUIRE
HARRISON BELL, ESQUIRE

ASSISTANT SOLICITORS

FOR THE STATE

VIRGIN YOUNG, ESQUIRE
COREY L. WILLIAMS, ESQUIRE

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immediate family ever been involved in a case where the Solicitor's office was on the other side? If so, please stand at this time.

No one is standing.

Alright. The defendant, Julian Young, is present in the courtroom. Mr. Young, would you mind standing, please, sir? Thank you, sir. Okay. Is any member of the jury panel related by blood or marriage or a close personal friend of Mr. Julian Young? If so, please stand at this time.

Alright, no one is standing.

Mr. Young is represented by Mr. Johnson and Mr. Williams. Mr. Johnson, if you wouldn't mind identifying yourself to the jury, please.

MR. YOUNG: My name is Virgin Johnson, my partner, Corey Williams, we practice together right here in Orangeburg.

THE COURT: Alright, thank you, sir.

COURT REPORTER: I didn't get your name?

MR. WILLIAMS: Corey Williams.

COURT REPORTER: Thank you.

MR. WILLIAMS: And our assistants that are here and present in the courtroom are Mr. William Chain and Ms. Andrea Scott.

THE COURT: Thank you, Mr. Williams.

Now, is any member of the jury panel related by blood or marriage or a close personal friend of Mr. Johnson or Mr.

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MR. JOHNSON: But obviously, we have to talk to our witnesses, but - - -

THE COURT: Right. yeah, right.

MR. JOHNSON: --- but the witnesses should not be talking ...

THE COURT: Right, the witnesses should not be talking between themselves. Alright, anything else?

MR. JOHNSON: Your Honor, the second motion is, now, it's two parts, Rule Five and Brady. The Solicitor has given me the information but I renew this motion out of an abundance of precaution to make sure there's no new information. We had talked today and it's my understanding I have all the information, but for the record I'm renewing the information, that if there is any Rule Five or Brady information, and Brady being any exculpatory information that would help us, if there is any new information that I haven't got we are asking for that now.

THE COURT: Okay. And you've given him all the information, Mr. Sorenson?

SOLICITOR SORENSON: I believe, he's come over and I've allowed him to look through the whole book, and what have you.

THE COURT: Alright, so I think we've got everything, Mr. Johnson.

MR. JOHNSON: Alright, and the last one, which is the most extensive motion, some of the testimony in this case is

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going to be, I think, from Officer Kendra Williams and a Captain Turner. They had an opportunity to talk to the deceased after he was shot while or nearby the ambulance. They made some statements, they did a statement and in their statements they made, I handed up a Brief to the Court.

THE COURT: I've already got -- you were kind enough to give them to me ahead of time - - -

MR. JOHNSON: Alright, sir.

THE COURT: --- or Mr. Williams gave it to me, I don't know which.

MR. JOHNSON: And Your Honor, I've also handed the same Brief to the Solicitor's office. The statement was the victim did not want to talk or answer questions because he advised he was in too much pain. I asked him if he was in the Queen Village, and he shook his head, yes. Then I asked him if he robbed again, and he nodded -- he was robbed again, and he nodded, yes. I asked him how many victim she held up four fingers. I asked if he saw the gun and was it a revolver. Victim nodded yes. When I asked if the gun was silver or black he nodded no for -- he nodded to both. The victim would not give his name or any other information, Captain then turned and went into the ambulance and the victim advised him his name and address. Upon Captain Turner's initial arrival he stated the victim said, they robbed me, they robbed me. And that's when they shot me. Your Honor, my first part of

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the motion is, Number One, that under Crawford versus Washington, and that was another murder case, that any testimony where the witness is unavailable, in this case he is unavailable, and any testimony, prior testimony where the defendants have not had the opportunity to cross-examine, regardless whether the statements are deemed reliable by the trial court, we are asking that any testimony as to excited utterance be excluded, Your Honor, because it is prejudicial and shifts the burden from the State to the Defendant to prove that he did not say -- that the deceased did not say this. And Your Honor, there's no way for us to cross-examine him, there's no way for this testimony to be reliable. As a matter of fact, it's about as unreliable as you can get. WE have two officers that could allegedly testify that what might have been said in the car, we've never had the opportunity to talk to, cross-examine, or seek any information from the deceased in this case.

The second thing, Your Honor, we would like to argue is that that is also hearsay testimony, and again, if the declarant is unavailable to testify at trial and the accused has no opportunity to cross-examine, State vs. Gardner, that, and under Rule Eight 0 Three, that this evidence should not be admitted into trial because it's prejudicial.

As to the dying declaration, there may be an exception as to the dying declaration. There are three elements to the

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dying declaration in South Carolina: One, the death must be eminent at the time the declaration is in question; Two, the declarant must be so fully aware of this as to be without any hope of life; and Three, the subject of the charge must be the death of the declarant and the circumstances of death must be the subject of the declaration. Well, Your Honor, in this case, from Officer Kendra Williams and Officer, and Captain Turner, there is no testimony, there's not even an inference where he was at the point where he thought he was going to die, or it was hopeless or it was eminent, at hand. As a matter of fact, he wouldn't even tell the officer who he was because -- and I think as the testimony goes along the Court will -- the Court doesn't know now but as the testimony goes along we will find out that he was in the business of selling drugs. And I think one of the reasons you can infer from this is, he did not want to give his name because he didn't, he didn't want to get into trouble later on. There is no testimony that was given to us, there's none that we have found that he, himself, thought he was in eminent death. And if he wasn't in eminent death, not only does the State Court, but also the Supreme Court said that is just evidence that cannot be used, and if it's used it's reversible, it's reversible error, it's prejudicial. And we are asking the Court not to allow that, this testimony in under, Number One, dying declaration; Number Two, Eight 0 Three, excited

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utterance; and Number Three is because our Sixth -- how can we challenge this information if we can never cross-examine him? It's a direct affront to the confrontational clause. So we are asking that the Court not allow any of the testimony from Officer Kendra Williams and Captain Turner as it relates to anything that the decedent might have told them. Now, if they're going to testify to something else they can, only as it relates to the decedent said. And Your Honor, if you look at the Brief, in the Brief it said that a research was done of this particular issue, and the vast majority of the cases does not allow it in. If you allow this testimony in, I mean, it shifts the burden, it shifts it to us. And there's no way for us to cross-examine or prove that he didn't say it, because we didn't get to talk to him. So, we are asking that this testimony not be allowed into this trial.

THE COURT: Thank you, Mr. Johnson.

Mr. Sorenson, anything in reply?

SOLICITOR SORENSON: Your Honor, may it please the Court, I guess the first thing I'm going to say would kind of handle this a little premature because actually I mean, I really think that this is something that needs to be addressed when the witness takes the stand and we have an opportunity to develop what that testimony is going to be. So, I mean, I'll be glad to kind of argue my position right now because that's kind of, I mean, what I think needs to be done.

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THE COURT: Well, and Mr. Johnson, you know, you have referenced some of the testimony and like that about whether he feels like he's in, close to death or not. Actually, you know, because I haven't heard any testimony, you know, I ,I -- I appreciate you making me aware of this issue, and I think after I hear the testimony it will put me in a better to determine how to rule on this.

MR. JOHNSON: Well, Your Honor, I would ask that any testimony by either one of those, then, be done first before the Court outside the presence of the jury, because once you ring that bell it's hard to unring it. I mean, if you're going to hear the testimony I would ask the Court to please hear it first prior, outside of the jury, in camera, so you can make your determination and not the possibility of it going before the jury.

THE COURT: Is, are any of these people going to testify today?

SOLICITOR SORENSON: Sergeant Williams is going to be our first witness.

THE COURT: Okay, okay.

SOLICITOR SORENSON: And I don't intend on calling Captain Turner, he's not employed, he has charges pending right now in our office, but he's not employed with Public Safety. I did not intend on calling him as a witness, I don't intend on getting into anything the decedent may have told

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him, so ...

MR. JOHNSON: I was about to say, Your Honor, if he's not going to call him, then anything the decedent may have told him is definitely - - -

THE COURT: Right, right.

MR. JOHNSON: --- hearsay, but we still hold the same position with Officer Williams, and if the Court would in camera listen to the testimony and maybe give us a chance, Your Honor, to cross-examine, and whatever the Court rules after that.

THE COURT: Okay. Well, is that ...

SOLICITOR SORENSON: That would be fine, Your Honor. And just to give you a little, just briefly kind of address what Mr. Johnson said, I mean, it's our position that basically Crawford would not apply because it's not testimonial evidence. I mean, this wasn't information that was given in basically anticipation of litigation. I mean, this is going to be Your Honor determination in our position whether it's either an excited utterance or a dying declaration. And as I said, I think we need to basically develop, you know, the testimony through Sergeant Williams for Your Honor to make that determination. But that would be our position, because otherwise, under Mr. Johnson's theory, the fact that he doesn't have the opportunity to cross-examine, I mean, you'd never get a dying declaration in because that deals with a

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homicide, and I mean, the victim's obviously not around to be cross-examined. So, I mean, that ...

THE COURT: Alright. Do y'all want to go ahead and do that now?

SOLICITOR SORENSON: She's going to be here, I want to say I told her to be here at Twelve:thirty.

THE COURT: Okay. Well, do y'all want to ...

SOLICITOR SORENSON: We can come back at maybe One:fifteen?

THE COURT: Yeah, do y'all come back at One:fifteen and we'll do that?

MR. JOHNSON: That's fine.

THE COURT: Alright. Anything else before -- we need to do before we take a break until One:fifteen?

MR. JOHNSON: Your Honor, there was, and I did not tell the Solicitor this, but there is -- it may not even come up. Nothing else.

THE COURT: Alright. Okay. We'll take a break, if you'll be back here at One:fifteen we'll get going on this. Thank y'all.

(Recess)

THE COURT: Okay. I need to put some things on the record. We have excused ...

COURT REPORTER: Wait one minute. Okay, I'm ready.

THE COURT: Okay. We have excused two jurors, we've

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excused Juror Saundra Sumpter, that was Juror Number ...

COURT REPORTER: Excuse me just a minute.

THE COURT: Ma'am? Saundra Sumpter, that was Juror Number ...

COURT REPORTER: I'm sorry, it's happening again, Your Honor. Okay, I'm ready.

THE COURT: Alright. The Court has excused two jurors, Saundra Sumpter, Juror Number One Sixty-seven, and Thomas D. Sutcliff, Juror Number One Sixty-eight. When we came back for Court the Bailiff made me aware of some issues. Ms. Sumpter knows the Smalls family, and apparently that is the mother and grandmother of the defendant. There were no possible witnesses with the last name of Smalls, so she does not know the defendant but she knows the family, and she indicated in my conversations in chambers that she did not feel that she could be impartial in listening to the testimony with her knowledge of the family.

Mr. Sutcliff was excused, I was made aware of the fact that he has, his being chosen for the jury had caused his blood pressure to go up. He indicated in my conversation in chambers that he was not, he wanted to serve on the jury but in chambers he appeared to be very shaken and on the verge of a panic attack, and so I have excused him from jury duty as well.

Mr. Sorenson, any objection from the State?

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SOLICITOR SORENSON: No, sir.

THE COURT: Okay. Mr. Johnson, any objection from the Defense?

MR. JOHNSON: No, sir.

THE COURT: Alright. Additionally, so that y'all will be aware of it, the jury has picked Mr. Cocke, Michael Cocke, Juror Number Thirty-seven, as the foreperson for the jury.

And Ms. Harry Dot, that will be Court's Number One. Okay?

COURT REPORTER: Court's One.

(Court's Exhibit One marked and filed.)

THE COURT: Okay. Alright, now, I know we've got -- would you mind telling the jury it's going to be about Fifteen minutes before I can bring them out?

Okay. Alright, Mr. Sorenson, I believe Mr. -- you've got some testimony so I can address Mr. Johnson's motion?

SOLICITOR SORENSON: Yes, sir.

THE COURT: Okay.

SOLICITOR SORENSON: The State would call Sergeant Kendra Williams.

CLERK: Place your left hand on the Bible and raise your right hand.

(Whereupon, Kendra Williams is duly sworn.)

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CLERK: Please be seated and state your name again for the record.

WITNESS: My name is Kendra Williams.

SOLICITOR SORENSON: Alright, Sergeant Williams, make sure you keep your voice up nice and loud for me.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

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KENDRA WILLIAMS - DIRECT EXAMINATION, IN CAMERA,
BY SOLICITOR SORENSON:

Q. If you would, tell the Court where it is that you're employed?

A. South Carolina State University Police Department.

Q. Okay. And what are your current duties there?

A. I'm a sergeant over the patrol division.

Q. Okay. And how long have you worked at S. C. State?

A. Since October, Two thousand nine.

Q. Alright, now, I want to turn your attention back to the evening of April Fifteenth of Two thousand eleven. Did you have the occasion that night to respond over to Twenty-one ninety-five Russell Street initially in response to a traffic accident there?

A. Yes, sir, I did.

Q. Okay. And in responding there did you have the occasion then to come in contact with the victim in this case, Jonathan Bailey?

A. Yes, sir, I did.

Q. Okay. If you would, tell the Court where when you got to that residence, to that location, where Mr. Bailey was located at?

A. Mr. Bailey was in the back of the ambulance.

Q. Okay. And had you learned whether he had been injured?

A. Yes, sir.

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Q. Okay. And did you have an opportunity then to kind of check up on him and find out yourself what his physical condition was?

A. Yes, sir.

Q. Alright. And tell the Court how that, how that went about and what your observations were?

A. When I learned that he was in the back of the ambulance I crawled up, I got up in the back of the ambulance. He had a gun shot wound, what appeared to be a gun shot wound to his right chest area. There was also another wound on the left side.

Q. Okay. And describe for the Court how Mr. Bailey was acting when you got up into the ambulance with him?

A. He was frantic, he was rolling back and forth, he was scared, he kept saying, get me to the hospital, I'm going to die. He was, he was scared.

Q. Did he appear in your, in your experience as a law enforcement officer, to be in pain at that point in time?

A. He appeared to be in a lot of pain.

Q. Alright. And did you then have an opportunity, Sergeant Williams, to question him or to ask him anything about what had happened to him to lead to him being in the back of that ambulance?

A. Yes, sir, I did.

Q. Okay. And tell the Court, if you would, how that went

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about?

A. I asked Mr. Bailey if he had been robbed, and he shook his head, yes. I asked him if he had been in the parking lot of Queen's Village, and he shook his head, yes. And I asked him if he saw who robbed him, and he shook his head, yes. I asked him how many? And he stuck his hand up and had four fingers up. I said, four? He shook his head, yes. I asked him if, you know, if he saw the weapon. He shook his head. I asked him if it was ...

Q. He shook his head?

A. Yes. I guess he had seen the weapon. I asked him if the weapon was silver or black. At that time he was, kept shaking his head, no. And there were some other questions that I asked him, but he did tell me that he lived in Queen's Village. He did tell me that he saw the person who shot him. He told me there was four of them, but most of it was just him shaking his head. He, if he took any kind of effort to speak he would just shake his head and kept saying he's in pain, he couldn't talk he was having a hard time talking, real frantic, still saying, you know, get me to the hospital, I'm going to die.

Q. And was he ultimately transported from that scene?

A. Yes, sir.

Q. Okay. And did you learn later on that evening whether, in fact, he had passed away from his injuries?

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A. Yes, sir.

Q. Okay.

SOLICITOR SORENSON: I beg the Court's indulgence.

Thank you, Sergeant, that's all I'd have as to this issue.

THE COURT: Alright, Mr. Johnson.

MR. JOHNSON: Your Honor, may it please the Court.

THE COURT: Yes, sir.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

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KENDRA WILLIAMS - CROSS-EXAMINATION, IN CAMERA,
BY MR. JOHNSON:

Q. Sergeant Williams, did you sometime give a voluntary statement after this occurred?

A. Yes, sir, I did.

Q. Who did you give a voluntary statement to?

A. It was to, I believe Investigator Johnson with SLED.

Q. Okay. And did he ask you about the circumstances of what happened that night?

A. Yes, sir.

Q. And did you tell him?

A. Yes, sir.

Q. Okay. And you told him everything that happened?

A. If I recall, yes, sir.

Q. Okay. Do you have a copy of the statement?

A. Yes, sir.

Q. Okay.

SOLICITOR SORENSON: Just make sure that that's what you want to look at.

Q. Okay. You testified today that he was frantic, correct?

A. Yes, sir.

Q. Okay. Can you tell me in this statement where you said he was frantic?

A. No, sir.

Q. It's not in here, is it?

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A. No, sir.
Q. Okay. And you also testified today that he said, get me to the hospital, is that correct?
A. Yes, sir.
Q. Can you tell me which line of the statement he said, get me to the hospital?
A. No.
Q. It's not in there, is it?
A. No, sir.
Q. Okay. You said he was scared. Can you tell me which line of the statement that he told you that he was scared?
A. No, sir.
Q. Okay. Now, this statement was done on Four/Sixteen/Eleven, was that correct?
A. Yes, sir.
Q. At Four:forty-five P.M., is that correct?
A. A.M.
Q. A.M. Correct. And you talked to SLED Agent Johnson, is that correct?
A. Yes, sir.
Q. And you was giving him a full discovery of what you knew about the case, is that correct?
A. To my knowledge, yes, sir.
Q. Okay. Was that your knowledge then?
A. Yes, sir.

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Q. The thing you said today, was that your knowledge then?
A. Yes, sir.
Q. But you didn't put it in your statement?
A. No, sir.
Q. But you said it today?
A. Yes, sir.
Q. So you, didn't remember it on Four/Sixteen, the day after, but you remembered it today, a year and something later?
A. My observation, yes, sir.
Q. Okay. Wasn't it your observation then?
A. Yes, sir.
Q. Okay. But you didn't remember to put that observation in the statement?
A. No, sir.
Q. Okay. And you didn't remember to put that, get me to the hospital in the statement?
A. No, sir.
Q. And you didn't remember to put, I'm scared, in the statement?
A. He didn't say he was scared.
Q. Oh, you said he was scared?
A. I said, he appeared to be scared.
Q. Okay. But -- Okay, but you didn't put that in the statement, did you?
A. No, sir.

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Q. And you didn't put in the statement that he was frantic?
A. No, sir. I didn't put anything in the statement about my opinion. Everything in here is, it's not my opinion. In my opinion he appeared scared.
Q. Okay. Okay. But you said he said, get me to the hospital, and that's not your opinion, but he didn't say, you didn't put that in your statement, is that correct?
A. No, sir, I did not.
Q. Okay. Alright, Now, the other thing I want to get to is, when you got to the scene he was in the ambulance, is that correct?
A. Yes, sir.
Q. And you went in and you started asking him questions, is that correct?
A. Yes, sir.
Q. When you got in the door he didn't blurt out, I'm in pain, he didn't blurt out -- you started asking him questions and he responded to your questions, is that correct?
A. Yes, sir.
Q. Okay. And you made a determination that none -- I can't cross-examination you on a head shake, so today you are telling us you determined that when he shook his head it was, yes or no?
A. Yes, sir.
Q. But there is no other testimony we've got other than the

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fact that you say he shook his head, yes or no, there's no other objective testimony that he did that, is that correct?

A. Yes, sir.

COURT REPORTER: You said, yes, sir?

A. Yes, sir.

Q. When you got to the scene were there a lot of people standing around?

A. There were some police officers from public safety, and I believe one or two from the county.

Q. Okay. Did you, how long after the incident occurred do you think you got to the scene?

A. I'd have to look at the time.

Q. Okay. And he couldn't tell you what kind of gun it was, you said he said it was a revolver, he couldn't tell you the identity of the gun, is that correct?

A. No, sir, he didn't say revolver, I asked him, and he just shook his head.

Q. Okay. So, quite frankly, he didn't give you any response, all you got is nods?

A. Yes, sir. I mean, every once in a while he was say, yes or no, but mainly it was just the nods.

MR. JOHNSON: Your Honor, indulge me just one second.

THE COURT: Okay. Take your time.

Q. Didn't you arrive, and initially he wouldn't tell you his name?

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A. He didn't tell me his name.
Q. Okay. You asked him and initially he wouldn't tell you his name, is that correct?
A. Yes, sir.
MR. JOHNSON: Your Honor, that's all I have.
THE COURT: Okay. Anything on redirect?
SOLICITOR SORENSON: No, sir.
THE COURT: Alright. You may step down. Thank you, ma'am.
Any other witnesses?
SOLICITOR SORENSON: No, sir.
THE COURT: Okay. Alright. Alright, any witnesses for the Defense?
MR. JOHNSON: No, sir, Your Honor.
THE COURT: Alright. I'm aware of your -- I have read your Memo, I remember your argument.
MR. JOHNSON: Yes, sir.
THE COURT: Anything you want to add to that?
MR. JOHNSON: Your Honor, I definitely - - -
THE COURT: Yes, sir.
MR. JOHNSON: --- I want to, on the excited utterance, Your Honor, excited utterance has to be an utterance that somebody blurts out without any response. She said he didn't -- I asked her and she specifically said he didn't blurt it out, she specifically said she asked him the questions. This

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is, an excited utterance is one which, and I had the rule, "a startling event or condition made while the declarant is under stress or excitement caused by the event or condition." It's startling. There's nothing about this that's startling. He was in pain, you know, that's a given, but there was nothing about startling. So, definitely, it's not an excited utterance. Then the only question left is if he was a dying declaration. Now, Your Honor, you heard me cross-examine her on her statement. Now, the statement on that night mentioned nothing about, get me to the hospital. And get me to the hospital still don't say he think he's going to die. He said get me to the hospital because I'm shot, I'm hurt. There is no definitive statement about him with an impending death or loss of hope as it relates to life. And then, Your Honor, even if there was, I think it's the Four 0 Three, it's more prejudicial than probative. So, there's not an excited utterance, there's not a dying declaration, and even if there was, it's more prejudicial than probative because we've got nods that we can't cross-examine, we have nobody that can verify these statements. So, it's highly prejudicial, highly unreliable, and again, it shifts the burden. And I know His Honor knows this, but in a case like this, particularly a dying declaration, I mean, it -- I mean, not only does it shift the burden, I think the case that we read, it's just, that's definitely prejudicial and it's an error of law, it's

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reversible. I mean, and how we unring, I mean, if we let this prejudicial testimony get to a jury how do we unring that bell? It's not, you can't do it. So, we are asking the Court to bar all of that testimony as not an excited utterance, as not a dying declaration, and even if there was it's more prejudicial than probative. And I ask that the arguments that were made in the Brief be part of my argument to you to make sure I didn't overlook any details.

THE COURT: Alright, thank you, Mr. Johnson.

Alright, Mr. Sorenson, any response? Or Mr. Bell, I'm sorry, Mr. Bell.

MR. BELL: Your Honor, first of all, I think the main question, or the threshold question is whether this is testimonial or not under Crawford versus Washington, and while I would argue, or I would concede it's close, I think it's not, I think from the totality of the circumstances, I mean, the officer didn't put in there, you know, all about the dying declaration and all that to make it prosecutorial testimonial, but even the answers, I think it has to be the declarant's state of mind that that's going to be used down the road in a prosecutorial setting, and nods and not giving your name is, I think goes against, or shows that he didn't want it to be used, it doesn't show his state of mind. He's in pain, he's wanting to get to the hospital because he said, I'm going to die. So, I think it's non-testimonial to get past that

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threshold. And then, is there an exception to which it can come in. And Number One, our exception is dying declaration, of course. The officer testified, get me to the hospital, I'm dying. I don't know how much more state of mind a person is that they're under impending death or no hope that, I'm dying, get me to the hospital. I mean, I think that clearly shows that he's under the influence of his dying declaration. The fact that's he's using nods instead of being able to articulate these questions to the officer shows that, that this isn't an interrogation, per se, because, you know, he's not formally verbalizing these answers.

And also, an excited utterance, I mean, he's just been shot and he thinks he's dying, I don't know how much more excited you can be in that. I think that's basically what it is.

And furthermore, talking about prejudice, he says it's prejudicial but it's not prejudicial to his client because, A, he doesn't mention his client's name, he only says there's four people involved without specifically naming anybody. The only prejudice is, he was robbed, but he doesn't say, you know, Julian Young, or whoever, robbed me, he just says, I was robbed, four men used a gun.

THE COURT: Okay. Mr. Bell, let me ask you a question. You're not indicating that the last sentence in that statement is going to be admissible in this argument, is it?

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MR. BELL: The last ...

THE COURT: The last sentence, what Captain Turner said.

MR. BELL: Oh, no.

THE COURT: I just wanted to make sure.

MR. BELL: No.

THE COURT: Alright.

MR. BELL: Just what Officer, Sergeant Williams said.

THE COURT: Okay. Alright, anything else?

MR. BELL: No.

THE COURT: Okay. Thank you.

Anything in reply?

MR. JOHNSON: Your Honor, just quickly, I mean, the statement just said, four men, but it happens so, one of those happens so they're alleging that my client is one of those four men. So, it is prejudicial to him, because he's sitting to the table. And with the state of mind, Your Honor, it says it has to be decisive and not left to conjecture and ...

THE COURT: You mean, his dying declaration?

MR. JOHNSON: --- in the dying declaration, it has to be, and it has to be, not, I guess, it has to be threat of eminent death and death is near, and if it's conjecture or if it's speculative, he has to know, the case law says he has to know he's dying. That testimony did not come forward today.

THE COURT: Alright. Thank you, sir, alright.

This is my ruling. Okay? I've got questions about

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whether or not it's a dying declaration, the statement about needing to get to the hospital, I'm going to die, it's not in the statement. So, I do have an issue about whether or not it's a dying declaration, but I'm not going to decide that on that issue. I'm deciding it on whether or not it's excited utterance based on the totality of the circumstances. There are three elements to an excited utterance. This kind of relates to the startling event. A gentleman has just been robbed and shot. While the declarant was under the stress of excitement, this was shortly after the event, and he was in the ambulance, I think it's unquestioned that he was in a stressful situation, and her testimony, Sergeant Williams's testimony would back that up. Number Three, or the third element of excited utterance is that the stress of the excitement must be caused by a startling event. And I think it's unquestioned that the stress that the victim was under, Mr. Bailey was under was caused by the robbery and the shooting. Additionally, he was an actual witness and had first hand knowledge to the event so he can talk about it. And so, I find that it is an excited utterance and she can testify as to that amount. Now, that does not include the last sentence about what Sergeant Turner said in that. That is not a part of what she can testify to as an excited utterance.

MR. JOHNSON: But, Your Honor, can I say ...

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THE COURT: Yes, sir.

MR. JOHNSON: May I say one thing?

THE COURT: Yes, sir.

MR. JOHNSON: Now, Mr., he brought up some of the nodding of the head as an excited utterance?

THE COURT: Yes, sir. Yes, sir. You can have non -- you can have essentially statements made that are, you know, physical, like something that someone does physically can essentially be an excited utterance.

MR. JOHNSON: Just, Your Honor, for the purpose of ...

THE COURT: I note, I note your objection to it, yes, sir.

MR. JOHNSON: Yes, sir, note my objection.

THE COURT: Yes, sir.

MR. JOHNSON: And you said in the totality of the circumstances, the three arguments, you know, I thought the motion was to, in the light most favorable to the moving party. As you look at the totality of the circumstances, the nearness of it, the fact that he was, she doesn't -- you remember me asking her, she doesn't know how close it was, she doesn't remember. She said she got to the scene after the fact. So, she doesn't know how close the shooting was, if that was the nearness for the excited utterance. And we don't know if it was an hour, we don't know if it was two hours, so he was in pain, so his argument, is the ruling that because he

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was in pain it's an excited utterance?

THE COURT: I'm ruling, because he is in the ambulance after he had just been shot and robbed, he's still under a stressful event at that point. So, at that point it meets one of the elements of an excited utterance.

MR. JOHNSON: Alright, sir.

THE COURT: So, hopefully, I clarified that.

MR. JOHNSON: Yes, sir.

THE COURT: But it's not, but I note your objection to any and all parts of it, Mr. Johnson.

MR. JOHNSON: Yes, sir, yes, sir.

THE COURT: Okay. Alright, thank you, sir.

MR. BELL: Your Honor, I think to make sure the record is clear, I think the State would ask that you probably need to make a finding on whether it's testimonial or non-testimonial, I think under Crawford versus Washington as well, just to protect ...

THE COURT: Okay. I'm going to let it in, I say it will be non-testimonial and let it in. It's just part of his excited utterance at the time, whether or not -- you know, the purpose of letting an excited utterance in is that he doesn't have time for any kind of reflective thought. And so, right now, this is a gentleman that's just been robbed and shot, he's in an ambulance, and I don't think based on the testimony I heard that he had time to have much reflection about what

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was going on so he could make up a story. Okay? He was just answering questions that were posed to him by a police officer trying to get to the bottom of the situation.

MR. BELL: I understand, I'm just trying to make sure the record is clear, Your Honor.

THE COURT: Yes. And we want it as clear as it can be.

MR. BELL: Yes, sir, yes, sir.

THE COURT: Okay. Anything else?

MR. JOHNSON: Your Honor, and the fact that he refused to tell them who he was does not give him time to be reflective? He refused, they asked who, he refused -- she testified he refused to say who he was. So, that's reflection.

THE COURT: As -- well, I'm going along with this -- I understand your arguments, Mr. Johnson, I think you got, I hope you got all of your points in.

MR. JOHNSON: Yes, sir.

THE COURT: You know, if not, let me know which other points you want me to put in there.

MR. JOHNSON: Yes, sir.

THE COURT: But I do believe it's an excited utterance. Again, the last part of that statement does not go into the record. Okay? Alright, anything else?

MR. JOHNSON: No, sir, thank you.

THE COURT: Okay, thank you.

Alright, are we ready to bring the jury in? Alright,

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bring them on out.

SOLICITOR SORENSON: Your Honor, can our first witness stand here during the openings or does she need to go out for openings?

THE COURT: Is it alright for her to stay in for openings, the first witness?

MR. JOHNSON: That's Ms. Williams? Yes, it's fine.

THE COURT: Okay. Alright.

(Whereupon, the jury enters the courtroom.)

THE COURT: We're getting ready to begin the trial of this case. Before we can begin the trial y'all have got to be sworn in as jurors. So, I'm going to ask you to please stand and raise our right hand, and Ms. Ferguson will swear you in as the jury on this case.

(Whereupon, the jury is duly sworn and impaneled.)

CLERK: Thank you.

THE COURT: Alright, thank y'all very much. And Mr. Cocke, congratulations on being named the foreperson.

Okay, Ladies and Gentlemen, this is Indictment Number 2011-GS-38-1833, State versus Julian C. Young, and we're about to begin the trial of this case. What I'm going to do right now is to give you kind of an overview, hopefully, of what you can expect in this trial. As you have been told before, Mr.

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Young has been indicted for the crime of murder, and the elements of murder will be explained to you later, but this indictment is simply a charge by which this case is brought to Court. It is not evidence in any sense of the word.

The defendant has pled not guilty to this indictment and therefore the State has the burden of proving each of the elements of the indictment beyond a reasonable doubt. And it will be your duty, Ladies and Gentlemen, to decide whether or not the State has met that burden.

Your job, your duty as jurors is to find and determine the facts in this case. You are the sole judges of the facts. If I make any comment regarding the facts in this case I ask you to disregard it, you must disregard it. You are to determine the facts from the testimony that you hear from this witness stand and any other evidence that is introduced in Court. It is up to you to determine the inferences which you feel may properly be drawn from the evidence. It is especially important that you perform your duty in determining the facts diligently and conscientiously because ordinarily there is no way to correct an erroneous determination of facts by a jury.

The law that makes you the judges of the facts makes me the judge of the law. The law as given by the Court is the only law you must consider. You must accept it and follow it even though you may disagree with it. I cannot tell you what

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the facts are and you cannot disagree with me about what the law is or should be. Your job is to take the law as I give it to you and apply it to the facts as you find them from the testimony of the witnesses and any other evidence that is introduced during this trial. After doing that you will render your verdict, a true and just verdict under the solemn oath that you just took as jurors.

As I mentioned earlier, until I advise you to begin your deliberations you must not discuss this case with anyone, including fellow jurors. You cannot discuss it with family, friends, or anyone else involved in this case or not involved in this case. After the case is submitted to you, you must discuss it only in the jury room among your fellow jurors. The parties and the attorneys have been advised that they are not to talk to you at all, so if you see them in the hall and they don't speak like we always do in the South, we always speak and say, hello, they're not being rude, they're following my instructions. They cannot speak to you.

During the trial you may not read, look into, watch any news reports or go on the internet to try and read anything about this case. If you find that there is something in the newspaper about it, you cannot read that article. If you hear something on the radio or see something on T.V. you cannot listen to it or watch it. Okay? You are not to consider anything about this case except what you hear in this

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courtroom, and you're not to do any kind of investigation like I mentioned earlier. Once -- at the end of the day you will know some more facts about this case but you are not to go on the internet and try to find out anything else. Everything you will need to know for you to make your decision in this case you will know and find out in this courtroom.

It is important that you keep an open mind and not decide any issue in this case until all of the evidence has been presented, the parties have made their closing arguments, and I have instructed you on the law in this case. It is your solemn responsibility to determine the guilt or innocence of the defendant and your verdict must be based solely on the evidence as it is presented to you in this trial and on the law as I will instruct you during and at the close of the trial.

In a moment the Solicitor will make an opening statement, at which time he will explain to you what he believes are the important issues in this case. The attorney for the defendant will also make an opening statement in which he will advise you of the issues he believes are important in this case. What the attorneys tell you in their opening statements is not evidence, it is only their contention as to what the issues are. The evidence in this case will be presented from the testimony of sworn witnesses from this witness stand and from any exhibits that are made part of the record.

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Now, at times, from time to time during this trial I will have to excuse y'all from the courtroom, and the reason you will be excused from the courtroom is because at certain times I will have to listen to arguments of the attorneys about certain areas of law. If that comes up when we are talking about the law it will require me to at sometime make comments about the facts. Since I am not allowed or supposed to influence you about the facts at all, you will not be present in the courtroom while I discuss those matters so that it can in no way prejudice you about what you determine to be the facts in this case, because as I will tell you over and over both now and at the end of this case, the only people that can determine the facts in this case are you. You're the only ones.

In determining what the true facts are in this case you must decide whether or not the testimony of a witness if believable. It is my responsibility to rule as a matter of law as to whether certain testimony is admissible, but once the testimony is admitted, whether or not you believe it is solely for you to determine. In deciding whether to believe a witness you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which the witness may testify, and the way the witness acts on the witness stand. You have a

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right to consider anything that is in the record that will help you evaluate the testimony of these witnesses. That means that it is your duty to pay close attention to them, to observe them, to listen to them, and to play close attention to the attorneys and the Court.

Please give strict attention to the testimony in this case so that at the end of all the testimony, after the arguments of counsel and the charge on the law by me, you will then be in a position to determine what the true facts are and apply the law to those facts and then render a true and just verdict.

Mr. Sorenson, or Mr. Bell, excuse me, Mr. Bell.

SOLICITOR BELL: Thank you, Your Honor, if it please the Court.

THE COURT: Certainly.

SOLICITOR BELL: Mr. Johnson, Mr. Williams.

OPENING STATEMENT BY SOLICITOR BELL:

Mr. Foreman, and Ladies and Gentlemen of the jury, greed with a window of opportunity sometimes leads to bad results. In this case it led to a deadly result. Back on April Fifteenth of Two thousand eleven, in the married housing just off the edge of South Carolina State University campus the victim in this case, Jonathan Bailey, was shot and eventually died as a result of that shot by this man, Julian Young.

What you will hear during this case is that three fellows

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came up from Charleston to get up with some other fellows here in Orangeburg. They met up at Pine Hill Apartments, the three individuals, Maurice Thompson, Ray Alston, and another fellow named Timothy Harrison, went up to an apartment, they got up with Hilliard Pinckney. Julian Young was there, it was kind of a place where they make music, they had some engineering boards and all. During the course of them being there together it was decided mainly by Ray Alston and Julian Young, and you will find out that Ray Alston goes by the name of Big Man, or Big Ray, and Julian Young goes by the name of Gouda, they decided they needed some weed, some marijuana. So, Julian Young started calling a fellow he had met on campus to try to find some marijuana. Later that night, probably about Ten:thirty or Eleven o'clock four people, Julian Young, Maurice Thompson, Ray Alston and Hilliard Pinckney, go up on the campus of State to pick up another individual named Ricky Gipson, or who they call the college kid or the college guy. They picked him up and went back off campus, went around Russell Street, came onto the street that goes to the married, the college married housing which I think is Bailey Street, and the parked, they backed in and parked. Not long after Jonathan Bailey showed up in his vehicle. Ray Alston, Ricky Gipson and the defendant, Julian Young, get out of the vehicle, they were all in the back seat. Ricky Gipson goes up and kind of introduces them and then backs off. Ray Alston

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gets in the vehicle to make the purchase. He's the one that had the money, he was going to make the purchase. But he got in the vehicle, looked at the marijuana, and he didn't like it, he didn't like it, it was brown, he didn't want it. So, he got out of the vehicle and went around, when all of a sudden Julian Young reaches in through the window and the testimony as you will hear, at some point while he's in the window, the car revs, the victim's car revs, and backs up out, somebody hears a pop, and all of a sudden Julian Young is out, and that vehicle takes off. And where it goes, it goes down Bailey, it goes out onto Russell Street and does a One hundred and eighty degree, and runs into a house. At that point the police are called, and these four individuals in their vehicle, they take off, they go down the same street and take a right, and they go back, and go back to the Pine Hill Apartments off of St. Matthews. The police are called thinking this is a traffic accident. When they get there they find the victim, Jonathan Bailey, in the car and they find a gun shot wound to his right side from which he died. And that's why we're here, Ladies and Gentlemen, because this individual has been charged with murder.

Basically, what the State would allege and what we feel the testimony is going to show is that he tried to rip off Jonathan Bailey and that when Jonathan Bailey tried to get away he shot him because he was trying to flee. And the

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reason that, you know, he tried to rip him off is, think about it, it's an easy mark, a guy selling marijuana, who's going to complain about being robbed, because he was selling marijuana? But in this case it went too far, in the ultimate death of Jonathan Bailey.

My name is Harrison Bell, along with Don Sorenson we represent the State of South Carolina and it's our honor and duty to prosecute this defendant for the crime of murder for killing Jonathan Bailey on the night of April Fifteenth, Two thousand eleven. We have the burden of proof, that is, we must prove to you beyond all reasonable doubt that that defendant is guilty of murder. He has nothing to prove, he sits there innocent and he doesn't have to put up evidence, he doesn't have to testify, he doesn't have to do a thing. He has to force us to prove the case against him, and that's what we're here to do.

Now, Ladies and Gentlemen, in order to do that we must prove each element of the crime of murder. And the elements of the crime of murder are the unlawful killing of a person with malice aforethought, either express or implied. What does all that mean, what does all that legal mumbo jumbo mean? Well, easily, we must prove that somebody was killed by another, with malice. Malice means ill will or hatred or some type of reckless disregard for human life, and it must exist right before the act. It can be a millisecond before the act,

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but it must exist before the act. And malice express or implied, there aren't different kinds of malice, it's just the way in which they can be proved. For example, express malice can be proved if somebody, there is testimony that a person said, I'm going to kill you, that's express malice. Or they were lying in wait for somebody. Implied malice means you have to look at the circumstances. The use of a deadly weapon you can imply, or the fact that during the commission of a crime, another crime - - -

MR. JOHNSON: Your Honor, I have a motion before the Court, please.

THE COURT: Okay. Alright. Do I need to excuse the jury?

MR. JOHNSON: Yes, sir.

THE COURT: Okay. Ladies and Gentlemen, I'm going to excuse y'all to go back into the jury room for a second. While you're back there, remember you cannot begin talking about this case at all. Okay? Go back.

(Whereupon, the jury retires to the jury room and the following takes place out of the presence of the jury.)

THE COURT: Mr. Johnson, let me hear from you, please, sir.

MR. JOHNSON: May it please the Court. At this time I

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would move before this Court for a mistrial based upon the fact that this, Mr. Bell just said that it can be implied from a deadly weapon. That is not the case law. The jury just has been told they can be implied that there was a deadly weapon involved that you can find him guilty of murder and that creates malice. It does not create malice, and if there's any other, if -- the law is if there's any other evidence at all you cannot imply or infer malice from a deadly weapon, and they just have been told that you can infer malice from a deadly weapon, and I don't think you can cure that.

THE COURT: Alright, Mr. Bell.

SOLICITOR BELL: Your Honor, I think Mr. Virgin has confused the law. The law I think that has become is that if there is evidence of self-defense, and the Court is going to charge self-defense, the Court cannot charge -- and if that self-defense involves a weapon, the Court can't charge that implied malice, or malice can't be implied from the use of a deadly weapon. However, I think the same case, however, says, there's nothing that prevents the State from arguing the use of a deadly weapon can imply malice. And implication of malice from a deadly weapon is good law in South Carolina, has been forever as far as I know.

THE COURT: I think, -- yes, sir, Mr. Johnson.

MR. JOHNSON: The implication of malice is there is not any testimony that would reflect any other lesser charge is

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the law, not the fact that you can infer malice. That has been, I think it is State versus Belcher, is that State versus Belcher? That is not the law.

THE COURT: Alright, if I recall, and -- if I recall, Belcher is a fairly recent case where they said, you cannot charge the implied malice charge when there is evidence of self-defense.

MR. JOHNSON: Your Honor, I may have read the case wrong, but my understanding of the case is that whether you charge self-defense or not, whether it's accident or not, it cannot be inferred if there is any other evidence, it's not just self-defense. Maybe I understood it wrong.

THE COURT: Well, the way it reads, it says, "A jury charge" -- now this is a jury charge -- "instructing malice may be inferred from the use of a deadly weapon. That malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where the evidence is presented that would reduce, mitigate, excuse or justify the homicide."

MR. JOHNSON: Yes, sir. It is, it is a jury charge, but if you tell the jury that now, the jury in the whole deliberation, if they hear about a gun they're going to be saying, well, we can infer, it's planted now that they can infer from a gun, and that's just not the law.

THE COURT: Well, you have the absolute right in your opening argument to tell them that, you know, it cannot be

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inferred if there is any evidence which would reduce, mitigate, excuse or justify the homicide.

MR. JOHNSON: Well, just note my objection.

THE COURT: Okay. Alright.

MR. BELL: Well, I think the case goes on to say, the prosecution can argue it.

THE COURT: Well, I -- I'm not ruling that you can argue it, Mr. Bell, I'm just merely mentioning that -- I'm going to note your objection to his statement. I'm going to let him complete that. You get the right to argue it, and then, as far as the charge on the law once all the evidence is in, I plan to make the correct charge to the jury at that time. Okay?

MR. JOHNSON: Thank you, sir.

THE COURT: Okay. Thank you, sir. Alright, would you bring the jury back in?

MR. JOHNSON: Can it be overruled on in front of the jury, Your Honor?

THE COURT: Huh? Oh, no, sir.

(Whereupon, the jury enters the courtroom.)

THE COURT: Mr. Bell, proceed, please, sir.

SOLICITOR BELL: Thank you, Your Honor.

OPENING STATEMENT BY SOLICITOR BELL CONTINUES:

As I was saying, Ladies and Gentlemen of the jury, malice, inferred malice is not a different type of malice, it

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can be inferred from the circumstances surrounding the crime, such as use of a deadly weapon, or involvement in another crime.

Now, the State must prove each element of murder, that is, the unlawful killing, malice aforethought, beyond all reasonable doubt. And what's reasonable doubt? Well, what it's not, Number One, is beyond all doubt, beyond every doubt, or beyond, if you like old movies, beyond the shadow of a doubt. It's not that extreme. Beyond all reasonable doubt. One definition for reasonable doubt is, proof beyond all reasonable doubt is proof that leaves a reasonable juror firmly convinced of the guilt of the defendant. That's one definition, I'm sure you'll hear others during the course of this trial, and at the end of the trial as Judge Dickson gives you the charge.

Now, Ladies and Gentlemen, as you've heard, we've got Judge Dickson, who is the judge of the law. That is, what he tells you about the law during the course of this case you must follow. You just took an oath to follow that law even if you don't like it, you've got problems with it, that cannot enter into it. But he's not the only judge in this courtroom. You, Ladies and Gentlemen, as the jury are the judges of the facts, and nobody in this courtroom can tell you how to find those facts. Judge Dickson can't tell you how to find those facts, the prosecutor, I can't, the defense attorney can't,

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it's solely up to you. You listen to testimony that comes up on this witness stand plus any and all evidence that is entered into the record, and you use that to find the facts of this case. And at the end you will take those facts and you will apply the law that Judge Dickson gives you to render a verdict.

Now, as I said, part of what you do is, you listen to testimony, and as Judge Dickson has told you, part of your job is to determine the credibility or the believability of the witnesses. And you're going, well, how do I do that? Well, I wish I could tell you a sure fire way. The only way I can suggest to you is that you do like you do every day of your life when you talk to your friends, family or strangers. When they tell you something you usually have a pretty good idea whether somebody is handing you a line or they're being straight up with you. You use that same standard, You didn't change coming into the courtroom in using that way to evaluate how people tell you, tell you a story or determine whether somebody is telling you the truth or not. And I ask you to use that same method in this courtroom today.

Now, Ladies and Gentlemen, I will say that, as Judge Dickson told you, all I can ask of you, all we can ask of you is to listen carefully to all the testimony that comes from the witness stand, observe all the exhibits that we present and that anybody presents in this case, because it is

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important. It's an important day for the State of South Carolina, we're here to uphold our laws, it's an important day for the Bailey family because they're here to seek justice for their son, and it's an important day for the defendant because his liberty is at stake. But in the end, Ladies and Gentlemen, I believe that the State will give you more than enough testimony, more than enough evidence to find the defendant, Julian Young, guilty of murder.

Thank you.

THE COURT: Thank you, Mr. Bell.

Mr. Johnson.

MR. JOHNSON: Your Honor, may it please the Court.

THE COURT: Yes, sir.

MR. JOHNSON: Solicitor Bell and Solicitor Sorenson.

OPENING STATEMENT BY MR. JOHNSON:

It's about Two:thirty. My name is Virgin Johnson, Junior, and my partner is Corey Williams, and the young man sitting beside him is Julian Young. Julian is charged with murder, just like Mr. Bell said. That he will be charged -- and charged means he's not guilty. If the judge stops this case right now, if everybody go home, y'all would have to find him not guilty, because he's charged, you haven't heard any evidence, and until you Twelve people say he is guilty, he is not guilty. You have to listen to what's said here, and after you've listened to all of it, then you Twelve determine the

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facts of whether or not he's guilty. You can't do it by suspicion, you can't do it by guessing, you have to do it from the facts. And anytime you are in a tragic situation sometimes our emotions come into being, but you don't have the luxury of your emotions, you have to do what is right based upon the facts. And a lot of times what is right is tough to do.

Now, I'm not going to do a lot in the opening because I'll probably talk more in the closing. They say they're going to prove it to you, and they're going to prove it beyond a reasonable doubt. The definition that I usually use is a doubt which would cause one to hesitate to act. Proof beyond a reasonable doubt, if it causes you to hesitate to act, that's a reasonable doubt. I heard Attorney I. S. Levy Johnson argue when I was much younger, and I didn't think it was important, but while I was sitting over there he argued the case, and he said, where's the beef? Those commercials about where is the beef, he said, where is the beef? Now, I want the Solicitor today and this week to give y'all some beef, because I tell you today, there is no beef. There is no testimony, and we believe from the evidence we have seen, there is no testimony that you Julian had a gun there. You may be able to infer it, but no testimony. There's no testimony of anybody going there to rob anybody. So, if he was shot with a gun through the side and if Julian didn't have

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the gun, then that would cause one to hesitate to act.

Now, you're going to see me jumping up and down. I'm here, I feel sorry because there's really two tragedies in this case, the Bailey had a tragedy, they lost a son, I'm very sympathetic to them. In and out of the courtroom nobody deserves to do that, I don't want that to happen to anybody. But also, the other tragedy is, they have a young man on trial that they can't put a gun in his hand, and nobody -- and ask them, where is the gun, and ask them to put a gun in his hand.

Now, when you hear the evidence I want you to ask those questions. I believe you will be fair, we are hoping you will be fair. When we go through the selection process the State wants fair jurors, the Defense wants fair jurors, because if you do the right thing everybody leaves a winner, and our community wins. But if you convict somebody on suspicion, innuendo, or you make the leap with no evidence because of your emotions, then justice hasn't been served.

Now, I'm telling you to make them prove the case. We don't have to prove nothing. He can sit right there, he doesn't have to testify. That's the law. That's not trickery, that's not us trying to do anything, that's the law for every citizen in this country. And the Judge will charge you that if he don't testify, he will charge you he doesn't have to testify. You shouldn't consider it. Don't shift the proof to us, we didn't write the charge, we have to come and

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deal with it. They charged him, the State should prove it, and we'd just ask you to make them do their job.

Thank you.

THE COURT: Thank you, Mr. Johnson, appreciate it.

Is the State ready to call its first witness?

SOLICITOR SORENSON: Yes, sir.

THE COURT: Alright, Mr. Sorenson, who is your first witness?

SOLICITOR SORENSON: The State calls Sergeant Kendra Williams.

THE COURT: Okay. Sergeant Williams.

(Whereupon, Kendra Williams
is duly sworn.)

CLERK: Thank you, you may have a seat and state your name again for the record.

WITNESS: Kendra Williams.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

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KENDRA WILLIAMS - DIRECT EXAMINATION

BY SOLICITOR SORENSON:

Q. Good afternoon, Sergeant Williams.

A. Good afternoon.

Q. If you would, you need to make sure you keep your voice up nice and loud for me, alright?

A. Yes, sir.

Q. If you would, tell the jury where it is that you are employed?

A. South Carolina State University Police Department.

Q. Okay. And how long have you been with S.C. State's Police Department?

A. It's almost three years, I started October of Two thousand nine.

Q. Okay. And what, if you would, tell the jury what your current duties are there?

A. I am a sergeant over the, or in the patrol division.

Q. Okay. And how many, how many years total do you have in law enforcement?

A. I started in Two thousand four.

Q. Okay. And where have you worked prior to S. C. State?

A. Orangeburg County Sheriff's Office.

Q. Alright. I want to turn your attention, if I could, Sergeant Williams, back to, back to the evening of April the Fifteenth of Two thousand eleven, so last year. Were you

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working that evening, ma'am?
A. Yes, sir, I was.
Q. Okay. And did you have an occasion that night to be dispatched over to Twenty-one ninety-five Russell Street?
A. Yes, sir.
Q. And tell the jury about what time that was that you were dispatched there?
A. Can I look at the time?
Q. Yeah, if you need to refresh your memory with your report, yes, ma'am.
A. I was dispatched at Eleven:fourteen, I arrived on the scene at Eleven:twenty.
Q. Okay. So, it was Eleven:fourteen p.m.?
A. Yes, sir.
Q. Okay. And if you would, tell the jury what -- first of all, what is Twenty-one ninety-five Russell Street, what is located there?
A. It is a building, it holds some offices for South Carolina State University. It's campus property that we maintain control.
Q. Okay. Alright, and if you would, tell the jury what was the reason that you were initially dispatched at Eleven:fourteen p.m. that night to that, to that location?
A. We were dispatched for a traffic accident. We were advised that a vehicle had hit our property.

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Q. Okay. And now, were there, is that, where that building is located, what -- and that's on Russell Street?
A. Yes, sir.
Q. Is that actually on State's campus?
A. No, sir, it's on the outskirts, it's actually out of the main property.
Q. Okay. So, I guess that's in Public Safety's jurisdiction?
A. Yes, sir.
Q. Okay. But it's your testimony that the reason you were called out there that night was because it was actually an S. C. State building that was struck though, is that correct?
A. Yes, sir.
Q. Okay. And if you would, when you arrived out there around Eleven:twenty p.m., some five or six minutes later, describe for the jury, Sergeant, what, kind of what you encountered when you came up to that scene?
A. There were several public safety officers, there was a green in color car that was, had struck the front of Twenty-one ninety-five Russell, there were a lot of car pieces and a lot of bricks everywhere, a lot of officers, a lot of blue lights, there was an ambulance. When I arrived public safety advised me of the accident.
Q. Okay. Let me show you State's Exhibits Numbers Three and Four, Sergeant. Do you recognize those photographs?
A. Yes, sir.

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Q. Okay. Do they kind of reflect that scene that you encountered that night as far as the location of the vehicle and where it had struck that building?

A. Yes, sir.

SOLICITOR SORENSON: Your Honor, at this time we'd offer State's Three and Four, I believe without objection.

THE COURT: Any objection?

MR. JOHNSON: Without objection, Your Honor.

THE COURT: Okay. Three and Four are in evidence without objection.

(State's Exhibits Three and Four marked and filed.)

Q. And State's Exhibit Number Three, is that the vehicle that you were speaking of?

A. Yes, sir.

Q. And that's where it was located when you arrived that night?

A. Yes, sir.

Q. And State's Exhibit Number Four, is that just more a close up of the vehicle?

A. Yes, sir.

Q. Now, when you arrived there you had indicated there was an ambulance on the scene. Was there anybody still inside this vehicle?

A. Yes, sir.

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Q. Inside this vehicle?
A. Oh, no, sir, not in the vehicle.
Q. Alright. I'm going to show you State's Exhibit Number One
- - -
SOLICITOR SORENSON: Have you got any objection?
MR. JOHNSON: No objection.
Q. --- I'm showing you State's Exhibit Number One, is that a map that kind of reflects that area around Twenty-one ninety-five Russell Street?
A. Yes, sir.
SOLICITOR SORENSON: Okay. Your Honor, I believe we'd offer this without objection also.
THE COURT: Okay.
MR. JOHNSON: Without objection, Your Honor.
THE COURT: Alright.
(State's Exhibit One
marked and filed.)
Q. And I'm going to let you look at State's Exhibit Number One, does that reflect the location of this residence, or this building that was struck by that vehicle?
A. Yes, sir.
Q. Can you point that out for the jury?
A. Right here.
Q. Okay. So, it's the property that's outlined in blue on the diagram, is that correct?

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A. Yes, sir.
Q. Okay. So that's where that was located at.
THE COURT: Ms. Harry Dot, note that State's One is in evidence without objection.
COURT REPORTER: Yes, sir.
THE COURT: Thank you, ma'am.
Q. Now, you had indicated, and let me ask you this, Sergeant Williams, is that area that's depicted in this diagram, is that all located here in Orangeburg County?
A. Yes, sir, it is.
Q. Alright. Now, you had indicated that when you got there, that there was nobody in that vehicle, is that correct?
A. Yes, sir.
Q. But that there was an ambulance on the scene?
A. Yes, sir.
Q. Was there anybody inside the ambulance?
A. Yes, sir.
Q. Okay. Did you ultimately learn who that, the identify of that person that was inside the vehicle?
A. Yes, sir, I did.
Q. And what was his name?
A. Jonathan Bailey.
Q. Okay. And did you learn out there on the scene what his, what condition he was in inside the vehicle?
A. Yes, sir, I did.

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Q. Okay. And what was that?
A. I was advised that he had been shot.
Q. Okay. And did you have an opportunity then to, to physically observe Mr. Bailey and attempt to talk to him out there at the scene at Twenty-one ninety-five Russell Street?
A. I did.
Q. Okay. And describe for the jury how that, how that occurred?
A. When I was advised he was in the ambulance I got in the back of the ambulance with him. He was lying on the, I guess it was a stretcher. I did observe he had a gun shot wound to the right chest area, and there was another on the left side a little higher up.
Q. Okay. Alright, and describe for the jury if you would, Sergeant Williams, what his demeanor or how he was acting inside the back of that ambulance?
A. He was frantic, he was scared, terribly scared. He was rolling back and forth on the stretcher talking about how much pain he was in, you know, get me to the hospital. He was just, kind of hard to describe, he was just frantic, I mean, he ...
Q. Okay. Did you have an opportunity then to speak with him at all about what had happened?
A. I did.
Q. Okay. And tell the jury how that went about?

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A. I first asked him his name, I asked him if he was a student at State. He wasn't answering questions, he was shaking his head and rolling back and forth, and he kept saying, you know, get me to the hospital, I'm going to die. He was just very, very frantic about pretty much everything. I asked him if he was Queen's Village, he said he -- well, he shook his head, yes. I asked him if he had been robbed, he shook his head, yes. I asked him if, how many, and he stuck his hand up and showed me four fingers. I asked him if he saw the weapon, he shook his head, yes. I asked him if it was a revolver, he shook his head, yes. When I asked him if he saw the color of the weapon, he just shook his head, no. He just kept saying he was in pain, get me to the hospital. It wasn't real easy to get anything out of him.

Q. Okay. So, that, pretty much what you described to the jury, was that about the extent of what you were able to get out of Mr. Bailey at that time?

A. Yes, sir.

Q. Okay. And did the ambulance ultimately end up transporting him?

A. Yes, it did.

Q. And are you aware of where they took him?

A. They took him to the heli-pad at TRMC.

Q. Okay. And was he then flown to another hospital?

A. Yes, sir.

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Q. Okay. And let me ask you, did you ultimately learn out there that night that he had passed away from his injuries?
A. I did.
Q. Now, you had referenced, one of the questions that you had asked him was whether he was in Queen's Village?
A. Yes, sir.
Q. Okay. And had you gotten information out there on the scene that that was where his vehicle had come from?
A. Yes, sir.
Q. Okay. And where is, in relation to that building at Twenty-one ninety-five Russell Street, where is Queen's Village located at in relation to that?
A. It's about two houses down, it's a street that goes in -- it doesn't go into campus but it dead ends.
Q. Okay. And is that reflected on this State's Exhibit Number One?
A. Yes, sir, it is.
Q. Okay. And where, can you point that to the jury?
A. The village is right here.
Q. Okay. So, at the end of, that's Baldwin Street I believe is what that says?
A. Yes, sir, Baldwin Street.
Q. Okay. So, Baldwin runs off of Russell but dead ends without actually going onto campus, is that correct?
A. It dead ends right there.

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Q. Okay. So, what are these, what are these buildings here at the end of Baldwin Street?
A. It's marriage houses.
Q. Okay. So, that's S. C. State property?
A. Yes, sir, it's married buildings.
Q. I guess you can't get to it from, vehicle-wise from campus, you have to actually come in off of Russell Street?
A. Yes, sir.
Q. Is that correct? Okay. And then again, that part is still, I mean, that's all in Orangeburg County, is that correct?
A. Yes, sir.
Q. Alright. Now, what, after kind of getting that information from him out there on the scene, what did you then do, Sergeant Williams?
A. I contacted my supervisors.
Q. Okay. Did you now realize that t his had happened actually, I guess, in your jurisdiction on campus?
A. Yes, sir.
Q. Okay. And as a result of that did other officers then with our agency respond out there to, to that area?
A. Yes, sir.
Q. Okay. And where did you, where did you go, or where did you stay out there at that time, ma'am?
A. I stayed at Twenty-one ninety-five Russell Street.

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Q. Okay. And did you help kind of secure that area for it ultimately to be processed for any evidence?
A. Yes, sir.
Q. Okay. Now, how about the area over, over here down Baldwin Street around the marriage housing, what, if anything was done there?
A. I sent Officer Bowers and Officer Millhouse into Queen's Village to secure that area.
Q. Okay. Alright, and ultimately, Sergeant Williams, that evening, did anybody from your agency respond out to those two locations to process not only the vehicle and around the vehicle but also that Queen's Village area for any potential evidence?
A. Yes, sir.
Q. Okay. And who was that that did that?
A. Investigator Dusty Johnson.
Q. And he's employed with South Carolina State?
A. Yes, sir.
SOLICITOR SORENSON: I beg the Court's indulgence.
THE COURT: Take your time.
SOLICITOR SORENSON: I believe that's all I'd have, thank you, Sergeant Williams, please answer any questions that Mr. Williams has for you.
MR. WILLIAMS: May it please the Court, Your Honor?
THE COURT: Yes, sir.

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KENDRA WILLIAMS - CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Sergeant Williams, you stated that when you arrived there were several officers already on the scene, is that correct?

A. Yes, sir.

Q. How many officers were on the scene?

A. I don't know, I can't say definitely.

Q. Were there already officers from your agency on the scene?

A. No, sir.

Q. Were there other individuals on the scene?

A. That I can't ...

Q. Bystanders?

A. Not on the scene, they were across the street.

Q. And about how many people were around the area or across the street when you arrived?

A. I don't know.

Q. Sergeant, I think you testified -- you testified that you spoke with the victim, is that correct?

A. Yes, sir.

Q. And you questioned him?

A. Yes, sir.

Q. Did he give you any audible responses?

A. Very, very few.

Q. You asked the victim his name, didn't you?

A. Yes, sir.

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Q. Did he tell you?
A. No, sir.
Q. You learned that later from someone else?
A. His ID.
Q. The victim told you he didn't want to talk to you, is that correct?
A. No, sir, he didn't say he didn't want to talk to me.
Q. Did he tell you where he had been?
A. I asked him if he had been in Queen's Village, and he shook his head, yes.
Q. You said you also asked him was he robbed?
A. Yes, sir.
Q. How did he respond?
A. He shook his head, yes.
Q. Did he tell you who robbed him?
A. No, sir.
Q. Did he identify anyone who had robbed him?
A. No, sir.
Q. I think you testified also that you asked him the color of the gun, is that correct?
A. Yes, sir.
Q. And I think you're looking at your statement, you asked him whether it was black or white, I mean, black or silver?
A. Black or silver, yes, sir.
Q. And what was his response?

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A. He shook his head, no.
Q. So, it was neither one?
A. Yes, sir, he just shook his head, no.
Q. Okay. Sergeant, did you go down to the scene at Queen's Village?
A. Yes, sir, I did.
Q. Was that before or after you had dispatched other officers to secure the location?
A. It was after.
Q. How long after?
A. I'm not exactly sure.
Q. Sergeant, just briefly, from your report did the victim give you any other information other than what you've testified to today?
A. No, sir.
Q. And from your report, the victim would not give you his name?
A. He wouldn't.
Q. Or any other information?
A. No, sir.
MR. WILLIAMS: Thank you. One moment.
THE COURT: I'm sorry, Mr. Williams, go ahead.
Q. Just one other question, Sergeant Williams, - - -
A. Yes, sir.
Q. You testified that the victim told you that he was

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frantic, and he was in pain, is that correct?
A. He didn't say he was frantic, but I observed he was frantic, yes, and yes, he did say he was in pain.
Q. He did? Did you note that in your report?
A. No, sir, I didn't. It may be in my report, it's not in my statement.
Q. Is it in your statement?
A. No, sir, it's not.
Q. And you gave that statement on the night of this incident?
A. The next morning.
Q. What time did you give the statement?
A. It was Four:forty-five a.m.
MR. WILLIAMS: Thank you. NO further questions.
THE COURT: Anything on redirect?
SOLICITOR SORENSON; Just very briefly, Your Honor.
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KENDRA WILLIAMS - REDIRECT EXAMINATION

BY SOLICITOR SORENSON:

Q. Just to kind of follow up on that last thing Mr. Williams asked you, I believe he had asked you whether you had noted in your report whether the victim was frantic or in pain, is that correct?

A. Yes, sir.

Q. I think you had said, no, you didn't think you had noted that. Let me show you your statement here. In fact, did you not note that you made, that he told you that he was in too much pain?

A. Yes, sir.

Q. So, you did note that in your statement that night?

A. Yes, sir.

SOLICITOR SORENSON: That would be all I'd have, thank you, Your Honor.

THE COURT: Anything on recross?

MR. WILLIAMS: Nothing further, Your Honor.

THE COURT: Alright. You may step down, Sergeant Williams, thank you.

Is the State ready to call its next witness?

SOLICITOR SORENSON: Yes, sir. The State calls Detective Dustin Johnson.

(Whereupon, the witness enters the courtroom.)

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CLERK: Will you please place your left hand on the Bible and raise your right hand.

(Whereupon Dustin Johnson is duly sworn.)

CLERK: Thank you, you may have a seat. And please state your name again for the record.

WITNESS: Dustin Johnson.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

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DUSTIN JOHNSON - DIRECT EXAMINATION

BY SOLICITOR SORENSON:

Q. Investigator Johnson, if you would, tell the jury, please, where it is that you work?

A. I currently work -- I work for South Carolina State University at -- out there at the University, for the police department.

Q. Okay. And what are your current duties out there with the South Carolina State Police Department?

A. What I do is, I do crime scene investigations. I also do the canine program, and assist with any investigation that they need, you know, help with, you know, just standard investigations as well.

Q. Okay. And how long have you been employed out there in that capacity?

A. Since October of Two thousand nine.

Q. Okay. And where were you employed prior to October of Two thousand nine?

A. At the City of Orangeburg Public Safety.

Q. And how long were you with Public Safety prior?

A. Right at two years.

Q. Alright. And I want to turn your attention, if I could, Investigator Johnson, back to the evening of April Fifteenth of last year. Did you ultimately respond out there to a shooting that has occurred on campus?

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A. Yes, sir, yes, sir, I did.
Q. And where, if you would, tell the jury where it is that night that you initially responded to?
A. Okay, well, initially I responded, I got a call that said there had been a shooting in Queen's Village on the campus, so that's where I initially responded to eventually, because I wasn't sure exactly, they said to meet over there, so I responded to Queen's Village and spoke with Commander Craft. And then I ultimately spoke with Sergeant Kendra Williams who informed me of what was going on at the time.
Q. Okay. And that Queen's Village, if you would just kind of describe that area, was that area kind of secured when you got there by other officers?
A. Yes, the area had already been secured, crime scene tape was up and there was officers standing by, by the crime scene tape as well.
Q. Okay. And describe, if you would, what that area over in Queen's Village, what that kind of, that crime scene consisted of at that location?
A. Okay. When I arrived on the scene, like I said, when I first got there I did, you know, I talked to Sergeant Williams who gave me an overview of what they thought was going on. At that point I started looking around, investigating, doing some of my initial processing of the scene. As I began processing the scene I started noticing items, I started looking for

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items of evidence that, to be found on the scene. A couple of things that I notice on the scene were, I noticed, I picked up several pieces of what I thought at the time were evidence on the scene. I picked up two green, two bags of green leafy like substance that appeared to be marijuana on the scene. Also, I picked up a Fifty Dollar bill on the scene that were possibly evidence, that you know, I thought were possibly evidence at the time. Also, something else that was strange, and you could tell there were fresh tire marks, skidding tire marks coming off the scene. I photographed that as well because you could see where on the dirt it looked like it had been fresh marks coming out of Queen's Village.

Q. I'm showing you, Investigator Johnson, State's Exhibit Number One, and the jury has already been shown by Sergeant Williams, but where, if you would kind of point out where the Queen's Village is located?

A. Okay. Queen's Village is actually right here on Baldwin Street. It runs off, it runs right here off of Russell Street and it goes up in the, right into this area here. This is Queen's Village, all these houses right here on both sides are Queen's Village.

Q. Okay. So, what area was it that you were kind of processing or looking for evidence around Queen's Village?

A. Okay. Actually, where we were at was right in this general area right here, between this building and this

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building, on the roadway though, but it was between these two buildings here, and actually, it was closed off starting about right here, so we had it secured all the way down.

Q. Okay, so basically that's kind of parking you see, I guess there's cars kind of parked on the diagram?

A. Yes, there's a parking lot, this right here, and then, sometimes people park on the end, it's not really parking places, and you know, across everywhere.

Q. Okay. So that area around all here, though, that's all paved?

A. Yes, sir.

Q. Okay. Alright, and you had indicated -- and let's kind of takes these a couple at a time, did you ultimately end up kind of preparing a crime scene diagram of, kind of that area at the end of Baldwin there?

A. Yes, sir, yes, sir.

Q. I'm showing you State's Exhibit Number Two, is that just an enlargement of that diagram that you prepared?

A. Yes, sir.

SOLICITOR SORENSON: Let me show you this.

MR. WILLIAMS: No objection.

SOLICITOR SORENSON: Your Honor, we'd offer State's Two into evidence.

THE COURT: State's Exhibit Two is in evidence without objection.

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(State's Exhibit Two
marked and filed.)
Q. And if you could ...
SOLICITOR SORENSON: Can I, can I get him to step down, Your Honor, in front of the jury?
THE COURT: Sure. Mr. Williams, you need to get where you can see as well.
Q. Make sure you keep your voice up nice and loud.
SOLICITOR BELL: Your Honor, there's an easel over there.
Q. Just kind of point to the jury kind of what they're seeing there.
A. Okay, basically, this is Baldwin Street. It's not exactly to scale. What I did was did a rough sketch of Baldwin when I got out on the scene. Like I said, it runs off of Russell Street. Baldwin Street comes out and you can see the parking, and where we were at, like I said, the houses were back in this general area. Basically, what you see is what, basically what I saw when I got there and I started processing the area. The items that I found that I collected, that's what's marked on the different areas right there. It's Item Number One, which is a, you know, is one of the green leafy like substance bags. Item Number Two is one of the second green leafy substance bags. And Item Number Three, which was the -- I'm sorry, Item Number Two right here was the Fifty Dollar bill, and Item Number Three, which is the third green leafy like

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substance bag. Basically, there's more -- how far they are out from the edge of the roadway, from the edge of the concrete right here in the parking area, they were actually in the parking area. This one was found actually about half way between one side and the other. Item Number Four is the skid marks which I was talking about. The skid mark actually went up onto the grass and started on from the grass, and that's what actually caught my attention about the skid marks, because you could see the grass was torn up and it looked like it seemed to be fairly fresh. And the skid mark come off of the grass and went onto the concrete at an angle coming like it was going out in this direction right here.

Q. Alright. And if I could, let me show you State's Exhibits Five through nine. And do those reflect the kind of area in those items of evidence that you've just been describing for the jury?

A. Yes, sir.

SOLICITOR SORENSON: Your Honor, at this time we would offer State's Five through Nine into evidence.

THE COURT: Any objection?

MR. WILLIAMS: Without objection.

THE COURT: Alright, State's Five through Nine are in evidence without objection.

(State's Exhibits Five through Nine marked and filed.)

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SOLICITOR SORENSON: Thank you.

Q. Alright, and you had testified first about, I guess the two leafy bags of kind of green leafy substances. I'm showing you State's Exhibits Numbers Six and Seven, are those those two items?

A. Yes, sir.

Q. Okay. And I notice that there's two different, these are numbered Numbers One and Two. Do those correspond necessarily with that diagram or ...

A. No, sir, actually, they're Number One and Number Three. Number Two was an accidental marking on there in the picture.

Q. Okay. So Number One, though, is going to correspond with Number One on the diagram?

A. With Number One, yes, sir.

Q. So, that's found basically kind of in the middle of the parking lot sort of?

A. Yes, sir, Number One was found out there, and like I said, the other one, being Number Three and it was found in here.

Q. So, that one was found closer to the, I guess, to those parking spaces?

A. Yes, sir, it was found right here. It was actually found dead between the two lines, where the lines came through, it was sitting right on the line.

Q. And that would be just so we're kind of related, as you turn off of Russell Street, as you come off of Russell Street

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down Baldwin, as you said, and down in this area on the right hand side?

A. Yes, sir, if you come down ...

Q. I'm sorry, on the left hand side?

A. If you come down, if you turn onto Baldwin and you come down onto the left hand side, yes, sir.

Q. And then you had also testified that there was a Fifty Dollar bill that was collected, is that State's Exhibit Number Eight, that Fifty Dollar bill?

A. Yes, sir.

Q. Okay. And that was yet again ...

A. That was right here, yes, sir, it was just in the middle of one of the parking places, yes, sir, found up closer towards the, from the concrete.

Q. Okay. And I'm showing you State's Exhibit Number Five, what is depicted in State's Exhibit Number Five?

A. Basically this picture is a picture taken from right where the skid marks are, across the parking lot area. I was trying to get -- my flash wasn't working very well, but I was trying to, it will show, and you can kind of see a little bit of them in the side, and also, you know, just basically from where the skid marks are back towards where we found the rest of the evidence.

Q. Okay. And a couple of vehicles that are depicted in this picture, they, they were parked there when you got there?

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A. Yes, sir.
Q. And then lastly, you had talked about that skid mark on the right side of the diagram, shown in State's Exhibit Number Nine, does that show that skid mark?
A. Yes, sir, that's it.
Q. Okay. And you described, I mean, does it show where it kind of goes up on the, up on the grassy area also?
A. Yes, sir.
SOLICITOR SORENSON: Okay, you can step back on the stand.
Q. Alright, now, were there any other items that were located out there on Baldwin Street, kind of in that area?
A. No, sir.
Q. Okay. Did you ever find any bullets out there?
A. No, sir.
Q. Any shell casings?
A. No, sir.
Q. In your experiences, those two bags that you found, what did those appear to be in your experience as a law enforcement officer?
A. As a law enforcement officer, it appeared to be marijuana in the two bags.
Q. Alright. So after you finished up out there on Baldwin Street, Investigator Johnson, what did you then do?
A. At that point I left from Baldwin Street to go to the

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second scene. I had not seen the second scene at that point in time. There was an officer from the city and I'm not sure who he was, it would have to be in Sergeant Williams's report, that stood by where we had it cordoned off. And I went up to the second scene on Russell Street.

Q. Okay. And where is that scene located at in relation to where you were on Baldwin Street?

A. Basically, if you were to make a right, when you're on Baldwin Street if you come out and make a right and come down ...

Q. Take a left?

A. I'm sorry, take a left, if you make a left and come down, it was about three houses farther down where the vehicle had actually struck into one the State's pieces of property.

Q. Okay. And the jury has already seen State's Exhibits Numbers Three and Four. Is that how, the condition of the scene when you arrived - - -

A. Yes, sir.

Q. --- out there that night?

A. Yes, sir.

Q. That would be the condition when you arrived out there?

A. Yes, sir.

Q. Okay. And in fact, are these pictures you took?

A. Yes, sir.

Q. Okay. What, what then did you do as far as going about

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processing that scene, Detective Johnson?
A. Well, at first I started, I began taking pictures, and as I took pictures I was actually looking over, doing just a glance over of the vehicle. I began to process and started looking for evidence around the vehicle. As I came into the driver's side door, as I stepped into the driver's side door I could -- I noticed a mark on the side of the door, and at that point in time what looked like, it appeared to be, you know a marking that had blood splatter on it, and it appeared like an impact mark as well on the side of the door. So, at that point I immediately stopped and began to try to locate a bullet projectile. It took a few minutes. The bullet projectile was ultimately found on the ground within a couple of minutes right there. I found it and marked it so we could, it wouldn't be lost later on. I continued my processing around, found several other pieces of evidence in the vehicle as well.
Q. Okay. Let me stop you right there so I can kind of go through some of the photographs.
A. Okay.
Q. So, you had indicated that you observed what appeared to be where something has struck the arm rest?
A. The arm rest, yes, sir.
Q. On the driver's side of the door. And I'm showing you State's Exhibit Number Twelve, does that depict that, the

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driver's side arm rest?
A. Yes, sir.
SOLICITOR SORENSON: Your Honor, at this time we'd offer -- I've shown Mr. Williams State's Exhibits Ten through Sixteen, and I don't believe there's any objection to any of those.
THE COURT: Any objection to State's Ten through Sixteen, is that correct, Mr. Sorenson?
SOLICITOR SORENSON: That's correct, that's the right numbers, yes, sir.
THE COURT: Any objection?
MR. WILLIAMS: No objection, Your Honor.
THE COURT: Alright, State's Ten through Sixteen are in evidence without objection. Thank you, Mr. Williams.
(State's Exhibits Ten through Sixteen marked and filed.)
SOLICITOR SORENSON: Thank you.
Q. So, State's Exhibit Number Twelve, what is that a picture of?
A. That's a picture of the arm rest, and as you can see, there's a little bit of, what appeared to be blood, a marking on it like an impact mark on the side of the arm rest.
Q. Okay, and that's on the driver's side of the vehicle?
A. The driver's side door, yes, sir.
Q. Okay. And as a result of that you had indicated you kind

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of got to looking around, and I'm showing you State's Exhibit Number Eleven, what's depicted in State's Exhibit Number Eleven?

A. That is a bullet fragment, a projectile fragment that was found in the grass.

Q. Okay. And where is that located at in relation to the driver's side door?

A. It was actually found extremely close to the driver's side door. It was found from my second diagram, I can tell you exactly. It was found Eighteen inches away from the side of the car, right under the driver's side door.

Q. Okay. And showing you, what is that that's next to it, that white item next to it?

A. It was a piece of the concrete that was broken off the side of the building that was used as a marker when we found, to keep from losing it again because it was dark and everything, so we wanted to mark it right then and there.

Q. Okay. And so you put that piece of brick there?

A. Yes.

Q. Okay. and I'm showing you, in fact, going back to State's Exhibit Number Four, is that piece of brick in State's Exhibit Number Four?

A. Yes, sir.

Q. So, basically, right next to that white piece of brick is where that bullet fragment was found?

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A. Yes, sir.
Q. Okay. And was that item collected?
A. Yes, sir.
Q. Okay. I'm showing you State's Exhibit Number Twenty-one, do you recognize what's in that envelope?
A. Yes, sir, this would be what I collected the projectile in at the time, just a pill bottle, and it was actually encased in paper inside of that to preserve it.
Q. Okay. And it is now kind of loose in an envelope next to it, is that correct?
A. Yes, sir, that's it.
SOLICITOR SORENSON: Your Honor, at this time we'd offer State's Twenty-one into evidence.
THE COURT: Any objection.
MR. WILLIAMS: Without objection.
THE COURT: State's Twenty-one into evidence without objection. Thank you, Mr. Williams.
(State's Exhibit Twenty-one
marked and filed.)
Q. Okay. And yet again, that, so that item was what was found in the grass right outside of that car door, is that correct?
A. Yes, sir.
Q. And did you find any other items kind of outside the vehicle at that scene, I mean, other than, I guess the

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condition of the building, but as far as any other items?
A. Not outside of the vehicle, no, sir.
Q. Okay. Let me just get you, I've got this other photograph here, State's Exhibit Number Ten, what's depicted in State's Exhibit Number Ten?
A. That's the passenger side of the vehicle, and basically the reason I took that, I took several pictures of the side of that vehicle, but what you can see in that picture is the back wheel, the way the back wheel is dug into the dirt as of when the vehicle whatever, you know, when it hit the building, as it was continuing to accelerate, which dug the vehicle deeper into the ground.
Q. Okay. And when you got on the scene that passenger side door was closed like that?
A. Yes, yes.
Q. Okay. Alright, now, Detective Johnson, did you then have an opportunity to, to kind of search and look in and see if there was any items inside the interior of the vehicle?
A. Yes, sir, I did. The driver's side door was open. Like I said, once I got there I looked in through the driver's side door. From the driver's side door, you know, you could see several things laying around.
Q. I'm showing you State's Exhibit Number Thirteen, does that kind of show, kind of looking into that driver's side door?
A. Yes, sir.

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Q. Was that kind of the condition, I guess, that you found in the interior of that vehicle?
A. Yes, sir.
Q. And I ask you, what condition was that steering wheel in?
A. The steering wheel had been crushed completely. It was a wood grain steering wheel and it had splintered and broken into hundreds of pieces actually.
Q. Okay. Alright, and as far as looking inside the vehicle, were there any items that you saw in your initial kind of looking in it that caught your attention as potentially being of interest to you?
A. Yes, sir, w hen I was on the driver's side I noticed some money could be seen on the passenger side. So I walked around and opened the passenger door. When I opened the passenger door I was actually able to find, I found another Fifty Dollar bill along with five Twenty Dollar bills and another bag of green leafy substance that appeared to be marijuana.
Q. Okay. I'm showing you initially State's Fifteen and Sixteen, does that kind of show some of that money, those six bills kind of strewn around the floor board in the, inside the passenger side door?
A. Yes, sir.
Q. Okay. And I'm specifically showing you State's Sixteen, is that where those two bills were located at, right inside the, kind of right where the door closed basically would be on

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top of the bills?
A. Yes, sir, those two Twenties were actually right inside the crease of the door when I opened it.
Q. State's Exhibit Number Fifteen shows some of the other money on the floor board there?
A. Yes, sir.
Q. And I believe you also indicated you saw another bag of the kind of leafy substance inside the vehicle?
A. Yes, sir.
Q. I'm showing you State's Exhibit Number Fourteen, - - -
A. Yes, sir.
Q. --- does that show that? And where was that located at in the vehicle?
A. On the floor board of the passenger side.
Q. In the same vicinity as the money?
A. Same vicinity, yes, sir.
Q. And those items were all collected at that time?
A. Yes, sir.
Q. Including all those bills, the bills?
A. Yes, sir.
Q. And, alright, at that point in time, Investigator Johnson, did you do anything else with the vehicle out there that night?
A. Not -- what I did at that point in time, and it seemed like everything we had could be secured from there with, you

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know, basically, the initial search was just to make sure everything could be secured and we weren't going to lose any evidence right there at the time. I rolled the driver's side window up because it was down, took the vehicle, secured the vehicle with evidence tape, marked it, and secured the vehicle, the doors, the trunk and everything, and then had it towed to a secure location.

Q. Okay. And ultimately, at some point in time that night did y'all learn that Mr. Bailey had passed away?

A. Yes, sir.

Q. Okay. And as a result of that was any other agency called in to kind of take over the investigation?

A. yes, sir, once we learned that Mr. Bailey was deceased, SLED was actually called in to take over the investigation at that point in time.

Q. Okay. And did you have an opportunity to meet with anybody from the State Law Enforcement Division with regards to kind fo what you had done up until that point in time?

A. Yes, sir, initially I met with Crime Scene Investigator Carl Kenley, and also Investigator Johnson, and a little later on I met with Jeremy, Investigator ...

Q. Smith, Jeremy Smith?

A. Jeremy Smith, that's right.

Q. Did you ultimately turn over those items, the bullet that you had recovered, the money that you had recovered, the bags

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of what appeared to be marijuana, did you turn all that stuff over to Agent Kenley?

A. Yes, sir, I turned it over to Agent Kenley.

Q. Okay. Now, the following morning you said that that vehicle was towed, where was it towed to?

A. It was actually towed to Orangeburg Department of Public Safety Station Three. They've got an impound out there but they also at the time had a secure bay. They had, some fire engines were down and the station itself was not being used, so we locked it in the bay so that elements wouldn't mess with it or anything of that nature, and I spoke withe the supervisor and we went out there and I got the key from the supervisor so it would stay secure and locked, you know, throughout the night.

Q. Okay. And the next day did you have an opportunity to go back out there to that vehicle?

A. Yes, sir, yes, sir, probably about nine o'clock in the morning I was able to obtain a search warrant for the vehicle. At that point in time myself and Agent Kenley and Agent Johnson went back out to the vehicle for further processing.

Q. And did Agent Kenley then continue with processing as far as for prints and things of that nature on the vehicle?

A. Yes, sir.

Q. And obviously, I guess, would he be the person to testify

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about that?
A. Yes, sir.
Q. Okay.
SOLICITOR SORENSON: I beg the Court's indulgence.
THE COURT: Take your time.
SOLICITOR SORENSON: Thank you, Detective Johnson, that's all I would have, please answer any questions that Mr. Williams has.
A. Yes, sir.
THE COURT: Mr. Williams, your witness.
MR. WILLIAMS: May it please the Court, Your Honor.
THE COURT: Yes, sir.
BAILIFF: Judge, can the jury just stand up and stretch for a minute?
THE COURT: Oh, yes.
BAILIFF: Stand up and stretch.
THE COURT: Y'all go ahead and stand up and stretch.
BAILIFF: Thank you, sir.
THE COURT: Do you need to take a break?
COURT REPORTER: I just need a minute.
THE COURT: Okay. Alright. Mr. Williams, do you mind if we take a short break so we can get some more tapes for the machine? Apparently, we're running out. So, do you mind if we take a break?
MR. WILLIAMS: No, Your Honor.

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THE COURT: Okay. Ladies and Gentlemen, we're going to take a short break now, we've got to get some more tapes for the machine right now, so that was probably a good stretch. Y'all can go back into the jury room for a minute. Remember, you cannot begin talking about this case yet. Okay? Thank y'all.

(Whereupon, the jury retires to the jury room.)

(Recess)

THE COURT: Alright. Are we ready to proceed? Mr. Williams, I don't want you to be upset by Ms. Harry Dot's implication. She needed more tapes for your cross-examination.

MR. WILLIAMS: No, sir.

THE COURT: Okay, good. I Just wanted to make sure. Okay. Alright, Ms. Harry Dot, are you ready?

COURT REPORTER: Yes, sir.

THE COURT: Okay. Alright, would you bring the jury back in?

(Whereupon, the jury enters the courtroom.)

THE COURT: Ladies and Gentlemen, we're going to continue with Mr. Williams's cross-examination.

Detective Johnson, you know you're still under oath.

DETECTIVE JOHNSON: Yes, sir.

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THE COURT: Okay. Alright, Mr. Williams, your witness.

MR. WILLIAMS: Thank you.

THE COURT: Yes, sir.

MR. WILLIAMS: May it please the Court, Your Honor?

THE COURT: Yes, sir.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

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DUSTIN JOHNSON - CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Investigator Johnson, - - -

A. Yes, sir.

Q. --- you testified during your direct that you examined two crime scenes?

A. Yes, sir.

Q. The first at Queen's Village, is that correct?

A. Yes, sir.

Q. Okay. I show you again what's been marked as State's Exhibit One.

A. Would you like me to step down, sir?

Q. Would you please?

A. Okay.

Q. Just so I can keep straight in my head, would you just tag where the Queen's Village scene was located?

A. Okay. It would be right there.

Q. Okay. And you also examined the second crime scene on Russell Street, is that correct?

A. Yes, sir.

Q. Can you tag for me where that's located?

A. Right there.

Q. Okay. Step back and let me ask you just a couple of questions before we -- at the ...

THE COURT: Mr. Williams, you might want to take that ...

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MR. WILLIAMS: Okay.

THE COURT: I know the jury wants to see him. Alright, thank you, sir.

Q. Now, Investigator Johnson, - - -

A. Yes, sir.

Q. Is your testimony that you found, you located some evidence at the Queen's Village site, is that correct?

A. Yes, sir.

Q. And I show you what's been marked as State's Exhibits Five through Nine, and you've looked at those before, but those are the -- are those your crime scene photos of the Queen's Village incident site?

A. Yes, sir.

Q. Can you tell us again for our record, what evidence did you find at the Queen's Village?

A. I found two small bags, small plastic bags containing a green leafy substance. Also, I found a Fifty Dollar bill, as well as a skid mark.

Q. A skid mark. Okay. And I think your testimony, this looked from your experience in law enforcement, this looks to be marijuana?

A. Yes, sir.

Q. And you also at that scene you found money?

A. Yes, sir.

Q. Did you locate anything else at that scene?

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A. No, sir.
Q. And did you locate any bullet fragments at that scene?
A. No, sir.
Q. Did you locate any weapon at that scene?
A. No, sir.
Q. And then subsequently you went down to the Russell Street?
A. Yes, sir.
Q. And at Russell Street tell us what evidence did you find at Russell Street?
A. I found another Fifty Dollar bill, five Twenty Dollar bills, another plastic bag of green leafy substance also appearing to be marijuana. I also found a projectile fragment as well.
Q. And I show you what's been previously marked as State's Exhibit Eleven, is the fragment you found?
A. Yes, sir.
Q. Investigator Johnson, how far is it from your first crime scene, from your first investigative site to the second?
A. I can't say for sure but it's several hundred yards.
Q. On a different street?
A. It's on a separate street, yes, sir.
Q. Investigator Johnson, did you ascertain what type of weapon this fragment came from?
A. We sent it to SLED, SLED has it in their report, sir, I'm not sure.

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Q. But you found no bullet fragments at the Queen's Village site?
A. No, sir.
Q. When you arrived at the scene were there other people present?
A. Yes, sir.
Q. Other officers present?
A. Yes, sir.
Q. Other bystanders present?
A. Yes, sir.
Q. How far away from the vehicle was that Exhibit Number Eleven located?
A. That's the bullet fragment?
Q. Yes, sir.
A. Eighteen inches.
Q. So, fairly close?
A. Yes, sir.
Q. In that vehicle you stated you also found some additional marijuana?
A. Yes, sir.
Q. Or what looked like marijuana?
A. What appeared to be marijuana, yes, sir.
Q. You also found money?
A. Yes, sir.
Q. At that scene did you locate a weapon?

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A. No, sir.
Q. The fragment you found in the ground, on the ground, do you know how long it had been there?
A. No, sir.
Q. Do you know whether it was, whether or not it was from this incident?
A. I can't say for sure, sir.
Q. Where in the vehicle did you locate what's been previously marked as State's Exhibit Fourteen?
A. On the floor board of the passenger side right by the edge of the seat, like kind of where there's a hump, like a transmission hump, right by the seat and hump right there.
Q. And this was after a crash?
A. Yes, sir.
Q. And you located money in the vehicle?
A. Yes, sir.
Q. How much?
A. Altogether it was a Hundred and fifty Dollars, Five Twenties and one Fifty.
MR. WILLIAMS: One moment, Your Honor.
THE COURT: Take your time.
Q. Investigator Johnson, after you had secured and processed the scene, both scenes did you ever locate a weapon?
A. No, sir.
MR. WILLIAMS: Thank you. One moment. Thank you. No

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further questions of this witness, Your Honor.

THE COURT: Alright, thank you, sir. Anything on redirect?

SOLICITOR SORENSON: No, sir.

THE COURT: Alright, you may step down. Thank you, sir.

WITNESS: Thank you, sir.

THE COURT: Is the State prepared to call its next witness?

SOLICITOR SORENSON: Yes, sir.

THE COURT: Alright, you can call your next witness, please.

SOLICITOR SORENSON: The State calls Ricky Gipson.

THE COURT: Gipson?

SOLICITOR SORENSON: Gipson.

(Whereupon, the witness enters the courtroom.)

SOLICITOR SORENSON: Come right around up there, place your left hand on the Bible and face the front.

CLERK: Raise your right hand, please.

(Whereupon, Ricky Gipson is duly sworn.)

CLERK: Thank you. You may have a seat, and please state your name again for the record.

WITNESS: Ricky Gipson.

CLERK: Thank you.

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RICKY GIPSON - DIRECT EXAMINATION

BY SOLICITOR SORENSON:

Q. Good afternoon, Mr. Gipson.

A. Good afternoon.

Q. Alright, the first thing we need to start with, you need to keep your voice up nice and loud, alright?

A. Alright.

Q. All Twelve of those jurors need to be able to hear you, okay?

A. Okay.

Q. Alright. And Ricky, where, where are you from?

A. Maryland.

Q. Maryland? Is that where you grew up?

A. Yes, sir.

Q. Where did you go to high school?

A. McDonald High School.

Q. And where is that located at?

A. It's in Maryland also.

Q. Okay. And did you graduate?

A. Yes, sir.

Q. And when did you graduate from McDonald High School?

A. Two thousand ten.

Q. Two thousand ten. And in the fall of Two thousand ten did you enroll in college somewhere?

A. Yes, sir.

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Q. And where was that that you enrolled in college?
A. South Carolina State.
Q. Okay. So, you were a freshman in the fall of Two thousand ten, into the spring of Two thousand eleven?
A. Yes, sir.
Q. Now, let me ask you this, back in April of Two thousand eleven, so April of last year, did you know the victim in this case, Jonathan Bailey?
A. Yes, a little bit.
Q. Okay. And what did, what did you know Mr. Bailey by, what name did you know him by?
A. Jon.
Q. Jon. And tell the jury how long you had known Jon?
A. Before when?
Q. How long had you known him prior to when he was killed?
A. A little bit, beginning the first semester, I'd say about from November to April.
Q. Okay, about six months or so?
A. Yeah, about six months.
Q. Alright. And back in April of Two thousand eleven, do you know whether Mr. Bailey was a student also at South Carolina State?
A. Yes, he was a student.
Q. Okay. Let me ask you this, do you know what year he was at State?

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A. A junior or a senior, one or the two.
Q. Okay.
A. An upperclassman.
Q. He was an upperclassman?
A. Right.
Q. Alright. Now, let me ask you this, Ricky, back in the spring of Two thousand eleven when you were a student, a freshman at South Carolina State, were you doing something that you shouldn't have been doing to make money?
A. Yes, sir.
Q. Okay. And tell the jury what that was that you were doing back in the spring of Two thousand eleven?
A. Selling marijuana.
Q. Okay. And where were you selling marijuana at?
A. On the school campus.
Q. On campus. Okay. And what about, what about Jonathan Bailey, Jon, was Jon doing the same thing?
A. Yes, sir.
Q. Okay. And in fact, is that how you got to know him was through that?
A. Yes, sir, you could say that.
Q. And did you know back in April of Two thousand eleven what kind of car Mr. Bailey was driving?
A. It was a green Cutlass.
Q. Okay. And I'm showing you State's Exhibit Number Four,

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was that his car that he was driving back at that time?
A. Yes, sir.
Q. I want to turn your attention, Ricky, back to the night that Mr. Bailey got shot. What were you doing that night kind of leading up to, up to when all this happened?
A. That night?
Q. Yes, sir.
A. Just hanging out. It was these upperclassman, dorms called the suites, and I was hanging out over there.
Q. Okay. And where you staying at in your freshman year at S. C. State?
A. I was in Mitchell Dorm, but I also was spending a lot of time in the suites.
Q. Okay. And that's on campus where you were hanging out?
A. Yes, sir.
Q. Alright. Now, did there come a time that night, Mr. Gipson, when you were contacted by someone with regards to them wanting to buy some marijuana?
A. Yes, sir.
Q. And did you know who that person was that contacted you?
A. No, sir.
Q. Okay. And how was it that you were contacted?
A. It was through the phone.
Q. Through a phone?
A. Yes.

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Q. Okay. And let me ask you, that person that contacted you, had you met that person at some point in time prior?
A. Prior to the conversation, no, sir.
Q. Prior to that night?
A. No, sir.
Q. You had never seen him before?
A. No, sir.
Q. Okay. Alright, let me ask you this, did there come a time earlier that day, April the Fifteenth of Two thousand eleven, when you had met somebody on campus with regards to buying some marijuana?
A. Oh, yes, sir.
Q. Okay. And let me ask you this, did you know that person prior to meeting them on the campus that day?
A. No, I didn't know them prior.
Q. Okay. And that's what I was kind of getting at. So, let's kind of back up to earlier that day. Could you describe for the jury how that, how that contact earlier in the day on April the Fifteenth came about?
A. Are you talking about earlier?
Q. Earlier, yes, sir.
A. Basically I was contacted to, I thought I was selling something small like a Ten or Twenty, and they asked for a larger quantity, and that was something I didn't have, so I told them I didn't have it, and that's when I contacted Jon

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because I was going to let him make the, basically make the money.

Q. Okay. And who was it that contacted you about trying to buy some marijuana that day, can you describe those people for the jury?

A. It was a group of people but I don't know them by names. It was earlier that day, it was about four of them.

Q. Okay. Alright, and what other, can you describe any of them that you dealt with earlier that day?

A. One of them had dreds and the other one had a buzz cut, and that was it. That's all I can remember.

Q. And the guy, when you talked to S.C. about the guy with the dreds, was he light skinned or dark skinned?

A. Light skinned.

Q. Okay. And did, did either one of them give you either their names or nick names or anything that they went by?

A. One of them they said their name was Gouda, but that was it.

Q. Gouda?

A. Yeah.

Q. And which one was that supposedly, the light skinned guy with the dreds or the guy with the hair cut more like yours?

A. I think it was the dreds but I'm not too sure, I can't be a hundred per cent.

Q. Okay. And yet again, prior to you dealing, talking to

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them, where did that conversation take place earlier that day?
A. It was behind the dorm on campus place.
Q. Alright. And had, prior to you talking to these guys about them trying to buy some marijuana, had you ever seen either one of them prior to that day?
A. No, sir.
Q. Okay. Now, ultimately that, that, during the day did they end up buying any marijuana from Jon that you're aware of?
A. No, sir. We arranged a meeting but it didn't go through.
Q. Alright. And did you have anymore dealings with that guy that was calling himself Gouda or the other guy with him throughout that afternoon?
A. No, it wasn't until later on that night.
Q. Okay. And tell the jury then later on that night what, what happened with regards to those people then?
A. Well, I was contacted again and saying that they were trying to meet up with Jon. Basically, the arrangement we made earlier that day, they were trying rearrange it and make it happen that night.
Q. Okay. And how were you contacted then later on in the evening?
A. It was by phone again.
Q. By phone?
A. Yeah, yes, sir.
Q. Okay. And do you know how they got your phone number?

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A. No, sir.
Q. Okay. Let me ask you this, do you give, had you given out your number to people around campus that knew that you were selling marijuana back in April of Two thousand eleven?
A. Yes, sir.
Q. Okay. So, you ultimately ended up getting contacted that evening by somebody now, is that somebody that you had met with earlier with, as far as ...
A. Can you repeat that question?
Q. When you got contacted later on in the evening, was that by one of the people that you had met with earlier on campus?
A. Oh, yes, sir.
Q. Okay. And which person was that, the light skinned guy with the dreds or the guy with the buzz cut?
A. I wasn't sure who I was talking to over the phone.
Q. Okay.
A. It was just one of them.
Q. Okay. Alright. And did you ultimately then make arrangements to meet with them that night?
A. Yes, sir.
Q. Okay. And tell the jury kind of how that went about and where you met with them that night?
A. Basically, it's a spot by the marriage houses, by the marriage houses on campus, and I arranged -- me and Jon usually meet there so I arranged for Jon to meet us there.

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And so, they picked me up on campus by the Ugueney Suites, and we went over there to the marriage apartments.

Q. Okay, you said, so they came and picked you up?

A. Yes, sir.

Q. Okay. And what kind of car was it that picked you up?

A. It was a silver car.

Q. A silver car?

A. A four door, I don't know what kind, though.

Q. Okay. And how many people were in the car that came and picked you up?

A. It was four people already in the car.

Q. Four people in the car? Where, where did you get into the vehicle, then, Ricky?

A. I got in the back but I sat in between two passengers.

Q. Okay. So, in the middle, in the back seat?

A. Yes, sir.

Q. Okay. So, there were two other people in the back with you?

A. Yes, sir.

Q. Okay. And describe those two people for the jury that were in the back seat with you?

A. One was black and had dreds, and the other one was light skinned and also had dreds.

Q. Okay. So, one was darker skinned than the other?

A. He was heavy set.

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Q. Okay. That's what I was going to ask you. So, the guy who was darker skinned was a bigger guy?
A. Yes, sir.
Q. Okay. And how about the lighter skinned guy with the dreds, was he - - -
A. Slim.
Q. --- slim?
A. Slim.
Q. Okay. And did you recognize him from anywhere?
A. He was -- earlier, he was from earlier.
Q. That's what I was getting at when I started this. So, that was one of the guys that you met with earlier in the day?
A. Yes, sir.
Q. Okay. And what name did, earlier in the day, were you under the impression that he went by?
A. Gouda.
Q. Gouda? Alright. Now, let me ask you, the two, you said there were four guys, so there was two guys in the back seat with you, obviously there was somebody driving and somebody in the front passenger seat?
A. Yes, sir.
Q. Okay. Did you interact at all with the two people in the front seat?
A. No, sir.
Q. Okay. Did you get a good look at either one of their

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faces?
A. No, sir, I wasn't really paying attention to them.
Q. Okay. Do you know whether either one of them could have been the other guy that was with the light skinned Gouda guy earlier in the day?
A. Possibly, but I don't know.
Q. Alright. Now, let me ask you this, so you had made arrangements at that point in time for y'all to go meet Jon over, you said in the marriage housing?
A. Yes, sir.
Q. Okay, now, is that marriage housing, how do you get to that, is it from campus or from off campus?
A. Well, you can get to it on campus and off campus.
Q. If you are in a vehicle how do you get to it?
A. Oh, you've got to go off campus.
Q. Okay. And obviously, you were in a care at this point in time, right?
A. Yes, sir.
Q. Okay. So, y'all left campus and then drove around to that marriage housing?
A. Yes, sir.
Q. Okay. Now, did you have any, any conversation at that point in time with the two guys in the back seat about the marijuana that they were attempting to purchase?
A. Not really, I just, they showed me the money, and ...

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Q. Okay. And do you remember which one of them it was that showed you the money?
A. It was the black one.
Q. The black one?
A. Yeah, I'm pretty sure.
Q. You say, black, it was the darker skinned?
A. Yes, the dark -- I'm sorry.
Q. That's alright. Okay. So, now, did y'all ultimately end up over there in the marriage housing where it's located at?
A. Yes, we ended up over there.
Q. Okay. And tell the jury how, did y'all park or what did y'all do when you got there?
A. When we got there we parked and basically we were waiting for a while. I called Jon a few times to tell him we was there, and he was just on his way.
Q. Okay. Alright. And do you remember if y'all pulled into a spot or backed into a spot or even ...
A. He pulled into it I believe.
Q. Alright. Now, did Jon ultimately end up ...
A. No, no, we backed in, I'm sorry.
Q. You backed in. Okay. And let me ask you, did Jon ultimately end up showing up?
A. Yes, sir.
Q. And that was in his green Monte Carlo?
A. Yes, sir.

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Q. Okay. And where did, where did he park in relation to where y'all were?
A. It was a few spots down, it wasn't next to each other, but he pulled in. It was probably about four or five parking spaces away.
Q. Okay. And you said he pulled in. Did he back in, too, or did he actually pull into the spot?
A. He pulled in.
Q. Okay. So, y'all were basically facing different directions at that point in time?
A. Yes, sir.
Q. And what, what did you then do, Ricky, after, when Jon arrived?
A. When he arrived I asked for the money because Jon knew me, so I was asking for the money, I was going to go get it for him, but then they kept on saying that they wanted to see the product. And so, I kind of understood where they were coming from, you know, they didn't want to spend their money and see what they was getting. So basically, ultimately all three of us ended up walking towards the car and...
Q. By all three of you, you mean who, you and who?
A. The darker skinned one with the dreds and the light skinned one with the dreds also.
Q. The three of y'all that were in the back seat?
A. Yes, sir.

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Q. I've got you. Alright, and what did you do then after, when the three of y'all got out of the car, where did y'all go, where did you go?

A. I got into the car because I was the only one that knew Jon at the time, so he was expecting me to get in the car anyway, and he passed me one of the, basically, one of the ounces of marijuana because they were purchasing two, and I handed it to them so they could see it. And while they was looking at it they were basically complaining, basically saying, you know, it wasn't what they was looking for at the time, you know, like it wasn't it. And after that they was just talking about that for a few minutes actually, like complaining about it. And ...

Q. I'm showing you, Ricky, State's Numbers Six and Seven, do those appear to be consistent or inconsistent with the two bags of marijuana that ...

A. Consistent.

Q. Okay. So, it was consistent with at least one of the bags that you handed to the other two guys?

A. Yes, sir.

Q. Do you remember who you handed it to, the darker skinned bigger guy or the light skinned guy?

A. At the time they were next to each other so I'm not too sure who I handed it to.

Q. I've got you. And you said that they were kind of

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complaining about how it looked and it wasn't what they wanted?
A. Yeah, yes, sir.
Q. Alright. What did you, where were you while all that was going on initially?
A. I was still in the car, the passenger side.
Q. The front passenger seat?
A. Yes, sir.
Q. Let me ask you this, sitting in the front passenger seat did you see, did you see a gun anywhere in Jon's car?
A. No, sir.
Q. Now, what, and what was Jon doing while all this was going on?
A. He was just in the driver's seat, you know, just observing I guess.
Q. Waiting, I guess, for either the money or his marijuana back?
A. Yeah, yes, sir.
Q. And what did you end up doing then, did you stay seated in the front passenger seat?
A. After about five minutes, well, yeah, after five minutes when they was complaining about the produce I was basically saying that they could, one of them could sit in the car, you know, because they were basically talking over me and it didn't have anything to do with me at the time. So, I was

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saying, one of y'all can get in the car, you know, I seen him lean over a little, I guess, you know, it's less suspicious if one of them is in the car. And the first couple of times I said that, you know, like they kind of ignored me, or I guess I wasn't heard. So, I actually got out of the car and was, like, one of y'all can get in the car and basically talk about this because, you know, it didn't have anything to do with me. And like right after I said that, when I was outside of the car already a car pulls up behind us, it was another silver car. We didn't, nobody knew who it was, who was in it, I don't remember anybody getting out either, but while I was looking at that for about Fifteen seconds I turned back around and I see the light skinned guy with the dreds and Jon tussling in the car basically, and I see Jon's car basically in reverse, the passenger door was still open at this time. And he's in reverse, and you hear his tires spur out. And after his tire spurs out you hear a pop, and originally I thought it was a tire but I wasn't too sure yet. And while, after that I basically got away from the situation, I ran off because I didn't have anything on me, and yeah, there was nothing I could really do in this situation. And when I turned back around, when I got to the gate I looked behind me and Jon's car was away from the scene but still in the marriage houses but away from the scene, pulling toward, yeah, pulling away. So, after I did that I just kept running. That

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was the last thing I remember - - -
Q. Okay. Let me kind of go ...
A. --- about the situation, that was the last time I was there.
Q. Let me back up and kind of touch on a few things there, Ricky. Alright, so you get out of the car and you said you saw another vehicle pull up and it kind of caught your attention trying to see who it was?
A. Yes, sir.
Q. Alright. And you said that when you turned back around you saw now the lighter skinned of the two guys tussling with Jon?
A. Yes, sir.
Q. And where was that taking place, in the car or out of the car?
A. It was inside of the car.
Q. Okay.
A. Jon never got out of his car.
Q. Okay. And the lighter skinned guy, was he all the way sitting in the car or leaning in the car or what?
A. He was leaning in the car.
Q. Okay. Now, could you see their hands and see what they were tussling over from where you were?
A. No, sir.
Q. Okay. Let me ask you this, I mean, did you ever see

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anybody with a gun?
A. No, sir.
Q. And you said kind of while that was going on suddenly Jon's car started backing up?
A. Yes, sir.
Q. Okay. And where were you at when the car started backing up?
A. I was at the rear of the car close to, I wasn't all the way at the end, by the bumper, in between the bumper and the tire you could say, the bumper and the back tire.
Q. Okay. Alright, and where was the darker skinned heavier set guy?
A. He was kind of next to me but wasn't next to me, I would say about two feet diagonal from me, away from Jon's car door.
Q. Okay. So, he wasn't in the car at that point in time?
A. No, sir.
Q. He had backed up kind of in the same direction you had gone, I guess?
A. You could say that.
Q. Alright. And at that point in time you said you heard a pop, is that right?
A. Yes, sir.
Q. Okay. And do you know what that pop was?
A. No, sir, not at the time.
Q. Okay. Now, when you heard the pop where was the lighter

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skinned guy, was he still hanging in the car tussling with Jon?

A. I think so, but after I heard the pop I was really trying to get away from the scene.

Q. Okay. And you said, I believe, you took off running at that point in time?

A. Yes, sir.

Q. Okay. What direction did you run?

A. I ran back towards campus, there's a gate that you can get back onto campus from.

Q. I'm showing you State's Exhibit Number One, and I think you've seen this diagram before, right?

A. Yes, sir.

Q. Alright. I'm going to move this sticky here for a second, but that -- there's been testimony that that's the marriage housing down in here, so is that the kind of parking lot that you're talking about all this taking place in?

A. Yes, sir.

Q. And this is Russell Street out there, Russell Street?

A. Okay.

Q. So, it's where you would turn in to go into the marriage housing?

A. Aright.

Q. Alright, so what direction did you take off running then?

A. I actually ran back towards campus, back towards the

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guards, and when I kept running though I went past Williams and ultimately back over to the suites.

Q. Alright. I guess, and you testified there are two ways in, is that, I guess the other way you can go in is it ...

A. Yeah, but there's only walk, yeah.

Q. If you walk in there there's a gate, but you can't drive that way?

A. Yes, sir.

Q. Okay. And you saw Jon, the last you saw Jon what direction was his car going?

A. Back towards Russell Street. It wasn't all the way out of Baldwin Street yet but it was going towards that way.

Q. Going away?

A. Yeah, yes, sir.

Q. At that point in time did there appear to be, when you last saw his vehicle did there appear to be anybody hanging out of his vehicle when you last saw it?

A. No, sir, not when I last saw it.

Q. Okay. Alright. Let me ask you, the two guys that were in the front seat of the silver car, did either one of them ever get out of the vehicle that you saw?

A. No, sir, not that I saw.

Q. And where did you ultimately end up going when you left from there?

A. I went all the way back to the suites across campus.

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Q. Okay. Did you go to anybody's room or did you go back ...
A. Yes, sir, I went to my friend's room.
Q. Okay. Did you tell him at that point in time what had just happened?
A. Yes, I did tell him.
Q. Do you know where Jon went other than just seeing, the last you saw his vehicle driving kind of down Baldwin back towards Russell?
A. No, sir. I tried to contact him a few times and I couldn't get an answer.
Q. So, you tried to contact him that evening?
A. Yes, sir.
Q. How about the guy, the phone number that you had gotten the call from that kind of set this whole thing up, did you try to contact that number back?
A. I probably called a couple of times, I couldn't get any response from him, and when, the next time I got to a voice mail I basically left a message saying that that wasn't cool, you know, it's not something that I do, and it was a little more words than that but that was the gist of it, paraphrase.
Q. Alright. And when, when did you ultimately find out that Jon had actually been shot and was, and had died as a result of what happened out there?
A. It was later on that morning. Actually that night I heard about his car crashing but I didn't know any of the details.

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Q. Okay. And did you ever see any of those guys that were in that silver car anymore that night?
A. No, sir.
Q. And the guy with, the light skinned guy with the dreds back, back in April of last year, you said you didn't know him prior to this day?
A. No, sir.
Q. Okay. And do you recognize him now?
A. Yes, sir.
Q. Would you point him out for the Court and the jury?
A. He's right there.
Q. Right there?
A. Yes, sir.
Q. Where is he sitting at at that table?
A. Yes, sir, in the middle.
Q. In the middle. Is something different about him today than back in April of last year?
A. He doesn't have dreds.
Q. Now, Ricky, do you remember a couple of weeks later, I believe it was May the Sixth of Two thousand eleven, being contacted and meeting with officers with the State Law Enforcement Division?
A. Yes, sir.
Q. Okay. And did you give them a statement at that point in time, did they talk to you about what had happened?

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A. Yes, sir.
Q. Alright. And let me show you State's Exhibit Number Nineteen. Let me show you State's Exhibit Number Nineteen, do you remember them showing you that, that page with some photographs on it?
A. Yes, sir.
Q. And did you tell them that you recognized that guy?
A. Yes, sir, I picked him out among a group.
Q. Okay. And where did you recognize the person that's in State's Exhibit Number Nineteen, who is that?
A. He was the other one that was with the ...
Q. The guy that you described, the darker skinned, the bigger dark skinned guy?
A. Yes, sir.
Q. Okay. And in fact, did you note that on that and sign it and date it?
A. Yes.

SOLICITOR SORENSON: Your Honor, at this time we'd offer State's Nineteen into evidence.

MR. WILLIAMS: Your Honor, without objection.

THE COURT: Alright, State's Nineteen is in evidence without objection.

(State's Exhibit Nineteen marked and filed.)

Q. And that according to at least what's on here is a picture

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of Ray Anthony Alston, is that correct?
A. Yes, sir, it would seem so.
Q. Okay. I mean, you didn't know -- prior to that night had you ever seen that person before prior to that night?
A. No, sir.
Q. Was he there earlier in the day when you had met with the defendant about ...
A. I don't remember him being there.
Q. You don't remember him? When you met with officers with the State Law Enforcement Division do you remember where it was that that happened, that you gave them that statement and picked that person out?
A. I think I was, yeah, they picked me up in Sumter, so I was at the police station in Sumter.
Q. In Sumter. And what were you doing in Sumter, Ricky?
A. I was actually preparing to go back to Maryland when they contacted me.
Q. Okay. And was school over by that point in time?
A. Yes, sir, the semester had just ended. Well, I took my finals, the semester wasn't over but I had took my finals.
Q. Okay, you were done as far as - - -
A. Yes, sir.
Q. --- classes for you at that point in time? Alright. Now, let me ask you this, Ricky, did you come back to State this year?

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A. No, sir.
Q. Okay. And where are you living now?
A. I'm living in Maryland currently.
SOLICITOR SORENSON: I beg the Court's indulgence.
THE COURT: Okay.
Q. The last thing, and it may sound kind of stupid, Ricky, but when you got out of the vehicle and left Jon in the driver's seat in his vehicle, - - -
A. Yes, sir.
Q. --- was he injured at all when you left the vehicle?
A. No, sir.
Q. Obviously, he hadn't been shot at that point in time, is that correct?
A. No, sir.
SOLICITOR SORENSON: Thank you, Ricky, please answer any questions Mr. Johnson has.
THE COURT: Mr. Johnson, your witness.
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RICKY GIPSON - CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Ricky, I want to get something straight up front. Now, you are drug dealer, is that correct?

A. I was.

Q. You was? Okay. When this happened you were a drug dealer, is that correct?

A. Yes, sir, that's correct.

Q. Okay. And I think you testified that the only reason that the deceased, Jonathan, got involved was because you called him, is that correct?

A. Yes, sir.

Q. Okay. Because you couldn't supply enough drugs, so Jon had it so you called Jon, is that correct?

A. Yes, sir.

Q. And I think you testified also that y'all were friends and if you didn't have it you would go ahead and get him to get the bigger amount, is that correct?

A. Yes, sir.

Q. Okay. And you, when this happened -- let me ask you this, did an investigator from our office try to call you, a guy by the name of Charles Dallas, didn't try to call you and your parents, is that correct?

A. I'm not sure.

Q. You're not sure? Okay. If I told you he tried to call

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you would you disagree with me?
A. I was contacted by a few involving the investigation, so possibly.
Q. Okay. And you wouldn't talk to us, would you? You wouldn't talk to us about the case, would you?
A. I had a lawyer present so I was expecting y'all to go through him if y'all had any questions.
Q. Oh, you had a lawyer present so your lawyer went through the Solicitor's office?
A. I believe so.
Q. Who is your lawyer?
A. His name is Dietrich.
Q. Okay.
A. Mr. Dietrich.
Q. Okay. And did your lawyer go through the Solicitor's office? I want you to know now, you're under oath now, and the Solicitor's office can't protect you. You know, if you lie in Court, you know, the Judge handles it now, now do you understand that?
A. I understand that.
Q. Okay. Now, did you go through your lawyer to get to the Solicitor's office, a yes or no?
A. I believe so, possibly.
Q. Now, sir, you know whether you went through your lawyer or not. Did you go through your lawyer to get to the Solicitor's

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office?
A. Yes, sir.
Q. Don't play that game.
A. Yes, sir.
Q. You went through him or you didn't.
SOLICITOR SORENSON: Objection, Your Honor, I mean, let him answer the question, I mean.
THE COURT: He's going to let him answer the question.
A. The answer is yes, sir.
Q. Okay. Okay. So, when you talked to the SLED agent did you go through your lawyer then?
A. To who?
Q. TO the SLED agent, Mr. Johnson, Agent Johnson?
A. No, I didn't have one at the time.
Q. So, you talked to them twice before you got a lawyer, is that correct?
A. Possibly, I know ...
Q. How many times did you talk with him?
A. Actually, I, the second time they contact me, my dad had a lawyer and I referred him to my lawyer.
Q. Okay. Okay. How many times did you talk with them without a lawyer?
A. Once.
Q. Okay. The second did you talk -- you say you had a lawyer?

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A. Yes, sir.
Q. And after the second time did you, not only did you talk to them twice, but you signed a statement, is that correct?
A. I signed a statement on my first visit.
Q. You signed a statement on your first visit. And I want to be sure, in all of those statements not one time did you say Julian had a gun, is that correct?
A. I don't know who had the gun, because I don't know any names.
Q. I didn't ask you that, sir, please answer my question and then you can explain. In any one of those statements did you say Julian had a gun?
A. No, sir.
Q. Okay.
A. It was one of the two, though, so technically, yes.
Q. Okay. If that's what you want to say. The only thing I'm asking, and I want to get that clear, did you say in any statement that Julian had a gun?
SOLICITOR SORENSON: Your Honor, he asked that, he told him he could answer it and then explain it, and then when he did that he makes it sound like he didn't do what he told him to do, and that's exactly what he did. He answered it and then explained it.
THE COURT: Alright, Mr. Johnson, just give him a chance to answer and give him a chance to explain. Okay. If you want

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to answer the question again I'll let you do it.

MR. JOHNSON: Your Honor, if I -- and I can also answer, ask the question again to really clarify something he said.

THE COURT: And that's what I'm saying, but give him an opportunity to explain it, please, sir. Okay? Alright.

Q. Did in either statement you say that Julian had a gun?

A. No, but as, in the statement I said either his, the friend that was with him or he had the gun.

Q. You said that in your statement?

A. Yes, sir.

Q. I think you gave a statement on the Fifth, on May Sixth, Two thousand eleven, at four:fifty-two, is that correct?

A. Yes, sir.

Q. In Sumter, South Carolina?

A. Yes, sir.

Q. You gave it at, to Agent Richard Johnson?

A. Yes, sir.

Q. And the interviewing agent R. Bond?

A. Yes, sir.

Q. Is this a copy of that statement?

A. Yes, sir.

Q. Okay. Would you pick it up and look at it, please? Would you read it?

A. The whole statement?

Q. Yes, sir, please, sir.

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A. "This statement is written by Sergeant Johnson in my presence, and at my request. The day that Johnny J. was killed I inadvertently left four black males in the back of -- about three of them had dreds and the other did not. They were standing by a green truck."

Q. Keep reading.

A. I continue, the handwriting is a little sketchy, I can't really read it.

Q. Okay. Is it anywhere in there you -- point out in that statement where you said you didn't know which one had a gun?

A. It might be on the picture, I don't know if it's in the statement. I'm still readying, though.

Q. Okay. Well, help yourself.

A. I don't know if it's in there.

Q. Is it in there?

A. I'm not too sure, I can't honestly read - - -

Q. Okay. You said ...

A. --- I can't honestly read the statement, it's a little sketchy, the print.

Q. Okay. It's a little sketchy. Let me ask you, didn't I hear you say you were a student?

A. Yes, sir.

Q. And you said you were a student at South Carolina State?

A. Yes, sir.

Q. And this is your statement?

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A. Yes, sir.
Q. And this is the statement you gave?
A. Yes, sir.
Q. And it's a little sketchy and you can't read it?
A. Yes, sir, the print.
Q. You can't read the print?
A. Yes, sir, the photocopy may have messed it up.
Q. The photocopy messed it up. Okay. How many days did you spend in jail?
A. None.
Q. Were you ever under arrest?
A. No, sir.
Q. Didn't you set this deal up?
A. Yes, sir.
Q. Okay. Do you remember when -- did you have any, you did do a recording transcript, do you remember they were recording you when you were talking at the station, do you remember that?
A. Yes, sir.
Q. And you agreed to that recording, that's right?
A. Yes, sir.
Q. Okay. Okay. Now, do you remember being promised that if you would just, do you remember the discussion, Big Daddy, if you will just tell us the truth, I've already talked with the Solicitor, do you remember that from the recording?

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A. I don't remember those words, honestly.
Q. Do you want me to get the recording?
A. Well, it must have happened.
Q. It must have happened? Well, please, sir, did it happen or not?
A. Yes, sir, I guess, I'm not too sure if he talked to the Solicitor before.
Q. Okay. And he said, all we need you to do is be honest and truthful with us, ain't that right, Big Daddy?
A. He did say be honest and truthful.
Q. And you would be alright because you're going back to your aunt, isn't that right?
A. He did say that.
Q. And don't you take the load, Big Daddy, for what you didn't do, didn't he tell you that?
A. He said that if I keep it honest that I'll be released, and that's what happened.
Q. Okay. And also he said, we're not dough police so we don't care about you selling drugs?
A. Yes, he said he was more interested in the homicide.
Q. Okay. And he knew about -- have you ever heard of felony murder?
A. Yes, sir.
Q. What's felony murder?
A. Murder.

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Q. Okay. Okay. That means you call it a murder and you're committing a felony?
A. Yes, sir.
Q. Okay. Did you not cause this murder with helping sell these drugs?
A. Inadvertently, yes.
Q. Inad -- but you did?
A. Yes, sir.
Q. And you did not one day in jail?
A. No, sir.
Q. You wasn't even locked up?
A. No, sir.
Q. Do you know how long he's been in jail?
A. No, sir.
Q. Do you care?
A. No, sir.
Q. Okay. Did you see -- you saw a struggle that night. Did you see anybody with a gun?
A. No, sir, not prior.
Q. You rode there in the car with them?
A. Yes, sir.
Q. Did you see -- you didn't see a gun in the car, did you?
A. No, sir.
Q. They got out of the car, you didn't see a gun, did you?
A. No, sir.

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Q. They talked, you didn't see a gun, did you?
A. No, sir.
Q. You don't know where the gun came from, do you?
A. No, sir.
Q. Okay. So, you were speculating?
A. I wouldn't say those words, I was ...
Q. Okay, you were lying?
A. No, I would use something more accurate than speculating.
Q. Okay. Give me something more accurate than speculating.
A. I assume, well, ..
Q. You assume.
A. Yes, I assume.
Q. Okay. That's a first cousin to speculate. Okay, you assume. You didn't ...

SOLICITOR SORENSON: Objection, is he going to let him answer the question? I mean ...

MR. JOHNSON: Your Honor, I didn't interfere with him with his cross-examination at all. I've got a right to cross-examine him the way I want to.

THE COURT: And I think the only thing he's asking, just make sure that Mr. Gipson has an opportunity to respond completely.

Q. Mr. Gipson, I apologize if I don't give you the opportunity to respond. You said you assume?
A. Yes, sir.

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Q. Assume means you didn't see it, is that correct?
A. Yes, sir.
Q. Okay. So, your testimony here, and I just want to get a full understanding, your testimony here is that you set up a drug deal, is that correct?
A. Uh-huh, yes, sir.
Q. That Julian and three other guys wanted to buy drugs?
A. Yes, sir.
Q. You didn't hear them talk about robbing?
A. No, sir.
Q. You didn't see a gun?
A. No, sir.
Q. They had money?
A. Yes, sir.
Q. And you didn't think they would do anything because you got out of the car and left your friend in the car with them, so you didn't think anything was going to happen?
A. No, sir.
Q. And when you heard a pop you dashed?
A. Yes, sir.
Q. Those were your exact words?
A. Yes, sir.
Q. So, you didn't see anything, you didn't know anything, all you had to do is to say that they were at the car, is that correct?

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A. A little more than at the car.
Q. Okay.
A. I actually visually saw them tussling.
Q. Oh, okay, you saw, but you don't know what they tussling over?
A. No, sir.
Q. Okay. And you don't know why they were tussling?
A. No, sir.
Q. And you don't know what went on in the car to make the tussling go on?
A. No, sir, I can only ...
Q. Again, all you did was, you're here to say you saw a tussling in the car, and they were at the car, is that correct?
A. Yes, sir.
Q. And you don't know what happened at the car?
A. No, sir.
Q. Didn't they cut you a deal because you wasn't charged?
A. No, sir.
Q. Everybody else went to jail.
A. I wasn't with them.
Q. Okay. You wasn't, you didn't ride over there with them in the car?
A. Inadvertently, yes.
Q. You inadvertently got in the car?

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A. Yes.
Q. Where did you inadvertently get in the car at?
A. The suites.
Q. On the campus you inadvertently got in the car?
A. Yes, sir.
Q. Inadvertently with four people you don't know?
A. Yes, sir.
Q. And inadvertently rode out the back gate?
A. It sounds foolish, but yes, sir.
Q. No, sir, and inadvertently made the turn and went into the marriage housing, and inadvertently waited for them, waited for Johnny J. to get there, and inadvertently got out of the car, is that correct?
A. Those are all actions I don't one hundred per cent control. I can only control myself.
Q. Okay. You didn't do all that?
A. I didn't drive the car, I told them where to go.
Q. Okay. Did you ride?
A. Yes, sir.
Q. Did you set the deal?
A. Yes, sir.
Q. Okay. Because you didn't have the drugs?
A. No, sir.
Q. Okay. Now, when you leave here you're going back home again today, right?

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A. Yes, sir.
Q. And you admitted to facts that you could get charged for felony murder?
A. Yes, sir.
Q. And you're going home?
A. Yes, sir.
Q. And he's been in the jail a year and a half.
A. I'm sorry to hear that, sir.
MR. JOHNSON: Your Honor, I beg your indulgence for just a few minutes.
THE COURT: Alright.
Q. Last question, you did not see a gun in the car that you rode in at all, did you?
A. No, sir.
Q. And to your knowledge none of those guys had a gun?
A. To my knowledge.
THE COURT: Is that it?
MR. JOHNSON: That's it, Your Honor.
THE COURT: Okay. Anything on redirect?
SOLICITOR SORENSON: Just a few things, Your Honor.
THE COURT: Okay.
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RICKY GIPSON - REDIRECT EXAMINATION

BY SOLICITOR SORENSON:

Q. Mr. Gipson, let me kind of back you up, when Mr. Johnson was asking you about where, if you remember him showing you your statement about where you said that it had to be one or the other that shot him?

A. Yes, sir.

Q. Okay. And I think you went through and looked at your statement you had given, and let me ask you this first of all, whose handwriting is that statement in, is that yours or the detective's?

A. The detective's handwriting.

Q. Alright. But did you also, when you filled out that same day on May the Sixth of Two thousand eleven, did you make some notations on that actually in our handwriting?

A. Yes, sir.

Q. Okay. Tell the jury, would you read for the jury what you wrote on that, that same day?

A. "This is one of the guys there, either it was him or the man with him that had the gun, that shot the gun, shot Jon."

Q. Okay. So, you did, in fact, tell the police back on May the Sixth of Two thousand eleven, and write it down on State's Exhibit Number Nineteen that it had to be one or the other that shot Jon, is that correct?

A. Yes, sir.

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Q. Let me ask you this, Ricky, if you, if you had seen a gun on one of these guys in the back seat would you have taken them over to buy drugs from Jon?

A. No, sir.

SOLICITOR SORENSON: That's all I have, Your Honor, thank you.

THE COURT: Alright. Anything?

MR. JOHNSON: One question, Your Honor.

THE COURT: Okay, now, I'm counting this time, Mr. Johnson.

MR. JOHNSON: Alright, sir, one and a half then.

THE COURT: Alright, thank you, sir.

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RICKY GIPSON - RECROSS-EXAMINATION

BY MR. JOHNSON:

Q. Did you know that for a fact or you were guessing?

A. I know that for a fact.

Q. And you testified you didn't know what happened in the car, right, so you're assuming that one of them had the gun, right, because you wasn't there, right, because you dashed?

A. Well, you could say that.

MR. JOHNSON: Thank you, sir, that's all I wanted.

THE COURT: Alright. You may step down. Thank you, sir. Appreciate it.

SOLICITOR SORENSON: May he be excused, Your Honor?

THE COURT: Do you have any objection to him being excused?

MR. JOHNSON: Your Honor, I've got ...

SOLICITOR SORENSON: May we approach, I mean, if there's something ...

THE COURT: If y'all need to talk.

(Whereupon, a bench conference is had out of the hearing of the jury and court reporter.)

THE COURT: Alright, thank you.

Mr. Sorenson, or Mr. Ball, call your next witness.

SOLICITOR BELL: Your Honor, the State calls Hilliard Pinckney.

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(Whereupon, the witness
enters the courtroom.)

THE COURT: Come right on down here and the Clerk will swear you in.

CLERK: Please place your left hand on the Bible and raise your right hand.

(Whereupon, Hilliard Pinckney
is duly sworn.)

CLERK: Please state your name again for the record.

WITNESS: Hilliard Pinckney.

THE COURT: Alright, Mr. Bell.

SOLICITOR BELL: Thank you, Your Honor.

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HILLIARD PINCKNEY - DIRECT EXAMINATION

BY SOLICITOR BELL:

Q. Good afternoon, Mr. Pinckney, how are you?

A. Good afternoon.

Q. Mr. Pinckney, where do you live?

A. North Charleston.

Q. And where did you go to high school?

A. Fort Dorchester.

Q. And did you graduate?

A. Yes, sir.

Q. Are you employed now?

A. Yes, sir.

Q. Where are you employed?

A. At the port.

Q. The port? What are you doing at the port?

A. Unloading trucks.

Q. Okay. Do you do anything else?

A. Take care of my daughter.

Q. Okay. Do you have a hobby or, a hobby you're trying to make into a business?

A. Music.

Q. What are you doing with music?

A. Engineering.

Q. What do you do with engineering, how do you ...

A. Recording, computer, stuff like that.

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Q. Okay. Do you come to Orangeburg much?
A. Not no more, I used to.
Q. Okay. When did you come to Orangeburg?
A. When my daughter was up here.
Q. And how long ago was that?
A. Three, four years ago.
Q. How long?
A. Two years ago.
Q. Two years ago. And did you stay in Orangeburg much during that time?
A. Pretty much back and forth.
Q. Between North Charleston and Orangeburg?
A. Yes, sir.
Q. Did you do anything else when you were up here besides caring for your daughter?
A. Music.
Q. Okay. Where did you stay when you came up here?
A. I was with my d-mama, my child's ...
COURT REPORTER: I didn't hear you, I'm sorry, I didn't understand what you said.
A. My child's mother.
Q. Where did she live?
A. In Pine Hills.
Q. Excuse me?
A. Pine Hills.

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Q. Where is that located?
A. In Orangeburg.
Q. You don't know what street it's off of?
A. No, sir.
Q. Okay. Now, Mr. Pinckney, you got caught up in a situation about, a little over a year and a half ago, is that true, is that correct?
A. Yes, sir.
Q. Do you remember back on April Fifteenth of last year, Two thousand eleven?
A. A little bit.
Q. A little bit?
A. Not too much.
Q. Okay. Where were you on that day?
A. We was at the studio.
Q. And where was the studio?
A. By Goldstein's.
Q. Okay. And that's where, where is Goldstein's located?
A. I don't know street names so, was it Russell Street, I guess, I don't know.
Q. Okay. On Russell Street?
A. I don't know street names.
Q. Okay. Was the studio at somebody's house or was it just a stand alone studio?
A. It was somebody's house.

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Q. And whose house was it?
A. A friend.
Q. What's his name?
A. Nard.
Q. And do you know what his whole name is?
A. No, sir.
Q. You just know him as Nard?
A. Yes, sir.
Q. Okay. Did you have some friends that came up from Charleston on that day?
A. Yes, sir.
Q. And who came up from Charleston?
A. Shatodd and Ray.
Q. Okay. Do you what Shatodd - is it Shatodd?
A. Yes, sir.
Q. What's his name, or full name, do you know?
A. I think it's Shatodd Thompson.
Q. Is he a friend or is he kin to you?
A. He's kin to me.
Q. How is he kin to you?
A. My cousin.
Q. And how did you, what did you call him?
A. Todd.
Q. Todd? And who was the other fellow?
A. Ray.

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Q. Do you know what his name was?
A. Ray Anthony.
Q. And what did you call him?
A. Big Man.
Q. Big Man? Okay. Did you have a name that people called you other than Hilliard Pinckney?
A. H. D.
Q. H. D.?
A. Hilliard Pinckney's a mouthful, isn't it? Now, after that, Nard, at Nard's studio, what time of day was this when they came up, do you recall?
A. I can't remember.
Q. Afternoon, night, morning?
A. Probably afternoon, I can't remember.
Q. Okay. Did they come up with another fellow?
A. Yeah, but I don't know who that was though.
Q. Okay. They did?
A. Yes, sir.
Q. Okay. Now, at the studio, Nard's studio were there other people there?
A. Yes, sir.
Q. Who do you remember being there?
A. It was them and some girls and Nard.
Q. Anybody else?
A. I can't remember who else was there.

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Q. Okay. And what was going on while y'all were at the studio?
A. Recording, and people laughing and playing, having fun.
Q. Okay. Did you know a fellow named Gouda?
A. Yes, sir.
Q. Was he there at that time?
A. Yes, sir.
Q. Okay. How did you know him?
A. Through Pine Hills.
Q. How, I mean, how through Pine Hills?
A. He was a close friend.
Q. Do you know what his name was?
A. No, sir, I can't remember.
Q. You can't remember?
A. No, sir.
Q. Do you see him in the courtroom today?
A. Yes, sir.
Q. Where is he?
A. Right there.
Q. Could you point him out, please?
(Witness points toward defendant.)
SOLICITOR BELL: Your Honor, we'd ask that the record reflect that the witness has identified the defendant.
THE COURT: The record will so reflect.

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Q. Does he look the same today as he did back then?
A. Yes, sir.
Q. Anything different about him?
A. No, sir.
Q. Okay. Now, y'all were recording, did y'all at some point leave from Nard's place?
A. Yes, sir.
Q. And do you recall who left?
A. Me and Shatodd, Ray and Gouda.
Q. Do you, how did y'all leave?
A. The other fellow's car, I don't know his name.
Q. Okay. And when y'all left, do you recall what kind of car it was?
A. I can't remember.
Q. Okay. Who was driving?
A. Shatodd.
Q. Okay. And how were y'all seated in the car?
A. I can't remember how we was sitting, I know I was in the passenger side, though.
Q. Back seat, front seat?
A. Me and Todd was in the front, I don't remember how it was in the back.
Q. Would Gouda and Ray have been in the back?
A. Yes, sir.
Q. Okay. Where were y'all going?

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A. Going to get some weed.
Q. Whose, do you remember whose idea that was?
A. No, sir.
Q. You just, y'all were going to get some weed?
A. Yes, sir.
Q. Did you have, were you going to buy some weed?
A. I was just down for the ride.
Q. Do you know who was going to?
A. No, sir.
Q. Do you know where y'all were going?
A. No, sir.
Q. Where did y'all go?
A. We went on campus first, then a little past Goldstein's.
Q. Okay. What did y'all do when you went on campus first?
A. We picked up somebody, I don't know.
Q. Okay. So, y'all had to go through a gate or something to get on campus?
A. Yes, sir.
Q. Okay. And what happened at the gate, do you recall?
A. The lady checked the ID and we just went on campus.
Q. And picked up another fellow?
A. Yes, sir.
Q. And do you recall where he got in the car?
A. Yeah, he got in the car.
Q. Okay. Did he get in the front seat with y'all?

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A. No, the back seat.
Q. Okay. And then once you picked him up what did y'all do?
A. We left campus.
Q. The same way you came in?
A. Yes, sir.
Q. And then where did you go from -- do you recall what gate you went in, from what street?
A. I don't know street names but I guess across the street from the U.V.
Q. Okay. And when y'all went out the gate where did y'all go?
A. A little past Goldstein's, the street by Goldstein's.
Q. Okay. And what did y'all do, did y'all ...
A. We turned on the street and, and we sat there and wait on, just a guy.
Q. What was on the street that you turned on?
A. A bunch of houses.
Q. Did y'all park?
A. Yes, sir.
Q. And how did you park, do you recall?
A. No, sir.
Q. Okay. What were you doing during this time?
A. We was parked, I was on the phone.
Q. Okay. What happened after you parked, did anybody show up?

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A. Yes, sir.
Q. What, tell us about that?
A. A green car pulled up and the guy we picked up got out the car.
Q. Let me ask you, where did the car pull up to?
A. Beside our car.
Q. On which side?
A. I think it was the right.
Q. On your side?
A. Yes, sir.
Q. Okay. And you said the fellow that y'all picked up got out?
A. Yes, sir.
Q. Did anybody else get out?
A. I remember Big Man getting out.
Q. Okay. Anybody else?
A. And Gouda got out, too.
Q. Okay. So all three of them eventually all got out of the back seat?
A. Yes, sir.
Q. Okay. Where did they go?
A. I don't recall, I don't know where everybody went because I was on the phone in the front seat.
Q. Okay. What do you remember happening next?
A. We was sitting, well, me and Todd was sitting in the front

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listening to music, and I heard the engine reving up.
Q. Which engine?
A. The engine of the person next to us. And I felt a bump. When I looked up I just saw, Gouda was already to the right of the car.
Q. To the right of which car?
A. Our car.
Q. Okay. And whereabouts was he?
A. Like by the back seat.
Q. Okay. Where was the other car?
A. It was like, like, across, to the right in front of me.
Q. To the right in front of you?
A. Yes, sir.
Q. Okay. Where, the guy that you picked up, where was he?
A. I don't know where he was at, I want to say he was in the car.
Q. What about Big Ray, Big Man?
A. I didn't see him.
Q. Okay. What happened next?
A. After that we got in the car and we left and went to Pine Hills, went in the house, came back out, and went back to Nard's house later on that night.
Q. Okay. What happened to Gouda?
A. Gouda was at home.
Q. Did he go back to Pine Hills with you?

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A. Yes, sir.
Q. When y'all left who was in the car?
A. It was me, Todd, Gouda and Big Man.
Q. And y'all went straight back to Pine Hill at that point?
A. Yes, sir.
Q. Okay. You went in your house?
A. Yes, sir.
Q. Where did the rest of them go?
A. I don't know where the rest of them went at. I know Gouda was at, in the house, though.
Q. And you don't know where Big Man and Todd went to?
A. No, sir.
Q. Did you see them anymore that night?
A. No, sir.
Q. Let me show you these photographs, Mr. Pinckney.
SOLICITOR BELL: Any objection?
MR. JOHNSON: No objection.
Q. Let me show you what's been marked as State's Eighteen and ask if you recognize that?
A. Yes, sir.
Q. What is it?
A. It's Pine Hills.
Q. Is that where you were staying with your daughter's mother, those apartments?
A. I'm trying to see which one.

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Q. Well, is that an apartment at Pine Hills?
A. Yeah.
SOLICITOR BELL: Okay, Your Honor, we'd offer State's Eighteen into evidence.
MR. JOHNSON: Without objection.
THE COURT: State's Eighteen is in evidence without objection.
(State's Exhibit Eighteen marked and filed.)
Q. And let me show you what's been marked as State's Seventeen and ask if you recognize that?
A. That's Pine Hills.
Q. Okay. And that's the entrance to Pine Hills?
A. Yes, sir.
SOLICITOR BELL: Okay, we'd offer State's Seventeen.
MR. JOHNSON: Without objection.
THE COURT: You said Seventeen?
SOLICITOR BELL: Seventeen, yes, sir.
THE COURT: State's Seventeen is in evidence without objection.
(State's Exhibit Seventeen marked and filed.)
Q. Mr. Pinckney, you were charged in this case with accessory after the fact, is that right?
A. Yes, sir.

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Q. And have you been offered anything for your testimony?
A. No, sir.
Q. But you're expecting to cooperate to help yourself, is that correct?
A. Yes, sir.
Q. Alright, let me go back, Mr. Pinckney, when y'all were parked in the, where all the houses were, do you remember that, talking about that?
A. Yes, sir.
Q. How were y'all parked?
A. I think we went ...
COURT REPORTER: I think we went?
Q. You need to speak up, Mr. Pinckney.
A. I think we pulled in.
Q. Pulled in front ways or back?
A. Front ways.
Q. Front ways? And you said that you heard, you felt the car bump. Where did the car bump your car?
A. On the side.
Q. On which side?
A. The door on the passenger side.
Q. Was it all towards the front or towards the back?
A. Towards the front.
Q. Okay. If you were backed in how did it hit towards the front?

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A. I said we pulled in front ways, I was facing, you know, just pulled in straight, we didn't back in.
Q. You didn't back in?
A. No.
Q. Well, then, how did the other car you front ways if you were pulled front in, if that car was leaving out the street?
A. I think it was backed in.
Q. You think you were backed in?
A. Yes, sir, I can't remember, that was a long time ago.
Q. Okay. And you were listening to music, is that right?
A. Yes, sir.
Q. Okay. If y'all were backed, and you said the car hit you towards the front of the vehicle?
A. Yes, sir.
Q. And you said you looked up. Where was Gouda?
A. He was, like in front of our car, Todd's, like, by the door.
Q. The driver's side?
A. Yes, sir.
Q. Over there?
A. Yes, sir.
Q. In front?
A. Yes, sir.
Q. So, if you're looking out, he was over that way?
A. Yes, sir.

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Q. Where was the car that was parked, the green car?
A. It was like, kind of like in front of -- well, I guess ...
Q. As best you can remember.
A. It was kind of in front of us but it was like a distance.
Q. Farther past Todd's side.
A. Like on my side.
Q. On your side?
A. Yes.
Q. Okay.

SOLICITOR BELL: Thank you, Mr. Pinckney, please answer any questions that Defense counsel may have for you.

MR. JOHNSON: Thank you.

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HILLIARD PINCKNEY - CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Mr. Pinckney, just a couple of quick questions. The group of y'all, y'all didn't go there to rob anybody, did you?

A. No, sir.

Q. Y'all didn't go there to rob anybody. And when Julian got out of the car he didn't get out of the car with a gun, did he?

A. No, sir.

Q. And he didn't get back in the car with a gun, did he?

A. No, sir.

MR. JOHNSON: Thank you, sir.

THE COURT: Anything on redirect?

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HILLIARD PINCKNEY - REDIRECT EXAMINATION

BY SOLICITOR BELL:

Q. You just didn't see a gun, is that right?

A. No, sir.

Q. It could have been a gun in his pocket?

MR. JOHNSON: Your Honor, objection to him speculating.

THE COURT: He can ask the question.

A. I didn't see any gun.

Q. You didn't see any gun but that doesn't mean he didn't have one, right?

A. I didn't see no gun.

SOLICITOR BELL: Okay.

THE COURT: Anything on recross?

MR. JOHNSON: No, sir. No questions, Your Honor.

THE COURT: Okay. You may step down. Thank you, sir.

Okay. Can I see y'all one second?

(Whereupon, a bench conference is had out of the hearing of the jury and court reporter.)

THE COURT: This was an important conversation on whether we're going to stop today or not. Okay? The next witness is going to take a little bit longer than, you know, Ten or Fifteen minutes, so we are going to stop for the day.

Now, the thing that I am going to tell you again is, you cannot talk about this case. You haven't heard all the

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testimony yet. Okay? You can't read anything about the case, you can't talk to anybody about the case, you can't even talk among yourselves about this case. Okay? We will start back nine o'clock tomorrow morning. I want y'all to be back in your jury room at nine o'clock in the morning and we will get started on this. Y'all are now excused for the day, have a good evening. Thank you, appreciate it.

(Whereupon, the jury leaves the courtroom for the day, and the following takes place out of the presence of the jury.)

COURT REPORTER: Solicitor what do you want to do with all these exhibits?

SOLICITOR BELL: They're yours.

COURT REPORTER: Do you want to lock them up?

THE COURT: We can lock up the courtroom.

Okay, Mr. Johnson, we were having a conference at the table. You had indicated that even though Mr. Gipson had been served with a subpoena you're releasing him from that subpoena?

MR. JOHNSON: Yes, sir, I did.

THE COURT: Okay. Alright. The only other thing I want to take up is, you had an objection to -- I didn't ask all the questions on the Voir dire.

MR. JOHNSON: Yes, sir.

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THE COURT: And just to protect the record, do you have an extra copy of those that we can mark as a Court's exhibit, or if you can get one?

MR. JOHNSON: Yes, sir.

THE COURT: Alright. Just so we'll have it in the record.

MR. JOHNSON: Alright. Thank you, Your Honor.

THE COURT: Okay. And we can do that -- if you don't have it right now we can get it later.

MR. JOHNSON: Alright.

THE COURT: I just want to make sure, and we'll do that.

Anything else we need to go over before we take a break for the day, anything from the State?

SOLICITOR SORENSON: I can't think of anything.

THE COURT: Anything from the Defense?

MR. JOHNSON: No, sir.

THE COURT: Alright, we'll start back at nine o'clock in the morning then. Thank you.

(Recess for the day)

DATE:

AUGUST 15, 2012

THE COURT: Anything before we bring out the jury?

SOLICITOR SORENSON: Our first witness is actually incarcerated, so I don't know if you want to just wait until the jury comes out and we'll call them and have them bring him

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out or have them bring them out ahead of time, or what do you want to do?

THE COURT: Whatever y'all want to do, it doesn't matter to me.

SOLICITOR SORENSON: I guess we'll just have him wait on the side of the door there.

THE COURT: Okay.

SOLICITOR SORENSON: Peggy, she's back there with them.

THE COURT: Alright, bring the jury on out.

(Whereupon, the witness enters the courtroom.)

SOLICITOR SORENSON: I thought you were supposed to be waiting right inside the door is what we just said.

(Whereupon, the jury enters the courtroom.)

THE COURT: Mr. Sorenson, I guess, the State's ready to call its first witness?

SOLICITOR SORENSON: Yes, sir.

THE COURT: Alright, sir.

SOLICITOR SORENSON: At this time the State calls Ray Anthony Alston.

THE COURT: Alright, Mr. Alston.

CLERK: Mr. Alston, will you please place your left hand on the Bible and raise your right hand as best you can.

THE COURT: Alright, that's as good as he can get it.

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(Whereupon, Ray Anthony Alston
is duly sworn.)

CLERK: Thank you. Please have a seat and state your name for the record.

WITNESS: Ray Anthony Alston.

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RAY ANTHONY ALSTON - DIRECT EXAMINATION

BY SOLICITOR SORENSON:

Q. Alright, Mr. Alston, make sure you keep your voice up nice and loud for us, okay?

A. Alright.

Q. Alright, if you would, tell the jury, Mr. Alston, how old you are?

A. Twenty-three.

Q. And where, where are you from?

A. Charleston, South Carolina.

Q. Okay. And did you go to high school down in Charleston?

A. Yes, sir.

Q. Where did you go to High School?

A. Stall High School.

Q. Stall High School?

A. Yes, sir.

Q. Did you graduate?

A. No, sir.

Q. What year did you stop going to Stall?

A. Probably like Two thousand seven.

Q. Okay. And let me ask you this, do you have a nick name that you go by?

A. Yes, sir.

Q. What is that?

A. Stew.

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Q. Stew?
A. Yes, sir.
Q. Alright. Some people call you Big Man also?
A. Yes, sir.
Q. Okay. And let me ask you this, back in April of last year, of Two thousand eleven, were you working anywhere back at that time?
A. Yes, sir.
Q. And where were you working back in April of last year?
A. Wendy's in Mount Pleasant.
Q. Okay. And what were you doing at the Wendy's in Mt. Pleasant?
A. I was a crew leader.
Q. And how long did you work at the Wendy's in Mt. Pleasant?
A. About a year and a half.
Q. And obviously, from the way you're dressed and all you're currently incarcerated, is that correct?
A. Yes, sir.
Q. Okay. And is that here in Orangeburg at the jail?
A. Yes, sir.
Q. Alright. And what is it that you're locked up for?
A. Murder.
Q. Okay. Is that stemming out of this incident that we're here about today?
A. Yes, sir.

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Q. And do you remember when it was that you got charged with murder stemming out of this incident?
A. I think it was around May.
Q. A couple of weeks after this all happened?
A. Yes, sir.
Q. Okay. I'm going to get, I'm going to go through your statements with you in a little while, kind of the dates a little better, but have you been locked up since May of last year?
A. Yes, sir.
Q. Alright. And let me ask you this, do you have a lawyer?
A. A public defender.
Q. Okay. And what is her name?
A. Peggy Hinds.
Q. Okay. Ms. Hinds has been representing you on this charge?
A. Yes, sir.
Q. Let me ask you this, Mr. Alston, when you were arrested back in May of last year did you, did you talk with law enforcement and give them some, a couple of statements - - -
A. Yes, sir.
Q. --- stemming out of this incident?
A. Yes, sir.
Q. Did you cooperate with them?
A. Yes, sir.
Q. And just kind of looking at, and you've had just a little

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bit of trouble in the past, is that right, a couple of marijuana convictions in the past?

A. Yes, sir.

Q. Is that correct? The first thing I want to do, Mr. Alston, is kind of go through just kind of how you know the other parties that are involved in this. Okay?

A. Yes, sir.

Q. Alright. Let me ask you, the young man that testified yesterday by the name of Hilliard Pinckney, do you know Mr. Pinckney?

A. Yes, sir.

Q. Okay. And how, tell the jury how you know Mr. Pinckney?

A. I met him through Maurice Thompson, that's his cousin.

Q. Alright. And let me ask you, Mr. Pinckney, how long do you think you've known Mr. Pinckney?

A. Probably since like Two thousand eight.

Q. Okay. So about four years maybe - - -

A. Yes, sir.

Q. --- somewhere in that range? And did you, what did you know him by, what did he go by?

A. H.D.

Q. H.D.?

A. Yes, sir.

Q. And then you brought up the name, Maurice Thompson. Did Maurice Thompson also get charged in this incident?

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A. Yes, sir.
Q. Okay. And how do you know Mr. Thompson?
A. We went to school together.
Q. Okay. And how long do you think you've known Mr. Thompson, then?
A. About eight years.
Q. Okay. And do you know Mr. Thompson by any other name besides Maurice?
A. We call him T sometimes.
Q. T?
A. Uh-huh.
Q. Okay. And you had said that Mr. Thompson and Mr. Pinckney were cousins, to your knowledge, - - -
A. Yes, sir.
Q. --- is that correct? And how about the defendant in this case, Julian Young, do you know Mr. Young?
A. Yes, sir.
Q. Okay. And how do you know Mr. Young?
A. Through H. D.
Q. Through H. D.?
A. Yes, sir.
Q. Okay. And how, how long, how long prior to this incident in April of last year, how long had you known Mr. Young prior to that?
A. Just a few months.

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Q. Okay. And do you know where -- let me ask you, back in April of Two thousand eleven, where was Mr. Thompson staying at, not specifically but just town-wise??

A. Oh, in Charleston.

Q. In Charleston?

A. Yes, sir.

Q. Okay. How about Mr. Pinckney?

A. He been back and forth here and in Charleston.

Q. Back and forth here and in Charleston, and how about the defendant, do you know where he was staying at back in April of Two thousand eleven?

A. In Orangeburg.

Q. In Orangeburg? And you said you had met him through H. D. a couple of months prior?

A. Yes, sir.

Q. Did you know him, or tell the jury what you knew him by?

A. Repeat that?

Q. What did you know him by, did he have a nick name or a name that you ...

A. Who was that?

Q. Mr. Young.

A. Gouda.

Q. Gouda. Okay. Now, let me ask you this, out of you, Maurice Thompson and Hilliard Pinckney, out of the three of y'all who was closest to the defendant?

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A. I would say H. D.
Q. Alright. And the jury heard yesterday from a young man by the name of Ricky Gipson. Prior to April of Two thousand eleven did you know Mr. Gipson?
A. No, sir.
Q. Ever see him before prior to that night?
A. No, sir.
Q. I want to turn your attention, if I could now, back to April the Fifteenth of last year.
A. Uh-huh.
Q. Mr. Alston, what, kind of late that afternoon what, what were you doing that day, kind of leading up to that evening?
A. Just chilling out at Charleston, and then I got with my manager, and we wanted to go out, and so we came down, we wanted to come down here.
Q. Okay. Who was your manager back then at Wendy's?
A. Timothy Harrison.
Q. Timothy Harrison?
A. Yes, sir.
Q. And now, is Timothy somebody that you hung out with a lot back in April of last year?
A. Yes, sir.
Q. So, did you ultimately end up coming somewhere or going somewhere that night with Mr. Harrison?
A. We came to Orangeburg.

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Q. Okay. And did anybody else come with you to Orangeburg?
A. Yes, sir.
Q. And who was that?
A. Maurice Thompson.
Q. Maurice Thompson. So, it was the three of y'all?
A. Yes, sir.
Q. Anybody else that came from Charleston up this way?
A. No, sir.
Q. Alright. And tell the jury how y'all got to, got to Orangeburg?
A. We drove in Mr. Harrison's Buick at the time.
Q. Okay, and what color was that Buick?
A. Silver.
Q. Okay. And you had said that Mr. Harrison worked with you, he was your manager - - -
A. Yes, sir.
Q. --- at Wendy's?
A. Yes, sir.
Q. And let me ask you, do you know back in April of Two thousand eleven whether Mr. Harrison knew the defendant?
A. No, he didn't.
Q. Okay. How about whether he knew Hilliard Pinckney, H.D.?
A. Uh-huh.
Q. He knew him?
A. Yes, sir.

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Q. And how about Maurice Thompson, did he know Mr. Thompson?
A. Yes, sir.
Q. Okay. Is that from hanging around with you?
A. Yes, sir.
Q. Alright. Now, tell the jury about what time it is that y'all ultimately got to Orangeburg that evening?
A. Probably like five, six o'clock.
Q. And do you remember where it is that y'all went when you got here?
A. I think we went to Pine Hills, and then Nard's house.
Q. Okay, you went to Pine Hills first?
A. Yes, sir.
Q. Okay. And what is Pine Hills?
A. An apartment complex.
Q. Okay. And what did you do over at the Pine Hills apartment complex?
A. Nothing, just hang out.
Q. And then where did you go after there?
A. Just by Goldstein's.
Q. Okay. And whose place was that that you went to?
A. Nard?
Q. Nod, or Nard?
A. Nard, yes, sir.
Q. Nard? Okay, and who is Nard?
A. Just somebody who, he's from Charleston, too, but he was

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going to State, he was living down here.
Q. Okay. Do you know his full name?
A. No, sir.
Q. And you said that was near Goldstein's, is that over kind of near South Carolina State?
A. Yes, sir.
Q. And, and when you went over there was Mr. Harrison and Mr. Thompson still with y'all?
A. Yes, sir.
Q. Y'all were still in Mr. Thompson's car?
A. Yes, sir.
Q. Okay. And at any point in time that night then did y'all end up meeting up with the defendant, Mr. Young?
A. Yes, sir.
Q. Okay. And where was that at that y'all met him?
A. Nard's house.
Q. Nard's house?
A. Yes, sir.
Q. Okay. And how about, how about Hilliard Pinckney, H.D., did y'all meet him somewhere that night also?
A. He was there, too.
Q. He was where?
A. At Nard's house.
Q. At Nard's house, too? Do you remember, were there other people there also or ...

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A. It was a few other people there.
Q. Okay. And what were y'all doing at Nard's?
A. Just hanging out. They got a studio there so we was doing music and had decided I wanted to get me some weed and stuff.
Q. Okay. And that's what we'll get to next. So who made the decision that y'all wanted to try to get some weed that evening?
A. Me.
Q. Me, or you?
A. Yes, sir.
Q. Alright. And how did you go -- let me ask you, I mean, are you familiar with Orangeburg?
A. Not really.
Q. Did you know anybody personally that was selling weed up here in Orangeburg?
A. No, sir.
Q. Okay. So, when you decided that you wanted to buy some weed, who did you talk to about trying to arrange that?
A. I had talked to Gouda about it.
Q. Okay. And what was the result fo that conversation with Gouda?
A. He said he was going to call his people for me.
Q. Okay. And are you aware of whether he made some phone calls?
A. Yes, sir.

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Q. Okay. And ultimately, some arrangements made for y'all to go get some weed?
A. Yes, sir.
Q. Okay. Who out of the group was going to buy that marijuana?
A. Me.
Q. And do you remember how much you were looking to buy?
A. Probably like an ounce or something, just for us when we go out.
Q. Okay. So the plan at that point in time was still to go out after you went and got the weed?
A. Yes, sir.
Q. Okay. And did you have any specific plans about where y'all were going to go?
A. The Script Club, Zodiac.
Q. Okay. Alright, now you said you were going to buy an ounce, about how much would that typically cost you back in April of last year?
A. Probably like a hundred dollars or so.
Q. And who had that money that was going to pay for it?
A. Me.
Q. Now, ultimately, did y'all, did y'all leave Nard's, that kind of music studio apartment, and go somewhere to attempt to purchase that marijuana?
A. Yes, sir.

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Q. Okay. And tell the jury how, how you left Nard's apartment?
A. We left Nard's apartment and we went to State campus to pick up a college student.
Q. Okay. And were you on foot or ...
A. No, sir, we was in the Buick, the silver Buick.
Q. Okay. And that's Timothy Harrison's Buick?
A. Yes, sir.
Q. Alright. Tell the jury who, when you left Nard's apartment who left there to go over to South Carolina State's campus in that Buick?
A. Me, H. D., Mr. Thompson and Gouda.
Q. Okay. So, it was the four of you?
A. Yes, sir.
Q. You, H. D., Maurice Thompson, and the defendant?
A. Yes, sir.
Q. Okay. And so, Timothy Harrison didn't go?
A. No, sir.
Q. Okay. Who -- but y'all took his vehicle?
A. Yes, sir.
Q. Okay. And who out of the four of y'all then was driving that vehicle?
A. Maurice Thompson.
Q. Okay. And was there a reason Maurice was driving out of the four of y'all?

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A. He had his license.
Q. Okay. And do you remember who was sitting up front with Mr. Thompson?
A. Hilliard Pinckney.
Q. Okay, Mr. Pinckney, and then, obviously then, you and the defendant were sitting in the back?
A. Yes, sir.
Q. Okay. And do you remember where you were sitting in the back?
A. If I'm not mistaken, behind the passenger seat.
Q. Okay. Alright. And you said that you then went over to campus and picked somebody up?
A. Yes, sir.
Q. Okay. And describe that person that y'all picked up?
A. A short, skinny, slim kid.
COURT REPORTER: What? I'm sorry.
A. A short, slim kid, black.
Q. Had you, had you ever seen him before?
A. No, sir.
Q. Did you know what his name was back then?
A. No, sir.
Q. Do you remember, did he introduce himself or anything, a nick name or a name or anything when he got in the car?
A. No, sir.
Q. Alright. And out of the four of y'all in the car, did

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anybody appear to know him in the car?
A. Yes, sir.
Q. Who was that?
A. Gouda.
Q. Okay. And let me ask you, before you picked him up did y'all have to do anything before you picked him up?
A. No, we went straight and picked him up.
Q. Okay. And where was it that you picked him up?
A. On the college campus.
Q. And let me ask you, to get on the campus at that time of night was there a gate that y'all had to go through?
A. Yes, sir.
Q. Okay. And tell the jury what happened when y'all got to that gate?
A. When we got to the gate they asked for, if anyone else was a college student at the time, and none of us was a college student so they asked us why was we going on campus, and we told them we was going to pick up someone. And so, they got Maurice's license and they wrote down his information and wrote down the tag number of the vehicle.
Q. Okay. Alright, and at that point in time, I mean, none of the four of y'all were students at State, is that correct?
A. No, sir.
Q. So, you ultimately ended up picking this guy up. What, after you picked him up where did he get in the car?

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A. In between me and Gouda.
Q. In the back seat?
A. Yes, sir.
Q. Okay. And what -- do you know where y'all went from there?
A. To the marriage housing.
Q. And the marriage housing, is that, did y'all have to go back outside the gate to get to there?
A. Yes, sir.
Q. And the marriage housing, do you know, is that fairly close to where Nard was staying at?
A. I'm not, I can't really answer that.
Q. Alright. And, alright, tell the jury then when you kind of got over to that marriage housing area, what happened when you got there, Mr. Alston?
A. We reversed and parked in a space, and then that's when -- we waited probably like two, maybe five minutes for the guy to come with the marijuana.
Q. Okay. So, you said you reversed, so you backed into a parking space?
A. Yes, sir.
Q. Alright, and at that point in time were the five of y'all just sitting in the car waiting for the guy to show up?
A. Yes, sir.
Q. Okay. And ultimately did another vehicle show up?

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A. Yes, sir.
Q. Alright. And describe, if you would for the jury, what that vehicle looked like?
A. It was a green, I don't know the model of the car, what kind of car it was, but it was a green car.
Q. A green car?
A. Yes, sir.
Q. And where, if y'all are now backed up into a parking space, where did that green car park in relation to your car?
A. Right next to us.
Q. Okay. On the driver's side or on your side, the passenger side?
A. The passenger side.
Q. Okay. And did that green car, did it pull in or back in next to y'all?
A. It pulled in.
Q. It pulled in?
A. Yes, sir.
Q. So, basically, their passenger side is next to your passenger side, is that right?
A. Yes, sir.
Q. Alright. And after that happened, after that vehicle pulled up, what happened next, Mr. Alston?
A. That's when the college kid got out the vehicle, then he pursued to go to the car and he talked to the young man who

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was selling us some marijuana.
Q. How many people were in that green car?
A. Just one.
Q. Just one? Okay. And let me ask you this, had you ever seen him before?
A. No, sir.
Q. Okay. Alright, so the college kid kind of went over to the vehicle and talked to him?
A. Yes, sir.
Q. And what were you doing at that point in time?
A. Just sitting in the back seat of the car waiting for him to tell me.
Q. Okay. And what, what happened, what ultimately happened?
A. That's when he said, he told me I could come out the car. And I went out the car and I went up to his window, and that's when he handed me the marijuana, and it wasn't what I wanted, so I just throwed it back.
Q. Describe what it kind of looked like and why it wasn't what you were looking for?
A. It was like dirty brown, really not what I smoked at the time, so I just put it back in his car.
Q. Okay. And during the time when you were looking over it, how many, did you remember how much, how many, what he handed you?
A. He handed me two bags.

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Q. Two bags?
A. Yes, sir.
Q. Okay. And did you look at both of those bags?
A. Yes, sir.
Q. Either one fo them appear to be what you were interested in?
A. No, sir, they were the same.
Q. Okay. And let me ask you -- and where were you at when that was taking place?
A. I was at his passenger window.
Q. Okay. And do you remember where the college kid was?
A. I think he was like behind this car or something like that.
Q. Okay, so he had kind of ...
A. He was running off.
Q. He had kind of gotten out of the way by that point in time?
A. Yes, sir.
Q. Alright. Now, did anybody else, had anybody else gotten out of your car that you arrived in besides you and the kid that y'all picked up?
A. Gouda got out after, like after I was finished.
Q. Okay. And so, what was he doing when he got out.
A. He went up to the passenger window when I walked off and got in my car again. And it looked like those two were

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talking at first and then that's when we saw him reverse the car with him inside the car. We heard a pow go off, and he got back in the car. I asked him if he was alright, and then I asked him if he shot the guy, but he never answered me.

Q. He never answered you?

A. No, sir.

Q. Let me kind of back up and kind of go over that again just to make sure I understand. So, you had walked away from the car?

A. Yes, sir.

Q. And the kid that y'all picked up, the college kid, was he around the passenger door at that point in time?

A. No, sir.

Q. Okay. And it's your testimony that the defendant then went up - - -

A. Yes, sir.

Q. --- to the victim's car?

A. Yes, sir.

Q. Okay. And tell the jury again what you observed when you looked over?

A. Like he was inside the car, like he was talking, I don't know what he was really doing inside the car.

Q. Could you see any of their hands at that point in time?

A. No, sir.

Q. Okay. Now, Mr. Young, Gouda, was he sitting in the car or

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leaning in the car?
A. He was leaning in the car.
Q. Okay. And I believe it's your testimony at that point in time that the victim's car started backing up?
A. Yes, sir.
Q. Alright. And when it started backing up where was he?
A. Inside the car.
Q. Inside the car?
A. Getting dragged by it, somewhat getting dragged by it.
Q. Okay. And that's when you said you heard a pow?
A. Yes, sir.
Q. Okay. And what did that pow sound like, what did you think it was?
A. A gun shot.
Q. A gun shot? Alright. And where, when you were observing all this, where were you at?
A. Back in the car.
Q. Back in your car?
A. Yes, sir.
Q. Alright. And had you been back in your car long?
A. Yes, sir, since he was at the car.
Q. Okay. How much, how much time are we talking about going by here?
A. Everything happened so fast, I can't really put a time to it.

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Q. So, it was all pretty quick?
A. Yes, sir.
Q. Alright. And after you heard that pow, I mean, what was the victim's car doing when you heard that pow?
A. He had already start from reversing, and that's when he drove off, he sped off.
Q. Okay. And where was Gouda when he went driving off?
A. He was outside the car then.
Q. He was outside the car then?
A. Yes, sir.
Q. And where, where, I mean, where is he outside the car?
A. Like standing on the side of the car.
Q. The side of what car?
A. The car that sped off, like he was standing like ...
Q. So, he had gotten basically out of the passenger's side?
A. He got out, yes, sir.
Q. But where was that, was that out in front of y'all's vehicle?
A. Yes, sir.
Q. Okay. So, kind of out in the parking lot, or the street, I guess, really?
A. Yes, sir.
Q. Alright. And you said that he, being the defendant, got back into the vehicle at that point in time?
A. Yes, sir.

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Q. And what is it that you asked him?
A. I asked him if he was alright. Then I asked him if he shot the guy, but he never answered me.
Q. He never answered either one of them?
A. No, sir.
Q. Did he say anything?
A. No, sir.
Q. And what, while all this was going on, what was, what was Mr. Thompson doing?
A. Driving off.
Q. Okay. But while you had gone up to the vehicle and looked at the marijuana and then when Gouda had gone up to the vehicle, where was Mr. Thompson at during all that time?
A. He was sitting in the car, him and H.D. was still sitting in the car.
Q. And did you ever see either one of them get out of the vehicle - - - .
A. No, sir.
Q. --- over there in that marriage housing area?
A. No, sir.
Q. Okay. And now you said that the victim's car ultimately ended up driving off?
A. Yes, sir.
Q. I mean, was it speed off or just drive off normally or ...
A. Yeah, he sped off.

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Q. Sped off? Okay. And what did, what did y'all do at that point in time?
A. We drove off, too.
Q. Okay.
A. I think he made like a left and we made a right.
Q. Okay. So, y'all went the opposite way that he went when you hit - - -
A. Yes, sir.
Q. --- Russell Street, I guess, the main road out there?
A. Yes, sir.
Q. Alright. Now, did you see what happened to his vehicle?
A. No, sir.
Q. And were y'all leaving kind of in a hurry, too, or ...
A. You could have sensed something probably happened so we was just leaving.
Q. Y'all weren't going to, didn't plan on sticking around out there, were you?
A. No, sir.
Q. Alright. And let me ask you this, right after, you know, you saw the car speeding off did Gouda come get in the car right away?
A. Yes, sir.
Q. And your testimony is that he, he didn't say anything when he got in the car?
A. No, sir.

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Q. Never said the victim had a gun?
A. No, sir.
Q. Never said the victim tried to rob him, did he?
A. No, sir.
Q. And let me ask you this, you had testified earlier, Mr. Alston, that you were the one that was planning on buying the weed?
A. Yes, sir.
Q. Obviously, you had the money on you?
A. Yes, sir.
Q. Did you ever take any of that money out?
A. No, sir.
Q. Ever hand any of it to the victim?
A. No, sir.
Q. And after y'all left and kind of got away from there, where was the money that you had planned to buy the weed with?
A. It was still in my pocket.
Q. Okay. And did you ever see Gouda with any money that evening?
A. No, sir.
Q. Alright. Now, you said that you, you kind of got back -- let me ask you this, did you ever, did you ever see a gun?
A. No, sir.
Q. Period?

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A. No, sir.
Q. Ever see anybody with a gun that night?
A. No, sir.
Q. Did you see a gun in the victim's car when you were talking to him about the marijuana?
A. No, sir.
Q. Did you see Gouda with a gun?
A. No, sir.
Q. Did you have a gun?
A. No, sir.
Q. How sure are you that that was a gun shot that you heard?
A. You can pretty much tell a gun shot.
Q. Now y'all, you testified that y'all ended up kind of going out of the marriage housing and taking a right, is that correct?
A. Yes, sir.
Q. Okay. And where did y'all go after you left the marriage housing?
A. We went to take Gouda home.
Q. You took Gouda home?
A. Yes, sir.
Q. And where was that at that you took him home?
A. To Pine Hills Apartments.
Q. Pine Hills Apartments?
A. Yes, sir.

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Q. I don't know how familiar you are with those apartments, but I'm showing you State's Exhibits Seventeen and Eighteen, is that the apartments that y'all took him to?
A. Yes, sir.
Q. Okay. And did he get out there?
A. Yes, sir.
Q. Did y'all hang out with him anymore that night?
A. No, sir.
Q. And what about, what about Mr. Pinckney, did y'all drop him off anywhere?
A. I'm not sure if he got out the car there or at Nard's house.
Q. Okay. After you left Pine Hills Apartments did you go back to Nard's?
A. Yes, sir.
Q. Okay. And why, why did you have to go back to Nard's?
A. To pick up Timothy Harrison.
Q. Okay. Is that where he had stayed the whole time?
A. Yes, sir.
Q. And after you picked up Mr. Harrison what did y'all end up doing then?
A. That when we went back home to Charleston.
Q. So, y'all drove back to Charleston at that point in time?
A. Yes, sir.
Q. Do you know about what time that was then that y'all were

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leaving Orangeburg?
A. No, sir.
Q. Was it before midnight or ...
A. I'm not sure.
Q. You're not sure?
A. I don't remember the time.
Q. Okay. Let me ask you this, did y'all hang out at all after all this had happened over in the marriage housing?
A. No, sir.
Q. You dropped off Gouda, dropped off Mr. Pinckney either there or at Nard's, got Mr. Harrison, and did y'all at that point in time head back to Charleston?
A. Yes, sir.
Q. Let me ask you, did y'all talk at all about what had happened?
A. No, sir.
Q. Other than the initial couple of questions you asked him?
A. No, sir.
Q. Let me ask you this, in the early part of May, so several weeks later, did you get locked up down in Charleston County initially?
A. Yes, sir.
Q. What did you initially get locked up for down there?
A. Just a DUS, a five day warrant for DUS.
Q. That's driving under suspension?

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A. Yes, sir.
Q. And that was down in Charleston County?
A. Yes, sir.
Q. Alright. Let me ask you this, have you gotten out of jail since then?
A. No, sir.
Q. Okay. What happened when you were getting ready to get out from serving those five days on that?
A. They told me that they had a hold for my arrest, and they said it was for Orangeburg. So, I went back to sleep that night, and I woke up the next morning and that's when they told me to roll up my things, some people wanted to see me. And that's when I went down there and it was SLED agents.
Q. Okay. And that was, I believe looking at your statements, I think the first one was on May Fourteenth, does that sound about right?
A. Yes, sir.
Q. Okay. And did you tell them on May Fourteenth, that first time when they talked to you what had happened that night?
A. Yes, sir.
Q. And as you said, you were aware at that point in time that they had a warrant for you, correct, for murder?
A. Yes, sir.
Q. And Mr. Alston, you haven't been promised anything to come testify here today, have you?

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A. No, sir.
Q. Cooperative with law enforcement back then?
A. Yes, sir.
Q. Let me ask you this, back in May of Two thousand eleven, when you talked to law enforcement, I mean, did you tell them about, you know, who was involved?
A. Yes, sir.

SOLICITOR SORENSON: I beg the Court's indulgence.

THE COURT: Okay.

SOLICITOR SORENSON: Thank you, Mr. Alston, please answer any questions Mr. Johnson has for you.

THE COURT: Mr. Johnson, your witness.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

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RAY ANTHONY ALSTON - CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Good morning, Mr. Alston.

A. Good morning, how you doing?

Q. Not a lot of questions.

A. Yes, sir.

Q. I just want to follow up on some the Solicitor asked you. I heard the Solicitor ask you, and I just want to make some things clear, I heard him ask you did Julian call about the drugs, and you said he did, is that correct?

A. That's correct.

Q. Okay. And, but didn't he call more than one person, he wasn't just particular calling this kid?

A. I didn't see.

Q. You didn't see?

A. No, sir. I can't say who he -- I know he was calling a college kid.

Q. Okay.

A. And the college kid, I guess they was doing back and forth calls.

Q. Okay. But do you have any knowledge, well, if the college kid didn't have it he was calling more than one people, or you don't know?

A. I don't know.

Q. Okay. Alright. And you said the amount you wanted to buy

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was an ounce, is that correct?
A. Yes, sir.
Q. Okay. And that, you're certain that's the amount you wanted to buy?
A. Yes, sir.
Q. Okay. And you were the one who wanted to buy it, is that correct?
A. Yes, sir.
Q. Nobody else?
A. No, sir.
Q. Okay. And you said you backed into the space, is that correct?
A. Yes, sir.
Q. Okay. And you said the college kid got out first?
A. Yes, sir.
Q. Okay. And you said the drugs were dirty brown?
A. Yes, sir.
Q. And tell me what the significance of the dirty brown was?
A. It's not no good.
Q. It's not no good?
A. No, sir.
Q. Okay. And, and you handed the drugs back to him?
A. Yes, sir.
Q. Okay. And the two bags he handed you trying to get you to choose which bag?

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A. Yes, sir.
Q. Okay. Alright. Now, you say you saw, do you have any idea what time of night it was?
A. No, sir.
Q. Would, would you agree with me that it was dark and it was good and dark?
A. Yes, sir.
Q. You would agree with that?
A. Yes, sir.
Q. Okay. And it was dark enough, and there were no lighting, so you actually didn't see what was going on in the car, is that correct?
A. Yes, sir.
Q. Okay. And the Solicitor asked you -- let me get this straight, you did see a tugging, is that correct?
A. Yes, sir.
Q. But you don't know what the tugging was about, do you?
A. No, sir.
Q. Okay. And, and I think you testified that when you were at the car you didn't see a gun in the car, is that correct?
A. No, sir.
Q. But now here -- and I think you also testified that Gouda rode there in the car with you, and that's the name you used, Gouda, Julian, right?
A. Yes, sir.

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Q. And you didn't see a gun?
A. No, sir.
Q. He got out of the car?
A. Yes, sir.
Q. You didn't see a gun?
A. No, sir.
Q. You said after the event occurred you said he stood around, you got a chance to see him, didn't you, you didn't see a gun then, did you?
A. No, sir.
Q. He got back into the car?
A. Yes, sir.
Q. And y'all drove off?
A. Yes, sir.
Q. And you didn't see a gun then, did you?
A. No, sir.
Q. So your testimony today is, you observed him going in, getting out of the car, and getting back in, and you didn't see a gun?
A. No, sir.
Q. Okay. And I just want to make this perfectly clear, and when he was standing outside of the car after the alleged pop you saw his hands and all?
A. Yes, sir.
Q. You didn't see a gun?

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A. No, sir.
Q. Okay. Now, you were in the car and you had some concerns about what happened?
A. Yes, sir.
Q. So, it would be natural for Gouda to have some concerns about what happened, is that correct?
A. Pretty much.
Q. And the fact that he didn't say nothing in those circumstances wouldn't mean nothing, everybody was scared, is that correct?
A. I can't speak on everybody's behalf but ...
Q. But you know you were scared?
A. Yes, sir.
Q. And if you were scared it's reasonable to think that somebody else would be scared?
A. Yes, sir.
Q. Okay. So, if money was found in the car, if I told you Twenty Dollar bills and Fifty Dollar bills were found in the car, none of that would be any of your money, is that correct?
A. No, sir.
Q. That would have to be the money of somebody in the car, is that correct?
A. Yes, sir.
Q. Okay. And you did give, I think two statements, and I think you also took the time to sit down and talk with them,

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and you told them everything you knew, is that correct?
A. Yes, sir.
Q. And in the statements you signed, I think you signed one on Five/Sixteen/Eleven, and I think you signed one on Five/Fourteen/Eleven, and the one on Five/Sixteen/Eleven I highlighted -- well, first of all I want you to look at that to see if that's the one, one of the ones you signed?
A. Yes, sir.
Q. And that was right after it happened?
A. Uh-huh.
Q. How about please read the highlighted part for me?
A. "I was, I did not know Gouda was going to rob or shoot this guy. I did not know that Gouda had a gun."
Q. Alright. So, what you were saying is, none of y'all planned to go there to rob, did you?
A. Oh, no, sir.
Q. There was never a plan between the four of y'all to rob?
A. No, sir.
Q. So, nobody went up there with the idea of a robbery?
A. No, sir.
Q. So, when you were cross, being, when the police were talking to you and you were doing the statement you were explaining to them that you didn't know anybody had a gun?
A. Yes, sir.
Q. And you didn't know a robbery was going to occur?

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A. Yes, sir.
Q. Okay. And I think they asked you questions intensely over a period of time about that and you continued to say, I didn't know he had a gun and I didn't know a robber was going to occur?
A. Yes, sir.
Q. So, there was no preplan for no robbery?
A. No, sir.
Q. And nobody had a gun in your car?
A. No, sir.
Q. And yet there was a pop?
A. Yes, sir.

MR. JOHNSON: Okay. Thank you, sir.

THE COURT: Anything on redirect?

SOLICITOR SORENSON: Just real briefly, Your Honor.

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RAY ANTHONY ALSTON - REDIRECT EXAMINATION

BY SOLICITOR SORENSON:

Q. Mr. Alston, I mean, you don't know if somebody had a gun in your car or not, right?

A. No, sir.

Q. You just didn't see one?

A. I didn't see one.

Q. In fact, and based on what Mr. Johnson just had you read, I mean, that would imply that you do think that he did rob and shoot him, is that correct, is that what you told them? Is that correct?

A. Yes, sir.

SOLICITOR SORENSON: Thank you, Mr. Alston.

THE COURT: Anything on recross?

MR. JOHNSON: Yes, sir, just a couple of questions.

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RAY ANTHONY ALSTON - RECROSS-EXAMINATION

BY MR. JOHNSON:

Q. Now, when you said you didn't know he had a gun, you didn't see one, you never did tell the offices you thought he did the robbery, though, did you?

A. I said I thought something occurred like that.

Q. Right, right, but you -- what I'm getting at, it's normal for somebody to think something occurred?

A. Yes, sir.

Q. But you didn't see that, did you?

A. No, I didn't see nothing.

Q. You didn't see a gun, did you?

A. No, sir.

Q. I mean, that's a normal thing, there's nothing wrong with thinking that?

A. Yes, sir.

Q. But you didn't see that with your own eyes?

A. No, sir.

Q. So, anything about that is your guess?

A. Yes, sir.

Q. It's speculation, you don't know that for a fact?

A. No, sir.

Q. Is that what you're saying?

A. Uh-huh.

MR. JOHNSON: Thank you, sir.

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THE COURT: Alright. Are you through?

MR. JOHNSON: Yes, sir.

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

Is the State ready to call it's next witness?

SOLICITOR BELL: Yes, Your Honor.

THE COURT: Alright, Mr. Bell.

SOLICITOR BELL: The State would call Michael Richardson.

THE COURT: Michael Richardson?

SOLICITOR BELL: Yes, sir.

(Whereupon, the witness enters the courtroom.)

SOLICITOR BELL: Come around and be sworn, Mr. Richardson.

CLERK: Please put your left hand on the Bible and raise your right hand, please.

(Whereupon, Michael Richardson is duly sworn.)

CLERK: Thank you. You may have a seat and please state your name again for the record.

WITNESS: My name is Michael Richardson.

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MICHAEL RICHARDSON - DIRECT EXAMINATION

BY SOLICITOR BELL:

Q. Mr. Richardson, where are you employed?

A. South Carolina State University.

Q. And how are you employed there?

A. South Carolina State Police Department, a parking enforcement officer.

Q. Okay. And what are your duties as a parking enforcement officer at South Carolina State?

A. Ticket, giving out tickets on the campus, gate security.

Q. How long have you been working at South Carolina State?

A. Two and a half...

Q. Years?

A. Yes.

Q. And you've been doing parking enforcement that whole time?

A. Yes.

Q. Okay. So, you were working back on April Fifteenth of last year, Two thousand eleven?

A. Yes.

Q. What time, do you recall what time you were working on that day?

A. Come on duty at Seven:forty-five for briefing and started at eight o'clock.

Q. Morning or night?

A. Evening.

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Q. Evening?
A. Yes.
Q. And during the evening what are your duties as a parking enforcement officer?
A. All I do is check IDs coming in on campus, basically that's it. We maintain that gate.
Q. Okay. So, how was the, how do you get on campus at South Carolina State at night?
A. At night all gates are closed at eight o'clock except on the by-pass.
Q. Okay. How many gates are there -- I'm sorry, I didn't mean to interrupt you. Go ahead.
A. The only gate is open is on the by-pass, everyone else is locked at eight o'clock.
Q. How many gates are there at South Carolina State University?
A. Open, let me see, One, Two, Three, Four, Five -- Six.
Q. Six gates?
A. Yes, sir.
Q. So, they're all locked and closed at eight p.m., eight in the evening?
A. Yes, sir.
Q. Except for the one off of Chestnut, the by-pass?
A. Right, right.
Q. Alright. And you were manning that gate on April

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Fifteenth, Two thousand eleven?
A. Yes, sir.
Q. And what do you do, when a car comes up what do you do?
A. I ask him for his ID, driver's license. I write it in, driver's license number, and tag number on the vehicle, what kind of car it is, what color it is.
Q. Okay. And if it's a student do you do anything different for students and non-students?
A. Students just show their ID.
Q. Okay.
A. Their State ID.
Q. And you make a notation about them as well?
A. Yes, sir.
Q. And then, for non-students you look at the driver's license?
A. Right.
Q. Get a description of the vehicle?
A. Right.
Q. Tag number?
A. Yes, sir.
Q. And time they come in, is that correct?
A. Yes, sir.
Q. And you did that on that night?
A. Yes, sir.
Q. Okay.

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MR. JOHNSON: No objection.

SOLICITOR BELL: Okay. Let me get this marked, I don't think it's been marked.

COURT REPORTER: That's State's Twenty-two.

SOLICITOR BELL: Okay.

COURT REPORTER: And did they say no objection?

SOLICITOR BELL: No objection, Mr. Johnson?

MR. JOHNSON: No objection, none.

COURT REPORTER: State's Twenty-two.

THE COURT: State's what, Twenty ...

SOLICITOR BELL: Twenty-two.

THE COURT: State's Twenty-two without objection is in evidence.

(State's Exhibit Twenty-two marked and filed.)

SOLICITOR BELL: It's a South Carolina State Vehicle Registrations.

COURT REPORTER: Okay.

Q. Mr. Richardson, let me show you what has been marked and is in evidence as State's Twenty-two, and I ask you if you recognize that?

A. Yes, sir.

Q. And what is that?

A. Vehicle Registrations.

Q. Okay. What date is it from?

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A. It's the Fifteenth, Four/Fifteen/Eleven.
Q. Okay. And this is the one that you filled out at your gate off the by-pass?
A. Yes, it is.
Q. Okay. At the top I believe at Eleven o'clock, you have between Eleven and Eleven:twenty, is that correct for times?
A. Yes, yes.
Q. There are, I think, four vehicles at Eleven o'clock?
A. At Eleven o'clock, between Eleven and Eleven:twenty?
Q. Yeah, Eleven ...
A. One, Two, Three, Four, Five, -- Five vehicles
Q. Five vehicles.
A. Yes, sir.
Q. Is there a name of Maurice Thompson on there?
A. Yes, sir.
Q. And what number vehicle was that after Eleven o'clock, or between Eleven and Eleven:twenty?
A. That's the third vehicle.
Q. Okay. And you took, you got his ID, took his name, Maurice Thompson?
A. Right.
Q. And a description of the vehicle?
A. Yes.
Q. What's the description?
A. Uginny Suites, He was going to Uginny Suites, it's a gray

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four door Buick.

Q. Okay. And he was going to where?

A. He said he was going to Uginny Suites.

Q. Okay. And you also took the tag number, is that correct?

A. Yes, sir.

Q. Okay. And this is what you filled out that night?

A. Yes.

Q. And checked out?

A. Yes, sir.

SOLICITOR BELL: Thank you, Mr. Richardson, please answer any questions Mr. Johnson may have for you.

THE COURT: Anything on cross?

MR. JOHNSON: No questions of Mr. Richardson.

THE COURT: Thank you, sir. May this witness be excused?

MR. JOHNSON: Yes, as far as I'm concerned.

THE COURT: Alright, you may be excused. Thank you, sir. Is the State ready to call its next witness?

SOLICITOR SORENSON: Yes, sir. The State calls Maurice Thompson.

(Whereupon, the witness enters the courtroom.)

SOLICITOR SORENSON: Please go around right up there, and put your left hand on the Bible and raise your right and face the Court.

(Whereupon, Maurice Thompson

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is duly sworn.)

CLERK: Thank you. You may have a seat, and please state your name again for the record.

WITNESS: Maurice Thompson.

THE COURT: Mr. Sorenson, your witness.

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MAURICE THOMPSON - DIRECT EXAMINATION

BY SOLICITOR SORENSON:

Q. Now, Mr. Thompson, make sure you keep your voice up nice and loud for me, alright?

A. Yes, sir.

Q. If you would, tell the jury how old you are?

A. Twenty-four.

Q. And where are you from, Mr. Thompson?

A. North Charleston, South Carolina.

Q. And where did you go to high school?

A. Stahl High School.

Q. And did you graduate from Stahl?

A. Yes, sir.

Q. What year did you graduate?

A. Two thousand six.

Q. Alright. And do you still live down in the Charleston area now?

A. Yes, sir.

Q. Okay. And let me ask you this, out of this incident did you ultimately get charged with something?

A. Accessory to murder after the fact.

Q. Accessory after the fact of murder, is that correct?

A. Yes, sir.

Q. Okay. And do you remember when it was that you got arrested?

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A. May Nineteenth.
Q. Okay. Of last year, Two thousand eleven?
A. Two thousand eleven.
Q. Alright. And do you have a lawyer?
A. I have a public defender.
Q. A public defender. Is that Mr. Wise?
A. Yes, sir.
Q. Alright. Now, Mr. Thompson, I want to kind of go over initially with you -- well, first let me ask you, you got, from back in Two thousand ten, you were convicted of receiving stolen goods and obtaining property by false pretenses, is that correct?
A. Yes, sir.
Q. Alright. Let me kind of go over how you know some of the other people that were involved in this incident. The first person I want to ask you about is Ray Anthony Alston. Do you know Mr. Alston?
A. Yes, sir.
Q. Okay. And tell the jury how you know Mr. Alston?
A. We went to school together.
Q. Okay. That was Stahl High School?
A. Yes, sir.
Q. Okay. And how long do you think you have known Mr. Alston for?
A. A little bit over ten years.

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Q. Okay. And what, what do you call him, has he got a nick name that he goes by?
A. Big Man.
Q. Big Man? Alright. And was he somebody that you hung out with frequently back in the early part of Two thousand eleven?
A. No, I mean, we used to be at the same house, but we used to be at work and back and forth up here, so not too much.
Q. Okay. And do you know back in April of last year where he was working at?
A. Wendy's.
Q. Wendy's? Alright. Were you working anywhere back at that time?
A. No, sir.
Q. Okay. How about Hilliard Pinckney, do you know Mr. Pinckney?
A. Yes, sir.
Q. Okay. How do you know Mr. Pinckney?
A. That's my cousin.
Q. Your cousin? And how are y'all cousins?
A. His mama and my grand mama is sisters.
Q. Okay. Alright, and what, what did you know Mr. Pinckney by, does he have a nick name he goes by?
A. H.D.
Q. H.D.? Alright. And was he somebody that you used to hang around with a lot?

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A. He used, he used to be up here, so not too much to be around.
Q. Okay. He used to be up here, be in Orangeburg?
A. Yes, sir.
Q. Okay. If he was down, when he was down in Charleston, would you hang out with him down in Charleston sometimes?
A. If he would have come by my mom's house, but not too much.
Q. Okay. Alright. And the last thing, how about the defendant, Mr. Young, did you know Mr. Young back in April of last year?
A. Yes, sir, I meet him a couple of times through Ray Anthony and Hilliard Pinckney.
Q. Okay. So you met him through Mr. Alston and Mr. Pinckney?
A. Yes, sir.
Q. Alright. And what name did you know him by back the early part of last year?
A. Little Gouda.
Q. Little Gouda? And how many times do you think you had been around, around the defendant?
A. Two, no more than three times.
Q. Alright. And back in, back in April of last year do you know where Mr. Young, Little Gouda, where he was living at back at that time?
A. I just know we used to take him to Pine Hills.
Q. Pine Hills, those are the apartments?

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A. Yes, sir.
Q. And would you point out in the picture, that's State's Exhibit Number Eighteen, is that the apartments that you would take him to?
A. That's how the apartments looked.
Q. Okay. Alright, Mr. Thompson, I want to kind of turn you attention back to the, to the evening of April Fifteenth of last year. Do you remember what y'all were doing or what you were doing that evening?
A. After six o'clock we end up right here at these apartments. We were sitting out there for a little while.
Q. Okay. Who, you said, we, who ...
A. Me, Ray, Hilliard Pinckney was already out there, Little Gouda was already out there, and a couple of other girls.
Q. Okay. And now, had y'all been in Orangeburg or had y'all come up from - - -
A. From Charleston.
Q. --- from Charleston?
A. Yes, sir.
Q. Who was it that came up from Charleston that day?
A. Me, Ray Anthony and T.
Q. And T? Who ...
COURT REPORTER: I'm sorry, I didn't hear.
A. Me, Ray Anthony and T.
Q. Okay. And who, tell the jury, who was T?

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A. That's Ray Anthony's friend.
Q. Okay. And let me ask you, did you know -- and I may have asked you this already, do you know where Mr. Alston was working last year?
A. Uh-huh.
Q. Where was that at?
A. Wendy's.
Q. Wendy's?
A. Mt. Pleasant.
Q. Okay. And do you know whether T. worked with him at Mt., at that Wendy's?
A. Yes. That was his manager.
Q. His what?
A. His manager.
Q. Manager? Alright. Now, that person, T., was he somebody that you hung around with frequently?
A. No, sir.
Q. Okay. But did you know who he was?
A. Through Ray Anthony.
Q. Through Ray Anthony? Okay. And let me ask you this, Mr. Thompson, do you have a nick name that you kind of went by back then?
A. Yes, sir.
Q. What was that?
A. Double.

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Q. Double? How about, did you also go by the nick name, Todd?
A. Yes, sir.
Q. Okay. What is Todd from?
A. From my middle name.
Q. Okay. What's your middle name?
A. Shatodd.
Q. Okay. It's S-H-A-T-O-D-D?
A. Yes, sir.
Q. Okay. So, some people may have called you Todd back then?
A. Yes, sir.
Q. Okay. Alright. So, you said you got up and I think you had made reference to these apartments, that you had gone by there about six o'clock that night?
A. Yes, sir.
Q. Is that correct? And was it the three of y'all that had come up from Charleston?
A. Yes, sir.
Q. And how did y'all get up here that day?
A. We drive T.'s car.
Q. Okay. And do you remember what kind of car that was?
A. A Buick Sentry, Silver.
Q. Silver? Alright. And what -- just kind of tell the jury then that evening what y'all were doing?
A. We was hanging out on Pine Hills just, just sitting out

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there, and a couple of them was on the phone. We left from Pine Hills and we end up in another -- I don't know nothing about Orangeburg, it was in another neighborhood, a long street where some other girls was at. After that we end up at Nard's house, like Nard's house.

Q. Okay. And did you know who Nard was?

A. I had meet him a couple of times.

Q. Okay. Did you know, do you know his real name?

A. I just know his name, they call him Nard.

Q. Okay. And where, and kind of what was, what was at his house?

A. He had a little studio over there.

Q. A music studio?

A. Yes, sir.

Q. Alright. And what were y'all doing over there?

A. Just sitting around.

Q. Okay. And was Mr. Alston with y'all?

A. Yes, sir.

Q. Was T., his manager, T.?

A. Yes, sir.

Q. Mr. Pinckney, your cousin?

A. Yes, sir.

Q. Okay. How about Mr., Mr. Young?

A. Yes, sir.

Q. Alright. And at some point in time that night did y'all

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end up leaving Nard's apartment, or his place?
A. Yes, sir.
Q. Okay. And what was the reason why y'all left there?
A. To go buy some marijuana.
Q. Okay. And do you know who it was that was going to go buy, who was planning on actually purchasing the marijuana?
A. Little Gouda was on the phone with the people, between him and H.D., both of them was on the phone, so ...
Q. Okay. Did you know who had the money or anything about that?
A. No, sir, I just know they want to purchase weed.
Q. Were you planning on actually - - -
A. No, sir.
Q. --- paying for any of it?
A. No, sir.
Q. Okay. And let me ask you this, tell the jury, how come you ended up going?
A. Because I was the only other person that had a license, and T. said he didn't feel like driving because he was driving all day.
Q. Okay. So, how, how did y'all go, what, whose vehicle did you take?
A. T.
Q. Okay. And tell the jury who then left Nard's apartment in T.'s, in that Buick Sentry?

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A. It was me, Ray Anthony Alston, Hilliard Pinckney and Little Gouda.
Q. Okay. And so, obviously, from what you said, you were driving?
A. Yes, sir.
Q. Okay. And who was sitting up front with you?
A. H. D., Hilliard Pinckney.
Q. Okay. And I guess the other two in the back seat?
A. Yes, sir.
Q. Do you remember where they were sitting in the back?
A. Gouda was on the back passenger side and Ray Anthony was right behind me.
Q. Alright. And now, you had already said you weren't real familiar with Orangeburg. I mean, do you know where it was that you ultimately ended up going?
A. To State.
Q. To State?
A. Yes, sir.
Q. And had you been on State's campus before?
A. No, sir.
Q. Okay. And what happened when you tried to get onto State's campus?
A. The guard asked for IDs.
Q. Okay. And did you give him your driver's license?
A. Yes, sir.

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Q. Alright. In fact, is that, looking at State's Exhibit Number Twenty-two, on the third line there, is that your name, your driver's license?
A. Yes, sir.
Q. And you probably don't recognize the license plate, but did they also write down the license tag at that point in time?
A. Yes, sir.
Q. Alright. And a gray four door Buick, is that pretty much what y'all were in?
A. Silver, yes, sir.
Q. Silver. Once you got onto State's campus what, after the guard took your information, where, where did you go?
A. We went towards the D Dorm.
Q. Okay.
A. And a guy, sounded like he was from up north, a dark skinned guy got in the car, and we left from the campus and we turned and made and ended up making another right, and ended up by some apartments.
Q. Okay. And did you know, had you ever been to that place before?
A. No, sir.
Q. Okay. And when the guy got in the car with y'all, where, where did he get in?
A. He got in the back seat.

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Q. Okay. And had you ever seen him before?
A. No, sir.
Q. Okay. Did you talk to him at all even when he got in the car?
A. No, sir.
Q. Alright. What, tell the jury then, after you got to that other, kind of took those couple of rights and ended up around those other apartments, what did y'all do?
A. We parked, and we waited for the guy in the green car, we waited for the guy in the green car. As soon as we got over, he came like two minutes, probably two minutes after, right after. He came, the three in the back seat got out the car, and he went over to the car and started talking, or whatever it was they was doing.
Q. Okay. And how, let me ask you, when y'all pulled in how did you park?
A. I backed in.
Q. You backed in?
A. Yes, sir.
Q. Alright. And then when the green car came where did it go?
A. It pulled up right along the side of us.
Q. Okay. On the passenger side or your side?
A. On the passenger side.
Q. The passenger side. Alright, and did he back in, too, or

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pull in?
A. No, sir, he pulled in.
Q. Okay. And you said the three guys in the back seat, so that would be Gouda, Little Gouda, Ray Anthony and the kid y'all had picked up?
A. Yes, sir.
Q. All of them? Now, do you know what -- were you able to hear what any of that conversation, or anything that was going on?
A. No, sir.
Q. Alright. What were you doing at that point in time?
A. I was on my phone, playing with my phone.
Q. Okay. And what about, what about Mr. Pinckney, who was sitting up front with you, what was Mr. Pinckney doing?
A. He was on his phone, too, sitting in the passenger side.
Q. Okay. And do you remember, did y'all have music going in the car?
A. Just a little bit.
Q. Alright. And what is the next thing that you kind of remember happening?
A. The back door opening, Ray Anthony got in on the inside, and after that I felt the car jerk, and Little Gouda hanging out the passenger side of the car, and then after that I heard a loud bang, and I just ducked down.
Q. Okay. What did you think that bang was?

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A. I, I couldn't ...
Q. You were ducking, though, right?
A. Yeah. I just don't know.
Q. And you said, and when you heard that bang, so Mr. Alston, he had gotten back?
A. Yeah, he was in the inside of the car.
Q. He was inside the car?
A. Yes, sir.
Q. Mr. Pinckney was inside the car?
A. Yes, sir.
Q. Do you know where the kid y'all picked up was?
A. No, sir.
Q. Did you ever see him again?
A. No, sir.
Q. And where was, where was he?
A. Hanging out the side of the door.
Q. Hanging out the side of what door?
A. Of the green car.
Q. And you said when you heard the bang you ducked?
A. Yes, sir.
Q. What did you do, did you eventually kind of look back up?
A. Yes, sir.
Q. Tell the jury what you saw when you looked back up?
A. I looked up, I saw Little Gouda standing up, like I couldn't see over the hood, but then the green car backed up

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and speed off real fast.
Q. So, the green car had sped, had backed up with him hanging out of the car and you heard the bang?
A. After the bang.
Q. You ducked, when you looked back up the car then is speeding - - -
A. Yes, sir.
Q. --- out of the apartments and away?
A. Yes, sir.
Q. Alright.
A. And it turned off to the left.
Q. And it turned to the left. Alright. And you said he was standing, where was he standing in relation to your car?
A. At this time now he was in the front, in the front of the car, like, on the other side, puffing a little bit.
Q. Okay. So how, so if you look out the front windshield that's where he is, out front there?
A. Yes, sir.
Q. And what, what happened then, I mean, what was going on?
A. Ray Anthony said, he screamed and said, get in the F-ing car, and after that I crank up and we leave, and he directed me back to Pine Hills.
Q. Okay. Now, when y'all left that, kind of that apartment complex did you go left also or right?
A. Right.

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Q. Did you see what had happened to the green car, where it went after you saw it take a left?
A. No, sir, I just know it speed off real fast and take a left.
Q. Okay. Now what, you said that Ray Anthony was yelling, get in the F-ing car, who was he yelling that to?
A. Little Gouda.
Q. Alright. And what, anybody say anything once he got in the car?
A. Just, which way to go, go this way, go that way.
Q. Did you ask anybody, I mean, what happened?
A. I mean, I didn't ask them anything because they just, everything good, man, everything good, and just go this way, go that way.
Q. That's all they were saying just, everything is good, and otherwise telling you where to go?
A. Yes, sir.
Q. And you said that you went back to Pine Hills Apartments?
A. Yes, sir.
Q. And what, what happened when you got back to Pine Hills Apartments?
A. We going upstairs, Little Gouda went on the inside, then we left and we went to, on to Nard's house?
Q. Uh-huh, back to Nard's house?
A. Yes, sir.

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Q. Okay. And what happened when you got back to Nard's house?
A. We sat there for a little while, and then we went back over here to Pine Hills, and then we left.
Q. Okay. And what did you go back over to Pine Hills for?
A. We take Hilliard back around there.
Q. Okay.
COURT REPORTER: You said you did what?
A. Take Hilliard.
Q. Took Hilliard. Alright. And I guess at some point in time -- where, let me ask you this, where was T., Timothy Harrison, where was he during all of this?
A. At Nard's house.
Q. Okay. And you ultimately picked him back up?
A. Yes, sir.
Q. Where did you ultimately end up going that night?
A. Back to North Charleston.
Q. And who went back to North Charleston?
A. Me, Ray Anthony and T.
Q. So, you left Mr., Little Gouda back at the Pine Hills Apartments?
A. Yes, sir.
Q. And ultimately ended up leaving H.D. over there, too?
A. Yes, sir.
Q. Let me ask you this, back then did you, do you know

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whether H.D., your cousin, whether he had a child that was living over in those apartments?

A. No, sir, no, sir, I just know that's what he tell us coming, when we got up there.

Q. Okay. Let me ask you this, now obviously, you were in the front seat, driver's seat, right, the whole time this all happened?

A. Yes, sir.

Q. And you never got out of the vehicle?

A. No, sir.

Q. Mr. Pinckney never got out of the vehicle?

A. No, sir.

Q. Did you ever see anybody with a gun?

A. No, sir.

Q. Okay. You never saw anybody with a gun beforehand?

A. No, sir.

Q. What did you think y'all were going to do when you went over there?

A. Buy marijuana.

Q. Never saw a gun afterwards?

A. No, sir.

Q. Of course, nobody ever would say what had happened afterwards either, right?

A. No, sir.

Q. And I think you had testified earlier, Mr. Thompson, that

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you ultimately find out that the police were looking for you?
A. Yes, sir.
Q. And they had a warrant. And I think, you said you were arrested, you turned yourself in on, I believe it was May Nineteenth I think you said, is that right?
A. Yes, sir.
Q. And did you talk to the SLED agents and give them a statement at that time?
A. Yes, sir.
Q. Alright. Let me ask you, do you remember them the following day showing you a lineup?
A. Yes, sir.
Q. I'm showing you State's Exhibit Number Twenty, do you remember them showing you that?
A. Yes, sir.
Q. Alright. And did you pick somebody out of that lineup?
A. Yes, sir.
Q. Who did you pick out?
A. Number Two.
Q. And who is Number Two?
A. Little Gouda.
Q. Little Gouda?
SOLICITOR SORENSON: Your Honor, at this time I'd offer State's Number Twenty into evidence.
MR. JOHNSON: Without objection.

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THE COURT: Okay. State's Number Twenty is in without objection, in evidence without objection.

SOLICITOR SORENSON: And that ...

COURT REPORTER: Just a minute. State's Twenty. Okay.

(State's Exhibit Twenty marked and filed.)

Q. And you actually dated that and put an arrow pointing to that picture, is that correct?

A. Yes, sir.

Q. And back in April of last year was that how Mr. Young's hair was also, like that, kind of short little dreds like that?

A. Yes, sir.

SOLICITOR SORENSON: One second, Your Honor, please.

THE COURT: Okay.

Q. The last thing, the person that you saw, Mr. Thompson, hanging out of that vehicle when you heard the bang, can you point him out, is he in the courtroom?

A. Right there.

Q. Is that the defendant, sitting in the middle of the table?

A. Yes, sir.

SOLICITOR SORENSON: Thank you, Mr. Thompson, that would be all the State would have.

THE COURT: Alright, Mr. Johnson, your witness.

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MAURICE THOMPSON - CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Good morning, Mr. Thompson.

A. How you doing?

Q. I want to ask you a few quick questions, okay?

A. Yes, sir.

Q. First of all, you did a recording transcript for them, didn't you?

A. Yes, sir.

Q. And you gave a statement, didn't you?

A. Yes, sir.

Q. And, and you told the truth, didn't you?

A. Sir?

Q. And you told the truth when you were doing that, didn't you?

A. Yes, sir.

Q. Okay. Alright. And one of the things you said was, there was never a plan of robbery with the four or the five of y'all, is that true?

A. Right.

Q. Nobody ever sat down and said, let's rob somebody of some weed?

A. Right.

Q. That never happened, did it?

A. No, sir.

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Q. Okay. Okay. And you said they were only going to -- I saw it in your statement, you said, they were only going to buy an ounce, is that correct?
A. Yes, sir.
Q. Okay. Alright, and I think I also saw you say, you never saw a gun, is that correct?
A. Right.
Q. Okay. Alright, now, let me ask you, you had been hanging out with Julian, how long y'all were together that day?
A. Since, from like six o'clock until eleven:thirty, forty-five.
Q. And y'all were moving around and walking and talking and all of that, is that correct?
A. Yes, sir.
Q. Doing your normal activities, is that correct?
A. Yes, sir.
Q. Okay. And from the time you got with him that day until the time this occurred you never saw a gun, is that correct?
A. No, sir, I never saw a gun.
Q. Now, after the pow, and I heard you just now testify that you saw Julian standing on the other side of the car. You had an opportunity to view his whole body, is that correct?
A. No, sir, I saw from here down.
Q. You saw from here down?
A. Yes, sir.

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Q. Okay. At some point in time he came and got in the car, is that correct?
A. Yes, sir.
Q. Did you see him getting in the car?
A. I seen him get in the car.
Q. You seen him, and you didn't see a gun while he was getting in the car?
A. No, sir.
Q. Okay. Alright. And let me ask you this, just like today, you're a little nervous, you were a little scared then, weren't you, you were a lot scared then probably?
A. I just was afraid of what was going on.
Q. Well, I mean, okay, so it wasn't the usual circumstance then?
A. Right.
Q. Okay. And you was just trying to figure out what was going on and you did what you thought was best, by leaving, getting out of there?
A. Yes, sir.
Q. Is that true?
A. Yes, sir.
Q. Okay. Okay. And I think in your statement you said over and over, I didn't see anything, I don't know anything, I think that's about what you said?
A. Right.

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Q. No more than what you said today?
A. Right.
Q. Did, did y'all ever, when y'all left the marriage housing, I think you said y'all took a right, is that correct?
A. Yes, sir.
Q. So, you never did get out on Russell towards where the other accident occurred, did you?
A. I don't even know where Russell is at.
Q. You don't know where it is?
A. No, sir.
Q. Okay.

MR. JOHNSON: Your Honor, one minute, please.

THE COURT: Okay. Take your time, Mr. Johnson.

Q. My last question, it's repetitive in the sense, I just want to ask for clarity, alright?
A. Uh-huh.
Q. That night you never saw Julian with a gun?
A. No, sir, never.
Q. Not coming nor going?
A. Coming or going, I never saw a gun.

MR. JOHNSON: Thank you, sir.

THE COURT: Anything on redirect?

SOLICITOR SORENSON: No, sir.

THE COURT: Alright, thank you, sir, you may step down. We're going to take a mid-morning break now. Okay?

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Ladies and Gentlemen, y'all have been, you know, listening to testimony now for one afternoon and one morning, but remember, you cannot begin talking about this case yet. Okay? We're going to take a break of about Ten or Fifteen minutes, and then we'll come back in here and we'll continue with the State's case. Okay? Thank y'all for your attention. Okay? Thanks.

(Whereupon, the jury retires to the jury room.)

(Recess)

THE COURT: Is the State ready?

SOLICITOR BELL: The State's ready, Your Honor.

THE COURT: Alright. Is the Defense ready?

MR. JOHNSON: Yes, Your Honor.

THE COURT: Alright, please bring the jury back in. Thank you.

(Whereupon, the jury enters the courtroom.)

THE COURT: Alright, Solicitor Bell, please call your next witness.

SOLICITOR BELL: Your Honor, The State calls Dr. Kelly Rose.

(Whereupon, the witness enters the courtroom.)

THE COURT: Good morning, Dr. Rose, if you'll come up and

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let the Clerk swear you in.

CLERK: Please place your left hand on the Bible and raise your right hand.

(Whereupon, Dr. Kelly Rose is duly sworn.)

CLERK: Please state your name again for the record.

WITNESS: My name is Dr. Kelly Rose.

THE COURT: Solicitor Bell, your witness.

SOLICITOR BELL: Thank you, Your Honor, may it please the Court.

THE COURT: Yes, sir.

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DR. KELLY ROSE - DIRECT EXAMINATION

BY SOLICITOR BELL:

Q. Good morning, Dr. Rose.

A. Good morning.

Q. Dr. Rose, how would you characterize your profession?

A. In South Carolina I am Board Certified as a Forensic Pathologist.

Q. And what do you do as a Forensic Pathologist?

A. I perform autopsies to determine cause of death.

Q. And how many autopsies have you done?

A. Approximately One thousand.

Q. And have you ever been qualified as an expert in the field of forensic pathology?

A. Yes, sir.

SOLICITOR BELL: Your Honor, I would move ...

MR. JOHNSON: She's qualified, without objection.

THE COURT: Alright. Dr. Rose is qualified as an expert in the field of Forensic Pathology without objection.

You may proceed.

Q. And where have you been practicing?

A. I have been practicing mostly in Newberry, and that is where we do autopsies.

Q. And you were doing them from all over the State of South Carolina?

A. Yes, sir.

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Q. Specifically, did you have an occasion to perform an autopsy on a person identified as Jonathan Bailey?
A. Yes.
Q. And when was that?
A. That was on April Seventeenth, Two thousand eleven, when the Orangeburg County Coroner brought him to the Hospital.
Q. And do you recall about what time you performed his autopsy?
A. Ten:thirty A.M. that morning.
Q. Was there anyone else there when you performed the autopsy?
A. I mean, there are always other people there.
Q. When you receive a body for autopsy what is the first thing you do?
A. You kind of like to examine, look at the head, chest, stomach, arms, legs, for injuries, signs of disease, and after that we do an internal examination and note any disease or injuries.
Q. So first you inspect -- can you tell the jury the general description of the body of Jonathan Bailey as you saw it?
A. This was a young male, he was about six feet tall.
Q. And was there anything unnatural that you saw?
A. He had an open wound in his stomach. He had an exit wound coming out of his left side.
Q. And were you able to see any other wounds?

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A. After I photographed the body and I observed the gunshot wound, then I examined it as well. When that is done we then open the body. In this instance we had already observed the gunshot wound, so I was looking for the internal wounds.

Q. And let's talk about these wounds, were they on both sides?

A. Right. Where your chest meets your stomach toward the right side, and the exit wound also was in a similar position on the left side.

Q. Can you describe the entrance wound, based on your observation?

A. Gunshot wounds have characteristics, and that helps classify them. It was about half an inch, Point Four to Point Five inches in size, the hole was. It had the characteristics of an entrance wound, which means the edges, they call it beveled, kind of sloped inward.

Q. And the other wound on the left side?

A. Corresponding exit wound also, was also about the same size, and it had characteristics that were more classic for an exit wound.

Q. Okay. And on this individual you, did you measure how far the entrance wound - - -

A. Yes.

Q. --- from various points on the body?

A. Uh-huh.

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Q. And what were those?
A. With, we have diagrams that we use in the autopsy, and with the body and what we call standard anatomic position, which is standing up like this, which normally stands like that, but we need a standard reference for our reports. We measure the wound from the top of the head, the distance from the midline in inches, and then in other coordinates. And in this instance I measured it from the nipple down to the center of the wound.
Q. Okay. And how far was it from the top of the head?
A. It was, it looks like it was Twenty-one inches.
Q. Okay. And how far from the mid-line?
A. It was nine inches.
Q. And from the nipple?
A. It was about seven inches in the eight o'clock direction, the face, if you're looking at the face of the clock, about the eight o'clock direction.
Q. Alright. Okay. And about the exit wound, what were the measurements on it?
A. It was Twenty-two and a half inches from the top of the head, so it was a little lower, it was six inches to the left of midline, so a little bit more forward, and it -- I'm sorry, that was seven and a half inches, and then it was six inches from the nipple.
Q. Okay. Thank you. And then you did the incision, the Y

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incision to look at the internal damage?
A. Yes.
Q. And what were your findings on the internal damage?
A. On the right it had, the bullet had passed through his lung. His right kidney was absent and there were some sutures there like stitches, so I presume that at the hospital he had his kidney removed. It went also through his liver, it crossed his midline, went through his intestines, went through his pancreas, which is this little organ that sits in your intestines, it got, it went through his stomach, and there's a really large artery that runs near the stomach called the splenic artery, and it had gone through that and then proceeded out the body.
Q. Okay. Based on the external examination and internal, can you, can you give an opinion as to how, the path that the bullet traveled through the body?
A. Yes. In standard anatomic position the bullet would have traveled from right to left, slightly down, and slightly forward, so ...
Q. I guess like that?
A. Uh-huh.
Q. Okay. And can you give any opinion based on your experience and expertise about how close a weapon would have been when the shot was fired?
A. That in real life is a ...

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MR. JOHNSON: Objection, Your Honor, I object, I don't think her opinion - I think her opinion is medical but I don't think she can give an opinion as to how close a weapon was, if she's not there and she doesn't know the situation that's around. I object to the opinion of how close the weapon was.

THE COURT: If you'd just ask her if she has any way of being able to qualify that, Mr. Bell.

SOLICITOR BELL: Thank you, Your Honor.

THE COURT: Okay.

Q. Dr. Rose, in doing autopsies and in the field of forensic pathology, are you and other doctors able to give an estimate in distances of a fired weapon, of a gun or a gun shot wound?

A. In certain instances we can.

Q. Okay. What are those instances?

A. If it's a contact wound you'll see a muzzle imprint because the gun was actually pressed to the skin and it leaves a big mark. If it was within ...

MR. JOHNSON: Your Honor, again, I understand she is explaining. I think my question was, if she's not an expert and if she can't explain it I wish she wouldn't discuss it.

THE COURT: Well, I'm going to overrule your objection.

MR. JOHNSON: Alright, sir.

THE COURT: I'm going to let her testify as to what she can qualify and what she can explain. I'm going to find out

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about that, and if this is one of those exceptions that she can qualify as an expert I'm going to let her testify about it. But I'll note your objection. Now, if she comes up and says she can't, then I'll go forward, I'll address your objection at that time.

MR. JOHNSON: Your Honor, could I make a motion outside the presence of the jury, please?

THE COURT: Sure. Alright, Ladies and Gentlemen, I'm going to excuse y'all for a second. This is one of those situations where y'all can't be in here while we talk. Remember, you can't talk about the case.

(Whereupon, the jury retires to the jury room and the following takes place out of the presence of the jury.)

THE COURT: Mr. Johnson, can you see if that door is closed? Yeah. Alright. Eventually, it's going to be closed.

Alright, Mr. Johnson, I didn't mean to interrupt you.

MR. JOHNSON: No, sir, I understand the Court's ruling, and I understand why they did it. I would just ask that it be done first in camera, because if it's done before the jury and then His Honor so finds out it's information she couldn't testify to, then it's already before the jury.

THE COURT: I'll be glad to let him go forward and question her about that.

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SOLICITOR BELL: Your Honor, I mean, I think it can be done. I'm not asking her, I'm not asking her about a distance in feet or inches, I'm asking what she can within her expertise. And I mean, it's routinely done.

MR. JOHNSON: Your Honor, he's asking her to tell whether the gun was close or far off, and I don't think ...

THE COURT: Hold up. What I'm going to do is, -- okay, we're taking a break right now. Just let me find out what she can talk to us about, and then we can bring them back in here. It shouldn't take long. Out of an abundance of caution we're going to do this. Okay?

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DR. KELLY ROSE, IN CAMERA, DIRECT EXAMINATION

BY SOLICITOR BELL:

Q. Let me ask you, you started talking about, through your training and all.

A. Uh-huh.

Q. How you and others in forensic pathology can talk about the distance of a weapon - - -

A. Yes.

Q. --- such as a gun or a shotgun or a rifle?

A. Uh-huh. Because firearms have characteristics and they use cartridges with bullets that have gun powder there are certain signs that we can use to determine approximate distances. If it's within several inches you'll get soot on the skin, if it's a little bit farther out you'll get what we call gun powder stippling, which is where gun powder flakes from the cartridge, actually impacts the skin and leaves abrasions, and then anything farther out than around two feet you get no markings, and it's called distance. Oftentimes if there's clothing involved it could have masked some of the signs like the soot of the gun powder, and so we would say, non-specific, meaning it looks like a distance wound; however, there could have been some clothing that blocked a little soot.

Q. But you can't give specific - - -

A. No.

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Q. --- two feet, six inches distance?

A. That's CSI, and that doesn't happen.

Q. Okay. But you can tell whether it's close contact, close or distant, or non-specific?

A. Yes, sir, definitely.

Q. Okay.

THE COURT: Alright.

MR. JOHNSON: Your Honor, if you'll note my objection, and my objection is based upon, in her report she's got, non-specific range of fire. And just note for the record that she said if it's non-specific she couldn't tell it. And that was my ...

THE COURT: Well, that's what she just said.

SOLICITOR BELL: She didn't testify to it.

MR. JOHNSON: I understand she hasn't testified, but the point was, I didn't want her to testify to it in an explanation, the jury heard it, and the Court have to come back and say, well, she couldn't, she said it was something she could testify to, something she would, and at this point I'm still saying, this is information she couldn't testify to, but I understand whatever the Court rules, and you know, we'll move on.

THE COURT: Alright, sir. Well, I think she can testify to it. I think she is, that's her specialty. She's testified to how she arrived at that decision, so I'm going to -- or her

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opinion on that, so I'm going to overrule your objection and I'm going to let her testify to that.

MR. JOHNSON: Thank you, sir.

THE COURT: Okay, thank you, sir.

Bring the jury back in.

(Whereupon, the jury enters the courtroom and the following takes place in the presence of the jury.)

THE COURT: I believe Dr. Rose was talking about if there was contact you could see the muzzle, I think that's where we left off, unless your notes indicate otherwise.

SOLICITOR BELL: I think that's correct but I want to kind of preface her further explanation with a question as well.

THE COURT: Right.

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DR. KELLY ROSE - DIRECT EXAMINATION

BY SOLICITOR BELL CONTINUES:

Q. Dr. Rose, in your expertise and experience, you can't give specific distances to tell how far a weapon fired, is that correct?

A. Only ranges.

Q. Ranges. And your ranges, correct me if I'm wrong, are contact, close, distant or non-specific?

A. And intermediate.

Q. Okay.

A. So, ...

Q. Okay. Can you explain to the jury about how you come to those conclusions, in general?

A. Sure. As I was saying earlier, a contact wound, you'll see a muzzle imprint. A close gun shot wound, the gun is farther away but still close enough that some of the gun powder soot that comes out of the cartridge which powers the bullet comes out of the barrel of the gun and will land on the skin. When people get gun show residue testing that's what they, similar stuff they're testing for. If it -- and that's within inches. When you enter the range of about one to three feet you get what's called stippling, which is where gun powder flakes that are unburned will come out of the gun also and impact the skin and leave abrasions, and we call that stippling. And then anything greater than two to three feet

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we call distant; however, since soot is one of the findings we use to classify, if someone has clothing or if there is a wall, anything that could have blocked the soot we would call it non-specific, and we mean that we didn't see a muzzle imprint, we didn't see soot, but the soot could have been stopped by a lawyer of clothing.

Q. Okay. And in this specific autopsy on Jonathan Bailey what was your finding as to a range?

A. I classified this as non-specific. Two reasons, the clothing was not sent with the body because he had been to the hospital first, and hospitals are notorious for washing their wounds where they can wash off stuff. But I called it non-specific.

Q. But you saw no evidence of, say, contact?

A. There is no evidence of a muzzle imprint and no soot.

Q. Okay. Now, Dr. Rose, after all of these, looking at the external and internal examination, did you come to a conclusion as to the cause of death of Jonathan Bailey?

A. I did.

Q. And what was that?

A. It was hypo-balemic shock due to gun shot wound, and hypo=balemic shock means his blood pressure bottomed out because he was losing so much blood. But the bottom line was that he died of a gunshot wound.

Q. How about the damage to, the internal damage that you

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described, would all that have been potentially fatal as well?
A. Well, that's what caused him to bleed so much because the bullet went through the liver which is basically a bunch of blood held together by a little bit of tissue, and it went through a huge artery.
Q. And did you classify a manner of death?
A. I did.
Q. And what is that?
A. Homicide.
Q. And homicide just means death at the hands of another, is that correct?
A. Yes, intentional. And our classification is a little different than what you hear on the street. It's death by another.

SOLICITOR BELL: Thank you, Dr. Rose, please answer any questions that the Defense counsel may have.

THE COURT: Alright, Mr. Williams.

MR. WILLIAMS: May it please the Court.

THE COURT: Yes, sir.

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DR. KELLY ROSE - CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Dr. Rose, just a few brief questions.

A. Sure.

Q. Dr. Rose, I think you testified that you did not determine a range of gunfire, is that correct?

A. Yeah, I classified it as non-specific.

Q. So, it could have been in close proximity?

A. Yes.

Q. You also testified, I believe, about the soot?

A. Yes, sir.

Q. And you usually find that with a close contact wound, is that correct?

A. You find it with contact in the wound, with clothes, you find it on the skin or clothing, and that's been washed off.

Q. You didn't find any fo that in this autopsy?

A. No. And his clothes did not come with him.

Q. So, we don't know if he had on a big jacket or anything that could have kept ...

A. I don't.

Q. Okay. So, Dr. Rose, in your opinion, we don't know how far the bullet was shot?

A. No. I couldn't determine from my information.

Q. And just, in your experience, Doctor, even sometimes in a near contact or a close contact wound the bullet, the weapon

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is pressed against the skin and you don't find those types of wounds because the muzzle is so up against?

A. You do. There's so much force that exits with the bullet that it will, if it's pressed to the skin it will leave muzzle imprint, a partial imprint soot deposition within the wound.

Q. And lots of times most of the soot or the grains, it enters the wound in that type of ...

A. But you can see it. And I look for it.

Q. In this particular case there had been stapling, you said?

A. Yes.

Q. He had been operated on on that side?

A. He had been operated on throughout.

Q. So, the wound had been altered?

A. Yes.

MR. WILLIAMS: Thank you. I beg the Court's indulgence one second, Your Honor.

THE COURT: Alright.

Q. And Dr. Rose, your examination of the body was at the request of Orangeburg County, is that correct?

A. Yes, sir.

Q. And you weren't present at the scene?

A. No, sir.

Q. And you have no opinion as to who did the shooting?

A. No, sir.

MR. WILLIAMS: Thank you, no further questions.

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THE COURT: Anything on redirect?

SOLICITOR BELL: One question.

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DR. KELLY ROSE - REDIRECT EXAMINATION

BY SOLICITOR BELL:

Q. Dr. Rose, based on your observation and experience, is the wound that you saw on Jonathan Bailey consistent with him being in a car and being shot from the passenger side of the vehicle?

A. Yes, it could be consistent with that.

SOLICITOR BELL: Thank you.

THE COURT: Anything on recross?

MR. WILLIAMS: Nothing, Your Honor.

THE COURT: Alright, you may step down, Dr. Rose, thank you, ma'am.

DR. ROSE: Thank you.

SOLICITOR BELL: Your Honor, we'd ask that Dr. Rose be excused.

MR. JOHNSON: Without objection.

THE COURT: Alright. Thank you, Dr. Rose, you're excused.

Is the State prepared to call its next witness?

SOLICITOR BELL: The State would call Karl Kenley, please.

(Whereupon, the witness enters the courtroom.)

CLERK: Please place your left hand on the Bible and raise your right hand.

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(Whereupon, Karl Kenley
is duly sworn.)

CLERK: Thank you. You may have a seat and please state your name again for the record.

WITNESS: My name is Karl, That's Karl with a K, last name, Kenley, K-E-N-L-E-Y.

THE COURT: Yes, sir, Mr. Bell.

SOLICITOR BELL: Thank you, Your Honor.

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KARL KENLEY - DIRECT EXAMINATION

BY MR. BELL:

Q. Mr. Kenley, where are you employed?

A. I am a crime scene, slash, special agent with the South Carolina Law Enforcement Division, commonly known as SLED.

Q. And how long have you been with SLED?

A. I have been with SLED for six years.

Q. How long have you been in law enforcement?

A. Twenty-one years.

Q. Okay. What, basically in generally, what general law enforcement training have you had in your background?

A. I graduated from the Criminal Justice Academy in Nineteen ninety. I've been a police officer, slash, fireman for the Casey Police Department. I started my career actually with the South Carolina State University Police Department in Nineteen ninety and worked my way up to investigator with the Casey Police Department before I came to SLED.

Q. And what are your duties at SLED?

A. The SLED laboratory is located in Columbia, South Carolina, and local agencies, that is, Sheriff's Departments and City Police Departments submit evidence to that laboratory, and one of my responsibilities is to process that evidence for fingerprint evidence. We also conduct tire and shoe comparisons, blood stain pattern analysis and crime scene reconstruction.

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Q. Okay. As part of your duties do you also, or are you also called out to crime scenes?
A. Yes. In addition to that, when requested we respond to all Forty-six counties in the State of South Carolina to process crime scenes for physical evidence.
Q. And those are your current duties?
A. Yes.
Q. Okay. And those were your duties back in April of Two thousand eleven?
A. Yes.
Q. And Agent Kenley, did you have an occasion to be called to South Carolina State University here in Orangeburg back then, in April?
A. Yes, sir, it was on April Sixteenth, Two thousand eleven.
Q. And why were you called?
A. I received a call from our fusion center, which is the point of contact for state agencies or local agencies to get in contact with SLED for assistance, and I was asked to call Chief Mike Bartley at that time who was the Chief of Police with the South Carolina State University Police Department in reference to a death investigation.
Q. When were you called during that day, were you called early in the morning or ...
A. I was actually called at three:thirty a.m.
Q. Okay. And once you talked with the chief what did you do?

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A. I responded from my residence to the South Carolina State University, which was the scene of the crime scene.
Q. Okay. Did you go to someplace at South Carolina State University?
A. Yes, I went to what's called Queen's Village, which is a marriage housing facility for married students on the campus, and that's where I responded.
Q. What did you do when you got there?
A. Well, let me back up. Initially I went to the Police Department and met with, I think it was Agent Richard Johnson and the Chief, and we then responded to the crime scene.
Q. Okay. And were you alone during this?
A. Yes, I responded alone. Normally, we work in pairs of two, but because of the logistics of that call I responded by myself.
Q. Okay. After going to the police you said you went over to married housing three on the campus of State?
A. Yes, sir.
Q. Okay. What did you do when you got there?
A. I was informed prior to getting there that the actual scene itself had already been processed by the University Police Department but because it was a, what we would call a fresh scene for our crime scene unit, I wanted to actually see the scene myself and again search for any possible evidence that was possibly missed or run over because there was a time

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distance between the actual incident and when I was actually called.

Q. Okay. Did you make contact with, with Investigator Johnson, Dustin Johnson?

A. Yes, Dustin Johnson, correct.

Q. And were you aware that he had kind of worked the crime scene for South Carolina State University?

A. Yes. He had already taken pictures and collected evidence prior to my arrival.

Q. And he had told you all about that, is that correct?

A. Correct, he did.

Q. Okay. So, when you went over to the marriage housing, what did you do?

A. I basically walked around again looking for physical evidence, just trying to kind of acclimate myself with the actual crime scene again. There were some hours that had passed so that obviously the scene was not as it was when the incident took place, but I just kind of wanted to get familiar with actually how the scene looked or, and in relation to the accident, the car accident.

Q. Did you find anything or anything else?

A. No, no, sir.

Q. Were you accompanied by Investigator Johnson, Dustin Johnson?

A. Yes, yes, Dustin Johnson.

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Q. Okay. And did he show you what he found and where he found it?
A. He did.
Q. Okay. And what did you do after you kind of looked around the married housing?
A. We walked over, which was in walking distance from the actual scene of the shooting to the actual vehicle accident, and from there we went to the Orangeburg Department of Public Safety, Fire Department Number Three, which is where the vehicle was towed for processing.
Q. So, when you went over to where the accident was the vehicle was no longer there, is that correct?
A. That's correct, it had already been towed to the Fire Department.
Q. Okay. Did you find any evidence when you were out at the married housing or at the accident scene?
A. No, sir, other than evidence of an accident, no physical evidence was collected.
Q. And again, Investigator Dustin Johnson told you what he found and where, he showed you what he found and where he found it?
A. That's correct.
Q. Okay. And so then you went over, as you stated, to Station Number Three, - - -
A. That's correct.

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Q. --- the Department of Public Safety of Orangeburg?
A. That's correct.
Q. And what did you find when you got there?
A. There was a green Monte Carlo parked in that fire bay and I was told that that was the vehicle that was, actually belonged to the victim and involve din the vehicle accident, and it had been towed there by the University Police Department, and had been sealed with evidence tape on each door to show that the car hadn't been entered or anything prior to my arrival.
Q. Let me show you what's been marked as State, or what's in evidence as State's Four and State's Ten and ask you if that, those are pictures of that vehicle that you saw?
A. Yes, sir, these are actually pictures that Investigator Johnson took prior to my arrival, but this is the vehicle.
Q. Okay. And you stated that when you found the vehicle it had been sealed, is that correct?
A. That's correct.
Q. And I think Investigator Dustin Johnson had sealed the vehicle?
A. That's correct, he put seal tape on each door, then he wrote his name, I think, and his initials to show that the car had not been entered after it was impounded.
Q. Okay. And what did you do when you started looking at the vehicle?

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A. From that point that became actually a crime scene from my standpoint, so I photographed the vehicle, documented the license plate, the VIN number and then I began to process the vehicle for physical evidence.

Q. Okay. What did you do?

A. From the information that I was given as, in relation to the incident, everything took place on the left side, passenger -- right side, I'm sorry, of the vehicle, so I first swabbed every area on the right side of the vehicle for DNA, and those swabs were submitted to our DNA laboratory.

Q. Okay. And what specific areas did you swab?

A. I swabbed the window, the top of the door frame on the passenger side, the door handle, anyplace that I would assume anybody on that side of the vehicle would have come in contact with it.

Q. Okay. Since we have what's State's Ten, which is a pretty good picture of the right side of the vehicle, is that the side that you did all that to?

A. That's correct.

Q. Could you stand up and show the jury where you ...

A. Again, the information that I was given was that the incident took place on the passenger side of the vehicle, so I swabbed the top from here to here, I swabbed the window, it was up and at the time that the vehicle was towed the windows were down. And I asked Investigator Johnson that, because I

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wanted to know if possibly the gunshot went through the window, if the window was not broken did that mean the window was down, and he told me the windows were down partially, but when they towed it they put it up so the inside of the vehicle would be preserved. So, I then actually swabbed the top of the window, the door handle and every, again, every portion of the passenger side that I would think someone would come in contact with the inside of the vehicle.

Q. Okay. You can have a seat. And you said those swabs were submitted to the laboratory?

A. They were.

Q. Are you aware if they matched those swabs to anybody?

A. No, they did not get any results from those swabs.

Q. Let me ask you, in your external examination of the vehicle, you looked all around the vehicle?

A. Correct.

Q. Three hundred and sixty degrees all around?

A. Correct.

Q. Did you see any, what appeared to be where a gunshot had gone into the vehicle?

A. No, sir, not on the outside.

Q. Okay. So, no gunshot passed through, didn't break a window?

A. No.

Q. Did go through any of the panels, the doors?

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A. No, sir, the only damage that I observed was the damage that probably occurred during the time of the vehicle accident.
Q. Okay. After you said you swabbed the outside for the DNA that didn't come back with anything, what did you do next?
A. next I used basic black powder and a brush and I actually processed those same areas that I swabbed with black powder for fingerprint evidence.
Q. Okay. And what does the black powder do?
A. Black powder actually enhances -- a latent print is a print that's there but you just can't see it visibly with your eye, and it lets you enhance it or process with some process. In this incidence I used black powder, and if there is a print there the black powder adheres to the ridges and it makes it visible to your eye so that you can see it.
Q. Okay. And did you find anything?
A. Yes, sir, I did.
Q. Let me ask you, where did you dust this black powder, just on the right side or all over the vehicle?
A. Just on the right side, the same areas where I processed for DNA evidence.
Q. Okay. Did you find anything when you put the black powder and dusted for fingerprints?
A. Yes, sir, I did.
Q. And what did you find?

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A. On the passenger side window, outside, above the top of the window I got a partial fingerprint, or a partial latent print.

Q. Okay. And when you saw that what do you do, you just, you dusted it and you were able to see it on the vehicle?

A. You dust it, you've visibly able to see it with your eye, and then you use a piece of clear tape that actually adheres to that same print that you're looking at, it doesn't distort the image at all, all you do is put the clear tape on it, and you lift it, and then you put that on a white backer so that you can actually visibly see it. It doesn't change the print at all, it just lifts it and basically duplicates it from the window or whatever that object is to the white backer so that you can see it.

Q. And do you have that with you, the latent print?

A. Yes, sir, I do. That's one, and that's the first one.

Q. Okay.

SOLICITOR BELL: Let me mark these.

COURT REPORTER: What are these?

SOLICITOR BELL: Prints, fingerprints, latent prints.

COURT REPORTER: That will be State's Twenty-three and Twenty-four.

SOLICITOR BELL: Do you need to put the sticker on this?

COURT REPORTER: Yes, sir.

Q. Alright, Agent Kenley, let me show you what's been marked

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as State's Twenty-three first, and is that the print that you got from the window, you said?

A. Yes, sir, this is the first print that I lifted from the window, and after I lifted it and placed it on the backer I actually put my initials at the bottom to show that this is actually evidence that I collected.

Q. Okay. And on the reverse, on the back of that what did you do?

A. I actually wrote the date and the time and my name, and a short description of where the print was lifted, and a very elementary diagram of actually where the print was lifted.

SOLICITOR BELL: And we'd offer this as State's Twenty-three, Your Honor.

MR. JOHNSON: Without objection.

THE COURT: State's Twenty-three is in evidence without objection.

(State's Exhibit Twenty-three marked and filed.)

Q. Okay. And did you find any other latent prints?

A. Yes.

Q. Where did you find that?

A. It was on the same side of the vehicle, on the passenger side near the door, near the key entry on the door itself.

Q. Okay. Let me show you what's been marked as State's Twenty-four and ask if you can identify that?

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A. Yes, sir, again, this is the same print that was lifted from the door. I placed my initials on the opposite again, the date that it was lifted, my name, a short description of where it was lifted, and then a diagram of approximately where it was taken.

SOLICITOR BELL: Okay. We'd offer this as State's Twenty-four.

MR. JOHNSON: Without objection.

THE COURT: State's Twenty-four is also in evidence without objection.

(State's Exhibit Twenty-four marked and filed.)

Q. Okay. Agent Kenley, let me ask you to step down, and I will again refer you to what's been -- the photograph, State's Ten, which is the right side of the green vehicle. And if you could show the jury where you got State's Twenty-three and Twenty-four from, the latent prints?

A. The first latent print, which is from the window, was taken from this portion of the window, because again, the information that I received, during the incident the window was partially down. So, I processed that part of the window to possibly if anybody touched it. And that's where this latent print was.

Q. You might want to kind of move over here and show the jurors over here.

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A. Okay. This is the first one that was lifted, and it was lifted from the top part of the window. I processed the window, it was partially down, so I did the top part as well as the bottom. The second print, which is near the key hold is this print, again, on the passenger side of the door, right near the key hold.

Q. Okay. Thank you. Did you find any other prints on the outside that you processed?

A. No, sir.

Q. Okay. What did you do after -- did you do anything else on the outside of the vehicle?

A. No, sir.

Q. Okay. What was the next step that you did?

A. After all the evidence was collected I went back to the University Police Department shortly to meet with the investigators and the chief, and then I went back to Columbia to submit the evidence.

Q. Okay. Let me back up a little bit. After you did the, your external examination of the vehicle did you look inside the vehicle at all?

A. Yes, we searched the inside, I searched the inside of the vehicle for any other physical evidence, with negative results.

Q. Did you find anything?

A. No, sir.

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Q. Did you find a weapon, a firearm, handgun, a rifle?
A. No, sir.
Q. Shotgun?
A. No, sir.
Q. And you then stated you went back to the University Police Department?
A. Correct.
Q. And what evidence did you receive, did you receive any evidence there?
A. No, sir, I did not.
Q. Okay. You just took your latent prints back to SLED?
A. The latent prints, the swabs, and the photographs that I took of the vehicle, correct.
Q. And what did you do when you got to SLED, you submitted the DNA samples to the DNA lab?
A. Correct, not that same day but it would have probably been the following Monday I would have submitted that evidence to the lab.
Q. And the latent prints, you submitted that to the latent print department?
A. Correct.
Q. You did not examine the prints?
A. I did not examine them, I submitted them and it was examined by another agent.
Q. Okay. Did you look at any evidence in, any other evidence

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in this case during the course of your investigation?
A. Yes.
Q. What did you look at?
A. Some money was submitted by the University Police Department again to be processed for latent print evidence.
Q. Okay. And did you process those items?
A. Yes, yes.
Q. Do you recall how many items there were?
A. It was a series of, it was currency, I'm just trying to make sure I give you the correct denominations, but it was Fifty Dollar bills and Twenty Dollar bills.
Q. Okay.
A. That's correct, it's currency.
Q. Alright. And how did you process those for latent prints?
A. We use a chemical called an inhydren, which is a liquid chemical, and you simply saturate the money with an inhydren, with that chemical, and with money normally it changes hands so many times you have to let it set. Any paper product that you process you would process it with an inhydren. And after you process it or soak it with that chemical we normally let it set for Twenty-four hours and that gives the chemical a chance to soak into the material, and if there is a latent print, again, a print that is not visible, that chemical will adhere to it and turn it a very bright purple color, again so that it is visible to the eye.

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Q. Did, on any of these did you raise any latent prints?
A. Yes.
Q. Did you examine those prints?
A. No, sir, I sent that evidence to photography. After we develop the latent print we send it to our photograph department photography department so that they can photograph it, and then that evidence is submitted to another agent for examination.
Q. Okay. After that did you process any other evidence in this case?
A. No, sir.
Q. Okay. Now, I think very recently you came down and you took some other evidence in this case?
A. I did, I came down to get a thumb print from Mr. Julian Young.
Q. Okay. The defendant?
A. That's correct.
Q. Do you see him in the courtroom?
A. Yes, I do.
Q. Is that the individual that you got the, you just got a thumb print?
A. Yes, sir.
Q. Okay. When did you do that?
A. August Sixth.
Q. Okay. Do you have a copy of the prints that you obtained?

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A. I do.
Q. Okay. These are all the same print?
A. Yes, they're all the same print, and because I knew what area the examiner that was going to conduct the examination, what area of the finger he needed for his examination, I just rolled multiple prints of the same print to make sure that I captured what area that he would need.
Q. Okay. Okay, again, these are the prints that you rolled from the defendant, Julian Young?
A. That's correct.
SOLICITOR BELL: Okay.
MR. JOHNSON: That's fine.
COURT REPORTER: Do you want these marked as a group or ...
SOLICITOR BELL: Yeah, as a group, not individually.
COURT REPORTER: Okay. How many are in the group?
SOLICITOR BELL: Seven. Just paper clip them for now.
COURT REPORTER: State's Twenty-five.
SOLICITOR BELL: Okay. And we'd move those into evidence, Your Honor.
MR. JOHNSON: Without objection, Your Honor.
THE COURT: Alright, State's Twenty-five, there are seven prints?
SOLICITOR BELL: Seven prints together.
THE COURT: They are in evidence without objection.

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(State's Exhibit Twenty-five marked and filed.)

Q. And I'm showing you what's been marked State's Twenty-five, the handwriting on that is yours?

A. That's correct, and also the signature of the defendant.

Q. Okay.

SOLICITOR BELL: Thank you, Agent Kenley, please answer any questions the defense may have for you.

A. Sure.

THE COURT: Mr. Williams.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Okay. Yes, sir.

MR. WILLIAMS: May it please the Court.

THE COURT: Yes, sir.

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KARL KENLEY - CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Agent Kenley, - - -

A. Yes, sir.

Q. I show you again what's been marked as State's Exhibit Number Twenty-five, are these the prints you took of Mr. Young?

A. Yes.

Q. And you took that on what date?

A. August Sixth.

Q. Of this year?

A. Correct.

Q. Did Mr. Young freely give you these prints?

A. Yes.

Q. Agent Kenley, how long after this incident occurred, I think you responded to the crime scene, or scenes?

A. What was your question?

Q. How long after the event occurred did you respond to the crime scenes?

A. The actual call for the vehicle incident was roughly Eleven:fifteen on the Fifteenth, and I responded at three:thirty on the Sixteenth.

Q. Okay. Agent Kenley, I think you also testified that you examined two separate crime scenes, is that correct, one at the marriage housing, and then you said you walked to another

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spot on Russell Street?
A. That's correct, where the vehicle accident took place, correct.
Q. About how far is it from one place to the next?
A. Maybe a block, it's walking distance, out of the parking lot, make a left and several feet down on the same street.
Q. Prior to August Sixth, Two thousand twelve, had you met Mr. Young before?
A. No.
Q. And Agent Kenley, you don't know how the victim, Mr. Bailey, was shot - - -
A. No.
Q. --- or who shot Mr. Bailey?
A. No.
MR. WILLIAMS: Thank you. No further questions.
THE COURT: Anything on redirect?
SOLICITOR BELL: No, Your Honor.
THE COURT: Alright. Thank you, sir, I appreciate it. You may step down. May he be excused?
SOLICITOR BELL: Yes, sir, Your Honor.
MR. WILLIAMS: Yes, Your Honor.
THE COURT: You are excused. Thank you, sir, appreciate it, Agent Kenley.
Is the State prepared to call its next witness?
We need to take about a ten minute break just to kind of

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get some things set up in here. I'm going to let y'all go back into the jury room for a minute and take a break. Remember, you cannot talk about the case yet, and we'll bring you back out in about ten minutes. Thank y'all.

(Whereupon, the jury retires to the jury room.)

(Recess)

THE COURT: Is the State ready to proceed?

SOLICITOR BELL: Yes, Your Honor.

THE COURT: Is the Defense ready to proceed?

MR. JOHNSON: Yes, Your Honor.

THE COURT: Bring them out. Have you had a chance to see whatever . . .

MR. JOHNSON: Yes, sir.

THE COURT: Okay.

(Whereupon, the jury enters the courtroom.)

THE COURT: Mr. Bell.

SOLICITOR BELL: The State would call Jeff Crooks to the stand.

(Whereupon, the witness enters the courtroom.)

CLERK: Please place your left hand on the Bible and raise your right hand.

(Whereupon, Jeff Crooks

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is duly sworn.)

CLERK: Thank you. You may have a seat, and please state your name again for the record.

WITNESS: My name is Jeff Crooks.

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JEFF CROOKS - DIRECT EXAMINATION

BY SOLICITOR BELL:

Q. Where are you employed?

A. I'm a special agent with the South Carolina State Law Enforcement Division commonly referred to by the acronym, SLED.

Q. Okay. And how are you employed with SLED?

A. I am the lieutenant of the SLED Latent Print Crime Scene Department.

Q. How long have you been with SLED?

A. I've been at SLED approximately Sixteen years.

Q. Any other law enforcement experience?

A. Yes, sir, prior to that I was a Deputy Sheriff with the Lexington County Sheriff's Department for approximately three years.

Q. What's your educational background?

A. I have a Bachelor's of Science Degree from the Citadel, I have, I am certified by the South Carolina Criminal Justice Academy as a law enforcement officer, I have successfully completed numerous courses in crime scene investigation as well as fingerprint examination, footwear and tire tread examination and blood stain pattern analysis.

Q. Okay. Are you a latent fingerprint examiner at SLED?

A. Yes, sir, I am.

Q. Okay. Can you specifically tell us what, what education

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or training you've had in regards specifically to latent print examination?

A. Yes, sir, I successfully completed a fingerprint course at the South Carolina Criminal Justice Academy, I have completed fingerprint courses sponsored by the International Association for Identification and Fingerprint Comparisons, Thumb Print Comparisons, I completed a Federal Bureau of Investigation course in fingerprint examination, I've also completed an advanced fingerprint examination course through the IAI as well.

MR. JOHNSON: Your Honor, may it please the Court.

THE COURT: Yes, sir?

MR. JOHNSON: I would certainly, if it's going to save time I would certainly stipulate that he is qualified to examine fingerprints.

THE COURT: Expert?

SOLICITOR BELL: And we'd offer him as an expert in latent fingerprint examination.

THE COURT: Okay. He is so qualified. Thank you, Mr. Johnson.

Q. Lieutenant Crooks, let me ask you, as a fingerprint examiner or a latent print examiner, what do you do?

A. Well, in our department we wear many hats. One of the responsibilities we have is, any evidence that's submitted to the SLED laboratory for examination for the presence of

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fingerprints, we process that evidence looking for fingerprints on those items. We also conduct examinations of fingerprints that we recover from those items, as well as any latent prints submitted to us by local agencies. We examine those against known standards.

Q. Now, we've used the term, latent prints. Could you tell the jury what you mean by latent prints?

A. Yes, sir, latent means hidden. A latent fingerprint is basically a fingerprint that you cannot see normally without the use of visually enhancing devices. One of the more common example of a device that enhances the print would be fingerprint powder.

Q. Black powder, is that ...

A. Yes, sir. We have quite a few methods at our disposal to develop latent prints off of various types of items of evidence.

Q. Okay. And you said a latent pri8t is one you can't see. Could you tell us about the fingerprint, what makes up a fingerprint?

A. Yes, sir, on the surface of one's fingers, hands and feet are raised lines of skin called ridges. The ridges form during pregnancy on an infant and remain permanent and unique until decomposition after death. We classify these types of ridges into three different types: an ending ridge which is a ridge that flows and comes to an abrupt stop and ceases to

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continue; bifurcating or forking ridge which is a single ridge that splits to two separate and distinct ridges and continues to flow; and a dot which is a ridge that forms a dot. It's these three types of ridges when we're doing an examination and their relationship to each other in a fingerprint is what we look at when we determine whether an unknown print was made by an individual. Located along these ridges, or these raised lines of skin are tiny holes called pores. These pores exude sweat from the body. This sweat along with oil residues from the face that collect on the ridges during normal contact with your face collect on the ridges, and sometimes when you touch an object it's possible to leave an outline of your ridges on the surface of that object much like a rubber stamp would do with ink.

Q. So these lines on our fingers are the ridges you're talking about?

A. Yes, sir. The purpose of the ridges are for grip. If you didn't have them you wouldn't be able to hold many things very easily, and because of, because of the three types of ridges that exist and where they exist on the surface of your fingers, hands and feet we can use those to identify an individual.

Q. And I notice when you were talking about leaving fingerprints you said sometimes we leave fingerprints. Does that mean that every time you touch an object you're going to

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necessarily leave a fingerprint?
A. No, sir. The transfer of the residue has to take place. If your hands are really dry you may touch an object and not leave a fingerprint. Some occupations where your hands get very callused, the ridges aren't as distinct. Someone who, say, like a brick mason for example, who handles rough surfaces a lot, their hands may get callused and that would reduce the chance of leaving fingerprints. However, if, if they discontinue that work for a period of time and the calluses went away the ridges would come back just like they were prior to the calluses.
Q. Is there anything else that determines whether you may or may not leave a fingerprint when you touch an object?
A. Yes, sir. The surface of the object would also have an impact. We tend not to find fingerprints as much on rough or textured surfaces. Smooth surfaces tend to be a better surface to locate fingerprints. Also, certain items of evidence that are handled a lot we tend to have difficulty getting individual latent prints. What we'll often finds is numerous fragments of prints that kind of overlap each other but not, they're not distinct enough to allow us to do an examination.
Q. Okay. So, for instance, you would suspect in this courtroom this top right here would be a better surface for leaving fingerprints than, say, the carpet?

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A. Absolutely, yes, sir.
Q. Okay. And you said earlier also, you said something about individual unique, but why do we, why are we so interested in fingerprints?
A. It is a reliable source for identifying an individual that might have handled an object.
Q. In your experience, training, reading, has there ever been two individuals that had the same fingerprint?
A. No, sir.
Q. And how long have fingerprints been used in the United States or in the world based on your education?
A. Since approximately the Seventeen hundreds throughout the world. I believe they started being used in the United States regularly around Nineteen hundred.
Q. And so, in all that history there's never been two individuals that had the same fingerprints?
A. Not that I'm aware of, no, sir.
Q. So, they're unique to everybody?
A. Yes, sir. And that's based on physiology and the way that, the randomness in which fingerprints, the ridge lines develop during fetal development during pregnancy.
Q. Okay. So, that's basically what you do, and why we're interested in latent prints or comparing latent prints with known prints, is that correct?
A. Yes, sir.

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Q. And what are known prints?
A. We refer to ink fingerprints that we take of an individual as known prints. We use printer's ink to cover an individual's ridge detail and then we will use a fingerprint card or a major case print sheet, and then when you're referring to palm prints or footprints to make a recording of that individual's ridge detail.
Q. And that brings up another question, you were talking about the fingerprints but you can also have palm prints, is that correct?
A. You can have fingerprints, you can have palm prints, you can have footprints, yes, sir.
Q. And they're all unique to the individual?
A. Yes, sir, they are.
Q. Okay. Let me direct your attention specifically to the case involving the victim, Jonathan Bailed. Did you receive items of evidence in this?
A. Yes, sir, I did.
Q. Okay. First of all, let me show you what is in evidence as State's Twenty-three and State's Twenty-four. I know that you have different numbers so it might get confusing, but those are the evidence numbers, Twenty-three and Twenty-four. And those were latent prints that were taken from a vehicle, is that correct?
A. Yes, sir, these are latent lifts that were provided to me

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from Special Agent Karl Kenley.

Q. Okay. And what was done when you originally received those items?

A. At the time we did not have any known standards that the investigating agency had asked us to compare to, so we ran it in what we call our, it's our automated fingerprint identification system, also known as AFIS.

Q. And what is that?

A. AFIS is a computer system that allows us to rapidly search unknown fingerprints to known standards that are in our State database. Anytime someone is arrested in this State and their fingerprints are taken their known standards are entered into the AFIS system. Our records division at SLED is responsible for maintaining those known standards. The known standards are entered into the AFIS system on their end and then when we have an unknown print we can enter that unknown print also into the system and it will search the unknown print against the known standards that have been entered in by our records department.

Q. Okay. Does this AFIS give you like an automatic identical print?

A. No, sir, the way the AFIS system works is, we have an operator who's trained to enter the unknown prints in on, in our department, and our SLED records department has AFIS operators that are trained to enter the known prints. And

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basically what you do is, she, she will mark these individual ridge characteristics, these three types, the ending ridges, the forking ridges and the dots. She will enter these unknown, she'll mark these ridges in the unknown latent on the computer. The computer will take those marks that she enters where she highlights these ridges, and it will create an algorithm, basically a numeric formula. So, the computer doesn't actually compare the latent, it compares the numbers. On the records side they do the same thing with the known fingerprints, and the system will look for the closest match to these algorithms, and it will score them based on how close they are. So, if the AFIS operator asks for the top ten scores the computer will give her the top ten scores and then it will be up to that AFIS operator to look at each one and determine if any one of these closely matches the unknown to the known. If she finds one that she feels like needs to be looked at by an examiner, that's what we refer to as an AFIS hit, she will notify an examiner and say, hey, you need to look at t his guy, it looks really close, I think it's worth looking at. At that point is when a latent examiner like myself will get involved, and we actually have to physically compare the known to the unknown, do a side by side comparison ourselves. So, the computer merely -- the purpose of the computer is to limit who to look for. It's a shortcut, it speeds up the process; otherwise, before AFIS we had people

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that would flip through cards and it could take a long time to find an individual to compare.

Q. So, AFIS isn't like what CSI, where they have the computer, it comes up like an automatic match, it just gives you, kind of cuts out all of the ones that aren't even close?

A. It speeds up the searching process. There's no system that does that for you. In our agency we have to physi - an examiner has to physically compare any unknown to known standards. So, if, whether AFIS gives us a hit or whether the requesting agency calls in a suspect that they want us to look at, we have to physically pull that card and do a visual examination between the unknown and the known impressions.

Q. So, you submitted what is State's Twenty-three and Twenty-four to AFIS to see if they could come up with a hit, is that correct?

A. Yes, sir, I did.

Q. Did either one provide a hit?

A. Yes, sir. The latent that's listed as State's Exhibit Twenty-three, which is for our reporting purposes, was Item One, we actually got an AFIS hit on that palm print, which is what this one is. And I pulled that, the individual's card that we got the hit on and did an examination of the unknown to the known.

Q. And who was that individual?

A. It was Anthony -- I'm sorry, Ray Anthony Alston, Junior.

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Q. Okay. And let me show you what's been marked as State's Twenty-seven and ask if you identify that?

A. Yes, sir, I do. This is a copy, this is the fingerprint card that we obtained through our SLED records department of Ray Anthony Alston, Junior.

SOLICITOR BELL: And Your Honor, we'd offer State's Twenty-seven into evidence.

MR. JOHNSON: Without objection.

COURT REPORTER: What was the number?

SOLICITOR BELL: Twenty-seven.

COURT REPORTER: Just one?

SOLICITOR BELL: Just one.

COURT REPORTER: Twenty-seven?

SOLICITOR BELL: Just Twenty-seven.

COURT REPORTER: Okay.

SOLICITOR BELL: So far.

THE COURT: Alright. State's Twenty-seven is in evidence without objection.

(State's Exhibit Twenty-seven marked and filed.)

Q. And you examined what is State's Twenty-three, is that correct? Let me make sure I've got the right, is that the ...

A. Yes, sir.

Q. And you compared it to State's Twenty-seven?

A. Yes, sir.

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Q. And what was your finding?
A. I was able to identify the unknown palm print to the left palm of Mr. Alston.
Q. And when did you do that, what date did you make that identification?
A. The examination was started on April Eighteenth of Two thousand eleven, the, my examination was completed on May Nineteenth of Two thousand eleven.
Q. Okay. Now, did you, did you look at -- that's Ray Anthony Alston's. State's Twenty-four, which I think is your Item Two?
A. Yes, sir.
Q. Did you find anything on that?
A. We were not able to get a hit on, through AFIS on Item Two, which is State's Exhibit Twenty-four.
Q. Okay. Now, as to State's Item Twenty-four, eventually were you given some known prints to compare State's Twenty-four with?
A. Yes, sir, I was.
Q. When was that?
A. Originally we were given the, we obtained, or one of our agents went and obtained a set of major case prints on a Julian Young, and an examination was completed on June the Twenty-second of Item Two, along with additional items of evidence, and the result of that examination I was able to

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identify Item Two, which is State's Exhibit Twenty-four, to Julian Young.

Q. Okay. Let me show you what's been marked as State's Twenty-eight and ask if you can identify that?

A. Yes, sir, I can.

Q. And what is that?

A. This is actually part of a set of major case prints that we obtained, and when I say, major case print, when we record the fingers, the ten fingers as well as the palm prints we call those, as latent examiners we call those major case prints because it includes all of the surface of the hands. We obtained -- this is the fingerprint cards of that set of major case prints that one of our agents collected from Mr. Young.

Q. Which agent was that?

A. It was Special Agent Kiki Stanley.

Q. Okay. And that we done in June of this year?

A. Yes, sir.

Q. Okay. And did you also look at another set of prints in regards to State's Twenty-four at a later date?

A. Yes, sir, I did.

Q. And let me show you what's been marked as State's Twenty-five, and ask if you recognize that?

A. Yes, sir, I do. This is a series of fingerprint cards that contain the left thumb print of Julian Young that was

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obtained, the prints were actually taken by Special Agent Karl Kenley and provided to me for examination.

Q. Okay. Does it state when they were taken?

A. I believe they were taken on August the Sixth.

Q. Okay. And does -- well, first let me ask you, the thumb print taken as State's Twenty-five matches the same thumb print in State's -- I'm sorry, State's Twenty-eight, of Julian Young?

A. Yes, sir, my second examination of Julian Young's fingerprints to Item Two I actually compared the, the known standards obtained by Agent Kenley, I compared it to Item Two which is State's Exhibit Twenty-four, and I also compared it to the major case prints obtained by Special Agent Stanley to confirm it was the same individual.

Q. Okay. And can I ask you why these later thumb prints were taken by Agency Kenley?

A. Yes, sir. Once we were notified that I needed to examine the, the Item Two, or State's Exhibit Twenty-four latent to Mr. Young, Special Agent Stanley was sent to obtain a set of his major case prints. Special Agent Stanley is currently in Indianapolis going through some fingerprint training this week, and she was unavailable for Court. As a result I needed to obtain a set of fingerprints, an additional set of his left thumb so that I could testify in Court today and we would have the agent available that obtained those known standards to be

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able to testify as well. So, Agent Kenley went and obtained the left thumb prints so that he could be here today since Agent Stanley was not able to be here.

Q. And so, the defendant is the person he got the print from, is that correct?

A. Right. We want to be able to provide the individual that obtained the known standards in case there was any question about where they came from we could have that agent available to testify.

Q. But the results are the same from both sets of print that State's Twenty-four, which is on the back of, behind the door matches the prints of the defendant, Julian Young?

A. Yes, sir. The Item Two as identified with State's Exhibit Twenty-five, which in my report is actually Item Thirty-five, it was identified to his left thumb, and the, both sets of known standards were compared to each other and I was able to confirm that both sets were the same, were from Julian Young.

Q. And finally, let me show you what's been marked as State's Twenty-six and ask if you can identify that, please, too?

A. Yes, sir, I can.

Q. And what is that?

A. This is a, what we call a Court chart. It is a photographic enlargement of the latent impression from State's Exhibit Twenty-four, and also a photographic enlargement of Mr. Young's left thumb from the, from the known standards

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obtained by Special Agent Kenley.
Q. Okay. And you made this for Court?
A. Yes, sir, this was created for the purpose of demonstrating our fingerprint examination of the Item Two unknown impression to Mr. Young.
SOLICITOR BELL: Your Honor, we would offer this as State's Twenty-six.
MR. JOHNSON: Without any objection.
THE COURT: State's Twenty-six is in evidence without objection.
(State's Exhibit Twenty-six marked and filed.)
Q. Okay. And I'd ask Agent, Lieutenant Crooks if he'd come down and show the jury how he does the comparison.
THE COURT: Yes, sir, step down.
Q. Let me ask you first, you said it came back to the left thumb of the defendant?
A. Yes, sir.
Q. Julian Young?
A. Yes, sir.
Q. What part of the thumb, was it the middle, side or ...
A. It was the side of the thumb, a little bit closer to the index finger.
Q. So, it would have been this side?
A. Yes, sir, it would have been this general area, or a

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little more to the side.
Q. Okay. And you might have to do it in sections, this section of the jury and this section of the jury, and kind of show them what you're looking at?
A. Sure. This is the chart that was created for the purpose of demonstration. On this side it says, known, this is the known standard, or the ink fingerprint of Mr. Young that was collected by, that was taken by Agent Kenley. On this side you'll see where it says, unknown. This is the latent print that was on the latent lift that was lifted from the vehicle by Agent Kenley during the crime scene investigation. What you'll also notice is, you'll see a series of numbers. What I did on this demonstration is, I identified eight of the ridge characteristics that I used to conduct my comparison. There's actually more than that, I believe I counted Twenty-two ridge characteristics that were in agreement, but for the purposes of demonstration I only highlighted eight to show. So, if you start with the unknown image with Number One and follow the line down you'll see there's an ending ridge, which is one of the three types that we classify the ridge characteristics in. You go to the known side, Number One, and follow the line down to the end you'll see the same correlating ending ridge. You do the same thing for Number Two, you'll see what we call a forking or bifurcating ridge, which is the single ridge that splits into two separate ridges. Same thing for Number Three.

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Number Two over here on the known. Do the same thing for three through eight on the unknown and three through eight on the known. This is a demonstration of the ridge characteristics and how the relationships of one through eight on the known are the same as the relationships of one through eight on the unknown. So, it's where they are in the latent, the unknown impressions and where they are in the known impressions correspond. And again, there was actually Twenty-two ridge characteristics that can be located throughout here. I just didn't mark all Twenty-two, I just did eight for the purpose of demonstration.

Q. Okay. Thank you, Lieutenant Crooks. And Lieutenant Crooks, did you look at any other items of evidence in this case for latent prints?

A. Yes, sir, I did. There was some, some U. S. currency, some cash that Agent Kenley had processed for the existence of latent print evidence, and I reviewed the results of his evidence processing to determine if there were any, if there was any latent impressions that were of sufficient value to compare.

Q. Did you find anything?

A. No, sir, there were some ridge detail observed on some of the bills; however, they were not of a sufficient quality. Typically, when we determine if an unknown impression is suitable for comparison we look at the amount of the latent

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that's there, if there's enough there, and also the clarify or the quality of the latent. And sometimes we'll see ridge detail on an object but the quality, the clarity of that ridge detail might not be sufficient to conduct a comparison, and in this particular case all of the bills either had no ridge detail or they had some ridge detail that was not suitable, of a suitable quality to conduct and examination.

Q. Is that surprising on currency?

A. No, sir, U. S. currency typically is handled so much that the process we use which is, we treat it with a chemical, we can treat paper objects with a chemical that will make any latent impressions visible because with paper items the ridge actually absorbs into the paper, it's not on the surface like it would be on that marble. So, we can't use traditional fingerprint techniques we have to use a chemical treatment which this treatment actually will stain amino acids present which comes from your sweat. It will turn it a pink color, and it will make any ridge detail present visible. Typically when we find something like money it's handled to much that instead of getting distinct ridge detail we just get a lot of pink, and you know, typically, if we actually do get ridge detail it's not, it's not very often that it's suitable quality. That's a typical result that, at least in my experience I've see when I process money.

Q. So, you couldn't basically, there was nothing to compare

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which you found on the money to, you just, you couldn't compare it, is that correct?

A. That's right. I, there's nothing I can tell you from the standpoint of identifying an individual to or excluding them from handling that money.

Q. Okay. And I just want to make sure I've offered all Twenty-six -- Twenty-five, Twenty-six, Twenty-seven, Twenty-eight into evidence, I think it was without objection.

THE COURT: I believe all of them are into evidence without objection, is that correct?

MR. JOHNSON: Yes, sir, Your Honor, they're all in.

THE COURT: Alright.

(State's Exhibit Twenty-eight marked and filed.)

Q. Okay. And to sum up, Lieutenant Crooks, based on your examination, your comparison, State's Twenty-three, which was a latent print that was found on the window of a vehicle, you were able to identify to Ray Alston, is that correct?

A. Yes, sir, I was.

Q. And then, State's Twenty-four, which is a latent print that was on the left side behind the door of the vehicle, you identified the left thumb of the defendant, Julian Young, is that correct?

A. Yes, sir. And also, it was not just me, all of our examinations go through what we call a hundred per cent peer

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review, so when I conduct an examination and I'm done with a case I give it to another qualified latent print examiner and they conduct the same examinations, and we both have to agree with our conclusion before a report is written. So, all this evidence was actually examined by two examiners before any report was issued.

SOLICITOR BELL: One moment. Thank you, Lieutenant Crooks, please answer any questions that Defense may have for you.

A. Yes, sir.

THE COURT: Mr. Williams, anything on cross?

MR. WILLIAMS: No questions of this witness, Your Honor.

THE COURT: Alright. You may step down. Thank you, sir.

SOLICITOR BELL: We'd ask that he be excused, Your Honor.

MR. JOHNSON: Without objection.

THE COURT: Alright. You may be excused, Lieutenant.

Y'all come up here a minute.

(Whereupon, a bench conference is had out of the hearing of the jury and court reporter.)

THE COURT: Alright, before the State calls it's next witness we're going to take a break for lunch. There are a couple of things that I've got to do that are unrelated to this trial, but I've got some other hearings and things that I've got to take care of. So, I'll give y'all a little bit

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longer for lunch and ask y'all to be back in the jury room at two:fifteen, and we will continue with the State's case at that time. Again, I know y'all are tired of me saying this, but y'all cannot talk about this case, you haven't heard all the evidence. You can't talk among yourselves, you can't do any investigation. Okay? Have a good lunch and come back here ready to go at two:fifteen. I appreciate it. Thank y'all very much.

(Whereupon, the jury leaves the courtroom and the following takes place out of the hearing of the jury.)

THE COURT: Ms. Harry Dot, earlier when we were picking a jury, when I was doing the Voir Dire Mr. Johnson had submitted a four page Voir Dire. We had met in chambers, I had told him that some of the follow up questions that he asked more specifics about crimes and things like that I had told him I was not going to ask. He wanted me to note his objection to not asking all of these questions during the Voir Dire. At the time we did the Voir Dire he expressed in a timely manner that, his objection. For the record I have a copy of that, a clean copy of the jury Voir Dire that he submitted to me and it will be marked as Court's Exhibit, is that Two?

COURT REPORTER: Yes, sir.

THE COURT: Okay. It will be marked as Court's Two so

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he'll have that preserved for the record.

(Court's Exhibit Two
marked and filed.)

THE COURT: Anything else, Mr. Johnson?

MR. JOHNSON: No, sir, Your Honor.

THE COURT: Okay. Thank you. Do y'all want to come on back and we'll ...

(Recess)

THE COURT: Mr. Johnson, we met after we took a break, and the State had indicated that they wanted to, that they may just have one other witness.

MR. JOHNSON: Yes, sir.

THE COURT: And normally speaking, what we would do, as you are well aware of is, after the State presents it's witness we would take a break, and I'd question the defendant about whether or not he wishes to take the stand or not.

MR. JOHNSON: Yes, sir.

THE COURT: But we talked about doing that beforehand so he could have a little bit more time to talk about it. Is that correct?

MR. JOHNSON: Yes, sir, and I asked the Court to do it.

THE COURT: Okay. Alright, sir.

Mr. Young, stand up please, sir. First of all, the Clerk's got to put you under oath because I've got to explain some things to you. Okay? And you've got to answer some

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questions for me. Alright?

DEFENDANT YOUNG: Yes, sir.

THE COURT: Would you swear him in, please, ma'am?

CLERK: Please raise your right hand.

(Whereupon, Julian Young
is duly sworn.)

CLERK: Thank you.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

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JULIAN YOUNG - IN CAMERA EXAMINATION

BY THE COURT:

Q. Alright. Mr. Young, I know your attorney has mentioned this to you before about whether or not you are going to testify?

A. Yes, sir.

Q. Okay. Normally speaking, at the conclusion of the State's case is when I would go over this with the defendant. But after talking with your attorney back in chambers, I'm trying to give you a little more time to think about this. Okay?

A. Yes, sir.

Q. So, at this time I'm going to explain your rights, and if there's something that I tell you that you don't understand, if you'll just let me know I'll be glad to explain it or Mr. Johnson will help me explain it to make sure you understand where we are now.

A. Okay, sir.

Q. Okay. We have just about reached the stage of the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment of the Constitution of the United States. That Amendment states sin part that "No person shall be compelled in any criminal case to be a witness against himself." This means that you cannot be required to testify in this case. You have the right to testify on your on behalf; however, no one can make

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you testify. This is a personal right and no one can waive this right except you. If you decide to testify you will be subject to the same rules that govern other witnesses and you may be examined and cross-examined on any relevant issue in this case.

Additionally, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year and this Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to you, the Solicitor will be able to introduce your record to attack your credibility.

If you decide to testify this decision on your part must be freely, voluntarily and intelligently made with knowledge of the protections given to you by the Fifth Amendment and the consequences of your decision to testify.

A. Okay.

Q. Now, if you decide not to testify I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever and there is to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether or not you testify. You may talk with your attorney, your family and friends or anyone else, but the final decision is left entirely to you.

A. Yes, sir.

Q. Do you understand everything that I have explained to you?

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A. Yes, sir.
Q. Do you have any questions about what I've explained?
A. No, sir.
Q. Okay. I know you have talked this matter over with your attorney already, is that correct?
A. Yes, sir.
Q. Okay. What I'm going to do is, I'm going to allow you some more time to talk with him, - - -
A. Yes, sir.
Q. --- and, because -- and some time for you to think about it. Okay?
A. Yes, sir.
Q. And have you talked about it with any members of your family or friends or anything?
A. No, sir.
Q. Did you want them to join in the discussion?
A. Yes.
Q. Then we'll arrange for you to meet with, you know, whatever family member you want to at the conclusion of the State's case when we take a break. Okay?
A. Yes, sir.
Q. Now, after that, you know, y'all will need to come back and you're going to have to tell me whether you decide to put up a defense or not. Okay? Do you understand?
A. Yes, sir.

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THE COURT: Alright, thank you, sir. You can sit down now. I appreciate it.

Alright, is there anything else from the State?

SOLICITOR SORENSON: I don't believe so, no, sir.

THE COURT: Okay. Anything from the Defense?

MR. JOHNSON: No, Your Honor.

THE COURT: Okay. Is the jury ready?

BAILIFF: Yes, sir.

THE COURT: Okay. If you'd bring them on out, please, ma'am.

(Whereupon, the jury enters the courtroom.)

THE COURT: Alright, Ladies and Gentlemen, I hope you had a good lunch. We're getting ready to continue with the State's case right now.

Is the State ready to proceed?

SOLICITOR SORENSON: Yes, sir, may it please the Court?

THE COURT: Yes, sir.

SOLICITOR SORENSON: The State calls Agent Richard Johnson.

THE COURT: Alright, Agent Johnson. Okay.

CLERK: Please place your left hand on the Bible and raise your right hand.

(Whereupon, Richard Johnson is duly sworn.)

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CLERK: Thank you. You may have a seat and please state your name again for the record.

WITNESS: Agent Richard Johnson.

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RICHARD JOHNSON - DIRECT EXAMINATION

BY SOLICITOR SORENSON:

Q. Good afternoon, Agent Johnson.

A. Good afternoon.

Q. If you would, tell the jury where it is that you're employed?

A. I'm employed by the South Carolina Law Enforcement Division, also referred to as SLED.

Q. Alright. And how long have you been employed with SLED?

A. Approximately eight years.

Q. Okay. And what are your current duties and responsibilities with SLED?

A. I conduct criminal investigations out of Twelve counties, sometime out of all Forty-six when required.

Q. Okay. And where is your main office located at?

A. The main office is in Columbia. Our regional office is in Walterboro.

Q. Okay. And one of those counties that you're assigned to assist in investigations, is that here in Orangeburg?

A. Yes, sir.

Q. Okay. And specifically, Agent Johnson, were you assigned to assist in an investigation of a homicide that occurred on S. C. State's campus back in April of last year?

A. Yes, I was.

Q. Okay. And that would be this one involving the death of

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Jonathan Bailey?
A. That's correct.
Q. Alright. And when is it that you were assigned, and when did you first respond down here to Orangeburg?
A. I was assigned on April Sixteenth, I think the incident occurred on April Fifteenth, but we didn't get notified until the following morning, which would have been after midnight at April Fifteen -- Sixteen, I'm sorry.
Q. Okay. And that would be after, I guess after Mr. Bailey had passed away from his injuries?
A. That's correct.
Q. Okay. Is that when y'all were called in at that point in time?
A. Yes, sir.
Q. Alright. And did you at that point in time have an opportunity then to come down to Orangeburg that morning, that early morning of April Sixteenth?
A. Yes, I did.
Q. Okay. And who did you make contact with when you came down here then that morning?
A. Chief Michael Bartley was the first person that I made contact with. He started to brief me on the surrounding events of that night and how we ended up getting involved with it.
Q. Okay. And did your investigation then kind of entail

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attempting to identify who the individuals were that were involved in Mr. Bailey's death?

A. Yes, sir.

Q. Okay. And the jury heard earlier before lunch ultimately that Lieutenant Crooks with the latent print crime scene division in Columbia had identified ultimately within a couple of weeks after this a palm print that was left on the vehicle that belonged to Ray Anthony Alston?

A. That's correct.

Q. Okay. Were you provided with that information?

A. Yes, sir.

Q. Okay. And what, as a result of that information did you attempt then to locate Mr. Alston?

A. At that very moment, no, we didn't proceed to locate Mr. Alston. We pretty much was concerned as to when did, the print was made, that we didn't know if it was made during the time of this incident, so at that very moment Alston was not a primary suspect, although he was a person of interest. I advised the other officer that was with me, an agent, that, to let's try to get more information so we can verify if Alston was in fact in Orangeburg the night that this occurred. And so, we proceeded through other avenues for moving in Alston's direction.

Q. Okay. And did you ultimately, were you ultimately able to identify, and I believe when the jury heard from him

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testifying yesterday, a young man by the name of Ricky Gipson?
A. That's correct.
Q. Okay. And I believe in looking, when he was shown his statements yesterday and the, the piece of paper where he identified Mr. Alston, that that occurred on May the Sixth of Two thousand eleven?
A. Yes, sir.
Q. Alright, tell the jury how it was that you came about getting in contact with and talking with Mr. Gipson?
A. Well, initially we had nothing to operate off of other than just canvassing S. C. State trying to determine if anyone knew Jonathan Bailey, anyone knew his background of who he may have been associated with. During that, the course of that time we was able to obtain the phone records of Jonathan Bailey, I think he had two phone records, but there was one of them that showed a good deal of activity on that we focused on. Through that phone record we identified a number that Bailey seems to have been in constant contact with prior to his death, and then right after Orangeburg Department of Public Safety received a Nine One One call we were able to identify at least two text messages that came in following it. That suggested that this person which turned out to be Ricky Gipson is a person that we needed to make contact with because apparently either he was there or he had information as to what took place. He knew clearly who all was involved.

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Sod, after we then got the phone records for Ricky Gipson and it came back to his grandmother out of, I think it was Maryland, and Maggie Gordon, which was her name, I made contact with her. She confirmed that she had a son who were a student -- I'm sorry, a grandson who was a student at, in Orangeburg. However, the name that she gave me did not match up with South Carolina State University's data base nor Claflin University's data base, and I don't think I checked with O.C. Tech. However, Lieutenant Barnes with S. C. State and myself continued to review Maggie Gordon's phone record, which was the last number in contact with Jonathan Bailey, and we were able to identify another number off of Maggie Gordon's phone records that struck our attention because of the duration of time that that call was made after the approximate death time of Jonathan Bailey to another number out of Maryland, at which time we then made contact with that individual. And the person identified himself as a, I think a Walker, if I'm not mistaken. Nevertheless, he informed us, we were informed that his daughter was in contact with an individual by the name of Ricky who was a student in Orangeburg. We then began to search S. C. State's data base again and discovered a Ricky O'Keif Gipson. At that point we got his records, class records to determine where would he have been at at a certain time so we could make contact with him, and it was clear to us from that that his class was over.

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So, we figured he was getting ready to go back to Maryland. But the address on S. C. State's data base indicated that he had an address in Sumter. So, we went to Sumter, and from there we were able to locate Ricky Gipson and commenced to talk with him.

Q. Okay. And that was when you took a statement from him at the Sumter County Sheriff's Office?

A. That's correct.

Q. Okay. And he, at that point in time is that when, May the Sixth, and you had an opportunity to show him this photograph and have him identify Mr. Alston was being somebody that now as involved in what had happened that night?

A. That's correct.

Q. Okay. So, that kind of corroborated, I guess, the palm print match that you had already gotten off of the vehicle, is that correct?

A. Yes, sir.

Q. And as a result of that information, did you then make an attempt to then track down Mr. Alston and talk to him about this situation?

A. Yes, sir. We, actually we entered his information into NCIC data base, and once he was arrested in Charleston, I think it was on a DUS, that's how we was able to pick him up.

Q. Okay. And he ultimately, as he had testified, gave y'all, talked to y'all and gave you statements on two different days,

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on May Fourteenth and May Sixteenth - - -

A. Yes, sir.

Q. --- of last year? Alright. And he was arrested at that point in time for murder, is that correct?

A. That's correct.

Q. He was arrested?

A. Yes, sir.

Q. Okay. And upon talking to him did you then have some information about some other individuals then that were allegedly, according to Mr. Alston and also Mr. Gipson, were present and potentially involved in this situation?

A. Can you repeat that again, please?

Q. Okay. After talking then with Mr. Alston on May Fourteenth and later on May Sixteenth, additionally with the information you had been provided by Mr. Gipson, did you have information then about a couple of other individuals, three other individuals that you were then looking for in relation to this incident?

A. Yes. And even by then, during the first interview with Mr. Alston he also provided those additional names of who all was involved or who all was with them when they came onto campus, and who was with them when Jonathan Bailey was shot.

Q. Okay. And one of those names, was it the nick name Gouda?

A. Gouda.

Q. Okay. And were y'all ultimately able to, and let me ask

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you this, not only the nickname, Gouda, but also did you know what apartment complex that Gouda supposedly lived in at that time?

A. Yes, sir.

Q. And what apartment complex was that?

A. That was the Pine Hill Apartments.

Q. Okay. I'm showing you State's Exhibits Numbers Seventeen and Eighteen, is that the apartment complex?

A. Yes, sir.

Q. Okay. And were y'all ultimately able to find a young man by the name of Gouda that fit that description that lived in Pine Hill Apartments back in April of Two thousand eleven?

A. Yes, sir.

Q. And who was that that you determined went by that nickname that lived in that apartment complex?

A. Julian Young.

Q. The defendant?

A. Yes, sir.

Q. And let me ask you, ultimately, on May Seventeen, so a couple of days after Mr. Alston was arrested, was the defendant, Julian Young, arrested at that point in time?

A. I'd have to look back and see the exact date that he was arrested. Bear with me one moment. Yes, sir, May Seventeenth he was arrested.

Q. Okay. And I'm showing you State's Exhibit Number Twenty,

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that is ultimately a lineup that you prepared with Mr. Young's photograph in it, is that correct?

A. That's correct.

Q. And I believe this is the lineup that was shown later on to Maurice Thompson, but that photograph of Mr. Young in State's Exhibit Number Two, when was that photograph then taken?

A. When he was arrested.

Q. Okay. So that is how he looked back on May Seventeenth of Two thousand eleven?

A. Yes, sir.

Q. Hair and what have you?

A. Yes, sir.

Q. Let me ask you this, when he was arrested on May Seventeenth, on that day did officers with your agency search his apartment in Pine Hill Apartments?

A. Yes, sir.

Q. Okay. Was any weapon found?

A. No, sir.

Q. Okay. Additionally, however, did you find some, some paperwork belonging to the co-defendant, Hilliard Pinckney, in his apartment?

A. Yes, sir, we did.

Q. Now, you knew -- let me ask you this to kind of back up a second here, were you aware from the initial investigation

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that a bullet had been found basically kind of right outside of the driver's door after Mr. Bailey had been removed from his vehicle?

A. Yes, sir.

Q. Okay. And were you aware that that had been submitted to your firearms department out at SLED?

A. Yes, sir, yes, sir.

Q. And as a result of that were you provided kind of a list of kind of what kind of weapons to be kind fo on the lookout for in this case?

A. Yes, sir.

Q. Okay. And what kind of weapons did your firearms department indicate to you could have fired that, that bullet?

A. Either a Thirty-eight or a Three fifty-seven revolver.

Q. Okay. A revolver. Okay. And what would be the difference between a revolver and a semi-automatic, for somebody that may not be familiar with firearms?

A. That revolver is going to discharge one round at a time as you pull the trigger and it's generally going to hold approximately five to six rounds of ammunition. Where that semi-automatic is subject to holding at least Twelve to maybe Fifteen or Sixteen, and the bullet can fire out a lot more quicker.

Q. And also, are you aware of what a shell casing is?

A. Yes, sir.

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Q. And what is a shell casing?
A. That's the casing that would hold the projectile with powder compressed up on it to help discharge the projectile.
Q. Okay. And when you fire a revolver what happens to that shell casing?
A. It's generally -- well, since it's a revolver it stays in the cylinder, it doesn't kick out like a semi-automatic would kick it out.
Q. Okay. So, a semi-automatic, when you pull the trigger it actually ejects - - -
A. It ejects it.
Q. --- the shell casing?
A. Yes.
Q. Okay. So, when you have a scene such as this and a revolver was used would you expect to find a shell casing somewhere at the scene?
A. No.
Q. Okay. And upon talking to Mr. Alston on May Fourteenth, was one of the names that you were ultimately provided with Maurice Thompson?
A. Maurice Thompson.
Q. I'm showing you State's Exhibit Number Twenty-two, were y'all as a part of your investigation able to go back and kind of, kind of verify and corroborate the fact that Maurice Thompson had in fact driven a gray four door Buick onto S. C.

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State's campus on the evening of May the Fourteenth of, I'm sorry, April the Fifteenth of Two thousand eleven?

A. Yes, sir.

Q. Now, the co-defendant that testified yesterday afternoon, Hilliard Pinckney, H.D., was he arrested I guess the following day, I think May Eighteenth, is that accurate?

A. Yes, sir, May Eighteenth.

Q. And did Mr. Pinckney cooperate and give y'all a statement when you interviewed Mr. Pinckney?

A. No, sir, no interview was conducted with Pinckney.

Q. Okay. He asked for a lawyer when you attempted to interview Mr. Pinckney?

A. Yes.

Q. And then lastly, the co-defendant, Maurice Thompson, was he arrested, I think he had testified, on May the Nineteenth, does that sound right?

A. Yes, sir.

Q. Okay. And did he, in fact, cooperate and give a statement to you?

A. Yes, sir.

Q. Okay. And I believe he had testified and it was documented on here that he was shown this lineup and identified Mr. Young the following day, on May the Twentieth, at two:fifteen in the afternoon, is that correct?

A. That's correct.

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Q. And did you in any way force him or coerce him to pick somebody out of this?
A. No, sir.
Q. And was he freely and voluntarily cooperating at that point in time with you?
A. Yes, sir.
Q. Let me ask you this, we've heard through several of these witnesses over the last two days, the nickname, Nard?
A. Yes.
Q. Is that correct? Were you able to identify who Nard was?
A. Yes. Through Lieutenant Barnes of S. C. State we determined that Nard was actually Bernard Singleton.
Q. And Mr. Singleton lived there kind of in close proximity to South Carolina State's campus?
A. Yes, sir.
Q. Okay. Did you have an opportunity to attempt to interview Mr. Singleton?
A. Yes, we did.
Q. Did he provide you any information that he knew anything about this incident?
A. I think his exact wording was, I don't know nothing about nothing. And that was just the gist of the interview with him.

SOLICITOR SORENSON: Okay. I beg the Court's indulgence. I appreciate it, Agent Johnson, please answer any

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questions Mr. Johnson would have.

THE COURT: Mr. Johnson.

MR. JOHNSON: Thank you, Your Honor, may it please the Court?

THE COURT: Yes, sir.

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RICHARD JOHNSON - CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Agent Johnson, are you the primary case officer on this case, would that be a correct statement?

A. Yes, sir, I guess you could say that.

Q. Let me do it like this. If I wanted to talk to an officer about information I would come to you maybe primarily first?

A. Not necessarily.

Q. Okay. Who would be the primary on the case?

A. I would.

Q. You would be?

A. Yes.

Q. So primary is a good word, then, you would be the primary?

A. Yes.

Q. You would be the primary on the case. And as the primary on the case, I think that -- and I want to make sure I'm right, that says that you probably know as much about this case as anybody, would that be a fair statement?

A. I should know as much about the case as anybody.

Q. Okay. Well, let me put it this way, would anybody know more about the case, the investigative part, more so than you?

A. It's hard to say. Again, Agent Smith worked on the case, Lieutenant Rodney Bond worked on the case. In fact, I think Lieutenant Bond and I probably worked more than Agent Smith

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did.
Q. But were you the one who arrested Julian?
A. I was one of the ones, yes, sir.
Q. Okay. And when you arrested him did you do the background check and interview -- not interview, but did you do the background check and you know determine his status like his age and all that kind of stuff like that?
A. Yes. And that was done during the, pretty much preliminary investigation, establishing who he was at the time.
Q. Well, while you were establishing who he was, he was about, during that time he was about Sixteen years old, he's Seventeen now, is that correct?
A. Somewhere in that ballpark.
Q. Okay, okay. You wouldn't disagree with me with that?
A. No, I wouldn't disagree.
Q. Okay. And let me go to this question, basically you, the other agent, was it Agent Simpson?
A. Smith.
Q. Agent Smith, and I think Lieutenant Bond or some of them, y'all did the primary investigation on this case?
A. Pretty much, yes, sir.
Q. Okay. Alright. Okay, now, during your investigation did you at some time get a search warrant and search the home of Julian?

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A. We got a search warrant, I don't recall if I was the Affiant on the search warrant.
Q. Okay. Alright, I just want to say, a search warrant was given?
A. Yes, sir.
Q. Okay. Not necessarily who got it, but a search warrant was given?
A. Yes, sir.
Q. And you, and you did the, and you searched his home?
A. We did, yes, sir.
Q. Okay. And there was, to my understanding there was no gun found that relates to this case, is that correct?
A. That's correct.
Q. Okay. And then through some other information, I don't know how, I think there was some other information that came up about a gun, and I don't know how but, and I think y'all recovered that gun and checked it, is that correct?
A. That's correct.
Q. And that gun was after the testing and all determined not to be the gun, is that correct?
A. I think, without looking at my note, it was inconclusive.
Q. That's what it says, inconclusive.
A. Yeah.
Q. Inconclusive, that's what it says. But inconclusive means it can be any number of guns, isn't that correct?

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A. It means it can or it cannot be, we just couldn't say if that was the weapon that was used to kill Jonathan Bailey or not.

Q. And the reason you don't is, if it's not conclusive you don't present it because it can't say he did it, is that correct?

A. Say that again?

Q. The reason it was conclusive because there was no certainty that that was the gun that killed Jonathan Bailey, is that correct?

A. Yes, sir.

Q. Okay. Okay. Alright, so during your investigation everything that you could run down to find that gun you tried to find it, is that correct?

A. That's correct.

Q. Okay. And, and when we did the preliminary hearing I asked you about it and you still was looking for that gun, is that correct?

A. That's correct.

Q. And you have yet 'til today to find the gun that was involved in the shooting, is that correct?

A. That's correct, at least a gun that I can say unequivocally is the weapon.

Q. Right.

A. Again, the initial one that was submitted was

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inconclusive, - - -
Q. Right.
A. --- we couldn't say one way or the other.
Q. Right. But what I'm asking though, but you didn't find a gun that you could conclusive say is the weapon?
A. That's correct.
Q. Is that correct? And you did a due diligence search trying to find that weapon, is that correct?
A. That's correct.
Q. Okay. Alright. Did you also do a search warrant to search the apartment of Mr. Bailey?
A. Again, we did, yes, sir.
Q. You did? And what was found?
A. I'm sorry, you're saying the apartment of Mr. Bailey?
Q. Mr. Bailey.
A. We didn't search Mr. Bailey's apartment.
Q. Alright. You didn't search his apartment?
A. No.
Q. I just want to make sure, I'm not trying to trick you.
A. Yeah, I'm sorry.
Q. You didn't search his apartment?
A. No, sir.
Q. Okay. Alright, now, during your investigation did you determine that there was, that he carried a gun to protect himself?

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A. From all account, no, sir. Everyone said he didn't carry a weapon.

Q. During your investigation, during the process of your investigation you have, you never determined that he carried a gun to protect himself?

A. I don't recall that, no, sir.

Q. Oh, you don't recall it?

A. Yes, sir.

Q. Alright. During your investigation did you ever find out the information that he had, did you ever find out the information that he had multiple guns?

A. Jonathan Bailey?

Q. Yes, sir.

A. No, sir, I don't ...

SOLICITOR SORENSON: Objection, I mean, he's asked and answered this. I mean, he asked him about one gun, so I mean, ...

THE COURT: Well, he's already answered that he didn't have any guns, so ...

MR. JOHNSON: Well, Judge, I was trying to identify two different people, or two different situations, but that was the reason for asking the, that was the reason for asking the question.

Q. I just want to be a hundred per cent sure. You reviewed all of the documents that you gave to the Solicitor and that

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the Solicitor gave to me, you have reviewed all of those documents?

A. Yes, I have reviewed them, but it has been over a year ago and I have not re-reviewed them again because I've worked multiple homicides since then. I just don't ...

Q. Okay. So, are you saying you don't remember that?

A. Yeah, I just don't recall that, that's what I kept saying.

Q. Oh, okay, okay, you're not saying it's not so, you're saying you didn't recall it?

A. I just don't recall that.

Q. Okay, okay, alright, good enough. I just want to distinguish the difference. Let me ask you this, the actual shooting took place in the marriage housing, is that correct?

A. That's correct.

Q. What street is that on?

A. I worked at S. C. State for Ten years, I don't know the actual street name, I just know the area.

Q. Okay. Okay.

A. It's off of Russell Street.

Q. But the actual accident itself occurred on Russell Street?

A. Yes, sir.

Q. Okay. And the projectile, it wasn't discovered in the marriage housing, was it?

A. That's according to Detective Dustin Johnson, where he got

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it from, yeah.
Q. I understand that, I understand that, but to your knowledge, I'm just asking to your knowledge, you can't speak for him, but to your knowledge it wasn't -- the projectile wasn't discovered at the marriage housing, was it?
A. No, sir.
Q. It was discovered on Russell Street, is that correct?
A. Yes, sir.
Q. Where the shooting didn't occur, is that correct?
A. That's correct.
Q. Okay. Now, let's get to -- you had an opportunity to take statements, if I'm correct, from Mr. Thompson?
A. Yes, sir.
Q. And I think you took a recording statement and a written statement, is that correct?
A. Yes, sir.
Q. Okay. And Mr. Thompson told you that he never saw Julian with a gun, is that correct?
A. That's correct.
Q. Alright. You had, you took recording statements and written statements from Mr. Ricky Gipson, is that correct?
A. That's correct.
Q. And Mr. Ricky Gipson also told you he never saw Julian with a gun, is that correct?
A. That's correct.

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Q. You took recoding statement from Mr. Ray Alston. As a matter of fact I think you took, you talked to Mr. Alston, you took two statements and a recoding statement from Mr. Alston, is that correct?
A. Yes, sir.
Q. And that were on one of them, they were on three separate, I'm not sure, they were on two separate days, is that correct?
A. That's correct.
Q. Because the recording statement and one statement was on the same day?
A. That's correct.
Q. So they were on two separate days, is that correct?
A. Correct.
Q. And this was at the very beginning of your investigation, right after, is that correct?
A. No, sir.
Q. Okay. How far down the road was it?
A. I think this investigation took a span of almost Thirty days if I'm not mistaken, - - -
Q. Okay.
A. --- so it was more or less close to the end of the investigation when we made contact with Alston.
Q. Okay. We're a year and something down the road. This took, the investigation and these statements and recordings, you received them at Thirty days from the time of the event,

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is that correct?
A. Approximately.
Q. Okay. And he also told you that Mr. Gipson, I mean, he didn't see Julian with a gun, is that correct?
A. That's correct.
Q. Okay. Alright, n ow, I just want to make sure. There were five people allegedly in the car, is that correct?
A. Yes, sir.
Q. Two in the front and three in the back?
A. That's correct.
Q. Okay. And it's my understanding that the three in the back got out and the two in the front never got out of the car?
A. That's correct.
Q. It's my understanding that the three in the back were Mr. Alston, Mr. Gipson and Mr. Young?
A. That's correct.
Q. Okay. It's my understanding that Mr. Young and Mr. Alston went to the door, went to the passenger door of the other car?
A. Yes, sir.
Q. Alright. It's my understanding from the testimony that Mr. Alston left the car?
A. That's correct.
Q. Okay. It's my understanding that it was Ten -- from

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reading the recording statement it's a question whether it was Eleven or Twelve O'clock but it's my understand it was late and it was dark, is that correct?

A. That's correct.

Q. And it's my understand that the only testimony anybody saw that they had, it was a struggle but nobody saw anybody -- nobody could tell you what the struggle was over, is that correct?

A. The testimony was a struggle, and the hearing of a sound.

Q. Right. But nobody could tell you what, what the struggle was over, they just saw a struggle?

A. That's correct.

Q. Nobody could tell you how the weapon got to the car, is that correct?

A. That's correct.

Q. Okay. All they could tell you is what they saw, is that correct?

A. Yes, sir, and heard.

Q. Okay. Okay. And this might be redundant, and these are my last couple of questions so I want to be clear. So, if they didn't see him with the gun that means they couldn't see him get out of the car with one, is that correct?

A. Repeat that?

Q. If they did not see him with a gun that would mean they did not see him get out of the car with a gun, is that

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correct?
A. You probably can conclude that.
Q. Okay. Okay. All of the testimony was, they didn't see him, is that correct?
A. That's correct.
Q. So, it wouldn't be a conclusion, it would be a fact, wouldn't it?
A. I can't say it would be a fact because someone didn't see or did see, but it would be more, I guess, believable that they did not saw him with a gun.
Q. Okay. But anything else would be an assumption or speculation, wouldn't it?
A. Yes.
Q. Okay. And we don't deal in assumption and speculation, - - -
A. No, sir.
Q. --- we deal in fact, don't we?
A. Absolutely.
Q. And the facts are, nobody saw him with a gun, is that correct?
A. Based on the information they testified to, that's correct.
MR. JOHNSON: Your Honor, one second, please.
Q. Agent Johnson, you and I been knowing each other a long time. The question I'm about to ask you now is my way of

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presenting an example, no disrespect is meant. Did you bring your -- I'll do it this way, is there a distinct difference in a revolver and a semi-automatic?

A. Yes, a distinct difference. One has a cylinder and generally discharges five to six rounds as you pull the trigger.

Q. Okay. Alright, now, it's my understanding that if you have a semi-automatic like a nine millimeter or something, when you shoot it the shell pops out, is that correct?

A. Yes, it would project it out.

Q. Okay. And a semi-automatic means you can either do one shot or you can pull the trigger and it can - - -

A. No.

Q. Okay. Tell me what it means.

A. You're saying a semi-automatic you can do that?

Q. Yes, sir.

A. Alright. A revolver, when you pull the trigger nothing kicks out.

Q. I understand that, but I'm asking, with a semi-automatic when you pull the trigger, won't -- you can either pull it and it will, one shell will pop out at a time, or you could squeeze it and it will be a continual pop out?

A. No, if you squeeze it and there's a continual pop out, that's an automatic.

Q. Okay. Then I'm corrected.

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A. Yeah.
Q. Well, then, an automatic then, and a nine millimeter would be considered an automatic?
A. A semi.
Q. A semi? So, you mean to tell me with a nine millimeter I can't keep pulling the trigger and it keep popping out?
A. Yeah, you can keep pulling the trigger.
Q. Okay. So, that means when you pull it, it pops out with the nine millimeter?
A. Yes.
Q. But with a revolver it's different, isn't that correct?
A. That's correct.
Q. With a revolver you will pull it but it stays in the cylinder?
A. That's correct.
Q. Okay. And so, if it stays in the cylinder with the revolver then you wouldn't have been able to find it in the car, is that correct?
A. You wouldn't be able to find a casing in the car.
Q. Okay. What did you, so what did you find in the car?
A. From Detective Dustin's information at the initial investigation he found a projectile, which is what came out of the casing that entered the victim and exited the victim, and that was found, if I'm not mistaken, in the car.
Q. No, if I'm correct that was found, not in the car, it was

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found outside of the car on the ground, wasn't it?
A. I'd have to look back at his report then and confirm that, but I know it was found in, adjacent with the car. Actually, right, approximately, I think, eight inches I think he said from the car.
Q. I think he said Eighteen but either Eight or Eighteen, it will be found.
A. Eighteen inches, right, yeah.
Q. It will be found. So, it wasn't found in the car either?
A. Absolutely.
Q. Okay. Now, all of the testimony you received in this case was testimony you got from somebody else, is that correct?
A. That's correct.
Q. Okay. And you witnessed none of this yourself, is that correct?
A. That's correct.
Q. So, so the only thing that you are testifying to the jury today is what the other people who were at the scene told you, is that correct?
A. That's correct.
Q. Okay. So, the people that were there, their testimony would probably be the most reliable testimony, is that correct?
A. That's correct.
Q. And the most reliable testimony said that they didn't see

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Julian with a gun, is that correct?

A. Yes, sir.

MR. JOHNSON: Thank you, sir.

THE COURT: Anything on redirect?

SOLICITOR SORENSON: Just a couple of things, Your Honor.

THE COURT: Okay.

(NOTE: Blank lines on this page do not indicate any part of record has been omitted. Headers on testimony pages and hard page breaks between testimony are now required by the Court. See next ensuing page for sequential continuation of record.)

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RICHARD JOHNSON - REDIRECT EXAMINATION

BY SOLICITOR SORENSON:

Q. And obviously, I mean, the jury has heard all the testimony, I mean, nobody has come in here and said they saw anybody with a gun that night, is that correct?

A. That's correct.

Q. And the fact of the matter is, is that Jonathan Bailey was shot and died as a result of a gun shot wound, is that correct?

A. That's correct.

Q. Just to sort of clear something up, State's Exhibit Number Twenty-one is what was testified to that Dustin Johnson found kind of right outside the vehicle?

A. That's correct.

Q. Alright. That is a bullet, is that correct, - - -

A. Yes.

Q. --- or a projectile, and that's not a shell casing when we're talking about shell casings?

A. Can I see it?

Q. Yes, sir.

A. Yes, that's a bullet, a projectile.

Q. Okay. And no matter what type of gun you're firing, whether it's a revolver or a semi-automatic or a fully automatic gun, I mean, this is what comes out of the end of the gun when you pull the trigger if it's loaded, is that

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correct?
A. Absolutely.
Q. Okay. He was asking you about shell casings, that's not what we're talking about, is that correct?
A. That's correct.
Q. Alright. And yet again, with a revolver, if you had a revolver, which is what this was fired by according to the firearms report, right?
A. That's correct.
Q. You would not expect to find a shell casing anywhere at the scene?
A. Absolutely.
Q. Unless somebody had taken it out of the revolver and left it there, is that correct?
A. That's correct.
Q. When Mr. Johnson asked you about, you did have one gun that was recovered, is that correct?
A. That's correct.
Q. Alright. And I believe you had testified that the results of that came back and it was inconclusive?
A. Yes, sir.
Q. In other words, your firearms department couldn't say if it was involved or not?
A. That's correct.
Q. It could be, it could not be?

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A. Absolutely.
Q. And obviously, if we can't say it is, I mean, that's not something we were presenting, but he asked you about it?
A. Absolutely.
Q. Alright. Who was that gun recovered by that was inconclusive as to whether it fired this bullet or not?
A. Julian Young's brother.
Q. And was that a type of gun that was on the list of guns that you were provided initially that could have fired this bullet?
A. Yes, sir.
Q. Of course, by the time you were searching Mr. Young's apartment, I mean, it's over a month later, is that correct?
A. Approximately, yes, sir.
Q. Do you have a gun on you today?
A. Yes, sir.
Q. Do you have your gun? Where is it? Can you stand up? Obviously, when you came walking in I couldn't see that you had a gun, I didn't know if you had it or not, is that correct?
A. I just kind of keep it pushed to the back a little bit.
SOLICITOR SORENSON: Okay, fine. Thank you.
THE COURT: Anything on recross?
MR. JOHNSON: Yes, sir.
THE COURT: Okay.

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RICHARD JOHNSON - RECROSS-EXAMINATION

BY MR. JOHNSON:

Q. The reason you checked the gun was because it was of the style that they found, so you wanted to check it out to verify whether it was the gun or not, is that correct?

A. Yes, sir.

Q. Okay. Okay. And I'm pretty sure, Officer Johnson, you're dressed pretty good, you're in a nice suit, and I'm pretty sure they wasn't dressed in suits that night, and I'm pretty sure they didn't have on coats and ties. With your gun, you dress so nobody can't really see your gun, is that correct?

A. Yes, sir.

Q. Okay. And I'm pretty sure they didn't, they don't dress the same way you do, they wasn't dressed that night the same way you're dressed now, is that correct?

A. I would have -- I can't say that.

Q. You can't say that, but on a hot summer night, I think this was May, I don't think hanging around, I don't think they'd be walking around with a suit, with a gun in a case, you don't think so, would you?

A. Well, it sounds like you're asking me to make an assumption. If I did then ...

Q. You know, I believe I did.

A. Yeah. I mean, kids at that age or even, I guess mid-

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twenties, wear a lot of baggy clothes and it makes it difficult to see anything of what they're carrying. So, I just can't, I guess I can't clearly answer your question like that.

Q. Touche, you got that in, I like that. But since you say you don't know what they had, but the one fact we do know is, nobody saw him with one?

A. Yes, sir.

MR. JOHNSON: Thank you.

THE COURT: Alright. May he be excused?

MR. JOHNSON: I have no objection.

SOLICITOR SORENSON: Yes, sir.

THE COURT: Alright, you can step down. Thank you, sir. Alright, next witness from the State.

SOLICITOR SORENSON: Your Honor, at this time the State would rest.

THE COURT: Alright, Ladies and Gentlemen, the State has rested their case. That means I've got some matters I've got to take up outside the presence of the jury. When we come back we'll find out, we will get started with the Defense's part of this case. Right now we're going to take about a Ten minute break, or probably about Fifteen minute break. Remember, you've only heard one part of the case, you can't begin talking about any testimony. Okay? Y'all go back into the jury room and I'll get y'all back out as soon as I can.

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Thanks.

(Whereupon, the jury retires to the jury room and the following takes place out of the presence of the jury.)

THE COURT: Anything from the Defense?

MR. JOHNSON: Of course, at this time I'd like to ...

THE COURT: Alright. Do you want to talk about the charge?

MR. JOHNSON: No, sir, I was going to move for a directed verdict.

THE COURT: Oh, okay.

SOLICITOR SORENSON: This is dealing with the jury instructions, is that what you're making it on?

MR. JOHNSON: Yes, sir, yes, sir. I meant to give both of y'all one.

THE COURT: You've got it. I just, I thought. Okay. I'm ready for your directed verdict motion.

MR. JOHNSON: I'd move for a directed verdict based upon the fact that looking at it in the light most favorable for my client there is no testimony of malice, implied or express. All of the people in the car testified, everybody testified that they didn't go there for a robbery, they didn't know Julian had a gun, that all of the testimony we have, that Julian didn't have a gun. There is nothing to show express or

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implied malice aforethought in this case. So based upon the fact that the element of malice has not been met -- and another thing, Your Honor, how do you show an unlawful killing when you can't show who did it? I mean, there's no testimony, he can't kill somebody with a gun that he did not have, all of the testimony is that he did not have a gun. There's no testimony that he had a gun, so there is no malice, no testimony of him having a gun, and the State's allegation is that he was killed by a gun. So, based upon those two, I would move that the Court should grant a directed verdict on this issue, because they have not proved every element of this crime.

THE COURT: Alright, thank you, sir. Alright, anything you want to say, Mr. Sorenson?

SOLICITOR SORENSON: Just very briefly, Your Honor. The first thing I'd start with is, I think Mr. Johnson is a little confused and is applying the wrong standard at this point in time. I think, Your Honor, when you're considering a directed verdict motion you're looking at in the light of the evidence most favorable to the State, the non-moving party. So, that's kind of the first thing I'd like to mention.

MR. JOHNSON: That's correct, I said it wrong, he's absolutely right to point that out.

SOLICITOR SORENSON: And Your Honor, I would point out that, I mean, you know, the witnesses, I think he's twisting

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also a little bit what they're saying. These witnesses are not, none of them have said the defendant didn't have a gun, they have all said they didn't see the defendant with a gun. You know, there's not been any testimony that anybody, you know, did a strip search on Mr. Young that night, and you heard just kind of the last comment out of Agent Johnson, I mean, that, you know, baggy clothes, I mean, he wasn't wearing baggy clothes and you couldn't see that the had a gun on him. But Your Honor, when you look at the evidence in the light most favorable to the State you have three different witnesses that have testified, Ricky Gipson, Ray Anthony Alston, and Maurice Thompson, that they all saw this defendant hanging out of the passenger side of the victim's vehicle when he put it in reverse and started to back up, and they all heard a bang. They described it in various different ways but you know, at least one of them's first comment when he got in the car with the defendant afterwards was, asking him if he had shot that guy. So, I submit to you that it's three people that put the defendant, I submit, as being the only person that was in a position to have shot the victim. And if you listen, look back at Dr. Rose's testimony, the victim was shot in the right side, exiting the left side, consistent with being shot from the passenger side of the vehicle. And then just to kind of corroborate that you have, you know, damage to the arm rest, the driver side arm rest where it appears to be an indentation

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of what appears to be a little bit of blood, and then, I submit to you, a bullet that has fallen out, basically when they have opened the door to remove Jonathan Bailey from that vehicle, that that bullet fell out, yet again consistent with him being shot from somebody in the passenger side of that vehicle. Because there's no, you know, windows weren't damaged, there wasn't one shot through the door or a window. So I submit to you, when you look at all that in the light most favorable to the State, I submit to you that it is clearly enough evidence that this defendant is the individual that, that pulled the trigger. You know murders happen all the time that there are no eye witnesses to, so obviously, there's nobody that saw the person with the gun but that doesn't mean he didn't have a gun.

So, the only other thing you'd be looking at is whether we've proven malice. And Your Honor, at this point in time, I mean, I think the evidence is that there was a struggle, which I submit to you that the evidence on the scene corroborates the fact that this defendant basically was trying to steal from this guy, either trying to take his marijuana and/or money, and when the victim, you know, resisted and attempted to put that car in reverse to get away from there, that he was shot. And I submit to you that from that right there you can infer malice. And at this point in time I think you're, I mean, if nothing else is presented I

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think part of Your Honor's charge to the jury would be that you can infer malice from the use of a deadly weapon, because there's been no evidence that this was, you know, self-defense, or an accident, or somehow a lesser offense than murder. So, I think part of the jury charge at this point in time would be that they could infer malice from the use of a deadly weapon. So, I mean, that would be our argument that we'd ask you to respectfully deny this motion at this time.

THE COURT: Alright, Mr. Johnson.

MR. JOHNSON: For the purpose of making the record perfectly clear, - - -

THE COURT: Yes, sir.

MR. JOHNSON: --- Number One, there's a case, State versus Miller And I think Miller is almost on point with this. It's not a Supreme Court case but it is a Court of Appeals case, and I think it addresses this issue. I would ask the Court to read Miller, consider the holding of Miller., Your Honor. And the second thing it is, here's the thing that concerns me, Your Honor, is, to get to the point, to make the leap that Julian had the gun and did the3 shooting we've got to infer that, and make a decision, or draw a conclusion that the other person in the car didn't have the gun. I mean, to me you can draw the inference either way. And Your Honor, we choose, and we believe that he didn't, but that's an

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inference, that's not a fact. And what that does is, it shifts to us, in a sense, it shifts to us a burden. We don't have to prove where it came from or who had it, all we've got to do is prove we didn't have it. So, I think it also shifts the burden to us, and I think that's why it's proof beyond a reasonable doubt. They have to prove not only that the gun was there but who had the gun, who did the shooting. That's what we're doing, that's just my argument for the record, Your Honor.

THE COURT: And it's also your argument for the jury.

MR. JOHNSON: Yes, sir, yes, sir. But I want to put that on the record.

THE COURT: Yes, sir.

MR. JOHNSON: So, it's burden shifting and the coroner said, I mean, the pathologist said it was unspecified. She said it could be consistent with, not that it was consistent with, and there's no testimony about -- there was testimony that the bullet and lots of blood was there, not how long they were there, not who put them there. So, we've got a lot of inferences that we're drawing, and I just want that on the record, Your Honor, it just depends on how you rule, I just want that on the record.

THE COURT: Yes, sir, alright, thank you, Mr. Johnson.

MR. JOHNSON: Thank you.

THE COURT: Thank you. Alright, Mr. Johnson, I'm going

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to deny your motion for a directed verdict. I think there is evidence in the record from which a jury could, a reasonable jury could conclude that Mr. Young shot the victim. Additionally, I think the argument over -- I have read the Miller case. I think the argument about whether or not to charge malice may be a little premature. I will tell you that my charge of malice includes the fact that malice is the intentional doing of a wrongful act without just cause or excuse with the intent to inflict an injury under circumstances that the law will infer evil intent. Malice also may be inferred from conduct showing a total disregard of human life. That doesn't even get into your argument about the gun. So, I think there has been evidence so far that would indicate that a reasonable jury could find malice. But I'm going to not rule on that, depending on what else happens in this case. Okay?

MR. JOHNSON: Yes, sir.

THE COURT: Alright, anything else at this time?

MR. JOHNSON: No, sir.

THE COURT: Alright. Are you going to need a few more minutes?

MR. JOHNSON: Yes, sir.

THE COURT: About how many minutes are you going to need to talk with your client and family and like that, so you can get back with me?

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MR. JOHNSON: Your Honor, I would say about Fifteen minutes. I just need permission for him to be able to talk to the family.

THE COURT: Alright. I'm going to tell the bailiff to tell the jury that we'll be back out at about three:thirty. Okay? That will give you Fifteen minutes.

MR. JOHNSON: Yes, sir.

THE COURT: Okay. And Deputy Asbury, if y'all will just make whatever arrangements y'all can so that you can accommodate Mr. Johnson, Mr. Young and a family member to talk with him, I'd appreciate it.

DEPUTY ASBURY: One family member?

THE COURT: Well, unless -- Mr. Johnson, do you need ...

MR. JOHNSON: Your Honor, I would at least need his mother, his grandmother and his aunt, at least.

THE COURT: Okay. Alright. I'll allow that. Okay? Thank you, sir.

Alright, we're going to be in recess. Would you let the jury know it's going to be about three:thirty before we get back in. Get them some drinks, snacks, whatever.

BAILIFF: Yes, sir.

THE COURT: Appreciate it.

(Recess)

THE COURT: Alright, Mr. Young, would you stand up again, please, sir?

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JULIAN YOUNG - IN CAMERA EXAMINATION

BY THE COURT:

Q. Mr. Young, you know you're still under oath?

A. Yes.

Q. Okay. Mr. Young, before the State put up their last witness I advised you of your right to testify and put up a defense, is that correct?

A. Yes, sir.

Q. Okay. And then afterwards, we have now taken a break. I know you met with your attorney and your family members?

A. Yes, sir.

Q. Okay. And you've talked about whether or not you're going to testify, is that correct?

A. Yes, sir.

Q. Okay. Now, after listening to, and talking with both of your attorneys and all the family members that you need to talk to, have you, have you, yourself - - -

A. Yes, sir.

Q. --- made a decision about whether or not you wish to testify in this case?

A. I don't want to, no, sir.

Q. Okay. And this is, you've made that decision freely?

A. It's my decision, sir.

Q. It's your decision?

A. Yes, sir.

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Q. You know that?
A. Yes, sir.
Q. Okay. You understand that I will instruct the jury that they can't consider that in any way whatsoever?
A. Yes, sir.
Q. But you have chosen not -- you have decided not to testify, is that correct?
A. Yes, sir.
Q. And nobody has forced you to make that decision?
A. Nobody has forced me to.

THE COURT: Okay. Alright, thank you, Mr. Young.

Alright, what I'm going to do now is, we'll bring the jury back o ut. Mr. Johnson, then, it's my understanding you're not putting up any defense, is that correct?

MR. JOHNSON: No, sir.

THE COURT: So, you're going to rest in front of the jury, and then what I will do is, I will excuse them and tell them to come back tomorrow morning at Nine:thirty.

MR. JOHNSON: Yes, sir.

THE COURT: And we'll do the closing arguments and my charge. Okay?

MR. JOHNSON: Yes, sir.

THE COURT: Alright, thank you, sir. Bring the jury back in.

(Whereupon, the jury enters

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the courtroom.)

THE COURT: Alright, Ladies and Gentlemen, I thank you for your patience. We're now ready to go forward with the Defense portion of the trial.

Mr. Johnson.

MR. JOHNSON: Your Honor, may it please the Court, the Defense rests.

THE COURT: Alright, thank you, sir.

Alright, Ladies and Gentlemen, the Defense has rested. It is now three:thirty in the afternoon. The next phase of the trial is the closing arguments, my charge of the law to you, and what we're going to do, because we have some matters again that we need to take up before we can begin that, since it's late in the afternoon I'm going to ask y'all to come back tomorrow morning at nine:thirty. Okay?

Now, you've heard all of the testimony in this case. Again, you have not heard the closing arguments of counsel nor have you heard the charge on the law. And once again, I'm going to remind you, you cannot talk about this case to anyone or even among yourselves. You can't do any investigation or read anything or listen to anything about this case. Alright? Y'all are now excused, I'll see y'all tomorrow morning at nine:thirty. Thank you very much.

(Whereupon, the jury leaves the courtroom for the day and

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the following takes place out of the presence of the jury.)

THE COURT: Anything for the record before we break, Mr. Sorenson?

SOLICITOR SORENSON: I don't think so.

THE COURT: Mr. Johnson?

SOLICITOR SORENSON: We may need to talk a little bit about your charge, I guess.

THE COURT: What we'll do is, let's go back in there and we'll talk about that.

SOLICITOR BELL: He needs to renew his motion.

THE COURT: Alright. As soon as y'all finish getting your stuff together if y'all will come back in chambers ...

SOLICITOR SORENSON: You need to just officially renew your motion now.

THE COURT: Oh, yeah, I'm sorry, that's correct, I'm sorry.

MR. JOHNSON: Okay. I renew my directed motion for all of the above issues, Your Honor, and the issues that are in the Brief that I handed you up, based upon all of that.

THE COURT: Alright, again, for the reasons I mentioned earlier, I'm denying your motion for a directed verdict, and as I indicated, the, since nothing has changed, I will look at this and we'll talk about what I'm going to charge with that back in chambers, and we'll come back and put that on the

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record. Okay? Alright, thank y'all.

(Recess)

THE COURT: Ms. Harry Dot, we have gone back in chambers to go over the charge, and I have gone over my charges with the attorneys. It appears from my reading or my take on the evidence, I'm not going to be charging voluntary or involuntary manslaughter as lesser included offenses.

The State has requested that I make the standard charge for malice, common law or inference that malice may be, may arise when a deed is done with a deadly weapon. The Defense, Mr. Johnson, has objected to that charge, and referred me both to the Belcher case and to the Miller case which was a Court of Appeals Decision. In my review of the Miller case which is the most recent it appeared that there was some testimony by the State's witnesses that would mitigate the charge of murder in the Miller case. I do not find them in this case; however, Mr. Johnson takes exception to that, and I'm noting his objection in the record. And anything else, Mr. Johnson, you want to add to that?

MR. JOHNSON: Your Honor, I don't want to add anything, you have been kind enough to -- I just want to add that my argument is the argument in the Brief that I handed up.

THE COURT: Well, what we'll do is, Mr. Johnson, just preserve that, your defendant's trial be for exclusion of evidence of statement -- wait a minute, that's not it. Hold

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on. It's the one that you gave me concerning malice.

MR. JOHNSON: If you want to read that caption.

THE COURT: Oh, I'm sorry, thank you, sir. Defendant's Trial Be On the Issue of Implied Malice Jury Instruction.

MR. JOHNSON: That's right.

THE COURT: Yes, sir, I will mark -- if you have an extra copy we'll mark that as Court's Exhibit Number Three so that objection to my ruling will also be preserved along with all the points that you made.

MR. JOHNSON: Your Honor, that's all I have.

THE COURT: Okay.

MR. JOHNSON: Thank you, and we'll be here in the morning.

THE COURT: Okay. See y'all at nine:thirty.

COURT REPORTER: So, what do I ...

THE COURT: Huh?

COURT REPORTER: Where is Court's Three? Will you give that to me tomorrow?

MR. WILLIAMS: Yeah, we've got highlights on this one.

THE COURT: Oh, I've got one back here, I'll get it. Okay, wait right there, I'll get it for you.

COURT REPORTER: Alright, sir.

THE COURT: Here we go. That's okay, I've got it right here, Mr. Williams. Okay? Thank you. Ms. Harry Dot, here it is, that's Court's Three.

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(Court's Exhibit Three
marked and filed.)
(Recess for the day)
DATE:
AUGUST 16, 2012

THE COURT: Is the State ready to go?

SOLICITOR SORENSON: Yes, sir.

THE COURT: Alright. Where is Mr. Williams?

MR. JOHNSON: He was right here a moment ago, I think he just went in the hall.

THE COURT: Alright. Is the Defense ready?

MR. JOHNSON: Yes, sir.

THE COURT: Okay. Is the jury here?

BAILIFF: Yes, sir.

THE COURT: Alright, bring them on out.

MR. JOHNSON: Your Honor, he's going to try to go get Mr. Williams, he's in the hall.

(Whereupon, the jury
enters the courtroom.)

THE COURT: Good morning, Ladies and Gentlemen, thank y'all. Y'all have been very attentive during the trial, and I appreciate that. We are now getting ready to get down to the final parts of the trial. What we're -- we've got -- both attorneys are going to give you closing statements and then I'm going to charge you with the law. After I charge you with

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the law I'm going to excuse you to go back into the jury room. You will not begin your deliberations at that time because I've got to go over my charges then with the attorneys, and make sure I didn't mis-speak, leave something out, or have to correct a charge. If I have to do that I will bring you back out, correct the charge and then send you back into the jury room. If, however, everything goes fine I will send the evidence back into the jury room with you along with the verdict form, and the bailiff will tell you to begin your deliberations at that time. But again, until you are told to begin your deliberations you cannot begin talking about this case.

Now, as I told you, we're getting ready to get the closing arguments of the attorneys. Remember, that's not evidence but you need to pay attention to their closing arguments. They're going to be talking about the evidence that you have heard in this case, so if you would give them your close and undivided attention I'd appreciate it.

Alright, Mr. Sorenson.

SOLICITOR SORENSON: Thank you, may it please the Court.

THE COURT: yes, sir.

CLOSING ARGUMENT BY SOLICITOR SORENSON:

Good morning, Mr. Foreman, and Ladies and Gentlemen of the jury. No doubt about it, back in April of Two thousand eleven Jonathan Bailey was selling marijuana. Even worse, he

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was selling out of one of our college campuses, it's no doubt about that. He was young, he was stupid, I submit to you, that lure of an easy buck pulled him in. But unfortunately, he paid the ultimate price for those decisions that he made back in Two thousand eleven. Nobody condones those actions, his family I'm sure are not proud of those actions. Ladies and Gentlemen, I submit to you, those actions ultimately are tragically the reason why we're here today.

I keep flashing back when I was going over and kind of outlining my closing last night, Mr. Bell's kind of opening statement, the opening kind of quote he gave to you in his opening statement, it's, greed with a window of opportunity sometimes leads to bad results. Greed with a window of opportunity sometimes leads to bad results, and in this case deadly, fatal, tragic results. Now, at first blush you might think -- look at that and think that we're talking about, talking about Jonathan Bailey, but that's not the case, Ladies and Gentlemen. What we're talking about is that man right there's greed, that man right there, seeing a window of opportunity on the night of April Fifteenth, Two thousand eleven, when he thought he could get away with snatching this money, snatching this marijuana that led to those fatal results in pulling that trigger as Jonathan Bailey tried to get away from him in that parking lot on Baldwin Street.

Before I forget, let me start by this. Just as His Honor

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said, the first thing he said to you when you came out here this morning, I, too, want to echo that, I want to thank you, not only on behalf of the citizens of Orangeburg County, State of South Carolina, the family and friends of Jonathan Bailey, not only for your time, because I know you basically you didn't have any choice in the matter when you came here on Tuesday once you got picked. I mean, basically, it's nothing you can do about that. So, not only for your time, but more importantly and most importantly for your attention. The attention that I've seen you give this matter over the last several days. We've had a chance to sit and observe you, you've been on time, we haven't had to wait for you, if anything you've had to wait for us sometimes, but for that attention that I'm sure you going to continue to give this matter, not only this morning to myself, to Mr. Johnson, and to Judge Dickson when he charges you on the law, but most importantly when you get back into that jury deliberation room. You've had to sit here quietly for the last couple of days and you haven't gotten to ask question, haven't gotten to say anything, and you were reminded that every time you leave the courtroom that, you know, you can't go talk about the case. But in a little while you're going to have that opportunity, and I know that you're going to give it the attention that everyone in this courtroom deserves, not only the family of Jonathan Bailey but also the defendant and his

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family.

Alright, so what's going to happen now? Alright, as His Honor told you, I have an opportunity to come before you and give you my closing argument. Alright? And I'm going to take a few minutes initially and go over a little bit, kind of a little bit of the law in the case. I'm going to talk to you a little bit about the charge of murder and what we have to prove to you before, before you can convict Mr. Young of that, and I'm going to talk to you about a couple of other kind of legal principles that kind of go along with that. And then I'm going to talk to you a little bit about the facts which you've heard from this witness stand over the last two days which I submit to you proves beyond all doubt that Julian Young shot and killed, murdered Jonathan Bailey back on April Fifteenth of last year.

Like I said, the first thing I want to talk to you about is the charge. And as you are aware by now, Mr. Young was indicted by the Orangeburg County Grand Jury, he was charged back in May of last year, indicted for murder. Murder, while it's the most serious charge we have on our law books, probably has the simplest and shortest definition of any one of them. Very simply, murder is the unlawful killing of any person with malice aforethought, either express or implied. The unlawful killing of another person with malice aforethought, either express or implied. And I want to take

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a minute and kind of talk to you about what some of those terms mean.

The first one I want to talk to you about is the first one that kind of comes up on there is malice. And His Honor is going to charge you, and this comes in his charge, what he's going to tell you what malice is. Malice is hatred or ill will or hostility towards another person. It's the intentional doing of a wrongful act without just cause or excuse. In other words, you're not defending yourself, so you don't have just cause to do it, with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

If you remember back here at the very end of this it says that that malice could be either express or implied. And I think Mr. Bell touched on this briefly in his opening Tuesday. Express malice is if somebody comes up to somebody and says, I'm going to kill you, pulls out a gun and shoots them. I mean, that's obvious, that's express malice. They're expressing their hatred, their ill will, their hostility towards another person. Sometimes you have a situation where somebody, you know, will lie in wait for somebody, you know, they will stake out an area and wait for somebody to come. So, if you have some sort of acts of preparation that lead up to it, that can be express malice, because they are basically showing us their evil intent, their hostility, their ill will

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towards another person.

Often, though, in, I'll say, the vast majority of the homicide cases you have, you don't have that, you don't have a witness that heard somebody say, I'm going to kill you, or something like that. So, obviously, you have to then look at the circumstances surrounding the incident to determine whether you, then, the jury, can infer malice from the defendant's actions and the circumstances surrounding the killing. And malice, as it says here, may be inferred from conduct showing a total disregard for human life. It can also be, arise when the deed is done with a deadly weapon. The fact that Julian Young, I submit, pulled out a hand gun and shot and killed Jonathan Bailey without just cause or excuse, you can infer malice and find him guilty of murder. The fact that, I submit to you, the evidence is going to show that he was trying to steal from Mr. Bailey, trying to swipe it that led to that tussle that ultimately led to Mr. Bailey's death, you can infer from that conduct that he had malice at the time he pulled that trigger.

And the other part of that, Ladies and Gentlemen, on here is, murder is the unlawful killing of a person with malice aforethought. The word, aforethought, essentially, all that means is, at the time that fatal blow was struck, at the time that trigger was pulled, that malice had to have existed at that point in time. If you will notice, nowhere in that

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definition does it say we have to prove premeditation, nowhere in there does it say we have to prove some sort of planning. You've probably heard on T.V. before on shows where they talk about premeditated murder. We don't have that here in South Carolina. What our law requires very simply, is that malice existed at the time that that fatal blow was struck. So, if you find, Ladies and Gentlemen, that these four guys went there to buy marijuana that night, and there had been no plan and no thought of anybody dying prior to that, of trying to rob or trying to steal anything from Mr. Bailey, but when that window of opportunity opened, when Mr. Alston decided he didn't want this marijuana and walked away, that he got greedy and decided he was going to take it and ultimately pulled out a gun and shot Mr. Bailey when Mr. Bailey was justified in trying at that point in time to get away from him by putting his car into reverse, Ladies and Gentlemen, that's murder under our law, and under these facts.

Now, the next, the next thing I want to talk to you about is, you've heard, and this is something I'm sure you've heard thousands of times in the past. In our courts and every criminal court in South Carolina, all the way down to simple Magistrate's Court or a Town Court somewhere, all the way up to the highest, highest court in any state in our country, the burden of proof in a criminal case is always on the State, it's always on the prosecution, and that's how it should be.

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A person shouldn't have to come into Court and prove themselves not guilty. And that's a burden that we welcome, that we welcome. And the burden in this case, just like it is in every other criminal case, is that we have to prove to you beyond a reasonable doubt. Notice, I didn't say beyond any doubt, I didn't say beyond the shadow of a doubt, it's beyond a reasonable doubt, the defendant's guilt. We have to do that before you can find him guilty. Very simply, what that means, Ladies and Gentlemen, is after you've heard all of the evidence, which you have at this point in time, when you get back into that jury room and start looking over it and judging it and weighing it, if you're firmly convinced at that point in time of Julian Young's guilt, under your oath you have a duty to find him guilty. Okay? By the same token, when you look at it and you think there's a real possibility that he's not guilty, then I submit to you, under your oath, you must find him not guilty. Alright? That's the burden of proof, it's very simple. Okay?

And I guess the last kind of legal kind of thing that I want to talk to you about that His Honor is going to charge about, there's basically two types of evidence that comes into a court, okay, that you're going to have to consider when you get back into your jury room. There's direct evidence and there's circumstantial evidence. And this is a case that has both of them. It's a case to you that I'm going to show you

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as I start talking about the facts to you, circumstantial evidence is pretty important in this case. So, I want to take a couple of minutes and kind fo explain to y'all what those are just so you'll have that in your mind as you're listening to the rest of our arguments this morning.

Direct evidence is very simply something a witness observed with their senses, what you saw, what you heard, what you felt, what you smelled, something you observed with one of your senses. Examples of that in this case is, you know, Ricky Gipson, Ray Alston, Maurice Thompson, you know, observing Julian Young hanging out of the passenger side of the vehicle, and hearing the pow, or the bang or the gun shot that they all heard. Okay? Those are examples of direct evidence, something that somebody perceived with their senses.

On the other hand, there's something called circumstantial evidence. What circumstantial evidence is is when you have facts such as those facts, and you take a series of those facts and when you put them together they ultimately prove another fact. Okay? And that's -- the law gives it, I mean, the same weight between direct and circumstantial evidence. An example I want to give to you about that, let's say you go home, say kind of to cool things off a little bit, put ourselves in the wintertime here. You go home one night after work and it's kind of cloudy out, kind of overcast, kind of blustery, kind of cold in the air, the middle of January,

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let's say. Alright? You look at the weather forecast and they're talking about a chance of snow tonight. Okay? Excited, maybe you don't have to go to work tomorrow. It still hasn't started doing anything outside. Okay? The temperature's dropping, it's gotten down into, let's say, the low twenties, high teens, and you ultimately go to bed. It's still not doing anything outside but it's gotten cloudy, and it looks like it's going to storm. You get up the next morning and look out your window, there's a winter wonderland outside. Trees are covered with snow, the ground is covered with snow, the house is covered with snow, the car is covered with snow. And if I came in and asked you then, did it snow, and you have no direct evidence that it snowed, you didn't see it snow, you didn't hear it snow, you didn't feel it snow, you didn't taste it snow, you didn't perceive that with your senses, but obviously, from those chain of factors leading up to what you ultimately observed the next morning, there's no doubt in your mind that it snowed overnight, there's no doubt about it. I submit to you, Ladies and Gentlemen, that's what this case is about, it's about a chain of facts that you're going to hear, that I'm going to talk to you about, about the fact of a young man hanging out the side of a passenger vehicle, about the fact of a young man tussling, struggling with the driver of that vehicle, the fact that drugs and money are found outside that vehicle, the fact that drugs and money

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are found on the floor board and basically where they would have gotten closed when the door closed in there, the fact that three witnesses heard a pow or a gunshot as that person is hanging out that passenger side door of that vehicle, and the victim was shot on the right side right where the driver would be shot if somebody shot him from the passenger side of the vehicle, the fact that one of the witnesses then, after he ducked down and looked back up and the defendant, Julian Young, is now standing basically out in the middle of the parking lot, the same spot that one of those bags of marijuana was found. And Mr. Johnson made a big deal, and I'm sure he's going to continue when he gets back up here this morning, made a big deal about the fact that nobody saw Julian Young with a gun, nobody saw him pull the trigger, nobody saw the gun shot. But I submit to you, Ladies and Gentlemen, use your common sense, is there any doubt, just like is there any doubt that it snowed when you woke up that morning, is there any doubt in your mind that Jonathan Bailey was shot in his car on the night of April Fifteenth, Two thousand eleven? I submit to you, no. Is there any doubt in your mind when you look at that evidence and put those facts together that he did it? I submit to you, the answer is, no. The answer is no.

I want to talk to you about just a few minutes here, and part of this unfortunately, since we have the burden of proof and I have to get up here and go first. Mr. Johnson is then

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going to have an opportunity to get up here and argue, and I'm not going to have an opportunity to get back up and attempt to rebut anything he says, so a lot of it at this point in time I've got to do some kind of anticipating, trying to anticipate what I think he's going to get up here and argue to you. And the first thing I want to talk to you about, just as His Honor told you a few minutes ago, while all our arguments to you are important, they're not evidence. The evidence is what you've heard from this witness stand and these exhibits that have been introduced. Along those same lines, Ladies and Gentlemen, the questions we ask when we're questioning a witness, the questions are not evidence either. And the assertions that are made from those questions are not evidence. The evidence is the answers that are given from this witness stand. And a couple of those things, and the reason I bring that up, because I was kind of going over this last night, and came up with five or six different situations where Mr. Johnson was asking questions, and a lot of times he was asking them over and over, the same question over and over again and getting the same answer basically. But just because he asked the question a bunch of times doesn't suddenly make what he's saying the truth. The evidence is what comes from the witness on the witness stand. Okay? And a couple of examples of that, if you think back to the first witness that I called was Sergeant Williams, Sergeant Kendra Williams. And

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one of the things Mr. Johnson asked her on cross-examination was the fact that, you didn't write in your report that Mr. Bailey told you that he was in pain, or that he appeared to be in pain, with the implication being that she was making that up. You know, he handed her a report and she was kind of flipping through it, and she didn't see it initially where it was in there. So, I mean, her answer to him on cross-examination at that point was, no, I didn't put that there. So, obviously, the implication that he was going to argue to you was that she was making that up, you know, she didn't document that because if it was true she would have documented it. If you remember, when I got back up on redirect and handed her and pointed it to her, she had on there documented where she had written down that he was in a lot of pain. Okay? So, something like that, something just as simple as that.

Alright, the next example I kind of came up with, going through notes, was here when Ricky Gipson testified. You remember the young, the college kid that they had picked up. Alright, he said over and over again, you never told those SLED officers, and handed him his statement, and he was getting on him because he was having trouble reading it, because ultimately as we found out it wasn't in his handwriting, he wasn't the one that had written it, you never told them it had to be either Ray Alston or my client that

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shot him, you never told them that, did you, you're just saying that now for the first time today. And of course, he's reading through his statement, and it's not in there. So, of course, his answer to that has to be, I guess I didn't tell them that. But you know, Mr. Johnson failed to show him the same affidavit or photo affidavit that he filled out in his own handwriting that same day, on May Sixth of Two thousand eleven, where he told them in his own handwriting, this is one of the guys there, either it was him or the other man with him that shot Jon. He did tell them that, he said it. It's a minor, petty little point, but it's the kind of thing when he does it over and over and over again, just because he asks the question doesn't mean that it's true. Ultimately, the answers and the evidence that supports the answers are the facts that you need to consider.

And the last couple of things along those kind of, that kind of topic dealt with Agent Richard Johnson, when Agent Johnson testified yesterday. Alright, there's several things he asked him about. Remember, he asked him, asked him the question probably two or three times about whether he had information that Jonathan Bailey carried a gun for protection. Well, in hindsight I guess maybe he wishes he was carrying a gun for protection, because obviously April Fifteenth he needed it. Alright, Agent Johnson's answer every time was that he wasn't aware of that. Okay? I don't know, I don't

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have information to that fact. You know, he asked him over and over again, and I suspect he's going to get up here and argue and now argue to you in his closing that Jonathan Bailey had a gun, and I'm going to talk to you a little bit about that in a few minutes, and that somehow it was Jonathan Bailey's gun that he got shot with, I guess. I submit to you, there's no evidence of that, none whatsoever.

The same token, along the lines of the gun, you remember, I had Agent Johnson stand up, asked him if he was carrying a gun, had him stand up. Sure enough, he had a gun on his hip. Okay? Mr. Johnson gets back up on recross-examination and starts basically asking him about, I want to say the way he initially led up to it was, you know, this happened in May, during the heat of the summer, you know, nobody has been wearing a heavy coat. But yet again, this didn't happen in the heat of summer, I mean, it's the second week of April. It didn't happen in May when his question is, it happened two and half months before, or two months and a week before summer would even start. Use your common sense of what people's clothing, young people's clothing they wear. You know, people when they're wearing guns, you know, they don't wear them, it's not like the wild west where they're wearing them in a holster on their hips, you know, they're hiding them in clothes.

And the last thing kind of along this, dealing with Mr.

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Johnson's questions, you know, over and over again he's asking the question of these witnesses, you didn't see,-- never said, never told anybody and you're not saying here today that you saw my client with a gun? And that is true, none of those witnesses, Ricky Gipson, Ray Alston, Maurice Thompson, Hilliard Pinckney, none of them ever said, or said here in this courtroom that they saw Julian Young with a gun. But suddenly that turns into, he did not have a gun. Well, I submit to you, Ladies and Gentlemen, those are not the same thing. A witness coming in and saying, I didn't see somebody with a gun is not the same thing as, that person did not have a gun. And harping back to the same example with Richard Johnson, Agent Johnson, if I had never asked him to stand up and he had ultimately just left the witness stand, and at the end of that polled the Twelve of y'all and asked y'all, did you see Richard Johnson, Agent Richard Johnson with a gun? The truthful answer I suspect out of all Twelve of y'all would be, no, you didn't, unless one of y'all happened to have caught him when he turned the right way or something and saw it on his hip. Does that mean he didn't have a gun? Well, we know it doesn't because he showed us that he did. No different than what was going on that night out there. I submit to you, he's running around out there when they're getting checked into that gate at S. C. State, he's not sitting in the back seat with a gun on his waist in full view

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for that officer to see. Like I said, Ladies and Gentlemen, the evidence is what comes from this witness stand and the facts that you can reasonably infer from them, just like the fact that it snowed outside, the facts that you can reasonably infer from the evidence from the witness stand.

So, let's talk now about what was proven. And I'm going to start off with the first witness, Sergeant Kendra Williams. But more importantly, not only what she told us, but I submit to you, through her what Jonathan Bailey told us. What did he tell us happened back the night of April Fifteenth of Two thousand eleven, as he's sitting in the back of the ambulance after being removed from this car after crashing into this building? I submit to you, he knew he was dying at that point in time. You heard from the doctor what that bullet did. It started here, exited here and went through about every organ besides his heart that you have inside your body. It tore through his liver, his lung, kidney, his colon, I'm sure there was one or two more. What did he tell Sergeant Williams? He was over in Queens Village, which we know from the map, of course, they knew that already and that's why she was asking him that, because they knew that he had come out of there into here. He had been in Queen's Village, he had been robbed, and most significantly, Ladies and Gentlemen, when she asked him how many people, what does he do? He holds up four fingers, he holds up four fingers. He had been robbed by four people.

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Think about it, on the night of April Fifteenth of Two thousand eleven nobody had talked to Ricky Gipson, nobody had talked to Maurice Thompson, nobody had talked to Ray Anthony Alston, didn't have any idea who Gouda was, didn't have any idea who H.D. was. Sergeant Williams has no idea how many people were involved in this robbery. Jonathan Bailey told us, that's how we know that, I submit to you, it has credibility, corroborates the fact that he was, somebody had attempted to rob him. This isn't something that she's just making up, she's got no way to know, I mean, otherwise, I mean, most robberies don't involve four people. Okay? And in this case there were four people that Jonathan Bailey didn't know that showed up in that car, and I submit to you, that's why he told her that, four people. And, of course, we know all this is happening, you know, she testified that she responded, she got the call at Eleven:fourteen and was there at Eleven:twenty. We know from the gate log, you know, that they entered campus sometime between Eleven and Eleven:twenty. So, she's talking to him, I submit to you, within, you know, less than ten minutes of him getting shot, less than ten minutes of them attempting to rob him.

But what else do we have, Ladies and Gentlemen? You know, that little bit of information that he was able to give is basically corroborated by the two crime scenes that they find. You know, they go back over, they go back over, Officer

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Detective Johnson, Dustin Johnson goes back over to Baldwin Street, to that marriage housing, and what does he find there? You know, evidence, I would submit, corroborates what the victim says. I mean, you find a Fifty Dollar bill sitting in the parking lot in one of the parking spaces right near where you ultimately find out the victim's car would have been initially parked. You find another bag of marijuana in the same spot, and then another bag out in the middle of the parking lot. Tire tracks, and I'm going to get to that in a little while because that ultimately kind of corroborates what these other witnesses end up telling you. And then when they search his vehicle, you know, they find, you've got a bullet that I submit to you, is consistent with right where Dr. Rose said it would have gone, you know, out of his left side if he's sitting in the driver's seat of that vehicle. It's going to strike that arm rest, where there appeared to be a little bit of blood on the arm rest at the impact there. And if you think about it, where is that bullet going to go at that point in time? Basically, it's going to fall, you know, right inside of his door. It's got nowhere else to, I mean, once it impacts it's going to fall. And ultimately, what ends up happening to it? When they're dragging, getting him out of the vehicle, getting him into the ambulance it's ultimately found, I believe Eighteen inches he said from the vehicle.

But what else do we have in the vehicle? You know, we've

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got another bag of marijuana on the floor, we've got five Twenty Dollar bills strewn out on the floor. Two of them, and this ends up being, I think, I mean it's most significant, that's not somewhere where people keep money. I mean, that is obviously money that has fallen, I submit to you, during that struggle inside the vehicle, and then when he peals off and the car door closes, it closes on those two Twenty Dollar bills. Okay? A Fifty Dollar bill has fallen out already as he is backing up to attempt to get away from the person I submit to you is trying to rob him, Julian Young.

But where do we go from there? Alright, ultimately State Law Enforcement Division is called in that night, early morning. And their involvement at that point in time is, once it turns into a homicide, once Mr. Bailey passes away, SLED's called in. Alright. And you heard Agent Johnson testify that, you know, basically the investigation kind of went a couple of different angles to ultimately end up identifying the individuals that were involved. You had the victim's cell phone that they looked at, text messages that they ultimately were able to track back belonging to Ricky Gipson, where they saw where Mr. Gipson had been texting and calling with the victim throughout the day, throughout the evening, right around the time of the incident, and then some text messages right after the incident. And you heard Ricky Gipson, I mean, he testified that that was part of, I mean, when he ran away,

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you know, he attempted after that to contact multiple times Mr. Bailey and was never able to get a hold of him, and also the people that had called in about setting up the drug deal. So, they find Ricky Gipson, and they get Ricky Gipson's name that way.

While all that's going on they have these two prints off of the car, and they ultimately find this palm print here that gets matched up when they run it through their state data base to Ray Anthony Alston. Okay? So, now we have Mr. Alston and Mr. Gipson. And at that point in time they get Mr. Gipson in and that's when he, you know, give his statement, what he testified about and identifies Mr. Alston as being somebody involved, and that's not going to be somebody that just happened to have touched Mr. Bailey's car, you know, somewhere else. I mean, it's clearly, at that point in time they know that he's involved. May Fourteenth and May Sixteenth he gives two statements to SLED implicating himself as being involved in there, implicating him, Maurice Thompson and Hilliard Pinckney. Mr. Young is arrested, Mr. Thompson is arrested, and Mr. Pinckney is arrested over the next three days, Seventeenth, Eighteenth and Nineteenth.

So, let's talk about these witnesses. Alright, the first one is Ricky Gipson, alright, and we're going to try to take them kind of in the order they testified. Alright, Ricky Gipson. No doubt about it, back in April he was selling

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drugs, too, no doubt about it. And I imagine, Ladies and Gentlemen, and you saw it from him on the witness stand, you know, he's got a decent amount of guilt inside of him about what happened to Mr. Bailey. Let's face it, he's the one that brought these four guys over there that night. He's the one that met up with him earlier in the day, he's the one that was fielding the calls and setting up the deal that night, and he's the one that ultimately brought them to Mr. Bailey that night. And Mr. Johnson was asking him about that, and I'm sure he was expecting him to say no when he asked him about that. I think he was probably a little bit shocked when he said, yeah, I mean, I feel very responsible for that. And that's something that, you know, I guess they could have charged him with, you know, with selling marijuana or something, but you know, that's something what, his actions and what they led to that night are something that he's going to have to live with for the rest of his life. And hopefully, it's something that's going to change his life at this point in time, but only time will be able to tell that. Well, let's look at what, at Mr. Gipson's testimony. Alright, Mr. Johnson gets up there and attacks him, attacks him, and attacks him. He was jumping all over him, you know, basically, telling him he's guilty of murder, he's guilty of murder for setting up this drug deal that led to, led to a homicide. You know, so he wants you to basically convict Mr. Gipson of murder. But

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that kind of begs the fact, you know, if he's guilty of murder, then I don't see how there's any question at all about his guilt, I mean, any at all, the person that pulled the trigger, the person that was trying to steal from Mr. Bailey. Alright, but then he also jumps all over him about the fact that he had the gall basically to go talk to a lawyer after, you know, the cops talked to him that first time, and when they had got back with him he had contacted a lawyer. I submit to you, the very thing I submit to you Mr. Johnson, if Mr. Gipson had come to him, would have advised him to do is, you need a lawyer. Alright, but let's talk about what he says happened. Alright? You know, the fact of the matter is, I mean, he, I mean, Mr. Gipson, and Mr. Johnson wants to make him out to be this bad person, and as I said, I mean, nobody is condoning what he was doing that night, he was a drug dealer, and that's wrong. Alright, but he doesn't really say anything any different than his friends. I mean, it's not like Ricky Gipson is coming in here and saying, you know, I saw him with a gun, you know, I saw him shoot my friend. You know, it's no different than what Ray Anthony Alston told y'all, it's no different than what Maurice Thompson told y'all. And I'm going to get to Hilliard Pinckney in a second. Alright? I submit to you, he's telling you what he saw. and I submit to you, if he knew he had a gun he wouldn't have been taking them over there to buy weed from his friend. Alright,

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but what does Ricky Gipson tell us? You know, earlier in the day he had gotten contacted and ultimately met up with some guys over on the campus that were looking for, looking for some marijuana, and it was more than he had. And he at that point in time attempted to get them up with Mr. Bailey. Alright? And he ultimately told you that Julian Young, Gouda who he introduced himself as, was one of those individuals. Didn't recognize the other ones, didn't know any of them before that. He knows that Ray Anthony Alston, the big dark skinned guy that got in the back seat with him later on that night was not one of them, but he was sitting in the back seat when he gets in the car later, so he doesn't ever get a good look at the driver and the front passenger. So, we don't know if one of them could have been the other person, one of the other people that was with Mr. Young earlier that day. But you know, I think it's -- you know, it's odd that, you know, they're there looking for marijuana, he gets them hooked up with Mr. Bailey, and then suddenly they've got to leave, suddenly they've got to leave, and we'll call you later, we'll call you later. Now, I don't know if the wheels started spinning at that point in time in his head, and we know it wasn't Maurice Thompson with him because Maurice Thompson had been in Charleston and didn't come up until within, you know, hours later, but maybe it was Hilliard Pinckney, you know, his friend that was with him earlier that day. And maybe those

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wheels are turning at that point in time, I don't know. Alright? There's no way to get inside of their minds and know that. But what does Mr. Gipson tell us? You know, he gets a call later on that night, you know, from people I had met earlier that day. And now they do want to -- they want to buy some weed. They come and pick him up on campus, the same thing that Maurice Thompson and Ray Anthony Alston and Hilliard Pinckney tells you, and they take him around to the marriage housing where he's set up, because that's where he usually meets with Mr. Bailey when they do their business. And what does he tell you? Alright, he gets out of the car, he sees the money initially in the car before they drive around there. It's Ray Alston that has the money, and I'm going to talk to you about what he tells you in a minute. They drive around there, he gets out initially and goes up to Mr. Bailey, and then the other two from the back seat, Mr. Alston and Mr. Young, come up. There's some conversation going on that he ultimately ends up getting out of the middle of about them not wanting the marijuana. He says it's Mr. Alston he thinks that he had handed the money to, and he gets out of the way, and at that point in time he says, remember, he says he thought it was another car that pulled up that kind of caught his attention, looking to make sure, basically to see who it was. When he turns back around the victim has put his car in reverse. Remember, Mr. Alston, he says, at that

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point in time was standing back by him, not at the victim's car anymore. The victim puts the car in reverse, and is backing up, and that that man hanging in the passenger seat appeared to be tussling or struggling with Mr. Bailey, and he hears a pop. I can't remember, you know, one of them described it as a pop, one of them as a bang, but we know that it was a gun shot that they hear. And he takes off running at that point in time, he says, I didn't have anything on me. In other words, I mean, he wasn't going to get into a shootout at that point in time because he didn't have a gun on him. So, he takes off running. I submit to you, when you look at, and I mean, we're going to get into these other witnesses' testimony here in a second, but when you look at, you look at his testimony, I mean, there's no doubt, I mean, there's nobody else that could have shot Jonathan Bailey. I mean, there's nobody else that could have. And he's got no allegiance to this guy, I mean, but he standing back by him. And that's corroborated by, I submit to you, him and also the other witnesses. There's nobody else that could have shot him, because where, when you think about it, where the victim was shot, you know, he's seated in his vehicle, the driver's seat of his vehicle and he's shot on the right hand side right here. If it's somebody outside the vehicle away who's shooting him, the problem is, he's in the way, he's in the way. There's no way that he could be shot except by Julian

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Young.

And when you start looking at these other witnesses, I mean, even let's start with the next one that we called Tuesday afternoon, Hilliard Pinckney, and I submit to you, he was a horrible witness. I mean, he couldn't remember anything about anything. And when you think about it, if you look at them, and there's a reason for that. If you look at both him, Mr. Alston and Mr. Thompson, who out of the three of them is the one that's closest to Julian Young? Hilliard Pinckney. He's the one that hangs out with him, I believe he even referred to him as a close friend. His baby's mama was living in the same apartment complex back then that Julian Young was living in, Pine Hill Apartments. And it was obviously that he didn't want to be up there. The last thing he wanted to be doing Tuesday afternoon was in here testifying with his friend sitting over there charged with murder. So, it's convenient that he basically didn't remember anything about anything that mattered. But I submit to you, what he does tell us that ends up being helpful is, he corroborates everybody else on where everybody was sitting, who got out of the car, things of that nature.

Alright, then you turn to Ray Alston. Remember, Mr. Alston when he came in here all shackled up, he's been in jail for Fifteen months because of that man's actions, for Fifteen months, because of Julian Young's actions. He's got every

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right in the world to be bitter. I submit to you, he told you the truth. He cooperated with law enforcement, and he's the first one they end up arresting. He cooperated, gave them two statements back in May of last year, laying out what everybody did, came in here Fifteen months later and told you the same thing. He didn't change his story, didn't suddenly say now, you know, yeah, I saw him with a gun. But what does Mr. Alston tell us? Alright, he had the money, he was the one that was planning on buying the marijuana, but you know, he's come up here from Charleston so he doesn't know where to do that. So, people that live up here are the ones that are making the phone calls, Julian Young, Gouda. Alright. That they ultimately come around and pick up this guy that he's never seen before, they go around, park, back into the parking space. He gets out after the college kid goes over, and he goes over and takes a look at the marijuana. He says he hands him two bags, I submit to you, the two bags that are ultimately going to end up on the ground, and he doesn't like the way they look. They're brown and trashy looking. He's not interested, he gives them back. But what Mr. Alston tell us? You know, at that point in time, you know, he wasn't buying the marijuana, okay, Mr. Alston was. He said he was the only one up there talking. He turns around and he has walked up. And why is that? He has walked up, and as Mr. Alston now is walking away, he turns back around and he sees,

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now he is in the vehicle, tussling, tugging, struggling with Mr. Bailey. The car starts going in reverse, he hears a pop. Yet again, we look at his, just like with Mr. Gipson, there's nobody else that could have fired that shot, nobody. What's more important with him, though? You know, he gets back in the car and he said that basically when all this was happening he was just basically back at the car getting in. He sees all this happen. And what does he tell you the first thing he says to Julian Young when Julian Young gets back in the car? He initially asked him if he's okay, and he says, did you shoot that guy? And if he didn't know that that was a gun shot and didn't know basically what had happened, I mean, he may not have had any idea what was going to happen beforehand, that doesn't -- and I'm going to talk to you about that in a while, but it really doesn't matter. But it's telling that the first thing he asks him is, did you shoot that guy? And what's his response? Because that's even more telling, you know. He doesn't say, no, which would be, if you didn't do anything would be the logical response. He doesn't say, no, what the hell are you talking about? He doesn't come up with some other story and say, man, he pulled a gun on me and tried to rob me. He didn't say anything. He didn't say anything.

Then we look at what Mr. Alston tells the police, you know, when he gets arrested a couple months later, or a month later, on May Fourteenth. You know, in his initial statement

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he tells them that the defendant, Mr. Young, Gouda, you know, tried to take the weed from the victim. Okay? You know, why is he saying that if that's not what he knew happened? Okay. But even more telling is on the second statement, May Sixteenth. and it's actually Mr. Johnson that asked him about this. Alright, his statement on, and part of his statement on May Sixteenth is, I did not know Gouda was going to rob or shoot this guy. I did not know that Gouda had a gun." You see, Mr. Johnson is trying to, trying to make that imply that basically he didn't rob or shoot him, he didn't have a gun. But I submit to you, Ladies and Gentlemen, when you look at those statements, I mean, if you, imagine if you're Mr. Alston and you're writing those statements, I did not know Gouda was going to rob or shoot this guy. I did not know that Gouda had a gun. That doesn't say that he didn't do those things. If anything, it almost says the opposite, it basically is implying that he did. He just didn't know beforehand that he was going to rob or shoot this guy or that he had a gun. Okay? So, that's the same type of thing with the questions. I'm sure he's going to get up here and try to make that mean that Ray Anthony Alston said that Julian Young didn't have a gun. I submit to you, that's not what he said. He's never said that a single time. He said he didn't see him with a gun, but when he has an opportunity in his own writing to write a statement to the police, I mean, he basically implies

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that he ultimately, it had to have been him that shot him. I mean, there's no other, as I said, no other person that could have done it.

Alright, then we have Maurice Thompson. You know, he basically says, for the most part, the same thing as Mr. Alston. You know, he, remember, he's ultimately the one that ends up driving because he's the one that's got a driver's license that leads to him checking in through the gate. Alright. What else does Mr. Thompson tell us? Alright, you know, he is sitting, messing around with his phone in the driver's seat. You know, he has backed in, and a picture of the victim's car has pulled in next to him so that the passenger sides are next to each other. Alright. He is messing around on his phone. I can't remember if he said Mr. Alston had just got back to the vehicle or had gotten in the vehicle, when he hears a bang. Alright, he looks up, and he sees, you know, as he hears the bang he sees Mr. Young hanging out of the passenger side door of the victim's vehicle. Yet again, corroborated, I mean, exactly what Ricky Gipson and Ray Anthony Alston had told you. Alright. He ducks down at that point in time. Alright, logical, the logical thing to do when you hear a gun shot is you're going to duck. By the time he looks back up over the steering wheel, alright, the victim now is speeding off. Alright. You know, he had backed up across onto here, had done that skid mark and headed back down

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Baldwin Street, alright, leaving that skid mark on the grass and the sidewalk. Alright. But more importantly is, where, where does he say Julian Young is? You know, he is now -- remember, initially, the car, you know, the car is parked over here -- they're in these parking spaces. Okay? He's facing out. Okay? He hears a commotion, hears the bang, looks and sees the victim's car backing up with the victim, I mean, with the defendant in the passenger side door. Alright. He ducks down. I submit to you, the defendant, I mean, the victim, I'm sorry, backs up, takes off, and when he looks back up now, the defendant is standing out in the middle of the parking lot, standing out in the middle of the parking lot, which I submit, is where he basically jumped out of the vehicle as Mr. Bailey is backing up. And it just so happens it's right where, you know, we find the bag of weed sitting out in the parking lot. I submit to you, in all the commotion after this, I mean, it's last thing he was expecting, was this guy to throw that car in reverse and take off with him hanging out of that car. You know, money is falling, money is falling that stays in the car, money is falling on the ground, a bag of marijuana is falling on the ground, and lastly, when he jumps out of the car in the middle of that parking lot the last one falls. And at this point in time, I mean, you know, we've heard from Mr. Thompson, you know, Mr. Young -- I mean, Mr. Alston is yelling at him, get in the f-ing car. I mean, they need to get out of

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there. And they may have, all of them, kind of played down knowing what happened, but I submit to you, there is no doubt about it, at that point in time they knew what had happened. It's why they go in the opposite direction when they hit Russell Street, and more telling is why they do what they all do after this. Remember, the testimony is, the plan, -- you know, I mean, two of these guys, or three of them technically, Mr. Harrison and the other guy that was left back at the apartment, they had drove all the way up from Charleston to come and party. The plan is to go buy some marijuana so they can go out to a club. Well, this happens, you know, if it's no big deal what they think happened, and nobody thought anything out of the ordinary happened, it's no big deal, everything's okay, everything's fine, as Mr. Alston and Mr. Young are telling Mr. Thompson when he's driving away, how come they all go home? You go from one minute when they're all getting ready to get, you know, an ounce or two ounces of weed to go out partying, to suddenly, we're dropping Mr. Young, you know, we're dropping Mr. Young back at his apartment, we're dropping Mr. Pinckney either at his apartment or back over at Nard's studio, we're picking up Mr. Harrison, we're heading on back to Charleston. That right there tells you that they knew something real bad had happened, that they knew that he had done something real bad, and they need to get out of here and didn't need to be hanging around S. C. State

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out on the streets anymore looking for somebody else to maybe buy marijuana from.

Alright. I'm just about done, Ladies and Gentlemen, I appreciate your attention.

Alright, the last thing I want to just touch on, just a couple of things here. As I told you before, I'm not going to get an opportunity to get back up here and so, part of this is, I've got to anticipate some of what Mr. Johnson I think is going to argue. And one of the things, you know, he brought out with Mr., with Agent Johnson, Agent Johnson yesterday, you know, defendant is Seventeen years old now. Okay? And I assume he's going to try to, I'm sure that age is going to come up a few times in his closing argument, that he was Sixteen at the time this happened, Seventeen now. And he's going to hope that you're going to feel sorry for him because of his young age. I submit to you, everybody involved in this was young. Alright? I'm going to ask you, Ladies and Gentlemen, under your oath, to do something, to decide this case based on the facts and the law. Okay? It would be improper for anybody in any homicide case for the State to get up here and, you know, ask you to basically convict a defendant just because somebody was killed. And I submit to you, for you to decide your verdict based simply upon how old Mr. Young was at the time would be just as improper. Okay? Under your oath, you said that you'd decide this case based on

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the facts from this witness stand. If at the end of the day you find that we haven't proven him beyond a reasonable doubt guilty, then find him not guilty and nobody can quarrel with that. But I just ask you to base your decision on that, on the facts, the evidence, the facts and the law in this case, and not on Mr. Johnson trying to tug on your sympathy because of how old Mr. Young is. You know, he made his own decisions that night, and maybe he thought he was going to show off, you know, being the youngest guy, he was going to show off with these older guys, he thought that was his way of being a big man out there that night, I don't know. You know, he made those decision back in April of last year, you know, to be the one, you know, that was hanging out on a college campus, you know, getting in with drug dealers, setting up and calling, setting up the drug deals, toting a gun around, hanging around with a bunch of guys, you know, that are five, six years older than him, and I submit to you, ultimately pulling and using that gun that night. Those are his decisions, and under our law he's an adult, he's responsible for those actions.

I'm sure Mr. Johnson, another thing that, from the questions he's asked, you know, the fact that nobody ever saw Julian Young with a gun, nobody ever saw him pull the trigger, that that right there is reasonable doubt. I submit to you if that was the case then we'd have a hard time convicting, you know, the vast majority of homicides. You know, people don't

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usually kill people with a bunch of witnesses around. Okay? That's why you have to look at the facts. That's why circumstantial evidence in cases like this is so important. Okay? A lot of times we don't have eye witnesses that actually saw somebody pull the trigger.

And as I touched on earlier, you know, that malice aforethought doesn't require any kind of premeditation. It doesn't require any kind of plan. Alright, it doesn't matter, Ladies and Gentlemen, under the law whether Ray Anthony Alston, Maurice Thompson, Hilliard Pinckney, Julian Young, whether the four of them or any combination of them hatched this plan earlier in the day, hatched this plan that evening. Okay? It doesn't matter with regards to his guilt.

Very simply, Ladies and Gentlemen, if you find that there was no plan, that the other three of them had no earthly idea what he was going to do at the time he did it, that might affect their culpability, whether any of them are guilty of anything, but it doesn't affect his culpability, because like Mr. Bell said, greed with that window of opportunity. If you find, Ladies and Gentlemen, that, you know, he got a little bit upset when he found out and saw that Mr. Alston wasn't buying the weed, and saw an opportunity to take it, and then things went terribly wrong, and he pulled out that gun and shot Mr. Bailey, he's guilty of murder. We don't need to prove the planning.

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Alright, and then the last little thing as far as, you know, just from some of the questioning that Mr. Johnson had asked, is somehow applying that, I guess this gun must have been the victim's gun. And yet again, going back to what I talked about the questioning of Agent Johnson, okay, those questions aren't evidence, his answers are evidence. As I said to you, first of all, there's no evidence that the victim had a gun. Alright. Let's argue this thing for a second, let's just pretend it was. Alright? Where did it go? Where did it go? You know, there's money all in this car and there's another bag of weed in the car, you know, if somebody's going to come along and swipe something out of the car, you know, I guess in those minutes before law enforcement get there and secures the scene, don't you think the money and the weed would go too? Alright. But more importantly, if you assume it's the victim's gun, it still doesn't explain how he got shot. Alright. I mean, that he somehow shot himself in the side, when we know it's not a contact -- I mean, that just, it makes no sense. Alright. That is Mr. Johnson trying to get y'all's, kind of off, your focus off of what the facts are. Okay?

And I guess the arguing would be that, you know, I guess that even though there's no evidence of it, that Mr. Bailey decided to try to rob Mr. Young. Does that make sense? I mean, just for a second, just think about that. If Jonathan

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Bailey, from the evidence we know, was selling drugs on State's campus. From what Mr. Gipson tells us, you know, this is where they would meet up to do their business. Okay? So, do you honestly believe that he is going to rob one of his potential customers? I mean, he's driving, I mean, it's not like that's a, I mean, a non-descriptive vehicle. Okay? You know, it just makes no sense. But yet again, it's their attempt to try to get your attention off of the facts.

Alright, so where does this leave us? I'm going to go through one more time with y'all and then I'm going to sit down, about, I submit to you, what happened that night, because when you look at all the facts, just like the example I gave you early on about it snowing, I submit to you, while there was no doubt when you got up that morning and looked outside that it had snowed last night, there's no doubt that Julian Young murdered Jonathan Bailey.

Look at the facts, what do we know? We know that we've got a car with five guys that go to meet him. Three of them get out of the vehicle. We ultimately know that Ricky Gipson initially goes up to the vehicle, and we know that at some point in time Ray Alston and Julian Young go up to that vehicle. We know that not only from the testimony but also from the fact that they each left a fingerprint on the car. Alright. We know that Ray Anthony Alston had never taken any money out at the scene, still had his money that he took with

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him to go buy the weed in his pocket when he got back to Charleston, and we know that this money that's strewn in the car and on the ground over on Baldwin Street is not Mr. Alston's. We know from his testimony that, you know, he was the one going to buy the marijuana, and he had never shown anybody any money that night. We know then that when he was not interested he walks away from the vehicle. In the process of getting back in his vehicle Mr. Thompson, Mr. Alston, Mr. Gipson and I submit to you, to some degree, Mr. Pinckney, his friend, all say they see at that point in time Julian Young hanging in the passenger side, the passenger side of this vehicle, the door open, tussling, struggling, tugging with Jonathan Bailey, and at that point in time he puts the car in reverse, starts to back up, and they hear a gun shot, a pow, a bang, enough to make people start ducking, enough to make people start running, enough to make people start asking him when he gets back in the car, did you shoot that guy? He puts that car in reverse, ultimately ends up backing up across the parking lot, throws it in gear, peels out, takes off down Baldwin Street. In the process of that we know that Mr. Young somehow ends up out in the middle of the parking lot, because I submit to you, that's where he bailed out of that car as it was backing up, leaving that bag of weed behind, the other bag and the Fifty Dollar bill initially where the initial struggle, tussling, tugging took place. We know at that point

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in time that Mr. Bailey goes down Baldwin Street and ends up basically doing a hundred and eighty degree turn smack down in the front of the building. I submit to you, he's dying at that point in time. He may not fully comprehend that yet, but you heard Dr. Rose's testimony, that bullet has torn through just about every one of his vital organs, hit major arteries, he's bleeding to death. And that bullet, I submit to you, that I talked to you about earlier, hat tore through his -- vitally tore through is body, as I said before, has hit this arm rest and has fallen and is sitting inside this vehicle. He ends up wrecking the car, they get him out and the bullet falls to the ground and they find it later on. And they open the passenger side door, you know, they look in the vehicle when they get there to process it, and they look inside and there appears to be some money, and you can see it on the floorboard. They go around and open the passenger side door and there's two Twenty Dollar bills that are basically stuck in the door well there, since the door was closed on top of it, I submit to you yet again, money that has fallen out, I submit to you, the victim's money. I submit to you, at some point in time, you know, he sees and he knows there's a couple of bags of weed. We know the victim had been a little late after them getting there. Maybe he had just sold some weed somewhere else before he came over there, and had that money stuffed in the visor or something and he saw it and tried to

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snatch it, too, because people don't leave money laying like that around their vehicle.

I submit to you, when you look at all that, and couple that, then, with what Jonathan Bailey tells Sergeant Williams out there, that he was robbed by four men with a revolver, which would yet again be consistent with not finding a shell casing anywhere, I submit to you, there's no doubt, when you look back at this definition of malice, and if that is not ill will or hostility towards another person or the intentional doing of a wrongful act without just cause or excuse, with intent to inflict an injury or under circumstances showing a total disregard for human life, it's hard to imagine how much more -- how much less disregard you can have for somebody than what he showed for Jonathan Bailey on the night of April Fifteenth, Two thousand eleven.

So, I submit to you, just like harking back one last time to that example, there's no doubt when you wake up on that January morning that it snowed and you're, snowed outside, there's no doubt, I submit to you, when you look at the facts, look at the facts there's no doubt, there's no doubt, not even beyond a reasonable doubt, I submit to you there's no doubt that Julian Young murdered Jonathan Bailey. There's no doubt he was shot, and no doubt he died as a result of that gun shot. I submit to you there's no evidence of any kind of, anything that was excuse those actions and there's nobody else

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that could possibly have pulled that trigger based on the evidence in this case.

Ladies and Gentlemen, respectfully on behalf of the State of South Carolina and the citizens of Orangeburg County, I'm asking you to do one thing for me when you get back into that jury room, hold Julian Young accountable, hold him responsible for his actions. And the way you do that, Ladies and Gentlemen, is you find him guilty of murder.

Thank you.

THE COURT: Thank you, Mr. Sorenson.

Mr. Johnson.

MR. JOHNSON: Your Honor, may it please the Court.

THE COURT: Yes, sir.

CLOSING ARGUMENT BY MR. JOHNSON:

Solicitor Sorenson, Solicitor Bell, Mr. Foreman, and Madam, Ladies and Gentlemen of the jury, I had a long, I stayed up most of the night trying to put together my closing argument, and the more I sat in that chair, I'm not going to stay up here with y'all long, I just want to point out some few points.

Did I bring up Julian was Seventeen years old? Yes, I did. Did I think that was a concern? Yes, it was a concern. But there has never been an issue as to whether or not Julian was at the car. The only issue that has always been an issue was, where did the gun come from and how did the shooting

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occur? That has always been the issue. That has always been the issue. And everything that Solicitor Sorenson say, -- my daddy had this story he told me, two buckets went to the well, one came back from the well happy because he was half full, the other one came back sad because he was half empty. And we see the evidence from two different point of views. He has said some things, now I didn't hear it like that from the stand. I may some things he didn't hear like that from the stand. It doesn't matter how we heard it from the stand, what matters is how you heard it from the stand. And you go back through and you remember what you heard.

Well, first of all, I did not question Sergeant Kendra Williams in front of y'all. That's how we can get so involved with the evidence. Attorney Williams questioned her in front of the jury. So, we can get excited about the evidence we heard. Yes, I harped on the fact of, there was no gun, and here's the fact that I harped on. They were with them all day. If he was bragging and such a braggadocios young man and wanted to show his pizzazz and all of that, it seems like sometime that day he would have brought up that gun. He was with them when they went on campus, they got in the car. Five, three people in the back, two people in the front, somebody at some time should have saw that gun. I don't car what kind fo clothes they got on. When they got to the scene where the shooting occurred everybody testified upon my cross-

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examination that he got out of the car with no gun, he got back in the car with no gun. So, what does that leave? That leaves one place -- now, yes, there had to be a gun some place. But all of the direct testimony -- now there is direct testimony and there's circumstantial testimony. All of the direct testimony, even Officer, I mean, even Agent Johnson said there is no testimony that Julian had a gun. Well, how can I shoot you with a gun that I don't have if I don't bring it out and I don't get back out with it? Well, let's try to clear that up. Well, then, you could infer from the fact that the gun was already in the car. I asked -- and here is how I remember Agent Johnson's testimony. I asked him, did, during his investigation did he receive any information as to Mr. Bailey having a gun? He first said, he said, no. I said, are you sure? He said, no, and I said -- and I went to walk to the table, and I said, I want to make sure, are you sure? And he said, well, I don't recall, It could be, I don't recall. And in my mind, and in his mind he knew why I was going to the table. He said, I don't recall, it could have been, I just don't recall. He said, my file was so big, I don't remember. But that's kind of important. He is here charged with murder and he can conveniently remember the facts that help but inconveniently remember the facts that would help Mr. Young. The law enforcement's job is just to -- and I got this from Mr. Johnson, -- to put the facts on the table and let y'all

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decide.

Here's the leap they want you to make, and it's no question from the testimony, Julian was the last person in the car. Let's just be honest in this, there's no question from all of the testimony, he was the last person to the car with mr. Bailey. But there's no question, he never had a gun. So, there's but one other place for the gun to come from. Now, Mr. Sorenson talked about somebody shooting through the window or shooting from the door. It's almost like everybody should forget that there was a tussle in the car. But what were they tussling over? Could it have been the gun? Could it have -- and if you're tussling over a gun and nobody knows what position you were in while you were tussling, and you got shot through the side, nobody knows how it happened. And the pathologist said, well, if I had the clothes I could have determined how close it was. She said, well, it's kind of unspecified but I'm not sure, but I could do more or I could tell you more if I had the clothes. They want you to think because Julian was the last person in the car, he's the person that's alive and he's the one that they charged with murder, well, he's the one that did it all. They're inferring that he had the gun. But there's another inference, there's the inference that Mr. Bailey, and if you use the standard of proof beyond a reasonable doubt you've got to make the leap that if Mr. Bailey had the gun, then were is malice? If

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Julian didn't take the gun to the car where is the ill will, where is the malice, where is the evil intent to give you malice? There is none.

Now, you may be saying in your mind, well, we don't know what goes on in the car. None of us know what went on in the car, but now, is that a doubt? The fact that you don't know, is that a doubt? Is that a reasonable doubt? And then, somebody might say, well, he didn't testify so let's punish him because he didn't testify. But the Court is going to instruct you, he doesn't have to testify, they have to prove it. I read a story, this dad bought his little girls some crayons and it was red crayon, and he went to work that morning and he left her home, and when he got back home that evening the walls had red crayon all over the walls in her room. And he was about to go punish his little girl because he said, I bought this crayon, and why are all the walls marked up? And she said, well, Daddy, I didn't mark the walls up. He said, yeah, but I gave you the crayon. But he forgot that his little niece spent the day with her, and at the end of the story, the little niece, while playing with the crayon, marked the wall. The daddy didn't see the niece, the mother did, but the little girl was blamed for the crayon. None of us know what happened in that car, and the fact that we don't know, that's reasonable doubt. And what they are asking you to do is to say, well, he's the last one there, there was

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nobody else that could have shot through the window, let's disallow any inference that the gun came from the car, and let's convict him. Well, justice is doing the right thing during tough times. It is easy during these troubled times in society, it is easy to say somebody is guilty. That's why we've got this system in play, because sometimes you can't prove yourself innocent. It is easy to say somebody -- it is difficult to get in a tough situation and somebody has to kill, it's easy, I mean, it's difficult to say, because you're questioning yourself, do I go, am I letting a guilty person go free? But if you've got a reasonable doubt, if you've got a question about where that gun came from, and God knows, in this case there is a question where the gun came from. There's not a question about the shooting, there's not a question about Julian being to the car, but there is a question as to who had that gun, and that's a reasonable doubt.

Now, let me give you some more doubt, if he was in there wrestling and pulling over money, we've got all these, we had these fingerprint people to come down and talk, and it amazed me, they got fingerprints off the door, they got two different sets of fingerprints off the door. But if you're pulling on money, there's no fingerprint. They tested the money. If I'm fighting and struggling for money wouldn't there be some fingerprints? I cannot pull on your money and there not be

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any fingerprints. Is that reasonable doubt? I submit to you, that's reasonable doubt.

The other thing, the hanging on the door, I don't remember which two, you recall, and if you don't recall like I recall, then disregard it, but ever since that thing happened so fast, and it's almost like the State is trying to lay it out like this happened, this happened, this happened. This happened so fast, I heard the pop, I think -- Gipson said, I dashed, I run. The others said what happened, I mean, this happened in a matter of seconds. Were they tussling, then they saw him hanging out the door? Was he hanging out that door? If he was hanging out that door then how were they tussling? You have to use your common sense, you have to use your judgement as to what happened at that car. It was dark, nobody saw what happened.

I had this belief that nothing is done by accident. As a matter of fact, I say most of the situation we are in, when we were created God had his destiny set up for us. The Twelve of you are not here by accident. You came because you have to make a critical decision. There has been one tragedy. Mr. Bailey's family lost a son. Anybody that cannot sympathize or be hurt by that, something is wrong with you. That's a tragedy. But let's not make it too tragedies. Let's not convict him because we want somebody to be punished. We don't want somebody to be punished, we only want him to be punished

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if he with malice, if he with ill will, hatred, hostility toward another, it's an intentional doing of a wrongful act without just cause or excuse and with the intent to inflict injury. No evidence to that. That's the law, that's what the Judge is going to charge you. And we can sit back on our emotions and say, somebody died and I just can't let it go, I've just got to forget about the law. The law serves us all. When you do justice, it serves justice over all. Where is the malice? When you go back there ask yourself, where is the malice?

Express or implied. I submit to you that the only way for you to find malice is if you imply it from circumstances. But if you take the direct testimony of Ricky Gipson, Hilliard Pinckney, Mr. Thompson, Mr. Alston, and even Agent Johnson, every decision you make is going to be based on the fact he didn't have a gun when he got out, he didn't have a gun when he got back. There was no fingerprints on the money, and neither did they find the gun. So, you have the right to infer from the circumstances, and the Judge will tell you that, you've got a right to do that, you can infer facts from the circumstances, but then do you disallow the express testimony, the direct testimony?

I asked Ricky Gipson, I said, so you speculated what went on in the car? He said, no, that's not the right word. I said, give me the right word. He said, assumed is better.

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I looked at the Twelve of y'all, I see this difficulty, but I ask you, please be fair, please do what's right.

Now, Mr. Sorenson made some comments about my tough questioning and all that. Well, Fifteen months ago the family placed Julian in my hands to do the best for him, and if I within my zealousness have said or acted or have done anything that you dislike, I ask you to count that towards me, count that towards my partner. It wasn't my intent, but I probably did, and I'd probably do it again if I thought it was in his best interest, but he didn't do it. Just like he didn't, he did not murder. He was the last one at the car but he did not murder Mr. Bailey. Two tragedies are not going to help his situation. As I go to my seat, I told you I wasn't going to be long, because I mean, y'all know the facts, y'all heard them. I'm just going to ask y'all to have the courage to do what's fair. The signal that we want to send is that at the end of the day we did what was right, not at the end of the day we meet society's need to say we are crime free. Well, until you do justice we're not crime free. I don't care what community you come from, I don't care what background you are, the Twelve of you are going to have to sit down and come together unanimously on a verdict. The word verdict comes from the Latin word, Vere dicto. It means to speak the truth. Sometimes society don't like, because our feelings are in conflict with what the law says. But courage connects our

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feelings to the conflict. Courage says I want to leave here doing the right thing. What is the right thing? The Twelve of y'all will decide. I told you he was charged when the trial started, he was charged through all of the testimony, he is still charged right now, he's not convicted. He won't be convicted until the Twelve of you make that decision. When you walk out with a unanimous decision whatever you decide, guilty or not guilty, that is when we will have a conclusion to this matter.

Thank you for listening to me. I had a lot more notes but I'm not going to burden you. It's time for y'all to do y'all's work.

I think the last thing I'm going to do is, Fifteen months ago Julian and his family put themselves in my hands, so as I leave I'm putting Julian in y'all's hands, and the only thing we ask is that you follow the law. The only thing we ask is that you make them prove the case, not shift the burden to us to prove what happened in the car. They must prove what happened in the car. Shifting it to us is not the law. You may not have the answers you want, and the fact that you don't have the answers itself is reasonable doubt, because you've got to infer whether he had a gun, and then you've got to infer whether he used that gun with malice. That's doubt, that's reasonable doubt.

Thank you.

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BAILIFF: Your Honor, may I approach?

THE COURT: Yes, ma'am. Thank you, ma'am.

(Whereupon, the Court examines the verdict.)

THE COURT: Alright, Madam Clerk, would you please publish the verdict.

VERDICT OF THE JURY:

CLERK: I'd like to bring the Court's attention to Indictment Number 2011-GS-38-01833, the State of South Carolina versus Julian Young. We, the jury, unanimously find the defendant as to the charge of murder, guilty. Signed, Michael Cocke, date, Eight/Sixteen/Two thousand twelve.

THE COURT: Thank you, ma'am.

Alright, anything from the defense?

MR. JOHNSON: Your Honor, no, I'm not going to poll the jury.

THE COURT: Alright, thank you, sir.

Alright, Ladies and Gentlemen of the jury, y'all have had to serve on jury duty for three days. Y'all have been attentive. I know it was not an easy thing to do to serve on the jury. I want to tell you that I appreciate your service, I appreciate your attention, and now y'all are excused. Okay? Thank y'all for your service.

(Whereupon, the jury leaves the jury box.)

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THE COURT: This is the State versus Julian C. Young.

Ladies and Gentlemen, when I got ready to read the verdict I reminded everybody they had to keep their composure. Now that I'm getting ready to sentence Mr. Young I need to remind you that you've got to keep your composure as well. If you cannot keep your composure now is the time to leave the courtroom.

Alright. Mr. Jefferson, I appreciate you coming up and speaking about your son, I really do. And I understand where you're coming from and why you want the time you requested, and I can probably honestly say if I was in your situation I'd say the same thing. But the other thing though is, Mr. Young is a very young man. I believe he doesn't have any kind of a record, is that correct, Mr. Sorenson?

SOLICITOR SORENSON: That's correct.

THE COURT: And I have to consider that. Okay?

Mr. Young, the jury has heard all the evidence in this case. You know, they have found you guilty, and what occurred was a senseless act, there was no reason for you to even be in that situation. You didn't need to be around there. What I'm doing is ...

SENTENCE OF THE COURT:

The sentence of this Court, Mr. Young, is that you are committed to the State Department of Corrections for a period of Thirty-five years. I'm going to give you credit for the

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STATE OF SOUTH CAROLINA) COUNTY OF ORANGEBURG)	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT
)	Indictment No. 2011GS38-1832 2011GS38-1833
STATE OF SOUTH CAROLINA)	
v.)	DEFENDANT'S TRIAL BRIEF FOR EXCLUSION OF EVIDENCE OF STATEMENTS MADE BY DECEDENT
JULIAN YOUNG)	

Now comes the Defendant, Julian Young, by undersigned counsel, and offers the following Brief in support of Defendant's motion to exclude any and all evidence of statements purportedly made by the decedent Johnathan M. Bailey on or about April 16, 2011:

FACTS

The investigative file provided to the defense includes a written document entitled "Voluntary Statement", signed by South Carolina University Police Officer Kendra DeAnne Williams, at approximately 4:45 a.m. on April 16, 2011. The narrative of this Statement includes the following:

> *...The victim did not want to talk or answer questions because he advised he was in too much pain. I asked him if he was in Queens Village and* ***he shook his head*** *yes. Then I asked if he was robbed, again he* ***nodded yes.*** *I asked how many and [sic] victim held up four fingers. I asked if he saw the gun* ***and*** *was it a revolver. victim* ***nodded yes.*** *When I asked if the gun was silver or black he* ***nodded no for both.*** *The victim would not give his name or any other information. Capt. Thad Turner went into the ambulance and the victim advised his name and address...* ***Upon Capt. Turner's initial arrival he stated the victim said,*** *"They robbed me, they robbed me, that's when they shot me!*

SLED Investigative File, Case Number 31110030, Orangeburg County, Attachment #4 (emphasis added) (attached hereto and incorporated herein by this reference as "Defendant's Exhibit "A").

Upon information and belief, the State of South Carolina seeks to enter into evidence, this written Statement, as well as the testimony of Officer Williams, and/or other hearsay evidence of decedent's statements, as *excited utterances* or *dying declarations*.

ARGUMENT
1. STANDARD OF REVIEW

Evidentiary rulings are within the sound discretion of the trial court, and such rulings will not be reversed absent an abuse of discretion or the commission of legal error that prejudices the defendant. *State v. Rice*, 375 S.C. 302, 314, 652 S.E.2d 409, 415 (Ct.App.2007) (emphasis added). The trial court abuses its discretion when the ruling is based on an error of law *or* factual conclusion that is without evidentiary support. *State v. Garner*, 389 S.C. 61, 65, 697 S.E.2d 615, 617, 2010 WL 1755057 (Ct. App. 2010), reh'g denied (Aug. 27, 2010), cert. denied (Feb. 8, 2012) (emphasis added).

2. THE CONFRONTATION CLAUSE BARS ADMISSION OF UNCONFRONTED 'EXCITED UTTERANCES'

The United States Supreme Court held that the United States Constitution's Confrontation Clause bars testimonial out-of-court statements by witnesses, unless witnesses are unavailable and defendants had a prior opportunity to cross-examine them, regardless of whether such statements are deemed reliable[1] by the trial court. *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004), abrogating *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 59 (1980) and, by implication, overruling *dicta* in State v. *McHoney*[2], 344 S.C. 85, 544 S.E.2d 30 (2001).

"Leaving the regulation of out-of-court statements to the law of evidence would render

---

[1] A review of Officer Williams' Statement reveals its unreliability, developed in Argument 3, below, but it applies here as well.

[2] In *dicta*, the Court found: "Although we find the victim's statement was a valid dying declaration, her statement also satisfies the excited utterance exception to the hearsay rule. Rule 803(2), SCRE" *McHoney, supra* 344 S.C. at 94, 544 S.E.2d at 34.

the Confrontation Clause powerless to prevent even the most flagrant inquisitorial practices." *Crawford. supra*, 541 U.S. at 51, 124 S. Ct. at 1364. "The text of the Confrontation Clause reflects this focus. It applies to "witnesses" against the accused - in other words, those who "bear testimony." *Id.* Barred testimonial statements include "statements that declarants would reasonably expect to be used prosecutorially." *Id.* "Statements taken by police officers in the course of interrogations are also testimonial under even a narrow standard." *Id.* 541 U.S. at 52, 124 S. Ct. at 1364.

South Carolina follows this directive: "The Supreme Court has held testimonial hearsay against a defendant violates the Confrontation Clause if (1) the declarant is unavailable to testify at trial and (2) the accused has had no prior opportunity to cross-examine the witness." *State v. Garner*, 389 S.C. 61, 66, 697 S.E.2d 615, 617, (Ct. App. 2010), reh'g denied (Aug. 27, 2010), cert. denied (Feb. 8, 2012). Thus, any and all evidence of statements made by the decedent to law enforcement personnel are not admissible under the 'excited utterance' exception of Rule 803 SCRE, or any other evidentiary rule, because the declarant is unavailable and the defendant has not had an opportunity to cross-examine him; and also because the decedent would have 'reasonably expected it to be used prosecutorially'.

Defendant contends that such evidence includes documentary evidence, such as Officer Williams Statement, and testimony about decedent's statements to any law enforcement personnel, or to any person after Officer Williams identified herself in the ambulance. From the moment Officer Williams identified herself, and again when Captain Turner entered the ambulance, decedent 'reasonably expected' a criminal investigation to be underway. From this knowledge he reasonably expected his statements - to all persons present – to be monitored and made a part of the investigation for prosecutorial use.

3. DECEDENT'S STATEMENTS ARE NOT 'DYING DECLARATIONS'

Statements amounting to dying declarations may be admitted under certain circumstances; but the decedent's gestures and cryptic answers to Officer Williams do not meet the requirements set forth by the U.S. Supreme Court. First, nothing in the evidence indicates that the decedent believed his death was imminent.

> Fear or even belief that illness will end in death will not avail of itself to make a dying declaration. **There must be 'a settled hopeless expectation' that death is near at hand,** and what is said must have been spoken in the hush of its impending presence. **Despair of recovery** may indeed be gathered from the circumstances if the facts support the inference. There is no unyielding ritual of words to be spoken by the dying. Despair may even be gathered, though the period of survival outruns the bounds of expectation. **What is decisive is the state of mind. Even so, the state of mind must be exhibited in the evidence, and not left to conjecture. The patient must have spoken with the consciousness of a swift and certain doom.**

Shepard v. United States, 290 U.S. 96, 100, 54 S. Ct. 22, 24 (1933) (citations omitted) (emphasis added). Accord, *Giles v. California*, 554 U.S. 353, 358, 128 S. Ct. 2678, 2682-83 (2008).

Undersigned's research found that *Shepard, supra,* has been cited 172 times around the country for this point. Further, *Shepard* held that admission of evidence as a dying declaration, which fails to qualify under these strictures is reversible error, even if it might have been admissible on some other ground. *Shepard,* 290 U.S. at 98 and 104, 54 S. Ct. at 23 and 25-26. This holding has been cited 78 times. Here, the decedent hardly spoke to Officer Williams, and instead, mostly gestured. There is nothing from which to draw a reasonable inference that he "spoke[] with the consciousness of a swift and certain doom", a "settled hopeless expectation" of death, or "despair of recovery". South Carolina has long recognized that *certainty* of imminent death is required:

> The rules in regard to such testimony are well settled: 1st. That death must be imminent at the time the declarations in question are made. 2nd. That

> the *declarant must be so fully aware of this as to be without any hope of life.* And 3rd. That the 'subject of the charge' must be the death of the declarant, and the circumstances of the death must be the subject of the declarations.

State v. Bethea, 241 S.C. 16, 21, 126 S.E.2d 846, 849 (1962).

4. THE EVIDENCE IS INHERENTLY PREJUDICIAL

Next, a review of Officer Williams' Statement reveals its inherent *un*certainty and unreliability – the decedent purportedly "*nodded no*"; "*nodded yes*"; but, also, "*shook his head yes*". We have no way of knowing what these gestures actually meant. Decedent answered compound questions "*if he saw the gun and was it a revolver.*" Again, we have no way of knowing which question he answered when he "*nodded no for both*". Likewise, we cannot know whether his answer to "*I asked how many*" meant how many assailants, how many items were taken from him, or some other referent, when he "*held up four fingers*". Further, the Statement contains hearsay within hearsay: "*Upon Capt. Turner's initial arrival* ***he stated the victim said,*** *"They robbed me. they robbed me, that's when they shot me!""* (Exhibit "A")(Emphasis added).

Thus, if the Statement and Officer Williams' testimony about the Statement are offered on other grounds, they should be excluded as inherently unreliable, confusing, prejudicial and thus, incompetent. "Even relevant evidence may be excluded on the grounds of its competency." *State v. Pipkin*, 359 S.C. 322, 327, 597 S.E.2d 831, 833, (Ct. App. 2004). "For instance, relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. *Id.* (Citations omitted). This confusion and unreliability renders the evidence utterly inadmissible: "Homicide may not be imputed to a defendant on the basis of mere suspicions, though they are the suspicions of the dying." *Shepard*, 290 U.S. at 101, 54 S. Ct. at, 24. "The declaration is kept out if the setting of

the occasion satisfies the judge, or in reason ought to satisfy him, that the speaker is giving expression to suspicion or conjecture, and not to known facts". *Id.*

CONCLUSION

On the basis of all of the above and foregoing, it is respectfully requested that this Court exclude the Statement of Officer Williams, Captain Turner, or any other individual, any testimony related thereto, and any and all other hearsay evidence of "dying declarations" or "excited utterances" of the decedent.

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Orangeburg, South Carolina
August 13, 2012

WITNESSES

Richard Johnson

State Law Enforcement Division

ARREST WARRANT NUMBER
M805407

Arrested: May 17, 2011

ACTION OF GRAND JURY

TRUE BILL

Date FEB 08 2012

Foreperson of Grand Jury

Date: February 8, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-1833

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

February 6, 2012 TERM

THE STATE
vs.

Julian C Young

Indictment for

MURDER

SC Code: **16-3-10**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

2012 FEB -8 PM 1:01

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-1833

At a Court of General Sessions, convened on February 6, 2012 the Grand Jurors of Orangeburg County present upon their oath:

MURDER

That in Orangeburg County on or about April 15, 2011, with malice aforethought, the defendant, Julian C Young did kill one Johnathan Bailey by means of shooting the victim with a handgun. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Donald N. Sorenson, Solicitor

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-1833
Appellate Case No. 2012-213006

STATE OF SOUTH CAROLINA,

RESPONDENT

v.

JULIAN C. YOUNG,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that certificate that this Final Brief of Appellant complies with Rule 211(b), SCACR. The undersigned also certifies that this Final Brief is in compliance with the August 13, 2007 Order of the Supreme Court of South Carolina relating to the inclusion of personal data identifiers and other sensitive information in documents.

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This 2nd day of December, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-1833
Appellate Case No. 2012-213006

STATE OF SOUTH CAROLINA,

RESPONDENT.

v.

JULIAN C. YOUNG,

APPELLANT.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUE ON APPEAL

I.

Did the trial court err, and thereby violate the Appellant's right to confront his accusers, by admitting into evidence hearsay testimony concerning statements made by the victim-deceased to a law enforcement officer after he was shot?

STATEMENT OF THE CASE

The Appellant was indicted by the Orangeburg County Grand Jury for the offense of murder. See, Indictment no. 2011-GS-38-1833. He was represented in the trial court by Virgin Johnson and Corey L. Williams, of the Orangeburg County Bar. The Appellant proceeded to trial by jury on August 14 – 16, 2102. The State was represented at trial by Assistant Solicitors Donald Sorenson and Harrison Bell. At the conclusion of this trial, the Appellant was found guilty as indicted and was sentenced by the Honorable Edgar W. Dickson, presiding circuit court judge, to a term of thirty-five (35) years incarceration.

The Appellant served and filed a timely Notice of Appeal from his judgment and sentence. This appeal follows.

ARGUMENT

Did the trial court err, and thereby violate the Appellant's right to confront his accusers, by admitting into evidence hearsay testimony concerning statements made by the victim-deceased to a law enforcement officer after he was shot?

At trial, the Appellant made a motion pursuant to ***Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004)*** that any testimony concerning statements attributed to the victim-deceased be excluded. The Appellant argued that admission of testimony concerning these statements, where the victim was not available for cross-examination, would violate his rights pursuant to the confrontation clause of the United States Constitution. The Appellant cited ***State v. Gardner*** [1] and ***Rule 803, SCRE***, in support of his position that the testimony in question would be prejudicial hearsay. The Appellant further argued that the statements in question should not be admitted as dying declarations where there was no reliable evidence from which it could be determined that the victim-deceased actually believed he was dying. Defense Counsel argued that the fact that the victim-deceased, who was known to be a drug dealer, did not want to give his name to the police, was evidence that he was capable of reflective thought at the time. This fact, the Appellant argued, directly evidenced that the victim-deceased was capable of reflective thought at the time the statements were made. Likewise, it was argued that the statements in questions were not spontaneous utterances but rather, were made in response to questioning by a sergeant with the South Carolina State University Police Department; Kendra Williams. ROA p. 4, line 11 – p. 7, line 15. In response to the Appellant's motion, the State argued that ***Crawford***, supra, should not apply because the statements were not testimonial in nature. ROA p. 9 lines 12-22.

Testimony from Sergeant Williams was presented *in camera*. She testified that when she arrived at the scene the victim-deceased was in the back of an ambulance. ROA p. 14, lines 10 –

[1] The record reflects that Counsel cited to State v. Gardner, however, based upon the content of his argument, Appellant asserts that this is a probable reference to *State v. Garner, 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2012)*.

23. He had a gunshot wound to his right chest and another wound on his left side. ROA p. 15, lines 5 – 11. According to Sgt. Williams, he appeared to be in a lot of pain. She said, ***"[h]e was frantic, he was rolling back and forth, he was scared, he kept saying, get me to the hospital, I'm going to die. He was, he was scared."*** ROA p. 15, lines 14 – 19.

According to this witness, she asked the victim if he had been robbed and he shook his head, yes. She asked him if he had been in the parking lot of Queen's Village and he once again nodded, yes. She asked him if he saw who robbed him and he indicated that he did by shaking his head. She then asked him how many people robbed him and he held up four fingers. When she asked, "four?" he shook his head, yes. Although he supposedly shook his head yes in response to the question about whether he saw the gun that shot him, he shook his head "no" when asked if the gun was black or silver. ROA p. 16, lines 2- 13. She testified that the victim was having a really hard time speaking and that he mostly just shook his head to answer questions. She did claim that he said he was in pain and that he was going to die. ROA p. 16, lines 11 – 21. On cross-examination, Sgt. Williams acknowledged that she had given a statement to Investigator John Johnson with SLED. She said that she had told him everything that happened, "if I recall." ROA p. 18, lines 6 – 14. She admitted that in her statement to SLED

- She did not say the victim was frantic;
- She did not say that he had said "get me to the hospital";
- She did not say that the victim was scared;

ROA p. 18, line 3 – p. 18, line 12.

Sgt. Williams also acknowledged that when she first spoke to the victim he would not tell her his name. ROA p. 22, line 24 – p. 23, line 4. In response to the testimony of Sgt. Williams, Trial Counsel noted that in the statement she gave to SLED, Sgt. Williams reported that the victim said, "get me to the hospital because I'm shot, I'm hurt.", as opposed to, "I'm going to die" as she claimed in court. ROA p. 24, lines 10 – 14. The Appellant renewed his objections to

the admission of this testimony on the ground that it clearly wasn't an excited utterance nor was it a dying declaration. Trial Counsel argued that the statements in question were more prejudicial than probative under Rule 403, SCRE. ROA p. 23, line 21 – p. 25, line 8. The State argued that the fact that the victim was in pain, and wanting to get to the hospital, coupled with the fact that he thought he was about to die, made these statements non-testimonial. The State additionally argued that since the victim did not name the Appellant in any of these statements to Sgt. Williams, the statements were no prejudicial to the Appellant. ROA p. 25, line 12 – p. 26, line 22.

Ultimately, the trial judge acknowledged that he had questions about whether, or not, it would be a dying declaration because the statement this witness gave to SLED after interviewing the victim, did not contain the statement about "***needing to get to the hospital, I'm going to die.***" The judge noted that he had "***an issue with whether or not it's a dying declaration***" and he declined to decide the admissibility of this testimony on that issue. ROA p. 27, line 24 – p. 28, line 5. The trial court found however, that the statements in questions were excited utterances and ruled that, as such, they were admissible. ROA p. 28, lines 5 – 24. Trial Counsel challenged the notion that a nodding of the head could qualify as an excited utterance however, the trial court found non-verbal communication could constitute an excited utterance. ROA p. 28, lines 4 – 14. In addition, Trial Counsel noted that Sgt. Williams was not able to say how close in time these statements were made to the shooting. Also, Trial Counsel objected to the position that someone being in pain would qualify as a foundation for a finding that a statement was an excited utterance. ROA p. 29, line 15 – p. 30, line 12.

The State subsequently asked the trial court to rule on whether the statements in questions were testimonial in nature. ROA p. 30, lines 13 – 17. The trial court then stated for the record,

> Okay. I'm going to let it in, I say it will be non-testimonial and let it in. It's just part of the excited utterance at the time, whether or not—you know, the purpose of letting an excited utterance in is that he doesn't have time for any kind of reflective thought. And so, right now, this is a

> gentleman that's just been robbed and shot, he's in an ambulance, and I don't think based on the testimony I heard that he had time to have much reflection about what was going on so he could make up a story. Okay? He was just answering questions that were put to him by a police officer trying to get to the bottom of the situation.

ROA p. 30, line 18 – p. 31, line 3.

In response to this ruling, the Appellant asked the Court to note, once again, that the fact that this witness refused to give his name to the officer interviewing him was evidence of reflective thought. ROA p. 31, lines 9 – 12. The Court responded, "But, I do believe it's an excited utterance." ROA p. 31, line 20.

The testimony of Sgt. Williams in the presence of the jury was largely consistent with her testimony *in camera.* In her testimony in camera she indicated that the victim shook his head and indicated yes when she asked him if he had seen the weapon. She said that when she asked him if the weapon was black or silver, he *"kept shaking his head, no."* ROA p. 16, lines 7 – 13. In her testimony in the presence of the jury, she added that she had asked him if the gun was a revolver and he answered yes. ROA p. 58, lines 10 – 11. With this exception, her trial testimony was consistent with her *in camera* testimony on the operative points concerning the circumstances surrounding this shooting. ROA p. 57, lines 17 – 21 and ROA p. 58, lines 1 – 14.

The Supreme Court of the United States has found that testimonial hearsay against a defendant violates the Confrontation Clause of the United States Constitution if 1) the declarant is unavailable to testify at trial and 2) the accused has had no prior opportunity to cross-examine the witness. ***Crawford v. Washington, 541 U.S. 36, 54, 124 S.Ct. 1354 (2004).*** As recognized by the Court in Crawford, "not all hearsay implicates the Sixth Amendment." ***Id, 541 U.S. at 51.*** On the other hand, otherwise admissible hearsay testimony may be rendered inadmissible if it is testimonial in nature. ***Id, 541 U.S. at 68.*** Thus, if a statement is testimonial in nature, it is not admissible simply because it would otherwise fall under a recognized exception to the hearsay rule. On the other hand, the fact that a statement is not testimonial, does not render it admissible

simply because it does not infringe upon the Sixth Amendment right of confrontation. ***State v. Garner, 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2012)***. Where non-testimonial hearsay is at issue, the Sixth Amendment is not implicated. ***State v. Ladner, 373 S.C. 103, 113, 644 S.E.2d 684, 689 (2007)***. In discussing what the standard for determining whether a statement is testimonial should be, the high court stated, "we leave for another day any effort to spell out a comprehensive definition of 'testimonial.' Whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations." ***Crawford, 541 U.S. at 68***. The Court went on to find that "[w]here testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation." *Id, at 68-69*. South Carolina has clearly recognized that a statement that would otherwise be admissible under an exception to the hearsay rule is inadmissible if it is testimonial nature. In ***State v. Mitchell, 378 S.C. 305, 662 S.E.2d 493 (Ct. App.2009)***, a prior statement to police which would have been admissible as a statement against penal interest under Rules 804(a)(2) and (b)(3), SCRE, where the declarant refused to testify, was found by the Court of Appeals to violate the confrontation clauses of both the United Sates Constitution and the South Carolina Constitution. ***U.S.C.A. Cont. Amend.6 and 14 and S.C. Cont. Art. I, §14***. Our Supreme Court has held that a violation of the Sixth Amendment right to confront witnesses is not per se reversible error. ***State v. Davis, 371 S.C. 170, 181, 638 S.E.2d 57, 63 (2006)***

On the facts of this case, the statements attributed to the victim-deceased should have been excluded from evidence inasmuch as they were testimonial in nature and the declarant would not be available for cross-examination. The testimony presented during the Appellant's trial established that drugs were found in the victim's car. ROA p. 70, lines 4-5. Multiple state witnesses would ultimately testify that the victim was a drug dealer. Despite the fact that he was seriously injured, the fact remains that he made the statements in question while being

questioned by a law enforcement officer concerning the circumstances surrounding his shooting. He made those statements under circumstances where an objective witness would reasonably believe that the statement would be available for later use at a trial. ***Crawford, 541 U.S. at 51-52.*** On these facts, the statements attributed to the victim by Sgt. Williams were testimonial and their introduction violated the confrontation clauses of both Untied States Constitution and the South Carolina State Constitution. ***U.S.C.A. Cont. Amend.6 and 14 and S.C. Cont. Art. I, §14. See also, State v, Green, 269 S.C. 657, 661, 239 S.E.2d 485, 487 (1977).***

The trial court appears to have concluded that the statements in questions were admissible because the circumstances surrounding these statements met the criterion for the excited utterance exception to the hearsay rule. Assuming *arguendo* that they would, this fact would not render the statements admissible in light of the fact that they were testimonial. As previously noted, otherwise admissible hearsay may be rendered inadmissible if it is testimonial.

Even if this Honorable Court were to conclude that the statements in questions were not testimonial in nature, the Appellant would submit that the circumstances under which they were made did not meet the standard for admission as an excited utterance. Rule 803(2) defines an excited utterance as a,

> **[s]tatement relating to a startling event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.**

A court must consider the totality of the circumstances when determining whether a statement falls within the excited utterance hearsay exception and the determination in such matters is generally left to the sound discretion of the trial judge. ***State v. Burdette, 335 S.C. 34, 43-44, 515 S.E. 525, 530(1999).*** The rationale behind the excited utterance exception is that "the startling event suspends the process of reflective thought, reducing the likelihood of fabrication." ***State v. Davis, 371 S.C. 170, 178, 638 S.E.2d 57, 62 (2006).*** As argued by the Appellant at trial, the victim-deceased in this case, knowing he had drugs in his car, refused to give his name to

Sgt. Williams. Such a ploy clearly evidences reflective thought and therefore, establishes that the statements in questions were no made while the victim's state of mind was such that he was incapable of reflective thought and therefore, less likely to fabricate. Hiding your identity in fear of the police is not an action one would expect to see in a person who wasn't expecting to be around to suffer the consequences of their unlawful behavior.

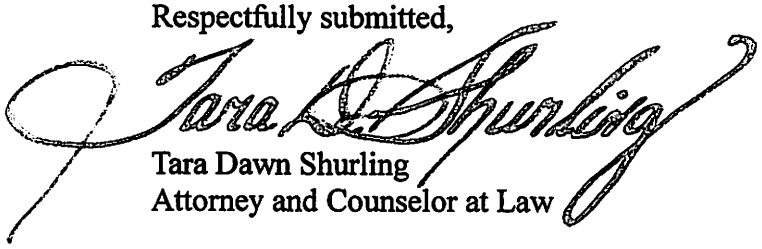
The Appellant would respectfully assert that the admission of the statements attributed to the victim irreparably tainted his ability to review a fair trial. Absent these statements, there was no other evidence that the victim in this case was robbed prior to his shooting. Given the totality of the evidence presented in this case, while the circumstances may have given rise to suspicion, they did not establish how the victim died. If anything, the testimony of all the states other witnesses left as a mystery what happened in the moments preceding the victim's shooting. Based on the testimony of the State's own witnesses, it was equally possible that the deceased pulled a gun on the Appellant and was shot in an ensuing tussle for the weapon. The testimony of Sgt. Williams is all the more dangerous inasmuch as she questioned the injured man in a manner which suggested an answer. After all, her question to the deceased was not, what happened? Her question was, were you robbed? ROA p. 16, lines 2-5. It is not unreasonable to suggest that a young man cool enough to refuse to give the police his name after he had been shot, and caught with drugs in his car, might also have been cool enough to seize on the opportunity to shift attention away from himself by answering that question affirmatively. It is also important to note that the statements in question were not blurted out by someone experiencing the immediate effects of a stressful event. He was questioned by the police and his refusal to answer the questions about his identity demonstrates that he was thinking reflectively about his answers.

For all these reasons the Appellant respectfully submits that the trial court erred in admitting the hearsay testimony of Sgt. Williams.

CONCLUSION

Based upon all the above reasons and authorities, the Appellant asks that his judgment and sentence for murder be vacated and that his case be remanded to the Orangeburg County Court of General Sessions for a new trial.

Respectfully submitted,



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This 17th day of December, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-1833
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JULIAN C. YOUNG,

APPELLANT,

Appellate Case No. 2012-213006.

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err, and thereby violate the Appellant's right to confront his accusers, by admitting into evidence hearsay testimony concerning statements made by the victim-deceased to a law enforcement officer after he was shot?

RESPONDENT'S STATEMENT OF THE CASE

An Orangeburg County Grand Jury indicted Appellant, Julian C. Young, in February 2012 for murder. (R. pp. 413–14). On August 14, 2012, Appellant's case was called to trial before the Honorable Edgar W. Dickson. (R. p. 1). Appellant was represented by Virgin Johnson and Corey L. Williams during the three-day trial. (R. pp. 1–2). Assistant Solicitors Donald Sorenson and Harrison Bell represented the State. (R. p. 1). On August 16, 2012, the jury returned a verdict of guilty. (R. p. 405, lines 5–12). Judge Dickson sentenced Appellant to a term of thirty-five years of incarceration. (R. p. 406, lines 17–25). Thereafter, on August 21, 2012, Appellant filed a timely Notice of Appeal.

RESPONDENT'S STATEMENT OF THE FACTS

A Conversation with Victim

Kendra Williams, a sergeant with the South Carolina State University (SC State) Police Department, was dispatched to 2195 Russell Street on the night of April 15, 2011. (R. p. 51, line 3–p. 52, line 5). Williams was called to the property around 11:14 p.m. because a vehicle had hit the building at 2195 Russell Street, which held offices for SC State. (R. p. 52, lines 6–25). Williams arrived on the scene at 11:20 p.m. (R. p. 52, lines 6–12). When Williams arrived at the scene, she observed that a green car had struck the front of the building at 2195 Russell Street. (R. p. 53, lines 13–22). Williams observed "a lot of car pieces and a lot of bricks everywhere. . . ." (R. p. 53, lines 19–20). There were a number of public safety officers already at the scene when Williams arrived. (R. p. 53, lines 13–21). An ambulance was also on the scene. (R. p. 54, line 22–p. 55, line 2).

Williams found the former occupant of the wrecked vehicle, a man named Jonathan Bailey (Victim), in the ambulance when she arrived. (R. p. 56, lines 11–22). Williams got in the back of the ambulance with Victim and observed that he had a gunshot wound to the right chest area and another wound to the left chest area.[1] (R. p. 57, lines 3–13). Williams observed that Victim "was frantic, he was scared, terribly scared." (R. p. 57, lines 14–17). Victim was rolling back and forth on a stretcher and complaining of the pain he was in. (R. p. 57, lines 14–21). According to Williams, he kept saying, "'get me to the hospital, I'm going to die.'" (R. p. 58, lines 3–4).

[1] Dr. Kelly Rose, the forensic pathologist who performed Victim's autopsy, testified that Victim had an open gunshot wound to his stomach and an exit wound coming out of his left side. (R. p. 234, line 1–p. 236, line 20).

Williams asked Victim his name and if he was a student at SC State, but Victim would not answer her. (R. p. 57, line 22–p. 58, line 2). Victim gave few audible responses. (R. p. 62, lines 22–23). But Williams testified that she

> asked him if he was Queen's Village, he said he—well, he shook his head, yes. I asked him if he had been robbed, he shook his head, yes. I asked him if, how many, and he stuck his hand up and showed me four fingers. I asked him if he saw the weapon, he shook his head, yes. I asked him if it was a revolver, he shook his head, yes. When I asked him if he saw the color of the weapon, he just shook his head, no. He just kept saying he was in pain, get me to the hospital. It wasn't real easy to get anything out of him.

(R. p. 58, lines 6–14). The ambulance ultimately took Victim to the helipad at The Regional Medical Center of Orangeburg, and then he was transported to another hospital. (R. p. 58, lines 19–25). Victim died later that night from his injuries. (R. p. 59, lines 1–3).

After getting information from Victim, Williams contacted her supervisors, and then a number of officers from the SC State Police Department responded to 2195 Russell Street and also to Queen's Village. (R. p. 60, line 13–p. 61, line 14). The officers secured both locations and began looking for evidence. (R. p. 61, lines 1–14).

Investigation

When Dustin Johnson, an officer with the SC State Police Department responded to Queen's Village the night of April 15, 2011, the crime scene had already been secured. (R. p. 68, line 1–p. 69, line 16). Johnson began to process the crime scene. (R. p. 69, lines 17–24). Johnson found and collected the following pieces of evidence from the crime scene at Queen's Village: two bags of a green leafy substance that appeared to be marijuana and a fifty dollar bill. (R. p. 69, line 24–p. 70, line 8; R. p. 72, line 10–p. 73, line 5). Johnson also photographed an area that had—what he perceived to be—fresh, tire skid marks. (R. p. 70, lines 8–12; R. p. 73, lines 5–12). Johnson did not find any bullets or shell casings in the area. (R. p. 76, lines 14–17).

Johnson then went to process the second crime scene, a short distance away on Russell Street. (R. p. 76, line 23–p. 77, line 14). While observing the wrecked car at the crime scene, Johnson noticed a marking on the arm rest of the driver side door that appeared to be blood spatter, so he began looking for a bullet projectile. (R. p. 78, line 2–p. 79, line 24). He found the bullet projectile about eighteen inches from the side of the car, right under the driver side door. (R. p. 79, line 25–p. 80, line 11). In the passenger side of the car, Johnson found another fifty dollar bill, along with five twenty dollar bills and another bag of a green leafy substance that appeared to be marijuana. (R. p. 83, line 8–p. 84, line 20). Johnson then secured the vehicle with evidence tape and had it towed to a secure location. (R. p. 84, line 21–p. 85, line 7).

Once police learned that Victim had died from his injuries, the South Carolina Law Enforcement Division (SLED) was called in to take over the case. (R. p. 304, line 1–p. 305, line 14). SLED Agent Richard Johnson came to Orangeburg on April 16, 2011 to begin his investigation. (R. p. 305, lines 14–24). Investigators lifted two latent prints from the outside of the passenger door of Victim's vehicle, one from the top of the window and one from the door, near the key entry. (R. p. 261, line 22–p. 265, line 9). The latent print from the window was identified as belonging to Ray Alston. (R. p. 284, line 13–p. 286, line 8; R. p. 294, lines 15–19). The other print could not be identified at first, but eventually it was identified as belonging to Appellant.[2] (R. p. 286, line 9–p. 292, line 11).

As part of SLED's investigation, Agent Johnson obtained Victim's phone records. (R. p. 307, lines 8–17). From those records, Agent Johnson identified Ricky Gipson as someone who had been in "constant contact" with Victim before his death and who had sent two text messages to Victim shortly after the 911 call regarding Victim's accident was made. (R. p. 307, lines 17–

[2] The bills collected from the crime scenes were also examined for latent prints, but none of the latent prints on the bills were of sufficient value to compare. (R. p. 292, line 12–p. 294, line 5).

25). Agent Johnson contacted Gipson and took his statement about what happened the night of April 15th. (R. p. 309, lines 3–8). Agent Johnson showed Gipson Alston's photograph, and Gipson identified Alston as someone who was present the night Victim was shot. (R. p. 309, lines 9–17).

Thereafter, Alston was arrested for murder, and Alston identified the other individuals who were present the night Victim was shot. (R. p. 309, line 18–p. 310, line 22). Alston identified Appellant, who goes by the nickname Gouda, as one of the individuals present the night Victim was killed. (R. p. 310, lines 8–24).

Night of April 15, 2011

At trial Alston testified that, on the night of April 15, 2011, he was hanging out with Appellant and others at a friend's house. (R. p. 167, line 8–p. 171, line 4). Alston decided he wanted to get some marijuana. (R. p. 171, lines 3–10). Alston asked Appellant about arranging for him to buy marijuana, and Appellant made some phone calls and set something up. (R. p. 171, line 11–p. 172, line 3). Then, Alston, Appellant, Hilliard Pinckney, and Maurice Thompson drove to the SC State campus in silver Buick. (R. p. 168, lines 9–13; R. p. 173, lines 1–20). Thompson drove, and Pinckney sat in the passenger seat. (R. p. 173, line 21–p. 174, line 4). Alston and Appellant sat in the back seat. (R. p. 174, lines 5–24).

On the SC State campus, the group picked up Gipson, who had been contacted by Appellant earlier in the day about purchasing marijuana. (R. p. 99, line 16–p. 104, line 4). Because Gipson did not have as much marijuana as Alston wanted to buy, Gipson arranged for Victim to sell to Alston. (R. p. 100, line 16–p. 101, line 20). In the car Gipson sat between Alston and Appellant, but Appellant was the only one there who knew Gipson. (R. p. 103, line 18–p. 105, line 16; R. p. 174, line 25–176, line 3).

Gipson testified that he had arranged to meet with Victim at the marriage housing area. (R. p. 103, line 18–p. 104, line 4). The group arrived before Victim, so they reversed and parked in a parking space and waited for Victim to arrive. (R. p. 107, lines 8–21; R. p. 176, lines 4–24). When Victim arrived, he pulled into a parking spot such that his passenger side was closest to the passenger side of the Buick. (R. p. 107, line 21–p. 108, line 11; R. p. 176, line 25–p. 177, line 21). Gipson, Alston, and Appellant went to Victim's car, and Gipson got in the passenger seat to facilitate the transaction. (R. p. 109, lines 1–13). Alston and Appellant were not happy with the quality of the marijuana, and they began complaining to Victim. (R. p. 109, line 8–p. 110, line 18; R. p. 178, line 13–p. 179, line 7). Gipson then got out of the car and turned his attention to another car in the parking lot. (R. p. 110, line 19–p. 111, line 12). When Gipson turned back around, he saw Appellant and Victim "tussling in the car. . . ." (R. p. 111, lines 12–14). Gipson observed that Appellant was leaning in the car, but Gipson could not tell what Appellant and Victim were fighting over. (R. p. 112, lines 10–24). Gipson never saw anyone with a gun. (R. p. 112, line 25–p. 113, line 2). Gipson noticed that Victim's car was in reverse and the passenger door was open. (R. p. 111, lines 14–16). Gipson also observed that Alston was standing away from the car. (R. p. 113, lines 11–19). Gipson testified that he heard Victim's tires make a noise, then he heard a pop, and he ran away. (R. p. 111, lines 16–21). Gipson looked back at the scene and saw that Victim's car had left the parking spot. (R. p. 111, lines 21–25). Gipson kept running. (R. p. 111, line 25).

Alston also testified that Appellant was leaning in Victim's car when he "heard a pow go off." (R. p. 179, line 19–p. 181, line 11). Alston thought the "pow" was a gun shot. (R. p. 181, lines 12–14). Appellant then got back in the Buick. (R. p. 180, lines 2–3). Alston asked

Appellant "if he was alright, and then [Alston] asked if he shot the guy, but [Appellant] never answered. . . ." (R. p. 180, lines 3–6; R. p. 183, lines 1–7).

ARGUMENT

The trial court did not err, nor did it violate Appellant's rights under the Confrontation Clause, when it admitted into evidence hearsay testimony concerning an excited utterance or dying declaration made by Victim to a law enforcement officer after Victim was shot.

Introduction

Victim's statement to Officer Kendra Williams was non-testimonial. Thus, the admission of Williams's testimony regarding that statement did not violate Appellant's rights under the Confrontation Clause. Even if the statement was not properly admitted, the admission was harmless error. Moreover, the statement was properly admitted under a hearsay exception.

Standard of Review

Confrontation Clause

The Confrontation Clause of the Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." The United States Supreme Court has held that this provision bars "admission of testimonial statements of a witness who did not appear at trial unless he was available to testify, and the defendant had had a prior opportunity for cross-examination." *Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). According to the Supreme Court

> when a court must determine whether the Confrontation Clause bars the admission of a statement at trial, it should determine the "primary purpose of the interrogation" by objectively evaluating the statements and actions of the parties to the encounter, in light of the circumstances in which the interrogation occurs. The existence of an emergency or the parties' perception that an emergency is ongoing is among the most important circumstances that courts must take into account in determining whether an interrogation is testimonial because statements made to assist police in addressing an ongoing emergency presumably lack the testimonial purpose that would subject them to the requirement of confrontation.

Michigan v. Bryant, __ U.S. __, 131 S.Ct. 1143, 1162 (2011).

"A violation of the Confrontation Clause is not *per se* reversible but is subject to a harmless error analysis." *State v. Gracely*, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012) (citing *Delaware v. Van Arsdall*, 475 U.S. 813, 822 (2006)).

> "Whether such an error is harmless in a particular case depends upon a host of factors . . . . The factors include the importance of the witness's testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross examination otherwise permitted, and, of course, the overall strength of the prosecution's case."

Id. (quoting *Van Arsdall*, 475 U.S. at 684).

Hearsay

Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. In general, hearsay is not admissible for purposes of trial; however, there are a number of exceptions. *See* Rule 802, SCRE. For example, S.C. R. Evid. 803(2) provides that "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" is not excluded. That exception is known as the excited utterance exception. *See* Rule 803(2), SCRE. Another exception, known as the dying declaration exception, provides that "[i]n a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death" is not excluded by the hearsay rule if the declarant is unavailable. Rule 804(b)(2), SCRE.

"'The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion

accompanied by probable prejudice.'" *State v. Kromah*, 401 S.C. 340, 349, 737 S.E.2d 490, 494–95 (2013) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006)). "'An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.'" *Id.* at 349, 737 S.E.2d at 495 (quoting *Douglas*, 369 S.C. at 429–30, 632 S.E.2d at 848)).

How the Issue Was Raised at Trial

Before trial began, defense counsel moved to have Williams's testimony concerning her conversation with Victim excluded. (R. p. 3, line 24–p. 7, line 16). Defense counsel argued before the trial court (1) that the testimony would violate Appellant's rights under the Confrontation Clause, (2) that the testimony was inadmissible hearsay and was not admissible under the excited utterance exception, and (3) that the testimony was inadmissible hearsay and was not admissible under the dying declaration exception. (R. p. 3, line 24–p. 7, line 16). Defense counsel also submitted a brief to the court providing case law in support of their arguments and additionally asserting that Williams's testimony was inherently prejudicial. (R. pp. 407–12).

In response, the State argued that the evidence was not testimonial because it "wasn't information that was given in . . . anticipation of litigation." (R. p. 9, lines 12–17). As to whether the testimony was admissible under a hearsay exception, the State asserted that it would be up to the court to decide whether Victim's statement to Williams was an excited utterance or a dying declaration. (R. p. 9, line 17–p. 10, line 2).

The trial court then heard Williams's testimony *in camera*. (R. p. 13, line 1–p. 23, line 9). On direct examination Williams testified that she spoke with Victim in the back of an ambulance. (R. p. 15, lines 1–8). Williams observed that Victim had a gunshot wound to his

right chest area and another wound on his left side. (R. p. 15, lines 8–11). Williams described Victim's demeanor as "frantic[. H]e was rolling back and forth[;] he was scared[;] he kept saying, [']get me to the hospital, I'm going to die.['] He was, he was scared. . . . He appeared to be in a lot of pain." (R. p. 15, lines 14–19). Williams then described her conversation with Victim:

> I asked [Victim] if he had been robbed, and he shook his head, yes. I asked him if he had been in the parking lot of Queen's Village, and he shook his head, yes. And I asked him if he saw who robbed him, and he shook his head, yes. I asked him how many? And he stuck his hand up and had four fingers up. I said, four? He shook his head, yes. I asked him if, you know, if he saw the weapon. He shook his head. . . .
>
> . . . .
>
> . . . . I asked him if the weapon was silver or black. At that time he was, kept shaking his head, no. And there were some other questions that I asked him, but he did tell me that he lived in Queen's Village. He did tell me that he saw the person who shot him. He told me there was four of them, but most of it was just him shaking his head. He, if he took any kind of effort to speak he would just shake his head and kept saying he's in pain, he couldn't talk he was having a hard time talking, real frantic, still saying, you know, get me to the hospital, I'm going to die.

(R. p. 16, lines 2–21).

When asked on cross-examination how long after the incident occurred did Williams get to the scene, she responded that she would have to look at the time. (R. p. 22, lines 10–12). Williams also testified that when she initially spoke with Victim, he would not tell her his name. (R. p. 22, line 24–p. 23, line 4).

Following Williams's *in camera* testimony, defense counsel argued that Victim's statement was not an excited utterance because Williams was asking Victim questions—he was not just blurting the information out. (R. p. 23, line 21–p. 24, line 7). Additionally, defense counsel argued that there was nothing about Victim's situation that was startling. (R. p. 24, lines

1–7). Defense counsel then argued that Victim's statement was not a dying declaration because Williams did not put in her statement, which she gave to SLED the day after she spoke with Victim, that Victim told her that he thought he was dying. (R. p. 24, lines 7–14). Defense counsel also argued that the statement was more prejudicial that probative and that it should have been excluded under S.C. R. Evid. 403. (R. p. 24, line 14–p. 25, line 8).

The State then argued that, looking at the totality of the circumstances, Victim's statement was non-testimonial. (R. p. 25, line 12–p. 26, line 1). The State further argued that Victim's statement was admissible as either a dying declaration or an excited utterance. (R. p. 25, lines 1–15). As to the issue of prejudice, the State pointed out that Victim did not even identify Appellant by name in his statement—he merely confirmed that he had been robbed by four people. (R. p. 25, lines 16–22).

Defense counsel replied that it was prejudicial because one of those four men was the defendant. (R. p. 27, lines 12–16). Defense counsel then went into more depth with his arguments concerning whether Victim's statement was either a dying declaration or an excited utterance. (R. p. 27, line 16–p. 30, line 1).

Judge Dickson found the testimony to be admissible, specifying that "because he is in the ambulance after he had just been shot and robbed, he's still under a stressful event at that point." (R. p. 30, lines 2–4). Upon prompting by the State, Judge Dickson clarified his ruling, stating

> I'm going to let it in, I say it will be non-testimonial and let it in. It's just part of his excited utterance at the time, whether or not—you know, the purpose of letting an excited utterance in is that he doesn't have time for any kind of reflective though. And so, right now, this is a gentleman that's just been robbed and shot, he's in an ambulance, and I don't think based on the testimony I heard that he had time to have much reflection about what was going on so he could make up a story.

(R. p. 30, line 13–p. 31, line 3).

Analysis

Confrontation Clause

Respondent submits that Victim's statement to Williams was non-testimonial, and, thus, admission of that statement did not violate Appellant's constitutional rights. Appellant, on the other hand, argues that Victim "made those statements under circumstances where an objective witness would reasonably believe that the statement would be available for later use at a trial." (Final Br. of Appellant at 11). Respondent disagrees.

The facts under which Victim made his statement are substantially similar to those in another case, *Michigan v. Bryant*, __ U.S. __, 131 S.Ct. 1143 (2011), in which the United States Supreme Court found that a gunshot victim's statement to police was non-testimonial. In *Bryant*, the Supreme Court described the circumstances surrounding the victim's statement as "a nondomestic dispute, involving a victim found in a public location, suffering from a fatal gunshot wound, and a perpetrator whose location was unknown at the time the police located the victim." 131 S.Ct. at 1156. That description is on all fours with the circumstances in which Victim spoke to Officer Williams in this case.[3]

In deciding whether the primary purpose of the victim's statement was to enable police assistance to meet an ongoing emergency, the Court in *Bryant* "first examine[d] the circumstances in which the interrogation occurred." *Id.* at 1163. As part of the analysis, the

[3] There are a few slight differences between the facts in *Bryant* and those in the instant case. For example, in *Bryant*, police spoke to the victim before emergency medical services had arrived. 131 S.Ct. at 1150. Also, in *Bryant*, the victim identified the person who had shot him when he spoke to the police, but he did not indicate the cause of the shooting. *Id.* at 1150, 1163–64.

Court noted that when the police questioned the victim, they did not know, and the victim did not tell them, if the threat was limited to the victim. *Id.* at 1163–64. The Court also explained that because the *Bryant* case involved a gun, "[t]he physical separation that was sufficient to end the emergency in [a domestic violence case where fists were the weapon] was not necessarily sufficient to end the threat in this case." *Id.* at 1164. Also, the Court considered that the police in *Bryant* did not know the location of the shooter when they questioned the victim. *Id.* The Court then looked at the statement by the victim and the questions by the police. *Id.* at 1165. As to the victim, "[h]is answers to the police officers' questions were punctuated with questions about when emergency medical services would arrive. He was obviously in considerable pain and had difficulty breathing and talking." *Id.* (internal citations omitted). On the other hand, "[t]he questions [the police] asked—what had happened, who had shot him, and where the shooting had occurred, were the exact type of questions necessary to allow the police to assess the situation, the threat to their own safety, and the possible danger to the potential victim." *Id.* at 1166 (internal quotations and citations omitted). Finally, the Court considered the informality of the situation, which in the *Bryant* case was "fluid and somewhat confused." *Id.* The Court found that "[t]he informality suggest[ed] that the interrogators' primary purpose was simply to address what they perceived to be an ongoing emergency, and the circumstances lacked any formality that would have alerted [the victim] to or focused him on the possible future prosecutorial use of his statements." *Id.* Based on its assessment of the facts in *Bryant*, the Court ultimately concluded that the victim's statement was not testimonial and that admission of the statement did not violate the Confrontation Clause. *Id.* at 1167.

Respondent submits that the circumstances analyzed by the Supreme Court in *Bryant* are substantially similar to the circumstances surrounding Victim's statements to Williams, and, like

the Court in *Bryant*, this Court should find that Victim's statements were non-testimonial and, thus, admission of the statements did not violate Appellant's rights under the Confrontation Clause. Like in *Bryant*, when Williams spoke to Victim, she did not know if the threat was limited to him. Also like in *Bryant*, this case involved a shooter, whose whereabouts were unknown at the time Williams spoke with Victim. When Williams questioned Victim, she sought to find out where Victim had been at the time of the shooting, what had instigated the shooting, how many people had been involved in the shooting, and if Victim knew any details about the gun that had been used. All of these questions indicate that Williams's primary purpose in speaking with Victim was to address the ongoing emergency—namely, the situation of having an unknown shooter on the SC State campus. Like the victim in *Bryant*, here, Victim was clearly in considerable pain. While Appellant makes much of the fact that Victim would not tell Williams his name, the record reflects that Victim mostly responded to Williams's inquiries by nodding his head, which is not surprising considering Victim was suffering from a gunshot wound to his abdomen. In Williams's own words, "if [Victim] took any kind of effort to speak he would just shake his head and kept saying he's in pain, he couldn't talk he was having a hard time talking, real frantic, still saying, you know, get me to the hospital, I'm going to die." (R. p. 16, lines 17–21). Finally, the informality of the conversation between Williams and Victim did not put Victim on notice that his statement would be for future prosecutorial use. For the same reasons that the Court in *Bryant* found the victim's statement to be non-testimonial, Respondent submits that Victim's statement in the instant case, too, is non-testimonial.

Respondent submits that even if this Court finds that Victim's statement was testimonial, the admission of the statement through Williams's testimony at trial was harmless error. Foremost, Victim did not even identify Appellant as the shooter when he communicated with

Williams. Victim merely confirmed that the shooting happened in Queen's Village, that he had been robbed, that there had been four people, and that he had seen the gun. Appellant argues that Victim's statement was particularly prejudicial because "[a]bsent these statements, there was no other evidence that the victim in this case was robbed prior to his shooting. . . . If anything, the testimony of all the states [sic] other witnesses left as a mystery what happened in the moments preceding the victim's shooting." (FBOA at 12). Respondent disagrees. Though the eyewitnesses to the shooting could not see exactly what happened in Victim's car that night, they observed Appellant leaning in Victim's vehicle and tussling with Victim, and they observed Victim trying to reverse while Appellant was still in the car immediately before they heard a gunshot. Additionally, investigators found money and bags of marijuana in the passenger side of Victim's car and on the ground at the location of the shooting. Respondent submits that the combination of this circumstantial evidence suggests that Appellant attempted to rob Victim. Finally, the State's case was strong even without Victim's statement. As such, if the Court finds that Victim's statement was testimonial, admission of the statement through Williams's testimony was harmless error.

Excited Utterance

Victim's statement was properly admitted under the excited utterance exception to the general hearsay rule.

> Three elements must be met in order for a statement to be an excited utterance: (1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition.

State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008) (citing *State v. Ladner*, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007)). "The rationale underlying the excited utterance

exception is that 'the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication.'" *Id.* (quoting *State v. Davis*, 371 S.C. 170, 178, 638 S.E.2d 57, 62 (2006)). In determining whether a statement is admissible under the excited utterance exception, a court must consider the totality of the circumstances. *Id.*

In this case the court considered "the totality of the circumstances" and decided to admit Victim's statement to Williams under the excited utterance exception. (R. p. 28, lines 4–24). The court did not abuse its discretion as the South Carolina Supreme Court has "generally allowed as excited utterances statements made by the victim to the police immediately following a physical attack." *State v. Burdette*, 335 S.C. 34, 43, 515 S.E.2d 525, 530 (1999). In this case, though Williams was unsure of how long after the shooting occurred she spoke to Victim, he was in the ambulance and still at the scene when she questioned him. Respondent submits that such proximity is sufficient considering the circumstances of this case. *See State v. Blackburn*, 271 S.C. 324, 327, 247 S.E.2d 334, 336–37 (1978) (concluding that a statement given while declarant was "still under the stress and pain of the assault" would be admissible under the excited utterance exception though the statement was given in excess of one hour after the incident).

Appellant argues that the statement evidenced reflective thought because Victim would not tell Williams his name, and, thus, the statement was not an excited utterance. However, the trial court rejected that argument, stating

> this is a gentleman that's just been robbed and shot, he's in an ambulance, and I don't think based on the testimony I heard that he had time to have much reflection about what was going on so he could make up a story. . . . He was just answering questions that were posed to him by a police officer trying to get to the bottom of the situation.

(R. p. 30, line 23–p. 31, line 3). Indeed, Victim's refusal to give his name could be a result of the considerable pain that he was feeling, as opposed to an indication that he was trying to hide his

identity. As previously discussed, Williams testified that any time Victim attempted to speak, he would start shaking his head and complaining of his pain. Consequently, during Williams's conversation with Victim, he gave "[v]ery, very few" audible responses—again, not surprising considering he was suffering from a gunshot wound to his abdomen. (R. p. 62, lines 22–23). Respondent submits that the continuing stress of the attack makes Victim's statement to Williams inherently reliable. *See State v. McHoney*, 344 S.C. 85, 95, 544 S.E.2d 30, 34–35 (2001) (finding victim's statement to a nurse while she was still under the continuing stress of being stabbed seven times in the abdomen and having her throat slit was inherently reliable because there was no time for the victim to reflect on the event).

Appellant additionally takes issue with the fact that Victim's statement was the result of questions posed by Williams. Appellant asserts that Williams "questioned the injured man in a manner which suggested an answer." (FBOA at 12). Respondent disagrees that Williams's questions suggested an answer—for the most part, Williams's questions allowed Victim to respond by nodding yes or no, but Williams did not suggest an answer. Additionally, the Supreme Court of South Carolina has previously found statements made in response to questions to be admissible under the excited utterance exception. For example, in *State v. McHoney*, the Court found the statement of a victim, whose throat had been slit, to be admissible under the excited utterance exception. 344 S.C. at 94–95, 544 S.E.2d at 34–35. In *McHoney* the victim was unable to speak, but she nodded in response to questions asked by a nurse—questions including if victim knew her attacker, if victim's family knew her attacker, if victim's attacker lived in her neighborhood, and if victim's boyfriend was the attacker. *Id.* at 89–90, 544 S.E.2d at 32. In another case, the Court found that a trial court did not err in admitting a son's statement concerning who murdered his mother under the excited utterance exception. *State v. Sims*, 348

S.C. 16, 20–23, 558 S.E.2d 518, 520–22 (2002). The court specifically noted in that case, "[a]lthough the son's statement was in response to a question, under the circumstances presented, we find this fact does not prevent his answer from being an excited utterance." *Id.* at 23 n. 1, 558 S.E.2d at 522 n. 1.

Respondent submits that this case is distinguishable from *State v. Washington*, 379 S.C. 120, 665 S.E.2d 602 (2008), a case where the Supreme Court excluded a statement made in response to a police interrogation. In the *Washington* case, the victim's girlfriend gave a statement "in a formal interview with law enforcement at police headquarters almost ninety minutes after the events." *Id.* at 124, 665 S.E.2d at 604. The girlfriend's statement "consisted of a written narrative of the incident, which [the girlfriend] wrote, and three pages of questions and answers, which the Officer transcribed." *Id.* at 123, 665 S.E.2d at 603. The circumstances under which Victim gave his statement to Williams in this case are vastly different from those of *Washington*. As previously discussed, the exchange was informal and was limited to the information that Williams needed to address the ongoing emergency. Thus, the trial court properly admitted Victim's statement.

"Whether a statement is admissible under the excited utterance exception to the hearsay rule depends on the circumstances of each case and the determination is generally left to the sound discretion of the trial court." *State v. Burdette*, 335 S.C. 34, 43–44, 515 S.E.2d 525, 530 (1999). Respondent submits that in light of this principle, the court's admission of Victim's statement under the excited utterance hearsay exception should not be disturbed.

Dying Declaration

Though the court did not admit Victim's statement as a dying declaration,[4] Respondent submits that the statement would also be admissible under that exception.

> A statement made under the belief of impending death is not excluded by the hearsay rule if the declarant is unavailable as a witness in a prosecution for homicide, the statement is made by a declarant while believing the declarant's death is imminent, and the statement concerned the causes or circumstances of what the declarant believed to be impending death.

State v. McHoney, 344 S.C. 85, 92, 544 S.E.2d 30, 33 (2001). Because Victim's statement meets all of the above criteria, in addition to being admissible as an excited utterance, it is admissible as a dying declaration.

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[4] The trial court neither accepted nor rejected the State's argument that Victim's statement should be admitted as a dying declaration. The court expressed that it had

> questions about whether or not it's a dying declaration, the statement about needing to get to the hospital, I'm going to die, it's not in the statement. So, I do have an issue about whether or not it's a dying declaration, but I'm not going to decide that on that issue. I'm deciding it on whether or not it's excited utterance based on the totality of the circumstances.

(R. p. 27, line 25–p. 28, line 6). It appears that because Williams did not include in her statement to SLED that Victim had said he was going to die, the trial court declined to make a ruling as to whether Victim's statement was a dying declaration. Respondent notes that Williams testified *in camera* and before the jury that when she spoke to him, Victim said, "I'm going to die[,]" (R. p. 16, lines 20–21; R. p. 58, line 4). The trial court never made a finding that Williams's testimony was either credible or not credible. As such, Respondent submits this argument as an additional sustaining ground.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully Submitted,

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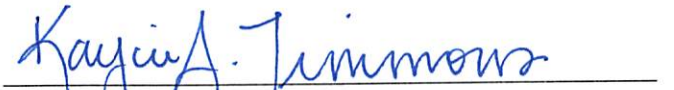
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December 23, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JULIAN C. YOUNG,

APPELLANT,

Appellate Case No. 2012-213006.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Kaycie S. Timmons, counsel for Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record Tara Dawn Shurling at:

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I further certify that all parties required by Rule to be served have been served.

This twenty-third day of December, 2013.

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Assistant Attorney General
SC Bar No. 100237

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Julian Young, Appellant.

Appellate Case No. 2012-213006

Appeal From Orangeburg County
Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2014-UP-234
Heard June 4, 2014 – Filed June 18, 2014

AFFIRMED

Tara Dawn Shurling, of Law Office of Tara Dawn Shurling, PA, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Donald J. Zelenka, and Assistant Attorney General Kaycie Smith Timmons, all of Columbia, and Solicitor David M. Pascoe, Jr., of Summerville, for Respondent.

PER CURIAM: Julian Young appeals his conviction for murder, arguing the trial court erred in admitting hearsay testimony concerning statements made by the victim after he was shot. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) ("'The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.'" (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)); *Michigan v. Bryant*, 131 S. Ct. 1143, 1166 (2011) (holding a gunshot victim's statement to police was non-testimonial and did not violate the Confrontation Clause when the police's "primary purpose was simply to address what they perceived to be an ongoing emergency, and the circumstances lacked any formality that would have alerted [the victim] to or focused him on the possible future prosecutorial use of his statements"); *State v. Washington*, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008) ("A court must consider the totality of the circumstances when determining whether a statement is admissible under the excited utterance exception, and the determination is generally left to the sound discretion of the trial court."); *State v. Burdette*, 335 S.C. 34, 43, 515 S.E.2d 525, 530 (1999) (holding the supreme court has generally allowed as excited utterances statements made by the victim to the police immediately following a physical attack); *State v. McHoney*, 344 S.C. 85, 94-95, 544 S.E.2d 30, 34-35 (2001) (finding victim's statement to a nurse while she was under the continuing stress of being stabbed in the abdomen and having her throat cut was inherently reliable because the victim had no time to reflect on the event); *State v. Sims*, 348 S.C. 16, 23 n.1, 558 S.E.2d 518, 522 n.1 (2002) (finding declarant's statement in response to a question did not prevent his answer from being an excited utterance).

AFFIRMED.

WILLIAMS, KONDUROS, and LOCKEMY, JJ., concur.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2012-213006

STATE OF SOUTH CAROLINA,

Respondent.

v.

JULIAN YOUNG,

Appellant.

PETITION FOR REHEARING

TARA DAWN SHURLING
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S. C. Bar No. 5099

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ATTORNEY FOR APPELLANT.

NOW COMES the Appellant in the above-captioned action, acting by and through undersigned counsel, seeking rehearing on this Court's unpublished opinion in this matter. The State v. Julian Young, 2014-UP-234 (S.C. Ct. App. Dated June 18, 2014). Pursuant to Rule 221(a), SCACR, the Appellant petitions for rehearing on the ground that certain issues of material fact or law have either been overlooked or misapprehended by this Honorable Court in the opinion in question. In support of this position, the Appellant would show unto this Court the following.

Our Supreme Court has found that the fact that a statement was made in response to a question does not prevent the answer from being an excited utterance. *State v. Smith*, 348 S.C. 16, 23 n. 1, 558 S.E.2d 518, 522 n. 1 (2002). Appellant respectfully submits, however, that the opinion of this Court overlooks the fact that on the facts of this case the answers to the questions posed by the officer who interviewed the victim indicate that the declarant was thinking forward to potential criminal prosecution. The fact that the declarant would not disclose his identity evidences the fact that he was capable of reflective thought and therefore, that his statements were not excited utterances. *See, State v. Davis, 371 S.C. 170, 178, 638 S.E.2d 57, 62 (2006).* In addition, Appellant respectfully submits that the opinion of this Honorable Court fails to take into account that the nature of the questions asked by the officer, particularly the inquiry concerning whether the declarant had been robbed, did not go to issues addressing public safety. Appellant submits that questions concerning the circumstances that lead to the victim being shot were not designed to reveal information which would aid law enforcement in curtailing any immediate threat to the community. Appellant maintains his position that the testimony in question was testimonial in nature and therefore, that its admission violated his rights pursuant to the Confrontation Clause of the United States Constitution where 1) the declarant was

unavailable to testify at trial and 2) the accused has had no prior opportunity to cross-examine this witness. *Crawford v. Washington, 541 U.S. 36, 54, 124 S.Ct. 1354 (2004)*. On the other hand, the testimony in question would not be admissible simply even if it did not implicate the Sixth Amendment. *State v. Garner, 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2012)*. Appellant submits that the evidence before this Court does not support a finding that the statements in question were admissible as excited utterances pursuant to *Rule 803(2), SCRE*, where the record demonstrates that the declarant engaged in reflective thought at the time the statements were made. Where the testimony in dispute constituted the only evidence that the declarant was shot in the course of a robbery, the Appellant was clearly prejudiced by its admission inasmuch as the jury would likely have factored that information into its deliberations on the question of whether the victim was shot with malice.

CONCLUSION

WHEREFORE, having set forth his grounds, the Appellant, Julian Young, asks that this Court rehear his appeal and grant him a new trial.

Respectfully submitted,

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ATTORNEY FOR APPELLANT

This 2nd day of July, 2014.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
Edgar W. Dickson, Circuit Court Judge

Case No. 2012-213006

STATE OF SOUTH CAROLINA,

Respondent.

v.

JULIAN YOUNG,

Appellant.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Appellant's Petition for Rehearing in the above-entitled case have been served upon opposing counsel, Kaycie Smith Timmons, Assistant Attorney General, P O Box 11549, Columbia, SC 29211, by depositing in the U.S. Mail, postage prepaid, postage prepaid, this 2nd day of July, 2014.

Tara Dawn Shurling
Attorney and Counselor at Law
S. C. Bar No. 5099

SWORN TO BEFORE me this 2nd day of July, 2014.

Sharon H. McAllister (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

The South Carolina Court of Appeals

The State, Respondent,

v.

Julian Young, Appellant.

Appellate Case No. 2012-213006

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Tara Dawn Shurling, Esquire
Kaycie Smith Timmons, Esquire
Donald J. Zelenka, Esquire
The Honorable Edgar W. Dickson

FILED

August 25, 2014

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Orangeburg County
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

S. C. Court of Appeals Appellate Case No. 2012-213006

THE STATE,

RESPONDENT,

v.

JULIAN YOUNG,

PETITIONER.

PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER.

CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies, pursuant to Rule 242(d) (1), SCACR, that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on August 6, 2014.

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QUESTION PRESENTED

I.

Did the trial court err, and thereby violate the Petitioner's right to confront his accusers, by admitting into evidence hearsay testimony concerning statements made by the victim-deceased to a law enforcement officer after he was shot where the statements at issue were testimonial in nature and where, even if not testimonial, they did not qualify under Rule 803(2), SCRE, as excited utterances which would be admissible as an exception to Rule 802, SCRE; the hearsay rule?

STATEMENT OF THE CASE

The Petitioner was indicted by the Orangeburg County Grand Jury for the offense of murder. See, Indictment no. 2011-GS-38-1833. He was represented in the trial court by Virgin Johnson and Corey L. Williams, of the Orangeburg County Bar. The Petitioner proceeded to trial by jury on August 14 – 16, 2102. The State was represented at trial by Assistant Solicitors Donald Sorenson and Harrison Bell. At the conclusion of this trial, the Petitioner was found guilty as indicted and was sentenced by the Honorable Edgar W. Dickson, presiding circuit court judge, to a term of thirty-five (35) years incarceration.

The Petitioner served and filed a timely Notice of Appeal from his judgment and sentence. This appeal was heard by the South Carolina Court of Appeals on June 4, 2014. Petitioner's conviction was affirmed by the Court of Appeals on June 18, 2014. ***State v. Julian Young***, *Op. No. 2014-UP-234 (S.C.Ct.App. filed June 18, 2014).* Petitioner filed his Petition for Rehearing in the Court of Appeals on July 2, 2014. Said petition was denied by the Court of Appeals by Order filed August 25, 2014. Petitioner now asks that the Writ be issued and that he be afforded the opportunity to fully brief the issue addressed herein.

STATEMENT OF FACTS

ARGUMENT

I.

Did the trial court err, and thereby violate the Petitioner's right to confront his accusers, by admitting into evidence hearsay testimony concerning statements made by the victim-deceased to a law enforcement officer after he was shot where the statements at issue were testimonial in nature and where, even if not testimonial, they did not qualify under Rule 803(2), SCRE, as excited utterances which would be admissible as an exception to Rule 802, SCRE; the hearsay rule?

C. How the Issue Arose Below

At trial, the Petitioner made a motion pursuant to ***Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004)*** that any testimony concerning statements attributed to the victim-deceased be excluded. The Petitioner argued that admission of testimony concerning these statements, where the victim was not available for cross-examination, would violate his rights pursuant to the confrontation clause of the United States Constitution. The Petitioner cited ***State v. Gardner*** [1] and ***Rule 803, SCRE***, in support of his position that the testimony in question would be prejudicial hearsay. The Petitioner further argued that the statements in question should not be admitted as dying declarations where there was no reliable evidence from which it could be determined that the victim-deceased actually believed he was dying. Defense Counsel argued that the fact that the victim-deceased, who was known to be a drug dealer, did not want to give his name to the police, was evidence that he was capable of reflective thought at the time. This fact, the Petitioner argued, directly evidenced that the victim-deceased was capable of reflective thought at the time the statements were made. Likewise, it was argued that the statements in

[1] The record reflects that Counsel cited to State v. Gardner, however, based upon the content of his argument, Petitioner asserts that this is a probable reference to *State v. Garner, 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2012)*.

questions were not spontaneous utterances but rather, were made in response to questioning by a sergeant with the South Carolina State University Police Department; Kendra Williams. ROA p. 4, line 11 – p. 7, line 15. In response to the Petitioner's motion, the State argued that ***Crawford***, supra, should not apply because the statements were not testimonial in nature. ROA p. 9 lines 12-22.

B. Argument on direct appeal to the South Carolina Court of Appeals.

Testimony from Sergeant Williams was presented *in camera*. She testified that when she arrived at the scene the victim-deceased was in the back of an ambulance. ROA p. 14, lines 10 – 23. He had a gunshot wound to his right chest and another wound on his left side. ROA p. 15, lines 5 – 11. According to Sgt. Williams, he appeared to be in a lot of pain. She said, ***"[h]e was frantic, he was rolling back and forth, he was scared, he kept saying, get me to the hospital, I'm going to die. He was, he was scared."*** ROA p. 15, lines 14 – 19.

According to this witness, she asked the victim if he had been robbed and he shook his head, yes. She asked him if he had been in the parking lot of Queen's Village and he once again nodded, yes. She asked him if he saw who robbed him and he indicated that he did by shaking his head. She then asked him how many people robbed him and he held up four fingers. When she asked, "four?" he shook his head, yes. Although he supposedly shook his head yes in response to the question about whether he saw the gun that shot him, he shook his head "no" when asked if the gun was black or silver. ROA p. 16, lines 2- 13. She testified that the victim was having a really hard time speaking and that he mostly just shook his head to answer questions. She did claim that he said he was in pain and that he was going to die. ROA p. 16, lines 11 – 21. On cross-examination, Sgt. Williams acknowledged that she had given a statement to Investigator John Johnson with SLED. She said that she had told him everything that

happened, "if I recall." ROA p. 18, lines 6 – 14. She admitted that in her statement to SLED

- She did not say the victim was frantic;
- She did not say that he had said "get me to the hospital";
- She did not say that the victim was scared;

ROA p. 18, line 3 – p. 18, line 12.

Sgt. Williams also acknowledged that when she first spoke to the victim he would not tell her his name. ROA p. 22, line 24 – p. 23, line 4. In response to the testimony of Sgt. Williams, Trial Counsel noted that in the statement she gave to SLED, Sgt. Williams reported that the victim said, "get me to the hospital because I'm shot, I'm hurt.", as opposed to, "I'm going to die" as she claimed in court. ROA p. 24, lines 10 – 14. The Petitioner renewed his objections to the admission of this testimony on the ground that it clearly wasn't an excited utterance nor was it a dying declaration. Trial Counsel argued that the statements in question were more prejudicial than probative under ***Rule 403, SCRE***. ROA p. 23, line 21 – p. 25, line 8. The State argued that the fact that the victim was in pain, and wanting to get to the hospital, coupled with the fact that he thought he was about to die, made these statements non-testimonial. The State additionally argued that since the victim did not name the Petitioner in any of these statements to Sgt. Williams, the statements were no prejudicial to the Petitioner. ROA p. 25, line 12 – p. 26, line 22.

Ultimately, the trial judge acknowledged that he had questions about whether, or not, it would be a dying declaration because the statement this witness gave to SLED after interviewing the victim, did not contain the statement about "***needing to get to the hospital, I'm going to die.***" The judge noted that he had "***an issue with whether or not it's a dying declaration***" and he declined to decide the admissibility of this testimony on that issue. ROA p. 27, line 24 – p. 28,

line 5. The trial court found however, that the statements in questions were excited utterances and ruled that, as such, they were admissible. ROA p. 28, lines 5 – 24. Trial Counsel challenged the notion that a nodding of the head could qualify as an excited utterance however, the trial court found non-verbal communication could constitute an excited utterance. ROA p. 28, lines 4 – 14. In addition, Trial Counsel noted that Sgt. Williams was not able to say how close in time these statements were made to the shooting. Also, Trial Counsel objected to the position that someone being in pain would qualify as a foundation for a finding that a statement was an excited utterance. ROA p. 29, line 15 – p. 30, line 12.

The State subsequently asked the trial court to rule on whether the statements in questions were testimonial in nature. ROA p. 30, lines 13 – 17. The trial court then stated for the record,

> Okay. I'm going to let it in, I say it will be non-testimonial and let it in. It's just part of the excited utterance at the time, whether or not—you know, the purpose of letting an excited utterance in is that he doesn't have time for any kind of reflective thought. And so, right now, this is a gentleman that's just been robbed and shot, he's in an ambulance, and I don't think based on the testimony I heard that he had time to have much reflection about what was going on so he could make up a story. Okay? He was just answering questions that were put to him by a police officer trying to get to the bottom of the situation.

ROA p. 30, line 18 – p. 31, line 3.

In response to this ruling, the Petitioner asked the Court to note, once again, that the fact that this witness refused to give his name to the officer interviewing him was evidence of reflective thought. ROA p. 31, lines 9 – 12. The Court responded, "But, I do believe it's an excited utterance." ROA p. 31, line 20.

The testimony of Sgt. Williams in the presence of the jury was largely consistent with her testimony *in camera.* In her testimony in camera she indicated that the victim shook his head and indicated yes when she asked him if he had seen the weapon. She said that when she asked

him if the weapon was black or silver, he *"kept shaking his head, no."* ROA p. 16, lines 7 – 13. In her testimony in the presence of the jury, she added that she had asked him if the gun was a revolver and he answered yes. ROA p. 58, lines 10 – 11. With this exception, her trial testimony was consistent with her *in camera* testimony on the operative points concerning the circumstances surrounding this shooting. ROA p. 57, lines 17 – 21 and ROA p. 58, lines 1 – 14. The Supreme Court of the United States has found that testimonial hearsay against a defendant violates the Confrontation Clause of the United States Constitution if 1) the declarant is unavailable to testify at trial and 2) the accused has had no prior opportunity to cross-examine the witness. ***Crawford v. Washington, 541 U.S. 36, 54, 124 S.Ct. 1354 (2004).*** As recognized by the Court in Crawford, "not all hearsay implicates the Sixth Amendment." ***Id, 541 U.S. at 51.*** On the other hand, otherwise admissible hearsay testimony may be rendered inadmissible if it is testimonial in nature. ***Id, 541 U.S. at 68.*** Thus, if a statement is testimonial in nature, it is not admissible simply because it would otherwise fall under a recognized exception to the hearsay rule. On the other hand, the fact that a statement is not testimonial, does not render it admissible simply because it does not infringe upon the Sixth Amendment right of confrontation. ***State v. Garner, 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2012).*** Where non-testimonial hearsay is at issue, the Sixth Amendment is not implicated. ***State v. Ladner, 373 S.C. 103, 113, 644 S.E.2d 684, 689 (2007).*** In discussing what the standard for determining whether a statement is testimonial should be, the high court stated, "we leave for another day any effort to spell out a comprehensive definition of 'testimonial.' Whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations." ***Crawford, 541 U.S. at 68.*** The Court went on to find that "[w]here testimonial statements are at issue, the only indicium of reliability sufficient to satisfy

constitutional demands is the one the Constitution actually prescribes: confrontation." *Id, at 68-69.* South Carolina has clearly recognized that a statement that would otherwise be admissible under an exception to the hearsay rule is inadmissible if it is testimonial nature. In ***State v. Mitchell, 378 S.C. 305, 662 S.E.2d 493 (Ct. App.2009)***, a prior statement to police which would have been admissible as a statement against penal interest under Rules 804(a)(2) and (b)(3), SCRE, where the declarant refused to testify, was found by the Court of Appeals to violate the confrontation clauses of both the United Sates Constitution and the South Carolina Constitution. ***U.S.C.A. Cont. Amend.6 and 14 and S.C. Cont. Art. I, §14.*** Our Supreme Court has held that a violation of the Sixth Amendment right to confront witnesses is not *per se* reversible error. ***State v. Davis, 371 S.C. 170, 181, 638 S.E.2d 57, 63 (2006)***

On the facts of this case, the statements attributed to the victim-deceased should have been excluded from evidence inasmuch as they were testimonial in nature and the declarant would not be available for cross-examination. The testimony presented during the Petitioner's trial established that drugs were found in the victim's car. ROA p. 70, lines 4-5. Multiple state witnesses would ultimately testify that the victim was a drug dealer. Despite the fact that he was seriously injured, the fact remains that he made the statements in question while being questioned by a law enforcement officer concerning the circumstances surrounding his shooting. He made those statements under circumstances where an objective witness would reasonably believe that the statement would be available for later use at a trial. ***Crawford, 541 U.S. at 51-52.*** On these facts, the statements attributed to the victim by Sgt. Williams were testimonial and their introduction violated the confrontation clauses of both Untied States Constitution and the South Carolina State Constitution. ***U.S.C.A. Cont. Amend.6 and 14 and S.C. Cont. Art. I, §14. See also, State v, Green, 269 S.C. 657, 661, 239 S.E.2d 485, 487 (1977).***

The trial court appears to have concluded that the statements in questions were admissible because the circumstances surrounding these statements met the criterion for the excited utterance exception to the hearsay rule. Assuming *arguendo* that they would, this fact would not render the statements admissible in light of the fact that they were testimonial. As previously noted, otherwise admissible hearsay may be rendered inadmissible if it is testimonial.

Even if this Honorable Court were to conclude that the statements in questions were not testimonial in nature, the Petitioner would submit that the circumstances under which they were made did not meet the standard for admission as an excited utterance. Rule 803(2) defines an excited utterance as a,

> **[s]tatement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.**

A court must consider the totality of the circumstances when determining whether a statement falls within the excited utterance hearsay exception and the determination in such matters is generally left to the sound discretion of the trial judge. ***State v. Burdette, 335 S.C. 34, 43-44, 515 S.E. 525, 530(1999)***. The rationale behind the excited utterance exception is that "the startling event suspends the process of reflective thought, reducing the likelihood of fabrication." ***State v. Davis, 371 S.C. 170, 178, 638 S.E.2d 57, 62 (2006)***. As argued by the Petitioner at trial, the victim-deceased in this case, knowing he had drugs in his car, refused to give his name to Sgt. Williams. Such a ploy clearly evidences reflective thought and therefore, establishes that the statements in questions were no made while the victim's state of mind was such that he was incapable of reflective thought and therefore, less likely to fabricate. Hiding your identity in fear of the police is not an action one would expect to see in a person who wasn't expecting to be around to suffer the consequences of their unlawful behavior.

The Petitioner would respectfully assert that the admission of the statements attributed to the victim irreparably tainted his ability to review a fair trial. Absent these statements, there was no other evidence that the victim in this case was robbed prior to his shooting. Given the totality of the evidence presented in this case, while the circumstances may have given rise to suspicion, they did not establish how the victim died. If anything, the testimony of all the states other witnesses left as a mystery what happened in the moments preceding the victim's shooting. Based on the testimony of the State's own witnesses, it was equally possible that the deceased pulled a gun on the Petitioner and was shot in an ensuing tussle for the weapon. The testimony of Sgt. Williams is all the more dangerous inasmuch as she questioned the injured man in a manner which suggested an answer. After all, her question to the deceased was not, what happened? Her question was, were you robbed? ROA p. 16, lines 2-5. It is not unreasonable to suggest that a young man cool enough to refuse to give the police his name after he had been shot, and caught with drugs in his car, might also have been cool enough to seize on the opportunity to shift attention away from himself by answering that question affirmatively. It is also important to note that the statements in question were not blurted out by someone experiencing the immediate effects of a stressful event. He was questioned by the police and his refusal to answer the questions about his identity demonstrates that he was thinking reflectively about his answers.

D. <u>Argument for Reversal.</u>

Petitioner recognizes that this Honorable Court has found that the fact that a statement was made in response to a question does not necessarily prevent the answer from being an excited utterance. ***State v. Smith***, 348 S.C. 16, 23 n. 1, 558 S.E.2d 518, 522 n. 1 (2002). Petitioner respectfully submits, however, that the opinion of the Court of Appeals appears to

overlook the fact that, on the facts of this case, the answers to the questions posed by the officer who interviewed the victim indicate that the declarant was thinking forward to potential criminal prosecution. As argued in the Court of Appeals and noted above, the testimony presented during the Petitioner's trial established that drugs were found in the victim's car. ROA p. 70, lines 4-5. The testimony of multiple state witnesses established that the deceased was a drug dealer. Despite the fact that he was seriously injured, the fact remains that the deceased made the statements in question while being questioned by a law enforcement officer concerning the circumstances surrounding his shooting. Petitioner submits that he made those statements under circumstances where an objective witness would reasonably believe that the statement would be available for later use at a trial. ***Crawford, 541 U.S. at 51-52.*** The fact that the declarant would not disclose his identity evidences the fact that he was thinking ahead to possible criminal charges for the drugs he knew were in his car. This factor strongly supports Petitioner's position that the statements at issue were testimonial in nature. Under these circumstances it is not at all surprising that a drug deal dealer would jump at the opportunity to agree with the officer that he was shot during a robbery. After all, this version of the facts, supplied to the deceased by the questions posed by the officer, offered up an opportunity for this drug dealer to deflect attention away from the drugs in his car. The fact that he was able to think ahead and try to avoid being properly identified, demonstrates that he was, despite his injuries, capable of reflective thought and therefore, that his statements were not excited utterances. ***See, State v. Davis,*** *371 S.C. 170, 178, 638 S.E.2d 57, 62 (2006).*

In addition, Petitioner respectfully submits that the opinion of the Court of Appeals fails to take into account that the nature of the questions asked by the officer, particularly the inquiry concerning whether the declarant had been robbed, did not go to issues addressing public safety.

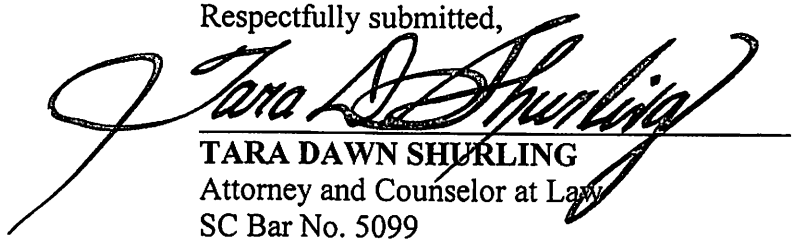
Petitioner argues that a close examination of the questions put to the deceased, concerning the circumstances that lead to him being shot, clearly reveals that the questions were not designed to reveal information which would aid law enforcement in curtailing any immediate threat to the community.

Petitioner maintains his position that the testimony in question was testimonial in nature and therefore, that its admission violated his rights pursuant to the Confrontation Clause of the United States Constitution where 1) the declarant was unavailable to testify at trial and 2) the accused has had no prior opportunity to cross-examine this witness. *Crawford v. Washington, 541 U.S. 36, 54, 124 S.Ct. 1354 (2004)*. On the other hand, Petitioner submits that the testimony in question would not be admissible simply because it did not implicate the Sixth Amendment. *State v. Garner, 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2012)*. Petitioner submits that the evidence before this Court does not support a finding that the statements in question were admissible as excited utterances pursuant to *Rule 803(2), SCRE*, where the record demonstrates that the declarant engaged in reflective thought at the time the statements were made. Where the testimony in dispute constituted the only evidence that the declarant was shot in the course of a robbery, the Petitioner was clearly prejudiced by its admission inasmuch as the jury would likely have factored that information into its deliberations on the question of whether the victim was shot with malice.

CONCLUSION

Based upon all the arguments presented to the Court of Appeals, and in this Petition, the Petitioner now respectfully prays that the writ might be issued and that he be granted the opportunity to be further heard on these issues.

Respectfully submitted,



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ATTORNEY FOR THE PETITIONER

This 24th day of September, 2014.

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Orangeburg County
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Appellate Case No.

The State,

Respondent,

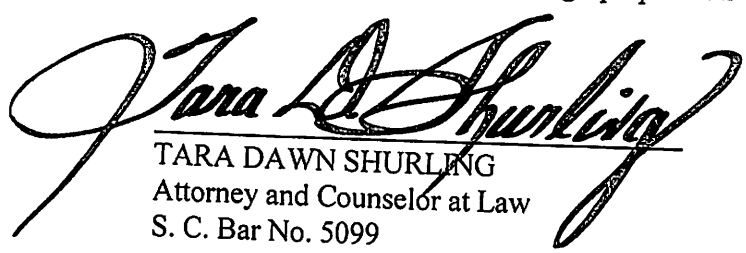
v.

Julian Young,

Petitioner.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Writ of Certiorari and the Appendix in the above matter has been served on opposing counsel, Kaycie Smith Timmons, Assistant Attorney General, by mailing in an envelope properly addressed to the Office of the Attorney General, P. O. Box 11549, Columbia, SC 29211, with postage prepaid on this the 24th day of September, 2014.



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SWORN TO BEFORE me this 24th day of September, 2014.

Sharon H McCollister
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires Jan 16, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

On Petition for Writ of Certiorari to the Court of Appeals
Unpublished Opinion No. 2014-UP-234 (S.C. Ct. App. filed June 18, 2014)

THE STATE, RESPONDENT,

vs.

JULIAN C. YOUNG, PETITIONER.

Appellate Case No. 2014-002054

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PETITIONER'S QUESTION PRESENTED

Did the trial court err, and thereby violate the Petitioner's right to confront his accusers, by admitting into evidence hearsay testimony concerning statements made by the victim-deceased to a law enforcement officer after he was shot where the statements at issue were testimonial in nature and where, even if not testimonial, they did not qualify under Rule 803(2), SCRE, as excited utterances which would be admissible as an exception to Rule 802, SCRE; the hearsay rule?

RESPONDENT'S COUNTER STATEMENT OF QUESTION PRESENTED

Whether certiorari is appropriate where the appellate court properly applied the law in affirming the trial court's admission of hearsay testimony concerning statements made by the victim-deceased to a law enforcement officer after he was shot.

RESPONDENT'S STATEMENT OF THE CASE

An Orangeburg County Grand Jury indicted Petitioner, Julian C. Young, in February 2012 for murder. (R. pp. 413–14). On August 14, 2012, Petitioner's case was called to trial before the Honorable Edgar W. Dickson. (R. p. 1). Petitioner was represented by Virgin Johnson and Corey L. Williams during the three-day trial. (R. pp. 1–2). Assistant Solicitors Donald Sorenson and Harrison Bell represented the State. (R. p. 1). On August 16, 2012, the jury returned a verdict of guilty. (R. p. 405, lines 5–12). Judge Dickson sentenced Petitioner to a term of thirty-five years of incarceration. (R. p. 406, lines 17–25). Petitioner appealed.

On December 17, 2013, appellate counsel filed a Final Brief of Appellant, addressing the following issue:

> Did the trial court err, and thereby violate the Appellant's right to confront his accusers, by admitting into evidence hearsay testimony concerning statements made by the victim-deceased to a law enforcement officer after he was shot?

(FBOA, p. 4).

The State filed its final brief in response on December 23, 2013.

The South Carolina Court of Appeals heard argument on the issue on June 4, 2014. On June 18, 2014, the Court of Appeals issued an unpublished opinion affirming the ruling and conviction. (App. pp. 1–3). Petitioner filed a petition for rehearing on July 2, 2014. (App. pp. 3–6). The Court of Appeals denied the petition on August 25, 2014. (App. p. 9).

On September 24, 2014, petitioner filed a Petition for Writ of Certiorari in this Court raising the following issue:

> Did the trial court err, and thereby violate the Petitioner's right to confront his accusers, by admitting into evidence hearsay testimony concerning

> statements made by the victim-deceased to a law enforcement officer after he was shot where the statements at issue were testimonial in nature and where, even if not testimonial, they did not qualify under Rule 803(2), SCRE, as excited utterances which would be admissible as an exception to Rule 802, SCRE; the hearsay rule?

(Cert. Petition p. 2).

This return follows.

RESPONDENT'S STATEMENT OF FACTS

A Conversation with Victim

Around 11:14 p.m. on the night of April 15, 2011, Kendra Williams, a sergeant with the South Carolina State University (SC State) Police Department, was dispatched to a building on Russell Street, which held offices for SC State. (R. p. 51, line 3–p. 52, line 25). When Williams arrived on the scene at 11:20 p.m., she observed that a green car had struck the front of the Russell Street building. (R. p. 52, line 6–53, line 22). Williams observed "a lot of car pieces and a lot of bricks everywhere. . . ." (R. p. 53, lines 19–20). There were a number of public safety officers already at the scene when Williams arrived. (R. p. 53, lines 13–21). An ambulance was also there. (R. p. 54, line 22–p. 55, line 2).

Williams found the former occupant of the wrecked vehicle, a man named Jonathan Bailey (Victim), in the ambulance when she arrived. (R. p. 56, lines 11–22). Williams got in the back of the ambulance with Victim and observed that he had a gunshot wound to the right chest area and another wound to the left chest area.[1] (R. p. 57, lines 3–13). Williams observed that Victim "was frantic, he was scared, terribly scared." (R. p. 57, lines 14–17). Victim was rolling back and forth on a stretcher and complaining of the pain he was in. (R. p. 57, lines 14–21). According to Williams, he kept saying, "'get me to the hospital, I'm going to die.'" (R. p. 58, lines 3–4).

Williams asked Victim his name and if he was a student at SC State, but Victim would not answer her. (R. p. 57, line 22–p. 58, line 2). Victim gave few audible responses. (R. p. 62, lines 22–23). But Williams testified that she

[1] Dr. Kelly Rose, the forensic pathologist who performed Victim's autopsy, testified that Victim had an open gunshot wound to his stomach and an exit wound coming out of his left side. (R. p. 234, line 1–p. 236, line 20).

> asked him if he was Queen's Village, he said he—well, he shook his head, yes. I asked him if he had been robbed, he shook his head, yes. I asked him if, how many, and he stuck his hand up and showed me four fingers. I asked him if he saw the weapon, he shook his head, yes. I asked him if it was a revolver, he shook his head, yes. When I asked him if he saw the color of the weapon, he just shook his head, no. He just kept saying he was in pain, get me to the hospital. It wasn't real easy to get anything out of him.

(R. p. 58, lines 6–14). The ambulance ultimately took Victim to the helipad at The Regional Medical Center of Orangeburg, and then he was transported to another hospital. (R. p. 58, lines 19–25). Victim died later that night from his injuries. (R. p. 59, lines 1–3).

After getting information from Victim, Williams contacted her supervisors, and then a number of officers from the SC State Police Department responded to Russell Street and also to Queen's Village. (R. p. 60, line 13–p. 61, line 14). The officers secured both locations and began looking for evidence. (R. p. 61, lines 1–14).

Investigation

When Dustin Johnson, an officer with the SC State Police Department responded to Queen's Village the night of April 15, 2011, the crime scene had already been secured. (R. p. 68, line 1–p. 69, line 16). Johnson began to process the crime scene. (R. p. 69, lines 17–24). Johnson found and collected the following pieces of evidence from the crime scene at Queen's Village: two bags of a green leafy substance that appeared to be marijuana and a fifty dollar bill. (R. p. 69, line 24–p. 70, line 8; R. p. 72, line 10–p. 73, line 5). Johnson also photographed an area that had—what he perceived to be—fresh, tire skid marks. (R. p. 70, lines 8–12; R. p. 73, lines 5–12). Johnson did not find any bullets or shell casings in the area. (R. p. 76, lines 14–17).

Johnson then went to process the second crime scene, a short distance away on Russell Street. (R. p. 76, line 23–p. 77, line 14). While observing the wrecked car at the crime scene, Johnson noticed a marking on the arm rest of the driver side door that appeared to be blood spatter, so he began looking for a bullet projectile. (R. p. 78, line 2–p. 79, line 24). He found the bullet projectile about eighteen inches from the side of the car, right under the driver side door. (R. p. 79, line 25–p. 80, line 11). In the passenger side of the car, Johnson found another fifty dollar bill, along with five twenty dollar bills and another bag of a green leafy substance that appeared to be marijuana. (R. p. 83, line 8–p. 84, line 20). Johnson then secured the vehicle with evidence tape and had it towed to a secure location. (R. p. 84, line 21–p. 85, line 7).

Once police learned that Victim had died from his injuries, the South Carolina Law Enforcement Division (SLED) was called in to take over the case. (R. p. 304, line 1–p. 305, line 14). SLED Agent Richard Johnson came to Orangeburg on April 16, 2011 to begin his investigation. (R. p. 305, lines 14–24). Investigators lifted two latent prints from the outside of the passenger door of Victim's vehicle, one from the top of the window and one from the door, near the key entry. (R. p. 261, line 22–p. 265, line 9). The latent print from the window was identified as belonging to Ray Alston. (R. p. 284, line 13–p. 286, line 8; R. p. 294, lines 15–19). The other print could not be identified at first, but eventually it was identified as belonging to Petitioner.[2] (R. p. 286, line 9–p. 292, line 11).

As part of SLED's investigation, Agent Johnson obtained Victim's phone records. (R. p. 307, lines 8–17). From those records, Agent Johnson identified Ricky Gipson as

[2] The bills collected from the crime scenes were also examined for latent prints, but none of the latent prints on the bills were of sufficient value to compare. (R. p. 292, line 12–p. 294, line 5).

someone who had been in "constant contact" with Victim before his death and who had sent two text messages to Victim shortly after the 911 call regarding Victim's accident was made. (R. p. 307, lines 17–25). Agent Johnson contacted Gipson and took his statement about what happened the night of April 15th. (R. p. 309, lines 3–8). Agent Johnson showed Gipson Alston's photograph, and Gipson identified Alston as someone who was present the night Victim was shot. (R. p. 309, lines 9–17).

Thereafter, Alston was arrested for murder, and Alston identified the other individuals who were present the night Victim was shot. (R. p. 309, line 18–p. 310, line 22). Alston identified Petitioner, who goes by the nickname Gouda, as one of the individuals present the night Victim was killed. (R. p. 310, lines 8–24).

Night of April 15, 2011

At trial Alston testified that, on the night of April 15, 2011, he was hanging out with Petitioner and others at a friend's house. (R. p. 167, line 8–p. 171, line 4). Alston decided he wanted to get some marijuana. (R. p. 171, lines 3–10). Alston asked Petitioner about arranging for him to buy marijuana, and Petitioner made some phone calls and set something up. (R. p. 171, line 11–p. 172, line 3). Then, Alston, Petitioner, Hilliard Pinckney, and Maurice Thompson drove to the SC State campus in silver Buick. (R. p. 168, lines 9–13; R. p. 173, lines 1–20). Thompson drove, and Pinckney sat in the passenger seat. (R. p. 173, line 21–p. 174, line 4). Alston and Petitioner sat in the back seat. (R. p. 174, lines 5–24).

On the SC State campus, the group picked up Gipson, who had been contacted by Petitioner earlier in the day about purchasing marijuana. (R. p. 99, line 16–p. 104, line 4). Because Gipson did not have as much marijuana as Alston wanted to buy, Gipson arranged for Victim to sell to Alston. (R. p. 100, line 16–p. 101, line 20). In the car

Gipson sat between Alston and Petitioner, but Petitioner was the only one there who knew Gipson. (R. p. 103, line 18–p. 105, line 16; R. p. 174, line 25–176, line 3).

Gipson testified that he had arranged to meet with Victim at the marriage housing area. (R. p. 103, line 18–p. 104, line 4). The group arrived before Victim, so they reversed and parked in a parking space and waited for Victim to arrive. (R. p. 107, lines 8–21; R. p. 176, lines 4–24). When Victim arrived, he pulled into a parking spot such that his passenger side was closest to the passenger side of the Buick. (R. p. 107, line 21–p. 108, line 11; R. p. 176, line 25–p. 177, line 21). Gipson, Alston, and Petitioner went to Victim's car, and Gipson got in the passenger seat to facilitate the transaction. (R. p. 109, lines 1–13). Alston and Petitioner were not happy with the quality of the marijuana, and they began complaining to Victim. (R. p. 109, line 8–p. 110, line 18; R. p. 178, line 13–p. 179, line 7). Gipson then got out of the car and turned his attention to another car in the parking lot. (R. p. 110, line 19–p. 111, line 12). When Gipson turned back around, he saw Petitioner and Victim "tussling in the car. . . ." (R. p. 111, lines 12–14). Gipson observed that Petitioner was leaning in the car, but Gipson could not tell what Petitioner and Victim were fighting over. (R. p. 112, lines 10–24). Gipson never saw anyone with a gun. (R. p. 112, line 25–p. 113, line 2). Gipson noticed that Victim's car was in reverse and the passenger door was open. (R. p. 111, lines 14–16). Gipson also observed that Alston was standing away from the car. (R. p. 113, lines 11–19). Gipson testified that he heard Victim's tires make a noise, then he heard a pop, and he ran away. (R. p. 111, lines 16–21). Gipson looked back at the scene and saw that Victim's car had left the parking spot. (R. p. 111, lines 21–25). Gipson kept running. (R. p. 111, line 25).

Alston also testified that Petitioner was leaning in Victim's car when he "heard a pow go off." (R. p. 179, line 19–p. 181, line 11). Alston thought the "pow" was a gun

shot. (R. p. 181, lines 12–14). Petitioner then got back in the Buick. (R. p. 180, lines 2–3). Alston asked Petitioner "if he was alright, and then [Alston] asked if he shot the guy, but [Petitioner] never answered. . . ." (R. p. 180, lines 3–6; R. p. 183, lines 1–7).

ARGUMENT

The Court of Appeals did not err in affirming the trial judge's admission of hearsay testimony concerning excited utterances made by Victim to law enforcement after Victim was shot. Victim's statement to law enforcement was non-testimonial, and, as such, admission of the statement did not violate Petitioner's rights under the Confrontation Clause. Additionally, the statement was properly admitted under a hearsay exception.

Court of Appeals Opinion

The Court of Appeals found, by *per curiam*, unpublished opinion, that the trial judge did not err in admitting the hearsay testimony. (App. pp. 1–2). In affirming the trial court, the Court of Appeals referenced a United States Supreme Court case, *Michigan v. Bryant*, 131 S. Ct. 1143, 1166 (2011) (holding a gunshot victim's statement to police was non-testimonial and did not violate the Confrontation Clause when the police's "primary purpose was simply to address what they perceived to be an ongoing emergency, and the circumstances lacked any formality that would have alerted [the victim] to or focused him on the possible future prosecutorial use of his statements"). The court also summarily referenced four cases from this Court that dealt with excited utterances.

Considerations Governing Review

A writ of certiorari is not a matter of right but of judicial discretion. Rule 242(b), SCACR. The following, while not binding, weigh in favor of granting the writ:

(1) Where there are novel questions of law.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242(b), SCACR. None of the above are true for this case, and, as such, the writ of certiorari should not be granted.

Relevant Facts

Before trial began, defense counsel moved to have Williams's testimony concerning her conversation with Victim excluded. (R. p. 3, line 24–p. 7, line 16). Defense counsel argued before the trial court (1) that the testimony would violate Petitioner's rights under the Confrontation Clause, (2) that the testimony was inadmissible hearsay and was not admissible under the excited utterance exception, and (3) that the testimony was inadmissible hearsay and was not admissible under the dying declaration exception. (R. p. 3, line 24–p. 7, line 16). Defense counsel also submitted a brief to the court providing case law in support of their arguments and additionally asserting that Williams's testimony was inherently prejudicial. (R. pp. 407–12).

In response, the State argued that the evidence was not testimonial because it "wasn't information that was given in . . . anticipation of litigation." (R. p. 9, lines 12–17). As to whether the testimony was admissible under a hearsay exception, the State asserted that it would be up to the court to decide whether Victim's statement to Williams was an excited utterance or a dying declaration. (R. p. 9, line 17–p. 10, line 2).

The trial court then heard Williams's testimony *in camera*. (R. p. 13, line 1–p. 23, line 9). On direct examination Williams testified that she spoke with Victim in the back of an ambulance. (R. p. 15, lines 1–8). Williams observed that Victim had a gunshot wound to his right chest area and another wound on his left side. (R. p. 15, lines 8–11). Williams described Victim's demeanor as "frantic[. H]e was rolling back and

forth[;] he was scared[;] he kept saying, [']get me to the hospital, I'm going to die.['] He was, he was scared. . . . He appeared to be in a lot of pain." (R. p. 15, lines 14–19). Williams then described her conversation with Victim:

> I asked [Victim] if he had been robbed, and he shook his head, yes. I asked him if he had been in the parking lot of Queen's Village, and he shook his head, yes. And I asked him if he saw who robbed him, and he shook his head, yes. I asked him how many? And he stuck his hand up and had four fingers up. I said, four? He shook his head, yes. I asked him if, you know, if he saw the weapon. He shook his head. . . .
>
> . . . .
>
> . . . I asked him if the weapon was silver or black. At that time he was, kept shaking his head, no. And there were some other questions that I asked him, but he did tell me that he lived in Queen's Village. He did tell me that he saw the person who shot him. He told me there was four of them, but most of it was just him shaking his head. He, if he took any kind of effort to speak he would just shake his head and kept saying he's in pain, he couldn't talk he was having a hard time talking, real frantic, still saying, you know, get me to the hospital, I'm going to die.

(R. p. 16, lines 2–21).

When asked on cross-examination how long after the incident occurred did Williams get to the scene, she responded that she would have to look at the time. (R. p. 22, lines 10–12). Williams also testified that when she initially spoke with Victim, he would not tell her his name. (R. p. 22, line 24–p. 23, line 4).

Following Williams's *in camera* testimony, defense counsel argued that Victim's statement was not an excited utterance because Williams was asking Victim questions—he was not just blurting the information out. (R. p. 23, line 21–p. 24, line 7). Additionally, defense counsel argued that there was nothing about Victim's situation that was startling. (R. p. 24, lines 1–7). Defense counsel then argued that Victim's statement was not a dying declaration because Williams did not put in her statement, which she gave to SLED the day after she spoke with Victim, that Victim told her that he thought he

was dying. (R. p. 24, lines 7–14). Defense counsel also argued that the statement was more prejudicial that probative and that it should have been excluded under S.C. R. Evid. 403. (R. p. 24, line 14–p. 25, line 8).

The State then argued that, looking at the totality of the circumstances, Victim's statement was non-testimonial. (R. p. 25, line 12–p. 26, line 1). The State further argued that Victim's statement was admissible as either a dying declaration or an excited utterance. (R. p. 25, lines 1–15). As to the issue of prejudice, the State pointed out that Victim did not even identify Petitioner by name in his statement—he merely confirmed that he had been robbed by four people. (R. p. 25, lines 16–22).

Defense counsel replied that it was prejudicial because one of those four men was the defendant. (R. p. 27, lines 12–16). Defense counsel then went into more depth with his arguments concerning whether Victim's statement was either a dying declaration or an excited utterance. (R. p. 27, line 16–p. 30, line 1).

Judge Dickson found the testimony to be admissible, specifying that "because he is in the ambulance after he had just been shot and robbed, he's still under a stressful event at that point." (R. p. 30, lines 2–4). Upon prompting by the State, Judge Dickson clarified his ruling, stating

> I'm going to let it in, I say it will be non-testimonial and let it in. It's just part of his excited utterance at the time, whether or not—you know, the purpose of letting an excited utterance in is that he doesn't have time for any kind of reflective though. And so, right now, this is a gentleman that's just been robbed and shot, he's in an ambulance, and I don't think based on the testimony I heard that he had time to have much reflection about what was going on so he could make up a story.

(R. p. 30, line 13–p. 31, line 3).

In the Court of Appeals, Petitioner argued that Petitioner's statement was testimonial because "[h]e made those statements under circumstances where an objective

witness would reasonably believe that the statement would be available for later use at trial." (FBOA p. 11). Petitioner additionally asserted that the statement did not qualify as an excited utterance because Victim's failure to provide his name to police was evidence of reflective thought. (FBOA p. 11–12). However, the Court of Appeals affirmed the trial court, citing United States Supreme Court precedent on the Confrontation Clause and opinions from this Court on the admission of evidence under the excited utterance exception.

Discussion

Confrontation Clause

The Confrontation Clause of the Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." The United States Supreme Court has held that this provision bars "admission of testimonial statements of a witness who did not appear at trial unless he was available to testify, and the defendant had had a prior opportunity for cross-examination." *Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). According to the Supreme Court

> when a court must determine whether the Confrontation Clause bars the admission of a statement at trial, it should determine the "primary purpose of the interrogation" by objectively evaluating the statements and actions of the parties to the encounter, in light of the circumstances in which the interrogation occurs. The existence of an emergency or the parties' perception that an emergency is ongoing is among the most important circumstances that courts must take into account in determining whether an interrogation is testimonial because statements made to assist police in addressing an ongoing emergency presumably lack the testimonial purpose that would subject them to the requirement of confrontation.

Michigan v. Bryant, __ U.S. __, 131 S.Ct. 1143, 1162 (2011).

"A violation of the Confrontation Clause is not *per se* reversible but is subject to a

harmless error analysis." *State v. Gracely*, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012) (citing *Delaware v. Van Arsdall*, 475 U.S. 813, 822 (2006)).

> "Whether such an error is harmless in a particular case depends upon a host of factors . . . . The factors include the importance of the witness's testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross examination otherwise permitted, and, of course, the overall strength of the prosecution's case."

Id. (quoting *Van Arsdall*, 475 U.S. at 684).

Respondent submits that Victim's statement to Williams was non-testimonial, and, thus, admission of that statement did not violate Petitioner's constitutional rights. Petitioner, on the other hand, argues that Victim "made those statements under circumstances where an objective witness would reasonably believe that the statement would be available for later use at a trial." (Cert. Petition p. 12). Respondent disagrees.

The facts under which Victim made his statement are substantially similar to those in the case the Court of Appeals referenced in its opinion, the case of *Michigan v. Bryant*, __ U.S. __, 131 S. Ct. 1143 (2011), in which the United States Supreme Court found that a gunshot victim's statement to police was non-testimonial. In *Bryant*, the Supreme Court described the circumstances surrounding the victim's statement as "a nondomestic dispute, involving a victim found in a public location, suffering from a fatal gunshot wound, and a perpetrator whose location was unknown at the time the police located the victim." 131 S. Ct. at 1156. That description is on all fours with the circumstances in which Victim spoke to Officer Williams in this case.[3]

[3] There are a few slight differences between the facts in *Bryant* and those in the instant case. For example, in *Bryant*, police spoke to the victim before emergency medical services had arrived. 131 S. Ct. at 1150. Also, in *Bryant*, the victim identified the person who had shot him when he spoke to the police, but he did not indicate the cause of the

In deciding whether the primary purpose of the victim's statement was to enable police assistance to meet an ongoing emergency, the Court in *Bryant* "first examine[d] the circumstances in which the interrogation occurred." *Id.* at 1163. As part of the analysis, the Court noted that when the police questioned the victim, they did not know, and the victim did not tell them, if the threat was limited to the victim. *Id.* at 1163–64. The Court also explained that because the *Bryant* case involved a gun, "[t]he physical separation that was sufficient to end the emergency in [a domestic violence case where fists were the weapon] was not necessarily sufficient to end the threat in this case." *Id.* at 1164. Also, the Court considered that the police in *Bryant* did not know the location of the shooter when they questioned the victim. *Id.* The Court then looked at the statement by the victim and the questions by the police. *Id.* at 1165. As to the victim, "[h]is answers to the police officers' questions were punctuated with questions about when emergency medical services would arrive. He was obviously in considerable pain and had difficulty breathing and talking." *Id.* (internal citations omitted). On the other hand, "[t]he questions [the police] asked—what had happened, who had shot him, and where the shooting had occurred, were the exact type of questions necessary to allow the police to assess the situation, the threat to their own safety, and the possible danger to the potential victim." *Id.* at 1166 (internal quotations and citations omitted). Finally, the Court considered the informality of the situation, which in the *Bryant* case was "fluid and somewhat confused." *Id.* The Court found that "[t]he informality suggest[ed] that the interrogators' primary purpose was simply to address what they perceived to be an ongoing emergency, and the circumstances lacked any formality that would have alerted [the victim] to or focused him on the possible future prosecutorial use of his statements."

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shooting. *Id.* at 1150, 1163–64.

Id. Based on its assessment of the facts in *Bryant*, the Court ultimately concluded that the victim's statement was not testimonial and that admission of the statement did not violate the Confrontation Clause. *Id.* at 1167.

The circumstances analyzed by the Supreme Court in *Bryant* are substantially similar to the circumstances surrounding Victim's statement to Williams, and, like the Court in *Bryant*, the Court of Appeals apparently found that Victim's statement was non-testimonial and, thus, admission of the statement did not violate Petitioner's rights under the Confrontation Clause. Like in *Bryant*, when Williams spoke to Victim, she did not know if the threat was limited to him. Also like in *Bryant*, this case involved a shooter, whose whereabouts were unknown at the time Williams spoke with Victim. When Williams questioned Victim, she sought to find out where Victim had been at the time of the shooting, what had instigated the shooting, how many people had been involved in the shooting, and if Victim knew any details about the gun that had been used. All of these questions indicate that Williams's primary purpose in speaking with Victim was to address the ongoing emergency—namely, the situation of having an unknown shooter on the SC State campus. Like the victim in *Bryant*, here, Victim was clearly in considerable pain. While Petitioner makes much of the fact that Victim would not tell Williams his name, the record reflects that Victim mostly responded to Williams's inquiries by nodding his head, which is not surprising considering Victim was suffering from a gunshot wound to his abdomen. In Williams's own words, "if [Victim] took any kind of effort to speak he would just shake his head and kept saying he's in pain, he couldn't talk he was having a hard time talking, real frantic, still saying, you know, get me to the hospital, I'm going to die." (R. p. 16, lines 17–21). Finally, the informality of the conversation between Williams and Victim did not put Victim on notice that his

statement would be for future prosecutorial use. For the same reasons that the Court in *Bryant* found the victim's statement to be non-testimonial, Respondent submits that Victim's statement in the instant case, too, was non-testimonial.[4] The Court of Appeals apparently agreed, as it cited *Bryant* in its opinion affirming Petitioner's conviction.

Excited Utterance

Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. In general, hearsay is not admissible for purposes of trial; however, there are a number of exceptions. *See* Rule 802, SCRE. For example, S.C. R. Evid. 803(2) provides that "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" is not excluded. That exception is known as the excited utterance exception. *See* Rule 803(2), SCRE.

This Court has recognized that

[t]hree elements must be met in order for a statement to be an excited

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[4] Additionally, even if this Court found that Victim's statement was testimonial, the admission of the statement through Williams's testimony at trial was harmless error. Foremost, Victim did not even identify Petitioner as the shooter when he communicated with Williams. Victim merely confirmed that the shooting happened in Queen's Village, that he had been robbed, that there had been four people, and that he had seen the gun. Petitioner argues that Victim's statement was particularly prejudicial because "[a]bsent these statements, there was no other evidence that the victim in this case was robbed prior to his shooting. . . . If anything, the testimony of all the states [sic] other witnesses left as a mystery what happened in the moments preceding the victim's shooting." (Cert. Petition p. 12). Respondent disagrees. Though the eyewitnesses to the shooting could not see exactly what happened in Victim's car that night, they observed Petitioner leaning in Victim's vehicle and tussling with Victim, and they observed Victim trying to reverse while Petitioner was still in the car immediately before they heard a gunshot. Additionally, investigators found money and bags of marijuana in the passenger side of Victim's car and on the ground at the location of the shooting. Respondent submits that the combination of this circumstantial evidence suggests that Petitioner attempted to rob Victim. Finally, the State's case was strong even without Victim's statement.

> utterance: (1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition.

State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008) (citing *State v. Ladner*, 373 S.C. 103, 116, 644 S.E.2d 684, 691 (2007)). "The rationale underlying the excited utterance exception is that 'the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication.'" *Id.* (quoting *State v. Davis*, 371 S.C. 170, 178, 638 S.E.2d 57, 62 (2006)). In determining whether a statement is admissible under the excited utterance exception, a court must consider the totality of the circumstances. *Id.*

"'The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.'" *State v. Kromah*, 401 S.C. 340, 349, 737 S.E.2d 490, 494–95 (2013) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006)). "'An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.'" *Id.* at 349, 737 S.E.2d at 495 (quoting *Douglas*, 369 S.C. at 429–30, 632 S.E.2d at 848)).

Victim's statement was properly admitted under the excited utterance exception to the general hearsay rule. In this case the trial court considered "the totality of the circumstances" and decided to admit Victim's statement to Williams under the excited utterance exception. (R. p. 28, lines 4–24). The Court of Appeals affirmed the trial court's admission of the statements as excited utterances, citing the South Carolina Supreme Court case noting this Court has "generally allowed as excited utterances

statements made by the victim to the police immediately following a physical attack." (App. p. 2 (citing *State v. Burdette*, 335 S.C. 34, 43, 515 S.E.2d 525, 530 (1999))). Though in this case Williams was unsure of how long after the shooting occurred she spoke to Victim, he was in the ambulance and still at the scene when she questioned him. Such proximity is sufficient considering the circumstances of this case.[5] *See State v. Blackburn*, 271 S.C. 324, 327, 247 S.E.2d 334, 336–37 (1978) (concluding that a statement given while declarant was "still under the stress and pain of the assault" would be admissible under the excited utterance exception though the statement was given in excess of one hour after the incident).

Petitioner argues that the statement evidenced reflective thought because Victim would not tell Williams his name, and, thus, the statement was not an excited utterance. However, the trial court rejected that argument, stating

> this is a gentleman that's just been robbed and shot, he's in an ambulance, and I don't think based on the testimony I heard that he had time to have much reflection about what was going on so he could make up a story. . . . He was just answering questions that were posed to him by a police officer trying to get to the bottom of the situation.

(R. p. 30, line 23–p. 31, line 3). Indeed, Victim's refusal to give his name could be a result of the considerable pain that he was feeling, as opposed to an indication that he was

[5] Respondent submits that this case is distinguishable from *State v. Washington*, 379 S.C. 120, 665 S.E.2d 602 (2008), a case where the Supreme Court excluded a statement made in response to a police interrogation. In the *Washington* case, the victim's girlfriend gave a statement "in a formal interview with law enforcement at police headquarters almost ninety minutes after the events." *Id.* at 124, 665 S.E.2d at 604. The girlfriend's statement "consisted of a written narrative of the incident, which [the girlfriend] wrote, and three pages of questions and answers, which the Officer transcribed." *Id.* at 123, 665 S.E.2d at 603. The circumstances under which Victim gave his statement to Williams in this case are vastly different from those of *Washington*. As previously discussed, the exchange was informal and was limited to the information that Williams needed to address the ongoing emergency. Thus, the trial court properly admitted Victim's statement.

trying to hide his identity. As previously discussed, Williams testified that any time Victim attempted to speak, he would start shaking his head and complaining of his pain. Consequently, during Williams's conversation with Victim, he gave "[v]ery, very few" audible responses—again, not surprising considering he was suffering from a gunshot wound to his abdomen. (R. p. 62, lines 22–23). Respondent submits that the continuing stress of the attack makes Victim's statement to Williams inherently reliable. *See State v. McHoney*, 344 S.C. 85, 95, 544 S.E.2d 30, 34–35 (2001) (finding victim's statement to a nurse while she was still under the continuing stress of being stabbed seven times in the abdomen and having her throat cut was inherently reliable because there was no time for the victim to reflect on the event).

Respondent would note that this Court has previously found statements made in response to questions to be admissible under the excited utterance exception. For example, in *State v. McHoney*, the Court found the statement of a victim, whose throat had been slit, to be admissible under the excited utterance exception. 344 S.C. at 94–95, 544 S.E.2d at 34–35. In *McHoney* the victim was unable to speak, but she nodded in response to questions asked by a nurse—questions including if victim knew her attacker, if victim's family knew her attacker, if victim's attacker lived in her neighborhood, and if victim's boyfriend was the attacker. *Id.* at 89–90, 544 S.E.2d at 32. In another case, this Court found that a trial court did not err in admitting a son's statement concerning who murdered his mother under the excited utterance exception. *State v. Sims*, 348 S.C. 16, 20–23, 558 S.E.2d 518, 520–22 (2002). The Court specifically noted in that case, "[a]lthough the son's statement was in response to a question, under the circumstances presented, we find this fact does not prevent his answer from being an excited utterance." *Id.* at 23 n. 1, 558 S.E.2d at 522 n.1.

Having found that Victim's statement was both non-testimonial and an excited utterance,[6] the trial judge properly admitted Williams's testimony concerning that statement. Petitioner's argument the Court of Appeals erred in affirming the ruling must be rejected.

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[6] The trial court did not admit Victim's statement as a dying declaration; however, Respondent submits that the statement would also be admissible under that exception to the hearsay rule.

> A statement made under the belief of impending death is not excluded by the hearsay rule if the declarant is unavailable as a witness in a prosecution for homicide, the statement is made by a declarant while believing the declarant's death is imminent, and the statement concerned the causes or circumstances of what the declarant believed to be impending death.

State v. McHoney, 344 S.C. 85, 92, 544 S.E.2d 30, 33 (2001). Because Victim's statement meets all of the above criteria, in addition to being admissible as an excited utterance, it is admissible as a dying declaration.

The trial court neither accepted nor rejected the State's argument that Victim's statement should be admitted as a dying declaration. The court expressed that it had

> questions about whether or not it's a dying declaration, the statement about needing to get to the hospital, I'm going to die, it's not in the statement. So, I do have an issue about whether or not it's a dying declaration, but I'm not going to decide that on that issue. I'm deciding it on whether or not it's excited utterance based on the totality of the circumstances.

(R. p. 27, line 25–p. 28, line 6). It appears that because Williams did not include in her statement to SLED that Victim had said he was going to die, the trial court declined to make a ruling as to whether Victim's statement was a dying declaration. Respondent notes that Williams testified *in camera* and before the jury that when she spoke to him, Victim said, "I'm going to die[,]" (R. p. 16, lines 20–21; R. p. 58, line 4). The trial court never made a finding that Williams's testimony was either credible or not credible. As such, Respondent submits this argument as an additional sustaining ground.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 23, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

On Petition for Writ of Certiorari to the Court of Appeals
Unpublished Opinion No. 2014-UP-234 (S.C. Ct. App. filed June 18, 2014)

THE STATE, RESPONDENT,

vs.

JULIAN C. YOUNG, PETITIONER.

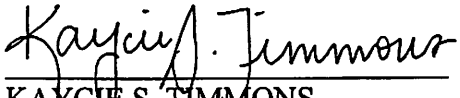
Appellate Case No. 2012-213006

PROOF OF SERVICE

I, Kaycie S. Timmons, certify that I have served the *Return to Petition for Writ of Certiorari* on Petitioner by depositing a copy of same in the United States mail, postage prepaid, addressed to his attorney of record:

Tara Dawn Shurling
3614 Landmark Drive, Suite A
Columbia, SC 29204

This 23rd day of October, 2014.



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ATTORNEY FOR RESPONDENT

The Supreme Court of South Carolina

The State, Respondent,

v.

Julian Young, Petitioner.

Appellate Case No. 2014-002054
Lower Court Case No. 2011-GS-38-01833

ORDER

Petitioner seeks a writ of certiorari to review the decision of the Court of Appeals in *State v. Young*, Op. No. 2014-UP-234 (S.C. Ct. App. filed June 18, 2014). The petition is denied.

C.J.
FOR THE COURT

Columbia, South Carolina

December 18, 2014

cc:
The Honorable Jenny Abbott Kitchings
The Honorable Winnifa Brown-Clark
Kaycie Smith Timmons, Esquire
Alan McCrory Wilson, Esquire
John W. McIntosh, Esquire
David Michael Pascoe, Jr., Esquire
Donald J. Zelenka, Esquire
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The South Carolina Court of Appeals

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January 16, 2015

The Honorable Winnifa Brown-Clark
PO Box 9000
Orangeburg SC 29115-9000

REMITTITUR

Re: The State v. Julian Young
Lower Court Case No. 2011GS3801833
Appellate Case No. 2012-213006

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

Enclosure

cc: Tara Dawn Shurling, Esquire
Kaycie Smith Timmons, Esquire
Donald J. Zelenka, Esquire

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)

JULIAN YOUNG, 352043) CIVIL ACTION COVERSHEET
Plaintiff(s))
) -CP- -
vs.)

STATE OF SOUTH CAROLINA)
Defendant(s))

(Please Print)
Submitted By: Law Office of Tara Dawn Shurling, Attorney for Plaintiff
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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

***If Action is Judgment/Settlement do not complete*

☐ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION *(Check One Box Below)*

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-_____-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☒ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: Tara D. Shurling **Date: March 3, 2015**

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**