

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No.: 2020-000590

Tamar Yaron Bryant,

Petitioner,

vs.

State of South Carolina

Respondent.

APPENDIX
VOLUME I OF II

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2011-GS-22-00495

The State,)
)
 Plaintiff,) Transcript of Record
)
 vs.) March 18-20, 2013
)
 Tamar Yaron Bryant,)
)
 Defendant.)

B E F O R E :

Honorable Larry B. Hyman, Jr.
Georgetown County Courthouse
Georgetown, South Carolina

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1 (On the record, March 18, 2013.)

2 MS. BAILEY: We're on the record with 2011-GS-22-495,
3 that's a true-billed indictment for murder. Your Honor, it's
4 my understanding we are here for pretrial motions in this
5 matter and the State is seeking a Jackson V. Denno motion
6 because there's a, a statement that the State will, the State
7 will seek to introduce into evidence tomorrow once testimony
8 begins.

9 THE COURT: All right.

10 MS. BAILEY: State calls Clint Busbee.

11 Whereupon, James Clinton Busbee is called to the stand,
12 duly sworn by the clerk and testified as follows:

13 THE CLERK: Thank you. Would you please be seated,
14 state your name for the record and spell it.

15 MR. BUSBEE: James Clinton Busbee, my last name is
16 spelled B-U-S-B-E-E.

17 EXAMINATION

18 BY MS. BAILEY:

19 Q What's your current position?

20 A I'm an investigator with the North Augusta Department of
21 Public Safety.

22 Q And where did you work in 2011?

23 A Georgetown County Sheriff's Office.

24 Q: And how long have you been in law enforcement?

25 A Fifteen years.

- 1 Q On March 15th of 2011 was there a case that you were
- 2 assigned to?
- 3 A Yes, ma'am.
- 4 Q And what case was that?
- 5 Q That was a shooting case in Plantersville.
- 6 A Okay, and in the course of that investigation did you
- 7 interview Tamar Bryant?
- 8 A That's correct.
- 9 Q Okay, can you tell us about the circumstances the day of
- 10 the interview that led up to that interview? Was there
- 11 already an arrest warrant for Mr. Bryant?
- 12 A There was already an arrest warrant for Mr. Bryant.
- 13 Q Okay, and what happened that evening?
- 14 A I was actually the on call investigator that evening and
- 15 was called. He had been sighted in the city limits of
- 16 Georgetown.
- 17 Q How long had you all been looking for him?
- 18 A It was a couple of days at least. He had been sighted
- 19 downtown near Saint James Street near the Budget Inn Hotel and
- 20 I responded and I'm the one that actually spotted him and
- 21 arrested him.
- 22 Q So you actually took him into custody?
- 23 A That's correct.
- 24 Q Did you draw your service weapon?
- 25 A No, I did not.

1 Q So you were able to take him into custody without
2 actually drawing your weapon?

3 A That's correct.

4 Q Did you provide him an advisement of rights at that time?

5 A That's correct.

6 Q And so what, what type of warnings did you give him then?

7 A I gave him a verbal Miranda warning as I was walking him
8 back to my vehicle. I'm the one that actually brought him
9 back to the Sheriff's Office. Once at the sheriff's office
10 later on in the interview room he was given a written Miranda
11 warning.

12 Q Now, before ---

13 THE COURT: There's no question he was under arrest?

14 MR. BUSBEE: He was under arrest, that's correct.

15 THE COURT: Okay.

16 Q After - once you got to the sheriff's office did you
17 immediately go inside?

18 A No, I did not. I actually on the way to the sheriff's
19 office called my supervisor, Wayne Owens. There was actually
20 nobody physically inside the building when we got back to the
21 sheriff's office being as it was around 3:30 in the morning.
22 I actually called him and he came down. We actually waited
23 outside on the - in the back parking lot they have a patio
24 area outside where we actually waited out there until Captain
25 Owens got there. I wanted somebody else at least in the

1 building before we went inside.

2 Q And while you were waiting on Captain Owens to arrive did
3 Mr. Bryant make any statements to you?

4 A Like I say, he did. We talked a little bit. He wanted
5 to smoke a cigarette and also got a drink of water.

6 Q Did you - and did you allow him those things?

7 A Yes, I did.

8 Q Okay.

9 A While we were waiting, like I say, initially when we
10 walked back to my vehicle when I first arrested him I verbally
11 Mirandized him then and didn't start asking him any questions
12 until we got to the sheriff's office and we were waiting on
13 Captain Owens. Like I say, he wanted to smoke a cigarette and
14 have a drink of water, which I provided to him.

15 Q And so did he provide you a statement at the time before
16 you went inside?

17 A He did. We were just, you know, I was asking him
18 questions, he was asking me some questions, he made some
19 initial statements first before I even asked him anything in
20 regards to what had happened on, you know, March 15th, the day
21 of the shooting. Now, we went through a couple of things as
22 we were out there and as a matter of a fact Captain Owens was
23 there, too, and I waited on him to get done smoking his
24 cigarette until we went inside. So he did make some
25 statements when we were outside before we went inside to the

1 interview room.

2 Q Okay, and once you got him inside to the interview room
3 did you Mirandize him again?

4 A Yeah, that's when we did, when I did the written Miranda
5 warning. This was a form that the sheriff's office has.

6 Q Showing you what's been marked as Court's Exhibit Number
7 One. Do you recognize this?

8 A I do.

9 Q And can you describe for the Court what this is?

10 A: This is a Miranda warning. It's actually a copy of it.
11 So this is an actual eight and a half by 11, but the form
12 itself is approximately half that size and what it has is at
13 the top it's Georgetown County Sherriff's Office. It's one of
14 the forms that we use as far as giving somebody a written
15 Miranda warning where it explains their Miranda Rights and
16 then has a place for them to sign, the date, the time, the
17 witness, and in this case was me, and then you can see his
18 initials along the left-hand side by each number. What I did
19 was when I would read that to whoever I was reading it to and
20 giving then - giving them that warning, I would make sure and
21 tell them that, you know, have them sign if they wanted to
22 sign and then make sure that they initial by each number and
23 what that shows is they or initialing by each number saying
24 that they understand each one.

25 Q And is this the - a copy of the one that you had Tamar

1 Bryant initial the day of the interview?

2 A Yes, it is.

3 MS. BAILEY: The State would seek to move Court's One
4 into evidence.

5 THE COURT: Mr. Hazzard?

6 MR. HAZZARD: Yes, sir.

7 (Court's One [Miranda Warning Form] appropriately
8 marked.)

9 BY MS. BAILEY:

10 Q During the course of the interview ---

11 MR. HAZZARD: I'm sorry is there ---

12 MS. BAILEY: Did you need to see that?

13 MR. HAZZARD: The Court's indulgence. No objection.

14 THE COURT: May I? All right.

15 BY MS. BAILEY:

16 Q About how long did the interview last based on your
17 memory? I know it's been a while.

18 A It was approximately about 30 to 40 minutes.

19 Q And during the course of that interview did you threaten
20 Tamar Bryant?

21 A I did not.

22 Q Did you threaten him physically?

23 A No, I didn't.

24 Q Did you threaten him anything having to do with his
25 family members?

- 1 A No, I didn't.
- 2 Q Did you threaten him physically at all?
- 3 A No, I didn't.
- 4 Q Did you ever draw your service weapon?
- 5 A No, I didn't.
- 6 Q Did you ever physically assault him or threaten to
- 7 physically assault him?
- 8 A No, I didn't.
- 9 Q Did he seem to be under the influence of drugs or
- 10 alcohol?
- 11 A He didn't appear to be.
- 12 Q Was he responsive to your questioning?
- 13 A He was.
- 14 Q Was he alert?
- 15 A He was.
- 16 Q Did he seem to understand what was happening?
- 17 A He did.
- 18 Q And did he seem to understand and be responsive to your
- 19 questions?
- 20 A He was.
- 21 Q Did he seem - to the best of your knowledge can he read
- 22 and write?
- 23 A Yes.
- 24 Q Did he, during the course of the interview, did he ever
- 25 request a bathroom break or drink of water or cigarette or

1 anything like that that - to the best that you can remember?

2 A He had a, obviously not inside as far as smoking a
3 cigarette, he did smoke one before we went inside and then I
4 believe he has his cup with him which has the, which had the
5 water during the course of the interview. I cannot ---

6 Q So he was actually allowed to drink some water during the
7 interview?

8 A Yeah, I believe he had it with him, then you'd be - you
9 could see it on the, the audio or video recording. I cannot
10 recall whether he requested a bathroom break during the
11 interview.

12 Q Okay, if he had would you have given it to him?

13 A I would have.

14 Q Have you had the opportunity to review what's on this
15 disk?

16 A I have before, yes.

17 Q Okay, and is it a true and accurate recording of your
18 interview with Tamar Bryant?

19 A Yes.

20 MS. BAILEY: At this time the State would seek to
21 publish State's Exhibit number 2 for the Court and Mr.
22 Hazzard.

23 MR. HAZZARD: No objection for the purposes of this
24 hearing.

25 THE COURT: All right, for the purposes of this

1 hearing. You want to have it marked?

2 MS. BAILEY: It's, it's marked as Court's Exhibit Two.

3 THE COURT: Okay.

4 (Whereupon, Court's Exhibit Number Two [CD - Interview]
5 appropriately marked and played in open court.)

6 BY MS. BAILEY:

7 Q A few brief questions and then I'll finish up my direct,
8 you talk a couple of times on that video to Captain Wayne
9 Owens. Was he in the room?

10 A There's a conference room right outside that interview
11 room. He was back and forth, in and out of that conference
12 room.

13 Q Okay, but was he ever in the room with Tamar Bryant with
14 you?

15 A The room that we were in, no.

16 Q Okay, and several times you see on the video you see
17 Tamar Bryant yawn. Was he awake because you all woke him up
18 to take him into custody or was he already awake when you all
19 found him?

20 A He was awake when I found him. He was sitting on the
21 front steps of the hotel.

22 Q Okay.

23 A He had been sighted earlier and that's the reason that
24 there was Georgetown City and County Officers had a several
25 block perimeter looking for him.

1 Q And you testified earlier and we just saw that that
2 video's about 45 minutes. How long from when you took him
3 into custody on the steps of that motel until the end of this
4 video do you think?

5 A It was around 3:30 when I actually took him into custody
6 approximately, and then as you see the time on the video was
7 4:29 I believe and I believe you hear me actually ask Captain
8 Owens what time it was and you could hear him say 5:29. So I
9 believe and it also has the time on the Miranda form when I
10 initially Mirandized him or once we got in the, in the
11 interview room. So from 3:30 until, you know, that time was,
12 you know, approximately it was a little over an hour.

13 MS. BAILEY: No further questions at this time
14 regarding this.

15 THE COURT: Mr. Hazzard.

16 EXAMINATION

17 BY MR. HAZZARD:

18 Q You were present at the time that Tamar Bryant was
19 arrested; is that correct?

20 A That's correct.

21 Q And at the time of his arrest he indicated that he was
22 not guilty of the crime for which he is charged; correct?

23 A Initially after I read, you know, gave him his Miranda
24 warning, the verbal Miranda warning, we were walking back to
25 the car. His first statement without me asking a question was

1 he was with those guys but he didn't shoot that guy.

2 Q Yeah.

3 A Was basically what - the statement that he made.

4 Q Yes, sir. Now, you say you arrested him about 3:30, the
5 end of the interview was about 5:29, the interview itself was
6 approximately 45 minutes long; is that correct?

7 A That's correct.

8 Q So that leaves you with about an hour, hour and 15
9 minutes from the time you arrested him until the time that you
10 actually turned on the videotape. Why is that?

11 A Like I said earlier, we - there was nobody physically at
12 the sheriff's office. I called Captain Owens. He actually
13 lives about 30 minutes away from the sheriff's office. We
14 waited on him outside. We didn't go in the building or
15 anything because there was nobody there and I wanted to make
16 sure somebody was there in the building. That's why you have
17 that length of time before we actually went into the interview
18 room.

19 Q Okay, and so you questioned him on what you refer to as
20 the patio area behind the police department; is that correct?

21 A That's correct.

22 Q But that is not recorded?

23 A That is not recorded.

24 Q And during that questioning for over an hour he indicated
25 that he did not commit this crime; correct?

1 A It actually evolved - it actually wasn't me questioning
2 him. He was actually asking me questions too, but during that
3 conversation he actually tried to explain how he didn't shoot
4 Deon and that, but he did have a gun and he only implicated,
5 you know, the other gun was a shotgun. "Well, we know he
6 wasn't shot with a shotgun. So did you shoot him with the
7 other gun or did somebody else get the gun?" And it evolved
8 into he ended up saying that he did shoot him.

9 Q Okay, so you're saying he said that on the patio?

10 A Uh-huh.

11 Q Okay.

12 A That's correct.

13 Q Did you note that in any incident report that's been
14 provided?

15 A That was not recorded in my notes, but not in the actual
16 supplemental incident report.

17 Q Okay, is there any particular reason why you would not
18 note a verbal confession in your incident report?

19 A Well, we actually when we talked about that he was pretty
20 much asking me questions and I was, you know, responding back
21 to him and then also asking him questions, and then I told him
22 at that time that we were actually going to go somewhere where
23 it was audio video recorded and then he could give his
24 statement where it'd actually be recorded at that time inside
25 the sheriff's office, but we were actually waiting until

1 somebody could physically be in the building.

2 Q How old was he on the date of his arrest? How old was
3 Tamar Bryant?

4 A I believe he was 17, I believe, at that time.

5 Q Okay, at any time from the time of his arrest till the
6 time that this interview concluded, did you ever ask him if he
7 wanted to speak to a parent?

8 A I'm sorry. Could you - I didn't hear the first part of
9 that. Can you repeat that, please?

10 Q At any time from the time of the arrest of Tamar Bryant
11 on March 25th, 2011, to the time of the conclusion of this
12 interview on March 25th, 2011, which is documented as 5:29 p.m.
13 did you ever ask Mr. Bryant if he ever wanted to speak to a
14 parent?

15 A 5:29 p.m. or a.m.?

16 Q Was it 5:29 a.m.?

17 A Yeah, it was early in the morning.

18 Q Okay, did you ask him if he wanted to speak to his
19 parents?

20 A I don't recall if I asked him if he wanted to speak to
21 his mother or his parents.

22 Q Did you ask him if he wanted to speak to a guardian?

23 A A guardian?

24 Q Yes, sir.

25 A I don't recall asking him. I may have, I'm not sure.

1 THE COURT: How old was he, Mr. Hazzard?

2 MR. HAZZARD: 17.

3 THE COURT: Okay.

4 A I know that I had spoke to his mother before all this,
5 before he was arrested, I had spoken to his mother before, but
6 I don't recall if I asked him if he wanted to actually speak
7 with his mother or a parent or a guardian.

8 Q At the time of this interview you were armed with a
9 handgun; correct?

10 A Yes, sir.

11 Q I mean, because, in fact, you pointed out to him several
12 times on the video?

13 A I think I pointed out to him, I was trying to get him to
14 explain. He said it was missing a handle, the gun, and we
15 used my gun as a - the grip on my gun as a reference because
16 he, what he was actually talking about was the side panels to
17 the actual handle was missing, not the actual handle.

18 Q And again, with regard to the issue of what type of grip
19 the shotgun had on it; correct?

20 A I'm sorry, can you repeat that?

21 Q Again with regard to what type of grip the shotgun that
22 Lavern Holmes had in his possession; correct?

23 A He was talking about the revolver with the missing
24 handles, not the shotgun.

25 Q Okay, so, you watched the video, but you didn't see him

1 say that Lavern Holmes had a shotgun ---

2 A Oh, yes.

3 Q --- but it didn't have a stock, it had a pistol grip?

4 A That, that is correct, yes.

5 Q Okay, and during that discussion you again showed him
6 your service revolver; correct?

7 A I believe I actually, was actually like I was holding a
8 shotgun because I was - he said it had a pistol grip. You
9 know, after we started I was trying to figure out what kind of
10 shotgun, whether it was sawed off, whether it had a butt
11 stock, whether it had a pistol grip.

12 Q Now, by the time he made these inculpatory statements,
13 after he had indicated to you that he did not commit a crime,
14 you indicated to him that it didn't matter, he was being
15 arrested because he had already been charged with murder;
16 correct?

17 A I explained to him that he was under arrest and that we
18 did have an arrest warrant for him.

19 Q Okay, and what was there - did you explain to him what
20 the arrest warrant was for?

21 A That is correct.

22 Q And you explained to him ---

23 A It was for murder.

24 Q --- the arrest warrant was for murder?

25 A Yes, sir.

1 Q Okay, so despite the fact that he had told you he had
2 already given a statement saying, "I didn't do this,"
3 apparently that didn't matter; correct?

4 A Well, I didn't ask him anything. I, I gave him his
5 Miranda warning, the verbal warning, and without me even
6 asking him a question or asking him if he wanted to make a
7 statement he just made that actual sentence or phrase if you
8 want to call it that, utterance.

9 Q Okay, now, what information or background evidence did
10 you have that led you to believe that Mr. Bryant understood
11 his Miranda warnings?

12 A He didn't have a question about what anything meant as
13 far as like I say on the Miranda form later on in the
14 interview room, you know, each one of those is numbered and,
15 you know, he didn't ask a question about what anything meant,
16 whether I thought he should get an attorney or anything like
17 that. So as far as what I could tell from him and him
18 responding to me I felt that he understood it and he didn't
19 show any signs that he didn't understand it to me.

20 Q So, do you recall him ever specifically saying he did not
21 want to have an attorney?

22 A After - I don't recall him specifically telling me that
23 he did not want to get an attorney. I don't think he
24 mentioned anything about an attorney.

25 Q Okay, and during the course of this interview, his hands

1 are cuffed; is that correct?

2 A That's correct.

3 Q And in what fashion are his hands cuffed?

4 A And you mean in what fashion they're - you know, you're -
5 obviously your hands are together and you're either cuffed in
6 the front or in the back.

7 Q Okay, so he didn't have a belly chain on and the
8 handcuffs weren't attached to the belly chain?

9 A Correct.

10 Q Okay, so handcuffs, regular standard handcuffs.

11 A He had no ankle restraints or anything like that, just
12 handcuffs.

13 Q Okay, and you indicated on direct examination that Mr.
14 Bryant, you said he did not appear intoxicated to you?

15 A He did not appear intoxicated to me.

16 Q Okay, so does that simply mean you didn't smell any odor
17 of alcohol on his person or ---

18 A I did not.

19 Q Did you ever ask him whether he had ingested any
20 substance such that he might not understand what you and he
21 were going to be talking about?

22 A I don't - I think on the video, I can't recall before the
23 actual interview room recording whether I asked him if he had
24 specifically taken any kind of drugs or anything like that. I
25 don't recall.

1 Q Okay.

2 MR. HAZZARD: Nothing further.

3 THE COURT: Anything further, Ms. Bailey?

4 MS. BAILEY: Not from this witness, Your Honor, just
5 argument.

6 THE COURT: You may step down. Thank you, sir.
7 Anything further from the State?

8 MS. BAILEY: Your Honor, just, I would just direct the
9 Court's attention, of course the Court is very aware the
10 standards for Jackson V. Denno, whether it's a ---

11 THE COURT: Preponderance of the evidence.

12 MS. BAILEY: --- by a preponderance of the evidence
13 that it's a free, voluntarily given statement with a knowing
14 waiver of rights, the - on the video itself we see the actual
15 waiver of rights. In addition, I would just add that when
16 watching the video an observer can see that it is a very non-
17 confrontational discussion that's happening, that it's not a
18 coercive nature, it's not a threatening nature. They're
19 really just sitting back. The body language is such that the
20 investigator's leaning back in his chair with his arms crossed
21 and it's clear that they are really just having a discussion,
22 that there's no coercion or intimidation. I would also direct
23 Your Honor to State v. Pittman which says that even though the
24 Defendant was 17 there's no need for a guardian or parent to
25 be present during questioning.

1 THE COURT: I'm familiar with that.

2 All right Mr. Hazzard, I'll hear from you. Mr., Mr.
3 Hazzard, first, will you put up any evidence in this regard?

4 MR. HAZZARD: I've spoken with Mr. Bryant. Please stand
5 up, sir. Spoken with Mr. Bryant regarding the protocol for a
6 Jackson v. Denno hearing, I've informed him that he has the
7 right to call witnesses on his behalf. He also has the right
8 to testify with regard to the issues of whether or not there
9 was any threat, coercion, promises, intimidation or force used
10 to compel his statement. In speaking with him approximately
11 an hour ago he indicated that he did not wish to testify in a
12 Jackson v. Denno hearing. I ask the Court to confirm that
13 with him for the record.

14 THE COURT: Is, is that right, sir?

15 MR. BRYANT: Yes, sir.

16 THE COURT: Do you understand that if you wish to
17 testify in this hearing what you said would not be heard by
18 the jury. It's only for my purposes. You understand that?

19 MR. BRYANT: Yes, sir.

20 THE COURT: And you do not wish to testify?

21 MR. BRYANT: No, sir.

22 THE COURT: Okay, and you've had plenty of time to
23 discuss this with your attorney?

24 MR. BRYANT: Yes, sir.

25 THE COURT: You understand that you have the right to

1 do so?

2 MR. BRYANT: Yes, sir.

3 THE COURT: But you do not wish to?

4 MR. BRYANT: I do not wish to.

5 THE COURT: All right, thank you. You may sit down.

6 MR. HAZZARD: Your Honor, with regard to the case law,
7 the Prosecutor mentioned State v. Pittman, but there's also
8 Schneckloth v. Bustamonte as well as State v. Pittman that
9 talk about the voluntariness of any waiver has to be
10 determined by the totality of the circumstances.

11 THE COURT: Certainly.

12 MR. HAZZARD: And those issues that are to be looked at
13 are the youth of the accused, which obviously weighs in his
14 favor, the lack of education or low intelligence issue, which
15 wasn't even addressed by the State; however, there is no
16 question that this young man has never graduated from high
17 school, and in fact, has had some educational struggles during
18 his time in school.

19 THE COURT: I would imagine that he has, has been
20 incarcerated since his arrest?

21 MR. HAZZARD: Yes, sir.

22 THE COURT: And he would have been too young at that
23 time to have finished high school. So I would assume that he
24 had not finished high school.

25 MR. HAZZARD: Correct, correct, his experience in the

1 judicial system, which is not great, his background, his
2 mental health and his capacity to understand the
3 constitutional rights and the consequences of any waiver that
4 was made, we would submit that taking all of those matters and
5 if I would, hold on, Court's indulgence. For the Court's
6 consideration, I'm going to hand up some records that are his
7 mental health records for the Court's consideration for the
8 purposes of this hearing and for the purposes of this trial.

9 THE COURT: Tell me what you would say about those
10 mental health records, Mr. Hazzard. Tell me what there is in
11 those records that the Court should consider.

12 MR. HAZZARD: Your Honor, this is a young man who has
13 had a very traumatic childhood. At a very early age,
14 approximately the age of 12 or 13 he and his younger sister
15 unfortunately witnessed his father beating his mother, almost
16 beating her to death. Subsequent to that event he was placed
17 in a position of providing information to the State that lead
18 to the conviction of his father for a sentence that his father
19 still serves in the South Carolina Department of Corrections
20 to this day. From ---

21 THE COURT: Does he suffer from any diagnosed mental
22 illness?

23 MR. HAZZARD: Nothing that would prohibit him from being
24 able to understand what is going on here today.

25 THE COURT: All right.

1 MR. HAZZARD: Basically with regard to the
2 documentation, I mean, he's been referred for clinical
3 assessments on several occasions, was not placed on
4 medication, but basically their position on him is that he's
5 just a young man who has, let's see, for instance they
6 indicate he needs attitude, ability to follow the rules and
7 regulations, things of that nature. He's a 16 - at this time,
8 he was a 16 year old that just came back from DJJ due to his
9 behavior with credit card fraud and theft. He was living with
10 his mother and sister. He is very rude and defiant young man
11 that wants to go his way. He doesn't respond well to people
12 that he feels asks so much questions and he will ignore
13 others. His father is currently incarcerated; his mother
14 thinks that is why Tamar is having behavior problems. Mother
15 seems to be a little afraid to control him and says very
16 little to him about things when he is wrong. The things about
17 it is from all that I have seen, prior to that incident he was
18 a very pleasant, well-adjusted young man and ever since that
19 incident, as they indicate, he has been defiant, truculent,
20 hard to get along with and subject to saying and doing things
21 that are very impulsive. Whether they are true or not he'll
22 say them, and I simply bring this to the Court's attention and
23 want to make them part of the record.

24 THE COURT: Mr. Hazzard, I noted during the
25 questioning that your client seemed to understand what was

1 being asked, he seemed to understand where he was and what he
2 was there for and he seemed to provide appropriate answers to
3 the questions that were, were posed him. I don't think
4 there's any question that he did understand, and I think
5 that's quite remarkable under the circumstances for a 17 year
6 old. I was wondering if in these records there was an
7 intellectual assessment done?

8 MR. HAZZARD: I've never received an intellectual
9 assessment. I do know that with regard to his schooling that
10 his grades were not the best by any stretch of the
11 imagination. Whether that is from a lack of knowledge or a
12 lack of effort I obviously cannot say.

13 THE COURT: Okay, all right. All right, anything
14 further, Mr. Hazzard?

15 MR. HAZZARD: Simply point to the Court In Re: Gault,
16 387 U.S. 1, a 1967 United States Supreme Court case that talks
17 about the confessions of juveniles do require a great deal of
18 caution, that other factors to be considered are the isolation
19 of a minor from the parent, that's State versus Smith a 1977
20 South Carolina Supreme Court case; the location of the
21 interrogation, which in this case obviously is not his home or
22 any place that he is familiar with, it is the department -
23 Georgetown Police Department, that's Withrow versus Williams,
24 507 U.S. 680 a 1993 United States Supreme Court case; and we
25 simply ask that, you know, two things are is it voluntarily

1 given, and it is intelligently given, and the significance of
2 the use of the term intelligent, for instance, is mentioned in
3 State versus Moses, a 2010 South Carolina Court of Appeals'
4 opinion is does the person giving the statement know the
5 consequences of the statement they are giving and that is
6 something that is the issue. Whether he knowingly knew the
7 words that were coming out of his mouth, that's one thing.
8 Did he know the consequences of those words, in other words,
9 i.e., the intelligent part of it, that is quite another. I
10 would submit based on this video, this testimony from the
11 detective or the investigator and my dealings with my client I
12 cannot in any way say that it was intelligently done, that
13 being with the knowledge, true knowledge of the consequences.
14 For those reasons ---

15 THE COURT: Wasn't he advised that the statement would
16 be used against him?

17 MR. HAZZARD: I'm sorry?

18 THE COURT: Wasn't he advised that any statement he
19 made would be used against him?

20 MR. HAZZARD: Well, the information provided and the
21 evidence provided by the State speaks for itself.

22 THE COURT: I mean, isn't that part of the Miranda
23 warning?

24 MR. HAZZARD: That is part of the Miranda warnings, yes.
25 Now, to tell someone you have the right to remain silent,

1 anything you say can and will be used against you in a court
2 of law, you have the right to an attorney, if you cannot
3 afford one, one will be appointed for you, anything you say
4 can and will be used against you doesn't necessarily say
5 somebody's going to understand those words and understand the
6 significance of statements that they make and as a result of
7 those words.

8 THE COURT: All right, anything further? Based on the
9 totality of the circumstances I find that the State has met
10 its burden, that is by a preponderance of the evidence the
11 State has shown that the statement was knowingly,
12 intelligently and voluntarily made. My assessment is based
13 upon, again, the totality of the, of the circumstances, but I
14 considered things like factors that might be coercive, factors
15 that would go to the conduct of the police, the interrogation
16 for a murder case. I think the interrogation was about 45
17 minutes or that's what the tape was. It was at the sheriff's
18 department, but there, it was not in a cell. It seemed to be
19 a pleasant, not a pleasant, but not an intimidating
20 surrounding. There was only one person in the room. It was a
21 continuous interrogation. There were no breaks in, in the
22 interrogation, and I also considered factors that are relevant
23 to this particular Defendant. The most telling thing I
24 believe was the fact that this Defendant was very, very
25 comfortable giving this statement or he appeared to be

1 comfortable. In fact, he appeared to be almost nonchalant in,
2 in giving this statement. I considered things like his age.
3 I considered things like his education. Obviously he has not
4 completed any formal education like high school, but if we
5 look at the background of this particular Defendant I think
6 that he is very street wise. He is very much in tune with the
7 system. I believe Mr. Hazzard you just told me that he had
8 recently been released from a period of incarceration. This
9 is not his, his, as they say, his first rodeo. When the
10 officer read the Miranda warnings, there did not seem to be
11 any or the Defendant did not seem to have any problem at all
12 understanding it. He initialed it appropriately. He
13 indicated that he understood it. He answered all the
14 questions put to him appropriately. I think he understood the
15 questions. There, in my view, were no misrepresentations made
16 to him by the police in order to elicit any particular
17 statement from him, nor were any promises or inducements made
18 to him in order to get him to give this particular statement.
19 All in all I think the statement was made knowingly,
20 intelligently and voluntarily and I will let it in. Of
21 course, Mr. Hazzard, you have the right to have a jury charge
22 and on that matter and the jury could determine whether or not
23 the statement is made freely and voluntarily. All right,
24 ladies, gentlemen, what else do we have this morning in
25 reference to this particular case for this afternoon?

1 MS. BAILEY: Your Honor, I believe since the video is
2 fresh in our mind that Mr. Hazzard had some 403 objections
3 that we discussed previously relating to certain issues in
4 that video.

5 THE COURT: Okay.

6 MS. BAILEY: I would, I would just request that those
7 issues get settled tonight so that we could redact them.

8 THE COURT: Well, let's go ahead and do it that way.
9 If there's some redactions you can take care of it tonight.

10 MR. HAZZARD: That's correct, Your Honor. There's a
11 portion - this - all of this is near the end of the video
12 basically where there is some discussion regarding, first of
13 all, intent and, of course, that's fair game I would submit
14 for the jury to hear whether or not Tamar in this confession
15 admitted intending to kill Mr. Myers, but Investigator Busbee
16 goes on to basically ask some questions that elicit the issue
17 of, "Do you feel bad about doing it, do you have remorse" ---

18 THE COURT: Remorse.

19 MR. HAZZARD: --- "for having done it," and we would
20 submit that just as that issue is not fair game for the
21 Prosecutor to mention to a jury, for instance in closing
22 arguments, that it is not proper, I would submit, for a jury
23 to hear.

24 THE COURT: How about that, Ms., Ms. Bailey?

25 MS. BAILEY: We're happy to redact that. I believe

1 it's about a minute.

2 THE COURT: All right, let's redact that. I think it
3 should be properly redacted.

4 MR. HAZZARD: Also, there's some discussion in there
5 with regard to whether or not Tamar saw a given police officer
6 or was trying to run from a police officer and why he didn't
7 attempt to run from Investigator Busbee. We would submit that
8 ---

9 THE COURT: I remember that, that conversation. In
10 fact, it was something I made a note of as, as something, one
11 of the reasons for my feeling that this was a voluntary
12 statement. He was very much in tune with what he should or
13 shouldn't do in order to escape that night, but be that as it
14 may, what you are concerned about is these statements that he
15 made and whether or not they're relevant, I guess that's what
16 you're, is what your objection is 403?

17 MR. HAZZARD: Yes, sir, Your Honor, whether it's
18 relevant, yes, whether it's relevant and probative, yes.

19 THE COURT: All right.

20 MS. BAILEY: Your Honor, I would just submit that
21 evidence of flight is always relevant as to a guilty
22 conscience and the fact that the warrant had been out there
23 for several days, that Tamar had not turned himself in and not
24 submitted to police easily is certainly evidence that is
25 competent for a jury to hear.

1 MR. HAZZARD: And I appreciate that; however, what we're
2 talking about is not the evidence of flight ---

3 THE COURT: The question is ---

4 MR. HAZZARD: --- it's the evidence of considered
5 flight.

6 THE COURT: The - I think there's no question that
7 evidence of flight under the South Carolina case law is
8 relevant. The question under 403 is whether or not its
9 relevance substantially outweighs its prejudice, okay?
10 Obviously it's got prejudicial value, otherwise it wouldn't be
11 relevant ---

12 MR. HAZZARD: Yes, sir.

13 THE COURT: --- if it didn't have some prejudicial
14 value for the State. The question is whether or not that
15 prejudice outweighs the probative value of it.

16 MR. HAZZARD: And I, and I would submit the ---

17 THE COURT: And what, what is the probative value? I
18 understand you want to argue to the jury that it's, it's
19 evidence of guilt, but do you need it is what I'm getting at?
20 I mean, goodness, Ms. Bailey ---

21 MS. BAILEY: Your Honor, Your Honor ---

22 THE COURT: --- you have a 45-minute statement that I
23 just let in. So doesn't that minimize the relevance of this
24 type of conversation that he had with the officer?

25 MS. BAILEY: Well, Your Honor, it's my understanding

1 that the Defense in this case is going to be that something to
2 the effect of ---

3 THE COURT: I would like to hear what it is going to
4 be.

5 MS. BAILEY: --- something to the effect of that he
6 said it, he gave his confession sarcastically or he didn't
7 really mean it, and so I, I would submit that evidence of
8 flight is evidence of a guilty conscience and would be
9 probative.

10 THE COURT: Well, you see if, if, if the case
11 developed in that fashion, if the case developed in that
12 fashion and the Defendant takes the stand I might very well
13 reconsider my analysis of the relevancy of that testimony and
14 it may become relevant where before it wasn't relevant, if
15 you, if you understand, but from what I see here I think the
16 probative value considering the statement is minimal and it is
17 prejudicial. So out of an abundance of caution I'm going to
18 rule at this juncture that if the Defendant does not recant
19 his statement or take the position that you are afraid of then
20 it's not relevant and I'm not going to allow it. If, on the
21 other hand, we take a different tact with the Defense and I
22 have no idea what the Defense is going to be, perhaps it will
23 become relevant. I don't know, but for right now if the - I
24 have ruled that this statement comes in, and if it comes in
25 unchallenged I don't think that the statements concerning,

1 "Well, I was going try to get away," are relevant or their
2 relevance does not outweigh the prejudicial value.

3 MR. HAZZARD: There are several other housekeeping
4 matters from the Defense, Your Honor, if the Court wishes to
5 address those at this time.

6 THE COURT: Okay.

7 MR. HAZZARD: Okay, first I noted that at the call of
8 the case the Prosecutor said she was calling 2011-GS-22-0495.
9 Your Honor, the Defendant has actually been, or at least my
10 office has been provided with two murder indictments, both for
11 the same offense, the other one being 2011-GS-22-0360, an
12 indictment for the offense of murder, and I would ask that the
13 Prosecution indicate the status of that indictment.

14 THE COURT: Did he get indicted twice or what
15 happened?

16 MS. BAILEY: He did. There was a technical defect with
17 the first indictment. We indicted him before the magistrate
18 transmitted the warrant to the clerk of court, so technically
19 it was a defective indictment anyway.

20 THE COURT: So the second indictment's the one we're
21 going forward on?

22 MS. BAILEY: Yes, Your Honor.

23 THE COURT: Okay, and the first indictment will be
24 withdrawn, quashed, nolle prossed, whatever.

25 MS. BAILEY: I guess it'll be nolle prossed. It's,

1 it's defective anyway, yeah.

2 MR. HAZZARD: Okay, as the Court knows in having dealt
3 with me several times in cases like this I like to put pretty
4 much everything on the record in the beginning of the case.

5 THE COURT: And I appreciate that.

6 MR. HAZZARD: I want to place on the record at this time
7 that no plea offer has been made by the State and that Mr.
8 Bryant has repeatedly indicated that if any plea offer were to
9 have been made he would have rejected it anyway. So there was
10 no plea offer, nothing for him to consider.

11 THE COURT: Well, let me just put it this way, the
12 only offer out there is to plead straight up?

13 MS. BAILEY: Yes, Your Honor.

14 THE COURT: Okay, so, that - that's the only offer?
15 So no offer has been made, so that question doesn't have to be
16 answered by Mr. Bryant.

17 MR. HAZZARD: Okay, previously I moved before this
18 Court, not Your Honor, but Judge John on September 27th of 2012
19 and Judge Culbertson on December 17th of 2012 requesting that
20 Mr. Bryant be evaluated for the purposes of determining that
21 he is competent to stand trial and in fact was competent and
22 culpable at the time of the offense if it were to be
23 considered that he actually committed the offense. On both of
24 those occasions, September 27th, 2012, Judge John questioned
25 Mr. Bryant on the record and denied the motion and December

1 17th, 2012, Judge Culbertson questioned Mr. Bryant and denied
2 the motion. For the purposes of this hearing I renew that
3 motion before this Court.

4 THE COURT: All right let me ask you this, Mr.
5 Hazzard, has there been any change in circumstances since the
6 rulings of the, of Judge Culbertson or Judge John?

7 MR. HAZZARD: You mean with regard to his mental status?

8 THE COURT: Yes.

9 MR. HAZZARD: Not that I am aware of; however ---

10 THE COURT: Has there been any, any change ---

11 MR. HAZZARD: --- one of the issues ---

12 THE COURT: --- were there findings made by those two
13 circuit judges that a mental health assessment was not or an
14 evaluation was not appropriate?

15 MR. HAZZARD: Yes, sir.

16 THE COURT: Okay, and so now we come a third time?

17 MR. HAZZARD: Again, I'm simply placing on the record.
18 I want this record to be as complete as possible to set forth
19 the previous requests because otherwise this record would not
20 show that, to set forth these previous requests and out of an
21 overabundance of precaution to ask again that this Court
22 consider that.

23 THE COURT: All right, and I would deny your, your
24 request. You know, I, I, I looked through these, these mental
25 health records that you had for me. Were these available to

1 Judge John and Judge Culbertson?

2 MR. HAZZARD: Yes, sir, Your Honor.

3 THE COURT: Okay, and I note that, you know, it would
4 appear that he's had some drug and alcohol or drug or alcohol
5 abuse in the past. I don't know what the extent of that was,
6 and that he seems to be a very angry young man, but I see no
7 diagnosis of mental health problems. I just don't see
8 whether, where he has anything that would or there's anything
9 here that would cause me to rule other than as was ruled on
10 that issue by Judge Culbertson and Judge John, and I would
11 respectfully deny a motion for an evaluation.

12 MR. HAZZARD: Yes, sir, Your Honor. The Defense makes a
13 motion to sequester witnesses pursuant to Rule 615, South
14 Carolina Rules of Evidence.

15 THE COURT: How about it, Ms. Bailey?

16 MS. BAILEY: Only that it be reciprocal.

17 THE COURT: All right.

18 MR. HAZZARD: Without objection.

19 MS. BAILEY: Your Honor, I should add one of my - two
20 of my witnesses on my witness list are the brother and sister
21 of the victim, and so I would just request that they be
22 allowed to stay in the courtroom under the Victims' Bill of
23 Rights? They're immediate family members.

24 THE COURT: Okay, and your lead detective?

25 MS. BAILEY: It's Investigator Busbee.

1 THE COURT: Okay, you want your lead detective and two
2 witnesses ---

3 MS. BAILEY: Yes, sir.

4 THE COURT: --- I mean two victims; right?

5 MS. BAILEY: Yes, Your Honor.

6 THE COURT: Your victims aren't fact witnesses are
7 they?

8 MS. BAILEY: They are.

9 THE COURT: The brother and sister they're fact
10 witnesses in they know something about this case?

11 MS. BAILEY: Yes, Your Honor. I would just add I'm
12 going to call the brother first.

13 THE COURT: Okay.

14 MR. HAZZARD: And I don't think that will be a
15 particular problem because from my view of all the evidence I
16 have been provided the brother is truly the fact witness. My
17 understanding is that the sister actually was notified after
18 the fact if I'm not mistaken. So I don't believe ---

19 MS. BAILEY: Yes.

20 MR. HAZZARD: --- the sister would be testifying as to
21 ---

22 THE COURT: I had a feeling you're more concerned
23 about your Co-Defendants than anyone else.

24 MR. HAZZARD: Yes, sir.

25 THE COURT: I thought so.

1 MR. HAZZARD: Yeah.

2 THE COURT: All right, we'll sequester witnesses and I
3 will allow the victim's brother and sister to be here and your
4 lead detective.

5 MS. BAILEY: And for the record that's Terell Myers and
6 Shantay Myers.

7 THE COURT: All right.

8 MR. HAZZARD: Okay, Your Honor, it's my understanding
9 that there may possibly be some evidence regarding after this
10 incident occurred. As the Court heard in the statement
11 allegedly all five Co-Defendants piled back into the same car,
12 drove away, did some driving around, dropping people off,
13 things of that nature. Well, as a part of that there was a
14 stop at the Kangaroo convenience store and there's some
15 information regarding my client allegedly shoplifting, I
16 think, a bag of chips and a soda or a couple of bag of chips.
17 I don't know if the State intends to get into that. I would
18 ask that that be excluded.

19 THE COURT: We don't need other bad acts, okay, Ms.
20 Bailey?

21 MS. BAILEY: Your Honor, I believe he references it in
22 his own statement. I would just say it's part of the
23 statement, but I will instruct my witnesses not, not to go
24 into it.

25 THE COURT: Okay.

1 MR. HAZZARD: Okay, also, if the Court wishes, I can
2 review the proposed autopsy photo. I have yet to see it so.

3 THE COURT: Let's see what we have. Who did the
4 autopsy?

5 MS. BAILEY: Dr. Ellen Reimer at MUSC. These are all
6 of the pictures.

7 THE COURT: Is she going to testify as to the cause
8 and manner of death?

9 MS. BAILEY: Yes, Your Honor.

10 THE COURT: What do you suppose she needs, Ms. Bailey?
11 Is she going to need all of her autopsy photos? Does she need
12 one? What does she need?

13 MS. BAILEY: Your Honor, I'm going to hand up the ones
14 that I intend to show her.

15 THE COURT: And where was he struck, in the head?

16 MS. BAILEY: In the tear duct.

17 THE COURT: Is this a bullet back here?

18 MS. BAILEY: Yes.

19 THE COURT: Okay, the bullet it's a 22?

20 MS. BAILEY: Yes.

21 THE COURT: All right, Mr. Hazzard, what do you say
22 about those four photos, and let the record reflect that I've
23 been shown a photo of a tear duct that has just a very, it
24 appears to be a very minor disruption of the tear duct. Then
25 there's an x-ray of the skull which would show a projectile,

1 some sort at the back of the skull and there's two photographs
2 of what appears to be a small caliber bullet or projectile.

3 MR. HAZZARD: Your Honor, I will object to the x-ray
4 photo as well as the two photos that are close-ups of Mr.
5 Myers' face that the Court is ---

6 THE COURT: I only saw one.

7 MS. BAILEY: It's just one.

8 MR. HAZZARD: Okay.

9 THE COURT: Just one.

10 MR. HAZZARD: Okay, we will, we will object to that,
11 Your Honor, simply because if for no other reason that it will
12 be cumulative. The Prosecutor's already indicated that the
13 doctor will testify as to the nature and manner and cause of
14 death. The picture ---

15 THE COURT: Let me tell you how I usually do it. I
16 usually let the, of course, they put up the prospector and as
17 he or she begins to testify, if he or she says that they need
18 a photograph to illustrate the testimony that they're giving I
19 usually let that photograph in. Ms. Bailey will tell you I'm
20 not much for letting anything gory go to the jury. I don't
21 like to do that. I like to keep it at a minimum, and what I
22 try to keep it down to is just what the doctor will need to
23 illustrate his or her testimony and I will do that here. Of
24 course I don't think you've objected to the two projectiles?

25 MR. HAZZARD: No, sir.

1 THE COURT: Okay.

2 MR. HAZZARD: No objection.

3 THE COURT: It's only the x-ray of the head and the,
4 and the photograph of the tear duct?

5 MR. HAZZARD: Yes, sir, yes, sir, the close-up of Mr.
6 Myers' face.

7 THE COURT: And I would think that the purpose of that
8 is to show the entry point and where the projectile ended up
9 so there would be, what we could assume to be the path that it
10 took in between. Let's just see what we have, but those are
11 the only ones that you intend at this time to introduce; is
12 that correct?

13 MS. BAILEY: Yes, Your Honor. There's some other
14 pictures of the crime scene that I've shown Mr. Hazzard. I
15 don't know if he has any objections to those?

16 MR. HAZZARD: No objection to those, Your Honor.

17 THE COURT: All right, and, and I will say that Mr.
18 Hazzard did - I don't find anything about the photographs to
19 be overly graphic. They seem to be very mild for this type of
20 case, okay.

21 MS. BAILEY: I do have a demonstrative, just to give
22 the Court and Mr. Hazzard a heads up.

23 THE COURT: A sketch of the nightclub?

24 MS. BAILEY: Yes, sir, a sketch of the nightclub which
25 may be as big as the nightclub itself.

1 MR. HAZZARD: I would, I would, I would ask if that's to
2 scale, Your Honor.

3 MS. BAILEY: It is not. It actually said not to scale
4 and that's why it's a demonstrative, not evidence.

5 THE COURT: But doesn't it have the width and all -
6 does it have anything there?

7 MS. BAILEY: Yes, there are notations.

8 THE COURT: It tells you how wide and how ---

9 MS. BAILEY: In width.

10 THE COURT: --- how long it is; doesn't it?

11 MS. BAILEY: Yes.

12 THE COURT: How, how big the building is?

13 MR. HAZZARD: No objection from the Defense.

14 THE COURT: Okay.

15 MR. HAZZARD: Your Honor, for the Defense at this point
16 those are all the pretrial motions.

17 THE COURT: Okay, Ms. Bailey, do you know of anything
18 we need to take up of the State?

19 MS. BAILEY: No, Your Honor.

20 THE COURT: Okay, so we'll be ready to go at ---

21 MS. BAILEY: I do have one, I'm sorry. Can we
22 approach, and Steve, could you come with me?

23 THE COURT: All right, strikes are five and ten ---

24 MR. HAZZARD: That's correct.

25 THE COURT: --- in the morning.

1 (Whereupon, a bench conference is held.)

2 THE COURT: Anything further?

3 MS. BAILEY: Only that our, our recording is in as a
4 Court's Exhibit if I might be able to take it downstairs to

5 ---

6 THE COURT: Redact it?

7 MS. BAILEY: --- redact it.

8 THE COURT: You can.

9 MS. BAILEY: With the Court's permission? Okay, that's
10 all the State has.

11 MR. HAZZARD: Nothing further at this time from the
12 Defense.

13 THE COURT: Okay, all right, we'll see you all in the
14 morning at 9:30.

15 MS. BAILEY: 9:30?

16 OFF THE RECORD

17 (On the record, Tuesday, March 19, 2013.)

18 THE COURT: The State has passed up three requests for
19 voire dire. Have you had an opportunity to look at those?

20 MR. HAZZARD: Yes, sir.

21 THE COURT: Any objection?

22 MR. HAZZARD: No, sir.

23 THE COURT: All right, sir, do you have any proposed
24 requests for voir dire?

25 MR. HAZZARD: No, sir.

1 THE COURT: All right, sir.

2 MS. BAILEY: Your Honor, the only other thing I want to
3 bring to your attention before they come in because I have no
4 idea which jurors are going to be here today but let me find
5 his name, Juror Number 45 is Inife Cohen and he is currently
6 represented by Wyn Bessent of the Public Defender's Office.
7 He has a pending charge. He's not disqualified but he does
8 have a pending charge and is represented by their office. So
9 the State is going to move to strike him for cause.

10 THE COURT: Well, I think that that would be covered
11 by your proposed voir dire anyway; right?

12 MS. BAILEY: Yes, Your Honor, thank you.

13 THE COURT: I mean, he would respond.

14 THE CLERK: Everybody is here.

15 THE COURT: All right, let's bring them in.

16 ((Whereupon, the following takes place in the presence of
17 the jury venire.))

18 THE COURT: Good morning, ladies and gentlemen, it's
19 good to see you again. We are about to begin the case of the
20 State of South Carolina versus Tamar Bryant. Mr. Bryant is
21 seated here at the Defense table with his attorney, Mr. Ron
22 Hazzard. Mr. Hazzard, if you would stand and introduce your
23 client.

24 (Mr. Bryant and Mr. Hazzard stand.)

25 THE COURT: This is Mr. Bryant.

1 The State in this case will be represented by Ms. Erin
2 Bailey of the 15th Circuit Solicitor's Office and as I said we
3 are about to select a jury for that particular trial. On
4 yesterday I explained to you that the selection of a jury
5 would fall into several different processes. The first would
6 be a general qualification of you as jurors and I found that
7 you are all qualified, but we're going to do a case specific
8 qualification this morning to make sure that you would have no
9 interest, prejudice or bias in this case and that you could be
10 a fair and impartial juror. I told you that normally what we
11 do is we bring up just a group of, well, in a high profile
12 case we'll bring up about 45 people to the courtroom and
13 select from that. In that we only had about 50 jurors left
14 after selection of the initial jury by Judge Newman we
15 determined that it would be better just to bring all of you
16 up.

17 Let me tell you a little bit about the process and how we
18 go about the selection of a jury on the criminal side of the
19 court. If this were a civil case Mr. Hazzard would be given a
20 list of you jurors and though the names would be selected and
21 placed in a random order on that list and all of you would be
22 given new numbers and Ms. Bailey would also have a list like
23 that and as we strike the jurors they would strike from the
24 list using the new numbers that were assigned, and as jurors
25 you would not even know if you were on the upper part of the

1 list, if you were being considered as a juror or if you were
2 being struck. Now, isn't that a nice way to do it, but on the
3 criminal side we do it differently. On the criminal side of
4 the Court our traditions are such that you would be required
5 to come forward, right up here and turn around and face the
6 parties and the attorneys and the other jurors and at that
7 time the State would first say either present the juror or
8 excuse the juror. If Ms. Bailey were to say excuse the juror
9 you would return to your seat and you would not participate in
10 this particular trial. If on the other hand she said present
11 the juror then we would turn to Mr. Hazzard and Mr. Hazzard
12 would either say swear the juror or excuse the juror. If he
13 were to excuse you, again, you would return to your seat and
14 you would not participate in the trial, but if Mr. Hazzard
15 then were to say swear the juror you would come around and
16 take a seat in the jury box and you would serve as a juror on
17 this particular case.

18 Now, some people find that to be an intimidating, even an
19 embarrassing process when they have to come up here and turn
20 around and face everybody and have the attorneys say that they
21 either accept them or reject them and we don't want that to
22 happen. Let me tell you about the selection of a jury. I
23 practiced law for 30 some years, did a lot of litigation, both
24 civil cases and criminal cases and let me say this about
25 picking a jury. These attorneys don't have a clue what they

1 are doing. I can tell you that. The selection of a jury is
2 absolutely the most difficult thing that an attorney can be
3 called upon to do because they don't know anything about you
4 and if you come forward and either one of these attorneys were
5 to excuse you from service on this jury you should not take it
6 to heart. You may have been struck for - because you part
7 your hair on the left or you part your hair on the right or
8 you don't have any hair to part. There is nothing other than
9 - it's nothing other than just a hunch on their part. Of
10 course these attorneys are looking for people that they
11 believe based on the limited information that they have that
12 person might be more sympathetic to their position in the case
13 and that's about as good as they can do.

14 Now I'm telling you all this to make sure that you won't
15 feel bad if you get struck and you're probably out there
16 thinking, "I hope I get struck so I don't have to serve on
17 this jury," but we're going to strike or we're going to seat
18 14 of you to serve and I believe that at the end of this case
19 you like almost every juror that I have had an opportunity to
20 discuss jury service with will find that it is a service that
21 is rewarding, one that is certainly enlightening and
22 educational and one that the jurors feel good about when they
23 have completed their jury service.

24 Now, the Defendant in this particular case has been
25 indicted and the indictment provides that Mr. Tamar Yaron

1 Bryant, who is the Defendant in this case, did on or about the
2 15th day of March of 2011 willfully, feloniously and
3 intentionally kill the victim Deon Myers with malice
4 aforethought.

5 Now, let me tell you about an indictment. An indictment
6 is not evidence in the case. What I just read to you is not
7 evidence in this case and if you're seated on this jury you
8 should not consider that as evidence. I will tell you later,
9 I will tell you several times during the trial of this case
10 that an indictment is nothing more than a document that tells
11 the Defendant what he's charged with. It puts him on notice
12 of the charge against him and the particulars of that, of that
13 charge. It is not to be considered by you as evidence at all.

14 Now, I'm going to ask you some questions about your
15 knowledge concerning this case. The reason we do that is it
16 is important that we make sure that we have a fair and
17 impartial jury. As I just told you this case involves an
18 alleged murder that occurred here in Georgetown County. Many
19 of you may have read something about it in the newspaper. You
20 might recall having seen a news report about it. I don't know
21 whether you did or not. I don't know what news reports or
22 newspaper reports might be out there or if you saw any of
23 them. However, if you have some knowledge of this case or the
24 witnesses who are going to testify, if you have any reason
25 that you might not be a fair and impartial juror we need to

1 explore that.

2 Now, these questions are so important that we're going to
3 have Ms. White or one of her staff place you under oath so
4 that you will understand that you must answer my questions
5 truthfully.

6 (Jury venire sworn by clerk.)

7 THE COURT: All right, now, let me ask you this, was
8 there any one of you who did not respond affirmatively? Is
9 there any one of you who refused to take that oath?

10 (No response.)

11 THE COURT: And let the record reflect that no one has
12 responded to that inquiry.

13 Now, has any one of you ever been related by blood or
14 marriage to either the Defendant, Mr. Tamar Bryant, and you
15 saw Mr. Bryant stand a moment ago or the victim in this case,
16 Mr. Deon Myers. Anyone related by blood or marriage?

17 MR. SCOTT: Yes, sir.

18 I'm kin to them - Deon Myers.

19 THE COURT: You're related to the Myers in some
20 fashion?

21 MR. SCOTT: Yes, sir.

22 THE COURT: Okay, would you please step out?

23 MS. HASBERRY: I'm related to Myers but I don't know if
24 I'm related to them.

25 THE COURT: You're related to some Myers, okay.

1 MS. HASBERRY: Yes, that's my mother's maiden name.

2 THE COURT: All right, well, just let me, are you

3 related, sir, to Mr. Deon Myers?

4 MR. SCOTT: Yes, sir.

5 THE COURT: You were related to him. Was he a cousin

6 or ---

7 MR. SCOTT: Cousin.

8 THE COURT: He was your cousin? Would that make you

9 feel uncomfortable as far as having to serve on this jury?

10 MR. SCOTT: No, sir.

11 THE COURT: Do you think that you could set that aside

12 and not be affected by it?

13 MR. SCOTT: Yes, sir.

14 THE COURT: Have you discussed this case with anyone?

15 MR. SCOTT: No, sir.

16 THE COURT: Is he a first cousin?

17 MR. SCOTT: I think it's second.

18 THE COURT: I am going to set you aside in this

19 particular case. Thank you, yes, ma'am, and your name, sir?

20 MR. SCOTT: Kevin Scott.

21 THE COURT: Kevin Scott?

22 MR. SCOTT: Yes, sir.

23 THE COURT: All right, sir, just have a seat over here

24 on the, on the left for a moment. Okay? Yes, ma'am.

25 MS. COOPER: That was my sister baby daddy.

1 THE COURT: Your what?

2 MS. COOPER: My sister baby daddy.

3 THE COURT: All right, he was your sister's child's

4 father?

5 MS. COOPER: Uh-huh.

6 THE COURT: Okay, were they married or were they

7 living together at the time?

8 MS. COOPER: Well, at the time before he got killed he

9 was staying with us.

10 THE COURT: And he was living with your sister?

11 MS. COOPER: Uh-huh.

12 THE COURT: Okay, and did you have much contact with

13 him?

14 MS. COOPER: Say that again.

15 THE COURT: Did you have much contact with him?

16 MS. COOPER: Yeah, he ---

17 THE COURT: Did you see him often?

18 MS. COOPER: Uh-huh.

19 THE COURT: Okay, and have you discussed this case

20 with folks?

21 MS. COOPER: No, sir.

22 THE COURT: You haven't even talked about it with your

23 sister?

24 MS. COOPER: I mean I talk about it, but I didn't never

25 really bring it up that day.

1 THE COURT: All right, I'm, I'm - your name is?

2 MS. COOPER: Iesha Cooper.

3 THE COURT: Cooper?

4 MS. COOPER: Yes, sir.

5 THE COURT: All right, Ms. Cooper, I want you to move

6 over here and I'm going to excuse you on this case, all right?

7 MS. COOPER: Okay.

8 THE COURT: Move over here where Mr. Scott is; okay?

9 Yes, ma'am.

10 MS. HASBERRY: I said my mother's maiden name is Myers -

11 Myers.

12 THE COURT: Your, your last name is Myers?

13 MS. HASBERRY: No, my mother's - well, we are Myers but

14 she got married.

15 THE COURT: My mother's name is Myers.

16 MS. HASBERRY: Yes, she got married. Her married name is

17 - we're Hasberrys now, but I don't know if I'm related to

18 them. I don't, I don't know a lot about them.

19 THE COURT: All right, other than sharing or your

20 mother sharing the last name you do not know if you have any

21 relationship to these folks?

22 MS. HASBERRY: No, I can stay.

23 THE COURT: You don't, you don't know them?

24 MS. HASBERRY: No.

25 THE COURT: Okay, and would the fact that you just had

1 - your mother had the same last name prevent you from being a
2 fair and impartial juror in this case?

3 MS. HASBERRY: No.

4 THE COURT: Could you be fair?

5 MS. HASBERRY: I can be fair.

6 THE COURT: All right, you could give both the State
7 and the Defense a fair trial?

8 MS. HASBERRY: Yes.

9 THE COURT: And your name again was?

10 MS. HASBERRY: Shamika.

11 THE COURT: Shamika?

12 MS. HASBERRY: Hasberry.

13 THE COURT: All right, Highfield?

14 MS. HASBERRY: Hasberry.

15 THE COURT: Hasberry, I'm sorry. I'm having
16 difficulty hearing and your number?

17 MS. HASBERRY: 118.

18 THE COURT: 118, okay, thank you, ma'am.

19 MS. HASBERRY: Okay.

20 THE COURT: Yes, ma'am.

21 MS. GREEN: I'm not related to either but I know them
22 very well and during the time of the incident so and stuff
23 with them doing the funeral and everything.

24 THE COURT: All right, so you are friends with the
25 family of the ---

1 MS. GREEN: Yes.

2 THE COURT: --- of, of Mr. Myers ---

3 MS. GREEN: Yes.

4 THE COURT: --- the victim; is that correct?

5 MS. GREEN: Yes.

6 THE COURT: And could you set that aside?

7 MS. GREEN: I just don't know whether I could or not.

8 THE COURT: You don't know whether you could or not?

9 MS. GREEN: No, sir.

10 THE COURT: All right, well, I'm going to excuse you

11 on this case. All right, thank you very much.

12 CLERK: Her juror number?

13 THE COURT: And your number?

14 MS. GREEN: 101.

15 THE COURT: 101, all right, and yes, sir, you may sit

16 down, ma'am.

17 MR. WATSON: I'm not any relation to either party but I

18 know their family and I know him.

19 THE COURT: Your name, sir?

20 MR. WATSON: Dellorenzo Watson.

21 THE COURT: Mr. Watson?

22 MR. WATSON: Yes, sir.

23 THE COURT: And your number?

24 MR. WATSON: 280.

25 THE COURT: 280?

1 MR. WATSON: Yes, sir.

2 THE COURT: And you know Mr. Myers' family?

3 MR. WATSON: Yes, sir.

4 THE COURT: Okay, how well do you know them? Do you

5 associate with them on a regular basis?

6 MR. WATSON: Some, some parts of their family.

7 THE COURT: All right, sir, could you set that aside

8 and give both the State and the Defense a fair trial or would

9 it be difficult for you to do that?

10 MR. WATSON: Yes, sir.

11 THE COURT: Pardon?

12 MR. WATSON: Yes, sir, I could.

13 THE COURT: You could set it aside?

14 MR. WATSON: Yes, sir.

15 THE COURT: And your relationship with them is just a

16 ---

17 MR. WATSON: The knowledge of them.

18 THE COURT: --- you're not related in any way?

19 MR. WATSON: No, sir; no, sir.

20 THE COURT: But you know - did you know Mr. Myers

21 himself?

22 MR. WATSON: Not personally.

23 THE COURT: You did not know him?

24 MR. WATSON: Not personally, just the family.

25 THE COURT: But you know some of the family and you

1 could set that aside and give both the State and the Defense a
2 fair trial?

3 MR. WATSON: Yes, sir.

4 THE COURT: All right, sir, and again, your number was
5 280?

6 MR. WATSON: Yes, sir.

7 THE COURT: All right, sir, thank you very much.

8 All right, were any of you or did any of you ever have
9 any close social or, or personal relationship with either Mr.
10 Bryant or Mr. Myers, the victim, other than what we have
11 already heard?

12 (No response.)

13 THE COURT: And there is no response.

14 I'm going to read a list of people who may possibly be
15 called as witnesses in this case. Certainly all of these
16 people may not be called and you should draw nothing from the
17 fact that a witness that you may hear listed is not called
18 during the trial. It's just that I ask the State and the
19 Defense to provide me with the names of any persons that they
20 think that might possibly be a witness.

21 Now, I'm going to read the names of these witnesses and I
22 want you to listen carefully because I need to know if you've
23 ever been related by blood or marriage or if you have any
24 close personal or social relationship with any of these
25 potential witnesses: Tyra Ford; Katina White; Cassius Green;

1 Autumn Mason; Terell Myers; Shantay Myers; Shaquettia Holmes;
2 Kewanee Dease; Marquise Green; Patrick Green - let me go back
3 to Marquise, M-A-R-Q-U-I-S-E, may be Marquise, but it's
4 Marquise or Marquise Green; Patrick Green; Donovan Myers;
5 Brittany Elaine Sanders; Cameron Green; Lavern Holmes; Brandon
6 Cheek; Kawaun Myers; Amon Knowlin, K-N-O-W-L-I-N; Joshua David
7 Smith; Deputy Craig Smith; Deputy Shannon Burbage, B-U-R-B-A-
8 G-E; Investigator Michael Thacker, T-H-A-C-K-E-R; Investigator
9 Robbie Sarvis; Investigator Clint Busbee; Sergeant Jared
10 Bardon; Captain Bill Pierce; Captain Wayne Owens; Mike Lewis;
11 Officer John Ohler, O-H-L-E-R; Agent Ira Parnell, Jr.; Nikki
12 Perry Hughes with SLED; Verona Gibson, who is also with SLED;
13 and Doctor Ellen Reimer, R-E-I-M-E-R. Is anyone related by
14 blood or marriage or have you ever had a close personal or
15 social relationship with any of those people that I just
16 named?

17 Yes, sir.

18 MR. VAUSE: Jared Bardon, cousins.

19 THE COURT: Jared Bardon?

20 MR. VAUSE: Yeah.

21 THE COURT: Okay, he is a cousin of yours?

22 MR. VAUSE: Yeah.

23 THE COURT: Okay, and would the fact that Mr. Bardon
24 is a cousin of yours affect your ability to be fair and
25 impartial in this case?

1 MR. VAUSE: No, sir.

2 THE COURT: Could you give both the State and the
3 Defense a fair trial?

4 MR. VAUSE: Yes.

5 THE COURT: And your name?

6 MR. VAUSE: Ricky Vause.

7 THE COURT: And your number?

8 MR. VAUSE: 275.

9 THE COURT: 275, thank you very much, and I saw - yes,
10 ma'am.

11 MS. ROBERTS: I went to high school with Wayne Owens,
12 and I know Michael Lewis.

13 THE COURT: Wayne Knowles?

14 MS. ROBERTS: Wayne Owens.

15 THE COURT: Owens, Ohler, I'm sorry, Owens, I'm sorry.
16 You went to high school with him?

17 MS. ROBERTS: Uh-huh.

18 THE COURT: And would that in any way affect your
19 ability to be fair and impartial?

20 MS. ROBERTS: No, sir. I mean, I ---

21 THE COURT: Could you set side the fact that you knew
22 him in high school ---

23 MS. ROBERTS: Yes, sir.

24 THE COURT: --- and, and could you give both the State
25 and the Defense a fair trial?

1 MS. ROBERTS: Yes, sir.

2 THE COURT: All right, and your number?

3 MS. ROBERTS: 224.

4 THE COURT: And again your name?

5 MS. ROBERTS: Tammie Roberts.

6 THE COURT: Thank you, ma'am.

7 Was there anyone else?

8 (No response.)

9 THE COURT: And I see no further response.

10 Okay, the attorneys in this case as I said a moment ago
11 are Mr. Ron Hazzard. Mr. Hazzard is seated here with Mr.
12 Bryant. Mr. Hazzard is employed with the 15th Circuit Public
13 Defender. He's been working with the Public Defender's Office
14 for several years now and he has recently been assigned to
15 Georgetown County exclusively. Is that right, Mr. Hazzard?

16 MR. HAZZARD: Your Honor, I do cases in both Horry and
17 Georgetown County.

18 THE COURT: So you're doing them in both counties?

19 MR. HAZZARD: Yes, sir.

20 THE COURT: All right, sir.

21 And as I said a moment ago the State in this case is
22 represented by Ms. Erin Bailey. Ms. Bailey is with the 15th
23 Circuit Solicitor's Office. She's been here a number of years
24 and she tries cases I believe exclusively in Georgetown
25 County; is that correct?

1 MS. BAILEY: Yes, Your Honor.

2 THE COURT: All right, is anyone related by blood or
3 marriage, do you have a close personal relationship with or
4 have you ever been represented by Ms. Bailey or Mr. Hazzard?

5 (No response.)

6 THE COURT: And there is no response.

7 Now, have any of you or do any of you have a family
8 member who currently has a pending criminal charge here in
9 Horry or, excuse me, in Horry or Georgetown County. That
10 would be do any your family have charges that would be
11 prosecuted by the 15th Circuit Solicitor's Office?

12 (No response.)

13 THE COURT: And there is no response.

14 Do any of you know if any of your family or have you been
15 prosecuted by the 15th Circuit Solicitor's Office in the past,
16 and again the 15th Circuit is Horry and Georgetown County?

17 (No response.)

18 THE COURT: All right, anything further from the State
19 in that regard ---

20 MS. BAILEY: No, Your Honor.

21 THE COURT: --- as to that series of questions? All
22 right, now, have any of you ever formed an opinion or
23 expressed an opinion about any issue in this particular case.
24 Now, I know I've given you limited information about this
25 charge. It involves an alleged murder that occurred March the

1 15th of 2011 and it's my understanding that this occurred down
2 in the Plantersville Community. Do any of you have any
3 knowledge concerning this? Have you discussed it with anyone?
4 Have you expressed an opinion about it?

5 (No response.)

6 THE COURT: And there is no response.

7 Is any member of the jury panel aware of any bias or
8 prejudice towards either the State or the Defendant in this
9 case?

10 (No response.)

11 THE COURT: And there's no response.

12 Has any member of the jury panel or was any member of the
13 jury panel a member of the Grand Jury which issued an
14 indictment in this case?

15 (No response.)

16 THE COURT: And there is no response.

17 Is there any member of the jury panel who is a member of
18 or a contributor to any group which has as its primary concern
19 the promotion of law enforcement or victims' rights, and that
20 would be groups like MADD or SADD or CAVE, which is Citizens
21 Against Violent Crime, anything like that?

22 (No response.)

23 THE COURT: And there, again, is no response.

24 Is there any member of the jury panel who knows of any
25 reason whatsoever why he or she should not serve as a juror in

1 this case, with particular emphasis being placed on your
2 ability to be fair and impartial to both the State and the
3 Defense?

4 (No response.)

5 THE COURT: And there's no response.

6 Anything further, Ms. Bailey?

7 MS. BAILEY: No, Your Honor.

8 THE COURT: Anything further, Mr. Hazzard?

9 MR. HAZZARD: Nothing from the Defense.

10 THE COURT: All right, Madam Clerk, if you would give
11 us a jury.

12 CLERK: When I call your name please come and
13 stand here in the center and face the door, please.

14 Juror Number 36, Larina Carr.

15 MS. CARR: Where did you say stand?

16 THE COURT: Come right up here, Ms. Carr, and turn
17 around. Thank you, ma'am.

18 CLERK: What says the State?

19 MS. BAILEY: Please present Ms. Carr.

20 CLERK: What says the Defense?

21 MR. HAZZARD: Please swear Ms. Carr.

22 CLERK: Please take a seat in the jury box.

23 Juror Number 152, Mack Langley.

24 What says the State?

25 MS. BAILEY: Please present Mr. Langley.

1 CLERK: What says the Defense?
2 MR. HAZZARD: Please swear Mr. Langley.
3 CLERK: Please take a seat in the jury box.
4 Juror Number 83, James Foxgrover.
5 What says the State?
6 MS. BAILEY: Please present Mr. Foxgrover.
7 CLERK: What says the Defense?
8 MR. HAZZARD: Please swear the juror.
9 CLERK: Please take a seat in the jury box.
10 Juror Number 86, Jerry Gardner.
11 What says the State?
12 MS. BAILEY: Please present Mr. Gardner.
13 CLERK: What says the Defense?
14 MR. HAZZARD: Please swear Mr. Gardner.
15 CLERK: Please take a seat in the jury box.
16 Juror Number 118, Shamika Hasberry.
17 What says the State?
18 MS. BAILEY: Please present Ms. Hasberry.
19 CLERK: What says the Defense?
20 MR. HAZZARD: Please excuse Ms. Hasberry from the trial
21 of this case.
22 CLERK: You may return to your seat.
23 Juror Number 298, Edward Yeager.
24 What says the State?
25 MS. BAILEY: Please present Mr. Yeager.

1 CLERK: What says the Defense?

2 MR. HAZZARD: Please excuse Mr. Yeager from this

3 particular case.

4 CLERK: You may return to your seat.

5 Juror Number 280, Dellorenzo Watson.

6 What says the State?

7 MS. BAILEY: Please present Mr. Watson.

8 CLERK: What says the Defense?

9 MR. HAZZARD: Please excuse Mr. Watson from the trial of

10 this case.

11 CLERK: You may return to your seat.

12 Juror Number 224, Tammie Roberts.

13 What says the State?

14 MS. BAILEY: Please present Ms. Roberts.

15 CLERK: What says the Defense?

16 MR. HAZZARD: Please swear Ms. Roberts.

17 CLERK: Please take a seat in the jury box.

18 Juror Number 95, Edward Goude, Sr.

19 What says the State?

20 MS. BAILEY: Please excuse Mr. Goude.

21 CLERK: You may return to your seat.

22 Juror Number 64, Jennifer Davis.

23 What says the State?

24 MS. BAILEY: Please present Ms. Davis.

25 CLERK: What says the Defense?

1 MR. HAZZARD: Please swear Ms. Davis.
2 CLERK: Please take a seat in the jury box.
3 Juror Number 191, Bernard Nelson.
4 What says the State?
5 MS. BAILEY: Please excuse Mr. Nelson.
6 CLERK: You may return to your seat.
7 Juror Number 265, Latiea Thomas.
8 What says the State?
9 MS. BAILEY: Please present Ms. Thomas.
10 CLERK: What says the Defense?
11 MR. HAZZARD: Please swear Ms. Thomas.
12 CLERK: Please take a seat in the jury box.
13 Juror Number 22, Priscilla Bone.
14 What says the State?
15 MS. BAILEY: Please present Ms. Bone.
16 CLERK: What says the Defense?
17 MR. HAZZARD: Please swear Ms. Bone.
18 CLERK: Please take a seat in the jury box.
19 Juror Number 25, Barbara Bossack.
20 What says the State?
21 MS. BAILEY: Please present Ms. Bossack.
22 CLERK: What says the Defense?
23 MR. HAZZARD: Please swear Ms. Bossack.
24 CLERK: Please take a seat in the jury box.
25 Juror Number 165, Teresa Lusk.

1 What says the State?

2 MS. BAILEY: Please present Ms. Lusk.

3 CLERK: What says the Defense?

4 MR. HAZZARD: Please excuse Ms. Lusk from the trial of

5 this particular case.

6 CLERK: You may return to your seat.

7 Juror Number 17, Howell Bellamy, Jr.

8 What says the State?

9 MS. BAILEY: Please excuse Mr. Bellamy.

10 CLERK: You may return to your seat.

11 Juror Number 45, Inife Cohen.

12 MS. BAILEY: Your Honor, may we approach?

13 THE COURT: Yes, not Mr. Cohen.

14 (Whereupon, a bench conference is held in the presence

15 but out of the hearing of the jury venire.)

16 THE COURT: All right, the juror is excused.

17 CLERK: You may return to your seat.

18 Juror Number 34, Jessie Mae Bryant.

19 What says the State?

20 MS. BAILEY: Please present Ms. Bryant.

21 CLERK: What says the Defense?

22 MR. HAZZARD: Please swear Ms. Bryant.

23 CLERK: Please take a seat in the jury box.

24 Juror Number 13, Susan Baldwin.

25 What says the State?

1 MS. BAILEY: Please present Ms. Baldwin.
2 CLERK: What says the Defense?
3 MR. HAZZARD: Please swear Ms. Baldwin.
4 CLERK: Please take a seat in the jury box.
5 Juror Number 12, Steven Attias.
6 What says the State?
7 MS. BAILEY: Please present Mr. Attias.
8 CLERK: What says the Defense?
9 MR. HAZZARD: Please excuse the juror from the trial of
10 this particular case.
11 CLERK: You may return to your seat.
12 Juror Number 41, Stephen Cinader, Jr.
13 What says the State?
14 MS. BAILEY: Please present Mr. Cinader.
15 CLERK: What says the Defense?
16 MR. HAZZARD: Please swear the juror.
17 CLERK: Please take a seat in the jury box.
18 This is for the first alternate, Juror Number 291,
19 Tarrant Winns.
20 What says the State?
21 MS. BAILEY: Please excuse Mr. Winns.
22 CLERK: You may return to your seat.
23 Juror Number 272, Kristin Vanallen, Vanallen.
24 What says the State?
25 MS. BAILEY: Please present Ms. Vanallen.

1 CLERK: What says the Defense?

2 MR. HAZZARD: Please swear the juror.

3 CLERK: Please take a seat in the jury box.

4 Juror Number 51, Timothy Crabtree, II.

5 What says the State?

6 MS. BAILEY: Please present Mr. Crabtree.

7 CLERK: What says the Defense?

8 MR. HAZZARD: Please excuse the juror in this case.

9 CLERK: You may return to your seat.

10 Juror Number 275, Ricky Vause.

11 What says the State?

12 MS. BAILEY: Please present Mr. Vause.

13 CLERK: What says the Defense?

14 MR. HAZZARD: Please excuse Mr. Vause on this trial.

15 CLERK: You may return to your seat.

16 Juror Number 226, Johnny Rogers, Jr.

17 What says the State?

18 MS. BAILEY: Please excuse Mr. Rogers.

19 CLERK: You may return to your seat.

20 Juror Number 55, Christine Crouch.

21 What says the State?

22 MS. BAILEY: Please present Ms. Crouch.

23 CLERK: What says the Defense?

24 MR. HAZZARD: Please swear the juror.

25 CLERK: Please take a seat in the jury box.

1 THE COURT: All right, Mr. Hazzard, will there be a
2 challenge to the panel?

3 MR. HAZZARD: The Court's indulgence, Your Honor.
4 None from the Defense.

5 MS. BAILEY: None from the State, Your Honor.

6 THE COURT: None from the State, very well.

7 All right, the balance of the jury panel is excused.
8 It's my understanding they will be excused for the week.
9 Isn't Judge Newman done?

10 CLERK: Yes, Your Honor.

11 THE COURT: And I think this will be the last case
12 that we will be trying. Is that right, Ms. Bailey?

13 MS. BAILEY: Yes, Your Honor.

14 THE COURT: This is the last case to be presented by
15 the Solicitor's Office.

16 Okay, you are excused then. Your obligation for jury
17 service is fulfilled. You will not have to serve again for
18 three more years. Thank you very much. It's good to have you
19 all here.

20 (Remaining jury panel exits courtroom.)

21 THE COURT: All right, the young lady right in the
22 middle of the - yes, ma'am, and I've, I've lost your name on
23 my jury list. You are?

24 MS. BALDWIN: Susan Baldwin, Number 13.

25 THE COURT: Ms. Baldwin, Ms. Baldwin, I want you to

1 act as the forelady of our jury. I want you to take this
2 first seat whenever we return to the courtroom. Always occupy
3 that seat. The rest of you may sit where you like, other than
4 you two ladies. You are our alternates and you can sit in
5 either of those two seats that are marked for alternates. If
6 you would always occupy those.

7 What I want to do is let you take a quick break. There
8 might be some matters that I need to take up with the
9 attorneys. I'm going to let you go into your jury room and
10 become familiar with that, refresh yourselves and we'll bring
11 you back in just a few minutes and we'll proceed with the
12 trial; okay? All right, first of all let's do this, before we
13 send them in let's, let's swear them; okay? If you'll wait
14 just one second.

15 (Jury is sworn by clerk.)

16 THE COURT: All right, and was there any juror who did
17 not take that oath?

18 (No response.)

19 THE COURT: And there's no response. Thank you.

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Any matter we need to take up?

23 MS. BAILEY: None from the State other than a brief
24 break.

25 MR. HAZZARD: None from the Defense.

1 THE COURT: All right, well, let's take about 10
2 minutes and let everybody get organized and refreshed and
3 we'll be right back in to begin the case.

4 MS. BAILEY: Thank you, Your Honor.

5 OFF THE RECORD

6 (On the record. The following takes place outside the
7 presence of the jury.)

8 THE COURT: All right, let's bring in the jury panel.

9 (Whereupon, the following takes place in the presence of
10 the jury.)

11 THE COURT: All right, we have all the jurors back and
12 our alternates, and ladies and gentlemen, the attorneys tell
13 me that they are ready to begin this trial, but before we
14 begin it let me make a few remarks to you. I want to thank
15 you for being here and serving as jurors in this court. It
16 seems that every time we turn on the TV there is a trial going
17 on of some sort of some sort of TV show or movie, and every
18 one of those trials seem to be the most riveting and exciting
19 things that you can imagine. In reality that's not
20 necessarily how a trial really goes. The search for the truth
21 is often tedious, repetitive and slow and that's as it should
22 be for we have here at stake this, this day, this week is not
23 only the right of the State to punish those that it feels has
24 or have violated the laws of this State, but also we have the
25 liberty of this Defendant at stake and he has plead not guilty

1 to the indictment that I presented to you earlier, and again,
2 I want to make sure that you understand that this indictment
3 is not evidence in this case, it is just the document by which
4 he is charged. It puts him on notice of the charge, and when
5 he pleads guilty or not guilty as he has done in this case,
6 the burden shifts to the State to prove to you beyond a
7 reasonable doubt that he is guilty of the offense for which he
8 is charged and the goal in this trial is to - for you to
9 determine whether or not the State has met its burden of
10 proof, that is whether or not the State has convinced each and
11 every one of you of the Defendant's guilt beyond a reasonable
12 doubt.

13 Now, everything we do in this courtroom today is and this
14 week, as we go through the trial, is for you. All the
15 evidence is presented for you to consider. If at any time you
16 cannot hear, you cannot see what is being presented in this
17 courtroom I want you to raise your hands to let me know that
18 you cannot see or you cannot hear or you cannot understand
19 what is taking place. Also, if at any time during the trial
20 of this case you become uncomfortable, please raise your hand,
21 let me know, we will take a break and let you refresh
22 yourselves. I ask you to do that for me because there's
23 nothing more important than you being able to be attentive and
24 focused on the evidence that's being presented in this case.

25 Now, you as jurors are the sole and exclusive judges of

1 the facts in this case. At the end of the case you and you
2 alone will determine or say what happened, what transpired
3 during this event. You as jurors will judge the credibility
4 or believability of every witness who testifies in this trial.
5 In doing so you can apply just about any test that you in your
6 experience have determined to be a fair and reasonable and
7 responsible way of determining what the truth is. You can
8 consider such things as any interest, prejudice or bias that a
9 witness may have in the case. You can consider whether the
10 witness was in a position to see or hear what that witness has
11 testified about. You can even consider such things as the
12 witness's demeanor or appearance on the witness stand. All
13 those are things which you may consider. The determination of
14 the facts, as I said, is entirely up to you. You must not let
15 me infer from what I say or do during this trial that I have
16 an opinion about this case. Please, if I do that, set that
17 aside. It's absolutely unintentional. I do not have a right
18 to even have an opinion about the evidence or the testimony in
19 the case. That's entirely up to you, but at the end of the
20 trial I will charge you as to the law, the law that you will
21 apply in your deliberations.

22 The deliberation process involves three things: first,
23 your determination of what the facts are; secondly, my
24 determination of what the law is and let me tell you you've
25 got to be guided by the law as I give it to you whether you

1 agree with it or not. You may have some idea as to what the
2 law ought to be and may be different from what I tell you, but
3 you are sworn as jurors to follow the law exactly as I give it
4 to you. Once you have the law and you have determined the
5 facts then the third and final phase is where you apply the
6 law to the facts and then you will determine whether or not
7 the State has met its burden. It's sort of like the wheels or
8 gears in a big mill, the law and the facts and how they come
9 together determines whether or not there is reasonable doubt
10 in this case or any other case.

11 Now, during the trial of this case I want to make sure
12 that you understand that you should consider only the evidence
13 which is presented during this trial. I know with today's
14 technology probably every one of you has one of those
15 smartphones. You know, all of a sudden we've all become
16 geniuses, we've got the world's knowledge in our hands 24-7.
17 We can look up anything and it would be easy for you to look
18 up probably past newspaper articles or probably even TV
19 reports about this case. This is a murder case and I'm sure
20 that there were some that were out there, but you've told me
21 that you don't remember anything about that, that you have no
22 knowledge of those things. I'm asking you not to do any
23 research on your own. Don't bring up MapQuest and try to look
24 at the distances from one place to another, don't do any type
25 of research on your own. Don't look up legal phrases or legal

1 definitions and second guess my instruction on the law. Don't
2 do any of those things. Do not tweet, do not go on Facebook,
3 do not text anyone about this case. In fact, you're not to
4 discuss this case with anyone until this case has been or all
5 the evidence is in in this case and I instruct you to begin
6 your deliberations. Pre-deliberation is the most dangerous
7 thing that can happen in a trial because you need to hear or
8 see all the testimony and evidence that's going to be
9 presented before you begin the process of determining whether
10 or not the State has met its burden of proof in this
11 particular case. So I'm going to ask you not to discuss it
12 with your family, your friends, your husband, your wife, your
13 significant others, not even among yourselves until I instruct
14 you to begin your deliberations at the end of this case.

15 From time to time during the trial of this case you may
16 hear one of these lawyers say something like, "Your Honor, we
17 have a matter to take up or a matter that we need to discuss
18 outside the presence of the jury." That's a normal thing that
19 happens in every trial. If that occurs and I send you out,
20 please understand we are not trying to keep anything from you.
21 The reason that we send you out is simply this, usually that
22 occurs when I'm asked to rule on the way a piece of evidence
23 is presented or whether or not a piece of evidence should be
24 admitted in this trial, and when I do that, I often have to
25 place on the record what my opinion is or what I think about

1 that particular piece of evidence, and if I did that in your
2 presence I might influence the way you perceive that evidence
3 or the way that you look at that evidence and that would be
4 highly improper, and that's why we do not allow you to be in
5 the courtroom when I am doing that. It's not that we're
6 trying to keep anything from you.

7 Again, let me tell you that the Defendant in this case
8 has pled not guilty to the indictment and the burden is upon
9 the State to convince you of his guilt beyond a reasonable
10 doubt and that's something that you should keep in your minds
11 as this case proceeds.

12 Now, anything further from the State?

13 MS. BAILEY: No, Your Honor.

14 THE COURT: Anything further from the Defense?

15 MR. HAZZARD: No exceptions or additions from the
16 Defense.

17 THE COURT: Okay, let me tell you what we're about to
18 do. Now we're going to begin the trial. Let me tell you
19 briefly how it will proceed. We will begin with an opening
20 remark by Ms. Bailey. The burden is on the State and the
21 State will begin by telling you its version of the facts in
22 this case and why it believes that it can prove or establish
23 that the Defendant committed this offense beyond a reasonable
24 doubt. Nothing that Ms. Bailey says in opening remarks is
25 evidence. She must prove every element of the offense by

1 evidence from the witness stand or testimony from the witness
2 stand or evidence that's been presented. Following her
3 opening remark, and again, she is merely setting forth what
4 she believes she can establish during a trial and she will be
5 able to give you a better understanding of what this case is
6 about.

7 Following that, Mr. Hazzard has the opportunity if he
8 wishes to use it to do the same thing and he is going to
9 discuss with you or present to you the Defense's position in
10 this particular case. The Defense does not have to do that,
11 but he may choose to do so. Again, what Mr. Hazzard says will
12 not be evidence. It doesn't become evidence until you have
13 heard it from the witness stand and then you will give it such
14 weight as you believe would be appropriate.

15 Following the opening remarks by the attorneys, the State
16 will put up its case. It will put up such witnesses and
17 evidence as it has to prove or to meet its burden. Following
18 that, the Defense may or may not, let me stress upon you the
19 fact that the Defendant does not have any obligation to prove
20 his innocence, the burden is on the State, and I will instruct
21 you more fully in that regard when I give you your final
22 instructions on the law, but the Defense may or may not put up
23 witnesses in this particular case, but they have the
24 opportunity to do so. Following that there will be closing
25 remarks by the State and closing remarks by the Defense.

1 Again, closing remarks are like opening remarks. They're not
2 evidence, merely a summation of what they have put up during
3 the trial of the case. Following that I will give you a
4 complete and final instruction on the law that you will use
5 during your deliberations and then the case will be turned
6 over to you and at that point and not until that point you
7 will begin your deliberations.

8 Now, Ms. Bailey?

9 MS. BAILEY: Thank you, Your Honor. May it please the
10 Court?

11 March 15th, 2011, small community of Plantersville, small
12 local club they call the Ghost Den, Terell Myers is working a
13 side job there, He takes money as people come in the club.
14 It's two dollars. For two hours they run a special, two
15 dollars to get in the club as much as you want to drink. It's
16 a good deal.

17 Terell's brother comes in. His name is Deon. Terell's
18 brother has two guests with him that nobody's ever seen
19 before, two girls there to hang out with him for the night.
20 After Deon's been in the club for 20, 30 minutes a man from
21 the community that they all know named Lavern Holmes comes in
22 the club. Lavern has a shotgun. Everybody recognizes Lavern.
23 He's tall. He comes in the club and he starts arguing with
24 Deon. Behind him another man comes in. That man is wearing a
25 red bandana across his face. That man is much smaller than

1 Lavern. They argue. Deon runs into the bathroom to take
2 cover. Deon hides behind the bathroom door to take cover.
3 Ms. Shaquettia Holmes, who is related to Lavern Holmes, gets
4 in between Lavern and Deon. She's not a big girl. She's
5 about this tall, but she still jumps right there in the middle
6 of them and says, "Calm down, everybody calm down. There's no
7 need for all this." She thinks she has diffused the
8 situation. Lavern leaves the bathroom, walks away from the
9 situation. Deon comes out of the bathroom. He believes that
10 the danger has passed, and as he is walking across the club,
11 regrouping himself, looking for a necklace that got lost in
12 the middle of all that craziness, he reaches down looking for
13 his necklace and Tamar Bryant takes out a gun and shoots him.

14 Terell Myers is still in the club. Terell Myers sees a
15 young man who he doesn't know with a red bandana across his
16 face pull out a small black gun. Terell Myers sees him pull
17 the trigger. He sees a flash come out of that gun and he sees
18 his brother shot in the face. Terell Myers rushes over to his
19 brother. Everybody else in the club yells gun and takes
20 cover. They all hide behind the cinderblock bar to try to
21 stay safe, but Terell Myers runs to his brother. He drags him
22 over to a corner and he holds him.

23 They're in Plantersville. That's in the northern part of
24 the county, takes EMS 35 minutes to get there. In the midst
25 of a traumatic event like this one minute can feel like an

1 hour. Terell Myers hold his brother for 35 minutes while his
2 brother is bleeding, while his brother is coughing up blood.
3 Terell looks at him. He tries to comfort him in what is
4 probably the last conscious moments of Deon Myers' life.

5 Deon was a fighter. Despite the horrible brain injury
6 that he sustained, Deon's body fought for three days. For
7 three days Deon was in the hospital and finally after three
8 days there was no more fighting left to do. You all are here
9 today because this week is Tamar Bryant's week in court.
10 There are many people involved in this. You're going to here
11 that there was five people charged out of this incident.
12 You're going to hear the names of some of them, Lavern Holmes,
13 Brandon Cheek, Kawaun Myers, Cameron Green. They will all get
14 their day in court. They'll all have their weeks in court,
15 but this week is about one person. This week I want you to
16 focus on the evidence against one person and that person is
17 Tamar Bryant. The evidence that you will hear over the next
18 few days will show that Tamar Bryant was that shorter man who
19 came in the club after Lavern Holmes. Tamar Bryant was the
20 man with the red bandana across his face. Tamar Bryant was
21 the man who pulled out a small black revolver and fired one 22
22 bullet that went into Deon Myers' head resulting in his death.

23 I ask you to listen carefully to the evidence that's
24 presented. You're going to hear from several witnesses.

1 Listen carefully to what they have to say and consider your
2 verdict carefully and I'll speak to you again in a few days.

3 THE COURT: Mr. Hazzard.

4 MR. HAZZARD: Thank you, Your Honor. May it please the
5 Court?

6 Good morning, ladies and gentlemen. The one thing the
7 Prosecutor and I can agree on is that there are five people
8 charged with murder and she has told you their names, okay,
9 but she says this man pulled the trigger. What you will see
10 and what you will hear among other evidence, and all of it is
11 just as important for your consideration, is a statement that
12 this young man gave to the police on or about March 25th of
13 2011, because you see, this incident happened on March 15th of
14 2011, and with regard to all of the witnesses there, I believe
15 that the evidence and testimony will show you that there is
16 absolutely no question about Lavern Holmes' involvement and
17 Cameron Green's involvement because they are arrested within
18 the next two days. Cameron Green's arrested the next day,
19 Lavern Holmes is arrested the day after that. Okay? And
20 evidence and testimony will show you that after that the next
21 person arrested is Brandon Cheek and then the next person
22 arrested after that on or about the 21st or 22nd of March is
23 Kawaun Myers. So you can tell that the police are already
24 doing a great deal of investigation from the beginning of this
25 incident from the night it happened, the early morning hours

1 they are on it and they know who's involved.

2 Now, the evidence and testimony will show that as part of
3 that investigation this gentleman then gets named later on
4 down the line and he is arrested. A warrant's put out for his
5 arrest for murder. He's arrested on March 25th of 2011.
6 Evidence and testimony will show you at the time of his arrest
7 he tells the police, "You have got the wrong guy, I didn't do
8 it, I didn't do it." Evidence and testimony will show you
9 that after his arrest he is taken to the Georgetown County
10 Sheriff's Office where for reasons satisfactory only to them
11 they continue the interrogation outside with nothing recorded,
12 nothing whatsoever, and that he then again says, "I didn't do
13 it." Evidence and testimony will show you that this 17 year
14 old boy at the time is then handed a warrant for murder so
15 that his pleas of, "I didn't do it," have fallen on deaf ears,
16 and evidence and testimony will show you that he subsequently
17 gives a statement saying, "Okay, I did it, I did it, I did it,
18 I did it."

19 Now, I want you to look at the statement because you will
20 have a chance to see it and hear it between Investigator
21 Busbee and at the time a 17 year old boy, and I want you to
22 focus not only on his words and his manner but also on
23 Investigator Busbee's manner during the time that this
24 confession, so-called confession, is obtained because you see
25 we have had matters, of course, that the Court has to take up

1 outside your presence, and the Judge has decided that you can
2 see this confession as evidence; however, I believe he will
3 also tell you that it is still incumbent upon you, the 12 of
4 you in your wisdom, to say is this truthful, is this accurate,
5 is it correct, does it tell me the actual facts of what
6 occurred? So the fact that you see it, you treat it like any
7 other piece of evidence. You know, as His Honor already
8 alluded to and as I believe he will tell you in greater detail
9 later on you can believe all of what you see and hear from
10 that witness stand, part of it or none of it based on your
11 common wisdom and knowledge.

12 I want you to pay very, very close attention to the
13 witnesses that the State puts up and Ms. Bailey has already
14 alluded to the fact that one of the State's main witnesses, Ms.
15 Shaquettia Holmes, is related to Lavern Holmes, the man
16 referred to as the man with the shotgun. Okay? Because I
17 think you'll see in that Plantersville Community virtually
18 everyone involved in this case is related to everyone else
19 with the exception of Tamar Bryant. He isn't from
20 Plantersville. He's from Georgetown. Okay? Listen very
21 carefully to the evidence as it's submitted. Consider, one of
22 the things I want you to consider is this, one of the things I
23 can't get enough of for whatever reason is real TV, like Court
24 TV, Snapped, you know, Dateline, 48 Hour Mystery, all that
25 stuff. I love that stuff, can't get enough of it. Now,

1 anyone who watches it one of the things they know is that with
2 regard to a police investigation and a subsequent
3 interrogation of a suspect, what's one of the things that the
4 police always do? They always withhold some piece of
5 evidence. Why do they withhold some piece of evidence, not
6 make it common knowledge to the public during the
7 investigation? Because they want to be able to determine
8 whether someone talking to them is talking just to talk or
9 whether they actually know and were there. Okay? So what
10 does that tell you? That tells you that false confessions
11 happen all the time. If false confessions never happened,
12 there would never be any need because you would say, all of us
13 would say no one in their right mind would ever confess to a
14 crime they didn't commit, but yet the police know it happens
15 so often that they know they have to withhold some particulars
16 of every case to make sure that when someone comes forward
17 they can say, "Well, wait a minute now, this doesn't match
18 with what we know," because it's not something that was made
19 known to the public.

20 Now, in this case what you're going to have is a
21 gentleman who stands before you and says, "I did not commit
22 this crime. Despite my confession, I did not commit this
23 crime." Look at the circumstances of it, and with him he's
24 actually there. He's there with Cameron Green. He's there in
25 the club with Lavern Holmes. He's there like all the other

1 witnesses are there. So for the most part, he knows what
2 happened. So he's able to put himself and anyone in that
3 shooter's position and say, "Oh, well, these - this is how it
4 went down," but look at it very carefully, look at what he
5 says, how he says it because I submit to you one of the things
6 you're going to see when you review this video, and I want you
7 to look very closely at it is when he says, "Okay, I did it."
8 I submit to you evidence and testimony will show since the
9 video will be in evidence that Investigator Busbee will
10 basically look at him like "What, what," like he's shocked by
11 that statement coming from this young man, and if you listen
12 to it carefully, evidence and testimony I believe will show
13 you'll see on the video that Investigator Busbee then asks him
14 "Well, why, why, why would you shoot this guy you don't know,"
15 and evidence and testimony as you review the video will show,
16 well, now he's got to come up with some kind of motive for the
17 story he's given, and you will hear him say, "Oh, well, I
18 didn't know who he was when I first walked in the club, but
19 then I recognized him from some difficulties we had had in
20 Hemingway four years earlier in 2007. It was over money,
21 drugs and girls," and what you have to think to yourself is,
22 on March 15th of 2011, March 25th of 2011 this boy was 17 years
23 old. In 2007 he was 13. He don't even know where Hemingway
24 is. So as you hear this information look at all of it, every
25 piece of it, from what he says, how he says it, what

1 Investigator Busbee says, what the witnesses from the state
2 say, any witnesses from the Defense, listen to them all and
3 parse them very carefully, and I know that we will get to the
4 truth of this matter. Thank you.

5 THE COURT: Ms. Bailey?

6 MS. BAILEY: Thank you, Your Honor. State calls Terell
7 Myers.

8 THE COURT: Come around, Mr. Myers, right here.

9 Whereupon, Terell Myers was called to the stand, duly
10 sworn by the clerk and testified as follows:

11 CLERK: Would you please be seated, state your
12 name for the record and spell it, please.

13 MR. MYERS: Terell Myers, M-Y-E-R-S.

14 DIRECT EXAMINATION

15 BY MS. BAILEY:

16 Q Speak right into that microphone, okay?

17 A All right.

18 MR. HAZZARD: I apologize, Your Honor, may we approach
19 right quick?

20 THE COURT: Certainly.

21 (Whereupon, a bench conference is held in the presence
22 but out of the hearing of the jury.)

23 BY MS. BAILEY:

24 Q Mr. Myers, where do you work?

25 A Coastal Wire.

1 Q Coastal Wire?

2 A Uh-huh.

3 Q And on March 15th of 2011 did you sometimes have a second
4 job?

5 A Yes, I used to work at a bar called Ghost Den in - on
6 Jackson Village Road.

7 Q What community is that in?

8 A Plantersville.

9 Q And what county is that in?

10 A Georgetown County.

11 Q And were you working the night of March 25th, 2011?

12 A Yes, I was.

13 Q Were you working the night of March 15th, 2011?

14 A Yes, yes, I was working at the bar at the door that
15 night.

16 Q And can you tell us a little bit about what it was like
17 when you got there?

18 A Well, the night of the incident I was at the door
19 receiving money, and my brother came in there, Deon, him and
20 two other females, and they were standing on the, on the west
21 side of the club standing against the wall, and shortly about
22 15, 20 minutes Lavern Holmes came in with a shotgun.

23 Q I'm going to back you up for just a second. When Deon
24 came in how many people were in the club about?

25 A Maybe about 20 people.

1 Q Twenty people in the club?

2 A Uh-huh.

3 Q And how long had Deon been there?

4 A Maybe about 20 minutes, 25 minutes at the most.

5 Q And did you see Lavern Holmes come in the club?

6 A Yes, I did.

7 Q And how long have you known Lavern Holmes?

8 A All my life.

9 Q Okay, any doubt in your mind it was him who came in?

10 A No, it's not no doubt.

11 Q Did he have anything with him?

12 A Yes, he had a, he had a gun.

13 Q What kind of gun?

14 A It seemed, it looked like the - a double pump, like a

15 rifle.

16 Q Was it big or little?

17 A It was long.

18 Q How long? Was it as long as your arm?

19 A Yeah, way longer than my arm.

20 Q. And what did he do when he came in?

21 A Well, he approached, he went straight to Deon and other

22 people that was in the club saw him coming in with the gun.

23 They was trying to stop it. Deon work his way to the

24 bathroom. He was trying to pry himself into the bathroom to

25 get to him and Shaquettia was the one that got in the bathroom

1 and stopped everything.

2 Q Okay, now, just to clarify, was Deon in the bathroom?

3 A Yes, he was.

4 Q And who was trying to get to him?

5 A Lavern Holmes.

6 Q Okay, at some point did somebody else come in the club
7 with Lavern?

8 A Lavern came in the club by hisself at first.

9 Q Okay, did anybody come in after that?

10 A Yes, a short guy came in, had a red bandana underneath
11 his eye, had his mouth and nose covered.

12 Q Okay, and what did that person do?

13 A Well, when he came in Deon was working his way coming out
14 the bathroom. He made it midway, the midway part of the club
15 and he came straight in and shot him. He came in and shot
16 him, straight, he, he came straight to Deon and shot him.

17 Q Okay, did you see what kind of gun this other person had?

18 A It was a small black gun. I really couldn't see it.

19 Q Okay, but you can say it's small and black?

20 A Yeah, small and black.

21 Q Much smaller than the shotgun?

22 A Way smaller than the shotgun. It's a handgun.

23 Q Okay, were you at all able to recognize that person who
24 had the bandana over their face?

25 A I couldn't recognize him at the time.

1 Q Okay, and what happened after - let me back up, did you
2 see that person with the red bandana pull the trigger?

3 A Yes, I did.

4 Q Did you see the gun?

5 A I saw the fire came from the barrel.

6 Q Okay, what happened after that?

7 A I immediately got over there, I grabbed him.

8 Q When you say him who do you mean?

9 A Deon, and I called 911 and I was trying to recover.

10 Q And what did you do after that?

11 A I held him till 911 got there.

12 Q Did you move him at all from where he was shot?

13 A Yes, I did because he didn't got shot directly in the
14 middle of the floor. He got, he got shot right about the
15 corner of the pool table and when I grabbed him I pulled him
16 so I could have laid him down so that I could - was trying to
17 save some blood.

18 Q And how long did it take 911 or anybody to show up for
19 help?

20 A 911 might have got there about 15 minutes after I
21 initially made the first phone call.

22 Q How long for EMS to get there?

23 A EMS got there maybe about five minutes after 911 got
24 there.

25 Q And was Deon responsive to you at that time?

1 A No, he wasn't.

2 Q Can you, can you describe?

3 A I mean, he was just laying there, he was coughing blood.
4 He was, he was just unconscious, he just can't do nothing.

5 Q I'm going to show you what have been previously marked as
6 State's Exhibits One through Six.

7 MR. HAZZARD: The Court's indulgence, Your Honor. No
8 objection, Your Honor.

9 THE COURT: All right, without objection those will be
10 State's One through Six, that correct?

11 MS. BAILEY: Yes, Your Honor.

12 THE COURT: They're already marked?

13 MS. BAILEY: Yes.

14 THE COURT: Very well.

15 BY MS. BAILEY:

16 Q If you could just flip through those. If you could turn
17 your attention to that screen there I'm going to show you
18 State's Exhibit One - well, before we do that do you recognize
19 these pictures?

20 A I do.

21 Q Are these true and accurate photos?

22 A It is.

23 Q And what are they depictions of?

24 A It's pictures of the inside of the club and the outside
25 of the club and where he got shot at.

1 Q And are they true and accurate photos of what it looked
2 like that night?

3 A It is.

4 MS. BAILEY: The State would seek to move State's
5 Exhibit One through Six into evidence.

6 THE COURT: They're admitted.

7 MS. BAILEY: Okay.

8 (Whereupon, State's Exhibits One through Six
9 [Photographs] admitted into evidence and appropriately
10 marked.)

11 BY MS. BAILEY:

12 Q Can you describe for the jury - actually that is not -
13 can you describe for the jury what we're looking at?

14 A This is the inside of the club. This is the, this is the
15 entrance part of the club. Right when you first walk in
16 that's where I stand at, that's where I take the money.

17 Q Which part's where you stand?

18 A I stand right here where the pool, I mean, right at the
19 front door where the, the tables are, right where the tables
20 are that's where I take the money at.

21 Q Is that on the right-hand side of the picture?

22 A That would be on my left-hand side.

23 Q Okay, by the white bar or by the wooden bar?

24 A By the wooden bar.

25 Q By the wooden bar? That's where you were standing when

1 you were taking money?

2 A Yes, I was.

3 Q Okay, and is this the front entrance to the club?

4 A Yes, this is the only entrance to the club.

5 Q That's the only door that people were using that night?

6 A That's right.

7 Q And can you describe what this is?

8 A This is a picture of the outside of the club after

9 everything was clear when 911 was there.

10 Q Okay, is this a picture of the front entrance of the
11 club?

12 A Yes, it is.

13 Q And is there a road nearby?

14 A Yes, this is a - there's a highway in front of it and
15 there's a dirt road right beside it.

16 Q Okay, and the highway in front of it would the, would the
17 person taking this picture be standing near that?

18 A Yes, they'd be standing right in the driveway.

19 Q Okay, what's the name of that highway?

20 A Jackson Village Road.

21 Q Can you describe what the jury's looking at now?

22 A This is the inside of the club. We got the ---

23 Q And where would the person who's taking this photograph
24 be standing?

25 A Right where I stand at to take the money.

1 Q Okay, is that by the front door?

2 A Yes, it is.

3 Q Can you describe based on this picture where Deon was
4 standing when he was shot?

5 A Well, if you walking into the club, he'll be standing on
6 the right side of the wall.

7 Q Okay, when he was shot was he standing near the pool
8 table?

9 A Midway.

10 Q When you look at this picture, is there - can you see the
11 dance floor?

12 A Yes, the dance floor is in the middle.

13 Q Okay, was he on the dance floor?

14 A Well, when he came out of the - once he exit the
15 bathroom, yeah, he came, he came midway to the dance floor.

16 Q Midway to the dance floor, and after he was shot and you
17 were holding him where were you all?

18 A We was right at the, the front part of the pool table
19 where you see a shirt because I took my shirt off.

20 Q Can you describe what this picture is?

21 A Yes, that's the dance floor, the pool table where we got
22 the music and the TV at on the far corner with the white bar.

23 Q And what's, what's over to the right?

24 A To the right would be the pool table, the chairs and the
25 TV.

1 Q Okay, and how about on the side near the wooden area
2 where you were standing?

3 A Okay, those are, those are sitting tables. That's where
4 Deon was sitting, standing up at.

5 Q And he was standing there before?

6 A Before this even happened when he - when they first came
7 in that's where he was standing at.

8 Q I'm showing you State's Exhibit Three. Can you describe
9 what this is?

10 A Yes, that's the inside of the club where - you see where
11 the police is standing at, that's where Deon was, that where
12 Deon was standing at the beginning. You will see an officer
13 in the corner right where he's standing at, kneeling down at
14 that's where Deon was at, in this corner.

15 Q Is that the lower right-hand corner?

16 A Yes.

17 Q This is State's Exhibit Two. Can you describe what we're
18 looking at? Where do you think the person who took this
19 picture's standing?

20 A He had to be standing somewhere near the bathroom area.

21 Q Okay, and what are, what are we looking at in this
22 picture that's different than the others?

23 A Well, you'll see the puddle of blood on the middle of the
24 floor. Several of us took shirts off trying to, to save him
25 from losing so many blood because he was standing, he was

1 laying there for at least 20 minutes before EMS done got there
2 and ---

3 Q And that's what - is that what that pile of clothes is
4 next to the pool table?

5 A Yes, yes, that's what it is.

6 Q I'm going to show you what in the legal world we're going
7 to call an unmarked demonstrative piece of evidence, not
8 evidence, an unmarked demonstrative aide. Would this assist
9 you in your testimony?

10 A Yes.

11 Q Does this make sense to you?

12 A Yes, it does.

13 MS. BAILEY: Okay. Your Honor, could I get permission
14 for him to come off the stand?

15 THE COURT: Certainly.

16 BY MS. BAILEY:

17 Q Come on down here. There's a microphone right here,
18 okay? So speak up so they can pick you up. What is this a
19 drawing of?

20 A That's a sketch of the inside of the club.

21 Q Okay, can you stand over here so our court reporter can
22 see you? There we go. There's a microphone right there, too.
23 Now, where were you standing?

24 A I was standing right here at the corner of the bar.

25 Q Okay, and where's the front door?

1 A This is the front entrance.

2 Q And where was Deon?

3 A Deon was standing right here.

4 Q Okay, and what door did Lavern come in?

5 A This door right here, the front door.

6 Q Did you see the other man with the red bandana come in?

7 A Yes, I did.

8 Q And what door did he come in?

9 A The same door Lavern came through.

10 Q And where's the bathroom?

11 A The bathroom's up here.

12 Q Okay, and where was Deon in the bathroom?

13 A Deon was in the middle of the bathroom door.

14 Q And is this a door?

15 A Yes, that's a door but we don't use it.

16 Q Okay, so was it closed?

17 A Yes. It's - it got locks on it.

18 Q Okay, so it's locked?

19 A Yes.

20 Q Okay, and in the midst of all this, you said there was

21 like 20 people in the club. Where did they all go?

22 A Everyone went and hide behind the bar. This is the bar,

23 the main bar.

24 Q And this bar here?

25 A That's right, it's the brick bar.

- 1 Q Okay, you say the brick bar, what's it made of?
- 2 A It's wooden on top, but it's some kind of brick material
- 3 that they have running around the bottom of it.
- 4 Q Okay, so most of the people in the club went and hid
- 5 behind that?
- 6 A That's where most of them went at.
- 7 Q And was that when they first saw a gun?
- 8 A When they first saw the fire everybody just holler and
- 9 start running and they went behind the bar.
- 10 Q Okay, now, where was Deon standing when he got shot?
- 11 A Deon was standing over here.
- 12 Q Okay, and where were you standing?
- 13 A I was over here.
- 14 Q And where was the man with the red bandana standing who
- 15 shot Deon?
- 16 A He ran in and shot him, and when he, when he shot him,
- 17 when he shot the first fire he ran right back out the door.
- 18 Q Okay, so how many gunshots did you hear?
- 19 A One.
- 20 Q Okay, and so where - you say he ran in. Can you show us
- 21 where he ran in?
- 22 A He ran straight through this door ---
- 23 Q Uh-huh.
- 24 A --- and ran straight to Deon and shot him.
- 25 Q Okay, how far away from Deon was he when he shot him?

1 A He was close.

2 Q Okay, was it as far as I am to you right now?

3 A Be about average.

4 Q And where did you take Deon to see to him until EMS
5 arrived?

6 A Well, when I saw that he got shot I grabbed him and I
7 pulled him from over here to where on the corner of this part
8 right here and I hold him.

9 Q Okay, all right, you can have a seat.

10 MS. BAILEY: I have no further questions for this
11 witness at this time.

12 THE COURT: Mr. Hazzard?

13 MR. HAZZARD: Thank you, Your Honor. May it please the
14 Court?

15 THE COURT: Certainly.

16 CROSS EXAMINATION

17 BY MR. HAZZARD:

18 Q Good morning, Mr. Myers, how are you?

19 A Hey.

20 Q Now, you are, are Mr. Deon Myers' brother; correct?

21 A Yes, I am.

22 Q Okay, and are you related to Kawaun Myers?

23 A Yes, I am.

24 Q And how are you related to him?

25 A That's my second cousin.

1 Q So, second cousin?

2 A Uh-huh.

3 Q Are you related to Lavern Holmes?

4 A No, I'm not.

5 Q You're not related to Lavern Holmes?

6 A Huh-uh.

7 Q Okay, are you related to Cameron Green?

8 A Yes, I am.

9 Q And how are you related to Cameron Green?

10 A That's my mother nephew.

11 Q That's your mother's nephew? Now, did you see Cameron
12 Green in the club that night?

13 A No, I didn't.

14 Q You did not?

15 A Huh-uh.

16 Q Okay, were you at the door the entire time or ---

17 A Yes, I was. I was the first one there and the last to
18 leave.

19 Q Okay, and so about what time was it that Mr. Holmes came
20 in with this shotgun?

21 A It been maybe about approximately about ten o'clock.

22 Q About 10 p.m.?

23 A Uh-huh.

24 Q Okay.

25 COURT REPORTER: You need to say yes or no, please.

1 A Okay.

2 Q Okay, and I believe you testified that there were
3 approximately 20 people in the club when Mr. Holmes came in
4 with a shotgun?

5 A Yes.

6 Q Okay, when he came in with the shotgun, what did he do?

7 A He was trying to attack him. Deon work his way to the
8 bathroom.

9 Q Okay, we'll take it one step at a time, please. Thank
10 you. So he came in and immediately attacked your brother?

11 A Yes, he did.

12 Q Okay, and he was - Mr. Holmes was by himself at that
13 time?

14 A Yes, he was.

15 Q Okay, no one else with him?

16 A No.

17 Q All right, what to your observation did the 20 people in
18 the club do when a man with a shotgun walked in the door -
19 well, first of all let's back up. How did the man with the
20 shotgun walk past you?

21 A Well, when he walked past me with the shotgun he had it
22 on his side. When I saw it when he pull it. That's when I
23 saw it.

24 Q Okay, and what did you do?

25 A I got on my phone, call the police.

1 Q Okay, did you run and get behind the bar?

2 A No, I did not.

3 Q Did not, okay. What did the other 20 people in the club
4 do at that time from your observation, I'm sorry?

5 A Was - well, they was just hollering his name telling him
6 stop. Everybody knows him.

7 Q Everybody knows Lavern Holmes.

8 A Uh-huh.

9 Q Okay.

10 THE COURT: Again, answer yes or no. Ms. Hurley has
11 to ---

12 A Okay.

13 THE COURT: --- record your answer and she can't see
14 you. So if you're going yes or no or, you know, uh-huh or
15 huh-uh and just nodding your head or shaking your head she
16 can't see that so, okay?

17 A Okay.

18 Q Okay, so were people reaching for Lavern Holmes or just
19 shouting whatever they were shouting?

20 A Yes, people was trying to stop him, but his niece was the
21 one that actually talked to him.

22 Q Okay, and who is his niece?

23 A Shaquettia Holmes.

24 Q Okay, and so she was out there in the club and talked to
25 him or ---

1 A Yeah, she was out there.

2 Q Okay, so you're talking about - let me back up, let me,
3 let me get some clarification, please. From the time Mr.
4 Holmes walks in the door with this shotgun at approximately 10
5 p.m. ---

6 A Uh-huh.

7 Q --- to the time that unfortunately you were holding your
8 brother's body in your arms, to your knowledge or recollection
9 how much time passed in between?

10 A Can you say that again?

11 Q Yes, sir. From the time - nothing was going on before
12 Mr. Holmes got there, is that correct?

13 A No, it wasn't.

14 Q Okay, so from the time Mr. Holmes walked in the door with
15 this shotgun until after the shooting and I believe you
16 testified that you immediately went to, to try to help your
17 brother any way you could, correct, sir?

18 A Yes.

19 Q Okay, so from the time Mr. Holmes walked in around 10
20 p.m. with the shotgun until the time unfortunately your
21 brother was shot, how much time was in between there?

22 A When Mr. Holmes came in with the gun, well, the person
23 that, the person that shot Deon came in like two minutes
24 behind him, two or three minutes behind him.

25 Q So you're saying from the time Mr. Holmes came in with

1 the shotgun to the time the shooting occurred was no more than
2 180 seconds, three minutes?

3 A That's correct.

4 Q Okay, let's take it step by step then. Mr. Holmes comes
5 in with the shotgun and what did he do now?

6 A When Mr. Holmes came in with the shotgun he went straight
7 to Deon.

8 Q And where was your brother at that time?

9 A Against the wall.

10 Q Okay, was he in the front of the club by the front door
11 or back of the club?

12 A He was, he was near the bathroom.

13 Q And where is the bathroom located?

14 A In the far right corner of the club.

15 Q Would that be near the front door or the back or the
16 side?

17 A It's near, it's near the back.

18 Q Okay, so let me make sure I understand your testimony and
19 if, and if I get something wrong please correct me. Mr.
20 Holmes walks in the door at approximately 10 p.m., he has a
21 shotgun and he goes all the way through the club to the back
22 door where or to the back of the room where your brother was
23 located?

24 A That's right.

25 Q Okay, what happened then, sir?

1 A That's, that's when Lavern drew the gun on Deon and
2 people was yelling stop. When people was yelling that's when
3 his niece ran to him and stop him. Deon worked his way in the
4 bathroom.

5 Q Okay, now, did your, did - when you say his niece you're
6 talking Mr. Holmes' niece?

7 A Yeah, Shaquettia.

8 Q Shaquettia Holmes, okay. So did Mr. Holmes, Lavern
9 Holmes, the guy with the shotgun, did he grab your brother in
10 the club or in the bathroom, sir?

11 A I don't understand what you - how you mean did he grab
12 him? He drew - he ---

13 Q Did he - did, did he - I'm sorry go ahead.

14 A He drew the gun. His niece grab him. Now, as far as him
15 grabbing Deon I couldn't see way back there.

16 Q Okay, okay, but you did see him draw the gun?

17 A Yeah, I see that gun, yes.

18 Q Okay, but you cannot testify as to whether Mr. Holmes
19 ever put his hands on Deon?

20 A No, I can't.

21 Q Okay, how then, if you can't see back there, do you know
22 that Deon ended up in the bathroom?

23 A Well, I see when Shaquettia is at, Shaquettia is at the
24 bathroom door hollering, "Don't, get away from the door, get
25 away from the door." Deon in the bathroom telling him, "Oh, I

1 ain't scared." I know my brother.

2 Q Was the bathroom door open or closed?

3 A Yes, it was open. The bathroom door was open, Shaquettia
4 was trying to get in there to stop Lavern because he had the
5 gun, he had the gun pointing it at the bathroom door.

6 Q Well, was Lavern in the bathroom or outside the bathroom?

7 A He was outside the bathroom door.

8 Q Okay, and he's pointing the gun inside the bathroom?

9 A He was pointing the gun and his niece was pushing him,
10 telling him to leave.

11 Q Okay, how big is this bathroom?

12 A It's little, it's a box.

13 Q Okay, square footage wise, how many square feet by how
14 many square feet would you say, sir?

15 A Sir, I don't know.

16 Q Okay, so Mr. Holmes is pointing the shotgun into the
17 bathroom, Mr. Myers is in the bathroom; is that correct, sir?

18 A Yes, sir.

19 Q Okay, and Ms. Holmes, Shaquettia Holmes, is talking to
20 and jostling Mr. Lavern Holmes; is that correct?

21 A That's right.

22 Q Okay, what happened then?

23 A Then that's when the second person ran in with a bandana
24 wrap around his nose and he shot Deon because Deon now work
25 his way out the bathroom.

1 Q Okay, well, we missed something from there then because
2 the last where we left off Deon's in the bathroom.

3 A That's correct.

4 Q And Mr. Holmes is right outside the bathroom with a
5 shotgun.

6 A That's right.

7 Q And Ms. Holmes is standing there jostling with Mr.
8 Holmes; correct?

9 A Right, she been done - the club - all right, when -
10 before Deon even walk out the bathroom she been done got
11 Lavern Holmes out the door.

12 Q Out of which door, sir?

13 A The exit door to leave out the club. He been done going
14 out the club with the shotgun.

15 Q Okay, the front door?

16 A The front door.

17 Q Okay, so now, then, she has walked him all the way
18 outside the club; is that correct?

19 A It's not as long as you making it seem.

20 Q Okay, but I mean, she's gone from the back to the front;
21 correct?

22 A That's correct.

23 Q Okay, now, where were you at this time?

24 A I was standing at the front door.

25 Q And what were you doing?

1 A On my phone calling 911.

2 Q Okay, and where were the other 20 people who were in the
3 club?

4 A Behind the bar yelling and screaming, hollering, "Lavern,
5 get Lavern out of here."

6 Q Okay, so all 20 of them are behind the bar?

7 A I can't say all 20 was but most of them was behind the
8 bar, as much as could get back there.

9 Q And were they standing up or were they crouched down?

10 A They was kneeling down underneath the bar.

11 Q Okay, in your opinion and knowledge based on your
12 knowledge of that club, would that have obstructed their line
13 of sight?

14 A Say that again.

15 Q Okay, based - you're familiar with the layout of that
16 club; right, sir?

17 A Yes, I am.

18 Q Okay, now, if you're kneeling down behind the bar, can
19 you see what's going on on the other side of the club?

20 A No, you can't.

21 Q Okay, so you're standing there at the door. Now, during
22 this time, is it your testimony that other than whoever runs
23 in with the red bandana that no one else came in or out?

24 A No, it just was those two that entered the club.

25 Q Okay, and no one left, none of the 20 people left.

1 You're saying they all just went and - went behind the bar?

2 A Yeah, most of them went and hide behind the bar.

3 Q Okay, did anyone else leave?

4 A I didn't see no one else leave, exit the club, never.

5 Q Because they would have had to go past you; correct?

6 A That's right.

7 Q Okay, and as far as anyone entering, they would have had
8 to go past you; right?

9 A That's right.

10 Q Okay, because the club does have that side door that's
11 kind of towards the back; correct?

12 A Yes, sir.

13 Q But is it your testimony that the side door was locked?

14 A Yes, sir.

15 Q So no one could go in or out of that door?

16 A No, sir.

17 Q Gotcha.

18 MR. HAZZARD: All right, Court's indulgence, Your Honor.

19 BY MR. HAZZARD:

20 Q And then I believe you said after Shaquettia Holmes
21 walked Lavern to the front door and/or out of the club, what
22 happened then?

23 A Well, when Shaquettia got Lavern - finally got Lavern out
24 of there that's when I had called - I had already called 911.
25 I had already got on my cellphone and called 911 at the time.

1 Q Did you identify yourself on that call?

2 A Did I identify myself on that call?

3 Q Yes, sir. Did you tell them this is Terell Myers?

4 A Yes, I did.

5 Q Okay, all right, sir, and what did you tell the folks at

6 911, Mr. Myers?

7 A That someone entered the club with a gun.

8 Q Okay, and after Shaquettia Holmes was able to get Lavern

9 Holmes out of the club, what happened then?

10 A That's when that second person run in there.

11 Q Okay, so they just ran right past you?

12 A Shot straight past me.

13 Q Shot straight past you?

14 A And he went straight to Deon like he saw where Deon was

15 standing at. He ran straight past me. He did not stop or

16 nothing.

17 Q Okay, well, I mean, at what point did Deon come out of

18 the bathroom because remember where we left off Deon was in

19 the bathroom?

20 A Yeah, and Deon walked out. Deon was kneeling down, he

21 was bending down.

22 Q Okay.

23 A He was at the corner of pool table, that's the far as he

24 made it.

25 Q Gotcha.

1 A When he looked up that's when the fire was released.

2 Q Okay, now, let me make sure I'm clear. Lavern Holmes at
3 the bathroom door with the shotgun, Deon, your brother, is in
4 the bathroom, Shaquettia who is related to Lavern is jostling
5 with him, pushing him trying to get him to get away from the
6 bathroom. Is that a fair characterization?

7 A Yes, sir.

8 Q Okay, she is able to then walk him, push him, get him to
9 go past you, out the front of the club?

10 A That's correct.

11 Q Did you have any interaction with Lavern ---

12 A No, I --

13 Q --- as he exited the club?

14 A No, no, I did not.

15 Q Okay, Deon then, based on your testimony, comes out of
16 the bathroom?

17 A Yes, he did.

18 Q Okay, was anyone with him when he came out of the
19 bathroom?

20 A No, no one was at him.

21 Q No one was there?

22 A No one was with him when he walk out the bathroom, no.

23 Q Okay, and subsequently someone whose face is covered by a
24 red bandana runs up and shoots him?

25 A Yes, sir.

1 Q Okay, on the date of the incident, March 15th, 2011, had
2 you spoken with Kawaun Myers or Cameron Green earlier that
3 day?

4 A No, I did not.

5 Q Okay, so you had no knowledge of any possible
6 difficulties earlier that day between Mr. Myers, Mr. Green and
7 Mr. Holmes or Mr. Myers, Mr. Holmes and Mr. Green?

8 A No, sir.

9 Q Okay, when the police got there did you have the - did
10 anyone interview you from the police department?

11 A No, sir.

12 Q Did you ask to speak to - I mean, there were detectives
13 there; right, police officers?

14 A Well, I talked to Detective Busbee several times when he
15 came to the house.

16 Q Uh-huh, did you talk to him that night?

17 A No, I did not.

18 Q Did you talk to any other officer that night?

19 A No, I did not.

20 Q So you did not give them any description of what the
21 shooter looked like or what events had transpired that night?

22 A No, sir, I just had lost my brother that - my brother
23 just got shot, I didn't talk to nobody.

24 Q Yes, sir. So when - how long after March 15th did you
25 speak with anyone with the police department?

1 A Well, Detective Busbee came to the house the very next
2 day.

3 Q Uh-huh, and did you give him a description and give him a
4 run down of what occurred?

5 A No, I just let him know that I was there.

6 Q Okay, and Detective Busbee didn't ask you what happened?

7 A No, sir.

8 Q And you didn't volunteer any information as to how your
9 brother got shot?

10 A No, sir.

11 Q Now, were you employed by the club itself, the Ghost Den
12 Lounge?

13 A Yes, I worked there on Tuesday nights.

14 Q Okay, and so you would have worked for the club owner
15 Cassius Green; is that correct?

16 A Yes, sir.

17 Q Okay, and was Mr. Green present on the night of March
18 15th, 2011?

19 A Yes, he was.

20 Q Okay, do you recall ever giving a recorded statement to
21 the police?

22 A No, sir.

23 Q All right. Thank you. No further questions.

24 A You're welcome.

25 THE COURT: Any follow up, Ms. Bailey?

1 MS. BAILEY: Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. BAILEY:

4 Q Where - do you know where Cassius Green was in the club?

5 A At the time, no, I did not.

6 Q Okay, so you're, you're not aware of where he was
7 standing when all this happened?

8 A No, ma'am.

9 Q Was the scene chaotic?

10 A Excuse me?

11 Q When somebody came in with a shotgun, people yelled gun,
12 a bunch of people ducked, there was a fight going over on in
13 one corner, would it be fair to say it was a chaotic scene,
14 there was a lot going on?

15 A Yes, it was. I mean, people shooting pool, music
16 playing, people at the bar, I mean, yeah, people was scattered
17 all over the club.

18 Q So that was all going on and you were on the phone with
19 911?

20 A Yes.

21 Q Okay, so was your attention at all times directed right
22 at that door?

23 A All the time.

24 Q Okay, but there was a lot happening; right?

25 A Right, was a lot going on. I couldn't just focus on one

1 thing, it was just I had people scattered across, I'm trying
2 to watch the door, I'm trying to take money, make sure people
3 don't slip past me.

4 Q Okay, and you said it took three minutes. Was that a
5 guess?

6 A Yes, that was.

7 Q Three minutes was a guess ---

8 A Yes.

9 Q --- because he pushed you on it, okay.

10 A That's right.

11 Q In reality, do you have an idea of how long it took?

12 A Before the second person enter?

13 Q For the whole thing, for the whole thing to happen? Did
14 it feel like it happened fast or slow?

15 A Oh, it, it was fast. Everything happened real fast.

16 Q Okay, so it all happened real, real fast?

17 A Yes.

18 MS. BAILEY: No further questions.

19 RECROSS EXAMINATION

20 BY MR. HAZZARD:

21 Q All right, Mr. Myers, time is somewhat important. Is it
22 - so now you're saying that three minutes is a guess? Is that
23 correct?

24 A I give or take about three minutes, yes.

25 Q Okay, and what does that mean? That it could have been

1 as much as six minutes?

2 A It could have. I mean, I had all that going on. It
3 could have been long - it could have been about six minutes,
4 yeah, could have.

5 Q Okay, let's talk, talk about what you had going on. You
6 were taking money, people were shooting pool; right?

7 A Taking money, people, yeah.

8 Q Okay, did you have any other responsibility?

9 A No.

10 Q Okay, once Mr. Holmes came in with a shotgun, were you
11 taking money from anyone else?

12 A Well, yeah, people was ahead of him.

13 Q People were ahead. I'm not asking about who was ahead of
14 him. I'm talking about once he entered the club with a
15 shotgun.

16 A No, I'm not taking no more money after that.

17 Q Okay, so you ain't worried too much about taking money
18 from anybody at that point; right?

19 A No, no, not when someone come in with a shotgun.

20 Q Yes, sir, and so you immediately then see him make a
21 beeline right for your brother; correct?

22 A That's correct.

23 Q Okay, and like you said, the club isn't that big; right?

24 A It's not.

25 Q So how long did it take him to walk from one end to the

1 other you figure?

2 A It don't take long. He's long, I mean ---

3 Q How long, ten seconds, 15 seconds?

4 A It could be less than that.

5 Q Less than that? Okay, so now he's back there and he's
6 pointing a shotgun in the bathroom at your brother; is that
7 correct?

8 A He was trying to attack him, yes.

9 Q Yes, sir, okay, now, Ms. Holmes then argues with him,
10 jostles with him, how long does that go on?

11 A Maybe about a minute or two.

12 Q Maybe about a minute or two. Now, she then walks him
13 another five seconds out of the door; correct?

14 A That's correct.

15 Q Okay, now, how long after that before your brother comes
16 out of the bathroom?

17 A He came right out the bathroom right after.

18 Q Came right out of the bathroom, all right, now, how long
19 after your brother comes out of the bathroom does the guy with
20 the red bandana run in and shoot him?

21 A Soon as he come out the bathroom he ain't made it no
22 further to the corner of the pool table.

23 Q Soon as he comes out of the bathroom, so that's about
24 another ten seconds?

25 A Could be.

1 Q Could be less, right?

2 A Yes.

3 Q So really we are talking about right around three
4 minutes; aren't we?

5 A It's possible because the second person was running. He
6 ran in. He didn't walk or nothing, he ran.

7 MR. HAZZARD: All right, thank you, sir.

8 MS. BAILEY: Nothing further from the State.

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

10 MS. BAILEY: We would request that he be released from
11 his subpoena.

12 MR. HAZZARD: No objection from the Defense, Your Honor.

13 THE COURT: All right, sir, you're released *from*
14 your subpoena. Witness?

15 MS. BAILEY: State calls Shaquettia Holmes. Up to this
16 lady in the jacket.

17 Whereupon, Shaquettia Holmes was called to the stand,
18 duly sworn by the clerk and testified as follows:

19 THE CLERK: Would you please be seated and state your
20 full name for the record and then spell it?

21 MS. HOLMES: My name is Shaquettia Holmes and it's S-H-
22 A-Q-U-E-T-T-I-A.

23 DIRECT EXAMINATION

24 BY MS. BAILEY:

25 Q Ms. Holmes, are you related to Lavern Holmes?

1 A Yes, ma'am.

2 Q How are you related to him?

3 A That's my uncle.

4 Q Okay, are you related to anybody else involved in this

5 case?

6 A Probably distant cousins.

7 Q Who would you be distant cousins with?

8 A Cameron.

9 Q Okay, how about Deon Myers?

10 A He probably is a distant cousin. I'm not sure but

11 probably.

12 Q Speak right into that microphone, okay?

13 A Oh, he's probably a distant cousin. I'm just not sure.

14 Q On March 15th of 2011 where were you that night?

15 A I went out with one of my other cousins to the two dollar

16 Tuesday at a little club in Plantersville.

17 Q Okay, what, what street was that club on?

18 A I guess Jackson Village Road.

19 Q Do you know the name of that club?

20 A I call it Cassius, I don't know the name.

21 Q Okay, and how long had you been there?

22 A We weren't there a hour.

23 Q Okay, who else was there?

24 A I went with my cousin Mark and Tyra. Other people from

25 Plantersville were in the club.

- 1 Q Okay, was Deon Myers there?
- 2 A He was in the club.
- 3 Q Okay, was anybody with him?
- 4 A Two girls were with him.
- 5 Q What happened next?
- 6 A What happened from the incident that happened in the club
- 7 to my knowledge is whenever my uncle came in the club he did
- 8 have a big gun, and with him having the gun I was at the bar.
- 9 With me being at the bar I felt as though I wasn't going to
- 10 sit there and just let him do nothing stupid. So I went in
- 11 the bathroom behind him and told him he need to leave him
- 12 alone and go. So me telling him that, he left, but with him
- 13 leaving Tamar came in the bathroom.
- 14 Q Hold on. Let's back up. We've got to slow down a little
- 15 bit. I thank you for your candor. When your uncle walked in
- 16 the club what did - what's the first thing that he did?
- 17 A He went next Deon and Deon ran in the bathroom.
- 18 Q Okay, did you see your uncle with a gun?
- 19 A Yes.
- 20 Q Can you describe that gun?
- 21 A It was a big gun with a barrel, like a circle, something.
- 22 Q You say it was big?
- 23 A Yeah, it was like the hole on it was big circle.
- 24 Q Okay, was it long?
- 25 A I consider it to be long. He had it in his hand like

1 he's going hunting for deer or something.

2 Q So it's the kind of gun you would use to hunt for deer?

3 A I guess.

4 Q Okay, and when they went into the back, did Deon go into

5 the bathroom first?

6 A I guess he went into the bathroom first because my uncle

7 went behind him.

8 Q Okay, and where in the bathroom was Deon?

9 A When I went in the bathroom he was just against the wall

10 and my uncle was holding the door and with him being behind

11 the door my thing was for him to leave him alone and go or

12 whatever. So me stating that, I was holding Deon then and

13 with me holding him down that's when Tamar came in and I was

14 telling him that they had guns.

15 Q Just one second, you're doing great, but we've got to go

16 slow so they understand everything; okay? Was the door to the

17 bathroom open or closed?

18 A When I went in it was open.

19 Q It was open?

20 A Yeah, because it was pushed back.

21 Q It was pushed back, and where was Deon?

22 A Behind the door.

23 Q Deon was behind the door with the door open?

24 A Yeah.

25 Q Do you know Tamar Bryant?

1 A I just know of him because he used to hang with my
2 brother or cousin and them like on my porch or right around
3 where I live at.

4 Q So you'd seen him before this day?

5 A Yeah.

6 Q And you'd know him by sight and know his name?

7 A Yeah.

8 Q Is he here in the courtroom today?

9 A Yeah.

10 Q Can you point him out?

11 A Right there.

12 Q And did you see Tamar Bryant in the club that night?

13 A Yes.

14 Q And did you see him in the bathroom?

15 A Yes.

16 Q Okay, tell us about that.

17 A Okay, with my uncle leaving out Tamar came in, with him
18 coming in he was saying Deon was good, I was telling Deon no
19 because he didn't have a gun and they had guns and he was
20 like, "Yeah, he good," let him go see what they talking about.
21 He insisted on leaving. With him leaving before he got to the
22 front door, with Tamar leaving out first and before Deon got
23 to the door whatever happened with the gunshot that's what.

24 Q Okay, did you see Deon get shot?

25 A I didn't see him get shoot, I just heard whatever.

- 1 Q Okay, when you were in the bathroom were Tamar and Deon
2 talking?
- 3 A No, only words that were exchanged out of Deon mouth was
4 he was good and Tamar was saying he was good and with him
5 saying it that's ---
- 6 Q When you say he was good, Tamar was saying it's okay for
7 Deon to come out of the bathroom?
- 8 A That's how I took he's good, but ---
- 9 Q Okay, did you see Tamar with a gun?
- 10 A Yes.
- 11 Q Can you describe the gun that Tamar Bryant had?
- 12 A It was a little black gun.
- 13 Q Okay, were you still in the bathroom when Deon got shot?
- 14 A I went back in the bathroom when I heard the shot.
- 15 Q Okay, was Tamar in the bathroom?
- 16 A Not when I went back in the bathroom.
- 17 Q Okay, when you heard the gunshot did you know where Tamar
18 was?
- 19 A No, because he left out first.
- 20 Q Okay, so, the order of people that left the bathroom,
21 just to be clear, who left when - who left the bathroom first?
- 22 A Tamar, Deon, then me.
- 23 Q What about Lavern, when did he leave?
- 24 A He left before Tamar came in.
- 25 Q Okay, did Tamar have on any kind of bandana?

1 A I don't recall; I don't remember.

2 Q You don't remember, okay.

3 A Yeah, I don't remember what he had on.

4 Q Did you see anybody else wearing a bandana?

5 A I know my uncle Vern had on a red bandana and Cameron

6 Green had on a red bandana.

7 Q Okay, where did you see Cameron Green?

8 A Like when I was at the bar he was just standing there.

9 MS. BAILEY: I have no further questions.

10 MR. HAZZARD: Court's indulgence, Your Honor. Thank

11 you.

12 THE COURT: Certainly.

13 CROSS EXAMINATION

14 BY MR. HAZZARD:

15 Q Okay, good morning, ma'am.

16 A Good morning.

17 Q Now, to your recollection what, what time did you get to

18 the Ghost Den Lounge the night of March 15th, 2011?

19 A I think it was before 10:30. I don't remember exact

20 time.

21 Q Okay, and you were there with a couple of other folks; is

22 that correct?

23 A Yes.

24 Q And who were those folks, ma'am?

25 A I rode with Mark, and if I'm not mistaken, I think his

1 brother rode with us to the club. I know when we left the
2 club, his brother and his other cousin was with us.

3 Q Okay, and what's Mark's full name?

4 A Mark Greer.

5 Q Mark Greer, okay, and do you know his brother's name?

6 A Jonathan Greer.

7 Q Jonathan Greer?

8 A Uh-huh.

9 Q Okay, and you indicated that, well, Laverne Holmes is
10 your uncle; right?

11 A Yes.

12 Q Okay, did you actually see him enter the, enter the club
13 with the shotgun?

14 A Yes.

15 Q Okay, did he come in by himself, other people came with
16 him?

17 A Him, Cameron and it could have been somebody else, but I
18 know those are the only two people I saw actually came in.

19 Q Okay, so Laverne came in with Cameron Green?

20 A They all came in fast and I saw my uncle went to the
21 bathroom because I turned around and with me turning around
22 that's what I saw, Cameron standing there and him going to the
23 bathroom.

24 Q Gotcha. How do you know Cameron Green?

25 A As just little kids, we all knew each other, grew up

- 1 together.
- 2 Q Okay.
- 3 A Family.
- 4 Q So do you know Terell Myers?
- 5 A Yes.
- 6 Q Okay, did you see him that night?
- 7 A Yes.
- 8 Q Okay, and where was he?
- 9 A He was at the door because when we first came in he was
- 10 taking the money.
- 11 Q Okay, so, did you see Laverne Holmes, did you see your
- 12 uncle and Mr. Green go past Terell Myers?
- 13 A When he came in he jumped back because he came in with a
- 14 gun.
- 15 Q Okay, and when Laverne came in with a gun what did he do
- 16 then, he being Laverne? What did Laverne do when he came in
- 17 with the gun?
- 18 A He was walking towards Deon.
- 19 Q And where was Deon?
- 20 A Sitting this way like on the opposite side of wherever
- 21 they were doing what, whatever they were doing over there.
- 22 Q Okay, so was Deon sitting - he was sitting at the table?
- 23 A I don't know if he was sitting or standing, but he was in
- 24 the area closer to the bathroom.
- 25 Q Okay, so he was towards the back of the club?

1 A The back, the side or whatever that is over that way.

2 Q Okay, was he in the area fairly well farthest from the
3 front door or the entry door?

4 A He was closer to the bathroom.

5 Q Okay, and is the bathroom near a side door?

6 A I just realized that it was a door there. I never knew
7 it was a door, but it's a door there.

8 Q Okay, so that night, March 15th, 2011, you didn't even
9 notice the door?

10 A I didn't, no.

11 Q Okay, so you didn't see anybody go in or out of that side
12 door?

13 A No.

14 Q Okay, so you said your uncle, Laverne Holmes, went
15 towards Deon Myers at the back of the club near the bathroom.
16 Is that correct, ma'am?

17 A Yes.

18 Q Okay, and what did Laverne Holmes do when he reached Deon
19 Myers?

20 A He was in there saying something to Deon about, "You
21 threaten to kill my family or something," and Deon didn't know
22 what he was talking about and when Deon said he didn't know
23 what he was talking my thing was for him to leave him alone
24 and that was that. It wasn't much words exchange.

25 Q Now the bar where you were at, is that at the front of

1 the club or back by the bathroom?

2 A At the back.

3 Q So it was at the back by the bathroom?

4 A Yeah.

5 Q So you were within a couple of feet and you could hear
6 this conversation?

7 A When we walking that's what I heard.

8 Q Okay, and you said that Mr. Holmes said that Mr. Myers
9 had threatened his family?

10 A That's what he said. He said he was going to kill his
11 whole family but ---

12 MS. BAILEY: Objection, Your Honor. That's hearsay.

13 THE COURT: She's correct.

14 Q Okay, now, how long did it take you to get up from the
15 bar? Were you seated at the bar, standing at the bar?

16 A No, I was standing.

17 Q Okay, how long did it take you to get to where Mr.
18 Laverne Holmes and Mr. Deon Myers were standing?

19 A Not long because I noticed how everybody just scattered,
20 but why scatter and nobody not doing nothing? I think it
21 could have been prevented, but ---

22 Q And when you say people scattered where did they go? Did
23 you see where they went?

24 A Just moving throughout the club. I don't know they ran
25 through the door or moved to the side, I don't know, don't

1 remember.

2 Q Okay, so what did you do when you reached Mr. Holmes and
3 Mr. Myers?

4 A I told my uncle to leave him alone.

5 Q And what did your uncle do?

6 A He actually left him alone, but I mean, I know he walked
7 to the bathroom. Far as him going out the club I guess he
8 went out the club because I never - when I got out the
9 bathroom everybody was gone.

10 Q Okay, let's back up. At this point - at some point your
11 uncle, Laverne Holmes, actually came into contact with Deon
12 Myers; is that correct?

13 A Yes.

14 Q Did he physically grab him or he was just standing there
15 talking to him?

16 A Well, if he's holding the door on him I consider that to
17 be contact. The door was on Deon because he was the one
18 holding the door pushing it against him.

19 Q Okay, so is your testimony then that Mr. Myers ran into
20 the bathroom before Mr. Holmes got to the back of the room?

21 A I don't know when he ran in the bathroom, but I know my
22 uncle was in the bathroom holding the door and Deon was behind
23 the door, and the words that I heard exchanged between them
24 consist of him saying he threatened to kill his family.

25 MS. BAILEY: Objection, Your Honor, that would be

1 hearsay again.

2 THE COURT: I'm going to allow it. It's not offered
3 for the truth of the matter. It's offered merely to show the
4 state of mind of Mr. Holmes perhaps.

5 Q Okay, so did you - I apologize because I'm having a
6 problem following you, I apologize. Mr. Holmes walks into the
7 club with, with a gun and he's heading towards the back where
8 Mr. Myers is located, and you were at the bar near where Mr.
9 Myers is located?

10 A Well, me being this way and the bar - well, the bar here
11 and with him this way I'm not turned around looking at the
12 bartender because I'm just there.

13 Q Uh-huh, I guess what I'm trying to grasp is did you reach
14 Mr. - did Mr. Holmes reach Mr. Myers, to your knowledge,
15 before Mr. Myers went in the bathroom?

16 A I don't think he like touch him or anything before he
17 went in the bathroom, but I know with him being in the
18 bathroom with the door being pressed against him my uncle was
19 the one who was pressing the door against him.

20 Q Okay, so you never saw your uncle or Mr. Myers face to
21 face outside of the bathroom?

22 A To my knowledge they weren't ever face to face outside
23 the bathroom.

24 Q Okay, did you see your uncle from the time he came in the
25 club?

- 1 A I saw him when he came through the door, yeah.
- 2 Q And did you see him as he made his way across the room
- 3 towards the back?
- 4 A I saw him when he walked in the bathroom, yeah, behind
- 5 him, going behind him, yeah.
- 6 Q Okay, so is your testimony then that Mr. Myers went in
- 7 the bathroom before Mr. Holmes ever got to the back of the
- 8 club?
- 9 A It's like if he's running to get out of the way with him
- 10 going, he right there behind him.
- 11 Q Okay.
- 12 A That's how it looked.
- 13 Q All right, and so Mr. Myers is now in the bathroom and
- 14 Mr. Holmes is in the bathroom. Is that correct?
- 15 A Yes, and the two girls.
- 16 Q And two girls are in the bathroom?
- 17 A Who - the two girls that were with Deon when he got up
- 18 they got up and they all ran in the bathroom.
- 19 Q Okay, how big is this bathroom?
- 20 A It's not big, but all of them went in there.
- 21 Q So now we've got ---
- 22 A Five people were in there at one point in time.
- 23 Q Okay, so we've got two girls who accompanied Mr. Myers?
- 24 A Uh-huh.
- 25 Q Mr. Myers?

- 1 A Uh-huh.
- 2 Q Mr. Holmes?
- 3 A Uh-huh.
- 4 Q And you?
- 5 A Yes.
- 6 Q All you all in the bathroom?
- 7 A Yes. It's not like the door was closed. Two people in
8 the doorway and three people in the bathroom.
- 9 Q Okay, did you ever see Mr. Holmes point his gun at Mr.
10 Myers?
- 11 A I don't know if he pointed it or not.
- 12 Q Okay, and again, Mr. Holmes is your uncle?
- 13 A Yes.
- 14 Q Okay, now, we've got these five people in the bathroom
15 now. Who left first?
- 16 A My uncle left first and then the girls left and it was
17 just me and Deon until Tamar came in the bathroom.
- 18 Q Gotcha, now, when your uncle left, why did he leave? Do
19 you have any idea based on what you observed as to why he
20 left?
- 21 A I mean I guess with me telling him it was stupid that's
22 why he left, but I know he left.
- 23 Q I mean, but you walked him out of the club right?
- 24 A I didn't walk him out the club. No, I didn't.
- 25 Q So you didn't leave the bathroom?

1 A No, I never left the bathroom. I left the bathroom
2 behind Deon.

3 Q Because you had to be in the bathroom to say that Tamar
4 Bryant came in the bathroom with a gun, right?

5 A Actually I was in the bathroom and I saw him come in the
6 bathroom with a gun.

7 Q All right, okay, so Mr. Holmes leaves of his own accord
8 with his shotgun. That's your testimony?

9 A Yes.

10 Q Okay, and what happened then?

11 A With him leaving me and Deon and then I was telling him
12 that if you don't know what they talking about they need to
13 squash whatever. He was saying he wanted to go see to talk -
14 I told him they had guns. With me keep stating that they had
15 guns here comes Tamar and Tamar thing was he was good, let him
16 go, and Deon was saying he's good, let him go, and I asked him
17 did he know Tamar. He said yeah. So with me letting him go
18 before he got to the front door he was shot.

19 Q So then it's your testimony then that Tamar Bryant just
20 walks into the bathroom, talks with Mr. Myers, walks out of
21 the bathroom and then shoots him?

22 A His exact words was he's good and with him saying he was
23 good Deon was saying yeah he was good, too. So I let go of
24 Deon and with me letting go of him Tamar already had left.
25 Deon went behind him and I left and with me hearing the

1 gunshot I don't who was shooting which way, so I went back.

2 Q Okay, so I take it when you told Ms. Bailey that Mr.
3 Bryant who was in the bathroom left, that Mr. Myers who was in
4 the bathroom left and then at some point you left the
5 bathroom, correct?

6 A I left right behind him, but with me leaving behind him I
7 don't know who body went which way first. It's not like it
8 was light, it was dark in that little piece of walkway.

9 Q Okay, so that then left the two other girls who were also
10 jammed up in the bathroom, that left them in the bathroom, is
11 that correct?

12 A They, they left out the bathroom behind my uncle.

13 Q They left behind the guy with the shotgun.

14 A I mean, they left out. They didn't stay in there.

15 Q Okay, from the time you saw your uncle enter the club
16 with a shotgun until the time that you heard Mr. Myers or you
17 heard the shot that ultimately killed Mr. Myers, how much time
18 elapsed?

19 A I don't think it was ten minutes. It probably wasn't
20 even five minutes.

21 Q Okay, did you hear a shot?

22 A I heard a shot, yeah.

23 Q Did you hear more than one shot?

24 A I don't recall.

25 Q You don't recall if you heard?

1 A No, I don't remember how much different time a gun shot
2 or what kind of gun it was, but I know a gunshot.

3 Q Okay, but you're not sure if there was more than one?
4 You don't recall if there was more than one?

5 A Yeah, I don't.

6 Q All right, were you at the club when the police arrived
7 that night?

8 A Yes.

9 Q Okay, and did you talk with any police officers and give
10 them a statement that night?

11 A I did not.

12 Q You did not?

13 A No, I didn't.

14 Q So you never talked to any police officer that night, you
15 didn't tell them that you knew Tamar Bryant, that you saw him
16 in the club with a gun?

17 A No, I didn't tell them that. When I was on the phone
18 with the 911 people all I could think was it was my uncle that
19 shot him and with me screaming that someone else was like he
20 didn't shoot him, it was the other boy and the 911 call the
21 lady was saying that they were on their way or whatever and
22 she was trying to calm me down because, I mean, I just
23 couldn't just sit there, but ---

24 Q Okay, let me get this right, you said that you were in
25 the club and other people were screaming that your uncle had

1 shot Mr. Myers?

2 A No, that's not what I said. I said I was screaming that
3 he, that I thought my uncle shot him because I heard a gun and
4 I was thinking that he shot him. I didn't know it was
5 animosity between all of them that came in the club with him.

6 Q And let's be clear, at some point you saw your relative
7 Cameron Green in the club as well, correct?

8 A Yes.

9 Q Okay, and you indicated that your uncle, Mr. Holmes, and
10 Cameron Green had red bandanas, correct?

11 A Yes.

12 Q Thank you.

13 MR. HAZZARD: No further questions.

14 THE COURT: Anything further?

15 REDIRECT EXAMINATION

16 BY MS. BAILEY:

17 Q You didn't know who shot Deon right?

18 A I didn't know who shoot him no.

19 Q Okay.

20 A I just know a gunshot and what other people saying that
21 Tamar shot, it wasn't my uncle. That's how I found out
22 whatever, but I don't know ---

23 Q Okay, as we sit here today you didn't see that happen,
24 right?

25 A I didn't see it happen. I don't know how guns sound.

1 Q But right, right when it did happen, you'd just seen your
2 uncle point a gun at Deon, right?

3 A When my uncle coming in the club with, with the gun
4 towards him I just assumed that he was the one that shoot him.
5 That's what I was thinking.

6 Q Okay, so you made that assumption, but you didn't really
7 know; right?

8 A I didn't know. I still don't know who actually pulled
9 the trigger.

10 Q And you still don't really know. When you were in that
11 little bathroom, is that when you saw the gun on Tamar Bryant?

12 A That's when I saw him had a gun in his hand. He, he had
13 a gun, he had a little black gun.

14 Q Okay.

15 MS. BAILEY: No further questions.

16 MR. HAZZARD: Nothing further from the Defense.

17 THE COURT: You may step down, thank you.

18 MS. BAILEY: Your Honor, may we approach as to
19 scheduling?

20 THE COURT: Certainly.

21 (Whereupon, a bench conference is held in the presence
22 but out of the hearing of the jury.)

23 THE COURT: All right, ladies and gentlemen of the
24 jury, the next witness may take a little bit of time, so what
25 we're going to do is break for lunch. It's 12:10. Let's try

1 to be back at 1:30. Again, do not discuss this case with
2 anyone, do not allow anyone to discuss it with you. If anyone
3 approaches you tell them you're on the jury, and if they
4 persist, just get that person's name and I'll take care of it
5 for you, okay? All right, thank you very much. Take the jury
6 into the jury room, let them get their personal property.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right, we'll be at ease until 1:30.

10 MS. BAILEY: Thank you, Your Honor.

11 OFF THE RECORD

12 (On the record.)

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: We've got all our jurors. All right,
16 let's bring them in. Are we ready for them, Ms. Bailey? Are
17 we ready for the jury?

18 MS. BAILEY: Yes, Your Honor.

19 THE COURT: Mr. Hazzard, you ready?

20 MR. HAZZARD: The Defense is ready, Your Honor.

21 THE COURT: Okay, all right, let's bring them in.

22 (Whereupon, the following takes place in the presence of
23 the jury.)

24 THE COURT: All right.

25 MS. BAILEY: Thank you, Your Honor. State calls

1 Cameron Green.

2 Whereupon, Cameron Green was called to the stand, duly
3 sworn by the clerk and testified as follows:

4 THE CLERK: Thank you. Please be seated and state
5 your name for the record and then spell it.

6 THE COURT: My, my understanding this is a Co-
7 Defendant. Is that correct?

8 MS. BAILEY: Yes, Your Honor. His lawyer is John
9 Hilliard and he's in the room.

10 THE COURT: Mr. Hilliard.

11 MR. HILLIARD: Yes, sir.

12 THE COURT: Ms. Bailey, Mr. Hazzard?

13 (Whereupon, a bench conference is held in the presence
14 but out of the hearing of the jury.)

15 THE COURT: All right, I'm sorry, ladies and gentlemen
16 of the jury. Let, let - we need to take you out one more
17 time.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: Was he sworn?

21 MR. HILLIARD: Not yet, Judge.

22 THE COURT: All right, let's ---

23 MR. HAZZARD: Yes, he was, Your Honor. He was sworn.

24 THE COURT: He was sworn, okay.

25 MR. HAZZARD: Yes, sir.

1 THE COURT: And you are Cameron Green; is that
2 correct?

3 MR. GREEN: Yes, sir.

4 THE COURT: All right, and Mr. Green, I want you to
5 understand that you have been called as a witness to testify
6 in this case and I also understand that you are a Defendant or
7 a Co-Defendant arising out of this same incident. Do you
8 understand that?

9 MR. GREEN: Yes, sir.

10 THE COURT: Okay, and I want to advise you that as a
11 witness you have the right to invoke the protections given you
12 by the Fifth Amendment to the Constitution of the United
13 States and this amendment says in part no person shall be
14 compelled in any criminal case, or any case, to be a witness
15 against himself, and this provision means that you cannot be
16 required to be a witness against yourself, okay? This is a
17 personal right which can only be claimed by you and you have
18 the right to refuse to answer any questions asked of you which
19 you think gives you reasonable cause to believe that the
20 answer to the question, if given, might tend to incriminate
21 you in your case. You understand that?

22 MR. GREEN: Yes, sir.

23 THE COURT: If you wish to exercise this right when a
24 question is asked, you will state to the Court that you refuse
25 to answer the question because, "the answer may tend to

1 incriminate me." You understand that?

2 MR. GREEN: Yes, sir.

3 THE COURT: You will say, "I refuse to answer the
4 question because the answer may tend to incriminate me." You
5 have that right. Do you understand that?

6 MR. GREEN: Yes, sir.

7 THE COURT: Okay, I also advise you that you are not
8 the final decision-maker on the issue of whether an answer to
9 a question will violate the protections given you or afforded
10 you by the Fifth Amendment. It's for the Court to determine
11 if silence on your part is justified. Do you understand what
12 I've said to you?

13 MR. GREEN: Yes, sir.

14 THE COURT: Okay, and do you have any questions about
15 what I just explained to you?

16 MR. GREEN: No, sir.

17 THE COURT: Now, I notice that you have your attorney,
18 Mr. Hilliard, who is in the courtroom with you, is that
19 correct?

20 MR. GREEN: Yes, sir.

21 THE COURT: And have you discussed the matter of your
22 testifying in this case with Mr. Hilliard?

23 MR. GREEN: The matter ---

24 THE COURT: Have you and Mr. Hilliard talked about the
25 fact that you were going to testify for the State in this

1 case?

2 MR. GREEN: Yes, sir.

3 THE COURT: Okay, and he's explained to you the same
4 thing that I just did?

5 MR. GREEN: As far as the Fifth Amendment?

6 THE COURT: Yes.

7 MR. GREEN: No, sir.

8 THE COURT: Okay, well, do you want to take some time
9 with Mr. Hilliard at this time? Do you have any questions
10 about your Fifth Amendment rights?

11 MR. GREEN: Would I like to speak with Mr. Hilliard
12 about my Fifth Amendment rights?

13 THE COURT: Yes, sir.

14 MR. GREEN: Yes, sir.

15 THE COURT: You want to talk to him a minute?

16 MR. GREEN: Yes, sir.

17 THE COURT: All right.

18 MR. HILLIARD: Thank you, Judge.

19 THE COURT: You can step down and go over there and
20 visit with him and if you can resolve it in a just a moment or
21 two that's fine. If not, we'll take as much time as you need.

22 MR. HAZZARD: Also, Your Honor, I apologize. In
23 reviewing the discovery that I have, I know that Ms. Bailey is
24 very thorough in providing everything. I apparently have
25 misplaced Mr. Green's rap sheet and she doesn't believe she

1 has one with her. I do not know if he has a prior record,
2 anything that could be used or not, but I believe that Ms.
3 Bailey is going to get us another copy of it from downstairs.

4 MR. HILLIARD: We're good, Judge.

5 THE COURT: Okay. Mr. Green, come back around, and
6 you've had an opportunity to speak with your attorney?

7 MR. GREEN: Yes, sir.

8 THE COURT: Has he answered any questions you might
9 have concerning your right to remain silent?

10 MR. GREEN: Yes, sir.

11 THE COURT: Okay, and you understand that if anything
12 is asked of you that might incriminate you or be used against
13 you or show that you are, are guilty of the crime that you're
14 charged with here or any crime that, that may be used against
15 you, you can certainly refuse to answer by saying that you are
16 invoking your rights under the Fifth Amendment. You
17 understand that?

18 MR. GREEN: Yes, sir.

19 THE COURT: All right, sir, and you wish to testify
20 here?

21 MR. GREEN: Yes, sir.

22 THE COURT: All right, okay.

23 MS. BAILEY: Your Honor, my office has gone to retrieve
24 the NCIC of Mr. Green. It'll be right back up. We don't have
25 to rerun it. We have it on file. I just didn't bring it with

1 me.

2 THE COURT: What?

3 MS. BAILEY: We don't have to rerun the NCIC, we just
4 need to bring it up here.

5 THE COURT: Okay, all right.

6 MS. BAILEY: It'll be just a moment.

7 THE COURT: Will we need that before we start again?

8 MS. BAILEY: That's up to Mr. Hazzard.

9 MR. HAZZARD: Well, no, Your Honor, as the Court knows
10 the rules say as long as I have it before cross examination.

11 THE COURT: Okay.

12 MR. HAZZARD: I'm sure it'll arrive sometime during
13 examination, so I'm good.

14 THE COURT: All right, if not let me know and we'll
15 give you some more time.

16 MR. HAZZARD: Yes, sir.

17 THE COURT: All right.

18 MR. HAZZARD: Yes, sir.

19 THE COURT: Okay, Mr. Green. Bring in the jury.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right, ladies and gentlemen of the
23 jury, you will recall that just a moment ago Mr. Green was
24 sworn. Ms. Bailey.

25 MS. BAILEY: Thank you, Your Honor.

1 DIRECT EXAMINAION

2 BY MS. BAILEY:

3 Q Can you state your name for the record?

4 A Cameron Green.

5 Q Can you spell that, please?

6 A C-A-M-E-R-O-N, G-R-E-E-N.

7 Q And Mr. Green, what were you doing on March 15th of 2011?

8 A Well I started off the day by spending the majority of
9 the day at my great grandmother's house and then later on that
10 evening, or I said or that night, I ran into one of my Co-
11 Defendant's on my way to the gas station. I stopped by his
12 house.

13 Q Who was that?

14 A Kawaun Myers.

15 Q What happened next?

16 A He was - he actually rode with me to the gas station to
17 get some gas for my car and he was telling me about an
18 incident that happened earlier that day with him, my other Co-
19 Defendant Lavern Holmes and the victim of this case, Deon
20 Myers.

21 Q Okay, did they have some kind of altercation?

22 A Yes, ma'am. It was - he - I was told that Deon Myers
23 pulled a gun out on Lavern Holmes.

24 Q Okay, what happened next?

25 A After I left the gas station I took Kawaun Myers back

1 home and then I went back to my great grandmother's house. I
2 didn't have my car at the time. I went to go get my car and
3 then I went to Lavern Holmes' house.

4 Q What kind of car were you driving?

5 A A Mercury Sable.

6 Q What color was it?

7 A I would say burgundy.

8 Q What happened next?

9 A After going to Lavern's house we went to his sister house
10 and we sat there for maybe 20 minutes or so and then we went
11 back to Kawaun Myers' house.

12 Q And where did you all go after that?

13 A Went to Georgetown to the projects.

14 Q Why'd you go there?

15 A Lavern Holmes said he didn't feel comfortable staying in
16 Plantersville.

17 Q Okay, so what happened when you were in the projects?

18 A Well, before I got to take Lavern to his destination then
19 we - I met with my Co-Defendant Tamar Bryant and Brandon
20 Cheeks and then we got to talking and they was telling him
21 about the incident that happened earlier and we just hanging
22 out in the projects drinking.

23 Q Okay, what happened after that?

24 A Well, they was talking about what happened, the incident
25 earlier with the victim and Kawaun and Lavern and a gun was

1 brought out.

2 Q Where'd that gun come from?

3 A One of my Co-Defendants, I'm not quite exactly sure who,
4 but it was between the guys we met in the projects between
5 Tamar and Brandon Cheeks.

6 Q What kind of gun was that?

7 A A 22 revolver.

8 Q Okay, can you describe more in detail what that gun
9 looked like?

10 A It was a - If I'm not mistaken it's a silver gun with the
11 handle, that's what made it noticeable, the handle was messed
12 up as if it didn't have the grip on it.

13 Q Okay, it was a revolver?

14 A Yes, ma'am.

15 Q And do you remember anything else about it?

16 A Besides the handle, that was the, that was the most part
17 I remembered about it.

18 Q Okay, and what did you all do once you had that gun?

19 A I mean, we just sat there for a minute and we was
20 talking. I was - let's see, Lavern wanted to come to
21 Plantersville, I mean he wanted to leave Plantersville and go
22 to the projects, but once I talked to the guys that we met in
23 the projects about the party in my neighborhood they wanted to
24 go to my neighborhood. So we was going to do that, but before
25 we went there I took Tamar to a family member's house in

1 Graves Station.

2 THE COURT: May I see it first? All right.

3 Q I'm showing you what's been marked for identification as
4 State's Exhibit Seven.

5 A Yes, ma'am, that, that look like the handle. I'm
6 mistaken about the color, but that's, that's familiar about
7 the handle. You could see through it, yes, ma'am.

8 Q This look like the gun that you saw them with that night?

9 A Yes, ma'am.

10 Q What happened next?

11 A Well, when we went to Graves Station before going back to
12 Plantersville, Tamar went inside the house that I took him to
13 and then came back out with a shotgun.

14 Q Okay, and when you say it was a shotgun, can you describe
15 that? Was it long?

16 A Yes, ma'am.

17 Q All right, what happened next?

18 A Well, we left there. Went - if I'm not mistaken we went
19 to the gas station before going to Plantersville and we got
20 more gas and then we went to Plantersville to the club.

21 Q When you say the club, what road is that on?

22 A I'm not familiar with the road. I know it's in - the
23 name of the club is the Ghost Den, but I'm not familiar with
24 the road it's on.

25 Q Okay, by the time you made it to the Ghost Den, about

1 what time was it?

2 A If I'm not mistaken, I want to say around 20 minutes to
3 11 or maybe a quarter till 11.

4 Q Okay, and what happened when you pulled up to the club?

5 A Well, before I got - before we got out of the car I spoke
6 with one of my cousins, Katina Myers, and she asked me was
7 some of my other cousins in the car, but they weren't. So
8 then I found a park, we got out the car, everyone except for
9 Kawaun Myers, and then me and Lavern we went to the door. We
10 went - I actually went inside the club, but I was only at the
11 door. Lavern went in before me. I don't know where Brandon
12 Cheeks and Tamar were at the time but I turned around. I
13 didn't stay in the club because I didn't pay.

14 Q Okay, so did you go inside?

15 A Yes, ma'am. I went to the door.

16 Q Okay, and did you go any further past the door?

17 A No, ma'am.

18 Q Why not?

19 A Because I turned around because they wanted to charge,
20 but it was only for 15 more minutes. So I figured if I went
21 back out, after 15 more minutes they would have stopped paying
22 - I mean, would have stopped charging.

23 Q Okay, and what did you do then while you were waiting for
24 that time to pass?

25 A I was speaking with one of the guys from my neighborhood,

1 Cedric Jones.

2 Q Okay, so this whole time you were outside the club?

3 A Yes, ma'am.

4 Q And were you paying attention to what was going on, who
5 was going in and out?

6 A No, ma'am.

7 Q Okay, and what happened next?

8 A Well, I was speaking with Cedric and we noticed a lot of
9 commotion was going on, a lot of people started running out
10 the club. We weren't - I wasn't quite sure what was going on,
11 but I had, somewhat had an idea that some type of crazy
12 altercation happened between the victim and my Co-Defendant
13 Lavern Holmes.

14 Q Okay, what happened next?

15 A Well, as the people was running out the club I was
16 looking for, I was searching for Lavern Holmes, but I notice
17 some people were still in the club and some people ran out,
18 but I didn't know where he was at. So I went to the car.
19 Kawaun Myers was still at the car when I went there and Tamar
20 and Brandon they came before Lavern and he came last. As
21 Lavern was coming to the car, he let off a shot with the
22 shotgun. I don't know who had the 22 revolver at the time,
23 and then we left.

24 Q And did all five of you get back in the car?

25 A All four, one was already in the car.

1 Q And soon as you all got in the car, what happened next?

2 A We was leaving the community or whatever and Lavern
3 Holmes and Tamar was getting - they wasn't really an argument,
4 but Lavern kept questioning him why he shot him, why he shot
5 him, and Tamar apologized for just doing it, he said, he said,
6 "My bad," but he couldn't explain exactly why he did it. He
7 say he don't know why he did it.

8 Q And what happened after that?

9 A We left Plantersville, we went back to the projects. We
10 dropped Lavern off there, then we went back to Graves Station.
11 I saw Tamar took the shotgun and went back in the house, he
12 came back out. At that time it was me, Tamar, Brandon, and
13 Kawaun Myers. Then we went back to the projects.

14 Q Okay, and where did you take Lavern?

15 A Well, I dropped Lavern, at that time before I went to
16 Graves Station after the club I dropped Lavern off at the
17 projects and then when we came back to the projects he was
18 outside waiting for us. So we maybe stayed in the projects
19 maybe 20, 30 minutes, I want to say no longer than that. I
20 ain't quite sure, but then everybody broke up. I took Lavern
21 to Myrtle Beach. Well, before I took Lavern to Myrtle Beach I
22 dropped Kawaun Myers off at his girlfriend's house and then I
23 took Lavern to Myrtle Beach, and on our way back that's when I
24 took Tamar and Brandon back to Graves Station and I went to
25 North Santee.

1 Q Okay, and what - did you all stop anywhere else along the
2 way? Did you go to any ---

3 A On, on the, yes, ma'am, on the way to Myrtle Beach we
4 stopped at a gas station in Pawleys Island.

5 Q Okay, and was there any talk about what, what the plan
6 was after that?

7 A Well, after the accident happened, no, ma'am, not as far
8 as what, what was the plan was. The talk about it - the
9 accident was between Lavern and Tamar about why he did it, but
10 then after that the whole conversation about the accident kind
11 of die down, and then the following day I spoke with Lavern
12 and I told him I was turning myself in.

13 Q Showing you what's been marked for identification as
14 State's Exhibit Eight.

15 A Yes, ma'am.

16 Q Do you recognize that?

17 A Yes, ma'am.

18 Q And what is that a picture of?

19 A A picture of the back end of my car.

20 Q Is this the car that you were driving that night?

21 A Yes, ma'am.

22 Q And the one that all five people were in?

23 A Yes, ma'am.

24 MS. BAILEY: At this time I'd seek to move State's
25 Exhibit Eight into evidence.

1 MR. HAZZARD: Without objection from the Defense.

2 THE COURT: Without objection.

3 (Whereupon, State's Exhibit Number Eight [Photograph]
4 admitted into evidence and appropriately marked.)

5 BY MS. BAILEY:

6 Q If you could look at your screen and could you describe
7 the car for the jury?

8 A It was my, my burgundy, my, excuse me, my burgundy
9 Mercury Sable.

10 Q Okay.

11 MS. BAILEY: I have no further questions for this
12 witness at this time.

13 THE COURT: Mr. Hazzard.

14 MR. HAZZARD: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. HAZZARD:

17 Q Mr. Green, you are related to Mr. Lavern Holmes, is that
18 correct?

19 A Well, I don't want to say I am since we from the same
20 neighborhood, but I can't really exactly tell you how, but I
21 believe that I am, yes, sir.

22 Q Okay, and in fact when you saw Mr. Holmes that day he was
23 over at a relative of yours house, correct?

24 A Earlier that day?

25 Q Yes, sir.

1 A I'm not quite sure, but I met him - seen him before that
2 day, I mean, before the incident. When I, when I met him I
3 picked him up from his mother's house and then we went to his
4 sister's house, yes, sir.

5 Q Okay, and what time was that when you picked him up from
6 his mother's house and took him to his sister's house?

7 A I want to say maybe 8:00, somewhere around 8:00, between
8 8:00 and 8:30.

9 Q In the daytime or at night?

10 A No, that's after - the night, p.m.

11 Q Okay.

12 A Yes, sir.

13 Q And why were you at his mother's house?

14 A Oh, when I spoke with Kawaun Myers when we went to the
15 gas station he asked me to pick Lavern up.

16 Q Okay, and are you related to Kawaun Myers?

17 A I believe I am, but I can't say exactly how, yes, sir.

18 Q Okay, so, when Kawaun asked you to go pick Lavern up, how
19 did you know where to go?

20 A Because he told me, Kawaun Myers told me.

21 Q He told you to go to Lavern's mother's house and get him,
22 right?

23 A Yes, sir.

24 Q Because you know Lavern's mother?

25 A Yes, sir.

- 1 Q And you know his sister?
- 2 A Yes, sir.
- 3 Q You know his family?
- 4 A Yes, sir.
- 5 Q Okay, you related to Shaquettia Holmes?
- 6 A Excuse me?
- 7 Q Are you related to Shaquettia Holmes, a young lady by the
8 name of Shaquettia Holmes?
- 9 A Shaquettia Holmes?
- 10 Q Yes, sir.
- 11 A All right, I'm not familiar with that name.
- 12 Q Okay, that's fine. Now, you told Ms. Bailey that - let
13 me get this straight. Were you ever in the club at all or you
14 never went in?
- 15 A I was - yes, sir, I went in, but I was at - only at the
16 door. I never made it past the entrance where they was
17 collecting the money.
- 18 Q Okay, and when you say you were at the door, you're
19 saying you never went past the door, never entered the club at
20 all?
- 21 A I mean, I was in the club. I was at the door inside the
22 club, at the entrance, no more than five feet, I'd say three
23 feet.
- 24 Q Okay, and how long were you in the club, sir?
- 25 A I'd say less than a minute.

1 Q Okay, and from the time you got to the club till the time
2 you heard the shots, how long was that?

3 A I want to say maybe, no more - probably between five and
4 ten minutes, no more than ten minutes. I was not out there
5 long.

6 Q Okay, so to make sure I'm clear, you get to the club,
7 according to you now testifying, you walk in, stayed there for
8 a minute, turned around and walked back out?

9 A Yes, sir.

10 Q Did you have a red bandana on that night, sir?

11 A No, sir.

12 Q No red bandana?

13 A No, sir.

14 Q Not over your face?

15 A No, sir.

16 Q Not around your neck?

17 A No, sir.

18 Q Nowhere on you?

19 A No, sir.

20 Q All right, now, you were arrested the following day,
21 correct?

22 A I turned myself in the following day, yes, sir.

23 Q And you were placed under arrest and charged with
24 attempted murder at that time, correct?

25 A Yes, sir.

1 Q Because Mr. Myers had not died at that point, correct?

2 A Yes, sir.

3 Q Okay, and you gave a statement to the police when you
4 were arrested on March 16th, didn't you, sir?

5 A Yes, sir.

6 Q Okay, and in talking to the police ---

7 MR. HAZZARD: The Court's indulgence, Your Honor.

8 BY MR. HAZZARD:

9 Q You told them that there were only two people in your car
10 that night and that was you and Mr. Holmes, right?

11 A Yes, sir.

12 Q And that was not true?

13 A No, sir.

14 Q Why did you lie to the police about that?

15 A At the time I didn't want to implicate anybody in the
16 accident. I just wanted to clear my name.

17 Q Ah, okay, and you told the police that you never entered
18 the building, correct?

19 A Correct.

20 Q And that, too, was a lie, correct?

21 A Well, when I say I never entered the building I meant I
22 told - I did tell them I was at the door, but I don't know if
23 they mistaken it for being at the door but not in, in the
24 entrance, but I was - I told them that I was at the door.

25 Q Okay, and you told the police on March 16th, 2011, that

1 Lavern Holmes walked in the club first, correct?

2 A Yes, sir.

3 Q And you told the police that Lavern Holmes didn't have a
4 shotgun, didn't you?

5 A Right.

6 Q Okay, but then you walked in after he did, correct?

7 A Yes, sir.

8 Q Okay, and you told the police you never saw Lavern Holmes
9 with a shotgun, didn't you?

10 A I told the police I never seen him enter the club with
11 the shotgun, yes, sir.

12 Q Okay, and you told them that you never saw him with any
13 weapon whatsoever, correct?

14 A At the first - I'm not - I can't say. I'm not quite
15 sure.

16 Q Okay, do you recall telling on March 16th or on March
17 21st, either one ---

18 A Yes, sir.

19 Q --- on March 16th do you recall saying to the police at
20 any time, "Hey, Lavern Holmes had a shotgun?"

21 A Did I recall telling them that he did had a shotgun?

22 Q Yes, sir.

23 A Yes, sir.

24 Q And when did you tell them that? At what point in the
25 interview do you recall telling them that, sir?

1 A I believe that was the interview at the detention center.

2 Q Okay, okay, so that - where was your first interview on
3 March 16th? That was at the sheriff's office, right?

4 A Yes, sir.

5 Q Now, when you were talking with them on March 16th, you
6 didn't tell them anything about Lavern Holmes having the
7 shotgun inside the club, did you?

8 A No, sir.

9 Q Why not?

10 A Like I said, I didn't want to implicate anybody, I just
11 wanted to clear my name.

12 Q Okay, so you lied to them?

13 A Yes, sir.

14 Q Okay, and then tragically and unfortunately Mr. Deon
15 Myers died on March 18th, 2011, correct?

16 A Yes, sir.

17 Q Two days after your first interview?

18 A That's correct.

19 Q Now, you ended up giving a second interview on March 21st
20 of 2011. How did that come about? Did the police come to you
21 and say they wanted to talk to you or did you send word that
22 you wanted to talk to them?

23 A They came and said they wanted to speak with me.

24 Q They came and said they wanted to speak with you?

25 A Yes, sir.

1 Q Okay, but I mean they had already talked to you once,
2 right?

3 A Yes, sir.

4 Q Okay, now, the second time they came back to talk to you
5 on March 21st, they came with a warrant for murder, didn't
6 they?

7 A I'm not quite sure when the exact date was I got served
8 that warrant.

9 Q Okay, but there's no question that after Mr. Myers died
10 you were shortly thereafter charged with the offense of
11 murder, correct?

12 A Yes, sir.

13 Q And that is what you are charged with now, correct?

14 A Yes, sir.

15 Q Okay, and that means you're facing 30 years to life for
16 this offense that you are charged with, right?

17 A Yes, sir.

18 Q All right, so when you talked to the police the second
19 time on March 21st of 2011 at that point you changed your
20 story, correct?

21 A I wouldn't say I changed it. I just gave more detail.

22 Q Okay, when you initially say, "The only two people who
23 went to the club were me and Lavern and I didn't have a weapon
24 and Lavern didn't have a weapon," then you change it to,
25 "There were five people in the car, Lavern had a shotgun,"

1 that's not changing your story?

2 A Yes, sir.

3 Q Because that is what you told the police on the 21st, on
4 your second try, right?

5 A Yes, sir.

6 Q Okay, so let's make sure we're clear, you've told Ms.
7 Bailey that you ran into Kawaun Myers earlier the day of March
8 15th ?

9 A Yes, sir.

10 Q That Kawaun told you that he, he being Kawaun Myers, and
11 Lavern Holmes had been threatened by Deon Myers, that Deon
12 Myers had a gun, correct?

13 A Yes, sir, but Kawaun Myers didn't say he was threatened.
14 He said - he was more telling me that only Lavern was
15 threatened.

16 Q Okay, but Kawaun told you he was there, right?

17 A Yes, sir.

18 Q Okay, and so then according to your testimony to Ms.
19 Bailey, Kawaun then says, "Go pick Lavern Holmes up," right?

20 A Yes, sir.

21 Q "Because all three of us are going to get together,"
22 right?

23 A Yes, sir.

24 Q Okay, did Kawaun have a car?

25 A No, sir.

- 1 Q Did Lavern have a car?
- 2 A No, sir.
- 3 Q So the significance of you specifically at first is that
- 4 you're the one with the car, right?
- 5 A Yes, sir.
- 6 Q Okay, and so no question that the three of you, Mr.
- 7 Lavern Holmes, Mr. Kawaun Myers and yourself, that you all
- 8 three get in the car, right?
- 9 A Yes, sir.
- 10 Q Okay, now, you told Ms. Bailey and your testimony to this
- 11 jury is that sometime after the three of you get together,
- 12 talking about this incident that happened earlier with Mr.
- 13 Myers with Mr. Holmes being threatened by Mr. Myers, okay,
- 14 that you then go and find this 17 year old boy at the time and
- 15 he magically produces a shotgun, is that correct?
- 16 A Well, he already had - well, I can't say - speak say him
- 17 specifically but one of the guys already had a 22 and he came
- 18 up with the shotgun, yes, sir.
- 19 Q Uh-huh, no, you told the jury that this boy here had the
- 20 shotgun, right?
- 21 A Yes, sir.
- 22 Q That's what you told them, right?
- 23 A I said he got the shotgun. He didn't have it when we met
- 24 him in the projects, but he got it, yes, sir.
- 25 Q And where did he go and get it, sir?

- 1 A Some house in Graves Station.
- 2 Q Some house in Graves Station, just walked up in a house,
3 came back with a shotgun?
- 4 A Yes, sir.
- 5 Q Okay, how old are you, sir?
- 6 A I'm 23 now.
- 7 Q Okay, and at the time how old were you?
- 8 A 21.
- 9 Q Okay, roughly how old was Mr. Kawaun Myers at the time
10 this occurred?
- 11 A I can't say. I want to say he was maybe two, probably
12 two or three years older than I am.
- 13 Q Okay, so he may have been 23 or 24 at the time this
14 occurred, right?
- 15 A Yes, sir.
- 16 Q Okay, and Lavern Holmes is older than both of you all,
17 right?
- 18 A Yes, sir.
- 19 Q By a good stretch, isn't he?
- 20 A Yes, sir.
- 21 Q Okay, would you say he's in his thirties?
- 22 A I believe so. I believe it was mid to late thirties, but
23 I'm not quite sure.
- 24 Q Okay, he a grown man?
- 25 A Yes, sir.

1 Q All right, but yet the three of you, apparently looking
2 for a weapon, is your testimony you come to this 17 year old
3 boy and he goes into a house, comes out with a shotgun?

4 A No, I don't agree with that.

5 Q Well, I'm sorry, what are you telling the jury as to
6 where the shotgun came from?

7 A Yeah, I agree with where it came from, but I never say we
8 went to him looking for the shotgun, no, sir. As far - I
9 can't speak for my Co-Defendants, but I never asked him for no
10 shotgun.

11 Q Okay, all right, were you present, because this is your
12 story, right?

13 A Yes, sir.

14 Q Or your second story, right? March 21st is your second
15 story?

16 A Yes, sir.

17 Q Okay, and today is your third story?

18 A Yes, sir.

19 Q Okay, now, you were present when this shotgun was
20 allegedly requested, right? I mean, you all weren't talking
21 about rainbows, puppy dogs and lollipops and all of a sudden
22 17 year old Tamar Bryant says, "Let me run in the house, grab
23 a shotgun?"

24 A No, I can't say - I was, I was present, but I can't say
25 somebody, somebody requested a shotgun.

1 Q So, it just magically appeared?

2 A It appeared, but I can't say why it appeared.

3 Q Okay, so your story is the shotgun came from Tamar
4 Bryant. We can be clear on that, right?

5 A Yes, sir.

6 Q Okay, now, fast forward a little bit. All five of you
7 get in the car because you were talking to Tamar and Brandon
8 who have nothing to do with Deon Myers, Kawaun Myers, you or
9 Lavern. You're talking to them about going to a party in
10 Plantersville, right?

11 A That's correct.

12 Q Say there're going to be girls there, right?

13 A I say there might be a few, yes, sir.

14 Q Okay, so they get in the car with you, right?

15 A That's correct.

16 Q Okay, and you know when you drive to the Ghost Den
17 Lounge, you know what Lavern and Kawaun have in mind, right?

18 A No, sir.

19 Q Okay, there's a shotgun that comes from somewhere, Lavern
20 and Kawaun are talking to you all afternoon about what Deon
21 did to Lavern, right?

22 A Somewhat, I wouldn't say all afternoon, but yes, sir.

23 Q Okay, did you ever see Lavern Holmes with a shotgun?

24 A Afterwards or before?

25 Q When you're driving there, when you get to the club,

1 while you're at the club, ever see Lavern Holmes with a
2 shotgun?

3 A Yes, sir.

4 Q Okay, and when did he somehow come up with a shotgun?

5 A I can't say. I just saw him when he was leaving the club
6 he was coming back to the car he had the shotgun out.

7 Q So you don't recall seeing the shotgun in the car, but
8 somehow he comes out with it?

9 A No, I don't recall him taking the shotgun out the car
10 towards the club. I saw him with my own eyes coming back to
11 the car with the shotgun, that's what I'm saying.

12 Q Okay, so then at some point he would have been in the car
13 with the shotgun, is that correct?

14 A Yes, sir.

15 Q Okay, and as for this little pistol you're talking about
16 there, you also told the police that at some point in the car
17 you handled the pistol, right?

18 A Yes, sir, but I don't recall saying in the car. I just
19 said I handled the pistol.

20 Q Okay, didn't handle it in the car?

21 A You asking me if I did handle it in the car? I don't
22 recall.

23 Q No, I'm asking you about what you told the police.

24 A Yes, sir.

25 Q Okay, so we know you're telling the police that whatever

1 the deal is with this pistol, it was in your hands at some
2 point, correct?

3 A Yes, sir.

4 Q Okay.

5 MR. HAZZARD: The Court's indulgence, Your Honor.

6 BY MR. HAZZARD:

7 Q And you said that you were outside talking with Cedric
8 Jones, correct?

9 A Yes, sir.

10 Q Okay, oh, and let me not forget, and you also told Ms.
11 Bailey that after this is all said and done, that you see this
12 boy here take the shotgun back into that same magical house in
13 Graves Station, right?

14 A Yes, sir.

15 Q Okay, and since you talked to the police on March 21st how
16 many times have you talked with law enforcement or the
17 Prosecutor regarding your testimony here today?

18 A Once.

19 Q I'm sorry?

20 A Once.

21 Q Okay, and when was this, sir?

22 A I want to say the 4th of this month here.

23 Q Okay, and when you talked to them on the 4th of this
24 month here that's when you signed your proffer agreement,
25 right?

1 A Yes, sir.

2 Q Okay, and based on that proffer agreement you're looking
3 for them to give you some help with your murder charge, right?

4 A No, sir.

5 Q You're not looking for any help?

6 A No, sir. From my understanding the agreement said that I
7 wasn't being promised anything.

8 Q Oh, I understand that, but your agreement also says that
9 they will consider based on your testimony what charge to
10 charge you with, what recommendation to make to the court as
11 to sentencing, correct?

12 A No, I can't answer that.

13 Q Did you read your proffer agreement or did you simply
14 sign your name at the bottom?

15 A I signed it at the bottom.

16 Q So you didn't read it?

17 A No, sir.

18 Q And Mr. Hilliard, your lawyer, didn't explain it to you?

19 A As far as my understanding went I just know that nothing
20 was being promised to me.

21 Q I understand that, sir, but it is your hope that they
22 take you out of that 30 to life range on murder, isn't it?

23 A My hope, yes, sir.

24 Q Yes, sir. Okay, now, you talked to the police on March
25 16th, 2011, correct?

1 A Yes, sir.

2 Q And you told one version of events, correct?

3 A Yes, sir.

4 Q And then you talked to the police on March 21st, 2011, and
5 you told them another version of events, correct?

6 A Yes, sir.

7 Q Okay, and then you talked with the Prosecutor on March 4th
8 and you told them another version of events, correct?

9 A No, I would say I told them the same thing I told them
10 the second time around except for I give more details about
11 the ---

12 Q More detail?

13 A --- yes, sir, about the conversation that happened in the
14 car.

15 Q Okay, so when you talked to the police on March 16th,
16 2011, did you want them to believe that you were telling the
17 truth at that time?

18 A Yes, sir.

19 Q When you talked to the police on March 22nd, 2011, did you
20 want them to believe you were telling the truth at that time?

21 A March 22nd?

22 Q March 21st, 2011?

23 A No, the second time I wanted them to believe what I was
24 saying the first time. I just wanted to clear my name. I
25 wasn't really trying to get into my Co-Defendants or anybody

1 else. I just wanted to clear my name.

2 Q And in order to clear your name you wanted them to
3 believe what you were saying, right?

4 A Yes, sir.

5 Q Okay, and then when you talked to the Prosecutor's staff
6 and whoever else you talked to on March 4th of this year,
7 2013, and you signed your name on the bottom line and entered
8 into your contract with the State to testify against Tamar
9 Bryant you want them or wanted them to believe you then,
10 right?

11 A Yes, sir.

12 Q Okay, please tell me, Mr. Green, how is it that someone
13 is supposed to know when you're telling the truth? How do we
14 know?

15 A You got a good point there, but I am. I don't like - I
16 don't have no reason to lie, like the whole incident that
17 happened was between the victim and my Co-Defendants. It had
18 nothing to do with me. I didn't wanted to get dragged into it
19 but I did. So when I turned myself in to clear my name that's
20 when - that was my whole point of being.

21 Q You have no reason to lie, is that what you just
22 said?

23 A Yes, sir.

24 Q What has changed, other than unfortunately Mr. Myers
25 dying as a result of the gunshot, what has changed in your

1 circumstances between when you first talked to the police and
2 lied to them on March 16th and your testimony here in court?
3 What has changed?

4 A I would say the fact that I didn't - when I, when I
5 first got arrested - well, when I first turned myself in, the
6 whole point of me turning myself in was to let everybody know
7 that I didn't want this situation that happened to happen the
8 way it did and I wasn't part of that at all, but I wasn't
9 going to try to - I wasn't trying to incriminate no one else,
10 I was just trying to clear myself up.

11 Q Okay, I appreciate that, sir.

12 A Yes, sir.

13 Q Now, I believe you told Ms. Bailey that after this
14 accident or incident or however you refer to it occurred that
15 you took Lavern Holmes to his sister's house in Myrtle Beach.
16 right?

17 A Yes, sir.

18 Q He doesn't live there, does he?

19 A No, sir.

20 Q Okay, and you went to North Santee, right?

21 A Yes, sir.

22 Q You don't live there, do you?

23 A No, sir.

24 Q And you took Kawaun Myers to his girlfriend's house or
25 somewhere else out the way, right?

- 1 A Yes, sir.
- 2 Q And he don't live there, does he?
- 3 A No, sir.
- 4 Q Now, where did you take Tamar Bryant?
- 5 A To ---
- 6 Q You took him back home, didn't you?
- 7 A To Graves Station.
- 8 Q Yeah, you took him back home, took him back to the
- 9 projects where he's from, right?
- 10 A No, I took him to Graves Station, not the projects.
- 11 Q And how far away is that? Projects, Graves Station what
- 12 kind of distance are we talking about?
- 13 A Maybe five, ten minutes I believe. I'm not quite sure.
- 14 I would say ten minutes, five minutes.
- 15 Q Okay, so you ain't taking him to Myrtle Beach, you ain't
- 16 taking him to Andrews, you ain't taking him to Santee. You
- 17 taking him back to Georgetown, right?
- 18 A Yes, sir.
- 19 Q All right.
- 20 MR. HAZZARD: Court's indulgence, Your Honor.
- 21 BY MR. HAZZARD:
- 22 Q With regard to the red Sable that you identified for Ms.
- 23 Bailey, you indicated that that is your car, is that correct?
- 24 A Yes, sir.
- 25 Q Is the car in your name, a family member's name?

1 A Family member's.

2 Q And there's no question though that you are the one who
3 drives that car, right?

4 A Yes, sir.

5 Q You're the one who has sole and only control over that
6 car, correct?

7 A Yes, sir.

8 Q Okay, nobody else driving around in your Sable when you
9 are out on the street, right?

10 A No, sir.

11 Q Okay, and you're driving that car to and from work at the
12 Wal-Mart, right?

13 A Yes, sir.

14 Q Okay, all right, and neither you nor Lavern Holmes have
15 red bandanas based on your truth today, is that correct?

16 A No, the day of the incident I didn't have no bandana but
17 Lavern Holmes did.

18 Q And what kind of bandana did he have?

19 A A red bandana.

20 Q He had a red bandana?

21 A Yes, sir.

22 Q All right, thank you. No further questions.

23 REDIRECT EXAMINATION

24 BY MS. BAILEY

25 Q Did you see Lavern Holmes go in the club with a

- 1 shotgun?
- 2 A No, ma'am.
- 3 Q Did you see him come out of the club with a shotgun?
- 4 A Yes, ma'am.
- 5 Q Okay, who all handled this revolver? You said that you
- 6 did. Did anybody else handle it?
- 7 A As far as my memory goes I believe everyone did.
- 8 Q All five of you handled it?
- 9 A Yes, ma'am.
- 10 Q And where did that happen?
- 11 A I know it was in Georgetown. I don't, I don't know if it
- 12 was outside in the projects or inside my car, but I know it
- 13 was in Georgetown.
- 14 Q And was that before you went to the club?
- 15 A Yes, ma'am.
- 16 Q When you were dropping everybody off for the night
- 17 after this was all over, how did you know where to take
- 18 people?
- 19 A They asked me or they told me where they wanted to go.
- 20 They gave me directions.
- 21 Q So did you, did you decide where they went?
- 22 A No, ma'am.
- 23 Q So did you just take them where they asked to go?
- 24 A Yes, ma'am.
- 25 Q And where did Tamar Bryant ask to go?

1 A Back to Graves Station.

2 Q You've given several other statements to law enforcement,
3 right?

4 A Yes, ma'am.

5 Q And did you at one point give a statement to my
6 investigator Steve Brown?

7 A Yes, ma'am.

8 Q Every other time you've given a statement have you ever
9 been under oath?

10 A No, ma'am.

11 Q Have you ever put your hand on the Bible?

12 A No, ma'am.

13 Q Have you ever sworn to God?

14 A No, ma'am.

15 Q Did you do those things today?

16 A Yes, ma'am.

17 Q Who did you see wearing a red bandana?

18 A I seen Lavern Holmes wearing a red bandana and I also
19 know, I can't speak for Brandon Cheeks, but Tamar had a
20 bandana. If I'm not mistaken it was black.

21 MS. BAILEY: No further questions.

22 RECROSS EXAMINATION

23 BY MR. HAZZARD:

24 Q A black bandana?

25 A Yes, sir.

1 Q All right, there's no question that you took four other
2 people to the club with you, correct?

3 A Correct.

4 Q Okay, all of them have bandanas?

5 A No, sir.

6 Q Okay, so Lavern had one and now you say Tamar had one,
7 right?

8 A Right.

9 Q Okay, anybody else in the car have one?

10 A I can't speak for, I can't speak for the other two guys.
11 Kawaun Myers never got out the car and I don't recall seeing
12 him with a bandana. At least I know those two guys, Tamar and
13 Lavern, they had theirs wrapped around their neck, but I can't
14 speak for the other guys.

15 Q Okay. All righty, now, and there's no question, of
16 course, that you had no bandana whatsoever?

17 A Correct.

18 MR. HAZZARD: All right, no further questions.

19 REDIRECT EXAMINATION

20 BY MS. BAILEY:

21 Q Did you maybe have a band - was there ---

22 MR. HAZZARD: Your Honor, I'm going to object to
23 this.

24 MS. BAILEY: He hasn't even heard my question, Your
25 Honor.

1 THE COURT: Let's hear her question, okay? It's in
2 the ---

3 MR. HAZZARD: Well, there is no such thing as re-
4 redirect.

5 THE COURT: It is if the Court allows it.

6 MR. HAZZARD: Yes, sir.

7 THE COURT: Thank you.

8 BY MS. BAILEY:

9 Q You just testified that you did not have on a
10 bandana?

11 A Yes, ma'am.

12 Q Was there a bandana anywhere in your car?

13 A Yes, ma'am. It could have possibly been there, yes,
14 ma'am.

15 Q And where would that have been?

16 A It could have been in the trunk or it could have been in
17 the car because I had a little luggage bag where I had some
18 clothes in so it could have been there.

19 MS. BAILEY: No further questions.

20 THE COURT: All right, nothing further?

21 MR. HAZZARD: Nothing further, Your Honor.

22 THE COURT: All right, you may step down.

23 MR. GREEN: Yes, sir.

24 THE COURT: Thank you, sir. Witness?

25 MS. BAILEY: Thank you, Your Honor. State calls

1 Officer John Ohler.

2 Whereupon, John Ohler was called to the stand, duly sworn
3 by the clerk and testified as follows:

4 THE CLERK: Thank you. Please be seated, state your
5 name and spell it for the record, please.

6 MR. OHLER: My name is John Ohler. First name is
7 spelled J-O-H-N, last name is O-H-L-E-R.

8 DIRECT EXAMINATION

9 BY MS. BAILEY:

10 Q If you could you can pull that microphone closer to you
11 and speak right into it. Where are you, where do you
12 currently live?

13 A I currently live in Rochester, New York.

14 Q And where did you used to work?

15 A I used to work for the Georgetown City Police Department
16 as a patrol officer.

17 Q How long ago was that?

18 A I moved back to New York. I'm originally from New York
19 but I moved back to New York about seven, eight months ago.

20 Q Okay, and were you working for the Georgetown City Police
21 in March of 2011?

22 A Yes.

23 Q And at that time did you have an encounter with a young
24 man named Brandon Cheek?

25 A Yes, I did.

1 Q Okay, can you tell us about that?

2 A Was dispatched to a nuisance call over on Lincoln Street
3 in Georgetown here and upon arrival me and another patrol
4 officer - I was speaking to a witness and my, my other partner
5 actually tried to contact Cheek and he took off running from
6 him and a foot pursuit happened. My partner chased him on
7 foot. I got in my marked patrol car and drove to get in front
8 of him and basically corner, cornered him so he had nowhere to
9 run and at that time was able detain Cheek and place him under
10 arrest.

11 Q Okay, and he was under or did that arrest have anything
12 to do with this crime?

13 A No, the arrest we placed him under initially was for
14 trespassing and resisting arrest for running.

15 Q And what date was that?

16 A That was March 20th, 2011, and it was - I think I was
17 about an hour into my shift. So it was about seven, about
18 seven p.m.

19 Q Okay, did - when you placed Brandon Cheek under arrest
20 did you search him?

21 A Yes, ma'am, I did.

22 Q And what did you find during that search?

23 A He had some cash on him, 30 or \$40 cash, there was a
24 black do-rag that he had, one condom, he had a couple of bags
25 of marijuana, and a cellphone, and tucked in the front of his

1 pants in his waistband was a black revolver pistol.

2 Q I'm going to show you what's been previously marked as
3 State's Exhibit Seven. Do you recognize that?

4 A Yes, ma'am. Yes, ma'am, that's, that's the gun that I, I
5 took off of Brandon Cheek on that day.

6 Q How do you know that it's the same one?

7 A I've actually never seen another gun similar to that one.
8 I did a little bit of research that day because I'm not even
9 sure what brand it was and it's actually kind of a rare gun,
10 and I also just, just by how the handle was, there was a
11 missing handle which usually is not common with, with guns not
12 having an actual, like a wooden or a some sort of, you know,
13 handle or grip on it.

14 MS. BAILEY: At this time State would seek to move
15 State's Seven into evidence.

16 THE COURT: Mr. Hazzard?

17 MR. HAZZARD: Without objection.

18 THE COURT: All right. Could I see it, please?

19 Ladies and gentlemen of the jury, I would advise you that
20 this firearm is now being placed into evidence. Per the
21 Court's rules there's been a disabling device placed through
22 the barrel and the cylinder so that it cannot close. So I
23 would ask you not to remove that at any time that this is in
24 your jury room. We want it always so that it is open and can
25 be readily identified as an unloaded weapon. All right,

1 without objection it's admitted.

2 MS. BAILEY: Thank you.

3 (Whereupon, State's Exhibit Number Seven [Gun] admitted
4 into evidence and appropriately marked.)

5 BY MS. BAILEY:

6 Q Was the weapon loaded?

7 A Yes, ma'am, it was.

8 Q Do you know how many rounds there were?

9 A I believe it was fully loaded, I believe eight rounds.

10 Q And what did you do with the gun and the bullets?

11 A The gun I actually handed over to my sergeant who showed
12 up on scene as the search was being conducted. That was
13 turned over to my sergeant which is Sergeant Church of the
14 Georgetown City Police Department and he took the gun and
15 brought it back to the police department and it was placed in
16 an evidence locker while I transported Mr. Cheek to the
17 detention center.

18 MS. BAILEY: I have no further questions for this
19 witness.

20 THE COURT: Mr. Hazzard, do you have any questions for
21 this witness?

22 MR. HAZZARD: Sure.

23 CROSS EXAMINATION

24 BY MR. HAZZARD:

25 Q So you arrested a guy by the name of Brandon Cheek on

1 March 20th of 2011, is that correct?

2 A Yes, sir.

3 MR. HAZZARD: No further questions.

4 THE COURT: All right, sir. You may step down.

5 MR. OHLER: Thank you.

6 MS. BAILEY: Your Honor, may he be released from his
7 subpoena?

8 THE COURT: Any objection, Mr. Hazzard?

9 MR. HAZZARD: No, sir.

10 THE COURT: Without objection you are released from
11 your subpoena.

12 MR. OHLER: Thank you, Your Honor.

13 THE COURT: Witness?

14 MS. BAILEY: Your Honor, may I approach for scheduling
15 purposes?

16 THE COURT: Okay.

17 (Whereupon, a bench conference is held in the presence
18 but out of the hearing of the jury.)

19 THE COURT: Okay, let's - the next witness is going to
20 take some time. Let's take a quick break, about ten minutes
21 and then we'll come back, okay?

22 MS. BAILEY: Thank you, Your Honor.

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right, we're at ease for about ten

1 minutes.

2 OFF THE RECORD

3 (On the record.)

4 THE COURT: We ready, Ms. Bailey? Okay.

5 MS. BAILEY: We are ready to proceed, Your Honor.

6 THE COURT: All right, let's get the Defendant in.

7 All right, let's bring in the jury.

8 (Whereupon, the following takes place in the presence of
9 the jury.)

10 THE COURT: Okay, your witness, please.

11 MS. BAILEY: Thank you, Your Honor. State calls
12 Investigator Clint Busbee.

13 Whereupon, James Clinton Busbee is called to the stand,
14 duly sworn by the clerk and testified as follows:

15 THE CLERK: Thank you. Please be seated, spell your
16 name and state it for the record, please.

17 MR. BUSBEE: My name is James Clinton Busbee, J-A-M-E-
18 S, C-L-I-N-T-O-N, B-U-S-B-E-E.

19 DIRECT EXAMINATION

20 BY MS. BAILEY:

21 Q Where do you currently work?

22 A I'm an investigator with North August Public Safety in
23 Aiken County.

24 Q And where did you work before that?

25 A I worked ten years for the Georgetown County Sheriff's

1 Office from 2002 to May of last year, 2012.

2 Q How long have you been in law enforcement?

3 A This is my 15th year.

4 Q And in May of 2011 what was your title at the Sheriff's
5 Department?

6 A In May of 2011 I was currently an investigator with the
7 criminal investigations division with the Sheriff's Office
8 here in Georgetown.

9 Q How long were you with the criminal investigations
10 division?

11 A I worked in the criminal investigations division two
12 different times, total time approximately four years.

13 Q And did you investigate an incident that happened on May
14 15th of 2011?

15 A Yes, I did.

16 Q Were you on scene that night?

17 A I did arrive shortly after the first units arrived at the
18 Ghost Den Club.

19 Q And what did you do once you arrived?

20 A I was not the on-call investigator that night, but that
21 was the area that I was assigned to investigate cases. I also
22 lived in Plantersville. So I was approximately ten minutes
23 from the shooting scene. I contacted the on-call investigator
24 who was Robert Sarvis and I called him on the phone and he was
25 just getting a phone call to respond there. I told him that I

1 would also respond to help him out because I knew that I would
2 eventually get assigned the case.

3 Q And once you arrived, what was the state of things?

4 A They had already had the property secured and they were
5 in the process of trying to gather any witnesses. EMS was
6 still there. They were actually putting the victim in the
7 ambulance when I pulled up and arrived on scene. The
8 ambulance left shortly after I got there, within a matter of
9 just a couple of minutes. I made contact with the Sergeant
10 that was on scene and he briefed me to what the information
11 that he had gathered as of that time. So they were actually
12 trying to gather any witnesses that were there or if anybody
13 had any knowledge of what had happened. That was pretty much
14 - they were in the first initial stages of getting that crime
15 scene secured and I assisted them with that and then I waited
16 on our crime scene investigator who was also responding,
17 Investigator Michael Thacker, and I waited on his arrival
18 before - I knew he would be the primary investigator in charge
19 of processing the scene.

20 Q Were there, by your observation, was there any type of
21 physical evidence inside the club that was useful to the
22 investigation?

23 A Initially what was found inside the club there were some
24 clothing that was on the floor that had blood on it. There
25 was also some blood on the floor and then there was also some

1 shoe impressions that were also in blood inside the club.

2 Q Was it determined through witness interviews what, what
3 all that - who that belonged to?

4 A Yes, ma'am. From different people that were there that
5 were willing to talk with law enforcement, the clothing,
6 several people tried to render aid to the victim that was
7 shot. That's where the blood came from. Some of the clothing
8 was used, we were told, to try to stop bleeding and the shoe
9 impressions that were found in blood on the floor were
10 determined that it was from people that were actually trying
11 to render aid, and then as you know having a lot of blood on
12 the floor and actually stepping in it and that's where the
13 shoe impressions came from on the floor.

14 Q Did you go to MUSC at some point during the course of
15 this investigation?

16 A I did.

17 Q And what was the purpose of your visit?

18 A The purpose of my visit, myself and Captain Owens who was
19 also with the Sheriff's Office who was my supervisor, we
20 attended the autopsy of Deon Myers.

21 Q And did you take possession of any evidence after that
22 autopsy?

23 A I did.

24 Q And what evidence did you take possession of?

25 A Several different things, after the autopsy was completed

1 they had recovered a projectile in Deon Myers' head. They
2 also gave us a couple of samples as well and one of those
3 being a hair sample. All those items were turned over to me
4 at the autopsy.

5 Q I'm going to show you what's been marked for
6 identification as State's Nine. If you could take a moment to
7 look at that, and if you need to open the envelope you can,
8 and can you describe for the jury what this is?

9 A That is a small evidence envelope that we use at, we used
10 at that time at the Georgetown County Sheriff's Office.

11 Q And is your signature on here or your marks?

12 A It is.

13 Q And what did you put in this envelope?

14 A This is the projectile that was found in the victim's
15 head during the autopsy that was turned over to me.

16 Q When you say projectile what's a common term for that?

17 A That's the bullet that was - he was shot with that was
18 lodged in his head.

19 Q And when you took possession of it at MUSC where - what
20 did you do with it?

21 A I'm sorry. Can you repeat the question?

22 Q You said that you took possession of this at MUSC?

23 A That's correct.

24 Q What did you, what did you do with it then?

25 A The, that particular piece of evidence there when I got

1 back to the sheriff's office it was placed in my assigned
2 evidence locker.

3 Q And did you alter or change it in any way while you had
4 possession of it?

5 A The, the, the projectile?

6 Q Right.

7 A No, I did not.

8 Q Could you go ahead and open this envelope and make sure
9 what's in there is the same thing that you took?

10 A Just open that anywhere?

11 Q Is that the projectile that you took from MUSC?

12 A That is the projectile.

13 Q Okay, and can you describe - you said you put it in your
14 evidence locker? What's the - does that have a lock on it?
15 How does that work?

16 A Yeah, we actually have assigned evidence lockers. Where
17 those are located is a secure room for investigators and it's
18 in our lab. Whether it's been altered or changed since I
19 moved in May, I'm under the impression that they still operate
20 the same way. It's a secure room and what it is is actually
21 our lab where we do different procession of evidence trying to
22 get, you know, fingerprints or take samples of certain, you
23 know, items that we recover and bring back. Where we process
24 some of the evidence that's where we process it at. Each
25 investigator is assigned a locker and we don't keep evidence

1 in those lockers for a long-term basis. What we do is if we
2 bring something back and it's just a very temporary storage
3 for, you know, different pieces of evidence. In this case I
4 got back and placed this item in my assigned evidence locker
5 which has a lock that I put on it that nobody else has access
6 to.

7 Q Does one other person have access to it?

8 A My locker? My assigned locker?

9 Q Uh-huh.

10 A It's the - no, because it's the lock that I put on it,
11 which was a combination lock at the time.

12 Q So after you put it in your evidence locker at some point
13 did it make its way into evidence, get logged in and all that?

14 A Right, after it was sent to SLED and then later on it
15 was, it was logged in, obviously.

16 Q During the course of your investigation did you interview
17 Tamar Bryant?

18 A I did.

19 Q How did you come into contact with Mr. Bryant, and not -
20 let me rephrase my question to be more specific. On the
21 evening that you interviewed him what were the circumstances
22 that led to him being brought in?

23 A There was a warrant already for his arrest. He was
24 sighted for a couple of days straight. On the day that he was
25 arrested I was actually the on-call investigator. He had been

1 sighted in the city limits of Georgetown near St. James and
2 Church Street. Georgetown City Police Department along with
3 the sheriff's office, patrol officers actually had a - were
4 trying to get a perimeter set up where they could actually try
5 to apprehend Mr. Bryant. All the other Co-Defendants in the
6 case were - had already been placed in custody. Now, like I
7 say, I was the on-call investigator. It was around 3:30 in
8 the morning I got a phone call that he had been sighted or
9 allegedly had been sighted in town. So I responded to the
10 area and actually I'm the one that actually saw him and took
11 him into custody. That's how I came in contact with him.

12 Q And when you took him into custody, did you draw your
13 service weapon?

14 A I did not draw my weapon.

15 Q And when you took him into custody did you read him any
16 rights?

17 A I verbally gave him his Miranda rights.

18 Q Okay, and what did you do with him then?

19 A I explained to him a bunch of different things, that he
20 was under arrest, we did have a warrant for his arrest and
21 that I would, you know, transport him back to the sheriff's
22 office where if he wanted to give a statement he could and
23 then later on he would be incarcerated at the Georgetown
24 County Detention Center and then he would have a bond hearing
25 at a later date.

1 Q And did you take him to the sheriff's office?

2 A I did.

3 Q Did you take him right inside?

4 A No, I didn't.

5 Q And why is that?

6 A Well, like I say it was approximately 3:30 a.m. in the
7 morning when I arrested him. There was nobody physically at
8 the building, which is a big building. It's a two story
9 building right, you know, a mile from where he was arrested.
10 I actually had to call my supervisor, Captain - it was Captain
11 Owens at the time. I wanted somebody to at least be in that
12 building when I went inside with him before I tried to get any
13 sort of statement or interview him or get any information from
14 him. So we actually waited outside and we, you know,
15 conversated. Like I say when I initially arrested him I
16 verbally gave him his Miranda rights and then we, we
17 conversated about general stuff and about the case while we
18 were actually outside at the sheriff's office waiting on
19 Captain Owens.

20 Q Did you initiate that conversation or did he?

21 A It was both. We - you know, I was asking him general
22 questions of where he was from, you know, just different
23 general things like that and then he made, you know, a couple
24 of statements before we actually got in the car when I - after
25 I gave him his Miranda warning.

1 Q And what did he say in those statements?

2 A He said - initially I didn't ask him anything, I gave him
3 his Miranda warning. I was explaining some stuff to him and
4 he said that he was with those guys, but he didn't shoot the
5 guy. When we got to the sheriff's office we had to wait on
6 Captain Owens to get there. He lives about 30 minutes away.
7 So he asked if he could smoke. I allowed him to do that. He
8 asked for a cup of water, which I got for him, and we, you
9 know, talked about the case some and then we talked about just
10 general stuff, also.

11 Q And while you all were standing outside waiting on
12 Captain Owens to arrive did his story change?

13 A Yeah, it did.

14 Q And what did he say now?

15 A Well, he was saying that from, you know, when we got back
16 to the sheriff's office, you know, he was asking me questions
17 and I would ask him some questions also and, you know, it went
18 from he didn't shoot - he was with the guys but didn't shoot
19 the guy to, you know, I'd ask him, "Well, well, who had the
20 shotgun?" And you know supposedly one of the Co-Defendants,
21 he named one of the Co-Defendants having the shotgun and he
22 had the other gun, and, you know, from that he - "We know he
23 wasn't shot with a shotgun, so who ended up shooting him if
24 you're the only one with another gun?" So it evolved into
25 that and once it started getting into that, you know, I

1 explained to him that reason - that I had already explained to
2 him the reason that we were waiting was so somebody could be
3 in the building while I was interviewing him because nobody
4 was in that building. So, you know, I - because he already
5 knew we were waiting for somebody to get there so we could go
6 in an interview room where it was audio and video recorded.
7 So once we got up there and then all that's recorded.

8 Q Did you, in the entire course of this, did you ever
9 threaten him?

10 A I did not.

11 Q Did you ever draw your service weapon on him?

12 A I did not.

13 Q Did you ever hit him?

14 A I did not.

15 Q Did you threaten to hit him?

16 A I did not.

17 Q Did he appear responsive to your questions? Did he seem
18 to understand them?

19 A He did.

20 Q To the best of your knowledge based on your interaction
21 with him, could he read and write?

22 A He could.

23 Q Did he appear under the influence of drugs or alcohol?

24 A He didn't appear to be.

25 Q Did he seem to understand everything that you asked of

1 him?

2 A He seemed to.

3 Q Once you were in the interview room, did you have him,
4 did you have him, did you Mirandize him again?

5 A I did.

6 Q And did you give him a form this time?

7 A Yeah, the Miranda form was just the same verbal Miranda
8 that I gave him when I initially arrested him. Those - that
9 form is you can tear off a carbon copy and what we did was we
10 would give the, the carbon copy to whoever was getting the
11 actual written warning.

12 Q I'm going to show you what's been marked for
13 identification as State's Exhibit Ten. Do you recognize that?

14 A I do.

15 Q And what is that form?

16 A That's the Miranda warning form. That's actually a copy
17 and that's a regular size piece of eight and a half by eleven
18 paper. The actual form is actually pretty much approximately
19 half of that paper. So it would actually be about right here
20 would be the bottom of the form.

21 Q Did Tamar Bryant make any marks on this page?

22 A He did.

23 Q And what marks are those?

24 A He put his initials by each number and then also his
25 signature.

1 MS. BAILEY: At this time State would seek to introduce
2 State's Exhibit Ten.

3 THE COURT: Is there any objection, Mr. Hazzard?

4 MR. HAZZARD: To that particular document?

5 THE COURT: Yes, sir.

6 MR. HAZZARD: No, sir, sir Your Honor.

7 THE COURT: All right, it's entered without objection.

8 (State's Exhibit Number Ten [Miranda Form] entered into
9 evidence and appropriately marked.)

10 BY MS. BAILEY:

11 Q Once you were in the interview room, did you allow him to
12 have any water?

13 A Yes, he already had some that we brought in there.

14 Q How many people were in that room?

15 A Just him and I.

16 Q Did the discussion ever get heated or intimidating in any
17 way?

18 A No, not that I thought it did.

19 Q I'm going to show you what's been marked as State's
20 Exhibit Number 11.

21 MR. HAZZARD: Your Honor, may we approach?

22 THE COURT: Certainly.

23 (Whereupon, a bench conference is held in the presence
24 but out of the hearing of the jury.)

25 THE COURT: All right.

1 Q Have you had the opportunity to review what is on this
2 disk? Have you reviewed what's on here?

3 A Yes.

4 Q Is it a true and accurate depiction of what happened that
5 night in the interview room?

6 A Yes.

7 MS. BAILEY: At this time the State would seek to move
8 State's Exhibit 11 into evidence.

9 THE COURT: Subject to your, your prior hearing?

10 MR. HAZZARD: Yes, sir, Your Honor, subject to the
11 Jackson v. Denno motion.

12 (State's Exhibit Number 11 [Redacted CD - Interview of
13 Defendant] admitted into evidence and appropriately marked.)

14 THE COURT: All right, are you prepared to play that
15 now, Ms. Bailey?

16 MS. BAILEY: Yes, Your Honor.

17 THE COURT: Ladies and gentlemen of the jury, we are
18 about to hear as you have heard a, a videotaped statement that
19 was allegedly given by the Defendant. There may be parts or
20 places in this statement where you might notice a break or a
21 pause as though something were skipped over or something were
22 deleted. This Court has previously reviewed this, this
23 statement and as in every matter concerning evidence, the
24 Court rules on the admissibility of evidence. There may be
25 parts that were deleted or removed. You should not concern

1 yourself at all with who may have requested the deletions or
2 what the deletions were. Please do not speculate as to what
3 might have been removed from the tape. Rest assured that that
4 was done in compliance with the law of the State of South
5 Carolina and the Rules of Evidence in this court. You should
6 not concern yourself with anything that's not on the tape.
7 You should not place any significance on it, do not speculate.
8 Okay? Thank you.

9 (Whereupon, State's Exhibit Number 11 played in open
10 court.)

11 BY MS. BAILEY:

12 Q How long was that interview?

13 A How long was the interview?

14 Q Yes.

15 A It was about 45 minutes almost.

16 Q And how long was your total encounter with him that
17 night?

18 A I responded about 3:30 a.m., like I said earlier, and
19 then it was one minute shy of 5:30. So that was the total
20 length of time. There was about two hours almost.

21 Q Did Mr. Bryant ever ask for a lawyer?

22 A No, he did not.

23 Q Did he ever ask for his mother?

24 A No, he did not.

25 MS. BAILEY: I have no further questions at this time.

1 THE COURT: Mr. Hazzard.

2 MR. HAZZARD: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. HAZZARD

5 Q Good afternoon. Is it Investigator Busbee or Detective
6 Busbee?

7 A Either one's fine.

8 Q Okay, Detective Busbee, Tamar told you that the shooting
9 of Mr. Myers was in retaliation for Mr. Myers shooting at him
10 and others in 2007 at the G & H Club in Hemingway, is that
11 correct?

12 A In the recording there he mentions that he had an
13 altercation with him in 2007 at a club in Hemingway.

14 Q Yes, sir. Did you - and in fact he says a shooting, that
15 Mr. Myers had shot at him, correct?

16 A Correct.

17 Q Okay, and did you ever check and see if there was any
18 validity to that statement back when he was 13 years old?

19 A I could find nothing that - any kind of report or
20 anything like that where I could verify that, no, I couldn't.

21 Q Yes, sir, to your record or as a part of your
22 investigation, to your knowledge does Mr. Bryant have any
23 family in Hemingway?

24 A I do not know whether he has any family in Hemingway or
25 not.

1 Q And you told Ms. Bailey that when you first met up with
2 Tamar the first thing he told you was, "I was with those guys,
3 but I didn't do it," correct?

4 A Correct.

5 Q Okay.

6 A That was the first thing he said after I gave him his
7 verbal Miranda warning.

8 Q Okay, now, did you serve the warrant on him first or did
9 you give him the Miranda first or how did all that go?

10 A From the recording you can see at the very end that I
11 asked my supervisor if he could call one of the road patrol
12 guys to transport him to the jail and I made mention that I
13 thought that the warrant was in the sergeant's office which is
14 downstairs at the sheriff's office. So, at that time I had
15 not served the warrant on him.

16 Q But you had told him he was under arrest for the crime of
17 murder, correct?

18 A That is correct.

19 Q And this is after he told you, "I didn't shoot that guy."

20 A I told him he was under arrest before he made that
21 comment.

22 Q Okay, and he says, "I didn't shoot that guy?"

23 A That's correct.

24 Q Okay.

25 A That was part of it.

1 Q And you said, "You're under arrest anyway?"

2 A Yes, "You're under arrest," is what I told him.

3 Q Okay, and instead of taking him, since he's under arrest,
4 instead of taking him to the detention center, you take him
5 back to the sheriff's office?

6 A Yes, I took him straight to the sheriff's office.

7 Q Because you wanted an additional statement from him?

8 A We have no way of video recording interviews at the
9 detention center. So we go to the sheriff's office. We have
10 two different interview rooms that are audio and video
11 recorded as you saw. That's why I took him to the sheriff's
12 office.

13 Q Well, he'd already given you a statement and you noted
14 that statement in your report, correct ---

15 A He made a comment.

16 Q --- that he didn't do it.

17 A I'm sorry. I didn't mean to interrupt you, I'm sorry. I
18 thought you were done.

19 Q No problem. He had already given you a statement and
20 you, in fact, put the gist or the wording of that statement in
21 your incident report that he said, "I was with those guys, but
22 I didn't shoot anybody."

23 A That was his comment after I gave him his Miranda warning
24 verbally. I didn't ask him anything. That was the first
25 comment that he made.

1 Q Okay, so you have a statement from him ---

2 A If you want to call that a sentence or a statement, then
3 ---

4 Q I'm sorry. I'm sorry, go ahead, sir, please.

5 A That was it. If you, I mean, if you want call that a
6 statement or a sentence or whatever you want to call it then,
7 yes, that's exactly what he said.

8 Q Now, you've had the opportunity to talk with some of the
9 - the jury's heard about the other people who are also charged
10 with murder, right?

11 A I believe they have. There's Co-Defendants.

12 Q Okay, yeah, and you, in fact, or as part of your
13 investigation, you know, Lavern Holmes has been interviewed
14 five times, right?

15 A He's been interviewed several different times by myself
16 and another agency.

17 Q Okay, and all of those are recorded?

18 A Correct.

19 Q Okay, and Cameron Green's been interviewed at least twice
20 or more, correct?

21 A They, they were recorded in different ways. A couple of
22 the interviews actually happened at the detention center. So
23 they were audio recorded but there is no video. There was one
24 occasion where he was interviewed by another agency in
25 reference to another case that has nothing to do with this

1 case at the sheriff's office and that was audio and video
2 recorded.

3 Q Now, when you say he was interviewed regarding another
4 incident Lavern ---

5 A Lavern Holmes was interviewed.

6 Q --- you're talking about Lavern Holmes.

7 A Lavern Holmes.

8 Q Got you.

9 A Correct.

10 Q So there is the capability of recording at the detention
11 center?

12 A If you have an audio recorder or if you bring your own
13 video recording device then, yes, there, there is that
14 capability, but you have to bring that. The detention center
15 does not supply that capability.

16 Q Yes, sir, but there have been other times when Lavern
17 Holmes has been interviewed by you and others that you worked
18 with and Cameron Green at the detention center and that was
19 done by a mobile or audio device, correct?

20 A Audio.

21 Q Like a tape recorder?

22 A Yes, a digital recorder.

23 Q Yeah.

24 A Basically the same thing.

25 Q And how big is a digital recorder, sir?

1 A A digital recorder is anywhere from - I've seen them this
2 small to you know, a little bit bigger.

3 Q So that would be the length of your fingers apart would
4 be approximately half an inch to an inch?

5 A I've seen them as small as less than an inch up to seven
6 or eight inches depending on what device and what technology
7 it has.

8 Q Okay, and did you have a digital recorder at that time,
9 March 15th, 2011?

10 A March 15th, when the incident occurred?

11 Q Yes, sir; yes, sir.

12 A Yes, I had one.

13 Q Okay, so did you have one March 25th, 2011, ten days
14 later?

15 A I did.

16 Q Okay.

17 A The audio recorder is what you're talking about, is that
18 correct?

19 Q Yes, sir, audio recording.

20 A Correct.

21 Q Yes, sir.

22 A Correct.

23 Q So you arrest this boy here, I believe you said it was
24 around 3:30 in the morning, correct?

25 A I was called about 3:30 a.m. that morning.

1 Q Okay, and your interview with him ended about 5:29 or
2 5:30 a.m., right?

3 A I believe it was 5:29 is what the captain said his time
4 that he had.

5 Q And the interview was about 45 minutes long, right?

6 A That's correct.

7 Q Okay, so that would mean that your interview began about
8 4:44, 4:45 in the morning, is that correct?

9 A That would be correct.

10 Q Okay, and how long did you say you had to wait on someone
11 to get to the sheriff's office, sir?

12 A Captain Owens lives approximately 30 minutes from the
13 sheriff's office.

14 Q Okay, so it was 30 minutes or longer, correct?

15 A Well, he wasn't in the car waiting on me to call him. I
16 mean, he obviously it took - it would take him several minutes
17 at 3:30 in the morning to get dressed and be able to drive to
18 Georgetown. So add a few more minutes on there, 10 or 15.

19 Q Okay, so then it'd be fair to say that there's
20 approximately then a 45-minute period of time where you and
21 this boy here are together and he has told you, "I have not
22 committed the crime, I have not shot anyone," and you have
23 told him, among other things, "You are under arrest anyway,"
24 but despite the fact that you have a digital audio recorder
25 that would record everything that you said, everything that he

1 said, you chose not to use it, is that correct?

2 A Which - are you talking about in the interview room?

3 Q No, sir.

4 A It is recorded.

5 Q Prior to all the talking that you say you all did before
6 the interview room because there was a good long period of
7 time where you all were sitting down on a picnic table or
8 something on a patio behind the sheriff's office, right?

9 A It's in the back parking lot of the sheriff's office. I
10 didn't want to go in the building until another person
11 actually got there. There was nobody physically in the
12 building itself. That's why we waited outside, which they
13 have a patio area with some tables where the back parking lot
14 is and that's where we waited at.

15 Q Do they, do they give you a key to the building you
16 worked in?

17 A It's not keyed, it's a combination.

18 Q So you could have gone in?

19 A I wanted to wait outside. I wanted somebody to be in the
20 building with us because there was nobody in the building
21 whatsoever.

22 Q Well, who all was out back on the patio?

23 A There was no - it was three, you know, between 3:30 and
24 four in the morning. So there was nobody - there is no
25 nighttime person that, that stays at the sheriff's office like

1 a, a, a desk sergeant or secretary. We do not have one at
2 night. So we waited outside.

3 Q Well, if it's just going to be you and this boy alone
4 what difference does it make whether you're outside or inside?

5 A I made the - that decision not to go inside until my
6 supervisor got there. I made the decision that I thought was
7 the best at the time and that's why we waited outside until my
8 supervisor got there.

9 Q And he was handcuffed this entire time, not your
10 supervisor, Tamar Bryant, is that correct?

11 A He was handcuffed.

12 Q Yes, sir.

13 A Just hand restraints.

14 Q I'm sorry?

15 A Just hand restraints.

16 Q Just hand restrains.

17 A There's no leg restraints or anything like that.

18 Q Okay.

19 A Just hand restraints.

20 Q Okay, and you never asked Tamar whether he wanted to
21 speak to his mother, his grandmother, any other guardian,
22 correct?

23 A I don't recall whether I asked him if he wanted to speak
24 with his mother or grandmother or guardian or family member or
25 anything.

1 Q Okay, okay, now, you're what is referred to as the case
2 agent, the lead detective on this case, sir, or ---

3 A I was assigned to the case, yes.

4 Q Okay, is anyone else assigned to this case?

5 A There was, there was a number of different people that
6 assisted with this case, but I was the actual investigator
7 that was assigned to the case, yes, sir.

8 Q Yes, sir, okay, so I heard on the video while you're
9 talking to Tamar you say - you mention his grandmother's
10 residence in Graves Station, correct?

11 A Yes, that's correct.

12 Q Okay, so, you know where his grandmother lives?

13 A I knew about where his grandmother lived, yes.

14 Q Yeah, and you had heard all this other talk from Cameron
15 Green and whoever else, specifically Cameron Green, about this
16 boy here getting a shotgun from a home in Graves Station,
17 correct?

18 A There was conflicting stories. Some were saying - some
19 stories changed obviously and then some people, you know,
20 there were comments made that Mr. Bryant actually got the
21 shotgun from his grandmother's.

22 Q And at some point did you recover a shotgun from
23 grandmother's residence?

24 A We did not recover a shotgun. When the warrant was
25 issued for Mr. Bryant, we actually went to - deputies went to

1 his grandmother's house at, I believe it's 4741 Highmarket
2 Street, which is in the Graves Station Community, which is
3 right outside of the city limits, and - but they did not
4 recover a shotgun.

5 Q Okay.

6 A From there or anywhere else.

7 Q Yes, sir.

8 A Excuse me.

9 Q When he was talking to you and giving you the statement
10 that you requested that was on video, you know, Tamar here,
11 you asked him about did he know these other guys? He said he
12 knew of or knew Cam because he worked at Wal-Mart, right?

13 A Correct, he said he knew of him.

14 Q Okay, yeah, knew of him because he worked at Wal-Mart.
15 You asked him about Lavern. He said he had seen, as best I
16 can tell, seen Lavern once before and got a cigarette and a
17 ride from him. Do you recall him saying that on there?

18 A Yeah, something to that ---

19 Q Yeah, a couple of months prior.

20 A --- to that nature, yes, yes.

21 Q Now, you obviously know as part of your investigation
22 that a couple of months prior or maybe even closer to March
23 15th, 2011, Lavern Holmes was up the road at the Department of
24 Corrections, right?

25 A That's correct.

- 1 Q Okay.
- 2 A I don't remember exactly when he was released.
- 3 Q Yes, sir.
- 4 A It was several months prior.
- 5 Q Okay, you think it was several months prior?
- 6 A I believe so.
- 7 Q Or the preceding January?
- 8 A I don't recall exactly the date that he was released, but
- 9 it was recent.
- 10 Q Yes, sir, okay, now, as the case agent did you do any
- 11 investigation or have anyone else do any investigation as to
- 12 the trajectory of the, of the bullet that, that killed Mr.
- 13 Myers?
- 14 A The trajectory of the projectile that was recovered from
- 15 Deon Myers, the doctor actually went into some of that in her
- 16 report, but other than what she actually went into I can't
- 17 say.
- 18 Q Okay.
- 19 A That was the only trajectory pattern or, or ---
- 20 Q Okay.
- 21 A --- whatever you want to call it. That's, yeah, that's
- 22 the only one.
- 23 Q Okay, so no other expert from SLED or any other CSI
- 24 person ---
- 25 A The only one is from the ---

1 Q --- that you know of pulled out the rods and did all that
2 stuff?

3 A The only one is from the autopsy at MUSC.

4 Q Okay, okay, initially or really as part of this very
5 conflicting statement Mr. Bryant indicated that he could not
6 enter the club because he didn't have the requisite two
7 dollars, correct?

8 A I'm sorry. Can you repeat that?

9 Q Okay, when you're talking to Tamar he said he could not
10 enter the club because he didn't have the two dollars they
11 were charging, right?

12 A Are you asking me if he said that or ---

13 Q During, during that interview, yes, sir. Do you recall
14 hearing him say that?

15 A I don't recall him saying exactly that, no, I don't in
16 the recorded interview.

17 Q Okay, but the interview will speak for itself, correct?

18 A Correct.

19 Q All right, okay, and you recall him saying that the
20 reason he went out there was because they were promised that
21 there was going to be a party and hopefully some girls there
22 and things of that nature, right?

23 A Yeah, that was part of it.

24 Q Okay. Thank you. No further questions.

25 THE COURT: Ms. Bailey.

1 MS. BAILEY: Nothing further, Your Honor.

2 THE COURT: All right, you may step down. Thank you.

3 MR. HAZZARD: Oh, I'm sorry. I do have one further
4 question. I apologize.

5 THE COURT: All right, sir.

6 MR. HAZZARD: No, I withdraw that. No questions.

7 THE COURT: All right, you may step down. Thank you.

8 MR. HAZZARD: No questions.

9 MS. BAILEY: Your Honor, I request that this
10 investigator be released from his subpoena.

11 THE COURT: Will you need him further, Mr. Hazzard?

12 MR. HAZZARD: No, sir, Your Honor.

13 THE COURT: All right, you're released from your
14 subpoena. Thank you, sir. Yes, ma'am, witness?

15 MS. BAILEY: State calls Michael Thacker.

16 Whereupon, Michael Thacker was called to the stand, duly
17 sworn by the clerk and testified as follows:

18 THE CLERK: Thank you. Please be seated and state
19 your name for the record and then spell it, please.

20 MR. THACKER: It's Michael Thacker.

21 DIRECT EXAMINATION

22 BY MS. BAILEY

23 Q What's your - where do you work?

24 A At Georgetown County Sheriff's Office.

25 Q And what's your job there?

- 1 A I do the forensics lab work and evidence.
- 2 Q Is that like what we see on TV?
- 3 A Not quite.
- 4 Q Would they call you our CSI person?
- 5 A As close as you can get I guess.
- 6 Q Did you respond to a crime scene on March 15th, 2011?
- 7 A Yes, ma'am.
- 8 Q And where was that?
- 9 A It was off of - I don't know the exact address offhand,
10 it was Jackson Village Road.
- 11 Q Okay, was it a club?
- 12 A Yes, ma'am. I think Ghost Den was the name.
- 13 Q Okay, what, what did you do when you arrived?
- 14 A When I got there I verified the scene was secure. The
15 Sergeant on duty was there. They had the - the scene was
16 secure, like I said, and first of all did a walkthrough of the
17 exterior, then the interior, and at that time just proceeded
18 to do my, my processing which begins with photographing the
19 scene as I find it.
- 20 Q I'm going to show you what we've been using as a
21 demonstrative. Do you recognize this handiwork?
- 22 A Yes.
- 23 Q And who drew this?
- 24 A I did.
- 25 Q Okay, when you say you did a walkthrough of the interior

1 what does that mean?

2 A Well, what I'll do is I'll come in from the general, in
3 this case would be that, the front door. There was only two
4 doors, a front door and a side door, and sweep the area
5 basically just seeing if I find anything, potential items that
6 could be evidence so it doesn't get destroyed number one and
7 so I can identify it, and after I get finished with that then
8 I'll come back and do the photographs and then go back through
9 another walk-through search.

10 Q Okay, and when you go through a crime scene, have you
11 talked to witnesses? Do you have any idea what's important,
12 what's not important or are you just trying to preserve
13 everything, what's ---

14 A Generally I don't have any of that information. What
15 I'll do is I will talk with the investigator or the officers
16 that are on scene and let them know to let - to tell me if
17 they have any, you know, any new information that might make
18 something relevant for me, but otherwise than that I take
19 everything in consideration that may be present.

20 Q Okay, at this particular crime scene inside what items
21 did you find?

22 A There was some clothing that was on the floor, an area of
23 blood and a few - you could see some places where some,
24 somebody had walked through some blood and that was basically
25 what was in that area. It was - other than that the bar, the

1 bar itself was pretty much, you know, bare other than pool
2 tables and such.

3 Q Now, once you collect evidence and you log it and you
4 take pictures of it, who makes the decision about what
5 evidence is relevant to the investigation and what evidence is
6 not?

7 A That would go back to the assigned detective or
8 investigator.

9 Q And in this case who was that?

10 A Clint Busbee.

11 Q Okay, in your job at the sheriff's department are you
12 also the evidence custodian?

13 A Yes, ma'am.

14 Q And what does that mean?

15 A I take in all the evidence and keep it stored in a secure
16 location at the office.

17 Q I'm going to show you what's been previously marked as
18 State's Exhibit Nine. Please look at that, open the envelope,
19 look inside. Do you recognize that item?

20 A Yes, ma'am.

21 Q And how did you come into contact with that?

22 A This item was turned in by Busbee from the autopsy. It
23 was taken in, logged and placed into evidence initially.

24 Q And then where did it go after - did you log it into
25 evidence?

1 A I did.

2 Q And where did it go after that?

3 A From that point then it was sent to SLED for analysis.

4 Q And do you know who did that?

5 A That was taken up there by Mike Lewis.

6 MS. BAILEY: I have no further questions for this
7 witness at this time.

8 THE COURT: Mr. Hazzard.

9 MR. HAZZARD: Thank you.

10 CROSS EXAMINATION

11 BY MR. HAZZARD:

12 Q So Investigator Thacker, you went to the Ghost Den
13 Lounge on the night of March 15th, 2011, is that correct?

14 A Yes, sir.

15 Q Okay, and while you were there you went in the club and
16 what did you do while you were there?

17 A I basically, like I said prior, did a walk-through of the
18 area looking for anything that may stand out initially,
19 photographed the inside and outside of the area, collected the
20 items that I placed numbers beside inside the building which
21 consisted of clothing. I did lift a, a partial shoeprint that
22 was inside and there was a casing that was found inside of the
23 or under the dirt outside after a secondary search.

24 Q What's a casing?

25 A A shell casing from a fired bullet.

1 Q And that was found outside?

2 A Yes, sir.

3 Q Okay, what else did you, from what you recall, what else
4 did you collect into evidence?

5 A From the scene it would have been a lift of the partial
6 impression of the shoe, photographs, some jackets that were
7 laying on the ground inside and a swab of blood and the
8 projectile, well, excuse me, the casing.

9 Q And the casing's outside?

10 A Yes, sir.

11 Q Okay, and that was on March 15th, right, the night of the
12 incident, correct?

13 A 15th into the 16th.

14 Q Into the morning of the 16th?

15 A Yes, sir.

16 Q Okay, did anyone assist you with, with that process, sir?

17 A Primarily it was me that was doing that, I did have, on
18 the secondary search I had a couple of people help me grid the
19 outside drive area because it's a lot of - sandy out there to
20 help me go back again, and that's where the, the casing was
21 discovered.

22 Q Okay, and on March 24th did you have the occasion to do a
23 search and processing of a red Mercury Sable automobile?

24 A Yes, sir. I processed a vehicle, the date, I could look
25 at my notes, but the date, that sounds correct around the 24th

1 at the sheriff's office.

2 Q Okay, so the car, when you came into contact with it, had
3 already been brought to the sheriff's office?

4 A Yes, sir.

5 Q Okay, and did it have, you know, tape on all the doors
6 and the hood and the trunk to make sure that it had not been
7 tampered with?

8 A I would have to refer to my notes or the photos to verify
9 that for you.

10 Q Do you have your notes with you, sir?

11 A I have, I have some. I don't have my photographs.

12 Q Okay.

13 MR. HAZZARD: If I may approach the witness?

14 THE COURT: Certainly.

15 MR. HAZZARD: May make it very quick.

16 BY MR. HAZZARD:

17 Q I'm going to hand you a document, well, let me hand it to
18 the Prosecutor first. This is a document that says additional
19 narrative and it has your name typed on it that's been
20 provided to me very kindly by the Prosecution. Let me give
21 you a chance to take a look at that and see if that's your
22 work product, sir.

23 A Yes, sir.

24 Q Okay, so do you have a copy of that document I've handed
25 you?

1 A Yes, sir, this, this is it right here.

2 Q All right, thank you, sir.

3 A Yes, sir.

4 Q So if you'll take a look at that, doesn't it indicate at
5 the bottom of the first paragraph, "I entered the building,
6 observed the vehicle, evidence tamper tape had been placed on
7 the doors, hood and trunk of the vehicle. All, all seals were
8 found secure."

9 A On the first paragraph?

10 Q Bottom of the first paragraph where it starts out with
11 ---

12 A Uh-huh.

13 Q --- "On March 24th, 2011, I met with Investigator
14 Busbee."

15 A Yes, sir.

16 Q At the end of that paragraph, the last sentence, "I then
17 entered the building," do you see that last sentence?

18 A Yes, sir. Yes, sir. I checked the - we have a building
19 in the back, a facility and that's why the first part of that
20 says that the doors were locked just to verify that and that
21 the tamper tape was placed on the doors and hood. Seals were
22 found secure.

23 Q Okay, and so you - explain to the jury what you do as far
24 as when you process this vehicle. What, what all did you do?

25 A Okay, well, the first thing with, with this is verifying

- 1 that the seals are still intact and then at that point I'll
2 photograph the vehicle as, as I find it. After that I will do
3 a search, much like we'll do on at a scene of a house or
4 anywhere else. We do a walk, walk search inside and outside.
5 In this case I most likely would have limited the interior
6 only to the photograph until I finished processing the
7 exterior of it. So what I would do first would be look for
8 any type of biological evidence that may be present and then
9 use powder to look for latent prints.
- 10 Q Okay, and latent prints, those - that simply means prints
11 that are not visible to the naked eye?
- 12 A That's correct.
- 13 Q Okay, and so you process this vehicle in the normal
14 course of how you would do such a thing?
- 15 A Yes, sir.
- 16 Q Okay, and in searching through the vehicle am I correct
17 in stating, based on your report, you found a lot of items
18 belonging to Cameron Green, the person who operates the
19 vehicle like a ---
- 20 A I probably - I did make note of anything that had any
21 type identification names on it.
- 22 Q Okay.
- 23 A As far as the owner's information I, I would not have had
24 that.
- 25 Q Okay, I believe about halfway down I believe your report

1 says, "Inside a pair of Jordan Craig jeans there was a Wal-
2 Mart receipt, a Wal-Mart employee ID card (Cameron Green) and
3 a Wal-Mart employee ID bracelet (Cameron Green)." Is that a
4 correct recitation of your report, sir, of that segment of
5 your report?

6 A Yes, sir.

7 Q Okay, and if you'll look at page two of your report you
8 list again the items that you - are these items you found in
9 the car - oh, no, these are items you collected from the
10 vehicle. You make a list of the items collected from the
11 vehicle, correct?

12 A Yes, sir.

13 Q Okay, and one of the items collected from the vehicle,
14 vehicle is a red bandana, correct?

15 A Yes, sir.

16 Q All right, thank you, sir. No further
17 questions.

18 REDIRECT EXAMINATION

19 BY MS. BAILEY:

20 Q Was that red bandana in the cabin of the car or in the
21 trunk?

22 A If you'll give me a moment I'll - I would have to look at
23 the notes here. Red bandana, let's see, they were in black
24 jeans and I'll have to go back to - I would, I would say that
25 would look like that was going to be in the trunk.

- 1 Q Was it inside of a pair of jeans?
- 2 A Yes, ma'am.
- 3 Q Was that pair of jeans inside another bag?
- 4 A Well, I have the black jeans with the red bandana and pay
5 stub.
- 6 Q What was in the - was the - was there anything else in
7 those jeans other than that red bandana?
- 8 A I don't have anything else listed for it, no, ma'am.
- 9 Q But it was in the trunk?
- 10 A Yes, ma'am.
- 11 Q Okay, the - let's talk about that shell casing that was
12 found outside. Do you know what caliber shell casing it was?
- 13 A I actually have it with me. I can refer to the evidence,
14 that's okay?
- 15 Q Okay, would that help refresh your recollection?
- 16 A Yes, yes, ma'am. I have listed 9 millimeter.
- 17 Q That's a 9 millimeter shell casing?
- 18 A Yes, ma'am.
- 19 Q Go ahead and keep that out. Is this the 9 millimeter
20 shell casing that was collected on scene?
- 21 A Yes, ma'am.
- 22 MR. HAZZARD: Thank, you ma'am.
- 23 Q I'm going to show you what's now been marked as State's
24 Exhibit 12 for identification. Will you please open that
25 envelope and is the shell casing inside that?

1 A Yes, ma'am.

2 Q Can you open that?

3 A Give me a moment, let me break the seal here.

4 Q Can you examine that shell casing and describe it for the
5 jury?

6 A Okay, it's a silver in color, it's packed with dirt,
7 fired casing, with the 9 millimeter stamped on the backside.

8 Q So the inside of the shell casing is packed with dirt?

9 A Yes, ma'am.

10 Q Are you aware of what caliber the victim was shot with?

11 A A small caliber was the only information that I had.

12 Q Do you mind packing that back up and putting it in there?

13 MS. BAILEY: At this time State would seek to move
14 State's Exhibit 12 into evidence.

15 MR. HAZZARD: Is that the 9 millimeter shell casing?

16 MS. BAILEY: Yes.

17 MR. HAZZARD: Oh, without objection.

18 THE COURT: Without objection.

19 (State's Exhibit Number 12 [nine millimeter shell casing]
20 admitted into evidence and appropriately marked.)

21 MS. BAILEY: I have no further questions.

22 MR. HAZZARD: Okay, very briefly, Your Honor.

23 RECROSS EXAMINATION

24 BY MR. HAZZARD:

25 Q Sir, if you'll look at your additional narrative again

1 it indicates that the items collected from the vehicle again
2 are the employee ID, employee ID bracelet, black cap, black
3 jeans, red bandana, Wal-Mart pay stub, black do-rag, some Nike
4 shoes, a plastic cup, some craft bags and six fingerprint card
5 lifts that you did. Is that a correct statement?

6 A Yes, sir.

7 Q Okay, now, Ms. Bailey had asked you about whether or not
8 the jeans or anything was in some kind of bag or anything of
9 that nature. Your report states, "I also located a pair of
10 black jeans with a red bandana and a Wal-Mart pay stub for
11 Cameron Green inside the pocket. All of these items were
12 collected." Is that correct, sir? It's about, it's about
13 little more than halfway down your report. Starts with, "I
14 also located a pair of black jeans."

15 A Okay, yes, sir.

16 Q Okay, all right, now, once these items were seized, to
17 your knowledge were any of these clothing items submitted to
18 whoever you ---

19 MS. BAILEY: Objection, Your Honor, he could have gone
20 into this on direct - on ---

21 THE COURT: Is this new ---

22 MR. HAZZARD: No, sir.

23 THE COURT: --- material that was covered on redirect?

24 MR. HAZZARD: No, no, but it's just it's re-recross.

25 THE COURT: I'll give him some leeway.

1 MR. HAZZARD: Thank you, Your Honor, I appreciate it.

2 BY MR. HAZZARD:

3 Q Simply asking was any of this stuff submitted for testing
4 for gunshot residue or anything like that to your knowledge?

5 A Not to my knowledge, no, sir.

6 Q Okay, now, is that something you'd be responsible or
7 somebody else would be responsible for that?

8 A Well, someone else would have to give - they would have
9 to come to me with the request and then it would be sent.

10 Q Okay, all right. Thank you very much, sir.

11 A Uh-huh.

12 MS. BAILEY: Nothing further, Your Honor.

13 THE COURT: You may step down.

14 A Thank you.

15 THE COURT: Thank you, thank you, sir.

16 THE COURT: Mr. Hazzard, Ms. Bailey?

17 MR. HAZZARD: Yes, sir.

18 (Whereupon, a bench conference is held in the presence
19 but out of the hearing of the jury.)

20 THE COURT: Ladies and gentlemen, they tell me this is
21 the perfect time to break. We've been working real hard
22 today. So we're going to let you go home. We'd ask you to be
23 back in your jury room at 9:30 in the morning, okay? Thank
24 you very much.

25 MS. BAILEY: Your Honor, may this witness be released?

1 THE COURT: Certainly.

2 MR. HAZZARD: Without objection from the Defense, Your
3 Honor.

4 THE COURT: If Mr., if Mr. Hazzard has no objections.
5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: Okay, that's it for this afternoon. I'll
8 see you all back at 9:30 in the morning.

9 MS. BAILEY: Thank you, Your Honor.

10 MR. HAZZARD: And Your Honor, as you requested on the
11 issue of possible charges, lesser included offenses, I will
12 take this opportunity to discuss that at length with Mr.
13 Bryant ---

14 THE COURT: All right.

15 MR. HAZZARD: --- and have an answer for you first thing
16 in the morning.

17 THE COURT: All right.

18 MR. HAZZARD: Thank you, Your Honor.

19 OFF THE RECORD

20 (On the record, Wednesday, March 20, 2013. The following
21 takes place outside the presence of the jury.)

22 THE COURT: Okay, we've got a couple of more jurors
23 that we're waiting on, but is there any - where's our
24 Defendant? Here he ---

25 MR. HAZZARD: Your Honor, while we're waiting I believe

1 the State and the Defense have provided their proposed charges

2 ---

3 THE COURT: Okay.

4 MR. HAZZARD: --- for your consideration.

5 THE COURT: All right.

6 MR. HAZZARD: And also now that Mr. Bryant is in the
7 courtroom the Court had asked me yesterday to confer with Mr.
8 Bryant regarding if the evidence were to be such that a
9 voluntary manslaughter charge to the jury might be an option
10 whether or not Mr. Bryant would want that charge, I have
11 discussed it with him at length yesterday afternoon and after
12 we recessed for the day. He indicates that he does not wish
13 to have a voluntary manslaughter charge even if such were to
14 be possibly appropriate based on the possible view of the
15 evidence by the jury.

16 THE COURT: And from the State?

17 MS. BAILEY: State's not requesting it.

18 THE COURT: All right, very well, thank you.

19 MR. HAZZARD: Your Honor, if you would, I would ask that
20 you put that on the record with Mr. Bryant, his understanding
21 of it. Please stand up, sir.

22 THE COURT: All right, Mr. Bryant, your attorney tells
23 me that you have had lengthy discussions with him concerning
24 a, a possible voluntary manslaughter charge as an alternative
25 charge in this case, is that correct?

1 MR. BYRANT: Yes, sir.

2 THE COURT: All right, and are you in agreement with
3 your attorney that you do not wish to have a manslaughter
4 charge given in this, in this case, is that correct?

5 MR. BRYANT: Yes, sir.

6 THE COURT: You understand that manslaughter would
7 carry a much lesser sentence if you were convicted of
8 manslaughter?

9 MR. BRYANT: Yes, sir.

10 THE COURT: You understand that, and the only option
11 that the jury would have if I do not charge voluntary
12 manslaughter would be to consider the charge of murder, do you
13 understand that?

14 MR. BRYANT: Yes, sir.

15 THE COURT: And is that what you wish for me to do?

16 MR. BRYANT: Yes, sir.

17 THE COURT: Do you understand the risk that you are
18 running?

19 MR. BRYANT: Yes, sir.

20 THE COURT: All right, sir, you understand that murder
21 carries 30 to life?

22 MR. BRYANT: Yes, sir.

23 THE COURT: And voluntary, I believe, carries a
24 maximum of 20 ---

25 MS. BAILEY: Maximum of 30.

1 THE COURT: Maximum of 30. You understand that? Do
2 you understand that?

3 MR. BRYANT: Yes, sir.

4 THE COURT: All right, sir. All right, very well.

5 MR. HAZZARD: Thank you, Your Honor.

6 MS. BAILEY: Your Honor, for the record the State has
7 no objection to the Defense's proposed charges other than ---

8 THE COURT: Those are, are, are included, Mr. Hazzard.
9 I'm going to give you a copy of my hand of one hand of all,
10 but it, it's very detailed and includes all of those matters
11 that you have raised ---

12 MR. HAZZARD: Okay, Your Honor, I look forward to
13 reviewing.

14 THE COURT: --- in your, in your proposed charge.
15 I'll give you an opportunity to look it over but I think you
16 will find that my hand of one hand of all includes that and
17 more. Okay?

18 MR. HAZZARD: Yes, sir.

19 MS. BAILEY: Is Your Honor inclined to include the
20 State's proposed charge?

21 THE COURT: The State has asked that I charge on the
22 voluntary or supplement my voluntary charge or voluntary
23 statement charge with a charge from State versus Pittman that
24 simply says a juvenile's confession is not involuntary where
25 there's no evidence of extended intimidating questioning or

1 some other form of coercion. A confession or admission of a
2 juvenile can be found to be voluntary under the totality of
3 the circumstances analysis. It is not necessary that a parent
4 or other interested party be present when a juvenile
5 confession is taken. I have a rather detailed and somewhat
6 lengthy charge that I always give on statements of a
7 Defendant, requiring the jury to find beyond a reasonable
8 doubt not only that he made it, but that it was freely and
9 voluntarily given. I will - well, let me hear from you, Mr.
10 Hazzard on, on this particular charge that she's requested.

11 MR. HAZZARD: Your Honor, the charge requested by the
12 State does appear to be an accurate summary ---

13 THE COURT: I think it is.

14 MR. HAZZARD: --- or recitation of what State versus
15 Pittman says. As a result the Defense has no objection to
16 that charge.

17 THE COURT: All right, thank you very much. That was
18 the only one you passed up, was it not?

19 MS. BAILEY: Yes, Your Honor.

20 THE COURT: All right, thank you, and I will add those
21 charges. Taylor has not completed the charge. He's just
22 putting it together but I do have the hand of one the hand of
23 all charge here.

24 MR. HAZZARD: Thank you, sir.

25 THE COURT: There's three pages and I'll let you be

1 looking over that at your - whatever opportunity you have.
2 All right, do we have our jurors here yet? Do you know if
3 they're here? I think there were a couple that we were
4 waiting on. They should be in the jury room.

5 MS. BAILEY: They got her out here.

6 THE COURT: Yeah, but they've been bringing them up.
7 I saw them bringing them through the hall.

8 OFFICER: Your Honor, they're bringing the last one
9 around now.

10 THE COURT: Okay, good. Everyone's here? Okay, if
11 they're ready bring them in.

12 MS. BAILEY: Can I approach briefly?

13 THE COURT: Yeah, just one second.

14 (Whereupon, a bench conference is held.)

15 THE COURT: All right, now we can bring them in.

16 (Whereupon, the following takes place in the presence of
17 the jury.)

18 THE COURT: All right, we have all our jurors now and
19 our alternates back in the courtroom and I see the other
20 staff's here. So, Ms. Bailey, if you would call your witness.

21 MS. BAILEY: Thank you, Your Honor. State calls Dr.
22 Ellen Reimer.

23 Whereupon, Ellen Reimer was called to the stand, duly
24 sworn by the clerk and testified as follows:

25 THE CLERK: Thank you. Please be seated, state your

1 name for the record and then spell it, please.

2 MS. REIMER: My name is Dr. Ellen Reimer.

3 DIRECT EXAMINATION

4 BY MS. BAILEY:

5 Q Dr. Reimer, did you have - did you examine Deon Myers?

6 A Yes, I performed an autopsy on Deon Myers.

7 Q And before we go into that can you tell us where you
8 currently work?

9 A Yes, I'm currently employed at Medical University of
10 South Carolina as a forensic pathologist.

11 Q And what does that mean, forensic pathologist?

12 A It means that I'm, I'm a physician, licensed to practice
13 medicine who is subspecialized in forensic pathology, which is
14 the field in which the doctor, myself, examines deceased
15 individuals and examines their bodies and performs an autopsy
16 in order to determine the cause and manner of death.

17 Q And can you tell us a little bit about your educational
18 background?

19 A Yes, you want me to go all the way - how far back do you
20 want me to go?

21 Q As far back as you'd like to tell us.

22 A Okay, that's fine. After I graduated from college at
23 Bryn Mawr College which is a liberal arts college in
24 Pennsylvania, I graduated in 1985, and then I went to law
25 school and I received my JD, my law degree in 1988, and I

1 practiced law for five years and didn't like one bit of it.

2 MR. HAZZARD: I apologize, Your Honor. I do not know if
3 the State wants a stipulation to her expert credentials, if so
4 the Defense will stipulate.

5 MS. BAILEY: Okay.

6 BY MS. BAILEY:

7 Q If you could just go briefly into ---

8 A Okay, I, well, then I went to medical school and received
9 my MD degree and then I did training in my residency training
10 in pathology at Columbia University in the City of New York,
11 and after receiving my pathology training I did subspecialty
12 training in forensic pathology at the Office of the Chief
13 Medical Examiner of the State of Maryland and additional
14 subspecialty training in cardiovascular and pulmonary
15 pathology at Johns Hopkins Hospital. So I - and I have board
16 certification in forensic pathology and pathology.

17 Q And how long have you been at MUSC?

18 A For a little bit more than four years.

19 Q And do you know how many autopsies you've performed?

20 A Well, yes, just give me a, give me a minute. I've
21 performed in the range an estimated 3,000 autopsies.

22 Q And have you ever been qualified by the court of this
23 state to testify as an expert?

24 A Yes, I have on multiple occasions.

25 Q Do you know how many times?

1 A No, I haven't kept track but in the range of 15 to 20.

2 MS. BAILEY: At this time the State would seek to
3 introduce her testimony as expert testimony - seek to qualify
4 her as an expert in forensic pathology.

5 THE COURT: And I believe that the Defense has
6 indicated they have no objection and stipulate that she is an
7 expert in that field.

8 MR. HAZZARD: That is correct.

9 THE COURT: So she is admitted, ladies and gentlemen,
10 as an expert in the field of forensic pathology, okay.

11 MS. BAILEY: Thank you.

12 BY MS. BAILEY:

13 Q So tell us on what date did you do an autopsy on Deon
14 Myers?

15 A Okay, I'm just going to pull out a copy of my reports.

16 Q Would that help refresh your recollection?

17 A Yes. I, I performed the autopsy of Deon Myers on March
18 19th, 2011.

19 Q And can you describe for us your preliminary findings?

20 A Yes, well, my findings were that - the significant
21 findings were that he had a gunshot wound to the head with the
22 entrance wound on the inner aspect of the right eyelid and the
23 bullet went through the sinuses, which are the air spaces that
24 filter your - the air you breath, like they're sort of behind
25 the bridge of the nose, and then the bullet went into the

1 brain and terminated in the brain at the back of the head.

2 Q Would it assist your testimony in describing for the jury
3 the injuries if you had some pictures?

4 A It would be helpful. Yes, it would be of assistance.

5 Q I'm going to show you what have been previously marked as
6 State's exhibit 13 through 16. If you could take a look at
7 those.

8 A Okay.

9 THE COURT: I have had an opportunity to view those
10 photographs and I'm familiar with them. Mr. Hazzard, have you
11 seen them?

12 MR. HAZZARD: I have seen them, Your Honor. On behalf
13 of the Defendant I will object to the photographs. I believe
14 they're ---

15 THE COURT: All right, let's, let's take the jury out
16 then for a moment, okay?

17 MR. HAZZARD: Okay.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: Now, Mr. Hazzard.

21 MR. HAZZARD: Thank you, Your Honor. The Defense
22 objection would be on several grounds, first of all that the
23 photographs, I believe, would be cumulative. The doctor is
24 here to testify to the nature and extent of the injury and you
25 know how the, the victim, the deceased presented to her for

1 the autopsy. Therefore, they are cumulative in that grounds.
2 I would submit to the Court as part of the objection that they
3 are - that it is very possible that they would inflame the
4 passions of the jury against the Defendant, and as such the
5 probative value, if any, is far outweighed by the prejudicial
6 nature of these photographs.

7 THE COURT: All right, I am going to allow the
8 photographs. The doctor has testified that she would be
9 better able to explain the injuries to the jury through the
10 use of the photographs. I've had an opportunity to review the
11 photographs, There is one photograph in which the decedent is
12 shown. There is a small wound in the inner corner of, I
13 believe, the right eye. There is little or no blood shown
14 there or trauma other than a small wound. I have looked at
15 the other photographs. There is an x-ray that appears to show
16 a projectile in the head. The other photographs were - what
17 were they Ms. ---

18 MS. BAILEY: They're two photographs of the bullet that
19 were extracted.

20 THE COURT: And two photographs of just the projectile
21 and I would assume that that's the projectile that was
22 removed, is that correct?

23 MS. BAILEY: Yes, Your Honor.

24 THE COURT: I do not think that there is much
25 prejudicial value here and I believe that these are probative

1 and should be admitted. Thank you. Please let the jury in.

2 (Whereupon, the following takes place in the presence of
3 the jury.)

4 THE COURT: All right, subject to objection of counsel
5 the four photographs are admitted.

6 MS. BAILEY: 13, 14, 15 and 16?

7 THE COURT: Yes.

8 MS. BAILEY: Are they moved into evidence, Your Honor?

9 THE COURT: Yes, they are.

10 MS. BAILEY: Thank you, Your Honor.

11 (State's Exhibit Numbers Thirteen through Sixteen
12 [Photographs] admitted into evidence and appropriately
13 marked.)

14 Q If you could look at your screen, we're going to bring up
15 State's Exhibit 13 which has now been moved into evidence.
16 I'll give you this copy, too. I think you're a little out of
17 focus up here.

18 A Yes.

19 Q Could you describe for the jury what we're looking at?

20 A Yes, it's a lateral x-ray of the decedent's head prior to
21 my opening the skull. So when he first came in and I
22 performed an x-ray to see if there was a projectile or any
23 other object in decedent's head and we can see that there's a
24 projectile, a bullet that's in toward the back of the head,
25 and the other items we can see on this x-ray are an

1 endotracheal tube that's in his mouth, that's to assist - a
2 medical device that assists with breathing and also there's a
3 drain, a drain that was medically placed within the skull.
4 That's kind of in the middle of, of the head.

5 Q Okay, and could you describe the path that the projectile
6 used?

7 A Yes, we can also see that there are small fragments of
8 bone and also just small fragments of metal making a path from
9 the area of the eye in the front of the head toward the back
10 of the head where the bullet terminates. So after the bullet
11 entered in the face on the inner corner of the right eye it
12 went into the brain and ended up on the left side of the back
13 of the brain.

14 Q I'm going to show you State's Exhibit 14, which'll be
15 coming up on the screen.

16 A Okay.

17 Q And can you describe what the jury's looking at?

18 A Yes, that is the entrance gunshot wound, which is a small
19 entrance gunshot wound on the inner corner of the right eye.
20 You can see the label FA11-169 is this individual's autopsy
21 number. This way everything can be filed according to number
22 and we don't have to worry about mixing up people's names and
23 stuff like that. So FA11-169, this was the 169th case in the
24 year of 2011.

25 Q Now, Mr. Myers, you mentioned that there was evidence of

1 resuscitation and medical treatment. Do you - are you aware
2 of how long he survived after the gunshot wound?

3 A Yes.

4 Q How long was that?

5 A Well, the gunshot wound reportedly took place on March
6 15th at approximately in the - at night around ten, I don't
7 know the exact time, and till he was, he was pronounced
8 deceased on March 18th at 9:30 a.m. So it's like two and a
9 half days that he was kept alive.

10 Q And to a reasonable degree of medical certainty can you
11 say whether this was a fatal wound? Was there any chance that
12 he could survive?

13 A No.

14 Q That there is no chance?

15 A There is no chance that he would have survived a wound
16 like this.

17 Q Okay, and to a reasonable degree of medical certainty can
18 you say what the cause and manner of death?

19 A Yes, the cause of death is a gunshot wound to the head
20 and the manner is homicide.

21 Q I'm going to show you what have been previously admitted
22 as State's Exhibit 15 and 16. Can you describe for the jury
23 what we're looking at?

24 A Yes, this is a photograph taken of the bullet that I
25 removed from Mr. Myers' brain at the autopsy.

1 Q Okay, and what were you able to determine - you're not a
2 ballistics expert, but what were your findings as to this
3 bullet?

4 A Well, it was a small caliber bullet and it was non-
5 jacketed, and I can tell that because I can see rifling marks
6 on the, on the, on the bullet, and so it was a non-jacketed
7 small caliber projectile and it had a little bit of copperish
8 color, discoloration on it.

9 Q Okay, I'm showing you State's Exhibit 16 and can you
10 describe for the jury what that is?

11 A Yes, it's the same projectile just taken at a different
12 angle from the base.

13 Q I'm now showing you what has been marked for
14 identification as State's Exhibit Nine. Do you recognize
15 that?

16 A Yeah, thank you. This is the, the projectile that I
17 removed from Mr. Myers' brain at autopsy, the photograph of
18 which is taken here.

19 Q Okay, and what did you do with this, with State's Exhibit
20 Nine, the projectile, what did you do with it once you removed
21 it?

22 A When I removed it I, I transferred that, and in addition
23 to pulled scalp hair to a detective from - who was from
24 Georgetown.

25 Q And do you remember his name?

1 A I have to look it up.

2 Q That would refresh your recollection?

3 A Yes, okay. Here it is. I transferred it to - after I
4 completed the autopsy I transferred it to Sergeant James
5 Busbee of the Georgetown County Sheriff's Office.

6 MS. BAILEY: All right, no further questions at this
7 time.

8 THE COURT: Any questions, Mr. Hazzard?

9 MR. HAZZARD: Yes, sir, very briefly. Thank you.

10 CROSS EXAMINATION

11 BY MR. HAZZARD:

12 Q Good morning, Doctor.

13 A Hi.

14 Q Is there any information that you obtained in your
15 autopsy that tells you who pulled the trigger?

16 A No.

17 Q Okay, and I believe based on your autopsy it said that
18 Mr. Myers, the deceased, was 26 years old at the time of your
19 autopsy?

20 A Yes.

21 Q Okay, so that would have meant that in 2007 or four years
22 earlier he would have been 22 or 23 years old?

23 A Correct.

24 Q Okay, and he was listed as 73 and a half inches tall, is
25 that correct?

1 A That's how I measured him as he was lying on the table,
2 yes.

3 Q Okay, so that would make him six feet, one and a half
4 inches?

5 A That's correct.

6 Q Okay, and you indicate in your report that the path of
7 the projectile or the bullet, the wound path has what is
8 referred to as minimal upward deviation, is that correct?

9 A Yes.

10 Q What does that mean?

11 A That means that when the individual is in the anatomic
12 position, as if you know just the body is is kind of straight
13 up and down, the bullet from the point where it entered the
14 body to where it ended, it ended up a little bit higher
15 relative to the top of the head.

16 Q But not much higher based on what you put in there?

17 A Right.

18 Q So it wasn't like it was a ---

19 A If I said it was minimal upward deviation it was minimal
20 upward deviation with the - if, if, if the decedent is viewed
21 from - in the anatomic position which is perfectly straight up
22 and down.

23 Q Okay, all right, thank you, ma'am. No further questions.

24 MS. BAILEY: Nothing from the State. We would ask that
25 she be excused from her subpoena.

1 THE COURT: You may step down, Doctor. Thank you.

2 A Thank you.

3 THE COURT: And you are released from your subpoena.

4 A Okay, thank you.

5 THE COURT: Did you have any objections to that, Mr.
6 Hazzard?

7 MR. HAZZARD: No, sir, no, sir.

8 MS. BAILEY: State calls Mike Lewis.

9 Whereupon, Mike Lewis is called to the stand, duly sworn
10 by the clerk and testified as follows:

11 THE CLERK: Please be seated. State your name and
12 spell it for the record, please.

13 MR. LEWIS: My name is Mike Lewis.

14 DIRECT EXAMINATION

15 BY MS. BAILEY:

16 Q Can you spell your name for the record, please?

17 A You say spell?

18 Q Yes, sir.

19 A M-I-K-E, L-E-W-I-S.

20 Q Thank you.

21 A My first name is Larry.

22 Q Okay, so it's Larry Mike Lewis?

23 A Larry, right.

24 Q All right, and what do you do now?

25 A I am retired.

1 Q And what did you do in 2011?

2 A In 2011 I was working with the Georgetown County
3 Sheriff's Department.

4 Q Okay, did you handle any evidence related to the death of
5 Deon Myers?

6 A Yes, ma'am, I did.

7 Q And I'm going to show you what's been previously marked
8 as State's Exhibit Number Nine. Do you recognize that?

9 A Yes, ma'am, I do.

10 Q And have you handled that piece of evidence before?

11 A Yes, ma'am, I have.

12 Q What was your role in that?

13 A I was, at that time, I was lieutenant of patrol and my
14 job on this, I took this from Mike Thacker, then evidence
15 custodian, I took this in custody and transported it to SLED
16 Division in Columbia.

17 Q Okay, and what did you do with it once you got to SLED?

18 A When I got to SLED with it I gave it to them, signed off
19 on it, etcetera, with the paperwork and whatever and then it
20 went to their care.

21 Q Okay, did you alter it or tamper with it in any way while
22 it was in your custody?

23 A No, ma'am, I did not.

24 Q Did you open the envelope?

25 A No, ma'am.

1 Q Okay.

2 MS. BAILEY: I've got nothing more for this witness at
3 this time.

4 MR. HAZZARD: Very briefly, Your Honor.

5 CROSS EXAMINATION

6 BY MR. HAZZARD:

7 Q Good morning, Mr. Lewis, how are you?

8 A Yes, sir.

9 Q Did you have any other part in the investigation of this
10 case?

11 A No, sir, not whatsoever.

12 Q So all you did was you received the - that's a bullet,
13 right?

14 A Right.

15 Q You received the bullet from Investigator Thacker, the
16 CSI guy and took it to SLED?

17 A That's correct.

18 Q Okay, you did not transport it back from SLED?

19 A No, sir.

20 Q All right, thank you so much, sir.

21 A All right.

22 MS. BAILEY: Nothing further from the State.

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

24 MS. BAILEY: State calls Nikki Perry Hughes.

25 THE COURT: Will we need this witness again?

1 MS. BAILEY: No, Your Honor. We'd request that he be
2 released.

3 THE COURT: Any objection, Mr. Hazzard?

4 MR. HAZZARD: Without objection, sir.

5 THE COURT: Mr. Lewis, you are released from your
6 subpoena.

7 Whereupon, Nikki Perry Hughes called to the stand, duly
8 sworn by the clerk and testified as follows:

9 THE CLERK: Thank you. Please state your name for the
10 record and then spell it, please.

11 MS. HUGHES: My name is Nikki Perry Hughes, N-I-K-K-I,
12 H-U-G-H-E-S.

13 DIRECT EXAMINATION

14 BY MS. BAILEY:

15 Q Thank you, and what's your job?

16 A I'm a forensic technician in the evidence control
17 department. I work for the South Carolina Law Enforcement
18 Division.

19 Q And do you work intake?

20 A I do.

21 Q And what's your job there?

22 A In evidence control we log in, package and transfer
23 evidence, submit it to the lab for forensic analysis.

24 Q Okay, I'm going to show you what's been previously marked
25 as State's Exhibit Number Nine for identification. Do you

1 recognize this?

2 A I do.

3 Q And did you ever handle that piece of evidence?

4 A I did.

5 Q And can you tell us about that?

6 A I recognize this evidence by the yellow label affixed to
7 the outside of the envelope. It has lab number L11-03063.

8 It's item number two. I took that in on March 21st of 2011
9 from Larry Lewis of the Georgetown County Sheriff's Office.

10 Q And what did you do with it after that?

11 A I would then log the information into the computer.
12 Larry would have provided me with a SLED forensics services
13 request form. I then log the information into the computer.
14 Our computer generates a unique lab number, an item number for
15 each piece of evidence on a case. I would then affix SLED
16 seal tape on the envelope and Larry would initial it and date
17 it in my presence. I would then place it in our firearms
18 evidence intake storage.

19 Q Okay, and did you transfer it out of evidence intake
20 storage at some point?

21 A I did. On March 22nd, 2011, I transferred custody to
22 Forensic Scientist Ira Parnell in our firearms department.

23 Q Okay, while that piece of evidence was in your custody or
24 control did you alter or tamper it in any way?

25 A I did not.

1 Q Did you open the envelope?

2 A No, ma'am.

3 Q Okay.

4 MS. BAILEY: No further questions for this witness at
5 this time.

6 THE COURT: Mr. Hazzard?

7 MR. HAZZARD: Yes, sir, very briefly, Your Honor.

8 CROSS EXAMINATION

9 BY MR. HAZZARD:

10 Q Good morning, ma'am.

11 A Good morning.

12 Q How are you? As a forensic technician do you only do
13 intake on projectiles or do you do intake on all kind of
14 matter that comes in for testing?

15 A I intake all evidence that comes to the lab.

16 Q Okay, to your recollection at any time did you receive
17 any clothing from a subject named Cameron Green for a gunshot
18 residue test?

19 A May I refer to my chain of custody?

20 Q Yes, ma'am.

21 A Okay. It's not listed on my chain of custody, no.

22 Q Okay, thank you, ma'am. No further questions.

23 MS. BAILEY: Nothing from the State.

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

25 A Thank you.

1 MS. BAILEY: May she be released from her subpoena?

2 MR. HAZZARD: Without objection.

3 THE COURT: All right, and you are released from your
4 subpoena. Thank you very much.

5 A Thank you, sir.

6 MS. BAILEY: The State calls Ira Parnell.

7 Whereupon, Ira Byrd Parnell, Jr., is called to the stand,
8 duly sworn by the clerk and testified as follows:

9 THE CLERK: Thank you. Please be seated, state your
10 name for the record and then spell it, please.

11 MR. PARNELL: My name is Ira Byrd Parnell, Jr., P-A-R-N-
12 E-L-L.

13 DIRECT EXAMINATION

14 BY MS. BAILEY:

15 Q Thank you, Mr. Parnell. What is your position? What do
16 you do for a living?

17 A I'm a firearm and tool mark examiner for SLED.

18 Q How long have you been doing that?

19 A Forty years.

20 Q And can you tell us about your training?

21 A Yes, ma'am. I have an associates as well as a bachelor's
22 degree from the University of South Carolina in the area of
23 criminal justice. I'm a graduate of the FBI National Academy,
24 the South Carolina State Academy and the three-year internship
25 program at SLED. During the internship program I received

1 training from three court qualified firearm and tool mark
2 examiners and assisted them in preparing cases and doing case
3 work. At the completion of that internship program I began
4 doing my own examinations in cases and testifying as to the
5 results.

6 Q How many times have you been qualified as an expert in
7 the courts of this state?

8 A In firearms and tool marks approximately 632.

9 MS. BAILEY: At this time, the State would seek to
10 qualify Mr. Parnell as an expert in firearms and tool marks.

11 THE COURT: Mr. Hazzard?

12 MR. HAZZARD: Without objection.

13 THE COURT: Without objection he is admitted as an
14 expert in that field.

15 BY MS. BAILEY:

16 Q I'm going to show you what's been previously marked as
17 State's Exhibit Nine. We'll start with the envelope, do you
18 recognize that?

19 A Yes, ma'am. It has my case number, specimen number and
20 initials written on it.

21 Q How did you come into possession of that?

22 A I received it from Ms. Nikki Hughes ---

23 Q Okay.

24 A --- on March 22nd of 2011.

25 Q Could you take a look at what's in there and describe

1 that for the jury?

2 A Yes, ma'am. It's a fired 22-caliber long rifle
3 projectile or bullet and the container that it was originally
4 in. I sealed it back up so that it would be visible.

5 Q Okay.

6 MS. BAILEY: At this time State would seek to introduce
7 State's Exhibit Nine into evidence.

8 MR. HAZZARD: Without objection.

9 THE COURT: Without objection it's so admitted.

10 (Whereupon, State's Exhibit Number Nine [Projectile]
11 admitted into evidence and appropriately marked.)

12 BY MS. BAILEY:

13 Q I'm going to show you what's been previously marked as
14 State's Seven. Could you describe for the jury what that is?

15 A Yes, ma'am. State's Exhibit 11 [sic] or for
16 identification is a Gecado brand German-made 22 revolver. It
17 holds eight cartridges. It's what we call a top break because
18 it opens from the top and a revolver because the cylinder
19 rotates or revolves.

20 Q Okay, and in the course of the investigation of this case
21 did you compare those two items, item nine and item seven?

22 A Yes, ma'am. I examined State's Exhibit Seven, this
23 revolver, and during the process of that examination I first
24 evaluated it for safety, be sure it was safe to examine or
25 fire. I did that. It was safe to fire. I test fired State's

1 Exhibit Seven, this revolver, and microscopically compared the
2 two - the four test bullets in this case that I fired myself
3 into our water recovery tank. We shoot into a - it's like a
4 giant barrel of water with a funnel at the bottom and when you
5 shoot it in the water the bullets go fast for a short
6 distance, then they slow down, go to the bottom, roll to the
7 middle and they land in a little recovery cup. By shooting
8 into water no markings that are left on the fired bullets are
9 removed and nothing is added because the water just slows it
10 down gradually. I microscopically compared these test bullets
11 that I fired in State's Exhibit Seven for consistency. When a
12 bullet is fired through a barrel markings are put on the
13 outside of that bullet that are unique to that gun barrel. In
14 that microscopic comparisons I discovered that the, number
15 one, the inside of State's Exhibit Seven's barrel was leaded.
16 It had lead residue from previous firings. When other bullets
17 are fired through a barrel that has lead residue in it, this
18 lead that's already in the barrel melts just a little bit.
19 That other bullet leaves a little lead in it. So the markings
20 that were on my test bullets were not real consistent. In
21 other words they did not look exactly alike. I then
22 microscopically compared State's Exhibit Nine, this fired
23 bullet, to the test bullets that I fired from State's Exhibit
24 Seven, and as a result of those microscopic comparisons I was
25 not able to say conclusively that State's Exhibit Nine was

1 fired from State's Exhibit Seven. However, the general
2 markings of the land and groove impressions that are unique to
3 State's Exhibit Seven were similar to those that were on
4 State's Exhibit Nine and State's Exhibit Nine could have been
5 fired in State's Exhibit Seven.

6 Q And why - what is part of the reason that you couldn't
7 compare all of the groove impressions on State's Exhibit Nine?

8 A Well, most of them are missing on State's Exhibit Nine
9 due to damage. It encountered objects after it was fired, in
10 this case the victim, and, and sustained damage. It is soft
11 lead or reasonably soft lead, and when it impacts objects
12 after it's fired then the bullet is distorted to a certain
13 degree, and in the case of State's Exhibit Nine at least half
14 or more of the outer surface of the bullet was destroyed.

15 Q I'm going to show you what's already been entered into
16 evidence as State's Exhibit 12. Now, have you ever seen this
17 before?

18 A I don't see any of my markings on the container, so
19 probably not.

20 Q Okay, could you open it up?

21 A Well, I would.

22 MR. HAZZARD: Your Honor, if - I believe that that piece
23 of evidence that the Prosecutor has handed him is the 9
24 millimeter cartridge or whatever.

25 MS. BAILEY: Yes.

1 MR. HAZZARD: If it'll save us some time the Defense
2 will stipulate that the 9 millimeter cartridge that he has in
3 his possession, State's Exhibit 12 ---

4 THE COURT: Was not where the 22-caliber bullet came
5 from.

6 MR. HAZZARD: Correct, yes, sir. We'll stipulate to
7 that.

8 THE COURT: All right.

9 MS. BAILEY: All right, thank you.

10 THE COURT: Was that what you were going to testify
11 to, Mr. Parnell?

12 A Yes, sir.

13 THE COURT: All right, sir.

14 Q Thank you.

15 MS. BAILEY: The State has no further questions for
16 this witness at this time.

17 MR. HAZZARD: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. HAZZARD:

20 Q Good morning, sir.

21 A Good morning, sir.

22 Q All right, so you've been doing this 40 years?

23 A Excuse me, sir?

24 Q You've been doing this for 40 years?

25 A Yes, sir, I have.

1 Q That's a good long while. Now, of that time how long
2 have you worked for SLED?

3 A The whole 40.

4 Q Okay, I believe you testified and we can agree that no
5 two guns leave identical tool marks, correct?

6 A None have been proven to do so, yes, sir, that's correct.

7 Q Okay, and if you could explain to the jury what a tool
8 mark is?

9 A Firearm, firearms identification is an extension of the
10 tool mark identification discipline. The firearm being the
11 tool and the fired bullet or the fired cartridge case in other
12 cases are the objects that the tool marks are left on. So
13 it's a microscopic study of markings left by this tool on this
14 object in this case.

15 Q Okay, and in your report you indicate that there are
16 inconsistencies in those markings, correct?

17 A That's correct, yes, sir.

18 Q Okay, now, tool marks, as far as their characterization,
19 take some different, different names kind of such as breech
20 marks, firing pin impressions, extractor marks and ejector
21 marks, correct?

22 A Yes, sir, that's - that is having to do with fired
23 cartridge cases.

24 Q Okay, okay.

25 A This case I didn't have any.

1 Q Okay, but here you have the bullet itself. Now, you
2 indicated to Ms. Bailey that it was the, that the markings on
3 this bullet are similar. Is that with regard to the, the
4 twists of the barrel?

5 A That's one of the characteristics that was similar, yes,
6 sir.

7 Q Okay.

8 A The, the individual characteristics that we
9 microscopically examine and study are put inside a gun barrel
10 when it's manufactured. They're unintentional and they're
11 random mainly due to the actual drilling of the hole into the
12 barrel blank. These circular drill marks are highly unique,
13 and you can't reproduce them in the next barrel. So each
14 barrel is unique to itself. Now, further than that, different
15 manufacturers when they cut rifling, now this is going to get
16 maybe a slight bit complicated, but the process of cutting
17 lands and grooves inside the barrel are there for mainly one
18 purpose and that is to make the firearm accurate. A land is a
19 section of the barrel that is the same diameter as was
20 originally drilled. A groove is an area between the lands
21 that is slightly larger diameter, in other words metal is
22 removed between the lands. The lands squeeze the bullet as it
23 goes out the barrel and the twist that you were referring to
24 can either be right or it can be left. It's very much like a
25 quarterback throwing the football. When he throws a football

1 and it spins, it's stable and it goes farther and straighter
2 than it would if he threw it sideways. Same principle applies
3 to a bullet, it spins around a central axis. In the case of
4 State's Exhibit Seven it has a right hand twist and six lands
5 and grooves. On State's Exhibit Nine I believe I had portions
6 - if I may refer to my notes just for a second here - I had a
7 portion of two or three lands and grooves, parts of lands and
8 grooves remaining. The others were obliterated by damage.
9 Now, the size of the lands and grooves that were on my test
10 bullets that I fired from State's Exhibit Seven were the same
11 approximate width as those that I observed remaining on
12 State's Exhibit Nine. There were just not enough of the
13 individual random markings left because of damage and because
14 of lead to the inside of the barrel in State's Exhibit Seven
15 for me to conclusively say that, yes, State's Exhibit Nine was
16 fired by Seven or it was not fired by Seven. It could have
17 been fired by Seven or it could have been fired by another
18 firearm with similar land and groove dimensions.

19 Q Okay, and when you talk about similar land and groove
20 dimensions, a manufacturer of a gun, if they're making a
21 certain model of gun, like a 22 or a 9 millimeter or a 357,
22 say Smith and Wesson if they're the manufacturer of a certain
23 type of gun like a 357, pretty much the lands and grooves and
24 the dimension of the barrel is going to be the same for every
25 one of those guns they make, correct?

1 A That's correct.

2 Q And the twist is going to be the same for every one of
3 those guns they make as far as coming from the manufacturer?

4 A That's correct.

5 Q Okay, but the different thing will be the actual markings
6 left on the bullet by the firing action, what we refer to as
7 the tool marks, correct?

8 A Of that particular firearm, yes.

9 Q Of that particular firearm.

10 A Uh-huh.

11 Q And that's where the inconsistencies come in, right?

12 A The inconsistencies in this case, like I said before,
13 were, were at least twofold, one being the, the condition of
14 the inside of the barrel of State's Exhibit Seven, which had
15 been fired several times anyway before, and without the lead
16 being removed part of that lead stays in there and obscures
17 some of those individual markings we were talking about. The
18 other thing that affected this case was the damage to State's
19 Exhibit Number Nine, and because of the fact that the barrel
20 was leaded and it causes that melted lead to move around and
21 shift I was unable to microscopically say that State's Exhibit
22 Nine was or was not fired in State's Exhibit Seven, but it
23 could have been.

24 Q Okay, so then in your experience if a gun is taken into
25 evidence and then submitted to you for analysis, if it has

1 been fired at some point between the time of the incident that
2 caused it to be taken into evidence and the time that you
3 received it, is it your testimony to this jury then that you
4 can never make a determination because of that leading that
5 ---

6 A No, sir, no, sir, that is not my testimony. That would
7 not be the case.

8 Q Okay.

9 A Individual firearms behave differently. Firearms such as
10 Smith and Wesson that you mentioned earlier, normally the
11 inside of the barrel is finished better or it's slicker,
12 smoother, and it does not accumulate lead as much as a firearm
13 such as State's Exhibit Seven might. It may be due to the
14 roughness of the bore during manufacture or the lack of
15 polishing after it's been rifled. There are many factors and
16 also the lack of cleaning. If, if that lead is cleaned out
17 and removed then the markings will be more visible on
18 subsequent bullets that are fired out of that barrel.

19 Q But there's no question that with regard to the bullet
20 that you were given to analyze and your test bullet that's
21 done in a laboratory setting that there are inconsistencies
22 noted in those markings, correct?

23 A There are similarities noted in the land and groove
24 dimensions as well as some individual similarities, but there
25 were enough, enough inconsistencies between my test to each

1 other and my test with State's Exhibit Number Nine to where
2 there was inconsistency noted there and the results are
3 inconclusive.

4 Q All right, thank you so much.

5 REDIRECT EXAMINATION

6 BY MS. BAILEY:

7 Q So in addition to the, as you describe like when you're
8 throwing a football, the grooves that are in every single
9 weapon made by this manufacturer of this kind there are
10 individual characteristics of this weapon, is that right?

11 A Certainly this weapon would have its own individual
12 characteristics, but to explain that a little farther when,
13 when it's been fired numerous times without being cleaned or
14 the lead removed, then these individual markings are somewhat
15 masked and changeable because of the lead shifting around as I
16 described earlier. There were some individual markings that
17 were similar to State's Exhibit Nine, but they were, they were
18 inconsistent, in other words they didn't repeat on each test.
19 You can see parts of it in parts - in places and not in
20 others. So based on the fact that the individual dimensions
21 of the lands and grooves in State's Exhibit Seven were similar
22 to the dimensions of the land and groove impressions remaining
23 on State's Exhibit Nine and the damage to Nine, the leading of
24 State's Exhibit Seven, all these factors combined to make it
25 an inconclusive.

1 MS. BAILEY: Thank you.

2 RECROSS EXAMINATION

3 BY MR. HAZZARD:

4 Q To follow up very briefly, did you or were you able to
5 submit the dimensions of the bullet in question to Drugfire?

6 A The ---

7 MS. BAILEY: Your Honor, I'm going to object. This
8 wasn't covered on cross. This is new.

9 MR. HAZZARD: She went into ---

10 THE COURT: I'll let him ask it.

11 MR. HAZZARD: Thank you, Your Honor.

12 A We have the IBIS bullet computer at SLED. The
13 computerized system that we use, we do not enter 22s at all.

14 Q Okay.

15 A So the answer to your question is no.

16 Q Okay, and with Drugfire, that would be the FBI ballistic
17 database and it was not submitted to that, correct?

18 A Well, number one, no, the answer to the question is no.

19 Q Okay.

20 A But the, the condition of State's Exhibit Nine would not
21 be such that it would be fruitful to, to even, even submit
22 because it does not have a complete base.

23 Q Okay, thank you, sir.

24 A Yes, sir.

25 MS. BAILEY: No further questions. We ask that he be

1 released from his subpoena.

2 THE COURT: Any objection?

3 MR. HAZZARD: No, sir.

4 THE COURT: Mr. Parnell, you are released from your
5 subpoena. Thank you.

6 A Thank you, Your Honor.

7 MS. BAILEY: And at this time the State is going to
8 rest.

9 THE COURT: All right. All right, ladies and
10 gentlemen, as you've heard the State has rested now. That
11 means that the State has concluded its presentation of
12 evidence in this case. I am going to have to take up several
13 matters at this moment with counsel, so I'm going to let you
14 go into your jury room. It might be a half hour or so. So
15 are there some refreshments and things back there for them,
16 soft drinks and things? Okay. If you would, Madam Forelady,
17 take your jury back and get comfortable. We'll bring you back
18 as soon as we can.

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: All right, Mr. Hazzard?

22 MR. HAZZARD: Your Honor, at this time noting that the
23 State has rested, the Defense would make a motion for a
24 directed verdict. The grounds of that motion for a directed
25 verdict of not guilty is that the evidence submitted by the

1 State, even taken in the light most favorable to them, we
2 submit is not sufficient and does not rise to the level to
3 submit to the jury for their consideration, Your Honor.

4 THE COURT: All right, Madam Solicitor?

5 MS. BAILEY: Thank you, Your Honor. I would submit
6 that the testimony of Investigator Busbee, including the
7 confession of the Defendant, along with the medical examiner
8 alone would be enough to go to the jury, but in addition to
9 that we have multiple witnesses putting the gun in Mr.
10 Bryant's hand, one person who says he saw a person matching
11 Mr. Bryant's description fire the trigger, fire the gun and
12 that that's enough to go to the jury.

13 THE COURT: I would agree with you, Madam Solicitor.
14 I think there's certainly enough in this case to take it to
15 the jury, Mr. Hazzard. Now, Mr. Hazzard, will you put up a
16 defense?

17 MR. HAZZARD: If the Court would give me an opportunity
18 to go over that again with my client.

19 THE COURT: I certainly will. I want you to explore
20 it fully with your client. We have copies of the, of the
21 charge here ready for each of you. I want to give those to
22 you and give you an opportunity to read over them. Before we
23 bring the jury back in let's make sure we're on track with our
24 charge and we all agree what should be charged. I think
25 that'll help you with your closings and we'll go ahead and do

1 that.

2 MS. BAILEY: Thank you, Your Honor.

3 THE COURT: So we'll, we'll break for a few minutes,
4 as long as you need, Mr. Hazzard, and then I'll - Mr. Hazzard,
5 do you want me to charge or instruct your client as to his
6 rights to remain silent before you talk with him?

7 MR. HAZZARD: I would appreciate that, Your Honor.
8 Please stand up.

9 THE COURT: Okay. All right, could we place Mr.
10 Bryant under oath?

11 (Defendant sworn by clerk.)

12 THE COURT: All right, Mr. Bryant, if you would please
13 direct your attention to me. At this time I'm going to
14 explain to you certain of your rights and if you don't
15 understand anything I say please let me know. If you want me
16 to explain anything in a more detailed fashion or to repeat
17 myself I'll be happy to do that. Do you understand?

18 MR. BRYANT: Yes, sir.

19 THE COURT: It's important that you understand what
20 I'm telling you now. Understand?

21 MR. BRYANT: Yes, sir.

22 THE COURT: So you let me know if there's anything
23 that you don't understand.

24 You have reached or we have reached the, the stage of
25 this trial where you can present a defense if you choose. You

1 have the right to claim the protections given you by the Fifth
2 Amendment to the Constitution of the United States and this
3 amendment says in part no person shall be compelled in any
4 criminal case to be a witness against himself. This means
5 that you cannot be required to testify in this case. You have
6 the right to testify on your own behalf; however, no one can
7 make you testify, and let me make one thing clear to you,
8 whether you testify or not does not mean that you can't put up
9 other witnesses. Do you understand that?

10 MR. BRYANT: Yes, sir.

11 THE COURT: Sometimes people get a little confused and
12 they think, "Well, if I don't testify I can't put up any other
13 witnesses." You certainly can. You can exercise your
14 personal right to remain silent and put up other witnesses in
15 your defense. Do you understand that?

16 MR. BRYANT: Yes, sir.

17 THE COURT: Now, this right to remain silent that
18 we're talking about is a personal right and no one can waive
19 it or give it up except you. If you decide to testify, you
20 will be subject to the same rules that govern other witnesses
21 and you may be examined by your attorney and cross examined by
22 Ms. Bailey, the Solicitor, on any relevant issue in this case.
23 In addition, if you have any convictions involving dishonesty
24 or false statements or for crimes punishable by imprisonment
25 for more than one year and this Court determines that the

1 probative value of admitting, that is the evidentiary value,
2 of admitting that evidence to this jury outweighs its
3 prejudicial effect to you or harmful effect to you, the
4 Solicitor will be able to introduce your record to attack your
5 credibility or your believability. Do you understand that?

6 MR. BRYANT: Yes, sir.

7 THE COURT: Okay, what that means is if you have a
8 crime that involved dishonesty or false statements or for
9 which you could have gotten, could have gotten a year or more
10 in your past that's a conviction. The Solicitor can go into
11 it if she can convince me that admitting that evidence to
12 prove or disprove your believability outweighs its prejudicial
13 or harmful effect on you. Do you understand that?

14 MR. BRYANT: Yes, sir.

15 THE COURT: Okay, if you decide to testify, this
16 decision on your part must be freely, voluntarily and
17 intelligently made with knowledge of the protections given you
18 by the Fifth Amendment and the consequences of your decision
19 to testify. If you decide not to testify I will tell the
20 jurors that they cannot give the fact that you did not testify
21 any consideration whatsoever and there's to be absolutely no
22 prejudice to you because you did not testify. Do you
23 understand that?

24 MR. BRYANT: Yes, sir.

25 THE COURT: I'll tell them they can't use that against

1 you in any way. Do you understand?

2 MR. BRYANT: Yes, sir.

3 THE COURT: Okay, it is left entirely up to you
4 whether or not to testify. Now, I'm going to let you talk
5 with your attorney, family or friends, anyone else that you
6 think that you need to talk to concerning this issue, but the
7 final decision is going to be left entirely up to you. Do you
8 understand that?

9 MR. BRYANT: Yes, sir.

10 THE COURT: Now, do you understand everything that I
11 tried to explain to you?

12 MR. BRYANT: Yes, sir.

13 THE COURT: Do you have any questions that you want to
14 ask me before you talk with your attorney about what I've
15 explained to you?

16 MR. BRYANT: No, sir.

17 THE COURT: Now, when we come back in, if you have a
18 question that arises during your conversation with your
19 attorney, you tell Mr. Hazzard to let me know that, okay?

20 MR. BRYANT: Yes, sir.

21 THE COURT: And I'll be happy to answer. Can't give
22 you legal advice, but I'll be happy to explain this again or
23 explain your rights to remain silent. Do you understand that?

24 MR. BRYANT: Yes, sir.

25 THE COURT: Okay, now, I want you to talk to your

1 attorney. I'm going to give you some time to do that. I'm
2 also providing your attorney with a copy of the proposed
3 charge that I have or what I believe to be the law in this
4 case and I have included in it the charge that, just out of an
5 abundance of caution, if you do not testify. I've included a
6 sample of a charge that I would give telling the jury that
7 they could not use that fact against you. Do you understand
8 that?

9 MR. BRYANT: Yes, sir.

10 THE COURT: I give that to you just so you will know
11 what I would tell the jury if you decided not to testify. Do
12 you understand?

13 MR. BRYANT: Yes, sir.

14 THE COURT: All right, you talk with your attorney.
15 You come back in, if you've got any more questions for me, you
16 make sure Mr. Hazzard asks me or tells me that you've got
17 another question and I'll have you tell me at that time
18 whether or not you want to testify, okay?

19 MR. BRYANT: Yes, sir.

20 THE COURT: All right, we're at ease. As I've said,
21 Mr. Hazzard, I have included a charge on the Defendant's right
22 not to testify. I was kind of under the impression from our
23 conversations earlier that he might not. So I have provided a
24 sample of my, my charge on Defendant's exercise of his rights
25 or his rights under the Fifth Amendment. Okay?

1 MR. HAZZARD: Yes, sir. Thank you.

2 THE COURT: All right, do you have a copy of it? You
3 got it? Okay.

4 OFF THE RECORD

5 (On the record. The following takes place outside the
6 presence of the jury.)

7 THE COURT: All right, Mr. Bryant, you are still under
8 oath. Have you had an opportunity to discuss the matter of
9 your Fifth Amendment protections with your attorney?

10 MR. BRYANT: Yes, sir.

11 THE COURT: And have you had all the time you need to
12 talk with him?

13 MR. BRYANT: Yes, sir.

14 THE COURT: Okay, do you need to ask me any questions
15 about it?

16 MR. BRYANT: No, sir.

17 THE COURT: Okay, have you made a decision as to
18 whether or not you will testify?

19 MR. BRYANT: Yes, sir.

20 THE COURT: And could you tell me what that is?

21 MR. BRYANT: Plead the fifth.

22 THE COURT: I'm sorry?

23 MR. BRYANT: I take the Fifth Amendment.

24 THE COURT: You're going to exercise your Fifth
25 Amendment rights?

1 MR. BRYANT: Yes, sir.

2 THE COURT: Then you will not testify, is that what
3 you mean?

4 MR. BRYANT: Yes, sir.

5 THE COURT: Is that correct, Mr. Hazzard?

6 MR. HAZZARD: Yes, sir, Your Honor.

7 THE COURT: Is that your understanding of your
8 conversations with Mr. Bryant?

9 MR. HAZZARD: Yes, sir.

10 THE COURT: All right, Mr. Bryant you may sit down.
11 Mr. Hazzard, will you put up any other witnesses in the
12 Defense of this case?

13 MR. HAZZARD: In speaking with my client at length, not
14 only today but for the past several weeks, his position has
15 not changed. He chooses to exercise his right to remain
16 silent and exercise his right to not present a case in chief
17 at this trial.

18 THE COURT: And he will have the last argument?

19 MR. HAZZARD: Yes, sir.

20 THE COURT: Okay, now, let's address the, the charge,
21 proposed charge. Have you had an opportunity to look at it,
22 Mr. Hazzard?

23 MR. HAZZARD: Yes, sir.

24 THE COURT: And do you have any objections to the
25 charge?

1 MR. HAZZARD: Your Honor, I have reviewed the charge.
2 Out of an abundance of precaution I would object to it insofar
3 I would ask that my Defense request to charge one, two and
4 three be added and that the documents provided to the Court
5 with the request to charge one, two and three be made a
6 Court's Exhibit for the record.

7 THE COURT: Okay, and I would like to go through
8 those. You've asked that I charge prior knowledge that a
9 crime is going to be committed without more is not sufficient
10 to make a person guilty of the crime, and I think, and I'm
11 certain that that is a part of, of my charge. Let me get over
12 here.

13 MR. HAZZARD: That'd be around page 20, Your Honor.

14 THE COURT: On page 20 I say prior knowledge that a
15 crime is going to be committed without more is not sufficient
16 to make a person guilty of that crime. Mere knowledge another
17 person's going to commit a crime even if the Defendant is
18 present when the crime is committed is not sufficient to
19 convict the Defendant as a principal. Guilt as a principal is
20 shown by actual or constructive presence at the scene as a
21 result of a prior arrangement. Therefore, a finding of a
22 prior arranged plan or common scheme is necessary and that I
23 think covers what you have asked me to charge. In fact, I
24 believe it goes further than what you've asked. Also, you
25 have asked that I charge to be liable as an accomplice the

1 Defendant must have knowledge of the principal's criminal
2 conduct, mere presence at the scene of the crime is not
3 sufficient to establish guilt as an accomplice, and I think
4 that that, again, is the same charge, and again, I believe my
5 charge goes even further. Mere presence, your last is mere
6 presence at the scene is insufficient to prove someone guilty
7 of the crime. The burden is on the State to prove every
8 element of the crime charged. If you find after viewing all
9 the evidence that the State has proved that the Defendant was
10 only present at the scene of the crime and they have not
11 proven beyond a reasonable doubt any other participation in
12 the crime then you must find the Defendant not guilty. I have
13 looked at my charge. It's this, however, mere presence at the
14 scene of a crime is not sufficient to convict one as a
15 principal on the theory of aiding and abetting. Intent is
16 also a necessary element for there must have been a common
17 design or intent to commit the crime and the crime must have
18 been committed pursuant thereto with the person aiding and
19 abetting by some overt act. Intent means intending the result
20 which actually occurs, not accidentally or involuntarily, and
21 I think it's very clear there that I'm telling the jury that
22 just mere presence is not enough, that the State must show
23 that you intended for the crime to have been committed, and
24 again, I think it goes even further than what you have asked
25 me to do and I think that that does sufficiently instruct on

1 the law. There is one thing that gave me some pause and that
2 and you haven't raised it, but in the - on page 20, hand of
3 one hand of all, I give an example. That's an example that's
4 commonly given. It says for example two people can be guilty
5 of killing another person when only one of the two had a gun
6 and there was only one bullet and only one of the two fired
7 the shot that caused death. I don't want this jury to think
8 that I am commenting on the facts in this case at all. If you
9 are uncomfortable with that example I would change that to say
10 something like two can be guilty of killing another person
11 when only one of the two had a weapon and only one of the two
12 used the weapon to cause the death. I would change it like
13 that if you would prefer if you are uncomfortable with the
14 example that's in my charge.

15 MR. HAZZARD: Yes, sir, it is very close to commenting
16 on the, the perception of commenting on the facts of the case.
17 You know, in fact, I'd go farther and say change it to two
18 people can be guilty of robbing a liquor store, one stays
19 outside and is the getaway drive.

20 THE COURT: Well, let me, let me just - I'm going to
21 change it, but I'm going to change it two people can be guilty
22 of killing another person when only one had a weapon.

23 MR. HAZZARD: Your Honor, we would object.

24 THE COURT: Let me look, let me read it again and
25 perhaps you have a point there. In fact I think it would be

1 better if I took the example out totally. I don't think it's
2 necessary. I think it's clear if we simply say a person who
3 joins with another to commit an unlawful act is criminally
4 responsible for everything done by the other person which
5 happens as a probable or natural consequence of the acts done
6 in carrying out the common plan and purpose and then go to -
7 and let it end there and then pick it up again with if two or
8 more persons - people are acting together, are together,
9 acting together, assisting each other in committing the
10 offense, the act of one is the hand of all. I think that
11 would be the safest thing to do.

12 MR. HAZZARD: Yes, sir.

13 THE COURT: All right, Taylor, let's delete that, that
14 sentence that begins with for example. Let's just take it
15 out. Do you think - do you have any opinion on that, Ms.
16 Bailey?

17 MS. BAILEY: No objection, Your Honor.

18 THE COURT: Okay, let's take that off. All right,
19 and would you have any other objections or to the charge, Mr.
20 Hazzard, other than the ones you've put on this record
21 already?

22 MR. HAZZARD: No, sir.

23 THE COURT: How about the State?

24 MS. BAILEY: No, Your Honor.

25 THE COURT: Okay, very well, then that will be the

1 charge and you can rely on that during your closings. I am
2 going to bring the jury back in and it's just after 11. What
3 I would like to do is go ahead and do the charges, I mean, the
4 arguments and charges. Let's send out for lunch for them, put
5 them back in the jury room, let them either eat their lunch or
6 deliberate while they are eating. Just let them move on with
7 it, okay? I don't want to send this jury out for lunch this
8 far or this close to the end of the case after they've heard
9 all the evidence. Okay, how about that? Let me ask you, who
10 would be in charge of ordering lunch for them? Okay, I would
11 think that probably an hour for charges and arguments,
12 something along those lines. My charge won't be that long,
13 25, 30 minutes for each of you probably would be about right.
14 Let's have lunch for them around 12:30. Let's do whatever we
15 need to do to have lunch here about 12:30, okay? All right,
16 let's bring the jury in.

17 (Whereupon, the following takes place in the presence of
18 the jury.)

19 THE COURT: We have our jury back. Ladies and
20 gentlemen of the jury, as you heard before we took a break the
21 State has rested. The Defendant in this matter has exercised
22 his right not to put up any witnesses or testify himself in
23 this case and I will give you a charge on his exercise of that
24 right when I charge you on the law at the end of the case, but
25 we're at the point where we now will have closing arguments.

1 Again, let me remind you that closing arguments are not
2 testimony. These are simply the attorneys pointing out to you
3 what they have heard from the witness stand and their view of
4 the evidence that's been presented in this case. Of course,
5 you are the ultimate triers of the facts and you will
6 determine what evidence is credible and what evidence is not
7 credible and what evidence you will use in your deliberations.
8 Ms. Bailey?

9 MR. HAZZARD: Your Honor, if I could before she gets
10 started. I apologize. I do want to say for the record that
11 the Defense renews the motions previously made.

12 THE COURT: And the Defense rests?

13 MR. HAZZARD: And the Defense rests, that's correct.

14 THE COURT: All right, thank you, sir.

15 MS. BAILEY: May it please the Court?

16 THE COURT: Yes.

17 MS. BAILEY: March 15th, 2011, at the Ghost Den
18 nightclub in the Plantersville section of Georgetown County.
19 That day is when this case began. That day is when
20 investigation of what happened that night started. All this
21 other stuff, taking all this evidence to SLED, questioning
22 Defendants, that's when all this started. That day was also
23 the end of a life. Deon Myers, 26 years old, his life ended.

24 You heard evidence of two types and the Judge is going to
25 tell you that you can consider two types of evidence, witness

1 testimony and physical evidence, and that you can give both of
2 those equal weight. Physical evidence is not the only kind of
3 evidence that's admissible in criminal court. Witness
4 testimony can be just as important. You heard from several
5 witnesses who were there that night. You heard from Terell
6 Myers, the brother of Deon Myers. You heard Terell say that
7 he recognized Lavern when Lavern walked in the club with a
8 shotgun. You heard Terell say that he saw another guy, a
9 shorter guy, a guy he didn't recognize, a guy with a bandana
10 over his face, and that that guy had a small black gun in his
11 hand and that that guy with the bandana, the smaller one,
12 pulled the trigger. Terell Myers described it as a fire
13 coming out of the gun in that dark nightclub.

14 You've heard the testimony of Shaquettia Holmes.
15 Shaquettia Holmes saw her uncle, Lavern Holmes, walk into that
16 club with a shotgun. She saw him chase Deon Myers into the
17 bathroom. She, all of this big of her, jumps in the middle of
18 those two guys and tries to diffuse the situation. Deon Myers
19 is hiding behind the door. The bathroom door is open and he's
20 hiding behind the door. She gets Lavern to leave with the
21 shotgun. She convinces Lavern to leave the bathroom. She
22 tells you she knows Tamar Bryant, she knows him from around
23 town. She says Tamar Bryant's there, too, he's in the
24 bathroom and that she sees Tamar Bryant with a small, black
25 gun. She knows him and sees him with a small black gun and

1 that when everybody else had left the bathroom she was still
2 in there. She heard the gun go off.

3 You've heard from Cameron Green. Cameron Green is
4 charged in this crime as well. Cameron Green drove the car
5 there, he drove the car away. He dropped everybody off when
6 it was all over. Cameron Green tells you he didn't go in that
7 club. Some people say they saw him there and the reason why
8 is he stepped just inside the door and then he realized he
9 didn't have the two dollar cover charge that it took to get in
10 and so he walked outside and talked to some friends until the
11 cover charge was over. Most importantly, Cameron Green tells
12 you after gunshots went off, after the chaos, after everybody
13 running, all five of those guys, including Tamar Bryant and
14 Lavern Holmes, who traveled to that night club, they all go
15 back to Cameron's car. As soon as they get in the car, Lavern
16 Holmes is yelling at Tamar Bryant saying, "Why'd you shoot
17 him, why'd you shoot him," and Tamar Bryant is saying, "My
18 bad." That's confession number one that you heard.

19 You heard from Investigator Busbee who told you that on
20 scene sometimes there's just not a lot of evidence to collect
21 on scene. On scene we had some bloody clothing which was all
22 from people trying to render aid to Deon Myers, some bloody
23 footprints, people walking through trying to help him out.
24 That was all they were able to collect and a shell casing
25 outside that had nothing to do with this crime because it was

1 a 9 millimeter. So they start interviewing witnesses,
2 interviewing witnesses. Soon as they pick up somebody they ID
3 as one of the guys who went there, they start interviewing Co-
4 Defendants. Then Investigator Busbee picks up Tamar Bryant,
5 brings him into the sheriff's department, and Tamar Bryant
6 confesses to being the shooter.

7 Now, Mr. Hazzard is a very fine attorney. Mr. Hazzard is
8 going to stand up here and tell you that that confession was
9 false, that people make false confessions every day, you see
10 it in the news. I don't know if any of you all have ever seen
11 one of those false confessions on television, but you watch
12 this confession carefully. Mr. Bryant, Tamar Bryant, actually
13 corrects Investigator Busbee several times. He's trying to
14 get the order of how people were sitting in the car and
15 Investigator Busbee says, "It was you and then Brandon and
16 then Kawaun," and Tamar goes, "No, no, no. It was me and then
17 Kawaun and then Brandon." Investigator Busbee says, "Now, you
18 were about this far away," and Tamar says, "No, no, no, little
19 further." He corrects him several times. This is not an
20 investigator leading this person on, giving him the answers.
21 Tamar Bryant tells him everything, everything, tells him
22 everything that you need to know to convict him of murder.

23 Now, I apologize that you all had to sit here through all
24 those boring witnesses. I had to establish something called a
25 chain of custody. Chain of custody is what - it establishes

1 that the same bullet that came out of Deon Myers' head is the
2 same bullet that was analyzed by that firearms expert from
3 SLED. You heard the firearms expert tell you that this bullet
4 right here, this small piece of metal, this bullet the doctor
5 told you killed Deon Myers, this is the bullet that traveled
6 through the corner of his eye right there near his tear duct,
7 through his brain, landed at the back of his skull.

8 You heard our firearms investigator tell you that this
9 gun right here, this gun which in Tamar's confession he looks
10 at a picture of it and says, "Yeah, that's the one, the one
11 that Brandon got arrested with, that's the gun, that's the gun
12 that I used to kill Deon," and you heard the firearms expert
13 tell you that because the quality of the bullet, the bullet
14 has hit the back of Deon's skull and so it got damaged a
15 little bit, because of the quality of the bullet he can't say
16 a hundred percent that this bullet came from this gun, but he
17 can tell you it's consistent. He can tell you he can't rule
18 it out. He can tell you this is a 22 bullet, this is a 22
19 gun. He can tell you this is the type of 22 based on the
20 rifling that would have come from a gun like this.

21 Now, I have to go first, that's how the rules work in the
22 closing. Mr. Hazzard is going to get to talk after me and I
23 don't get to reply. So I'm going to need you all to rely on
24 your good common sense. That's why we chose you to be on this
25 jury, because you've all got it, we're all born with it. I

1 don't know what arguments he's going to make. I need you to
2 rely on your good common sense and your gut to know what
3 happened.

4 Now, when I put those first couple of witnesses up, Mr.
5 Hazzard did a pretty good job pressing them on all these
6 little details, all these little details that some of them
7 contradicted. What I have to prove in this case is that Tamar
8 Bryant killed Deon Myers and he did it with malice, and I have
9 to prove that beyond a reasonable doubt. I don't have to
10 prove whether Tamar was in the bathroom and ran out or whether
11 he ran in the front door to kill Deon Myers. I don't have to
12 prove whether he was wearing a black handkerchief or a red
13 handkerchief when he killed Deon Myers. I don't have to prove
14 whether they'd been in the club for three minutes or five
15 minutes before he killed Deon Myers. What I have to prove is
16 that Tamar Bryant killed Deon Myers. Don't get caught up in
17 all those little details.

18 You heard Terell Myers tell you it was a chaotic scene,
19 people were on the phone with 911, Terell was on the phone
20 with 911, people are screaming gun, everybody's ducking behind
21 - about 20 people in this tiny little club, they're running
22 every which way, ducking behind the bar. There's two guns,
23 there's a big gun, people are yelling, it's chaos and
24 everybody's memory of exactly how it happened and the
25 timeframe is a little bit different, but do you know who's

1 memory is a hundred percent consistent with all of the
2 evidence in the case? Tamar Bryant. Everything Tamar Bryant
3 has to say in his confession is consistent. Tamar Bryant
4 tells you that they traveled to the club in a red Mercury.
5 Cameron Green tells you that they traveled to the club in this
6 red Mercury that belonged to Cameron Green. Tamar Bryant
7 tells you that Deon Myers was looking for his chain, his
8 necklace that had fallen off in the altercation. He's bent
9 down a little bit, he's looking for it and as he comes up is
10 when Tamar Bryant shoots him. Deon Myers is 6-1. I don't
11 know how tall Tamar Bryant is, but he's shorter than that, and
12 you heard the doctor say it is a slight upward deviation of
13 the bullet. It went in the tear duct and traveled almost
14 straight, but just a very slight upward deviation through the
15 brain. That's because Deon's bent down. Tamar told us that.
16 Tamar told us that that gun that got pulled off of Brandon
17 Cheek when Brandon Cheek was arrested three days later is the
18 one that Tamar used to shoot Deon, and our firearms expert
19 agrees. He doesn't say a hundred percent, he says, "I can't
20 conclusively say it's the exact same one," he says it's
21 consistent. Everything this Defendant told you in that
22 confession, everything is consistent with the evidence in the
23 case.

24 Now, the other thing Mr. Hazzard may try to convince you
25 of is that Cam did it or that they didn't do some kind of

1 thorough investigation. They didn't test Cam, when I say Cam
2 I mean Cameron Green, they didn't test his clothes for gunshot
3 residue. His clothes were in the trunk of the car. Our
4 witnesses say Cam wasn't even in the club. Cameron was in the
5 club, it was just for a brief moment, to figure out that there
6 was a cover charge and he walked out. There's no reason that
7 they would test Cameron Green's clothes for gunshot residue.
8 It doesn't make sense with the facts of the case.

9 I have to prove that Tamar Bryant killed Deon Myers and
10 that he did so with malice aforethought. What is malice
11 aforethought? The Judge is going to tell you what that is,
12 it's hatred, it's ill will, it's a legal term, it's archaic.
13 Sometimes it's a little difficult for juries to understand,
14 but malice aforethought just means that the person formed a
15 hate for the person, the killer formed a hate or an ill will
16 towards the person that he shot. It does not require
17 premeditation. We don't have degrees of murder like you see
18 on TV. There's no first degree murder here in South Carolina.
19 We have murder. There's one, murder. It doesn't require
20 premeditation; it just requires hatred and ill will in Tamar
21 Bryant's heart.

22 How do we know what's in Tamar Bryant's heart? Well, in
23 this case he told us what was in his heart. He told us
24 exactly what was in his heart. Excuse my language; I'm going
25 to quote Mr. Bryant directly, "So then I be like, oh, yeah,

1 all right, so they damn. Once I realize who he been, I be
2 like, all right, I got this fucker." That's what he says.
3 He's telling you that once he entered that club, he comes face
4 to face with Deon, he goes, "Oh, yeah, I know this guy.
5 That's the guy I had some trouble with several years back.'
6 He tells you quote, "I got this fucker." That's hatred, that
7 is malice.

8 The other thing Tamar Bryant tells you is that he already
9 had the gun cocked. He goes into the bathroom, Lavern has
10 left, Deon and Tamar Bryant are in the bathroom. They're
11 talking, calm, nobody's yelling, nobody's arguing anymore.
12 They're talking about who's got a cigarette. Tamar looks at
13 Shaquettia and says, "It's cool, it's all right, he's good."
14 All the while he's already got it cocked. I can't do it
15 because it's locked for your safety, but he's already got this
16 gun cocked and ready to fire. He's got it tucked in his
17 jeans. "All right, he's good." He lets Deon walk out of that
18 bathroom. He tells you, "I followed him real slow, way behind
19 him." Then, while Tamar is standing near the door and Deon is
20 distracted looking for his chain, his necklace, Tamar sees his
21 opportunity. With the gun already cocked, he pulls it out and
22 he fires. That is malice. That is hatred. That is ill-will.

23 When you go back into your jury room you can consider all
24 the evidence. We're going to send this evidence back with
25 you. You could request to see Tamar Bryant's full statement

1 again. All you have to do is send a note to the Judge, we'll
2 arrange that, we'll get it set up, bring you all back out here
3 and you can watch the whole thing. I have prepared - now, the
4 whole thing is 40 minutes, and that's okay, take all the time
5 you need, but I have prepared some clips for you that I would
6 like for you to see again during my closing statement.

7 (State's Exhibit Number 11 played in open court.)

8 MS. BAILEY: Now, Mr. Hazzard is going to stand up here
9 and tell you ---

10 MR. HAZZARD: Your Honor, I'm going to - this is the
11 third time she's going to tell them what I'm going to say. I
12 think what I'm going to say will speak for itself.

13 THE COURT: Well, it's a fair comment. She can
14 speculate as to what you're going to say and you can surprise
15 the jury.

16 MS. BAILEY: Mr. Hazzard is going to tell you that
17 there's something wrong with this confession because Tamar
18 Bryant was 17 at the time that it was taken. I watch Law and
19 Order. I watch a lot of Law and Order. On Law and Order you
20 can't take a confession from a 17 year old, but let me tell
21 you something, in the real world that's not true. The Judge
22 is going to charge you on that. The law of the State of South
23 Carolina is that you can take a confession from a 17 year old
24 without their parent present, you can. There's not a legal
25 problem with that, as long as they sign their Miranda form,

1 you look at all the circumstances, as long as the police
2 didn't beat him over the head, keep them up for four days
3 straight. Those are the kinds of things that would make a
4 confession involuntary, but Investigator Busbee told you all
5 the details about this confession from the time he picked the
6 guy up until the end of the confession was all of two hours.
7 He gave the guy water. He let Tamar Bryant smoke cigarettes.
8 He gave him some water. He let him stand up and stretch. You
9 see that on the video, just had a conversation. His
10 confession was voluntary.

11 Before I send you back to that room to deliberate I want
12 you to remember one thing. I want you to remember who's not
13 in the courtroom today. Who is not in the courtroom today is
14 Deon Myers, and as much as this day is Tamar Bryant's day in
15 court, this is also Deon Myers' day in court. This is the day
16 that determines whether the man who murdered Deon Myers is
17 held accountable for that and nobody decides that except the
18 12 of you. Twelve of you will decide whether the man who
19 confessed to murdering Deon Myers is held accountable for his
20 actions. Thank you for your service.

21 THE COURT: Mr. Hazzard?

22 MR. HAZZARD: Thank you, Your Honor. May it please the
23 Court? Senior Solicitor Bailey, ladies and gentlemen of the
24 jury, good morning to you. I will try not to take too much of
25 your time this morning. You have sat through this entire

1 trial and you have heard the evidence, but I think I would be
2 remiss if I did not comment on it for the purpose of our
3 system and for the benefit of this young man here. I will say
4 that in 25 years of doing this I have never heard an attorney
5 say in closing arguments until today, "Don't get caught up in
6 the little facts and details. Don't get caught up in the
7 facts and the details," because when you're looking for the
8 truth that is what it's all about. That's absolutely what
9 it's all about.

10 Now, we live in a society where we're blessed, and the
11 Judge will explain it to you, he'll explain all this to you.
12 He knows the law better than I'll ever know it, has for the 25
13 years I've known him and the 25 years before that. He'll
14 explain all that in the law to you, but what I know is that
15 we're blessed to be in a system where a citizen accused,
16 because that's what they used to call us, not Defendants,
17 citizens accused. Where a citizen accused is always believed,
18 presumed and known to be innocent unless and until there is
19 sufficient evidence shown to prove guilt beyond a reasonable
20 doubt and we're going to talk about that for a second, come
21 back to it later. I believe the Judge is going to tell you
22 that how do you determine that standard of beyond a reasonable
23 doubt? What is that? It's not a 51 to 49, it's not a scale.
24 What I believe he's going to tell you is you have to have
25 heard evidence, testimony, information, stuff from that

1 witness stand, exhibits, what's been submitted to you for your
2 consideration that leaves you firmly convinced, firmly
3 convinced of guilt. Now, the analysis on this is, is really,
4 I think, going to take two parts. One is with regard to
5 whether or not you believe the statement he gave. Then the
6 other one is if you do not. Let's don't fool ourselves. If
7 you believe the statement that he gave, if you believe that
8 this boy when he said, "Yes, I killed someone I really didn't
9 know because they had fired a gun at me four years ago when I
10 was 13 years old in Hemingway over money, drugs and girls," if
11 you believe that, then yes, this is going to be very, very
12 quick, there's no question about it. So, the issue becomes is
13 it credible, is it believable because obviously Ms. Bailey
14 really wants you to believe it, you know. She really wants
15 you to believe it, okay? The issue I've got and we'll get to
16 it right up front is it's not about my knowledge, it's not
17 about her knowledge because neither of us were at the Ghost
18 Den Lounge on Jackson Village Road on March 15th, 2011. As I
19 told you when I had a chance to speak to you at the beginning
20 of this trial, the issue I had, besides all the
21 inconsistencies in what all the witnesses say and what he
22 says, what really brought it home to me is the reaction of
23 Detective Busbee. Now, Ms. Bailey wants you to review that
24 tape and I notice she cut it off before the end, but you saw
25 it and you'll have a chance to see it again, but I suggest

1 that if you want, the Court will make an arrangement where you
2 can hear it all or hear that say last 15 minutes, and what's
3 the significance of that? The last 15 minutes is after this
4 young man has given this rogue statement that, "Yes, I'm the
5 person who committed this crime with this gun," and what did I
6 tell you at the very beginning? Look at Detective Busbee's
7 reaction. A professional of 15 years, at that time 13 years
8 on the force, had interrogated, interviewed probably hundreds
9 if not thousands of witnesses and investigated hundreds of
10 cases. Now, let's go back and think about this again. First
11 and foremost, this is March 25th, 2011. On March 15th, ten days
12 earlier, a young man tragically lost his life. March 16th, if
13 memory serves correctly, Cameron Green is arrested. Okay?
14 That's the man that sat there and testified for you and told
15 his three or four different versions of the truth. On March
16 17th, Lavern Holmes is arrested if memory serves correctly.
17 March 20th I believe is when Kawaun Myers is arrested and I
18 know that Brandon Cheek was also arrested on the 20th or the
19 21st, if memory serves correctly. So all four of them, as we
20 discussed, and as Detective Busbee told you, all four of them
21 are already in custody. Remember this case is about five
22 alleged Defendants, okay? March 25th, five days after the
23 fourth person is arrested, this young man here gets arrested.

24 Now, Detective Busbee, what did he tell you? He said, "I
25 am the case agent, this is my case. I'm the investigator, I'm

1 responsible for bringing this thing on," okay. So ten days
2 after this crime occurs he has the other four people locked up
3 already. He has this young man at the Georgetown County
4 Sheriff's Office and he has just obtained a complete
5 confession from him, okay? That's it, case closed. It's
6 done. It's Miller time. It's time to go home, but no, what
7 does Detective Busbee say after he gets this statement from
8 Tamar? After Tamar tells him this, and I tried to, I don't
9 have a transcript. So I tried to write it down as best I
10 could, and when you listen to it you'll hear that it was
11 something like this, after getting that confession, instead of
12 saying, "Okay, well, that's good, time to turn off the tape
13 and let's take you on down to 51 and put you in the department
14 of Georgetown Detention Center," he says, "Is there anything
15 else you want to say? Is there anything else you want to
16 say?" Ladies and gentlemen, what else is there to say? I've
17 just confessed. The other four guys are in jail, what else is
18 there to say? But see Busbee in his experience knows
19 something isn't right here. This doesn't make any sense. He
20 then goes on to say, "I'm going to give you my card. Tell the
21 detention officers if you need to talk to me, tell them to
22 call Busbee." Again, what's he going to talk about? There's
23 no one else out there to catch. It's not like he needs
24 Tamar's help in getting someone else arrested. Remember,
25 other four guys are already in jail. Tamar's already given

1 his statement implicating himself completely as the sole
2 person who committed this crime, but Busbee knows something
3 isn't right about it. He knows something isn't right. He
4 knows Tamar did not have the gun and he knows he didn't pull
5 the trigger. So he says, "If you need to talk to me, here's
6 my card, I'm going to give it to you. Call me and tell them,
7 tell them at detention, just tell them to call me and I'll
8 come out and talk to you. I'll come out," because, again,
9 he's saying, "Something isn't right. This is not the guy."

10 Now, what possibly is causing him to know that this is
11 not the guy? What does he then go in to asking him about, and
12 you heard it on there, "Is anyone pressuring you? Is this
13 gang related?" Because he asks him, "Is Kawaun Myers in a
14 gang? Is he a blood? Is Lavern Holmes in a gang? Is he a
15 blood? Is Cameron Green in a gang? Is he a blood?" He then
16 goes on and says something to the effect of, "You know this is
17 your opportunity," and again, all of this is after the
18 confession. He says, "You know this is your opportunity to
19 say whatever you want to say." Again, if I did it and I'm the
20 person who told you I did it, what else is there to say, but
21 he knows that's not the case, and then he goes on and he says,
22 "Are you intentionally leaving anything out?" Again, I have
23 given a full confession, what is there to leave out other than
24 the person who actually committed the crime? That's what
25 Busbee's getting at, and he then says, "Anyone forced you to

1 make this statement?" And then he shows Tamar a picture of
2 that gun. Now, keep in mind, this is March 25th. If memory
3 serves correctly, the report on the gun was March 23rd, and
4 what did the report on the gun say? The report on the gun
5 said it was inconsistent. Now, that's something you're going
6 to have to consider for the 12 of you because on the one hand
7 Mr. Parnell, who obviously has a great deal of experience and
8 knowledge with SLED, over 40 years, says, "Every handgun is
9 unique in the markings it leaves." Every and unique, and he
10 doesn't use - a man who's done this for 40 years does not use
11 that word lightly. That means it's virtually, it is basically
12 a fingerprint. There's not another one in the world that's
13 going to leave the markings that were left on the bullet that
14 was taken from poor Mr. Myers. Okay? Unique, and then he
15 says, his report says, "Markings on the bullet are
16 inconsistent, inconsistent with those fired from that gun in
17 evidence." Now, I'm sorry, ladies and gentlemen, there ain't
18 no other way to cut it. Now, he tried to cover it up and he's
19 a good company man for 40 years and he said, "Well, might
20 have been some, you know, dust or powder residue," or whatever
21 you want to call it, "that's in the barrel," but you heard me
22 ask him, "Well, if that's the case if anybody ever fires a gun
23 and then you get it you're not going to be able to match it,"
24 but what did he tell you? "Oh, no, we can do that, we can do
25 that," and then we talked about the lands and the grooves and

1 how the barrel is constructed and that's what's consistent.
2 That is the only thing that's consistent is the fact that if a
3 manufacturer manufactures a gun, they're going to have a
4 certain number of lands and grooves, and in this case didn't
5 even have the same number of lands and grooves. I think he
6 said that bullet had four and the gun had six or seven or
7 nine.

8 MS. BAILEY: Objection, Your Honor. That's incorrect.
9 That's not in evidence.

10 THE COURT: All right, and the jury heard the
11 testimony. They know what was said.

12 MR. HAZZARD: And please understand I do not mean or
13 intend to mislead you in any way. It is based on what the 12
14 of you heard and that's what it's going to go on. I'm trying
15 to go on what I recall hearing as part of evidence, but if I
16 misheard something it is not my intention to miscategorize or
17 mislead you.

18 So, anyway, bottom line is the markings on that bullet
19 are inconsistent with those fired from that gun. So,
20 Detective Busbee's got that report, I believe, on March 23rd
21 and he shows Tamar the picture of that little gun right there,
22 that thing right there, that, that piece of junk and he says,
23 "Is this it," and Tamar, what does he say? He said, "Yeah,
24 that's the one. That's the one I used to shoot Mr. Myers,
25 that's it," and if you listen to it again watch and listen for

1 Busbee's reaction. Again, instead of, "All right, good,
2 Miller time, case closed," he immediately says, "Are you a
3 hundred percent positive that's the gun? I mean don't they
4 make thousands of these guns?" Because he knows what the
5 report says, but see, Tamar just tells him what he thinks he
6 wants to hear.

7 Now, as far as what happened between the time Tamar was
8 arrested at 3:30 and the time they turned on the recording at
9 4:40, I have no idea. I have absolutely no idea what the
10 discussion was about. I'm not standing here telling you that
11 Detective Busbee hit him, beat him, poked him, threatened him.
12 I have no idea. I wasn't there. I do think it's exceedingly
13 strange that you've got this 17 here at the time, 17 year old
14 boy in the middle of the night behind the police station
15 instead of inside the police station for an hour, not really
16 sure, but the bottom line is, based on that, once, once the -
17 and what did, what did Busbee say? "Oh, yeah, I got the
18 little, little audio recorder, that's what we used to take all
19 five of Lavern Holmes' statements and all two or three of
20 Cameron Green's different statements," but didn't use it for
21 the first hour with him, don't know. That's for your
22 consideration and determination when you consider the totality
23 of that statement.

24 Now, Ms. Bailey, again, says, "Forget about the facts and
25 the details," because she's trying to hammer that square peg

1 into that round hole really, really hard because we start with
2 the evidence and I, and I thank you so much for your
3 attention. I'm not going to be long, but we start with, with
4 Terrell Myers, the brother of the deceased. He's working the
5 door at the club doing his job, minding his business and what
6 does he tell you? Lavern Holmes enters with a shotgun, went
7 immediately after his brother, Deon. Okay? Says that Deon
8 ran into the tiny bathroom and Shaquettia Holmes tussled with
9 Lavern, and I say tussled, but you know, pushed him back, get
10 out of here, don't do this outside the bathroom, that she then
11 walks him literally out of the club. Okay? That's the guy
12 who's standing there at the door. He ain't been drinking.
13 He's at work, he's the doorman taking money, ain't had a drop
14 of alcohol I wouldn't think, and says she walks him out the
15 front door of the club. Then a man with a red bandana runs in
16 and shoots his brother and that the whole thing took three to
17 five minutes, and the significance of that, obviously things
18 can happen very quickly, people see some things differently
19 like what was a person wearing, maybe even an issue of height,
20 but in this case one of the significant things to me is that
21 all of the State's witnesses say this incident happened very
22 quickly, but if you remember back on the video, and Ms. Bailey
23 just played it for you, that clip for you again, what was one
24 of the basis again when Detective Busbee's like, "Well, why
25 would you shoot this guy you don't even know," and what, and

1 what does Tamar think to say as a reason that would make some
2 sense, he says, "Man, because they were - him and Lavern were
3 just arguing and arguing and arguing and arguing and it just
4 took forever. They were just arguing, arguing, arguing," you
5 know, because he's got to say something in this story of his.
6 Okay? But no, it didn't take that long, nothing about this
7 makes any sense.

8 So the man with the red bandana runs in, shoots his
9 brother and Terell Myers then tells you that his relative,
10 Cameron Green, wasn't there, and I assume that's what Ms.
11 Bailey was referring to when she says her witnesses say that,
12 but who's the next witness they put up there? Shaquettia
13 Holmes. What does Shaquettia Holmes say? Lavern Holmes is
14 her uncle, she's related to Cameron Green, and she saw Cameron
15 and Lavern in the club with red bandanas. Okay? That's her
16 testimony. That's her statement. What Terell also told you
17 is other than the man that came in and fired, after Lavern
18 Holmes entered with the shotgun, and this does make absolute
19 sense to me, after Lavern Holmes came in with that shotgun
20 raising all kind of sand, nobody else came in the club. What
21 did I ask Terell? He said, "Well, man, I had to do my job, I
22 was taking money at the door." I said, "After he came in with
23 a shotgun, was anybody else coming in the door?" He said no.
24 "You weren't taking any more money were you?" "No." So only
25 one other person comes in after Lavern Holmes, only one other

1 person comes in.

2 Now, what does Shaquettia tell you? Okay, Lavern's in
3 there, Cameron's in there, and what did Cameron tell you?
4 Because see that's the thing about all these little details.
5 Lies are huge, humungous. The truth is in the details. What
6 did Cameron tell you? "Well, yeah, we went to the club, me
7 and Lavern, we're in there. Lavern walked in first," and then
8 you get this whole thing about where he walked in or whatever
9 little two step he's doing at the door, almost like he's
10 getting ready to play double-dutch, "maybe I'm going in, maybe
11 I'm not," but he did eventually tell you he went in after
12 Lavern and how long did he tell you he was in there?
13 "Couldn't have been in there no more than two or three
14 minutes," just long enough to kill, but Terell says only one
15 other person walked in and Cameron's, only one other person
16 walked in after Lavern and Cameron, I'm pretty sure not
17 thinking about it, tells you who that person is. It's him.
18 Now, Cameron Green, he's doing his best, he's doing his best
19 trying to get out from under this thing and that will tell you
20 and inform you of some of the inconsistencies in his story.
21 For instance, what does Cameron say? He evens gives you this
22 foolishness about, "Well, yeah, I drove everybody there and
23 Lavern walked in, he didn't walk in with no shotgun though. I
24 just happened to see him coming out with one," because, see,
25 in Cameron's mind he's talked to his attorney. He knows the

1 deal about the law as far as, "If I knowingly drive someone
2 somewhere to commit a crime," that is what's called an overt
3 action, an action in assistance aiding and abetting what can
4 end up being a crime and the Judge, I believe, will tell you,
5 "I'm then just as guilty as the person who does the crime,"
6 but remember the issue is an action, you got to do something.
7 I think the Judge will also tell you because there's no
8 question Tamar was in the car. All of them were in the car,
9 that ain't a problem. All of them in the car because what the
10 Judge is also going to tell you is being present where a crime
11 occurs without more is not a crime, and I mean, the law even
12 goes farther and the Judge is going to tell you that if I even
13 know, if me and my roommate and my roommate says, "You know
14 what, it's about rent time, I'm running low. I think I'm
15 going to go stick up the liquor store. Want to take a ride?"
16 The law says even if I hop in the car and take a ride with
17 him, if I don't aid, assist in any way or do an overt action
18 in furtherance of his foolishness, I'm not guilty of a crime,
19 okay, and that's the situation we have here because what did
20 Cam say, and that's what's so difficult about this, when you
21 really look at everything because there's little bit of truth
22 in what a lot of different people say, just none of them say
23 all the truth, none of them. What did Cam say? He said,
24 "Well, me and Kawaun and Vern, you know, the three aggrieved
25 people who were concerned about Deon Myers and his gun earlier

1 that day," because remember that's how that started because
2 Lavern, big bad Lavern Holmes, what did Terell Myers say, "Oh,
3 everybody knows Vern," big bad Lavern Holmes had been
4 threatened allegedly with a gun by Mr. Myers. That was the
5 whole purpose for going to the club, but now, see that
6 apparently isn't enough to get Tamar to go, so what does
7 Cameron say? He says, "Well, we told him there was going to
8 be a party there, there were going to be girls," and what did
9 you hear this, Lord have mercy, what did you hear this boy say
10 on the tape? "Man, there was supposed to be girls there."
11 Okay, does that sound like somebody who's going to commit a
12 crime, even though he then says, "Well, yeah, yeah, I, I did
13 it, I, I shot him. I had this gun that hardly works and
14 doesn't really match the bullet, but I'm the one." Does that
15 make sense? Does that match? Because see the truth, the
16 truth ain't ever hard, the truth is never hard and the truth
17 never changes, ever, ever. See that's the problem with this
18 story.

19 Now, I also found it interesting that Ms. Bailey says
20 that you have these witnesses at the club, I mean,
21 specifically Mr. Myers and Mr. Holmes. I tell you what,
22 Plantersville has got to be an interesting place, it's, it's,
23 it's got to be because according to Shaquettia Holmes she's in
24 the bathroom, Deon's hiding in the bathroom, forget what
25 Terell says, his brother says, "Nah, Deon's the only person in

1 the bathroom." According to Shaquettia what does she say,
2 "No, I'm in the bathroom, Deon's in the bathroom, them two
3 girls who were with Deon are in the bathroom," and then Tamar
4 comes and he somehow jams himself into the bathroom. Okay,
5 so, now you got five or six people supposedly all jammed up in
6 the bathroom, which everybody says is very tiny. I submit to
7 you that makes absolutely no sense and is not worthy of
8 belief, okay? But that's what, that's what she says happened.

9 Now, what is interesting to me is she claims she sees
10 Tamar Bryant in the bathroom with a weapon and that as soon as
11 he leaves the bathroom with that weapon Deon Myers ends up
12 dead. What did I ask her? "Were you there when the police
13 got there?" "Yeah, I was there." "Did you tell anybody, did
14 you talk to the police, did you say, 'Hey, somebody I know was
15 at the club with a gun standing beside the guy who ended up
16 dead.'" "No, I didn't tell the police that." "Did you ever
17 give a statement to the police, they ever get you down there
18 and record it?" "No, I just showed up for trial two years
19 later and toss this out there. You know, that's how I roll."
20 Now, the Judge will tell you again, I believe, that you can
21 believe all of what a witness says, part or none of what a
22 witness says and that it's all based on the credibility and
23 the believability. Is there anything believable about that?

24 Cameron said some other things, and I don't, I don't
25 really fault him. I mean, the guy's fighting for his life,

1 you know, he's trying to get out from under this as hard as he
2 can, but there's no question that there's some issues with
3 what he says because one of the things that I always request
4 is I want people to tell their own, their own story. So I ask
5 that the witnesses be what's called sequestered, that one
6 witness not be in the courtroom when another witness testifies
7 so you get to hear the true, unvarnished version of whatever
8 that person has to say. They can't craft it around what
9 they've heard other people testify to. So that's how you end
10 up with the situation where Shaquettia Holmes says, "Yes, I'm
11 related to Cameron Green, I know him very well," and Cameron
12 Green gets on the stand and says, "Shaquettia Holmes, I, I
13 don't think I know a Shaquettia Holmes." Why? Because
14 Shaquettia Holmes can place him inside that club with that red
15 bandana. He can't have that, he can't have that.

16 He told you that he gave untruths in virtually every
17 statement that he gave, the one on March 16th when he was
18 charged with attempted murder and then tragically remember
19 that Mr. Myers died on the 18th, and they came back out and
20 served him with a murder warrant on the 21st, and he gave a
21 second statement. He said, "Well, that one has - full of
22 lies, too, but you know, the third time is the charm. I'm now
23 here testifying trying to get out from under this murder
24 charge, and so I want you to believe me." I think the most
25 telling thing that he said is I asked him, "How are people

1 supposed to know when you're telling the truth," and what was
2 his response? He said, "Now, that's a good question, that's a
3 good question. I don't know, I don't know, know how you're
4 supposed to know that," but there's all the allegations he
5 made about supposedly them and them being Cameron and Kawaun,
6 the adults, Cameron and Kawaun and the other guy, Lavern
7 Holmes supposedly go and what do they say this young man does?
8 They say that he provides them with a shotgun. I mean because
9 see they got to pin all of this on Tamar, you know, he's, he's
10 the guy. You know, he's, he's Yosemite Sam, he's providing
11 the shotgun, he ends up with a pistol, nobody else did
12 nothing, it's all on Tamar, and again, I do not know between
13 March 16th, the morning of March 16th when the arrests began
14 and March 25th, I do not know what pressure was exerted on him.
15 I do know if you listen to what Detective Busbee asks him, he
16 certainly believes it in his heart and soul based on his
17 experience that there's something going on here that ain't
18 right as far as this young man saying he did it, taking the
19 rap for it. So I don't know what pressure's exerted on him
20 during that nine-day period and where it came from, but again,
21 when you look at things, look at what actually occurred. One
22 thing I think everyone can agree with is that after the
23 incident occurred where does everybody go? Well, Lavern
24 Holmes who supposedly has committed no crime, he got to leave
25 Georgetown and go hide out at his sister's in Myrtle Beach

1 because remember Cam told you this, he told you where he took
2 everybody, Cam's taxi service, and where does Kawaun Myers go?
3 Well, Kawaun got to go hide out at his baby momma house out in
4 the country, that's not where he lives, and where does Cameron
5 tell you he went? Well, he had to go hide out in I think he
6 said North Santee. That's not where he lives, and I said,
7 "Well, where'd you take this young man?" "Oh, took him back
8 to his grandma's house, took him back to his grandma's house
9 in Georgetown." Okay, he ain't hiding out, he ain't got
10 nowhere to go because he ain't shoot nobody. See look at the
11 actions when you consider the words, and then this whole thing
12 again about the shotgun and all like that, I asked Detective
13 Busbee, who, again, very thorough, "Yeah, we went to his
14 grandmother's house because that was what some of these other
15 knuckleheads were saying, went to his grandma's house,
16 searched it up and down, ain't no shotgun there," and when you
17 talk about firmly convinced, evidence that leaves you firmly
18 convinced, that's what I'm talking about. If I were on the
19 jury and I heard that statement and I heard what Cameron said
20 about how this young man did it and got in the car saying, "My
21 bad, I'm sorry," I'd want to hear something like, "Well, yeah,
22 I mean, they said he had the shotgun, went to grandma's
23 house, there it was." "They said he'd fired a gun, took the
24 clothes, sent them to SLED, gunshot powder residue, there it
25 is. Simple as that, open and shut. Said he had the gun,

1 matched it up with the ballistics, the gun matched," and I
2 think the main reason the gun keeps sticking in my head
3 because remember you all, just like you all weren't there, I
4 wasn't there March 15th, 2011. We all trying to puzzle this
5 thing together. The reason the gun sticks in my head is what
6 did Cameron say? He said, "Yeah, it was a silver gun, it was
7 a silver gun, silver gun." I don't know my colors very well,
8 but I tell you that's about as black as black can get, and
9 that along with the issue of the ballistics I can't get over
10 that, I can't get over that, and I can't just take his words
11 as a 17 year old boy possibly under pressure, possibly, you
12 know, based on Busbee and Busbee's reaction in saying, "This,
13 ain't right, this ain't right, this ain't right," and it isn't
14 right and the reason it's not right is because he didn't
15 commit this crime. There's a reason five people were charged.
16 He didn't commit the crime, and as I said I don't think
17 anybody likes the fact that he jumped in the car with those
18 four hoodlums or whatever they may be and went there that
19 night, you know, because there was supposed to be girls and
20 knowing that there was at least a shotgun in the car, but
21 again, his Honor will explain the law to you that that, being
22 there, going, even just going with is not sufficient, is not
23 something to convict, is not a matter of guilt. This young
24 man - oh, and one last thing, I'm sorry. As part of the
25 confession supposedly there's this whole issue of this chain.

1 I tell you we saw a lot of other stuff into evidence. What
2 did Thacker say? That he went all through the club, picked up
3 this, picked up that, picked up the other, there ain't no
4 chain, ain't nobody said they picked one up. You know, how
5 else, but how else is, in telling this fictional story, a 17
6 year old boy supposed to convince a detective that he was able
7 to get the drop on a 26 year old man? How else?

8 I've lived with this young man in my mind for 18 months
9 now and any shortcomings that I have, which are many,
10 hopefully our system of justice will help smooth them out and
11 deliver the verdict that is a right one and that is a verdict
12 of not guilty. Thank you so much for your time. Thank you
13 for your attention. Thank you for the privilege of appearing
14 before you.

15 THE COURT: Ladies and gentlemen of the jury, I am now
16 going to instruct you as to the law. I appreciate the fact
17 that I, we bring you from your daily routines and professions
18 and jobs that you are familiar with and we bring you here and
19 we expect you to understand everything that we, that we do.
20 One of the things that we expect of you is to hear me recite
21 the law that's applicable to this case and my instruction that
22 you have to be guided by that law and then we expect you to
23 remember complex theories of law during your deliberation. So
24 in that regard I do something a little differently. I don't
25 know any other Judge that does it, but I've been doing it ever

1 since I came on the bench and that is I prepare a transcript
2 of my charge in advance and I provide it for you during your
3 deliberations. The Supreme Court has said that that is an
4 acceptable practice as long as I read my charge verbatim from
5 that transcript and that's what I will do in this case. So
6 you're going to have a transcript of the law to use with you
7 in your jury room during your deliberation process. Now, that
8 doesn't mean you don't have to listen to me now, I certainly
9 need for you to do that but I will have a transcript for you.
10 Let me caution you, don't get caught up in any particular part
11 of the, of the transcript or my charge. Remember you should
12 consider the charge as a whole document and look at it as a
13 whole because every part is important and many of these parts
14 are interconnected and you should be aware of that.

15 I remind you that during the trial of this case you and I
16 have certain duties to perform and as Trial Judge, it's my
17 responsibility to preside over the trial of the case, and I
18 also have the duty to rule on the admissibility of the
19 evidence offered during this trial and you are to consider
20 only the competent evidence before you. If there was any
21 evidence ordered stricken from the record in this case during
22 the trial, you must disregard that testimony. You are to
23 consider only the testimony which has been presented from this
24 witness stand, any exhibits which have been made a part of the
25 record in this case and any stipulations of counsel or

1 agreements of counsel. I have the additional duty to charge
2 you the law applicable to the case. As the presiding judge, I
3 am the sole judge of the law of this case and it is your duty
4 as jurors to accept and apply the law as I now state it to
5 you. If you already have an idea as to what the law is or
6 what the law ought to be and it does not agree with what I now
7 tell you the law is, you must abandon this idea because you
8 are sworn to accept the law and apply the law exactly as I
9 state it to you. In every case tried in this court before a
10 jury, the jury becomes the sole and exclusive judge of the
11 facts in the case. A trial judge cannot intimate, state,
12 comment on or make any statement to a trial jury about the
13 facts in a case. Since you, the jury, are the sole judge of
14 the facts in this case you are not to infer from what I have
15 said during the progress of this trial in ruling upon the
16 admissibility of evidence, or otherwise, or anything that I
17 say now during the course of this instruction to you that I
18 have an opinion about the facts in the case. The law does not
19 allow me to have an opinion about the facts in the case. This
20 is a matter solely for you, the jury, to determine. As jurors
21 it is your duty to determine the effect, value, weight and
22 truth of the evidence presented during this trial.

23 Now, the indictment charges the Defendant with murder. I
24 remind you that the fact that the Defendant was arrested,
25 charged and indicted in this case is not evidence in the case

1 and it cannot be considered by you as evidence of guilt in
2 this case, nor does it create any presumption or inference of
3 guilt. That document is simply the formal written instrument
4 which contains the charge made against the Defendant. It is
5 the formal document by which the case is brought before the
6 court.

7 Now the Defendant has pled not guilty to the indictment,
8 and that plea puts the burden on the State to prove the
9 Defendant guilty. A person charged with committing a criminal
10 offense in South Carolina is never required to prove himself
11 innocent. I charge you that it is an important rule of the
12 law that the Defendant in a criminal trial, no matter what the
13 seriousness of the trial or the charge may be, will always be
14 presumed to be innocent of the crime for which the indictment
15 was issued unless guilt has been proved by evidence satisfying
16 you of that guilt beyond a reasonable doubt, and this
17 presumption of innocence does not end when you begin your
18 deliberations but it accompanies the Defendant throughout the
19 trial until you reach a verdict of guilt based on the evidence
20 satisfying you of that guilt beyond a reasonable doubt. The
21 presumption of innocence is like a robe of righteousness
22 placed about the shoulders of the Defendant which remains with
23 the Defendant until it's been stripped away from the Defendant
24 by evidence satisfying you of the Defendant's guilt, again,
25 beyond a reasonable doubt. The presumption of innocence is

1 not mere legal theory. It's not just a legal phrase. It is a
2 substantial right to which every Defendant is entitled unless
3 you, the jury, are satisfied from the evidence of the
4 Defendant's guilt beyond a reasonable doubt. The State has
5 the burden, as I have said, of proving the Defendant guilty
6 beyond a reasonable doubt.

7 Some of you may have served as jurors in civil cases
8 where you were told that it's only necessary to prove that a
9 fact is more likely true than not true, such as by a greater
10 weight or a preponderance of the evidence. In criminal cases,
11 the State's proof must be more powerful than that. It must be
12 proof beyond a reasonable doubt. Proof beyond a reasonable
13 doubt is proof that leaves you firmly convinced of the
14 Defendant's guilt. There are very few things in this world
15 that we know with absolute certainty, and in criminal cases
16 the law does not require proof that overcomes every possible
17 doubt. If based on your consideration of the evidence you are
18 firmly convinced that the Defendant is guilty of the crime
19 charged, you must find the Defendant guilty. If on the other
20 hand, you think there is a real possibility that the Defendant
21 is not guilty, you must give the Defendant the benefit of the
22 doubt and find him not guilty. What is a reasonable doubt in
23 the law? A reasonable doubt is the kind of doubt that would
24 cause a reasonable person to hesitate to act.

25 Now, there are two types of evidence which are generally

1 presented during a trial, direct evidence and circumstantial
2 evidence. Direct evidence is the testimony of a person who
3 claims to have actual knowledge of a fact, such as an
4 eyewitness. It is evidence which immediately establishes the
5 main fact to be proved. Circumstantial evidence is evidence
6 of proof of a chain of facts and circumstances indicating the
7 existence of a fact. It is evidence which immediately
8 establishes collateral facts from which the main fact may be
9 inferred. Circumstantial evidence is based on inference and
10 not on personal knowledge or observation. The law makes
11 absolutely no distinction between the weight or value to be
12 given to either direct or circumstantial evidence, nor is a
13 greater degree of certainty required of circumstantial
14 evidence than of direct evidence. You should weigh all of the
15 evidence in the case. After weighing all the evidence if you
16 are not convinced of the guilt of the Defendant beyond a
17 reasonable doubt, you must find the Defendant not guilty.

18 Necessarily, you must determine the credibility of
19 witnesses who have testified in this case. Credibility simply
20 means believability. It becomes your duty as jurors to
21 analyze and to evaluate the evidence and determine which
22 evidence convinces you of its truth. In determining the
23 believability of witnesses who have testified in this case you
24 may believe one witness over several or several over one. You
25 may believe a part of the testimony of a witness and reject

1 the remaining part of the testimony of that same witness. You
2 may believe the testimony of a witness in its entirety or
3 reject the testimony of a witness in its entirety. You may
4 consider whether a witness has exhibited to you any interest,
5 bias, prejudice or other motive in the case and you may also
6 consider the appearance and manner of a witness while on the
7 witness stand.

8 Now, the rules of evidence ordinarily do not permit
9 witnesses to testify to opinions or conclusion. An exception
10 to this rule exists for witnesses we call expert witnesses. A
11 witness who by education and experience has become expert in
12 some art or science or profession or calling may state an
13 opinion as to relevant and material matter in which the
14 witness claims to be an expert and may also state the reasons
15 for his opinion. You should consider any expert opinion
16 received in evidence in this case and like any other evidence
17 give it the weight you think it deserves. If you decide that
18 the opinion of the expert is not based on sufficient education
19 and experience or if you conclude that the reasons given in
20 support of the opinion are not sound or that the opinion is
21 outweighed by other evidence, you may disregard the opinion
22 entirely. An expert witness's testimony is to be given no
23 greater weight than that of other witnesses simply because the
24 witness is an expert. Further, you are not required to accept
25 an expert's opinion even though it's not contradicted.

1 A statement alleged to have been made by the Defendant
2 has been admitted into evidence in this case and while the
3 Court has determined that the statement is admissible, I
4 instruct you that you make the ultimate decision of whether or
5 not the Defendant made the statement. If the Defendant did
6 make the statement, you must determine whether the statement
7 was made by the Defendant voluntarily and of his own free
8 will. This means that the statement was not caused by
9 pressure, force, fear, threats, coercion or intimidation or by
10 hope or a promise of leniency or a reward of any kind. In
11 determining whether the statement was voluntary, you should
12 consider both the characteristics of the Defendant and the
13 details of the questioning. Some of the factors that you must
14 consider are the age of the Defendant; the Defendant's
15 education or lack of education; the Defendant's mental ability
16 or capacity; the Defendant's I.Q. or intelligence; the
17 Defendant's background and environment; the place and length
18 of the detention; the nature of the questioning; and the
19 advice or lack thereof to the Defendant of his constitutional
20 rights including, but not limited to, the right to remain
21 silent; that any statement could be used against him in a
22 court of law; the right to have a lawyer present; that if he
23 could not afford a lawyer, a lawyer would be appointed to
24 represent him without any cost; and that he could stop making
25 a statement at any time. You must carefully consider all of

1 the surrounding circumstances before you give any weight to an
2 alleged statement. The State has the burden of proving beyond
3 a reasonable doubt that the alleged statement was voluntary.
4 If you determine it was, you may give the statement any
5 further consideration that you deem proper. You must decide
6 what weight, if any, should be given to the alleged statement.
7 If you determine the alleged statement was not the free and
8 voluntary statement of the Defendant, you should not consider
9 it at all.

10 A juvenile's confession is not involuntary where there is
11 no evidence of extended, intimidating questioning or some
12 other form of coercion. A confession or admission of a
13 juvenile can be found to be voluntary under a totality of the
14 circumstances analysis. It is not necessary that a parent or
15 other interested party be present when a juvenile's confession
16 is taken.

17 I instruct you and emphasize that the fact that the
18 Defendant did not testify is not a factor to be considered by
19 you in any way in your deliberation and in your consideration
20 of the question of the guilt or innocence of the Defendant.
21 It must not be considered by you in any manner whatsoever. A
22 Defendant has the constitutional right to remain silent and
23 the assertion of this right must not be considered by you in
24 your deliberations. I repeat, under your oath, you are to
25 draw no conclusion whatsoever from the fact that the Defendant

1 in this case did not testify. The fact that this Defendant
2 did not testify should not even be discussed in the jury room.
3 The burden of proof, as I have stated to you, is on the State.
4 The Defendant is not required to prove his innocence. The
5 burden of proof remains on the State to prove guilt beyond a
6 reasonable doubt.

7 Now, the Defendant is charged with murder. The State
8 must prove beyond a reasonable doubt that the Defendant killed
9 another person with malice aforethought. Malice is hatred,
10 ill-will or hostility towards another person. It is the
11 intentional doing of a wrongful act without just cause or
12 excuse and with an intent to inflict an injury or under
13 circumstances that the law will infer an evil intent.

14 Malice aforethought does not require that malice exist
15 for any particular time before the act is committed, but
16 malice must exist in the mind of the Defendant just before and
17 at the time the act is committed. Therefore, there must be a
18 combination of the previous ill intent and the act. Malice
19 aforethought may be express or inferred. These terms, express
20 and inferred do not mean different kinds of malice but merely
21 the manner in which malice may be shown to exist, that is
22 either by direct evidence or by inference from the facts and
23 circumstances which are proved. Express malice is shown when
24 a person speaks words which express hatred or ill will for
25 another or when the person prepared beforehand to do the act

1 which was later accomplished; for example, lying in wait for a
2 person or any other act of preparation going to show that the
3 deed was in the Defendant's mind would be express malice.
4 Malice may be inferred from conduct showing a total disregard
5 for human life.

6 If a crime is committed by two or more people who are acting
7 together in committing a crime the act of one is the act of
8 all. A person who joins with another to commit an unlawful
9 act is criminally responsible for everything done by the other
10 person which happens as a probable and natural consequence of
11 the acts done in carrying out the common plan and purpose. If
12 two or more people are together, acting together, assisting
13 each other in committing the offense, the act of one is the
14 act of all or as it is sometimes said the hand of one is the
15 hand of all. Prior knowledge that a crime is going to be
16 committed, without more, is not sufficient to make a person
17 guilty of that crime. Mere knowledge that another person is
18 going to commit a crime even if the Defendant is present when
19 the crime is committed is not sufficient to convict the
20 Defendant as a principal. Guilt as a principal is shown by
21 actual or constructive presence at the scene as a result of
22 prior arrangement. Therefore, a finding of a prior arranged
23 plan or common scheme is necessary for a finding of guilt as a
24 principal. The State must prove beyond a reasonable doubt by
25 competent evidence the theory of the hand of one is the hand

1 of all.

2 A principal in a crime is one who either actually commits
3 the crime or who is present aiding, abetting or assisting in
4 committing the crime. When a person does an act in the
5 presence of and with the assistance of another, the act is
6 done by both. Where two or more acting with a common plan or
7 intent are present at the commission of a crime, it does not
8 matter who actually commits the crime. All are guilty. The
9 hand of one, again, is the hand of all. Present at the
10 commission of a crime means to be sufficiently near to aid and
11 abet and assist in the commission of the crime. However, mere
12 presence at the scene of a crime is not sufficient to convict
13 one as a principal on the theory of aiding and abetting.
14 Intent is also a necessary element, for there must have been a
15 common design or intent to commit the crime and the crime must
16 have been committed pursuant thereto with the person aiding
17 and abetting by some overt act. Intent means intending the
18 result which actually occurs, not accidentally or
19 involuntarily. Intent may be shown by acts and conduct of the
20 Defendant and other circumstances from which you may naturally
21 and reasonably infer intent. The State must prove these
22 elements beyond a reasonable doubt.

23 Now, ladies and gentlemen, there are two possible verdicts
24 which you may find on the indictment in this case, guilty or
25 not guilty, and there's no significance whatsoever in the

1 order in which I state these possible verdicts. It simply
2 means that one must be stated first. Ladies and gentlemen,
3 your verdict must be a unanimous one. Madam Foreperson, when
4 the jury agrees on a verdict in this case, I would have you
5 write that verdict form on the jury, the verdict form which I
6 have provided for you. You simply circle your verdict. The
7 verdict form in this case is very simple, it asks the question
8 or has a statement as to the charge of murder of Deon Myers we
9 the jury unanimously find the Defendant and you circle either
10 guilty or not guilty, and again, there's no significance as to
11 which one is first or which one is second, they just had to
12 put them some place, but you circle your verdict, write your
13 name and place your date on there, and if you would knock on
14 the jury door, jury room door and that will signal the
15 bailiffs that you are - have completed your deliberations.
16 Let me say to you that I would ask that you not begin your
17 deliberations until I send word for you to do so. We have to
18 gather up the exhibits here in the courtroom. There also may
19 be some requests for an addition to or deletion from the
20 charge. I give the attorneys an opportunity to do that. My
21 signal to you will be this, if I do not bring you back in the
22 courtroom for further instruction, I will send in the
23 exhibits, the verdict form and a copy of my charge. If I do
24 that that is your signal to begin your deliberations. Now,
25 what I have done is this, I have ordered lunch for you. It

1 should be back there now or just about back there and you can
2 stop and have your lunch or you can deliberate during lunch.
3 I do ask you this, if anyone leaves the room, any juror, I'd
4 ask the rest of you to just take a break and wait for that
5 juror to return because each and every one of you needs to
6 share in all the deliberations.

7 Now, if you would, Mr. Bailiff, take the jury to their
8 jury room and segregate the alternates right now. Okay?

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: Would you like to look at the verdict
12 form? As I said it simply says as to the charge of murder of
13 Deon Myers we the jury unanimously find the Defendant either
14 guilty or not guilty.

15 MS. BAILEY: Looks good to me.

16 MR. HAZZARD: No objection from the Defense as to the
17 form of the verdict.

18 THE COURT: All right, okay, here's the verdict form,
19 and if you would get together there and make sure we have all
20 the exhibits.

21 (Exhibits reviewed and approved by counsel for State and
22 Defense.)

23 THE COURT: Okay, have we got them all together and we
24 send them out? If you would take those into the jury room and
25 bring out the alternates.

1 (Alternates discharged by Court. Deliberations begin at
2 12:40 p.m.)

3 OFF THE RECORD

4 (On the record. Question from jury at 1:34 p.m.)

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: I have a note from the foreperson, "Could
8 we please have a copy of the transcript from the video," and
9 of course there's no transcript from the video, "and the
10 video." What I propose to do is let them come back in and
11 watch any portion of the video that they'd like to see, any
12 part or all of it. From the State, anything from the State?

13 MS. BAILEY: No, Your Honor, only that they heard me
14 read from a portion of the transcript. Just tell them it's
15 not in evidence.

16 THE COURT: Okay, that's what I'll tell them.

17 MS. BAILEY: And just that they be allowed to watch the
18 video again.

19 THE COURT: I mean, we don't have a transcript. You
20 had a portion right? So ---

21 MS. BAILEY: I mean, I have a transcript, but it wasn't
22 done by a certified court reporter, it's not in evidence.

23 THE COURT: Yeah, okay, and our court reporter, of
24 course, does not transcribe the video. So they are welcome to
25 see the video. Okay, that's essentially what I'll tell them,

1 okay?

2 MR. HAZZARD: No objection from the Defense.

3 THE COURT: All right, let's bring them in.

4 MS. BAILEY: Your Honor, I will need just a minute to
5 get my tech support people up here to get the video going.

6 THE COURT: Oh, okay, where are they?

7 MS. BAILEY: He's on his way up.

8 THE COURT: All right.

9 MS. BAILEY: And the video is in - the redacted copy is
10 in with them because it's in evidence.

11 THE COURT: Okay.

12 MS. BAILEY: Here he is.

13 THE COURT: Are you ready now?

14 MS. BAILEY: Yes.

15 THE COURT: All right, let's bring them in.

16 (Whereupon, the following takes place in the presence of
17 the jury.)

18 THE COURT: Madam Forelady, I have your, your question
19 and that is, "Could we please have a copy of the transcript
20 from the video and the video." During the playing of the
21 video there's not a formal transcript made for court purposes.
22 You may have heard the Solicitor mention during her closing
23 that she had a transcript but that's not in evidence. What we
24 have in evidence for your consideration would be the video and
25 we are prepared now to play the entire video or any portion of

1 the video. What I would suggest that we do is we will begin
2 playing the video back for you. If you'd like to see the
3 whole video, that's perfectly all right. If at any time
4 during the playing of the video we have reached the part that
5 you wanted to see, if you did not want to see all the video,
6 just indicate that we have reached that part and we'll let you
7 go back in your jury room, but if you would like to see it all
8 that's fine. We are prepared to do that. Are you ready for
9 that?

10 FORELADY: Yes.

11 THE COURT: All right.

12 MS. BAILEY: Your Honor, it's in evidence. It's in
13 that ---

14 THE COURT: Oh, it's still in the jury room?

15 MS. BAILEY: --- jury room.

16 THE COURT: Would, bailiff, would you go in and I
17 think it'll be right there on the table.

18 FORELADY: Your Honor, can we just hear the last 15
19 minutes of it I think?

20 THE COURT: Can we do that? Can you run it over to
21 the last 15 minutes?

22 MS. BAILEY: Yes.

23 THE COURT: Okay, we'll have our technician bring it
24 up to what he thinks is the last 15 minutes. If we're not to
25 the part that you wanted to see let us know, but he will,

1 he'll try to do the last 15 minutes. Okay?

2 FORELADY: All right, thanks.

3 MS. BAILEY: Your Honor, the entire video is 40 minutes
4 and 25 seconds. We have it cued up at the 25 minute mark
5 exactly.

6 THE COURT: All right, let's start it and let's have
7 the foreperson tell me if we're far enough along or far enough
8 back to meet her purposes, okay?

9 (State's Exhibit Number 11 played in open court.)

10 THE COURT: Is that what you needed, Madam Forelady?

11 FORELADY: Yes, sir.

12 THE COURT: Is that what you needed to see?

13 FORELADY: Yes, sir.

14 THE COURT: Okay, all right, thank you. Take the jury
15 to the jury room.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right, Madam Bailiff, if you would
19 take the exhibits back in.

20 BAILIFF: Yes, sir.

21 THE COURT: All right, we're at ease.

22 OFF THE RECORD

23 (On the record. Verdict reached at 3:15 p.m.)

24 (Whereupon, the following takes place outside the
25 presence of the jury.)

1 THE COURT: Please be seated. I see we have the
2 Defendant, the attorneys. All right, bring in the jury.

3 (Whereupon, the following takes place in the presence of
4 the jury.)

5 THE COURT: Madam Forelady, have you reached a
6 verdict?

7 FORELADY: Yes, Your Honor.

8 THE COURT: And is it a unanimous verdict?

9 FORELADY: Yes, Your Honor.

10 THE COURT: Would you give your verdict form to the
11 clerk, please? Thank you.

12 (Court reviews verdict.)

13 THE COURT: Madam Clerk, will you publish the verdict?

14 THE CLERK: State of South Carolina in the County of
15 Georgetown, State of South Carolina versus Tamar Yaron Bryant,
16 as to the charge in the murder of Deon Myers, we the jury
17 unanimously find the Defendant guilty.

18 THE COURT: All right, is that your verdict again?

19 FORELADY: Yes, sir.

20 THE COURT: All right, any requests for polling?

21 MR. HAZZARD: Defense requests polling, Your Honor.

22 THE COURT: All right, Madam Clerk?

23 THE CLERK: Yes, I don't have the jury number, is that
24 your verdict and it's still your verdict?

25 JUROR: Yes, Your Honor.

1 THE CLERK: Is it your verdict and is it still your
2 verdict?
3 JUROR: Yes, ma'am.
4 THE CLERK: You, sir, is that your verdict and it's
5 still your verdict?
6 JUROR: Yes, ma'am.
7 THE CLERK: Is that your verdict and it's still your
8 verdict?
9 JUROR: Yes, ma'am.
10 THE CLERK: You, sir, is that your verdict and it's
11 still your verdict?
12 JUROR: Yes, ma'am.
13 THE CLERK: Is that your verdict, ma'am, and is it
14 still your verdict?
15 JUROR: Yes, ma'am.
16 THE CLERK: Is that your verdict, sir, and is it still
17 your verdict?
18 JUROR: Yes, ma'am.
19 THE CLERK: You, ma'am, is that your verdict and it's
20 still your verdict?
21 JUROR: Yes, ma'am.
22 THE CLERK: You, sir, is that your verdict and is it
23 still your verdict?
24 JUROR: Yes, ma'am.
25 THE CLERK: You, ma'am, is that your verdict, is it

1 still your verdict?

2 JUROR: Yes, ma'am.

3 THE CLERK: You, ma'am, is that your verdict and it's
4 still your verdict?

5 JUROR: Yes, ma'am.

6 THE CLERK: And you, ma'am, is that your verdict and
7 it's still your verdict?

8 JUROR: Yes, ma'am.

9 THE COURT: Let the record reflect that each juror was
10 polled individually and each juror has indicated that the
11 verdict was his or her verdict and it is still his or her
12 verdict. All right, any motions from the Defense?

13 MR. HAZZARD: At this time, Your Honor, the Defense
14 makes a motion to set aside the verdict of the jury. We would
15 submit and basically renew the motion for a directed verdict
16 as previously made at the close of the case, of the State's
17 case in chief and at the close of the Defense case in chief.
18 We would submit that the evidence was insufficient to return a
19 verdict of guilty in this case against the Defendant.

20 THE COURT: All right, and I would respectfully deny
21 your motion. There was substantial, ample evidence of or to
22 support this verdict. Are we ready to proceed from the State?

23 MS. BAILEY: Yes, Your Honor, I have a sentencing sheet
24 for the Court.

25 THE COURT: All right, any reason why we should not

1 proceed with sentencing, Mr. Hazzard?

2 MR. HAZZARD: No, sir, Your Honor.

3 THE COURT: All right, very well. All right, Mr.
4 Hazzard - well, first of all, Ms. Solicitor, would you provide
5 me with the Defendant's prior criminal record if he has any
6 prior criminal record?

7 MS. BAILEY: Your Honor, he has no adult prior record.
8 He was in PTI for use of vehicle without permission when he
9 committed this offense.

10 THE COURT: Okay, but he has no adult record?

11 MS. BAILEY: Correct.

12 THE COURT: Okay, all right let me hear from the
13 Defense.

14 MR. HAZZARD: Your Honor, you have heard the trial of
15 the case. Tamar is 19 years old. He was born May 8th, 1993,
16 in Georgetown. He's a life resident of Georgetown County. As
17 the Prosecutor indicated he was in the DJJ system at age 15
18 for an offense. As a result he was not able to matriculate
19 through high school and the normal course of education;
20 however, he did attend Howard Optional School in Georgetown.
21 He is so young that he has never had a job at this point in
22 his life. His mother, Lashae, is here in the courtroom with
23 him. She is from Georgetown. His father, James Bryant, is
24 incarcerated in the South Carolina Department of Corrections.
25 as I indicated to the Court sometime previously. He has a

1 child who is two years old, a daughter by the name of Nizeria,
2 Your Honor.

3 THE COURT: All right, would your client offer
4 anything to the Court? Nothing?

5 MR. HAZZARD: He said, no, sir. He said, no, sir.

6 THE COURT: All right, how about his family? Anyone
7 else want to speak on his behalf?

8 MS. BRYANT: I wanted to speak. I just wanted to say
9 that ---

10 COURT REPORTER: I need your name, please.

11 MS. BRYANT: Lashae Bryant, I'm his mother. I just
12 wanted to say that Tamar is my son, my only son, and he was
13 never a bad child, he never did anything really intentionally
14 to no one. So I, I'm just going to just let God handle this
15 and go from here because I just - this is not even acceptable
16 to me, it's not. It's not.

17 THE COURT: All right, thank you. Anything further,
18 Mr. Hazzard?

19 MR. HAZZARD: No, sir.

20 THE COURT: Okay, Mr. Bryant, it's my understanding
21 that at this juncture you're 18, 19 years old now?

22 MR. BRYANT: 19.

23 THE COURT: How, how old, Mr. Hazzard?

24 MR. HAZZARD: 19, Your Honor.

25 THE COURT: He's 19. Just turned 19?

1 MR. HAZZARD: Yes, sir.

2 THE COURT: Okay, and Mr. Bryant, sometimes I wonder
3 what brings us to this point. It's hard for me to understand
4 even though I am here in this courtroom or some other
5 courtroom almost every day and I see tragedies like this and
6 this is an absolute tragedy. It's a tragedy in that the
7 victim lost his life here. That is a terrible thing. I'm
8 sure his family has suffered as a result of that, but it's
9 also tragic, at least in my mind, to see a young person such
10 as yourself who for reasons that I cannot understand has
11 placed himself in this situation. Your attorney has told you
12 and I think I told you at the beginning of this trial that
13 this sentence or this conviction carries a minimum of 30 years
14 to life and that's a non-parolable sentence. I watched you as
15 you explained what happened, and like the jury I believe that
16 your statement was voluntary, I believe that you were being
17 truthful with Officer or Detective Busbee. The thing that
18 really struck me was the fact that you were almost nonchalant
19 as you described taking the life of another person for what
20 you described as essentially no reason. You had a
21 disagreement with him five years earlier when you were 13 or
22 you perceived that he offered some insult or offense to one of
23 your friends earlier in the evening. I, I just can't
24 understand why that or those events could lead to that murder
25 and this conviction. We all lose when I have to impose a

1 sentence in a case like this, every one of us, but Mr. Bryant,
2 it's my job to pass sentence, and although it's very difficult
3 at times to do I have that job and I must perform that job.
4 I'm taking into consideration your youth. You were 17 years
5 old when you did this. Had you been an adult I would probably
6 give you a life sentence or had you been a little bit older I
7 would have probably given you a life sentence because the
8 facts of this case certainly support it, but I'm going to
9 consider the fact that you were young, I'm going to consider
10 the fact that you had no adult record at least and I'm going
11 to impose a sentence that I believe would be fair, one that
12 will at least give you the opportunity to hold out some hope
13 for release from incarceration at some time in your future.
14 I'm going to sentence you to a term of imprisonment of 35
15 years. Good luck to you, Mr. Bryant.

16 Ladies and gentlemen of the jury, I want to thank you for
17 your service. These are difficult cases. They're difficult
18 not only for the jury, but for the Prosecutors and the Defense
19 attorneys. I used to sit in Mr. Hazzard's chair all the time
20 and I tell you there's nothing - he feels really beat up now,
21 I can tell you that, and that's just normal and it's tough on
22 me as well. I hate to sentence a young man to prison, but
23 it's what we have to do sometime and society requires it of
24 us. Society required you to sit in judgment of another human
25 being this week and you have done a good job. You were

1 attentive, you paid attention to everything, and I think that
2 you gave Mr. Bryant a very fair trial and it was obvious to me
3 that you were deliberating hard in this matter. I want to
4 commend you for the job that you've done. Thank you for the,
5 on behalf of the citizens of Georgetown County. You will not
6 have to serve again for the next three years, but I do look
7 forward to seeing you again. If you run into me around the
8 county anywhere please remind me that you were on my jury. I
9 always like to talk with jurors about their service. It was a
10 pleasure having you, thank you for being here, but you are
11 dismissed. If you would take the jury back to their jury
12 room, let them gather their personal affects and you're
13 excused for the week.

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Anything further from the State?

17 MS. BAILEY: Not on this matter, Your Honor.

18 THE COURT: Mr. Hazzard, anything further in this
19 matter?

20 MR. HAZZARD: Nothing further from the Defense.

21 THE COURT: All right, thank you both for the job that
22 you've done in this case.

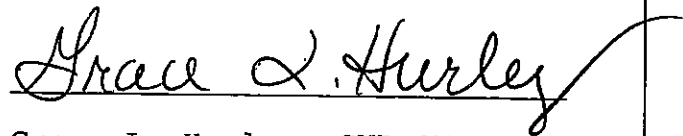
23 MS. BAILEY: Thank you, Your Honor.

24 (Adjourned.)

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of The State versus Tamar Yaron Bryant, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on March 18-20, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M

Official Reporter

June 7, 2013.

WITNESSES

Georgetown County Sheriff's Office

REST WARRANT NUMBER

Direct Indictment

CDR: 0116 §16-03-0010, 0020

DOI: March 15, 2011

ACTION OF GRAND JURY

TRUE BILL

Richard C. Holmes
Foreperson of Grand Jury
Date: 5-18-11

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS22-000495

The State of South Carolina

County of Georgetown

Erin Bailey

11G00278

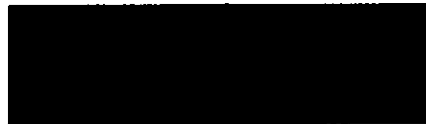
COURT OF GENERAL SESSIONS

MAY, 2011 TERM

THE STATE

VS.

TAMAR YARON BRYANT



ATTORNEY: Colvin, Richard F.

Indictment for

MURDER

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

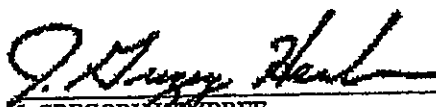
At a Court of General Sessions, convened on May 18, 2011, the Grand Jurors of Georgetown County present upon their oath:

MURDER

CDR: 0116 16-03-0010, 0020

That Tamar Yaron Bryant did in Georgetown County, on or about March 15, 2011, willfully, feloniously, and intentionally kill the victim, Deon Myers, with malice aforethought, either express or implied, by means of gun shot wound to the head, and the victim did die as a proximate result thereof on or about March 18, 2011 in Charleston County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF Georgetown
STATE VS.
Mr. Tamar Yaron Bryant

AKA:

Race: BLACK

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS22-000495

A/W#: DIRECT INDICTMENT

Date of Offense: 3/15/2011

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)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: Bailey, Erin SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 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 formonths/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 PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

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	
Proviso 47.9 (Public Def/Prob)	\$500	
§ 14-1-212 (Law Enforce. Funding)	\$25	25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	
§ 50-21-114(BUI Breath Test Fee)	\$50	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	
Proviso 90.5 (SCCJA Surcharge)	\$5	5.00
3% to County (if paid in installments)		2.90
TOTAL		133.90

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐May serve W/E beginning ☐Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly ☐

pmts. of \$ 20.00 beginning 1st after arrest

\$ 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

Court Reporter:

SCCA/217 (03/2014)

Presiding Judge

Judge Code:

Sentence Date:

2152

3-20-13

SCANNED

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF GEORGETOWN) (MOTION)

3 STATE)
4)
5 VERSUS) TRANSCRIPT OF RECORD
6)
7 TAMAR JOHNSON) September 21, 2012
8) Georgetown, S. C.
9)

10 B E F O R E:
11 HONORABLE STEVEN H. JOHN, Judge.

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

13 ERIN E. BAILEY, ESQ.
14 ASSISTANT SOLICITOR FOR GEORGETOWN COUNTY
15 ATTORNEY FOR STATE

16 RONALD W. HAZZARD, ESQ.
17 ASSISTANT PUBLIC DEFENDER FOR GEORGETOWN COUNTY
18 ATTORNEY FOR DEFENDANT

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DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

1 (THE FOLLOWING TAKES PLACE ON SEPTEMBER 21, 2012.)

2 MS. BAILEY: We are on the record with State v. Tamar
3 T-A-M-A-R, Bryant, B-R-Y-A-N-T.

4 Mr. Bryant has a couple of pending charges, (2010-GS-22-
5 01240) for use of vehicle without permission. I put him in
6 PTI for that. Failed that PTI. For (2011-GS-22-00360), which
7 is a true-billed indictment for murder.

8 It's my understanding that we are here on a Defense
9 Motion for a -- both a Blair and a McNaghten.

10 MR. HAZZARD: Correct.

11 THE COURT: All right, Mr. Hazzard, be glad to hear
12 from you, sir.

13 MR. HAZZARD: Your Honor, this is fairly short and
14 sweet. The biggest issue that we have is that anytime I
15 represent someone charged with the ultimate crime, which
16 carries almost the ultimate sanction, I'm very concerned and
17 mindful regarding their mental state, and that that be
18 determined before the Court.

19 In speaking with Mr. Bryant, who currently is housed at
20 J. Reuben Long, he has given extensive inculpatory statements
21 that are recorded, and in speaking with him what he says to me
22 repeatedly is that there is no evidence against him, and I
23 have not been able, over several conversations, to get him to
24 grasp the concept that an inculpatory statement that is made
25 without any apparent pressure or coercion whatsoever, that

1 that is evidence, and that twelve men and women can consider
2 it, and can consider it very strongly, and it is almost as
3 if -- I don't know if it's just a denial thing, or if it's a
4 Department of Disabilities and Special Needs thing, but it was
5 something that that inability to connect in that fashion, and
6 make him understand something so crucial, and such a central
7 point to his prosecution and defense caused me to want to
8 bring him before the Court, so that the Court could make a
9 determination whether he needed an evaluation of any sort.

10 THE COURT: All right. Do you have any indication --
11 have you gotten any indication from -- or have you been able
12 to locate any family members to talk about his upbringing,
13 education, anything like that?

14 MR. HAZZARD: The family members that I've spoken to
15 have indicated that Mr. Bryant has had a tough upbringing, but
16 as the Court knows, a lot of times folks are hesitant and
17 vague to give specifics as to what might have happened, or
18 something of that nature. All of them that I have -- the
19 couple that I have had a chance to speak to are in agreement
20 with an evaluation, but none of them want to say specifically
21 say why.

22 THE COURT: Okay.

23 MS. BAILEY: I just want to add for the Court's
24 information that Mr. Bryant was very young when this happened.
25 He has now been incarcerated for over a year, but he -- he was

1 eighteen, nineteen, when he was locked up. When I first had
2 him on some charges he was still in high school, so he is a
3 very young individual.

4 THE COURT: Okay. How about regarding his educational
5 path? Was he ever deviated from the normal education path
6 into any ---

7 MR. HAZZARD: To my knowledge he has not -- you know,
8 let me say, to my knowledge he was never an IUP candidate or
9 anything of that nature, never specifically a special needs
10 student.

11 THE COURT: Okay.

12 MR. HAZZARD: Which again is why it is so jarring to me
13 that we have discussed this time and time again over the last
14 several months ---

15 THE COURT: Okay.

16 MR. HAZZARD: ---And it's just like there's a wall.
17 It's like, they don't have any evidence. I'm like, well,
18 they've got your voice on tape. They don't have any evidence.

19 THE COURT: All right. Okay.

20 Mr. Bryant, let me ask you a few questions. Mr. Hazzard
21 is standing right next to you. What is his job? What is he
22 suppose to do for you?

23 A. Represent me.

24 THE COURT: All right, sir. And you've got the
25 Solicitor over there. What is her job? What is she suppose

1 to do?

2 A. Find me guilty.

3 THE COURT: All right, sir. And just assume we had
4 twelve men and women sitting in the box over there to hear the
5 case, what would be their job; what are they suppose to do?

6 A. Decide whether I'm guilty or not.

7 THE COURT: All right. And what's -- whether it's
8 myself or some other Judge, what's the Judge's job?

9 A. Judgment. Make your decision.

10 THE COURT: Okay. Now, I'm not asking for you to tell
11 me any details here, okay, but I am asking, when you speak
12 with Mr. Hazzard, do you have any problems understanding him?
13 Is there anything in talking to him that you don't understand?

14 A. No sir.

15 THE COURT: All right, sir. When he explains to you
16 what evidence, if any there is that the State has do you
17 understand what he is saying?

18 A. Yes sir.

19 THE COURT: All right, sir. When he talks about what
20 you might do to defend yourself in this case, how the Defense
21 might go in this case -- again, I don't want you to tell me
22 what it is, but when he talks about that do you understand
23 that?

24 A. Yes sir.

25 THE COURT: And do you give him your opinion about the

1 evidence the State has?

2 A. Yes sir.

3 THE COURT: All right. And do you give him your
4 position about what defense, or what you might do to defend
5 yourself in the case?

6 A. Yes sir.

7 THE COURT: All right, sir. Have you talked to him
8 about any -- and again, not wanting to talk about the facts,
9 but if there's any witnesses that might be called, or people
10 that you might want him to talk to, do you tell him who they
11 are?

12 A. Yes sir.

13 THE COURT: All right, sir.

14 Mr. Hazzard, I appreciate the concern that you have, and
15 I understand your concern, I can't see any reason at this
16 point in time to order an evaluation. If the -- you know,
17 if -- and again, communicating with the family members,
18 understanding the Court's position, you tell them there has to
19 be some specific information as, has there ever been any kind
20 of evaluation done in the past, or hospitalization or
21 something ---

22 MR. HAZZARD: Yes sir.

23 THE COURT: ---But based upon the information that has
24 been presented, my questioning of the Defendant, and what I've
25 heard so far I just don't see any reason or rationale to order

1 an evaluation in this particular matter.

2 MR. HAZZARD: Yes sir. Thank you, Your Honor.

3 THE COURT: All right.

4 MR. HAZZARD: I would ask at this time my client, in
5 the brief time I had to speak with him this morning, reminded
6 me that he has never had a bond set on this murder charge, and
7 he wanted to address that.

8 THE COURT: I would be glad to hear that.

9 Is the State prepared for that?

10 MS. BAILEY: I could be, Your Honor. On 4/20 of 2011,
11 which was less than a month after the murder, he was brought
12 before Judge Culbertson to set bond. Bond was denied at that
13 time.

14 I brought him back on Defense motion on 11/30/2011, and
15 Judge Cottingham heard a bond motion. Judge Cottingham, at
16 that time, denied it, but said that he would rehear it if it
17 was not tried by the end of 2012.

18 THE COURT: Okay. All right. Now, is this case going
19 to be tried in Horry or Georgetown?

20 MS. BAILEY: In Georgetown.

21 THE COURT: In Georgetown.

22 MS. BAILEY: He's -- there's five co-defendants. One
23 of the co-defendants is the -- the Defendant who you saw in
24 the trial earlier this week ---

25 THE COURT: All right.

1 MS. BAILEY: ---And so because there are so many of
2 them, and bond was denied on all of them, we are having to
3 house some of them in other locations.

4 THE COURT: Okay. I appreciate that. Do you
5 anticipate -- the last term of General Sessions Court you are
6 going to have this year is December 17th, with Judge
7 Culbertson? Do you anticipate you are going to have a trial?

8 MS. BAILEY: Your Honor, the State is moving full speed
9 ahead at preparing the case for trial, and will call it at the
10 earliest opportunity.

11 THE COURT: Okay.

12 MS. BAILEY: If we are able to call it in December -- I
13 would love to be able to call it in December.

14 THE COURT: All right. I appreciate that.

15 MR. HAZZARD: Your Honor, ---

16 THE COURT: Yes sir.

17 MR. HAZZARD: ---All we would ask is that the Court
18 consider a type of order which says, for instance, that should
19 the State not call the case by the last General Sessions term
20 in December, 2012 that bond automatically be set in the amount
21 of a Hundred or a Hundred and Twenty-Five, or a Hundred and
22 Fifty Thousand Dollars ---

23 THE COURT: All right.

24 MR. HAZZARD: ---If the Court would consider that.

25 THE COURT: The problem I would have, did the State

1 notify the victim's family and ---

2 MS. BAILEY: No, I did not notify them.

3 THE COURT: ---I have -- I don't have the ability to
4 hear from them, so I think the best that I can do is -- as I
5 indicated there is a -- you've got a term of Criminal Court --
6 well, you've got a couple between now and the end of the year,
7 but the last one is December 17th, the week of December 17th,
8 2012. If the case is not going to be reached during that
9 particular time it will be brought back before Judge
10 Culbertson for a rehearing on the bond motion.

11 Notify the victims, the deceased's family or
12 representatives who wish to speak that, if they want to, that
13 a bond is going to be held that week if the trial isn't going
14 to go forward, Solicitor, so that you put them on notice, and
15 if they are here they are here, and the Court could hear from
16 them; if not, then Mr. Hazzard, you can argue the matter
17 before Judge Culbertson and will have complied with the
18 Victim's Rights Notification Act.

19 MR. HAZZARD: All right. Thank you, Your Honor.

20 THE COURT: All right. Thank you very much.

21 MS. BAILEY: Thank you, Your Honor.

22 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
23
24
25

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the MOTION HEARING of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS for GEORGETOWN COUNTY, SOUTH CAROLINA, on the 21st day of September, 2012.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

January 29, 2014



DIXIE COX EUBANK

CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2011-GS-22-00495

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	December 17, 2012
	)	
Tamar Yaron Bryant,	)	
	)	
Defendant.	)	

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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

Erin Bailey, Esquire
Attorney for Plaintiff

Ronald Hazzard, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)
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1 (On the record, December 17, 2012.)

2 MS. BAILEY: We're on the record with 2011-GS-22-
3 493. That's a true-billed indictment for murder. This is
4 State v. Tamar Bryant. Mr. Bryant is here with his defense
5 lawyer, Mr. Ron Hazzard, on two defense motions. One is a
6 motion to set a bond. The other is a motion for a - an
7 evaluation as to competency and criminal responsibility. For
8 the Court's information this Defendant was arrested on March
9 25th, 2011, for murder. At that time he did confess to pulling
10 the trigger and killing the victim in this case. We have
11 attempted to engage in plea negotiations and have been
12 unsuccessful. Mr. Bryant has been here three times for bond
13 motions. Every time it has been denied, but I have been
14 ordered to bring him before the Court and would have anyway
15 for a bond reduction motion this term.

16 THE COURT: Yeah, if I recall this is the one that you
17 all said you were going to try it this term of court and I
18 said, well, if we don't try it this term, he's been in jail
19 for over a year and a half, we're going to do something with
20 it; right?

21 MS. BAILEY: Bring him for a bond motion.

22 THE COURT: Yeah, okay, all right, all right, Mr.
23 Hazzard.

24 MR. HAZZARD: Yes, sir, Your Honor.

25 THE COURT: You've got a motion for - is it a

1 competency evaluation or a criminal responsibility evaluation?

2 MR. HAZZARD: A competency evaluation, Your Honor.

3 THE COURT: All right, have you had difficulty or in
4 your opinion does your client have difficulty understanding
5 the charges against him or assisting in the preparation of his
6 defense?

7 MR. HAZZARD: Your Honor, Mr. Bryant is a very easy
8 person to talk to, there's no question about that. The time
9 we spend together is very enjoyable. The issue I'm having is
10 that in the 20 some odd years that I've been practicing law
11 and doing cases that carry 30 to life I've never had a client
12 with a taped confession to a murder who does not appear to
13 grasp the severity of this situation. I think that ---

14 THE COURT: In what way?

15 MR. HAZZARD: I'm sorry?

16 THE COURT: I mean in what way? What makes you think
17 he doesn't grasp the severity of it?

18 MR. HAZZARD: Because one of the - for instance, he has
19 not - he, he does not allow the, the possibility of any plea
20 offer and I understand that obviously he has the absolute
21 right to a jury trial and that's what I am here for and I got
22 no problem with doing that. I do not believe I've ever seen a
23 situation where a client has been charged with the crime of
24 murder with a confession on the record who did not even want
25 to explore the possibility of what plea offer might be out

1 there. That's one instance of it. Another thing is I don't
2 know if Mr. Bryant does not trust me, and again, I do not
3 categorize him as hostile because he is not, we get along
4 great. There are just certain things about his past history,
5 certain experience that he, that he has experienced as a child
6 that he's not very forthcoming as far as his personal history
7 with me. He says that those things really do not matter and I
8 try to get him to understand that they do matter in the grand
9 scheme of trial preparation. So, I do not know again if it's
10 these past instances that have occurred that have brought him
11 into contact with the, with the juvenile system and brought
12 him into contact with the court system as a victim that cause
13 him to be kind of closed up, but it's been very difficult and
14 is very difficult to get from him the information I need that
15 will help me to best represent him and I can't figure out why
16 that is.

17 THE COURT: When did, when did you first notice this?
18 Why have we waited from March of 2011 until now to make the
19 request?

20 MR. HAZZARD: Oh, Your Honor, as I indicated in my
21 letter to - my e-mail to the Court I brought this to the
22 attention of the Prosecution, I was appointed to represent Mr.
23 Bryant, I believe, it was April 13th of this year. I first met
24 with him on April 27th and I made that known within the first
25 week of May right after I had met with him. I do not control

1 the motion docket or the trial docket. The matter was brought
2 before Judge John in September of this year and as I indicated
3 what I know now I did not know then when I spoke with Judge
4 John or when I did the motion before Judge John. Also in
5 speaking with his mother I've obtained his school records that
6 indicate unfortunately that for various reasons and I think
7 some of them again have to do with some trauma in his personal
8 life that Mr. Bryant has been held back on multiple occasions,
9 grades very, very, very poor. I do not know if I've ever seen
10 that many Fs in my life, unfortunately. I think some of it
11 may be again or a lot of it really is due to that trauma in
12 his personal life because I think he's actually a very bright
13 young man, very bright, but really he's an enigma to me,
14 Judge, simple as that, and based on the nature of these
15 charges, if we were talking about a shoplifting I wouldn't
16 have any problem in the world with saying, "Yeah, I'm sure
17 he's okay, we can go forward," but my job in protecting his
18 interest is to bring any issues I have before the Court for
19 the Court's consideration and that's simply what I'm doing.

20 THE COURT: Okay, Mr. Bryant, you understand what
21 you're charged with?

22 MR. BRYANT: Yes, sir.

23 THE COURT: And what are you charged with?

24 MR. BRYANT: Murder.

25 THE COURT: Okay, is - do you know who your attorney

1 is?

2 MR. BRYANT: Yes, sir.

3 THE COURT: And who's your attorney?

4 MR. BRYANT: Ronald Hazzard.

5 THE COURT: All right, have you been able to discuss
6 your case with Mr. Hazzard?

7 MR. BRYANT: Yes, sir.

8 THE COURT: Have you been able to answer all of his
9 questions?

10 MR. BRYANT: Yes, sir.

11 THE COURT: Has he answered all of your questions?

12 MR. BRYANT: No, sir.

13 THE COURT: Okay, have you asked him certain
14 questions?

15 MR. BRYANT: Yes, sir.

16 THE COURT: All right, has he given you a reason as to
17 why he has not responded to those questions?

18 MR. BRYANT: No, sir.

19 THE COURT: Okay, do you know what Ms. Bailey's job
20 is?

21 MR. BRYANT: Yes, sir.

22 THE COURT: Okay, what is her job?

23 MR. BRYANT: Prosecute me.

24 THE COURT: Okay, when you say prosecute you ---

25 MR. BRYANT: I mean find me guilty or not guilty.

1 THE COURT: Okay, and what is Mr. Hazzard's job?
2 MR. BRYANT: To represent me.
3 THE COURT: Okay, and do you know what my job is?
4 MR. BRYANT: Yes, sir.
5 THE COURT: And what is my job?
6 MR. BRYANT: It's to decide.
7 THE COURT: Okay, all right, you understand you have a
8 right to a jury trial?
9 MR. BRYANT: Yes, sir.
10 THE COURT: Okay, you understand that you have the
11 right to confront anybody that accuses you of the crime?
12 MR. BRYANT: Yes, sir.
13 THE COURT: Okay, you have the right to put up a
14 defense if you want to. Do you understand that?
15 MR. BRYANT: Yes, sir.
16 THE COURT: And do you understand that you also have
17 the right to remain silent and you don't have to talk to
18 police or anything of that nature? Do you understand that?
19 MR. BRYANT: Yes, sir; yes, sir.
20 THE COURT: Okay, all right, have you ever had any
21 mental health issues?
22 MR. BRYANT: No, sir.
23 THE COURT: Have you ever been to any mental health
24 provider? You ever been to Georgetown County Department of
25 Mental Health or have you ever had any teachers ---

1 MR. BRYANT: Yes, sir, to pay attention in school.
2 THE COURT: To pay attention in school?
3 MR. BRYANT: Yeah, like - yes, sir.
4 THE COURT: How old were you?
5 MR. BRYANT: Like 13, 14.
6 THE COURT: And what did they do?
7 MR. BRYANT: Give me some medication.
8 THE COURT: Okay, what kind of medication?
9 MR. BRYANT: Adderall, Ritalin.
10 THE COURT: When did they - and how old are you now?
11 MR. BRYANT: 19.
12 THE COURT: Okay, and so that happened - that was
13 about six years ago?
14 MR. BRYANT: Yes, sir.
15 THE COURT: Okay, do you have to have that medication
16 now?
17 MR. BRYANT: No, sir.
18 THE COURT: Do you have trouble paying attention now?
19 MR. BRYANT: No, sir.
20 THE COURT: All right, what grade were you in when
21 that happened?
22 MR. BRYANT: Like I was in the sixth grade.
23 THE COURT: Okay.
24 MS. BAILEY: Your Honor, on the bond issue, just for
25 the record, the victims are here. They're in - the victim's

1 family is in the back of the courtroom and wanted to be
2 present today.

3 THE COURT: Okay.

4 MS. BAILEY: And the State would also request, I spoke
5 with Mr. Hazzard about this, the State would request that if
6 Your Honor does set a bond that you order home - that the
7 monitoring along with it just to make sure that this Defendant
8 doesn't leave us.

9 THE COURT: Okay, all right, on your motion for
10 evaluation I'm going to deny that. There's nothing in the
11 responses by Mr. Bryant that shows or indicates to me that he
12 does not understand the charges against him and is unable to
13 assist in his defense. So I'm going to deny the motion for an
14 evaluation.

15 Now, on the motion for a bond reduction I know we had him
16 brought back, why aren't we trying this case? The case is
17 going on two years old and you don't need that long to prepare
18 a case. What's the reason for the delay?

19 MS. BAILEY: Your Honor, there's five Co-Defendants and
20 it is an extremely complicated case, and frankly I ---

21 THE COURT: What makes it complicated?

22 MS. BAILEY: Your Honor, I had concerns about his
23 competency. That's why I decided not to call the case this
24 term. I felt like he needed to have a fair opportunity to be
25 heard on that.

1 THE COURT: All right, well, this - his competency was
2 expressed to you back in April of 2012. So what has happened
3 from April of 2012 until now that raises the issue of his
4 competency to you?

5 MS. BAILEY: Well, Your Honor, as I was full steam
6 ahead preparing the case for trial Mr. Hazzard indicated to me
7 he had concerns about his competency based on new information
8 and I thought that that was a serious enough concern given
9 that Mr. Bryant is facing life that I didn't want to call the
10 case without proper consideration.

11 THE COURT: Well, I'm going to be honest with you, he
12 was arrested in March of 2011. He's been in jail since March
13 of 2011 and I think this competency is just a ploy to kind of
14 put it off. I don't think that over the last year and nine
15 months all of a sudden two weeks before trial his competency
16 becomes a great concern that could not have been addressed for
17 the last year and nine months.

18 MR. HAZZARD: And if I may be heard on that, since the
19 Court has on the record indicated that this is some kind of
20 ploy by me to delay the trial.

21 THE COURT: Not a ploy by you. I do have concerns as
22 to the State whether or not they're really concerned as to his
23 competency and whether or not they really think that he does
24 not understand the charges against him and cannot assist in
25 his defense because I don't know that the State has ever said

1 that or correct me if I'm wrong, Ms. Bailey ---

2 MS. BAILEY: Your Honor, I've consented ---

3 THE COURT: --- has the State ever taken that
4 position?

5 MS. BAILEY: I have consistently consented to having
6 this Defendant evaluated and when Mr. Hazzard, is a very
7 accomplished attorney, comes to me and says that he has
8 serious concerns about the Defendant's competency I don't want
9 to try this thing twice.

10 THE COURT: Well, who - so did Mr. Colvin ever
11 approach you?

12 MS. BAILEY: No.

13 THE COURT: Did Mr. Hazzard approach you in April of
14 2012?

15 MS. BAILEY: Your Honor, I have no record of that. I
16 do have that I brought him over in September but I don't have
17 a motion in my file as to when that was filed. I know that
18 ---

19 THE COURT: You brought him over in September for what
20 purpose?

21 MS. BAILEY: For a competency hearing.

22 THE COURT: Based upon the State's motion?

23 MS. BAILEY: Based on Defense motion.

24 THE COURT: The Defense made a motion in September?

25 MS. BAILEY: Yes.

1 MR. HAZZARD: Yes, sir.

2 THE COURT: And what was that decision?

3 MR. HAZZARD: That was before Judge John. Judge John
4 questioned Mr. Bryant just like you did and made the
5 determination that he didn't see anything and as I put in the
6 e-mail to the Court last week or the week before last actually
7 that the Judge did not at that time see anything that would
8 indicate there was a question with regard to competency but if
9 there were any other information discovered that may play a
10 bearing into it, that I was to feel free to bring the matter
11 back before the Court. As I indicated subsequent to that I
12 had the opportunity to speak with his mother and discuss some
13 matters with him that Mr. Bryant will not discuss with me
14 point blank as far as, you know, his father committing a crime
15 of extreme violence against his mother in his presence and Mr.
16 Bryant at the age of, I believe, 13 having to provide
17 information to the police that subsequently resulted in his
18 father now being incarcerated, I believe, for 28 years. I
19 believe that may have a bearing on how a young man sees the
20 world and what a young man thinks about a certain situation
21 and I believe it's obviously traumatic enough where again
22 based on the severity of the charges and what he's facing I
23 could not and would not in good faith go forward without
24 bringing the matter up to the Court for its consideration.
25 That's what I have done. Senior Solicitor Bailey has always

1 been mindful of my concerns, and again, and as she says to the
2 Court she doesn't want to try this matter twice.

3 THE COURT: Well, I don't think they want to try it
4 period.

5 MR. HAZZARD: No, I don't ---

6 THE COURT: It's going on two years old. I don't
7 think anybody wants to try the case, and I mean I'll have to
8 admit I've been getting letters from Mr. Bryant saying, "Why
9 have I been sitting in jail for almost two years and nobody
10 wants to try my case?"

11 MS. BAILEY: Your Honor, that would be ex parte
12 communication which I would submit is not proper for the
13 Court's consideration.

14 THE COURT: Exactly and that's why I said let's do
15 something with this case. We've got the State's that not
16 doing anything with it. We've got Defense counsel that's not
17 doing anything with it and the end result is we have a
18 Defendant sitting in jail for almost two years without the
19 benefit of a trial, without the benefit of confronting his
20 accusers, without the benefit of having a bond. You all are
21 keeping him in jail without a trial and that's the problem
22 we're facing here and I don't blame him. If he can't get his
23 lawyer to do something, he can't get the State to do
24 something, that's why he's writing the Court.

25 MR. HAZZARD: Well, I think ---

1 THE COURT: Who's going to help him?

2 MR. HAZZARD: --- I think one of the issues that was
3 brought up previously in some communication with the Court was
4 that when it comes to bond I believe he has had either three
5 or four bond hearings, all of which he's been denied bond, and
6 I believe you were one of the judges who denied him bond.

7 THE COURT: And every time it's come before me it's
8 been based upon the assurance, "Judge, he's on the trial
9 roster for the next term of court," and the next term of court
10 comes up and nothing happens to it.

11 MS. BAILEY: Your Honor, this case has only been before
12 you once and that was for the original bond setting.

13 THE COURT: Exactly.

14 MS. BAILEY: Back in April of 2011. We would not have

15 ---

16 THE COURT: No, it came, it came in front of me and
17 was it September for a bond reduction and I was told then it
18 is going to be on the roster in December, we're disposing of
19 it.

20 MS. BAILEY: Your Honor, that was Judge John in
21 September.

22 THE COURT: It was before Judge John?

23 MS. BAILEY: Yes.

24 THE COURT: Okay, then that was before Judge John, but
25 I know that it - this isn't just appearing on the trial roster

1 for the first time in December; is it?

2 MS. BAILEY: Yes.

3 THE COURT: Okay, all right, well, I agree with Judge
4 John. I don't see the need for a mental evaluation. Now
5 let's address the bond issue.

6 MS. BAILEY: Well, Your Honor, it's the State's ---

7 THE COURT: I mean, if he's such a threat of harm to
8 the community and you've got the evidence why are we taking so
9 long to try the case? I know you say there's five Co-
10 Defendants, but why do five Co-Defendants make it so difficult
11 to get this guy to trial?

12 MS. BAILEY: Because, Your Honor, I have to make
13 decisions as to who I'm going to try on what counts together.
14 There's Bruton issues. They've all given statements. I have
15 to decide which statements I want to include. Some of them
16 have given multiple statements. It is - I have 18 disks each
17 of which is over an hour and I have reviewed all of those, as
18 has Mr. Hazzard. We're talking about getting them all
19 transcribed. The ones who are proffering are still
20 proffering.

21 THE COURT: So when were the statements given?

22 MS. BAILEY: The statements were given - some of the
23 statements were given at time of arrest. Some people are
24 still giving statements.

25 THE COURT: Okay, the ones that were taken at the time

1 of arrest when were they transcribed?

2 MS. BAILEY: They have not been transcribed.

3 THE COURT: Okay, so, we're two years down the ---

4 MS. BAILEY: We don't automatically transcribe.

5 THE COURT: --- later and you're saying, this is two
6 years after the fact and you're saying this stuff needs to be
7 done and nobody's doing it. That's the problem ---

8 MS. BAILEY: Okay, Your Honor, if you feel the need to
9 set bond I'm fine with that. It ---

10 THE COURT: Well, no, I need to know earnestly ---

11 MS. BAILEY: I don't consent to bond but ---

12 THE COURT: --- I need somebody to be honest and tell
13 me what is taking so long with this case because you're saying
14 18 statements and they've got to be transcribed but the ones
15 that were given back in March of 2011 you haven't even
16 transcribed them yet.

17 MS. BAILEY: Well, Your Honor, as of February this will
18 be on the judicial docket and will be scheduled at the Court's
19 convenience.

20 THE COURT: All right, Mr. Hazzard, let me hear from
21 that, since the Court's taking over the - so this is the one
22 where the administrative judge will set it for trial ---

23 MS. BAILEY: Yes.

24 THE COURT: --- in February regardless of whether the
25 State's ready or not.

1 MS. BAILEY: Yes.

2 THE COURT: Let me hear from you on that, Mr. Hazzard.

3 MR. HAZZARD: Your Honor, the Court - this Court made it
4 very clear that if possible this matter would be up for trial
5 beginning today. As a result for the better part of the last
6 four weeks that is what I've been preparing for. I am not
7 sure at all as many conversations as Mr. Bryant and I have had
8 what he means by there are questions that he has that I
9 haven't answered, but the bottom line is we're ready to try
10 the case today. Of course for us the burden is nowhere near
11 what it is for the Prosecution as far as preparation is
12 concerned and getting witnesses present, things of that
13 nature, but we're prepared to try the case today because the
14 Court said we needed to be ready for that. As far as the
15 matter being heard once the administrative judge sets it in
16 February, you know, that is obviously up for this Court's
17 consideration. I have no problem with that. I know Mr.
18 Bryant wants this matter resolved as quickly as possible. So
19 I stand at the Court's convenience whenever.

20 THE COURT: All right, Mr. Hazzard, you said that
21 you're not aware of any questions that he has of you that you
22 hadn't answered. Do you want to take a minute to talk to him
23 regarding that before we proceed?

24 MR. HAZZARD: Yes, sir; yes, sir, I'd appreciate it.

25 THE COURT: All right, let's stand - well, let's go

1 ahead. We'll stand it down about 10 or 15 minutes because I
2 don't know what I'm going to do with this yet.

3 MR. HAZZARD: Okay.

4 THE COURT: I just know it's, it's, it's - if it's not
5 the oldest case we've got going, it's pretty close to it.

6 MS. BAILEY: Your Honor, we're going to try a murder
7 from 2007 in January.

8 THE COURT: So it takes you all five years to ---

9 MS. BAILEY: Yes.

10 THE COURT: --- get a case ready for trial?

11 MS. BAILEY: Your Honor, we - I'm just telling you this
12 is ---

13 THE COURT: Has that person been ---

14 MS. BAILEY: --- not the oldest case by far.

15 THE COURT: So has the person been sitting in jail
16 since 2007?

17 MS. BAILEY: Some of them have bonded out and then been
18 re-arrested. It's - some of them are sitting in jail, yes.

19 THE COURT: And have been for the last five years
20 without the benefit of a trial?

21 MS. BAILEY: I don't know the answer to that because
22 it's not my case but I can ---

23 MR. HIXSON: No, sir, not ---

24 MS. BAILEY: --- assure you ---

25 MR. HIXSON: --- re-arrested on five additional

1 warrants since that time on additional charges.

2 THE COURT: Being re-arrested's one thing and I can
3 understand that, but holding a person in jail for such
4 extended periods of time without the benefit of trial, without
5 the benefit to confront one's accuser and without the benefit
6 of a bond is just flat against the law and you can't do it.

7 MR. HIXSON: And perhaps it's appropriate, Your Honor,
8 perhaps we can have a status conference relating to the
9 difficulties relating to the trial may help because some of
10 the stuff doesn't need to be on public record with folks in
11 here as relates to some gang activity and things like that,
12 so.

13 THE COURT: Well, and I understand that, but I can
14 tell you this is the type of case that really started the
15 issue of the conflict between the Solicitors and the Supreme
16 Court over who should manage the docket because the Supreme
17 Court recognizes that you've got people sitting in jail for
18 exuberant amounts of time without the benefit of a trial and
19 you just can't do that. Let's stand this one down for about
20 10 minutes, give Mr. Hazzard an opportunity to talk to his
21 client, find out what questions he had and then we'll bring it
22 back up in just a minute.

23 MR. HAZZARD: Yes, sir.

24 OFF THE RECORD

25 (On the record.)

1 THE COURT: All right, we're going back on the record
2 in State versus Tamar Bryant. Is that correct?

3 MS. BAILEY: Yes, Your Honor.

4 THE COURT: All right, all right, Mr. Hazzard, have
5 you had an opportunity to meet with your client ---

6 MR. HAZZARD: Yes, sir.

7 THE COURT: --- in regards he said he had some
8 questions.

9 MR. HAZZARD: Yes, sir.

10 THE COURT: All right, anything further regarding the
11 motion for an evaluation or the motion and I'll - on the
12 motion for evaluation I've denied it but if anything came up
13 during you all's meeting that you think plays on that I'll
14 hear from you on that, also regarding the motion for a bond
15 reduction or bond modification.

16 MR. HAZZARD: Your Honor, with regard to the motion for
17 an evaluation there's nothing that was addressed during our
18 discussion that I could use or would use to augment that
19 motion. I would ask the Court at some point during this
20 hearing to confirm with Mr. Bryant on the record that I've
21 answered any questions that he may have had. As far as the
22 bond issue is concerned what I would say to the Court is that
23 he is a lifelong resident of Georgetown County who is 19 years
24 old. His mother lives here. His grandmother lives here. At
25 the time of this incident in March of 2011 he was residing

1 with his grandmother in Georgetown County. It's the only home
2 he knows. His younger sister who's in high school lives here
3 as well. As the Prosecutor indicated there are five Co-
4 Defendants in this case. One of the main issues in trying to
5 get to the bottom of this over time has been based on the
6 different statements and counterstatements and the fact that
7 independent, innocent bystanders indicate there was more than
8 one weapon involved and the different conflicting statements
9 that the bystanders give is who is to be considered at fault,
10 who is to be charged, who is to, you know, ultimately go to
11 trial. Mr. Bryant tells me that he wishes to plead not
12 guilty, that he did not commit this act. I believe that there
13 is, in fact, evidence that can be put up at trial that will
14 help indicate that or may support that. In light of that we
15 ask for a bond that protects the community but also allows
16 him, you know, to get out on bond to aid in his defense if he
17 so chooses and we would submit that a bond in the range of 50
18 to \$75,000 would accomplish both of those ends and would ask
19 the Court to strongly consider it.

20 THE COURT: All right. All right, Mr. Bryant, have
21 you had an ample opportunity to discuss this matter with your
22 attorney?

23 MR. BRYANT: Yes, sir.

24 THE COURT: All right, earlier you had indicated that
25 there were some questions he had not answered.

1 MR. BRYANT: Yes, sir.

2 THE COURT: But you've answered all his and you've had
3 no trouble communicating with him; is that correct?

4 MR. BRYANT: Yes, sir.

5 THE COURT: All right, has he answered all of your
6 questions?

7 MR. BRYANT: Yes, sir.

8 THE COURT: Okay, and you understand the charges
9 against him and you're able to provide him with the
10 information he needs?

11 MR. BRYANT: Yes, sir.

12 THE COURT: Okay, and as I understand you said you did
13 have some - well, when you had mental health treatment that
14 was for disrupting school?

15 MR. BRYANT: Yes, sir.

16 THE COURT: Okay, and you said they put you on some
17 Adderall or something?

18 MR. BRYANT: Yes, sir.

19 THE COURT: Okay, and you don't need that anymore or
20 you do?

21 MR. BRYANT: No, sir.

22 THE COURT: All right, all right, you said victims
23 were here?

24 MS. BAILEY: Yes, Your Honor, the victim's family is
25 here and they do oppose any bond being set. The State also

1 opposes it, but if Your Honor does set bond would request a no
2 contact order with the victim and would also request an ankle
3 monitor so that we can keep track of where Mr. Bryant is.

4 THE COURT: All right, do they wish to address the
5 Court or anything?

6 MS. BAILEY: I don't think so, no, Your Honor.

7 THE COURT: And what are the charges?

8 GRANDMOTHER: Excuse me, I am his grandmother. I'm one
9 of - excuse me.

10 MS. BAILEY: You are Mr. Bryant's grandmother?

11 GRANDMOTHER: Yes.

12 MS. BAILEY: Okay, we were asking about the victim.

13 THE COURT: Yeah, I was talking about the victim.

14 GRANDMOTHER: Oh, okay, oh, okay, sorry.

15 THE COURT: Is there any victim's or family of the
16 victim's here that want to address the Court?

17 MS. BAILEY: No, Your Honor.

18 THE COURT: Okay, and what are the charge - it's
19 murder and what else?

20 MS. BAILEY: It's murder. That's it.

21 THE COURT: That's the only charge.

22 MS. BAILEY: He also - he has a use of vehicle without
23 permission charge that he was in PTI on when he, when he was
24 arrested on the murder. That has a \$1,000 bond. I'm sorry,
25 it's a \$1,000 PR bond.

1 THE COURT: What kind of prior record does he have?

2 MS. BAILEY: None, he was 17 when this happened. So he
3 had no adult record.

4 THE COURT: All right, Mr. Bryant, I am going to grant
5 your motion for a bond reduction. I'm going to set a \$75,000
6 surety bond, also require that you have GPS ankle monitoring
7 if you're released on bond, also to have no contact directly
8 or indirectly with the victim's family in this case.

9 MS. BAILEY: Thank you, Your Honor.

10 THE COURT: All right, thank you.

11 MR. HAZZARD: Your Honor, for clarification is the
12 \$1,000, does that cover the - what is it unlawful use of
13 vehicle or possession of stolen vehicle?

14 THE COURT: No, that's - as I understand that's a
15 separate PR bond?

16 MS. BAILEY: Yes, Your Honor.

17 MR. HAZZARD: Yeah.

18 THE COURT: All right, so, that'll stay separate.

19 MR. HAZZARD: Okay.

20 THE COURT: All right.

21 MS. BAILEY: Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Adjourned.)

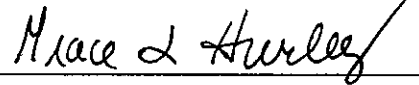
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of The State versus Tamar Bryant, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on December 17, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M
Official Reporter

February 7, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUL 25 2014

Appeal from Georgetown County

SC Court of Appeals

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAMAR BRYANT,

APPELLANT

APPELLATE CASE NO. 2013-000671

FINAL BRIEF OF APPELLANT

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Columbia, SC 29211-1589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court's refusal to order a mental competency examination was erroneous because it was based on an improper consideration, a mistake of fact, and the State consented to the evaluation?

STATEMENT OF THE CASE

On May 18, 2011, a Georgetown grand jury indicted appellant Tamar Bryant for murder. R. 345. Erin E. Bailey represented the State throughout the proceedings in the case. Ronald W. Hazzard represented appellant. On September 21, 2012, a hearing on whether to order a competency evaluation was held before the Honorable Steven H. John. R. 322 (Sept. 12, 2012, Hearing R. 322).¹ On December 17, 2012, a hearing on whether to order a competency evaluation was held before the Honorable Benjamin H. Culbertson. R. 296 (Dec. 17, 2012, Hearing R. 296).² On March 18-20, 2013, appellant was tried before the Honorable Larry B. Hyman, Jr. R. 1. The jury convicted appellant. R. 288, ll. 14 – 17. Judge Hyman sentenced appellant to thirty-five years' imprisonment. R. 294, ll. 14 – 15. This appeal follows timely filing and service of the notice of appeal.

¹ In this Initial Brief, references to this transcript will be abbreviated to "September Hearing." These abbreviations will be replaced with citations to the Record in the Final Brief and this footnote deleted.

² In this Initial Brief, references to this transcript will be abbreviated to "December Hearing." These abbreviations will be replaced with citations to the Record in the Final Brief and this footnote deleted.

STATEMENT OF FACTS

On March 15, 2011, Deon Myers ("Deon") was shot and killed in a club called the Ghost Den in Plantersville. R. 55, l. 3 – 57, l. 16. Despite twenty people being in the club, only three witnesses—all of whom had some bias against appellant—testified for the State. R. 55, ll. 23 – 25. The testimony of these witnesses was inconsistent. No forensic evidence linked appellant to the crime. The murder weapon, a rare pistol with a missing handle, was found when the police arrested appellant's co-defendant, Brandon Cheeks ("Brandon"). R. 147, l. 22 – 148, l. 13. By far, the strongest evidence against appellant was a videotaped statement in which he confessed to shooting Deon, which was admitted over appellant's objection. R. 164, ll. 7 – 16. (State's Ex. 11).

The three witnesses the State managed to find agreed on one fact: the well-known gang member Lavern Holmes ("Lavern") barged into the club with a shotgun threatening Deon. R. 56, ll. 7 – 57, l. 8 (Terell Myers). R. 88, ll. 5 – 23 (Shaquettia Holmes). R. 117, l. 4 – 118, l. 23 (Cameron Green). Terell Myers ("Terell") worked at the club and had known Lavern all of his life. R. 55, l. 3 – 56, l. 8. Shaquettia Holmes ("Shaquettia") was Lavern's niece. R. 86, l. 25 – 87, l. 3. Cameron Green ("Cameron") was Shaquettia's "distant cousin." R. 87, ll. 4 – 8. Shaquettia said she knew Cameron as a child and that they "grew up together." R. 92, l. 24 – 94, l. 1. When Cameron was asked if he knew Shaquettia, he said "I'm not familiar with that name."³ R. 123, ll. 7 – 11. Terell and Cameron were cousins. R. 68, ll. 7 – 10. Terell was also a cousin of a man named Kawaun Myers ("Kawaun") who was with Lavern that evening. R. 67, ll. 22 – 23. Deon was Terell's brother. R. 67, ll. 20 – 21. None of these people are related to appellant.

³ The witnesses were sequestered. R. 39, ll. 12 – 18.

Terell testified first. Terell was working the door at the club. R. 55, ll. 13 – 15. Approximately twenty people were in the club. R. 55, l. 23 – 56, l. 2. Twenty minutes after Deon arrived, Lavern entered brandishing a shotgun. R. 55, ll. 16 – 22. Lavern “went straight to Deon.” R. 56, ll. 20 – 21. Deon fled to the bathroom. R. 56, ll. 20 – 24. Shaquettia got to the bathroom and “stopped everything.” R. 56, l. 20 – 57, l. 5. Shaquettia “got Lavern Holmes out the door.” R. 75, ll. 7 – 11.

Deon came out of the bathroom. R. 57, ll. 12 – 14. When Deon got “midway” through the club, a short man with a red bandana covering his mouth and nose “came straight in and shot him. He came in and shot him, straight, he, he came straight to Deon and shot him.” R. 57, ll. 9 – 16. Terell said the short man with a red bandana “did not stop or nothing.” R. 78, ll. 13 – 16. He had “a small black gun.” R. 57, ll. 17 – 20. Terell did not recognize the short man with the red bandana. R. 57, ll. 23 – 25.

Terell claimed he did not see his cousin Cameron in the club that night. R. 68, ll. 7 – 15. The night of the shooting, Terell did not give the police any information about what happened. R. 80, ll. 16 – 23. The next day, when the police came to his house, Terell did not volunteer any information about the shooting. R. 81, ll. 1 – 10.

Shaquettia was the State’s next witness. She was at the bar. R. 88, ll. 5 – 13. Cameron had on a red bandana. R. 92, ll. 4 – 8. She saw her uncle, Lavern, enter the bar with “a big gun.” R. 88, ll. 5 – 13. Lavern had on a red bandana. R. 92, ll. 4 – 6. Cameron, also wearing a red bandana, entered the bar with Lavern. R. 93, ll. 15 – 23. R. 104, ll. 9 – 11. R. 92, ll. 4 – 6.

Deon went into the bathroom with Lavern following. Rr. 89, ll. 4 – 7. Deon was behind the door and her uncle was holding it. R. 89, ll. 8 – 14. Two girls were also in the

bathroom. R. 99, ll. 13 – 16. Shaquettia went into the bathroom and told Lavern “to leave him alone and go.” R. 88, ll. 5 – 13. Shaquettia testified that her uncle took her advice and left. R. 100, ll. 18 – 24.

Shaquettia said she knew appellant. R. 89, l. 25 – 125, l. 7. Shaquettia said that when her uncle left the club, appellant entered the bathroom and started talking to Deon. R. 90, ll. 16 – 23. R. 100, ll. 14 – 17. The two girls had already left the bathroom. R. 100, ll. 14 – 17. She saw appellant with a gun. R. 101, ll. 3 – 6. Appellant and Deon appeared to agree that everything was fine. R. 101, ll. 10 – 18. Shaquettia said appellant left, followed by Deon. R. 101, l. 19 – 102, l. 1. Shaquettia heard a shot, but did not witness the shooting. R. 90, ll. 24 – 25. She originally thought her uncle shot Deon. R. 103, l. 24 – 104, l. 5. Shaquettia did not remember appellant wearing a bandana. R. 91, l. 25 – 127, l. 3. Shaquettia did not give the police a statement the night of the shooting. R. 103, ll. 14 – 23.

Cameron was the last of the State’s three witnesses culled from the twenty people in the club. He was charged with Deon’s murder. R. 128, ll. 9 – 17. Two weeks before trial, Cameron signed a proffer agreement. R. 135, l. 23 – 136, l. 1. Cameron testified that he had not read the proffer agreement, that he “wasn’t being promised anything,” but hoped that he would escape a murder charge. R. 136, ll. 2 – 23. Directly contradicting Shaquettia’s testimony that they had grown up together and were related, Cameron denied being even “familiar” with her name. R. 123, ll. 7 – 11. Also contradicting Shaquettia,

Cameron denied that he wore a red bandana or had one anywhere on his person that night.⁴

R. 124, ll. 10 – 19.

Cameron gave multiple versions of his story to police and then to the jury. He was arrested the day after the shooting and charged with attempted murder. R. 124, ll. 20 – 25. In this statement, he told the police that only he and Lavern were in his car that night. R. 125, ll. 9 – 11. He told the police he never entered the club. R. 125, l. 17 – 19. He told the police Lavern did not have a shotgun. R. 126, ll. 3 – 4.

Deon died in the interval between Cameron's first and second statement. R. 127, ll. 14 – 18. The police upgraded Cameron's charge to murder. R. 128, ll. 9 – 12. Cameron denied that he changed his statement admitting only that he "gave more detail" and he "just wanted to clear [his] name." R. 128, ll. 18 – 21. R. 137, l. 22 – 138, l. 1. In his second statement, he told police there were four people in the car with him and that Lavern had a shotgun. R. 128, l. 22 – 129, l. 5. In this second version, Kawaun, Brandon Cheeks ("Brandon"), and appellant joined Cameron and Lavern in the car. R. 118, ll. 7 – 25.

Cameron told his "third story" to the jury. R. 132, ll. 17 – 18. In this version, either appellant or Brandon brought the handgun. R. 115, ll. 2 – 5. On the way to a party, they stopped at a house in Graves Station. R. 115, l. 18 – 116, l. 1. Appellant went into the house and returned with the shotgun. R. 116, ll. 10 – 13. After stopping for gas, they went

⁴ Cameron admitted that Lavern wore a red bandana. R. 141, ll. 14 – 21. He said appellant had a black bandana. R. 143, ll. 17 – 20. The color of the national gang known as the "Bloods" uses red as its identifying color. See <http://en.wikipedia.org/wiki/Bloods>. In his recorded statement, appellant identified Lavern as a Blood because he "had a red flag." (State's Ex. 11). Appellant also identified Kawaun as a Blood because he often wore red and also thought that Brandon used to be in a gang. (State's Ex. 11). Appellant said he did not associate with Cameron enough to say whether he was in a gang. (State's Ex. 11). Appellant denied he was in a gang or was trying to get into a gang. (State's Ex. 11).

to the club. R. 116, ll. 17 – 24. Cameron parked the car and everyone got out except Kawaun. R. 117, ll. 4 – 13.

Cameron and Lavern went to the door. R. 117, ll. 4 – 13. He did not know where Brandon and appellant were. R. 117, ll. 11 – 13. Lavern went in before Cameron. R. 117, ll. 4 – 13. Cameron went no further than the door because he did not pay. R. 117, ll. 12 – 22. Despite seeing the shotgun in the car, seeing Lavern with the shotgun after leaving the club, and walking to the door with Lavern, Cameron claimed he did not see Lavern with the shotgun when Lavern entered the club. R. 134, ll. 7 – 14.

Cameron supposedly stayed outside the club during the shooting. R. 118, ll. 2 – 13. He saw appellant and Brandon run from the club with Lavern following. R. 118, ll. 14 – 23. Lavern “let off a shot with the shotgun.” R. 118, ll. 14 – 23. After they left the club in the car, Lavern supposedly questioned appellant about why he shot Deon, with appellant apologizing and saying “My bad.” R. 119, ll. 1 – 7. Cameron dropped everyone but appellant off at a place that was not their residence. R. 119, ll. 14 – 25.

At the time of the shooting, Cameron and Kawaun were in their early twenties. R. 131, ll. 5 – 15. Lavern was in his mid-to-late thirties. R. 131, ll. 16 – 25. Appellant was only seventeen years old at the time of the shooting and when he gave his statement to police. R. 294, ll. 4 – 5. In his statement, appellant said he did not know the origin of the shotgun. (State’s Ex. 11). He said that he, Lavern, Cameron, and Brandon entered the club. (State’s Ex. 11). Lavern and appellant were wearing bandanas, but not any of the others. (State’s Ex. 11). Deon ran into the bathroom when he saw Lavern with the shotgun. (State’s Ex. 11). Appellant took the pistol from Brandon after Deon entered the bathroom. (State’s Ex. 11). Appellant went into the bathroom and talked with Deon about cigarettes

(State's Ex. 11). When they left the bathroom, Deon stopped to look for a gold chain and when Deon looked up, appellant shot him. (State's Ex. 11). No gold chain was entered into evidence.

Officer John Ohler arrested Brandon after a chase. R. 147, ll. 1 – 10. Officer Ohler searched Brandon. R. 147, ll. 19 – 21. He found a black "do-rag", a "couple of bags of marijuana," and the murder weapon. R. 147, l. 22 – 148, l. 13. The pistol was a .22 caliber, as was the bullet removed from Deon's head. R. 216, ll. 2 – 19. When the police searched Cameron's car after the incident, they found a red bandana and a black "do-rag." R. 188, ll. 13 – 15. R. 190, l. 24 – 191, l. 6.

ARGUMENT

The trial court's refusal to order a mental competency examination was erroneous because it was based on an improper consideration, a mistake of fact, and the State consented to the evaluation.

Relevant Facts

Appellant was seventeen years old at the time of the shooting and when he gave his statement to law enforcement. R. 294, ll. 4 – 5. On September 21, 2012, defense counsel asked Judge John to order a competency evaluation. September Hearing R. 323, l. 13 – 324, l. 9. Defense counsel told the trial court that he had been unable to get appellant to understand that his recorded statement would be used as evidence against him. September Hearing R. 323, l. 19 – 324, l. 9. Appellant continued to insist there was “no evidence against him.” September Hearing R. 323, l. 19 – 324, l. 9. Defense counsel described his continued insistence that there was no evidence against him as “a wall.” September Hearing R. 325, ll. 12 – 18. Appellant's family told defense counsel they agreed an evaluation was needed, but would not provide defense counsel with specifics or “say why.” September Hearing R. 324, ll. 14 – 21. After asking appellant nine questions, Judge John found no need to order a mental evaluation. September Hearing R. 325, l. 24 – 328, l. 2.

On December 17, 2012, defense counsel raised the issue of appellant's competency again before Judge Culbertson. December Hearing R. 298, l. 25 – 299, l. 13. Defense counsel told Judge Culbertson that he was having trouble communicating with appellant about his defense. December Hearing R. 299, l. 7 – 301, l. 19. Appellant did not appear to understand the severity of the situation and the potential impact of a videotaped confession on his chances at trial. December Hearing R. 299, l. 7 – 301, l. 19. Defense counsel said

that in his twenty years of experience, he had never seen a defendant unable to grasp this problem and refuse to explore a plea. December Hearing R. 299, l. 7 – 301, l. 19. Defense counsel indicated that there were “certain things about his past history, certain experience that he, that he has experienced as a child, that he’s not very forthcoming. . . .” December Hearing R. 299, l. 7 – 301, l. 19. Defense counsel also stated he had reviewed appellant’s school records and said, “I do not know if I’ve ever seen that many Fs in my life, unfortunately.” December Hearing R. 301, ll. 4 – 10.

Judge Culbertson questioned appellant. Appellant first denied having any mental health issues, but then indicated he had been to the local mental health office for help with paying attention in school. December Hearing R. 303, l. 20 – 304, 9. After more questioning, to which appellant provided superficially appropriate answers, Judge Culbertson denied the motion for evaluation. December Hearing R. 305, ll. 9 – 14. Judge Culbertson stated that the motion for a competency evaluation was “just a ploy” to delay the trial. December Hearing R. 306, ll. 11 – 17.

Argument continued during which the solicitor stated she consented to having appellant evaluated. December Hearing R. 307, ll. 2 – 9. The State told the court that she “had concerns about his competency” and these concerns were the reason she had not called the case for trial during that term. December Hearing R. 305, ll. 22 – 25. The solicitor also told the judge that defense counsel was “a very accomplished attorney” and that she took his concerns about appellant’s competency seriously because she did not “want to try this thing twice.” December Hearing R. 307, ll. 2 – 9.

Defense counsel then informed Judge Culbertson of the prior hearing before Judge John and that after that hearing, he had learned that appellant’s father had committed “a

crime of extreme violence against his mother in his presence.” December Hearing R. 308, l. 3 – 14, l. 2. Appellant’s father received a twenty-eight year prison sentence. December Hearing R. 308, l. 3 – 14, l. 2. Judge Culbertson then expressed his frustrations with both attorneys for the delay in trying the case and then ruled that he “agree[d] with Judge John” and did not “see the need for a mental evaluation.” December Hearing R. 309, l. 3 – 311, l. 5.

Immediately before trial, Appellant renewed his request for an evaluation before Judge Hyman. R. 37, l. 17 – 38, l. 3. Defense counsel dutifully informed Judge Hyman of the prior rulings by Judge John and Judge Culbertson. R. 37, l. 17 – 38, l. 3. Judge Hyman asked if anything had changed since the prior hearings and defense counsel responded that was unaware of any changes. R. 38, ll. 4 – 15.

At the pre-trial hearing, Appellant’s medical records were made a court’s exhibit. (Court’s Ex. 3). Judge Hyman stated he had “looked through” the records. R. 38, l. 23 – 39, l. 1. He asked if the records were made available to Judge John and Judge Culbertson. R. 38, l. 23 – 39, l. 1. Defense counsel answered affirmatively. R. 39, l. 2. Despite defense counsel’s answer, the records were not made an exhibit at either the September or December hearings. Neither Judge John nor Judge Culbertson stated they had reviewed any medical records.

The State did not oppose the motion at the hearing. Judge Hyman denied the motion for an evaluation, stating:

Okay, and I note that, you know, it would appear that he’s had some drug and alcohol abuse in the past. I don’t know what the extent of that was, and that he seems to be a very angry young man, **but I see no diagnosis of mental health problems.** I just don’t see whether, where he has anything that would or there’s anything here that would cause me to rule other than as

was ruled on that issue by Judge Culbertson and Judge John, and I would respectfully deny a motion for an evaluation.

R. 39, ll. 3 – 11 (emphasis added).

Discussion

The trial judges in this case had “reason to believe” that appellant lacked “the capacity to understand the proceedings against him or assist in his own defense.” S.C. Code Ann. § 44-23-410(A). When a trial judge has reason to question a defendant’s capacity, “a competency evaluation is compulsory.” State v. Colden, 372 S.C. 428, 441, 641 S.E.2d 912, 920 (Ct. App. 2007). See also State v. Blair, 275 S.C. 529, 533, 273 S.E.2d 536, 538 (1981). The conviction of a mentally incompetent person violates due process. Pate v. Robinson, 383 U.S. 375, 378-79 (1966). See also U.S. Const. amends. V, XIV.

The “reason to believe” an evaluation is needed can come from evidence of past and current mental problems and proffer of counsel. See State v. Singleton, 322 S.C. 480, 482-84, 472 S.E.2d 640, 641-42 (Ct. App. 1996). In Singleton, this Court reversed because the trial judge abused his discretion in refusing to order an evaluation. Id. Defense counsel told the court that the defendant heard voices and had hallucinations. Id. The attorney suspected the defendant’s behavior stemmed from a poisoning incident in his childhood. Id. The defendant was receiving mental health treatment at the time of the hearing. Id.

In this case, not only defense counsel, but the solicitor asked the court to order an evaluation. December Hearing R. 307, ll. 2 – 9. Defense counsel told the trial judge that he was unable to make appellant understand the impact that his videotaped confession would have on his chances of success at trial. December Hearing R. 299, l. 7 – 6, l. 19. He also told the court of appellant’s extraordinarily poor school record and a violent incident in his childhood. December Hearing R. 301, ll. 4 – 10. December Hearing R. 308, l. 3 – 14, l. 2.

Indeed, as a viewing of appellant's videotaped statement reveals, appellant does not seem to understand the impact of his words. (State's Exhibit 11). Judge Hyman described the seventeen-year old appellant as "nonchalant" in giving the statement. R. 31, ll. 1 – 2. Near the end of the video, appellant asks the officer, "So this is the statement already right here?" (State's Ex. 11 at approximately 30:45-31:00). This question, given after thirty minutes of interrogation by the officer who explained several times that this was the appellant's statement and long after supposedly recounting the events of the incident, betrays an almost childlike misunderstanding by appellant of what was happening to him.

In Singleton, the trial judge denied the motion for an evaluation "without explanation." Singleton at 482, 472 S.E.2d at 641. In this case, the trial judge's explanation appears to show that the denial was, in part, based on an improper consideration. Judge Culbertson was clearly upset about the age of the case and thought that the motion was meant to delay the case. The trial judge called the motion a "ploy." December Hearing R. 306, ll. 11 – 17. This concern, while certainly valid when administering the court's trial docket, should not play a role in the decision of whether to order an evaluation. The sole focus should be on whether there is any reason to believe that the defendant is incompetent. The suspicion of delay may be present in many cases where a defendant requests an evaluation, but this concern should not allow a trial judge to substitute his judgment as to competency when section 44-23-410 requires evaluation by medical professionals.

Judge Hyman's ruling relied upon the findings of Judge John and Judge Culbertson, so the errors committed by them are inextricable from Judge Hyman's ruling. Additionally, Judge Hyman made a clear factual error in his ruling. He stated that appellant's medical records showed "no diagnosis of mental health problems." R. 39, ll. 3 – 11. Appellant's

medical records, which stem from an assessment done on February 9, 2010 (over a year before the shooting), show diagnoses of Oppositional Defiant Disorder (DSM Code 313.81), ADHD (DSM Code 314.01), and a GAF of 65. (Court's Ex. 3, page 336). It notes appellant as being extremely uncooperative and ignoring people who ask questions, which corroborated defense counsel's statements. (Court's Ex. 3, page 336-337). The records show prior mental health treatment in 2008-09. (Court's Ex. 3, page 334). It stated appellant had witnessed his father attack his mother. (Court's Ex. 3, page 334). Appellant suffered from "clinically significant impairment." (Court's Ex. 3, page 337).

These records show that appellant had mental health problems. Therefore, Judge Hyman's ruling was based, in part, on a mistake of fact. Judge Hyman's ruling was also based on the rulings of the other circuit judges, one of which used the improper consideration of delay to deny appellant's motion. Combined with the proffer of defense counsel and the consent of the solicitor, the circuit court erred in refusing to order a mental evaluation be performed by medical professionals.

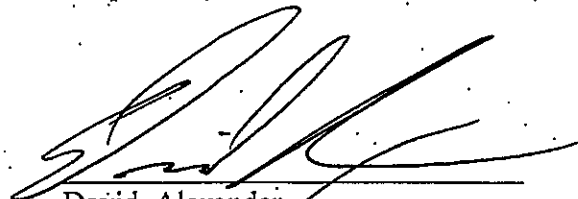
Finally, this error requires a new trial. In Blair, the Supreme Court remanded for a competency evaluation and a new trial was ordered only if the defendant was held incompetent. In this case, a new trial is required because even if the defendant is found competent, the findings of the examiner(s) may well require a reexamination of whether appellant's statement was knowingly, voluntarily, and intelligently made. The factual inconsistencies and biases of the witnesses, the lack of forensic evidence, the possibility of improper influence by gang members, the possession of the murder weapon by a co-defendant, and appellant's youth and lack of intellectual ability all point to possible

intellectual disabilities that—at a minimum required a competency evaluation—and certainly raise the question of the validity of the State's primary evidence in the case.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed and this case remanded with instructions to order a mental evaluation and, if required, a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

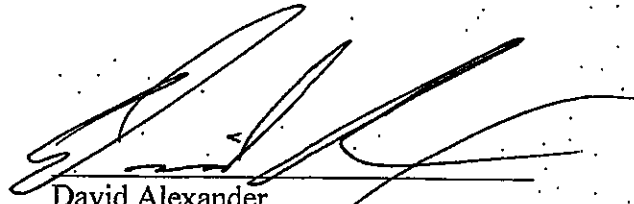
ATTORNEY FOR APPELLANT

This 25th day of July, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 25th, 2014



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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Georgetown County
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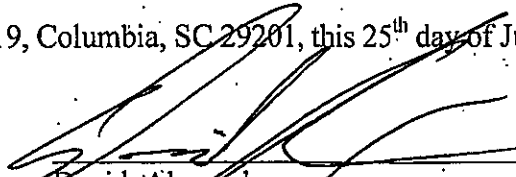
V.

TAMAR BRYANT,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 25th day of July, 2014.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of July, 2014.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAMAR BRYANT,

APPELLANT,

Appellate Case No. 2013-000671.

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STATE OF SOUTH CAROLINA
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Appeal from Georgetown County

Larry B. Hyman, Jr., Circuit Court Judge

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V.

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court's refusal to order a mental competency examination was erroneous because it was based on an improper consideration, a mistake of fact, and the State consented to the evaluation?

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Petitioner's request for a mental competency evaluation.

RESPONDENT'S STATEMENT OF THE CASE

A Georgetown County Grand Jury indicted Appellant, Tamar Yaron Bryant, in May 2011 for murder. (R. p. 345). On September 21, 2012, Petitioner appeared at a hearing before the Honorable Steven H. John. (R. p. 322). On December 17, 2012, Petitioner appeared at a hearing before the Honorable Benjamin H. Culbertson. (R. p. 296). At both hearings, Petitioner's counsel, Ronald Hazzard, made a motion for an evaluation as to competency. (R. pp. 323-328; R. pp. 298-311, 316). Each time, the motion was denied. (R. pp. 327-328; R. p. 311).

On March 18, 2013, Appellant's case was called to trial before the Honorable Larry B. Hyman, Jr. (R. p. 1). Ronald Hazzard continued to represent Appellant during the three-day trial. (R. p. 1). Solicitor Erin Bailey represented the State. (R. p. 1). The jury returned a verdict of guilty. (R. p. 288, line 14-p. 290, line 12). Judge Hyman sentenced Appellant to thirty-five (35) years imprisonment for murder. (R. p. 294, lines 9-15).

Thereafter, Appellant served a timely notice of appeal, dated March 26, 2013. (R. p. 332).

RESPONDENT'S STATEMENT OF THE FACTS

At Appellant's trial, the State presented evidence, including Appellant's own statement to law enforcement, that Appellant shot Deon Myers (Victim) in a club called Ghost Den on March 15, 2011.

The State presented three witnesses who were at Ghost Den at the time of the shooting. Terell Myers, Victim's brother, testified that he was working the door at Ghost Den when Victim came to the club on March 15, 2011. (R. p. 54, line 14–p. 55, line 22). About twenty minutes after Victim arrived, Lavern Holmes entered the club carrying a rifle. (R. p. 56, lines 3–19). According to Terell Myers, Lavern Holmes went towards Victim, who made his way into the bathroom. (R. p. 56, line 20–p. 57, line 5). Shaquettia Holmes, Lavern Holmes's niece, then “got in the bathroom and stopped everything.” (R. p. 56, line 25–p. 57, line 1; R. p. 72, line 18–p. 74, line 21). As Victim left the bathroom and got midway into the club, a short man wearing a red bandana over his mouth and nose ran up to Victim and shot him. (R. p. 56, lines 6–16; R. p. 66, lines 14–17). Though Terell Myers was unable to recognize the man who shot Victim, he identified the gun that the man used as a small, black handgun. (R. p. 57, lines 17–22). According to Terell Myers, after shooting Victim, the man in the red bandana ran back out of the club. (R. p. 66, lines 14–17).

Shaquettia Holmes also testified about the night of the shooting. Shaquettia Holmes witnessed Lavern Holmes approach Victim with a long gun in his hand. (R. p. 86, line 25–p. 89, line 3). Victim ran into the bathroom, and Laverne Holmes followed him. (R. p. 88, line 14–p. 89, line 14). Shaquettia Holmes also went to the bathroom. (R. p. 89, lines 8–14). There, she saw Laverne Holmes holding the door with Victim positioned behind the door. (R. p. 89, lines 9–14). Shaquettia Holmes testified that

[Laverne Holmes] was in there saying something to [Victim] about, "You threaten to kill my family or something," and [Victim] didn't know what he was talking about and when [Victim] said he didn't know what he was talking my thing was for him to leave him alone and that was that. It wasn't much words exchange.

(R. p. 95, lines 20–24). Laverne Holmes then left the bathroom, and Appellant entered the bathroom.¹ (R. p. 89, line 25–p. 91, line 24). Shaquettia Holmes noticed that Appellant had "a little black gun." (R. p. 91, lines 9–12). According to Shaquettia Holmes, while Victim and Appellant were in the bathroom the "only words that were exchanged out of [Victim's] mouth was he was good and [Appellant] was saying he was good" (R. p. 91, lines 3–4). Shaquettia Holmes interpreted Appellant's words to mean that it was alright for Victim to leave the bathroom. (R. p. 91, lines 6–8). The three left the bathroom—Appellant left first, followed by Victim, and then Shaquettia Holmes. (R. p. 91, lines 17–22). Shaquettia Holmes did not see Victim get shot, but she heard the gunshot. (R. p. 90, lines 24–25). She then went back to the bathroom. (R. p. 91, lines 13–14).

Cameron Green testified that, on the evening of March 15, 2011, Kawaun Myers, Lavern Holmes, Brandon Cheek, Appellant, and himself were hanging out, drinking, and talking about an altercation that occurred earlier that day between Kawaun Myers and Lavern Holmes and Victim, in which Victim pulled a gun on Lavern Holmes. (R. p. 113, line 1–p. 114, line 22). At some point, someone brought out a revolver that was missing the grip.² (R. p. 114, line 23–p.

¹ Shaquettia Holmes could not recall if Appellant had on a bandana the night of the shooting, but she knew that both Laverne Holmes and Cameron Green had red bandanas on that night. (R. p. 91, line 25–p. 92, line 8).

² Cameron Green originally stated that the gun was silver, but he later stated that State's Exhibit 7 looked like the gun he saw that night and stated that he was mistaken about the color. (R. p. 116, lines 3–9).

Law enforcement officers later recovered the gun identified by Cameron Green (State's Exhibit 7) from Appellant's co-defendant, Brandon Cheek. (R. p. 116, lines 3–9; R. p. 146, line 6–p. 150, line 2). A firearms and tool marks expert testified,

115, line 17). The group then headed to Ghost Den, but, before going to the club, they stopped by the house of one of Appellant's relatives. (R. p. 115, line 18–p. 116, line 24). Appellant went inside the house and then emerged with a shotgun. (R. p. 116; lines 10–13).

When the group arrived at Ghost Den, Lavern Holmes and Cameron Green went into the club, but Cameron Green did not stay in the club because he did not want to pay the cover charge. (R. p. 117, lines 4–17). According to Cameron Green, "[I]t was only for 15 more minutes. So I figured if I went back out, after 15 more minutes they . . . would have stopped charging." (R. p. 117, lines 21–22). While waiting outside, Cameron saw people start running out of the club. (R. p. 118, lines 7–10). Cameron Green testified,

I wasn't quite sure what was going on, but I had, somewhat had an idea that some type of crazy altercation happened between the victim and my Co-Defendant Lavern Holmes.

....

[A]s the people was running out the club I was looking for, I was searching for Lavern Holmes, but I notice some people were still in the club and some people ran out, but I didn't know where he was at. So I went to the car. Kawaun Myers was still at the car when I went there and [Appellant] and Brandon [Cheek] they came before Lavern [Holmes] and he came last. As Lavern was coming to the car, he let off a shot with the shotgun. I don't know who had the 22 revolver at the time, and then we left.

(R. p. 118, lines 10–23). In the car "Lavern [Holmes] kept questioning [Appellant] why he shot him, why he shot him, and [Appellant] apologized for just doing it, he said, he said, [']My

I was not able to say conclusively that State's Exhibit Nine [the bullet recovered from Victim] was fired from State's Exhibit Seven [the gun]. However, the general markings of the land and groove impressions that are unique to State's Exhibit Seven were similar to those that were on State's Exhibit Nine and State's Exhibit Nine could have been fired in State's Exhibit Seven.

(R. p. 214, line 11–p. 218, line 5; *see also* R. p. 155, lines 5–18).

bad,[] but he couldn't explain exactly why he did it. He say he don't know why he did it." (R. p. 119, lines 4-7).

Some time after the shooting, Investigator Clinton Busbee arrested Appellant around 3:30 a.m. one morning pursuant to a warrant. (R. p. 157, line 19-p. 158, line 11). All of Appellant's co-defendants had already been apprehended and were in custody. (R. p. 158, lines 5-6). Investigator Busbee then took Appellant to the sheriff's office to interview him, but because it was 3:30 a.m., no one was at the sheriff's office, so Investigator Busbee and Appellant waited outside until Investigator Busbee's supervisor arrived. (R. p. 158, line 18-p. 159, line 19). Initially, Appellant told Investigator Busbee "that he was with those guys, but he didn't shoot the guy." (R. p. 160, lines 2-5). However, as they stood outside and talked, Appellant's story evolved. (R. p. 160, line 1-p. 161, line 7). Eventually, Investigator Busbee's supervisor arrived, and Investigator Busbee took Appellant's statement, which he audio and video recorded. (R. p. 161, lines 4-7).

In the video recorded statement, Appellant gives a detailed report about the circumstances that led to the shooting and what happened at Ghost Den. (State's Ex. 11, 3:00-17:20). Throughout the statement he responds to questions by Investigator Busbee. (State's Ex. 11). He clearly admits to shooting Victim. (State's Ex. 11, 16:44-46 ("[T]hat's when I shot him.")). He also gives reasons for shooting Victim—including because Victim was one of those "arguing, arguing, arguing like some females" and because Appellant remembered that Victim had previously shot at him in 2007. (State's Ex. 11, 22:39-23:50). Appellant also recounts what he and his co-defendants did after leaving Ghost Den. (State's Ex. 11, 17:20-22:04). Appellant tells Investigator Busbee that he wiped off the gun and gave it to Brandon Cheek. (State's Ex. 11, 20:07-20).

ARGUMENT

The trial court did not err in denying Appellant's motion for the court to order a mental competency examination.

Introduction

Respondent submits that the trial court did not err in denying Appellant's motion to have an evaluation of Appellant's competency where three different circuit court judges found there was no need for an evaluation based on the information presented by Appellant.

How the Issue Was Raised at Trial

September Hearing

At the hearing before Judge John, defense counsel stated, "The biggest issue that we have is that anytime I represent someone charged with the ultimate crime, which carries almost the ultimate sanction, I'm very concerned and mindful regarding their mental state, and that that be determined before the Court." (R. p. 323, lines 14–18). Defense counsel then explained that he could not get Appellant to "grasp the concept that an inculpatory statement that is made without any apparent pressure or coercion whatsoever, that that is evidence" (R. p. 323, line 23–p. 324, line 1). Defense counsel further indicated that he did not know if Appellant was just in denial or if he was actually incapable of understanding that idea, but he wanted the trial court to make a determination as to whether Appellant needed an evaluation. (R. p. 324, lines 3–9).

According to defense counsel, Appellant's family agreed with the evaluation, and they indicated that Appellant "had a tough upbringing," but defense counsel had no specifics to offer the court on Appellant's upbringing. (R. p. 324, lines 10–21). Defense counsel further told the court that he had no information that Appellant was ever a special needs student. (R. p. 325, lines 4–10).

Judge John then questioned Appellant about his understanding of the roles of defense counsel, counsel for the State, the judge, and the jury. (R. p. 325, line 20–p. 326, line 9). Judge John also questioned Appellant about his understanding of the evidence and of his potential defense in the case. (R. p. 326, line 10–p. 327, line 12). The court then made its ruling:

Mr. Hazzard, I appreciate the concern that you have, and I understand your concern, I can't see any reason at this point in time to order an evaluation. If the—you know, if—and again, communicating with the family members, understanding the Court's position, you tell them there has to be some specific information as, has there ever been any kind of evaluation done in the past, or hospitalization or something—

....

—But based upon the information that has been presented, my questioning of the Defendant, and what I've heard so far I just don't see any reason or rationale to order an evaluation in this particular matter.

(R. p. 327, line 14–p. 328, line 1).

For the remainder of the hearing, the court addressed the issue of setting bond, which Appellant had reminded defense counsel of at their meeting that morning. (R. p. 328, line 4–p. 330, line 21).

December Hearing

The court held a hearing on December 17, 2012, to address Appellant's motions for the court to set a bond and for an evaluation as to competency and criminal responsibility. (R. p. 298, lines 2–15). Defense counsel told Judge Culbertson the following:

Your Honor, Mr. Bryant is a very easy person to talk to, there's no question about that. The time we spend together is very enjoyable. The issue I'm having is that in the 20 some odd years that I've been practicing law and doing cases that carry 30 to life I've never had a client with a taped confession to a murder who does not appear to grasp the severity of the situation

[F]or instance, he has not—he, he does not allow the, the possibility of any plea offer and I understand that obviously he has the absolute right to a jury trial and that's what I am here for and I've got no problem with doing that. I do not

believe I've ever seen a situation where a client has been charged with the crime of murder with a confession on the record who did not even want to explore the possibility of what plea offer might be out there. That's one instance of it. Another thing is I don't know if Mr. Bryant does not trust me, and again, I do not categorize him as hostile because he is not, we get along great. There are just certain things about his past history, certain experiences that he, that he has experienced as a child that he's not very forthcoming as far as his personal history with me. He says that those things really do not matter in the grand scheme of trial preparation [I]t's been very difficult and is very difficult to get from him the information I need that will help me to best represent him and I can't figure out why that is.

(R. p. 299, line 7–p. 5, line 16).

The court asked why defense counsel had waited from the time of Appellant's arrest in March 2011 until the hearing to raise this issue, and defense counsel explained that he had brought the issue up at an earlier hearing, but he had since gotten Appellant's school records, which indicated that Appellant had been held back on multiple occasions and that he had personal trauma as a child. (R. p. 300, line 17–p. 301, line 19). Defense counsel stated,

I think he's actually a very bright young man, very bright, but really he's an enigma to me, Judge, simple as that, and based on the nature of these charges, if we were talking about a shoplifting I wouldn't have any problem in the world with saying, "Yeah, I'm sure he's ok, we can go forward," but my job in protecting his interest is to bring any issues I have before the Court for the Court's consideration and that's simply what I'm doing.

(R. p. 301, lines 12–19).

Judge Culbertson then questioned Appellant about his understanding of what was going on with his case and about his interaction with defense counsel. (R. p. 301, line 20–p. 303, line 19). Judge Culbertson also asked Appellant about his mental health history, and Appellant told the court that he had been prescribed Adderall and Ritalin when he was thirteen or fourteen years old to help him pay attention in school. (R. p. 303, line 20–p. 304, line 9). However, Appellant also told the court that he was no longer on the medication and that he did not have any trouble paying attention now. (R. p. 304, lines 15–19).

Judge Culbertson then ruled as follows:

[O]n your motion for evaluation I'm going to deny that. There's nothing in the responses by Mr. Bryant that shows or indicates to me that he does not understand the charges against him and is unable to assist in his defense. So I'm going to deny the motion for an evaluation.

(R. p. 305, lines 9–14).

Judge Culbertson then moved on to the issue of bond reduction, asking the State what reason it had for the delay in calling Appellant's case to trial. (R. p. 305, lines 15–18). Counsel for the State explained that the case had five co-defendants, which made it extremely complicated, and counsel further stated that she had concerns about Appellant's competency and wanted him to be heard on that issue. (R. p. 305, lines 19–25). Counsel for the State further informed the court that defense counsel had indicated that he had concerns about Appellant's competency based on new information, and she "didn't want to call the case without proper consideration." (R. p. 306, lines 5–10). The court pointed out that Appellant had been sitting in jail awaiting trial since March 2011, further stating, "I think this competency is just a ploy to kind of put it off." (R. p. 306, lines 11–17). Judge Culbertson clarified that he didn't think it was a ploy by the defense, however. (R. p. 306, lines 21–p. 307, line 1).

In response, counsel for the State indicated that she had consistently consented to the evaluation. (R. p. 307, lines 3–9). Defense counsel then informed the court about what occurred at the earlier hearing with Judge John and what defense counsel had since learned about Appellant's past. (R. p. 308, line 3–p. 309, line 2). Judge Culbertson again expressed his dissatisfaction with the fact that Appellant's case had not yet gone to trial and further stated, "I agree with Judge John. I don't see the need for a mental evaluation." (R. p. 309, line 3–p. 311, line 5). The court then heard the remaining arguments on the bond reduction issue and

eventually granted Appellant's motion and set Appellant's bond at \$75,000. (R. p. 311, line 7–p. 320, line 8).

Pretrial Hearing

The first matter addressed at the pretrial hearing was the State's motion to introduce Appellant's videotaped statement. (R. p. 6, line 2–p. 31, line 25). The State presented the testimony of Investigator Busbee and Appellant's videotaped statement to law enforcement. (R. p. 6, lines 15–p. 23, line 5; Court's Ex. 2). Defense counsel, on the other hand, informed the trial court that Appellant did not wish to present evidence or to testify in the *Jackson v. Denno* hearing, and defense counsel asked the trial court to confirm that with Appellant. (R. p. 24, lines 4–13).

The trial court then questioned Appellant about his decision not to testify, and Appellant affirmed that he understood that he could testify at the pretrial hearing but that he did not wish to. (R. p. 24, line 14–p. 25, line 5). Defense counsel then argued that certain factors went against the State's position that the statement was voluntary. (R. p. 25, line 6–p. 30, line 7). In particular, defense counsel told the trial court about Appellant's educational struggles and traumatic childhood experience of witnessing his father beat his mother, "almost beating her to death." (R. p. 25, line 12–p. 26, line 20). Defense counsel also presented the trial court with Appellant's mental health records. (R. p. 26, lines 5–8; R. p. 334).

The trial court specifically asked defense counsel if Appellant "suffer[ed] from any diagnosed mental illness"—to which defense counsel responded, "Nothing that would prohibit him from being able to understand what is going on here today." (R. p. 26, lines 21–24). Defense counsel then summarized and quoted from the findings in the mental health records as follows:

[H]e's been referred for clinical assessments on several occasions, was not placed on medication, but basically their position on him is that he's just a young man who has, let's see, for instance they indicate he needs attitude, ability to follow the rules and regulations, things of that nature. He's a 16—at this time, he was a 16 year old that just came back from DJJ due to his behavior with credit card fraud and theft. He was living with his mother and sister. He is very rude and defiant young man that wants to go his way. He doesn't respond well to people that he feels asks so much questions and he will ignore others. His father is currently incarcerated; his mother thinks that is why Tamar is having behavior problems. Mother seems to be a little afraid to control him and says very little to him about things when he is wrong. The things about it is from all that I have seen, prior to that incident he was a very pleasant, well-adjusted young man and ever since that incident, as they indicate, he has been defiant, truculent, hard to get along with and subject to saying and doing things that are very impulsive. Whether they are true or not he'll say them, and I simply bring this to the Court's attention and want to make them part of the record.

(R. p. 27, lines 2–23; R. p. 334).

The trial court noted that Appellant seemed to understand and appropriately answer all of the questions posed to him regarding whether he wanted to testify in the *Jackson v. Denno* hearing and commented, "I think that's quite remarkable under the circumstances for a 17 year old." (R. p. 27, line 24–p. 28, line 6). Judge Hyman asked if an intellectual assessment had ever been done. (R. p. 28, lines 6–7). Defense counsel responded that he had not received one but that Appellant's grades "were not the best" though "[w]hether that is from a lack of knowledge or a lack of effort [he] obviously [could not] say." (R. p. 28, lines 8–12).

The trial court ultimately found that the State had met its burden to show that Appellant's statement was made knowingly, intelligently, and voluntarily. (R. p. 30, line 8–p. 31, line 25). The trial court based his finding on a number of factors, including "that this Defendant was very, very comfortable in giving this statement or he appeared to be comfortable. In fact, he appeared to be almost nonchalant in, in giving this statement." (R. p. 30, line 24–p. 31, line 2). The trial court further noted that though Appellant had not completed his formal education, he was "very street wise" and "very much in tune with the system." (R. p. 31, lines 3–6). Additionally,

Appellant seemed to understand his Miranda warning and the questions posed to him during his interview based on his own responses. (R. p. 31, lines 9–15).

The trial court then moved on to other pretrial matters. (R. p. 32, lines 1–9). Shortly thereafter, defense counsel informed Judge Hyman of the previous motions for mental evaluations before Judge John and Judge Culbertson and renewed his motion before Judge Hyman. (R. p. 37, line 17–p. 38, line 3). Judge Hyman asked if there had been any change in circumstances since those previous motions. (R. p. 38, lines 4–8). Defense counsel answered, “Not that I am aware of” (R. p. 38, line 9). The trial court then denied the motion, noting

it would appear that he’s had some drug and alcohol or drug or alcohol abuse in the past. I don’t know what the extent of that was, and that he seems to be a very angry young man, but I see no diagnosis of mental health problems. I just don’t see whether, where he has anything that would or there’s anything here that would cause me to rule other than as was ruled on that issue by Judge Culbertson and Judge John, and I would respectfully deny a motion for an evaluation.

(R. p. 39, lines 3–11).

Standard of Review

The ordering of a competency examination is within the discretion of the trial judge. *State v. Drayton*, 270 S.C. 582, 584, 243 S.E.2d 458, 459 (1978); *State v. Singleton*, 322 S.C. 480, 483, 472 S.E.2d 640, 642 (Ct. App. 1996). The refusal to grant such an examination will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Drayton*, 270 S.C. at 584, 243 S.E.2d at 459; *State v. Buchanan*, 302 S.C. 83, 85, 394 S.E.2d 1, 2 (Ct. App. 1990). “This is so, because the determination of whether there is ‘reason to believe’ a defendant lacks a certain mental capacity necessarily requires the exercise of discretion.” *State v. White*, 364 S.C. 143, 147–48, 611 S.E.2d 927, 929 (Ct. App. 2005) (citing and quoting *State v. Bradshaw*, 269 S.C. 642, 644, 239 S.E.2d 652, 653 (1977)).

An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001); *State v. Funderburk*, 367 S.C. 236, 239, 625 S.E.2d 248, 249–50 (Ct. App. 2006). If there is any evidence to support the trial judge’s decision, the appellate courts will affirm it. *State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 829 (2001); *State v. Taylor*, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004). Even without any evidentiary support, “[i]n order for an

error to warrant reversal, the error must result in prejudice to the appellant.” *State v. Preslar*, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct. App. 2005); *see also State v. Beck*, 342 S.C. 129, 536 S.E.2d 679 (2000); *State v. Wyatt*, 317 S.C. 370, 453 S.E.2d 890 (1995) (error without prejudice does not warrant reversal).

State v. Colden, 372 S.C. 428, 435–36, 641 S.E.2d 912, 916–17 (Ct. App. 2007).

Analysis

S.C. Code Ann. § 44-23-410 requires a circuit court judge to order a mental examination if the judge “has reason to believe that a person on trial before him . . . is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity.” This Court has

identified three factors to be considered in determining whether further inquiry into a defendants’ fitness to stand trial was warranted. These are: (1) evidence of irrational behavior; (2) demeanor at trial; and (3) prior medical opinion regarding ability to stand trial. In some instances, the presence of just one of the factors may justify further inquiry requiring a mental evaluation.

Colden, 372 S.C. at 441, 641 S.E.2d at 920 (citing *State v. Burgess*, 356 S.C. 572, 590 S.E.2d 42 (Ct. App. 2003)). In *Colden* (and also in *Burgess*), the request for a competency evaluation was based not on a pre-existing history of mental illness, but on “a perceived difficulty counsel faced in discussing matters with their client.” *Id.* In fact, Colden’s responses to the court’s questions were appropriate and demonstrated an understanding of the proceedings and the charges against him. *Id.* at 442, 641 S.E.2d at 920. Furthermore, Colden’s counsel was unable to demonstrate that Colden’s mental state rendered him unfit for trial. *Id.* In *Colden*, “[t]here was no evidence of irrational behavior before or during the trial, nor prior medical opinion concerning competency as to require an evaluation under the Burgess factors.” *Id.* Thus, this Court drew “the ineluctable conclusion that the trial judge did not abuse his discretion in denying the motion.” *Id.*

Respondent submits that, in this case, the trial court did not err in denying Appellant's multiple requests for a competency evaluation. Indeed, each time Appellant made a motion for a competency evaluation, the evidence before the judge considering the request supported their decision to deny it.

Judge John considered the information provided by defense counsel and the colloquy between Appellant and himself but found no "reason or rationale" to order a competency hearing at that time. (R. p. 327, line 23–p. 328, line 1). When Judge Culbertson considered the motion, defense counsel provided additional detail about Appellant's school history and the trauma he experienced as a child. But Judge Culbertson denied the motion after questioning Appellant about his understanding of the case and his mental health history, finding "nothing in the responses by Mr. Bryant that shows or indicates to me that he does not understand the charges against him and is unable to assist in his defense." (R. p. 305, lines 10–13). At the pretrial hearing, Judge Hyman asked defense counsel if anything had changed since Judge John and Judge Culbertson had denied Appellant's previous motions, and defense counsel answered, "Not that I'm aware of" Of course, having just evaluated the voluntariness of Appellant's statement based, in part, on Appellant's mental health history and, in part, on his own questioning of Appellant, Judge Hyman had his own basis for finding that there was nothing that would cause him to rule contrary to the earlier rulings. Thus, Judge Hyman denied the motion. The record in this case supports Respondent's position that the trial court had no reason to believe that an evaluation of Appellant was necessary.

Like in *Colden*, in this case, defense counsel's request for an evaluation was based on "a perceived difficulty counsel faced in discussing matters with [his] client." Indeed, defense counsel had difficulty with the fact that Appellant would not acknowledge the impact the

videotaped confession would have on his case. However, there was no evidence before the trial court that Appellant “[was] not fit to stand trial because [Appellant] lack[ed] the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity.” *See* S.C. Code Ann. § 44-23-410 (2011). Defense counsel even told the court,

[I]f we were talking about a shoplifting I wouldn’t have any problem in the world with saying, “Yeah, I’m sure he’s ok, we can go forward,” but my job in protecting his interest is to bring any issues I have before the Court for the Court’s consideration and that’s simply what I’m doing.

(R. p. 301, lines 15–19). Respondent submits that this statement reveals that defense counsel’s difficulties with Appellant did not rise to the level of incompetency to stand trial, and, thus, there was no reason for the trial court to believe Appellant was unfit to stand trial.

Appellant now asserts that Judge Culbertson improperly considered the age of the case in denying Appellant’s motion. Respondent disagrees. Though it is clear from the record that Judge Culbertson was aware of the age of the case when he denied Appellant’s motion, he did not go into a discussion about the amount of time the case had been pending until he moved on to Appellant’s motion for a bond reduction.³ Also, it is obvious that Judge Culbertson believed the State’s reliance on the motion for a competency evaluation was “a ploy” to further delay bringing Appellant’s case to trial—he did not believe it was a ploy by defense counsel. (R. p. 306, line 21–p. 307, line 1). The record shows that Judge Culbertson properly considered his own interaction with Appellant, not the age of the case, in ruling on Appellant’s motion.

Appellant further contends that Judge Hyman’s pretrial ruling is in error because errors in the earlier rulings of Judge John and Judge Culbertson are inextricable from Judge Hyman’s

³ The record shows that Judge Culbertson reaffirmed his earlier ruling that there was no need for a mental evaluation after reproving the State for failing to bring Appellant’s case to trial when it had been pending for almost two years. However, it is also clear from the record that Judge Culbertson made his initial decision before going into the issue of the State’s delay.

decision. However, as argued above, the evidence before each judge supported their individual conclusions that there was no need for a mental evaluation. Though Appellant believes that Judge Culbertson improperly considered the age of the case in coming to his decision, Respondent has refuted that contention above. Respondent respectfully asserts that Judge Hyman's decision stands on its own, but, even if it was based on the earlier rulings, those rulings were not in error.

Respondent also disagrees with Appellant's contention that Judge Hyman made his decision based on a factual error because he stated, "I see no diagnosis of mental health problems." (R. p. 39, lines 6-7). The record shows that Judge Hyman had already considered Appellant's mental health history during the *Jackson v. Denno* portion of the pretrial hearing, and, at that time, he specifically asked defense counsel if Appellant "suffer[ed] from any diagnosed mental illness[.]" and defense counsel responded, "Nothing that would prohibit him from being able to understand what is going on here today." (R. p. 26, lines 21-24). Thus, it seems likely that Judge Hyman's later reference to "no diagnosis of mental health problems" was based on the earlier declaration by defense counsel that none of Appellant's mental health issues impacted his understanding of the trial. Though perhaps incomplete, Judge Hyman's statement was not in error. However, even if the statement evinced a factual error on which Judge Hyman based his decision, Respondent does not believe that the error prejudiced Appellant. As established in *Burgess*, a trial court can find that a mental examination is not required under S.C. Code Ann. § 44-23-410 even with evidence that a defendant suffered from mental retardation if there is "nothing to demonstrate that [the defendant's] mental retardation was such as to render her unfit to stand trial." 356 S.C. at 576, 590 S.E.2d at 44. Even now, Appellant has not shown how his mental health issues rendered him unfit to stand trial.

Potential Remedy

Finally, even if this Court remanded this case for a competency hearing, Respondent submits that the remedy outlined in *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981),⁴ would be sufficient to correct any error. If Appellant were found competent, Appellant's conviction and sentence would stand. Thus, contrary to Appellant's contention, there would be no need to reexamine whether his statement to law enforcement was made knowingly, voluntarily, and intelligently. If Appellant were found incompetent, in accordance with *Blair*, Appellant would be entitled to a new trial once he was found competent to proceed.

⁴ Specifically, *Blair* provides, "[O]n remand, if the hearing reveals Blair was incompetent to stand trial, an order reversing his conviction should be entered and a new trial granted when he is presently competent to stand trial. However, if the hearing reveals Blair was competent to stand trial, the conviction will stand." 275 S.C. at 534, 273 S.E.2d at 538.

CONCLUSION

For all the foregoing reasons, Respondent respectfully asserts that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully Submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

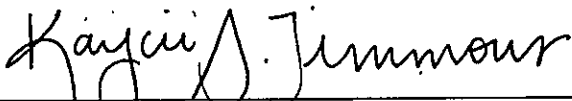
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July 22, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAMAR BRYANT,

APPELLANT,

Appellate Case No. 2013-000671.

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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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

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APPELLANT,

Appellate Case No. 2013-000671.

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, David Alexander, at:

SCCID/Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served.

This twenty-second day of July, 2014.



Kaycie S. Timmons
Assistant Attorney General
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JUL 22 2014

SC Court of Appeals

**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.

Tamar Bryant, Appellant.

Appellate Case No. 2013-000671

Appeal From Georgetown County
Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-440
Submitted October 1, 2014 – Filed December 3, 2014

AFFIRMED

Appellate Defender David Alexander, 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 Jimmy A. Richardson, II, of
Conway, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Burgess*, 356 S.C. 572, 575, 590 S.E.2d 42, 44 (Ct. App. 2003) ("The question of whether to order a competency examination falls within the discretion of the trial [court,] whose decision will not be overturned on appeal absent a clear showing of an abuse of that discretion."); *id.* ("By statute, the question of whether a defendant is fit to stand trial depends upon whether the defendant, because of a lack of mental capacity, cannot 'understand the proceedings' or 'assist in his [or her] own defense.'" (quoting S.C. Code Ann. § 44-23-410 (2002))); *id.* ("Factors to be considered in determining whether further inquiry into a defendant's fitness to stand trial is warranted include [1] evidence of his or her irrational behavior, [2] his or her demeanor at trial, and [3] any prior medical opinion on his or her competence to stand trial. In some circumstances, the presence of just one of these factors may justify a trial court's ordering a further inquiry into a defendant's competency to undergo trial." (footnote omitted)); *id.* at 575-76, 590 S.E.2d at 44 (finding no abuse of discretion in trial court's denial of request for competency hearing where defendant's demeanor during the pre-trial motion was "very appropriate"; defendant had not been previously adjudicated incompetent to stand trial; and defendant "understood the proceedings, the roles of the various participants, and the charges leveled against her"); *State v. Colden*, 372 S.C. 428, 441-42, 641 S.E.2d 912, 920 (Ct. App. 2007) (finding no abuse of discretion in trial court's denial of request for competency hearing where, despite defense counsel's difficulty discussing matters with defendant, defendant had an appropriate demeanor during trial and understood the proceedings, the role of the participants, and the charges leveled against him and had no difficulty conversing effectively).

AFFIRMED.¹

FEW, C.J., and GEATHERS and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

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December 19, 2014

The Honorable Alma Y. White
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REMITTITUR

Re: The State v. Tamar Bryant
Lower Court Case No. 2011GS2200495
Appellate Case No. 2013-000671

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,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: David Alexander, Esquire
Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
Kaycie Smith Timmons, Esquire
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The Honorable Larry B. Hyman, Jr.