

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Post-Conviction Relief

R. Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2017-002494

Jaquwn Brewer #347482,..... Petitioner,

vs.

State of South Carolina, ...Respondent.

APPENDIX

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SC Court of Appeals

INDEX

Trial Transcript of August 22-23 & 26, 2011.....	1
Sentence Sheets, Indictments.....	709
Opinion #27487 of SC Supreme Court filed January 28, 2015.....	718
Petition for Rehearing of February 23, 2015.....	730
Return to Petition for Rehearing of February 23, 2015.....	734
Petition for Rehearing Denial of March 5, 2015.....	751
Remittitur of March 5, 2015.....	753
Application for Post-Conviction Relief (2015CP0701939) & Attachments.....	755
Return.....	782
Post-Conviction Relief Transcript dated February 13, 2017.....	788
Order of Dismissal.....	830
Notice of Appeal	839

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 THE COURT: You may step down.

2 You can call your next witness.

3 MS. BANNON: The State calls Sheena Parker
4 Gardner.

5 THEREUPON,

6 SHEENA PARKER GARDNER,
7 after being duly sworn, testified as follows:

8 THE CLERK: Please be seated. State your
9 name and spell it for the Court, please. Thank
10 you.

11 THE WITNESS: Sheena Gardner. S-h-e-e-n-a.
12 Gardner, G-a-r-d-n-e-r.

13 **DIRECT EXAMINATION**

14 By Ms. Bannon:

15 Q Ms. Gardner, where do you live?

16 A Columbia.

17 Q And what do you do up in Columbia?

18 A I work at Bose.

19 Q And what's Bose?

20 A A factory that makes radios and speakers.

21 Q And how long have you lived in Columbia?

22 A Four years.

23 Q And where are you from originally?

24 A Beaufort.

25 Q And how do you -- do you know a Deon

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 Stevenson?

2 A Yes, ma'am.

3 Q How?

4 A That's my boyfriend.

5 Q And how long y'all been together?

6 A Four years.

7 Q And do y'all have any kids?

8 A Yes.

9 Q How many?

10 A One.

11 Q And how old is he?

12 A One.

13 Q And so during the weekend of May 23rd and

14 24th, 2009, were you pregnant?

15 A Yes, ma'am.

16 Q And that weekend, did you spend it up in

17 Columbia or down here?

18 A In Beaufort.

19 Q And why were you spending the weekend down

20 here?

21 A It was my family reunion.

22 Q On whose side?

23 A My mom's.

24 Q Do y'all have a big family?

25 A Yes, ma'am.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 Q Okay. And what kind of events did y'all
2 have planned?

3 A We had a banquet, a cookout, and then we
4 had a party.

5 Q And this party, where was that?

6 A At the Shriner's Club in Burton.

7 Q And who put that together?

8 A Me and my cousin.

9 Q And who was invited to this party?

10 A Mutual friends.

11 Q So did you know most of the people at the
12 party?

13 A Yes, ma'am.

14 Q Were you related to a lot of them?

15 A Yes, ma'am.

16 Q And the people you did know at the party,
17 how long would you say that you had known them?

18 A Some months, some years.

19 Q Was it a lot of people from the
20 neighborhood?

21 A Yes, ma'am.

22 Q Do you know Henry Jones?

23 A Yes, ma'am.

24 Q How do you know Mr. Jones?

25 A That's my uncle.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 Q And was he invited to the party?

2 A Yes, ma'am.

3 Q Why?

4 A To be the bartender.

5 Q Why was he bartending?

6 A Because we asked him to.

7 Q Now, did he work as a bartender for his
8 job?

9 A No, ma'am.

10 Q What'd he do for a job?

11 A I think he worked at Sea Pines.

12 Q And so if he didn't work as a bartender,
13 why did you ask him to bar tend?

14 A Just because.

15 Q Okay. And do you remember what time you
16 got to the party?

17 A Maybe about ten.

18 Q And do you know a Jaquwn Brewer?

19 A Yes, ma'am.

20 Q Do you know him by any other name?

21 A Yes.

22 Q What's that?

23 A Queezy.

24 Q How long you known Queezy?

25 A I don't know him personally.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 Q Okay. But you knew him on him on sight?

2 A Yes.

3 Q And do you see Jaquwn Brewer here in the
4 courtroom today?

5 A Yes, ma'am.

6 Q Where is he?

7 A Right there.

8 Q And could you state for the record what
9 color shirt he's wearing?

10 A White.

11 MS. BANNON: May the record reflect the
12 witness has identified Mr. Brewer.

13 By Ms. Bannon:

14 Q Did you see him that night at the club?

15 A Yes, ma'am.

16 Q Are you familiar with Travis Polite?

17 A Yes, ma'am.

18 Q How do you know Travis Polite? (??)

19 A He lives in my neighborhood.

20 Q All right. And was he at the club that
21 night?

22 A No, ma'am, not that I know of.

23 Q All right. So you didn't see him that
24 night?

25 A No, ma'am.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

- 1 Q Did y'all have security at the club?
- 2 A Yes, ma'am.
- 3 Q And how many doors were y'all letting
- 4 people in?
- 5 A One.
- 6 Q And after you got -- went through security,
- 7 did you get anything?
- 8 A Did I get anything, as in --
- 9 Q Like if -- let's say I was going to the
- 10 party, I walk in the door and I was searched by
- 11 security?
- 12 A Yes, ma'am.
- 13 Q And then do I pay a cover?
- 14 A Yes.
- 15 Q Do they give me anything?
- 16 A Yes.
- 17 Q To show --
- 18 A A wristband.
- 19 Q Okay. And so how would you say the party
- 20 was going?
- 21 A It was going fine.
- 22 Q Did a lot of people show up?
- 23 A Yes, ma'am.
- 24 Q Did something happen to kind of end the
- 25 party at some point?

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 A Yes.

2 Q All right. What was that?

3 A A shooting.

4 Q Okay. Prior to that shooting, could you
5 feel any animosity in the club?

6 A No, ma'am.

7 Q So it wasn't tense?

8 A No, ma'am.

9 Q Did you see anyone else with a gun in the
10 club?

11 A No, ma'am.

12 Q Did you have a gun with you that night?

13 A No, ma'am.

14 Q Did Deon have a gun?

15 A No, ma'am.

16 Q Did Uncle Henry have a gun?

17 A No, ma'am.

18 Q So at some point, did your attention get
19 over by the photographers?

20 A Yes, ma'am.

21 Q Why?

22 A Because someone came and told us that -- we
23 was going to take a picture but someone came and
24 told us that Jaquwn had a gun.

25 Q Someone told you the defendant had a gun?

Sheena Parker Gardner - Direct Examination by Ms. Bannon

- 1 A Yes.
- 2 Q So what'd you do with that information?
- 3 A We walked over there to take the gun out of
- 4 the club.
- 5 Q Who's we?
- 6 A Me and Deon.
- 7 Q And was he with anybody when you went up to
- 8 talk to him?
- 9 A Yes.
- 10 Q Who was he with?
- 11 A Dominique and Brian.
- 12 Q All right. And Dominique, who -- do you
- 13 know him by another name?
- 14 A Yes.
- 15 Q What's that?
- 16 A Dizzy.
- 17 Q Dizzy?
- 18 A Yeah.
- 19 Q Do you know Dominique's last name?
- 20 A I think it's Middleton.
- 21 Q Okay. So if I asked you a question about
- 22 Dominique Middleton and you respond with Dizzy --
- 23 A Yes.
- 24 Q -- are we talking about the same person?
- 25 A Yes.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

- 1 Q Okay. You said he was also with Brian?
- 2 A Yes.
- 3 Q Does -- do you know Brian by another name?
- 4 A Yes.
- 5 Q What's that?
- 6 A Chocolate.
- 7 Q Okay. What were they doing?
- 8 A Taking a picture.
- 9 Q And so y'all go up to them and what do you
- 10 do?
- 11 A Deon asked him -- told him that he had to
- 12 leave with the gun in the club.
- 13 Q All right. Was -- what was Deon's demeanor
- 14 doing this? Was he angry? Was he calm? Was he
- 15 in Jaquwn Brewer's face?
- 16 A He wasn't angry, no, ma'am.
- 17 Q Was he really close to Jaquwn, kind of
- 18 threatening him?
- 19 A Not threatening him, but close because the
- 20 music was kind of loud.
- 21 Q Did he seem angry?
- 22 A No, ma'am.
- 23 Q So what was Jaquwn, Queezy's, response when
- 24 Deon asked him to take the gun out of the club?
- 25 A Mind your business.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 Q Did he use a little stronger language than
2 that?

3 A Yes, ma'am.

4 Q Okay. So after he said that, what
5 happened?

6 A That's when he pulled the gun out of his
7 shirt and pointed it at Deon.

8 Q When you say he, who do you mean?

9 A Jaquwn.

10 Q Okay. Where did he point it at Deon?

11 A In his face.

12 Q Where'd he pull the gun out from?

13 A Under his shirt or his belt.

14 Q And do you recall the color of the gun?

15 A Yes.

16 Q What was that?

17 A Black.

18 Q So when you say he pointed it at Deon's
19 face, could you show the jury how he did it? Was
20 it to the side, to the front, up, down?

21 A (Hand gesture).

22 Q So he pointed it straight on?

23 A Yeah.

24 Q What did Deon do when Mr. Brewer stuck the
25 gun in his face?

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 A Moved it out his face.

2 Q What do you mean?

3 A (Hand gestures).

4 Q So he took his hand and kind of got the gun
5 out of his face?

6 A Yes.

7 Q What were the other people at the club
8 doing while this was going on?

9 A They really didn't know what was going on
10 at the time.

11 Q And this was happening at the back corner
12 where the pictures were going on?

13 A Yes, ma'am.

14 Q After Deon kind of swatted away the gun,
15 what happened?

16 A He started shooting.

17 Q Who started shooting?

18 A Jaquwn.

19 Q All right. Were you able to see where he
20 was aiming his gun?

21 A He was just aiming it at the ground.

22 Q Okay. Was he aiming it up at the ceiling?

23 A No, ma'am.

24 Q Was he aiming it at the wall?

25 A He just fired shots in the ground.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

- 1 Q Would you say he was aiming it at people?
- 2 A Yes.
- 3 Q Do you remember how many shots were fired
- 4 in that club?
- 5 A I think it was like one or two.
- 6 Q Okay. Did you see anyone else with a gun
- 7 inside the club.
- 8 A No, ma'am.
- 9 Q Did you see anyone else shoot inside the
- 10 club?
- 11 A No, ma'am.
- 12 Q Did you see Jaquawn Brewer shooting inside
- 13 the club?
- 14 A Yes, ma'am.
- 15 Q So after he starts firing into the crowd,
- 16 what do you do?
- 17 A Run.
- 18 Q Where do you run to?
- 19 A Outside.
- 20 Q Now, there are three doors on this club,
- 21 right?
- 22 A Yes, ma'am.
- 23 Q At some point, did the other two get open?
- 24 A Yes, ma'am.
- 25 Q Do you know how they got open?

Sheena Parker Gardner - Direct Examination by Ms. Bannon

- 1 A The people.
- 2 Q They just -- in their efforts to get out?
- 3 A Uh-huh.
- 4 Q So which door did you get out of?
- 5 A The main entrance.
- 6 Q So the front entrance?
- 7 A Yes.
- 8 Q And once you were outside, what did you do?
- 9 A I just was standing up. My best friend
- 10 Carla parked in the front and I was just standing
- 11 behind her car.
- 12 Q Okay. And what was going on outside?
- 13 A People was running and there was more
- 14 shooting.
- 15 Q How many people did you see shooting
- 16 outside?
- 17 A Two.
- 18 Q We talked a little bit about Dominique,
- 19 Dizzy, Middleton?
- 20 A Yes.
- 21 Q How do you know him? Did you know him
- 22 before that night?
- 23 A I don't personally know him but had seen
- 24 him, yes.
- 25 Q So you recognized him?

Sheena Parker Gardner - Direct Examination by Ms. Bannon

- 1 A Yes.
- 2 Q Y'all aren't best friends but you know
- 3 him -- you know him?
- 4 A Uh-huh.
- 5 Q Did you see him outside in front of that
- 6 club?
- 7 A Yes, ma'am.
- 8 Q And what was he doing?
- 9 A Shooting.
- 10 Q All right. Did you see where Mr. Brewer
- 11 had gone off to?
- 12 A Huh? Can you repeat that? I mean, I don't
- 13 understand you.
- 14 Q So you last saw Mr. Brewer shooting inside
- 15 the club. You get outside the club. Did you see
- 16 Mr. Brewer again?
- 17 A Yes, he was outside too.
- 18 Q Okay. And what was Mr. Brewer doing
- 19 outside the club?
- 20 A Shooting.
- 21 Q Okay. Were he and Dominique Middleton next
- 22 to each other shooting?
- 23 A One was further back than -- Dominique was
- 24 further back and Jaquwn was up close.
- 25 Q Up close to what?

Sheena Parker Gardner - Direct Examination by Ms. Bannon

- 1 A The building.
- 2 Q Okay. How could you tell who was who?
- 3 A One light skinned and one dark skinned.
- 4 Q Okay. Anything about their guns stand out
- 5 to you?
- 6 A Yes.
- 7 Q What?
- 8 A The gun that Dominique had had a laser on
- 9 it.
- 10 Q And Dominique, was he closer or farther
- 11 away from you?
- 12 A Farther away.
- 13 Q And was he closer or farther away from the
- 14 club?
- 15 A Farther away.
- 16 Q When you say that Jaquwn was close to the
- 17 club, like, what do you mean? Like in the parking
- 18 lot back or next to the building or --
- 19 A Next to the building.
- 20 Q Okay. Were you able to see -- I'm sorry, I
- 21 think we might have already covered this, I just
- 22 forgot, so give me a little room. Was there
- 23 something remarkable about Dominique Middleton's
- 24 gun versus Jaquwn's gun?
- 25 A Yes.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 Q What?

2 A He had a laser.

3 Q Okay. From that, were you able to tell
4 where Dominique was shooting?

5 A Yes.

6 Q Where was that?

7 A He was shooting up in the air.

8 Q Okay. And how about Jaquwn? Were you able
9 to see where Jaquwn was shooting?

10 A He was shooting towards the building.

11 Q When you say towards the building, what do
12 you mean?

13 A Like, it was -- it's another door at the
14 end, he was shooting towards that door.

15 Q And he was shooting into the building from
16 that doorway?

17 A Yes.

18 Q Did you ever see Dominique Middleton
19 pointing his gun into the building?

20 A No, ma'am.

21 Q How about Mr. Brewer?

22 A Yes, ma'am.

23 Q Well, outside you said that Mr. Brewer was
24 shooting into the building; was he also shooting
25 at people?

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 A Yeah.

2 Q And you saw Mr. Brewer pointing the gun
3 towards the door of the building?

4 A Yes, ma'am.

5 Q Did you see how Dominique Middleton got
6 away?

7 A Yes.

8 Q How's that?

9 A In a brown Cadillac.

10 Q Do you know who the brown Cadillac belonged
11 to?

12 A Yes.

13 Q Who?

14 A Kevin Moultry.

15 Q Okay. Did you see how Mr. Brewer got away?

16 A No.

17 Q Did he get into that brown Cadillac with
18 Dominique Middleton?

19 A I'm not sure.

20 Q At some point, did the shooting stop?

21 A Yes.

22 Q And once it stopped, what'd you do?

23 A Went back in the building.

24 Q And why'd you go back in the building?

25 A To see what was going on.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 Q And did anything happen once you were back
2 inside the building?

3 A No, ma'am.

4 Q So how many people did you see shoot at the
5 building?

6 A Two. No, I only saw one person shooting at
7 the building.

8 Q Okay. When you answered two, what were you
9 thinking?

10 A I wasn't thinking it was something -- I
11 don't know.

12 Q How many people did you see shooting
13 outside the building?

14 A Two.

15 Q How many people did you see shooting into
16 the building?

17 A One.

18 Q And who was that one person shooting into
19 the building?

20 A Jaquwn.

21 Q How do you know Henry Jones?

22 A That's my uncle.

23 Q Did you get to talk to him after the
24 shooting?

25 A No, ma'am.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 Q Why not?

2 A He was shot -- he wasn't -- I ain't get to
3 talk to him.

4 Q So he never regained consciousness again?

5 A No.

6 Q Prior to the shooting, were you able to
7 talk to him?

8 A Before the shooting?

9 Q Uh-huh.

10 A Yes.

11 Q Did he seem to be in a good mood?

12 A Yes, ma'am.

13 Q All right. Would you mind stepping off the
14 stand for me?

15 I just have a couple things I want to --
16 actually, you know what, stay right there?

17 MS. BANNON: I've previously shown these to
18 the defense counsel, Your Honor.

19 THE COURT: Okay.

20 MS. BANNON: They have been made through
21 State's Exhibit 12. They are merely print-offs.

22 By Ms. Bannon:

23 Q Ms. Gardner, I'm showing you what's been
24 labeled as State's Exhibit 66 through 73. Would
25 you mind looking at these? Do those look to be a

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 fair and accurate depiction of the club that
2 night?

3 A Yes, ma'am.

4 Q At this time, the State would move State's
5 Exhibit 66 through 73 into evidence?

6 THE COURT: Any objections?

7 MR. NEWMAN: No, sir.

8 THE COURT: Okay. State's 66 through 73 is
9 into evidence.

10 (WHEREUPON State's Exhibits 66 through 73
11 were entered into evidence.)

12 MS. BANNON: All right.

13 THE COURT: Without objection.

14 By Ms. Bannon:

15 Q Ms. Gardner, if you wouldn't mind stepping
16 down for me.

17 MS. BANNON: Can everyone see if we leave
18 this over here?

19 By Ms. Bannon:

20 Q All right. Ms. Gardner, what I'm going to
21 do is give you this pointer and just ask you some
22 questions, okay?

23 A Okay.

24 Q If you wouldn't mind taking the pointer,
25 I'm just going to sit it here.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 In this photo, do you recognize anybody?

2 A (Witness nods head.)

3 Q Who do you recognize?

4 A That's Jaquwn and that's Brian.

5 Q Okay. You're going to have to speak
6 really, really loud so everyone can hear you,
7 okay?

8 THE COURT: Can you put that microphone...

9 THE WITNESS: That's Jaquwn and that's
10 Brian -- The one in the black shirt with the gun
11 is Jaquwn and the one in the red, that's Brian,
12 Chocolate.

13 By Ms. Bannon:

14 Q Okay. And do you recognize that sign that
15 they're making?

16 A Yes, ma'am.

17 Q What's that?

18 A That's where they from.

19 Q Where's that?

20 A Poppy Hill.

21 Q Poppy Hill?

22 A Yes, ma'am.

23 Q All right. And how about that gun in
24 Brewer's pants, do you recognize that?

25 A Yes, ma'am.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 Q All right. How do you recognize it?

2 A That's the gun he was shooting.

3 Q And when you said that he pulled it out of
4 his pants to shove it into Deon's face, is that
5 the gun you were referring to?

6 A Yes, ma'am.

7 Q Okay. All right. Do you recognize this
8 photo?

9 A Yes, ma'am.

10 Q All right. Do you know who's car that is?

11 A Yes, ma'am.

12 Q Whose is it?

13 A Deon's.

14 Q Okay. What -- what are we looking at here?

15 A That's the front entrance to the club.

16 Q Okay. And how about these chairs and
17 shoes? Were those there when y'all started?

18 A No, ma'am.

19 Q Do you know how they got there?

20 A I guess when people was running out, they
21 was kicking out chairs, shoes was falling off.

22 Q Was it pretty chaotic?

23 A Yes, ma'am.

24 Q All right. What are we looking at here in
25 this photo?

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 A That was after.

2 Q All right. This was after. Is it from the
3 doorway looking into the club?

4 A Yes, ma'am.

5 Q And the chairs, were they like that when
6 y'all started?

7 A No, ma'am.

8 Q How'd they get like that?

9 A When they started shooting people,
10 everybody started running.

11 Q And how about this one?

12 A The same.

13 Q Okay. Do you recognize where this photo's
14 taken from?

15 THE COURT: Hold on one second. This juror
16 down here cannot see. If y'all would back up.

17 MS. BANNON: Could y'all back up? Would
18 you mind, Ms. Gardner, to stand right at the edge
19 of that thing?

20 THE COURT: Thank you.

21 MS. BANNON: Yeah, there we go.

22 By Ms. Bannon:

23 Q Do you recognize what this is a picture of?

24 A Yes, ma'am.

25 Q What's that?

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 A That's a picture taken from the front door.

2 Q Okay. And how about this thing right over

3 here; what is that?

4 A The ramp to go inside the kitchen.

5 Q Okay. So that's the little ramp we heard?

6 A Yeah.

7 Q So in this picture, where was you Uncle

8 Henry tending bar?

9 A In that kitchen.

10 Q Okay. If we were talking about the photo

11 booth, where would that be?

12 A In the back. In the back corner.

13 Q Okay. This side or this side?

14 A This side.

15 Q Okay. All right. Do you recognize what

16 this is?

17 A Yes, ma'am.

18 Q What's that?

19 A The ramp in the kitchen.

20 Q Okay. So it's just a closer shot --

21 A Yeah.

22 Q -- of what we just looked at?

23 A Yes, ma'am.

24 Q And I'm assuming this is not how it looked

25 prior to the shooting?

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 A No, ma'am.

2 Q All right. Do you recognize what this is?

3 A Yes. That's the -- on the side going
4 inside the club.

5 Q Okay. Would you say -- where were you --
6 when you ran out of the club, where was your
7 friend's car parked that you were hiding behind?

8 A At the front door.

9 Q Could you just show us on this?

10 A Over here.

11 Q Okay. Over here. So which way were you
12 facing that you could see the shooting?

13 A I was facing this way.

14 Q So if you were parked here, you were facing
15 looking out like this?

16 A Like if I was parked like this, I was
17 looking this way.

18 Q Okay. So her car's parked this way, you're
19 looking out this way?

20 A Her car is parked -- okay. This is the
21 building, her car is parked like this and I'm
22 right here --

23 Q Okay.

24 A -- looking out.

25 Q So you're looking back at the shooting?

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 A Yes.

2 Q And in this photo, where was Dominique
3 Middleton shooting from?

4 A About right over here.

5 Q Okay. So back over here?

6 A Yes.

7 Q Where was Jaquwn Brewer shooting from?

8 A About right there to the grass area right
9 there.

10 Q Okay. Right here?

11 A Yes.

12 Q And you said there was a -- a second door
13 that had been opened, right? Do you see it in
14 this photo?

15 A Yes, that's the second door right there.

16 Q All right. So Mr. Brewer was shooting from
17 like right in front of that?

18 A Yes.

19 Q Okay. And so when you saw Mr. Brewer
20 shooting back into the club, what area was he
21 shooting at?

22 A Just like right here. Through that like --
23 through that door.

24 Q Okay. And Mr. Middleton was out over here?

25 A Yes.

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 Q Did you ever see a red laser sight going
2 back into the club?

3 A No.

4 Q Did you ever see Mr. Middleton run up to
5 Mr. Brewer and start shooting into the club?

6 A No.

7 Q All right. Do you recognize this?

8 A Yes.

9 Q What is it?

10 A The laser.

11 Q All right. And do you see the laser still
12 on?

13 A Yes.

14 Q Would you mind just pointing it out to us?

15 A (Witness points.)

16 Q And again, is that the same thing?

17 A Yes, ma'am.

18 Q Now, I'd like to show you something.

19 Okay. So is this the way out of the club,
20 right here? This is the front and that's the
21 inside?

22 A Uh-huh.

23 Q Does that look about right?

24 A Yes, ma'am.

25 Q Here, I'll do it so you can turn and face

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 the jury.

2 So where were the pictures being made?

3 A This is the -- this is the inside.

4 Q This is the entrance right here, the front
5 door?

6 MR. NEWMAN: I can't quite see either. It
7 may be easier if they put it on the easel.

8 MS. BANNON: I -- I think we're fine. I
9 think everyone on the jury can see it.

10 MR. NEWMAN: I can't see it.

11 THE COURT: You can step a little closer if
12 you need to.

13 By Ms. Bannon:

14 Q And if this is the front door --

15 A Uh-huh.

16 Q -- where were the pictures being made?

17 A Over here.

18 Q Okay. And where are the bathrooms?

19 A Through there.

20 Q Okay. And when you and Deon went to tell
21 Mr. Brewer he can't have the gun in the club --

22 A Yes, ma'am.

23 Q -- where was he?

24 A Right over there at the picture booth.

25 Q Okay. And where was your Uncle Henry

Sheena Parker Gardner - Direct Examination by Ms. Bannon

1 tending bar?

2 A Back -- back here.

3 Q Okay. So this bar right here?

4 A Yes.

5 Q So when you got out -- this is the outside
6 of the club, where was your friend's car parked?

7 A Right here.

8 Q Okay. It's on the other side of Deon's
9 car?

10 A Uh-huh.

11 Q And was there room to walk between the cars
12 and the building?.

13 A Yes, right there in that -- right in this
14 area.

15 Q Okay. And now you said that Mr. Brewer was
16 standing in front of the club?

17 A Uh-huh.

18 Q Where was he standing?

19 A Right here.

20 Q And when you said that he was shooting into
21 the club, where was he shooting, aiming at?

22 A Through that door.

23 Q Through this door?

24 A Uh-huh.

25 Q Right here?

Sheena Parker Gardner - Cross-Examination by Mr. Newman

1 A Uh-huh.

2 Q And where would Mr. Middleton be?

3 A Back here.

4 Q Like back kind of off the diagram?

5 A Uh-huh.

6 Q Okay. Okay. If you wouldn't -- and this
7 door -- do you remember how open it was?

8 A Wide open.

9 Q Just wide -- completely open?

10 A Uh-huh.

11 Q Okay. If you wouldn't mind taking the '
12 stand again?

13 MS. BANNON: Beg the Court's indulgence.

14 THE COURT: Sure.

15 By Ms. Bannon:

16 Q All right, Ms. Gardner. That's all the
17 questions I got for you. If you wouldn't mind
18 answering anything Mr. Newman asks, I'd appreciate
19 it.

20 A Okay.

21 **CROSS-EXAMINATION**

22 By Mr. Newman:

23 Q You never told the investigators that Mr.
24 Brewer was standing by that secondary door; isn't
25 that correct?

Sheena Parker Gardner - Cross-Examination by Mr. Newman

1 A No.

2 Q You told them that Mr. Brewer actually went
3 back inside the club and that you witnessed him
4 shoot your uncle; isn't that what you told the
5 investigators?

6 A I don't remember.

7 Q You wrote a written statement in this case,
8 didn't you?

9 A Yes, I did, yes, sir. But when I wrote
10 that statement, I didn't say that I personally saw
11 him went up to him and shot him.

12 Q I'm sorry, you're going -- you're going a
13 little fast; I wasn't able to understand you?

14 A I said when I was writing the statement, I
15 didn't say that I went up to -- that he went up to
16 him personally and shot him, but I wrote that he
17 was the one that was shooting in the club.

18 Q Well, in your statement, you said that, I
19 saw -- that's what Doctor said.

20 You said, He came back in and that's
21 when -- he came back inside and that's when he
22 shot my uncle.

23 A Well, he was on the outside shooting.

24 Q He was on the outside.

25 Now, that door would be on on the back wall

Sheena Parker Gardner - Cross-Examination by Mr. Newman

1 looking at where the photographer would have been?

2 A Excuse me?

3 Q That door that you said -- this door here.

4 A Yeah.

5 Q That would -- the photographer was back
6 over here, correct?

7 A Uh-huh.

8 Q All right. And the police said when they
9 got there, or other witnesses testified there was
10 still forty to fifty people inside that club when
11 the police got there. So Mr. Brewer was shooting
12 through those people.

13 A So when the police got there, people must
14 have went back in because he already had left.

15 Q Okay. Okay. You're saying there were no
16 people inside the club except for your uncle?

17 A When?

18 Q When Mr. -- you say Mr. Brewer was shooting
19 into the club from the outside?

20 A There was other people in there when he was
21 shooting.

22 Q Okay. Ivori Polite was still in there?

23 A Uh-huh.

24 Q Okay. Octavia was still in there?

25 A Uh-huh.

Sheena Parker Gardner - Cross-Examination by Mr. Newman

1 Q In fact, Octavia was standing on the ramp?

2 A Yes.

3 Q Okay. Now, this door -- you recognize this
4 photograph? This is the club, right?

5 A Uh-huh.

6 Q And this secondary door here is off the
7 ground, isn't it?

8 A Uh-huh.

9 Q And there's no step inside or outside?

10 A Huh-uh.

11 Q Okay. You agree with that?

12 A Yes.

13 Q Okay. So we can take out of your
14 statement, you did not actually see Mr. Brewer
15 shoot your uncle?

16 A No.

17 Q Okay. I think they had you look at State's
18 Exhibit 54 which I think is on that board.

19 A Yes, sir.

20 Q And you identified Jaquawn Brewer, correct?

21 A Uh-huh.

22 Q And Mr. Revere?

23 A Uh-huh.

24 Q Okay. Who's this dapper gentleman over
25 here?

Sheena Parker Gardner - Cross-Examination by Mr. Newman

- 1 A I'm not sure.
- 2 Q Okay. Who's this fellow?
- 3 A I'm not sure.
- 4 Q Who's this fellow?
- 5 A I'm not sure.
- 6 Q Okay. And you know Dominique Middleton?
- 7 A Yes.
- 8 Q Okay. Dominique Middleton's not in this
- 9 photograph?
- 10 A No.
- 11 Q Okay. And when did you speak to the
- 12 solicitors about your testimony today?
- 13 A Maybe about two months ago.
- 14 Q Okay. And that's the last time. You
- 15 didn't talk with them this morning or yesterday?
- 16 A No, I didn't speak to her.
- 17 Q Did you speak to anybody?
- 18 A No. I mean, I speak to her this morning
- 19 when we came in.
- 20 Q Okay. And do you know Gary Bright?
- 21 A I don't think so -- who is he?
- 22 Q The photographer?
- 23 A No, not personally.
- 24 Q Okay. Who were the security guards?
- 25 A I don't remember their names.

Sheena Parker Gardner - Cross-Examination by Mr. Newman

1 Q Well, who hired them?

2 A I don't remember who hired them.

3 Q Well, you were taking money at the door,

4 right?

5 A No.

6 Q Who was taking money at the door?

7 A My sister.

8 Q Which one?

9 A She's not here.

10 Q What's her name?

11 A Keesha.

12 Q Keesha. And who was going to get the money

13 from the proceeds?

14 A Who was going to get the money from the

15 party?

16 Q Yeah, yeah, I'm sorry.

17 A The people that was having it.

18 Q And who was having it?

19 A Me and my cousins.

20 Q Okay. So you and your cousins was going to

21 get the money from the party?

22 A Yes.

23 Q All right. You saw Dominique with the gun

24 with the red light?

25 A Yes.

Sheena Parker Gardner - Redirect Examination by Ms. Bannon

1 Q All right. All right. Yeah. If you'll
2 read that for me right there where it starts at,
3 He went -- Jaquwn Brewer --

4 A Okay. He asked Jaquwn -- oh. He and
5 Jaquwn Brewer went outside, started shooting
6 outside, came back in and started shooting again
7 and that's when he shot my uncle.

8 Q Okay. I'm sorry. And you made that
9 statement on -- well, it'd be that night on May
10 24th, 2009?

11 A Yeah.

12 Q Okay. Thank you.

13 THE COURT: Anything further?

14 MS. BANNON: Briefly.

15 **REDIRECT EXAMINATION**

16 By Ms. Bannon:

17 Q Ms. Gardner, did you write that statement?

18 A No, ma'am.

19 Q Who wrote it?

20 A Ivori.

21 Q Why?

22 A I was nervous.

23 Q All right. So you were really upset?

24 A Yes.

25 Q And -- so this -- how long is that

Sheena Parker Gardner - Recross-Examination by Mr. Newman

1 statement? How many lines? Do you know?

2 A Maybe five.

3 Q All right. So in those five lines, were
4 you able to encapsulate everything that you
5 witnessed that night?

6 A No, ma'am.

7 Q And how soon after seeing your uncle dead
8 on the floor did you give this statement?

9 A Right after.

10 Q All right.

11 MS. BANNON: No further questions.

12 THE COURT: Anything further, Mr. Newman?

13 MR. NEWMAN: Yes, sir, I do.

14 **RECROSS-EXAMINATION**

15 By Mr. Newman:

16 Q You spoke with the detectives in this case,
17 correct?

18 A Yeah.

19 Q Okay. And you did sign this statement,
20 correct?

21 A Yes, sir.

22 Q Even though Ivori wrote it out?

23 A Yes, sir.

24 Q You told her what to write and then you
25 signed it?

Sheena Parker Gardner - Recross-Examination by Mr. Newman

1 A Yes, sir.

2 Q Okay. And when you signed it, you knew it
3 was a statement, correct?

4 A Yes, sir.

5 Q And you knew you had to be truthful in a
6 statement?

7 A Yes.

8 Q Okay. Now, when you spoke with the
9 investigators, you told them Dominique's gun had a
10 red light on it, correct?

11 A Yes.

12 Q Dominique was shooting outside the club?

13 A Yes.

14 Q And Sheena stated her immediate reaction
15 was to run outside, so you ran outside?

16 A Uh-huh.

17 Q Okay. That's correct. You notice
18 Dominique was shooting?

19 A Yes.

20 Q Okay. Dominique's gun had a red light on
21 it?

22 A Yes.

23 Q Sheena stated shortly after she got
24 outside, she observed Jaquawn Brewer come out the
25 door, correct?

Sheena Parker Gardner - Recross-Examination by Mr. Newman

1 A Yes.

2 Q Okay. He began shooting outside?

3 A Yes.

4 Q Sheena stated she ran back into the party?

5 A Yes.

6 Q And just after making it inside the door,
7 Jaquwn came back into the building and began to
8 shoot again. Sheena stated this is when she
9 saw -- when she -- when Jaquwn shot her uncle in
10 the head?

11 A I said that -- like I said, I did not see
12 him actually shoot him in the head personally, but
13 he was the only one shooting in and outside.

14 Q Well, didn't you tell the detective that
15 you ran back inside?

16 A Well, I mean, I was upset that night.

17 Q The very night when you perceived this
18 and -- how about on June 9th of 2009? Were you
19 upset then as well when you talked to the
20 detectives?

21 A Uh-huh.

22 Q Okay. And you don't deny telling the
23 detectives that you went back into the club, do
24 you?

25 A Well, I didn't went back in there while he

Sheena Parker Gardner - Recross-Examination by Mr. Newman

1 | was shooting, I went back in there after
2 | everything was done.

3 | Q Okay. It says, Sheena stated she ran back
4 | into the party. Just after making it inside the
5 | door, Jaquwn Brewer came back into the building
6 | and began to shoot again?

7 | A Well, he was shooting outside the building.

8 | Q Okay. So this wasn't correct when you told
9 | the detectives that statement?

10 | A I mean, not everything. I really -- it's
11 | basically what I --

12 | Q I mean, you wouldn't lie to the detectives?

13 | A No.

14 | Q No. Just after making it inside the door,
15 | Jaquwn came back into the building and shot again.
16 | That's what you told the detectives in June of
17 | 2009; isn't that true?

18 | A Well, that was a minute after the shooting,
19 | but I know that he wasn't shooting. He was
20 | shooting outside the building. That's --

21 | Q Well, it said you ran back into the party.

22 | A Well, it wasn't no party going on. It was
23 | shooting.

24 | Q Okay. Well, you ran back into the
25 | building; just after making it inside the door,

Sheena Parker Gardner - Recross-Examination by Mr. Newman

1 Jaquwn came back into the building. Now, there's
2 a problem with those statements because that
3 couldn't have happened. And have you changed your
4 testimony from what you told the detectives to fit
5 what possible physical evidence there is?

6 A No.

7 Q Okay. So you did not see Jaquwn shoot your
8 uncle. Jaquwn did not come back into the building
9 and shoot again. And you did not run back into
10 the building and shoot again as you told the
11 detectives in June of 2009?

12 A I didn't run back in and shoot in the
13 building.

14 Q Let's take it one at a time. You did not
15 run back inside the building?

16 A After the shooting was over, yes I did --

17 Q No, I meant -- Sheena stated shortly after
18 she got outside, she observed Jaquwn Brewer come
19 out the door. He began shooting outside. Sheena
20 stated she ran back into the party, into the
21 building. That didn't happen?

22 A I didn't ran back in the building while he
23 was shooting, I ran back in the building after the
24 shooting was over.

25 Q Just after making it inside the door,

Sheena Parker Gardner - Recross-Examination by Mr. Newman

1 Jaquwn came back into the building and began to
2 shoot again?

3 A Well, he didn't came back in the building,
4 he was standing by the door shooting.

5 Q Okay. So when you told the detectives this
6 back in June, that wasn't correct?

7 A I guess, I mean, it was days or months
8 later.

9 Q Well, 24th to the 9th, two weeks later.
10 And on the same day when you were upset on May
11 24th, you said Jaquwn Brewer went outside and
12 started shooting outside and came back in and
13 started shooting again. That's when he shot my
14 uncle. And that's what you said on May 24th,
15 2009.

16 A Well, as in come back in, he was standing
17 right there by the door, I mean...

18 Q Well, why didn't you say standing by the
19 door?

20 A I did say that he was standing by the door.

21 Q No, you said that here. Why didn't you say
22 that then?

23 A (There was no answer.)

24 MR. NEWMAN: Thank you, Your Honor.

25 THE COURT: All right.

Sheena Parker Gardner - Redirect Examination by Ms. Bannon

1 Anything further, solicitor?

2 **REDIRECT EXAMINATION**

3 By Ms. Bannon:

4 Q In your statement given May 24th, the night
5 of the shooting, who -- how many people did you ID
6 as shooting into the building?

7 A How many people did I ID as shooting into
8 the building.

9 Q Uh-huh.

10 A One.

11 Q And who was that person?

12 A Jaquwn.

13 Q Jaquwn Brewer, the defendant?

14 A Yes.

15 Q All right. How about the statement that
16 you gave a couple weeks later? How many people
17 did you ID as shooting in the building?

18 A One.

19 Q And who is that person?

20 A Jaquwn.

21 Q Okay. And then today, how many people did
22 you ID shooting into the building?

23 A One.

24 Q And who was that person?

25 A Jaquwn.

Octavia Jones - Direct Examination by Ms. Bannon

1 MS. BANNON: That's all I've got.

2 THE COURT: All right. Anything further?

3 MR. NEWMAN: I don't think so.

4 THE COURT: All right. You may step down.

5 Call your next witness.

6 MS. BANNON: The State calls Octavia

7 Shawnee Jones.

8 THEREUPON,

9 OCTAVIA JONES,

10 after being duly sworn, testified as follows:

11 THE CLERK: Please be seated. State your
12 name and spell it for the Court, please.

13 THE WITNESS: Octavia Jones. O-c-t-a-v-i-a
14 J-o-n-e-s.

15 **DIRECT EXAMINATION**

16 By Ms. Bannon:

17 Q Ms. Jones, do you go by Octavia?

18 A Yes.

19 Q Do you go by any other names?

20 A Shawnee.

21 Q So if other witnesses have referred to
22 Shawnee, would they be referring to you?

23 A Yes.

24 Q Where do you work?

25 A Presbyterian in Charlotte.

Octavia Jones - Direct Examination by Ms. Bannon

- 1 Q Okay. Do you live in Charlotte?
- 2 A Yes.
- 3 Q How long have you lived in Charlotte?
- 4 A Eight years.
- 5 Q Where are you from originally?
- 6 A Beaufort.
- 7 Q Where in Beaufort?
- 8 A Stewart Point.
- 9 Q And so do you come back home on an
- 10 occasion?
- 11 A Yes.
- 12 Q And were you back home on the weekend of
- 13 May 23rd and 24th of 2009?
- 14 A Yes.
- 15 Q What were you back home for?
- 16 A I was having a family reunion.
- 17 Q And what kind of events did y'all have for
- 18 that family reunion?
- 19 A Like Friday we had a seafood night,
- 20 Saturday a banquet, Sunday a picnic. And Saturday
- 21 night we had a party.
- 22 Q Where was the party held?
- 23 A At the Shriner's Lodge, I think.
- 24 Q Is that also known as the Semper Fi Club?
- 25 A Yes.

Octavia Jones - Direct Examination by Ms. Bannon

- 1 Q How big's your family?
- 2 A Really big.
- 3 Q Okay. So there were a lot of people in
- 4 town for all these events?
- 5 A Yes.
- 6 Q And are you related to Henry Jones?
- 7 A Yes.
- 8 Q How are you related to him?
- 9 A He's my uncle.
- 10 Q And were y'all close?
- 11 A Yes.
- 12 Q And you said that there was a party after
- 13 the banquet, what was this party for?
- 14 A It was just something to do and have fun.
- 15 Q And who was invited to this party?
- 16 A Anybody who wanted to come.
- 17 Q And did you know a lot of people at the
- 18 party?
- 19 A Not -- I mean, yeah. Yeah, I did. Yeah.
- 20 Q And was your uncle at the party?
- 21 A Yes.
- 22 Q Do you remember what time you got to the
- 23 party?
- 24 A I think it was like 10:30, maybe 11:00.
- 25 Q And were you responsible for any of the

Octavia Jones - Direct Examination by Ms. Bannon

1 planning of the party?

2 A Some of it.

3 Q All right. Do you remember what you were
4 responsible for?

5 A Just basically helping with the cost of it.

6 Q And if you were a partygoer, how did you
7 get into the party?

8 A You had to pay \$10 to get in.

9 Q Okay. And did you go through security?

10 A Yes.

11 Q Did you arrange for security?

12 A No.

13 Q Do you remember who arranged for security?

14 A Not really.

15 Q And how was the party? Was it crowded,
16 empty?

17 A It was very crowded.

18 Q Do you remember when it got crowded?

19 A Like maybe started about 12:30 people was
20 already coming in.

21 Q And what kind of things did y'all have at
22 the party?

23 A We had a picture man, DJ booth, alcohol,
24 and basic normal stuff.

25 Q And did something happen to end the party?

Octavia Jones - Direct Examination by Ms. Bannon

1 A Yeah. They started shooting.

2 Q Okay. Did you see who was shooting?

3 A No.

4 Q Where were you when the shooting started?

5 A We was like in front of the ladies'
6 restroom.

7 Q Okay. And why were you in front of the
8 ladies' room?

9 A We were just -- we were about to go take a
10 picture and then we started hearing gunshots.

11 Q Do you remember what direction the gunshots
12 came from?

13 A It just came from the front of the club
14 like by the picture booth or like in the front.

15 Q So it came by the picture booth, not from
16 the bar area?

17 A- No.

18 Q Did you have a gun on you that night?

19 A Huh?

20 Q Did you have a gun on you that night?

21 A No.

22 Q Okay. Did your Uncle Henry have a gun?

23 A No.

24 Q Anyone you saw that night, did they have a
25 gun?

Octavia Jones - Direct Examination by Ms. Bannon

- 1 A No.
- 2 Q Were there like local neighborhood tensions
3 going on that night?
- 4 A No.
- 5 Q Until the shooting started, were you aware
6 of any stress or anything like that at the party?
- 7 A No. Nope.
- 8 Q So the -- you hear shooting, what do you
9 do?
- 10 A Ran in the bathroom.
- 11 Q Okay. And when you were in the bathroom,
12 was anyone else with you?
- 13 A It was a whole bunch of girls and a couple
14 of guys.
- 15 Q Okay. Was Ivori with you?
- 16 A Yes.
- 17 Q How do you know Ivori?
- 18 A She's my cousin.
- 19 Q How do you know Sheena?
- 20 A She's my cousin.
- 21 Q And do you know Deon Stevenson?
- 22 A Yeah.
- 23 Q How do you know her -- him?
- 24 A Sheena's boyfriend.
- 25 Q Okay. Once you were in the bathroom, could

Octavia Jones - Direct Examination by Ms. Bannon

1 you hear anything?

2 A A lot of screaming and yelling.

3 Q Could you hear gunshots?

4 A Yes.

5 Q Did they sound like they were still inside
6 the building or outside the building, could you
7 tell where they were?

8 A Well, when we first ran, we could hear them
9 in the building. Then like maybe two minutes
10 later, I could hear them outside.

11 Q Okay. At some point, did you leave the
12 bathroom?

13 A Yes.

14 Q When?

15 A Like maybe five minutes. It was like five
16 or six minutes after the shooting inside.

17 Q Was the shooting still going on inside?

18 A No, it was clear.

19 Q And when you came out of the bathroom, what
20 did you do?

21 A I just -- I just peeked out to see who was
22 in there. The whole area was empty so I just
23 walked up the ramp and I saw my Uncle Henry came
24 from around the bar and I told him he needed to
25 call the police because somebody's shooting.

Octavia Jones - Direct Examination by Ms. Bannon

1 Q Okay. And so where were you when you were
2 talking to him?

3 A I was standing like on the ramp a little
4 bit, walking -- right in front of the doorway on
5 that ramp.

6 Q And where was your uncle standing?

7 A He was standing right a little bit in front
8 of me like still inside the kitchen area.

9 Q And so when you told him to call 9-1-1,
10 what'd he do?

11 A He grabbed his phone.

12 Q Okay. And what'd he do?

13 A He started -- I think he dialed 9-1-1, but
14 I'm not sure he actually hit send.

15 Q Okay. Did something interrupt that?

16 A Yeah. I just -- I just remember -- I
17 remember Rochelle coming in screaming and then we
18 heard like the last couple of gunshots and then
19 that's when I saw my uncle hit the floor.

20 Q Okay. So how close to your uncle were you
21 when you saw him hit the floor?

22 A Like side by side basically.

23 Q Like one in front of each other?

24 A Just like he -- I'm right here and he was
25 like right here.

Octavia Jones - Direct Examination by Ms. Bannon

1 Q Okay. And what'd you see when he fell to
2 the floor?

3 A Brains and blood.

4 Q Did you ever see the shooter come back
5 inside the building?

6 A No.

7 Q So you -- so did -- when you said you heard
8 a couple of shots and he fell to the floor, was
9 the person -- did he step back inside the building
10 to let those out?

11 A No.

12 Q Were you able to tell from the sounds where
13 the shots were coming from?

14 A It came from outside. It was a door that
15 was opened by the DJ booth.

16 Q Okay. So like not the door where everyone
17 was entering, but the other door?

18 A Uh-huh.

19 Q And did you realize what had happened to
20 your uncle?

21 A Yes.

22 Q And so what'd you do?

23 A Started screaming.

24 Q Okay. And to your knowledge, was there any
25 reason for the shooting to happen?

Octavia Jones - Direct Examination by Ms. Bannon

1 A It -- it was no reason for it, but I guess
2 it's only because they told him to put his gun up
3 and he didn't want to.

4 Q Did you ever see the man who was shooting
5 at the club?

6 A No.

7 Q Okay. Would you mind stepping down off the
8 stand real quick?

9 A All right. Would mind standing right here
10 just so Ms. Radford can hold the mike and
11 everyone can hear what you say, okay.

12 All right. I am showing you -- this is a
13 picture that Mr. Newman's been using. When you
14 say that the shooting was coming from the second
15 door, do you see that door here on this photo.

16 THE COURT: Solicitor, make sure that the
17 gentleman on the far end can see as well.

18 By Ms. Bannon:

19 Q This -- here, Ms. Radford has a pointer for
20 you.

21 Would you mind just pointing out which
22 door?

23 A This door right here.

24 Q Okay. So that was the door from which
25 those last bullets were coming from?

Octavia Jones - Direct Examination by Ms. Bannon

- 1 A Yeah. Because this door was open and I --
2 and I saw a lot of commotion like out here, like
3 people running; and this door was open and I heard
4 like gunshots.
- 5 Q Did you ever see a red laser sight come
6 back into the club?
- 7 A No.
- 8 Q Did you ever see a red laser sight in the
9 club?
- 10 A No.
- 11 Q Okay. I'm showing you this; it's a floor
12 plan of the club, okay? So that door that we just
13 saw in the picture, do you see it on this?
- 14 A Right there.
- 15 Q Okay. And what was the main door where
16 people were coming in?
- 17 A This door.
- 18 Q Now, was this door open prior to the
19 shooting?
- 20 A No.
- 21 Q You -- where was your Uncle Henry tending
22 bar?
- 23 A Tending bar?
- 24 Q Uh-huh.
- 25 A He was behind the bar right here.

Octavia Jones - Direct Examination by Ms. Bannon

1 Q Okay. And where were you in the bathroom?

2 A Like right over here. This is the ladies
3 room and this is the men's room.

4 Q So when you came out and said you were on
5 the ramp, where were you?

6 A I was like right here, standing like right
7 there.

8 Q Okay. And where was your uncle?

9 A He was like right here.

10 Q Okay. So you were here and he was like
11 here?

12 A Uh-huh.

13 Q Okay. And --

14 MS. BANNON: Beg the Court's indulgence
15 real quick.

16 THE COURT: Sure.

17 By Ms. Bannon:

18 Q I'm showing you what has previously been
19 made into evidence. Is that how your uncle looked
20 after he was shot in the head?

21 A Exactly.

22 Q And you said he had been on his cell phone.
23 Can you see that in this picture?

24 A Yes.

25 Q Can you point it out to us?

Octavia Jones - Cross-Examination by Mr. Newman

1 A (Witness points.)

2 Q All right. Thank you.

3 If you wouldn't mind taking a seat again.

4 MS. BANNON: Beg the Court's indulgence.

5 THE COURT: Sure.

6 MS. BANNON: I don't have any further

7 questions for you. Thank you.

8 THE COURT: Mr. Newman?

9 MR. NEWMAN: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 By Mr. Newman:

12 Q When did you get ready for your testimony

13 today?

14 A Excuse me?

15 Q I said -- I said, when did you get ready

16 for your testimony today? Did somebody ask you

17 what they were going to be -- the questions they

18 were going to be asking you?

19 A No.

20 Q Not at all? You didn't speak to any

21 investigators or anybody from the prosecutor's

22 office?

23 A Just Meredith.

24 Q Just Ms. Bannon?

25 A Uh-huh.

Octavia Jones - Cross-Examination by Mr. Newman

1 Q And you all went over your testimony?

2 A Not like over everything, but just like
3 little stuff. She said -- she was like -- she
4 asked me about my name because they was confused
5 about it. That was the only -- the only thing.

6 Q Okay. Now, it's true when you spoke to
7 detectives, you didn't mention anything about this
8 rear door, did you?

9 A The rear door being open?

10 Q Yes.

11 A No.

12 Q And you didn't mention anything about
13 hearing gunshots from back there when you were
14 being interviewed by the detectives.

15 A No.

16 Q All right. You were interviewed on June
17 the 23rd of 2009 and stated, when the shooting
18 started, you ran into the kitchen to get away from
19 the gun fire?

20 A I ran into the bathroom.

21 Q Okay. You didn't initially run into the
22 kitchen?

23 A No.

24 Q Okay. And Octavia was with Ivori who ran
25 into the bathroom?

Octavia Jones - Cross-Examination by Mr. Newman

1 A I am Octavia.

2 Q Well, that's what I was -- I'm just saying
3 what the statement says. You and Ivori ran into
4 the bathroom?

5 A Yes, sir.

6 Q Okay. You stated you did not see the
7 person shooting?

8 A No.

9 Q Okay. You yelled to your uncle to dial
10 9-1-1 or call the cops?

11 A Exactly.

12 Q You never mentioned to the detectives that
13 you heard these shots?

14 A Who wouldn't hear shots. I mean, of course
15 you're going to hear shots.

16 Q Well, what I'm saying is, you never did
17 mention that to the detectives, did you?

18 A I mean, he didn't ask me that.

19 Q Okay. And you said when the guy shooting
20 went out, people began running back into the
21 building; is that correct?

22 A When the shooting happened, people ran
23 through the side door, the front door, and through
24 the kitchen because they broke the kitchen door
25 down --

Octavia Jones - Cross-Examination by Mr. Newman

1 Q Right.

2 A -- to get out.

3 Q Right. So my question is, when the
4 shooting went out, people began running back into
5 the building?

6 A When the shooting started happening
7 outside, that's when people came back inside.

8 Q Okay. Do you know how many people?

9 A No.

10 Q If a witness testified that there was forty
11 to fifty people in there, would you agree with
12 that?

13 A No.

14 Q Okay. And when the first shot or shots was
15 fired into the building, your uncle was fine,
16 correct?

17 A Correct.

18 Q Things calmed down, you told him -- asked
19 him to call the cops, 9-1-1?

20 A Yes.

21 Q Okay. And you were standing -- you were
22 never shown the diagram by the police, were you?

23 A No.

24 Q And you were never asked to identify any
25 points on this diagram, were you?

Octavia Jones - Cross-Examination by Mr. Newman

1 A No.

2 Q All right. So if I got it right, you
3 pointed you were standing here -- about here on
4 the ramp?

5 A Yeah, like right in front.

6 Q And your uncle was standing about right
7 here?

8 A Yeah.

9 Q Okay. And this door that goes to the back
10 of this building, have you been in and out of that
11 door?

12 A What? By the kitchen?

13 Q No, no, no, the --

14 A By the DJ booth?

15 Q The kitchen door would be out this way,
16 right?

17 A Yeah.

18 Q Okay. That would be the main door where
19 people were coming. This door here, the one that
20 doesn't have a step on it --

21 A Yeah.

22 Q Okay. You've been in and out of that door?

23 A Huh-uh.

24 Q Okay. And where that door is -- do you
25 know Mr. Bright?

Octavia Jones - Cross-Examination by Mr. Newman

1 A No.

2 Q You knew there was a photographer there?

3 A Yes.

4 Q A fellow that makes some extra money by
5 taking pictures and has a backdrop thing?

6 A Yeah.

7 Q Okay. He was back in this area, correct?

8 Toward the -- on the back wall? Well, I'm calling
9 this the back wall.

10 A Okay. Yeah.

11 Q Okay. And that door is right there in
12 relation to that back wall?

13 A Yeah.

14 Q All right. You never saw who shot Mr.
15 Jones?

16 A No.

17 Q All right. Thank you, Octavia.

18 THE COURT: Anything further, solicitor?

19 MS. BANNON: No, Your Honor.

20 THE COURT: All right. You may step down.

21 Call your next witness.

22 MS. BANNON: Your Honor, if we could have a
23 brief break.

24 THE COURT: Sure. All right. Why don't we
25 take a fifteen minute break. Do not talk about

Octavia Jones - Cross-Examination by Mr. Newman

1 the case.

2 (WHEREUPON the jury left the courtroom at
3 11:07 a.m.)

4 (WHEREUPON a recess was observed.)

5 THE COURT: Go ahead and bring out the
6 jury.

7 THE BAILIFF: All right.

8 (WHEREUPON the jury entered the courtroom
9 at 11:07 a.m.)

10 THE COURT: Is the State ready to proceed?

11 MR. BANNON: Yes, Your Honor.

12 THE COURT: Defense?

13 MR. NEWMAN: Yes, sir.

14 (WHEREUPON the jury entered the courtroom
15 at 11:36 a.m.)

16 THE BAILIFF: The jury is ready to enter,
17 Your Honor.

18 THE COURT: Bring them in.

19 THE BAILIFF: The jury is present, Your
20 Honor.

21 THE COURT: Okay. You can call your next
22 witness.

23 MS. BANNON: May it please the Court.

24 THE COURT: Sure.

25 MS. BANNON: The State calls Charles Cox.

Charles Cox - Direct Examination by Ms. Bannon

1 THEREUPON,

2 CHARLES COX,

3 after being duly sworn, testified as follows:

4 THE CLERK: Please be seated. State your
5 name and spell it for the Court, please.

6 THE WITNESS: My name is Charles Cox. You
7 said spell it?

8 THE COURT: Yes, sir.

9 THE WITNESS: C-h-a-r-l-e-s C-o-x.

10 **DIRECT EXAMINATION**

11 By Ms. Bannon:

12 Q Mr. Cox, did I pull you out from the gym
13 today?

14 A Yes, ma'am.

15 Q Okay. So did you plan on wearing this to
16 court today?

17 A No, ma'am.

18 Q Okay. How old are you, Mr. Cox?

19 A Twenty-one.

20 Q Okay. And so in May of 2009, how old were
21 you?

22 A Eighteen.

23 Q And what were you doing at that time?

24 A I was at the party.

25 Q Okay. Had you just graduated high school?

Charles Cox - Direct Examination by Ms. Bannon

- 1 A Yes, ma'am.
- 2 Q Do you work now?
- 3 A Yes, ma'am.
- 4 Q What do you do?
- 5 A I work food and beverage at Fripp Island.
- 6 Q Okay. You said that you were at a party?
- 7 A Uh-huh.
- 8 Q Do you remember where the party was?
- 9 A At the Pepsi Cola Plant.
- 10 Q And did you go alone or -- who did you go
11 with?
- 12 A I was with some friends.
- 13 Q And do you remember what time you got
14 there?
- 15 A Roughly like around twelve.
- 16 Q And was your plan always to go to that
17 party that night?
- 18 A No. It just came up.
- 19 Q Okay.
- 20 A We had just graduated so we wanted to have
21 a good time.
- 22 Q All right. Did you know Henry Jones?
- 23 A No.
- 24 Q Where do you live at?
- 25 A St. Helena Island.

Charles Cox - Direct Examination by Ms. Bannon

1 Q Okay. So you're -- so you're from St.
2 Helena?
3 A Yes, ma'am.
4 Q Do you go into Burton often?
5 A Not much.
6 Q Do you know Jaquwn Brewer?
7 A Huh-uh.
8 Q How about Donald Parker?
9 A Yes, ma'am.
10 Q How do you know Donald?
11 A He's kind of like my cousin. We grew up.
12 Q Okay. And did Donald also date your
13 sister?
14 A Yes, ma'am.
15 Q Okay. But y'all aren't actually cousins?
16 A No.
17 Q Okay. So when you got to the party, what
18 was the party like?
19 A It was -- it was packed, crowded.
20 Q People dancing?
21 A Yeah.
22 Q Drinking?
23 A Yeah.
24 Q Were the pretty girls there?
25 A A lot of them.

Charles Cox - Direct Examination by Ms. Bannon

1 Q It was a good party?

2 A It was a good party.

3 Q Okay. When you went in, did you have to go
4 through any security or anything like that?

5 A Yeah. They patted us down.

6 Q Okay. Patted you down?

7 A Uh-huh.

8 Q Did you have a gun on you that night?

9 A Oh, no.

10 Q Did you see anyone with a gun that night?

11 A When I did see it, it was right before it
12 went off.

13 Q All right. So where were you standing?

14 A I was like left from the DJ and where they
15 had the beer and stuff, alcohol. I was not far
16 from that, so -- I want to say right maybe where
17 that picture was, that's the bar and maybe a
18 little further past that, where the DJ is.

19 Q Okay. Okay. So you saw it from across the
20 club?

21 A The gun?

22 Q Yeah.

23 A No. I seen it from my left, like right by
24 my left shoulder.

25 Q Okay. How did you see it?

Charles Cox - Direct Examination by Ms. Bannon

1 A First, I was dancing and then a girl came
2 moving in a hurry like she was worried, bumped me,
3 and I looked back like, why she bump me? And then
4 I seen the gun and I was about to tell my friends
5 so we could leave and the gun went off, so we
6 started running.

7 Q Okay. Did you see who was holding the gun?

8 A I seen a glimpse of him. He was a dark
9 skinned, shorter fellow.

10 Q A dark-skinned-short fellow?

11 A Yeah.

12 Q Do you remember what color shirt he was
13 wearing?

14 A No.

15 Q Do you remember anything about his hair
16 cut?

17 A Little hair cut -- short, excuse me.

18 Q All right. So he wasn't wearing braids or
19 anything?

20 A No.

21 Q Okay. So you see this guy with the gun and
22 you see the -- and the girl bumped you. So what
23 happened next?

24 A I was about to leave and then when the gun
25 went off, that's when I ran. We was out the door,

Charles Cox - Direct Examination by Ms. Bannon

1 the gun went off again and by then we was already
2 outside.

3 Q Okay. So you heard it go off a couple of
4 times inside the club?

5 A Yes, ma'am.

6 Q The short guy with the close crop had the
7 gun?

8 A When I turned back after we was almost out,
9 he was like aiming. I guess you would say so.

10 Q Where was he aiming it?

11 A He was just aiming it like left to right, I
12 guess looking. I don't know if he was looking for
13 somebody, I didn't want to stick around to find
14 out.

15 Q So was he aiming it straight ahead? Up,
16 down, to the side?

17 A Like side, back and front, left, right.

18 Q Like -- like arm level, like I'm doing
19 right now?

20 A Yeah.

21 Q Did it seem to you like he was aiming at
22 people?

23 A People were dancing, I mean, yeah. I
24 didn't want to be one of the people so...

25 Q Okay. Did you see anyone else with a gun?

Charles Cox - Direct Examination by Ms. Bannon

1 A No. I heard other guns, but I didn't see
2 any.

3 Q Okay. Did you hear them inside the club?

4 A Just the two shots that I heard.

5 Q And once you got outside the club, what'd
6 you do?

7 A Ran. Oh, went to the car.

8 Q Okay. And after you got to the car, what'd
9 you do?

10 A Cranked up and leave.

11 Q Where'd you go?

12 A To the hospital because by then, somebody
13 came and told me that Donald got shot.

14 Q Okay. Were you hit?

15 A Huh-uh.

16 Q Okay. So you went to the hospital to check
17 on Don?

18 A Uh-huh.

19 Q And that's Donald Parker?

20 A Uh-huh.

21 Q Okay. Prior to the shooting starting, did
22 you feel any gang tension or anything like that?

23 A No, not really.

24 Q Was it a tense night or anything like that?

25 A I was having fun before that.

Charles Cox - Cross-Examination by Mr. Newman

1 Q Okay.

2 MS. BANNON: Beg the Court's indulgence.

3 THE COURT: Sure.

4 MS. BANNON: All right. Please answer any
5 questions Mr. Newman might have.

6 THE WITNESS: All right.

7 **CROSS-EXAMINATION**

8 By Mr. Newman:

9 Q Hey, Mr. Cox. How you doing?

10 A I'm all right. How you doing?

11 Q Where'd you grow up at?

12 A I grew up on St. Helena Island.

13 Q On St. Helena Island?

14 A Yes, sir.

15 Q All right. Did you go to Beaufort High
16 School?

17 A Graduated from, yes.

18 Q Okay. When'd you graduate from Beaufort
19 High School?

20 A 2009.

21 Q Okay. Do -- you were interviewed by the
22 sheriff's office investigators, weren't you?

23 A Uh-huh.

24 Q Okay. You gave them your name, told them
25 who you were --

Charles Cox - Cross-Examination by Mr. Newman

1 A Yes, sir.

2 Q -- phone number. All right. And just
3 prior -- you stated to the investigators that just
4 prior to the shooting, you were at the bar getting
5 a drink near where the victim was located?

6 A Yes.

7 Q Okay. And did they check your ID coming
8 in?

9 A It wasn't alcoholic, it was just water.

10 Q Okay. Did you tell the detective that?

11 A No.

12 Q Okay. And you -- it'd be fair to say that
13 once the -- somebody yelled, Gun, or whatever it
14 was and people started moving about and then shots
15 fired that it was just total chaos in there?

16 A Yeah. I stepped on somebody --

17 Q Okay.

18 A -- myself.

19 Q People stepping on each other trying to get
20 out of the door?

21 A Yeah.

22 Q Okay. Now, the security that patted you
23 down, were they wearing any type of uniforms?

24 A No, sir.

25 Q Wearing any shirts that said security?

Cynthia Schandl - Direct Examination by Ms. Bannon

1 A No.

2 Q Okay. Did they have one of those wands?

3 A No, just hands.

4 Q Just hand patting then?

5 A Yeah.

6 Q Okay. Thank you, Mr. Cox.

7 A No problem.

8 THE COURT: Anything further, Solicitor?

9 MS. BANNON: No, Your Honor.

10 THE COURT: All right. You may step down.

11 Call your next witness.

12 MR. BANNON: Thank you. Your Honor, the

13 State Calls Dr. Cynthia -- Cynthia Schandl.

14 THEREUPON,

15 CYNTHIA SCHANDLL,

16 after being duly sworn, testified as follows:

17 THE CLERK: Please be seated. State your
18 name and spell it for the Court please.

19 THE WITNESS: Cynthia Ana Schandl.

20 S-c-h-a-n-d-l.

21 **DIRECT EXAMINATION**

22 By Mr. Bannon:

23 Q Good morning, Doctor?

24 A Good morning.

25 Q Where do you work?

Cynthia Schandl - Direct Examination by Ms. Bannon

1 A I work at the Medical University of South
2 Carolina in Charleston, South Carolina in the
3 Department of Pathology and Laboratory Medicine
4 and in the Medical and Forensic Autopsy Section.

5 Q Okay. What do you do there?

6 A I am a forensic pathologist, which is a
7 medical doctor who has had further training in
8 pathology and then sub-specialized in forensic
9 pathology.

10 Q And how long have you been a forensic
11 pathologist?

12 A I have been board certified in the field of
13 forensic pathology since 2005.

14 Q And prior to that, did you have any
15 training or education to help you --

16 A Yes, in order to become a forensic
17 pathologist, one must complete college. I did my
18 college studies at the California State University
19 System.

20 Then one must complete medical school; I
21 did my medical school training at the Medical
22 University of South Carolina in Charleston.

23 After medical school, one must then do what
24 is called a residency in the field of one's
25 choice; my choice was pathology and laboratory

Cynthia Schandl - Direct Examination by Ms. Bannon

1 medicine. That training is an additional four
2 years. And after completion of the residency
3 program, one may chose to sub-specialize as I did,
4 and I did an additional year of what's called a
5 fellowship in the field of forensic pathology.

6 MR. BANNON: Your Honor, at this time I
7 would ask that Dr. Schandl be qualified as an
8 expert in the field of forensic pathology.

9 THE COURT: Any objections?

10 MR. NEWMAN: Without objection.

11 THE COURT: Granted.

12 By Mr. Bannon:

13 Q And Dr. Schandl, could you just tell us
14 briefly sort of, what is -- what is it that you do
15 when you're performing a forensic autopsy?

16 A So part of my job is to perform autopsies.
17 Forensic autopsies are those on individuals who
18 have died, obviously -- who may have died under
19 unusual circumstances or those who do not have a
20 known illness for which they're expected to die
21 from. So the autopsy procedure itself has several
22 different components. The cases are referred to
23 our office at MUSC through the county coroners.

24 So the county coroner or his designee would
25 call our office to let us know that they have a

Cynthia Schandl - Direct Examination by Ms. Bannon

1 case for us and they will transport that
2 individual physically to the Medical University of
3 South Carolina.

4 At the time of the autopsy, the individual
5 is brought up to the autopsy suite and the first
6 thing that we will do is photograph the individual
7 as we receive them, fully clothed or unclothed.
8 Whether they have medical interventions such as
9 EKG pads or however they are when they come to us.
10 We document both, again, by photography and then
11 also in a diagram. Those things that can assist
12 us with the identification of the person, such as
13 their height and weight, eye color, that sort of
14 thing, as well as some medical intervention.

15 And also during that portion of the
16 examination, we may look at the clothing before we
17 remove it, look at it again after we remove it.

18 The external examination continues then
19 with a closer look of the body with the clothing
20 and the medical apparatus, whether there are
21 endotracheal tubes or EKG pads, all those things
22 off. And again, we do photography to document and
23 diagrams to document. Again, things for
24 identification such as scars and tattoos and also
25 any evidence of injury that we might see on the

Cynthia Schandl - Direct Examination by Ms. Bannon

1 skin's surface.

2 So upon completion of the external
3 examination, we go to what is commonly considered
4 the autopsy, which is the internal examination
5 where the Y incision is made and we're looking
6 actually at the internal organs for any disease
7 processes, any injury or other things that we may
8 see. So those are some of the components of the
9 autopsy. Additionally, blood, if available, may
10 be taken, other body fluids may be taken for
11 testing. We take sections of the organs to look
12 closer for any evidence of injury or -- or disease
13 processes in order to look at them under the
14 microscope; that's another part of the autopsy
15 examination.

16 So each of these then becomes a cohesive
17 whole in our report that we generate and provide
18 to the coroner.

19 Q Okay. When you're conducting an autopsy,
20 sort of at it's very basic level, what are you
21 looking to determine?

22 A In a forensic autopsy, our main goal is to
23 determine -- is to determine, if possible, the
24 cause of death; and again, if possible, the manner
25 of death. So what those terms mean -- so cause of

Cynthia Schandl - Direct Examination by Ms. Bannon

1 death is what killed the person. So was it that
2 he wasn't getting any blood to his heart so he had
3 a heart attack. Was it that he had a motor
4 vehicle crash and that caused injury to his head.
5 So that's the cause of death.

6 The manner of death is something different;
7 it's an assignment and we have five choices. And
8 we can consider manner of death to be either a
9 natural, accidental, suicide, homicide, or
10 undetermined; those are our five choices.

11 So through the course of the autopsy with
12 all those steps that I described, we try to give
13 it -- give the individual a cause of death and to
14 also give them a manner of death.

15 Q And in May of 2009, did you have an
16 opportunity to conduct a -- an autopsy on Henry
17 Jones?

18 A Yes.

19 Q And the findings of your autopsy, did you
20 memorialize them in report number FA0900282?

21 A Yes, sir. And I do have a copy of that
22 report which I will refer to.

23 Q And I'd like to show you what has been
24 marked as State's Exhibit No. 65. Could you take
25 a look at that for me?

1 A Yes, sir.

2 Q And what is that?

3 A This is a photocopy of the autopsy report
4 that I generated at the conclusion of the autopsy
5 on Mr. Henry Jones.

6 Q Okay. And is it a fair and accurate
7 depiction of your findings -- your recording of
8 your findings in Mr. Jones' autopsy?

9 A Yes, sir.

10 MR. BANNON: Your Honor, at this point the
11 State would move State's Exhibit 65 into evidence?

12 THE COURT: Any objections?

13 MR. NEWMAN: Yes, sir, as to the report. I
14 have no objection to her testimony and her
15 testifying from the report, but the report itself,
16 yes.

17 THE COURT: On what grounds?

18 MR. NEWMAN: On the grounds that there are
19 opinions and conclusions in the report; however, I
20 believe the proper method is the testimony. I
21 have no objection to her opinions and conclusions
22 being testified to but as to entry of the report,
23 the autopsy reports; there are a lot of medical
24 language that's used in it, there's various things
25 in the report that are difficult -- if you and I

Cynthia Schandl - Direct Examination by Ms. Bannon

1 as laymen read it, to decipher.

2 THE COURT: I'm overruling it. State's No.
3 65 is into evidence.

4 MR. BANNON: Thank you, Your Honor.

5 (WHEREUPON State's Exhibit 65 was entered
6 into evidence.)

7 By Mr. Bannon:

8 Q And I believe you said that you have a copy
9 of it up there with you as well?

10 A Yes, sir, I do.

11 Q Would it be more helpful to refer to this
12 one or the one that you have?

13 A Either one is fine by me.

14 Q Okay. I'll show you the one that has been
15 admitted into evidence. So if you could tell us a
16 little bit about what you did when Mr. Jones
17 arrived?

18 A So again, the procedure is to follow
19 certain steps that I already outlined and it was
20 much the same with the particular autopsy on Mr.
21 Jones. Differences included the fact that he had
22 been in the hospital so he came down from an
23 Intensive Care Unit rather than from out in the
24 field somewhere.

25 So again, he came to our facility and

Cynthia Schandl - Direct Examination by Ms. Bannon

1 | photographs are taken, diagrams are made, did the
2 | external examination and continued on to the
3 | internal examination. Take those specimens for
4 | further testing, and then finally generate a
5 | report.

6 | Q And when you conducted the external
7 | examination of Mr. Jones, what did you find?

8 | A The external examination of Mr. Jones
9 | showed me that he had an injury to the forehead.
10 | It had been sutured, meaning stitched up by a
11 | surgeon or another medical practitioner. And
12 | because of the history of the case, which included
13 | an apparent gunshot wound, we also did X-ray
14 | examination to see if there was a bullet to be
15 | recovered.

16 | So that's another thing that we do prior to
17 | getting a case if we're suspicious or informed
18 | that a -- that a gunshot wound is involved.

19 | So in this case, we did get X-rays of Mr.
20 | Jones' head and saw that there was a bullet still
21 | in his head for us to recover.

22 | Following that, we removed the sutures
23 | from the injury on his forehead to get a better
24 | look at the entrance wound itself. This turned
25 | out to be the entrance wound here on the -- on the

Cynthia Schandl - Direct Examination by Ms. Bannon

1 left side of the forehead. So then we took
2 measurements of that and -- and look at its
3 characteristics and so forth to see if it's
4 consistent with an entrance wound and so forth and
5 it is.

6 Q Doctor --

7 A Yes, sir?

8 Q And so, did you take pictures of what you
9 observed?

10 A Yes, sir. In my practice, I like to take
11 photographs as I go through the autopsy at each
12 stage in order to document our findings.

13 Q Dr. Schandl, I'd like to show you what's
14 been marked as State's Exhibits 59 and 60; if you
15 can take a look at those for me.

16 Do you recognize them?

17 A I do recognize the photographs.

18 Q Okay. What are they?

19 A One of them -- well, they are close-up
20 photographs of the injury to Mr. Jones' head.

21 Q Okay. And are they different or are they
22 the same?

23 A They differ, one from the other.

24 Q How do they differ?

25 A One of them demonstrates the injury as it

Cynthia Schandl - Direct Examination by Ms. Bannon

1 appeared when I first saw Mr. Jones, so stitched
2 closed with sutures. And then the other one is
3 after I removed that suture.

4 Q Okay.

5 MR. BANNON: Your Honor, at this time, the
6 State would move to admit State's Exhibits 59 and
7 60.

8 THE COURT: Any objections?

9 MR. NEWMAN: Just subject to our prior
10 objection.

11 THE COURT: All right. Overruled.
12 Fifty-nine and sixty are in evidence.

13 (WHEREUPON State's Exhibits 59 and 60 were
14 entered into evidence.)

15 By Mr. Bannon:

16 Q And if you could step down off the stand
17 for just a second.

18 MR. BANNON: I'd like to publish these
19 photos to the jury, Your Honor.

20 THE COURT: Okay.

21 By Mr. Bannon:

22 Q Okay. So can you tell us what we're
23 looking at here?

24 A Yes. So this is very similar to one of
25 the -- one of the pictures that he showed me just

Cynthia Schandl - Direct Examination by Ms. Bannon

1 a second ago. He showed me two pictures, this is
2 one very similar to the one -- it may be the same
3 one, I can't verify that, but here we're looking
4 at a close up of Mr. Jones' head. You can see,
5 here is his left ear.

6 Q Okay.

7 A And here you can see what looks like thread
8 which is the suture closing some sort of an injury
9 to his head. So this is -- this is the sutured
10 wound.

11 Q Okay. And did you suture it up?

12 A No, sir, that -- he came to me looking like
13 this. So he had been in the hospital for a couple
14 of days after he was shot and so one of the things
15 that they did was -- was close the wound with a
16 suture.

17 Q And what did you do when you saw the
18 sutures or did you do anything to them?

19 A Yes. So looking at the wound like this
20 doesn't give me very much information as far as
21 what kind of a wound it is, whether I can tell
22 anything about distance and so forth. So after
23 looking at it sutured and taking a picture how it
24 came, I then removed the sutures in order to get a
25 better look at the entrance wound.

Cynthia Schandl - Direct Examination by Ms. Bannon

1 Q Okay. And what are we looking at now?

2 A So this is the same -- the same wound.

3 After I've removed the sutures or stitches that
4 were closing the wound right here. And you can
5 see that there are some -- you can see some
6 residual evidence that there have been -- have
7 been stitched, little holes, and these sorts of
8 things and then you can see the approximate size
9 of the wound and when you're very close up, you
10 can see these are hairs.

11 So the size of the wound might look very
12 big because we have a very big screen here, but
13 when I'm looking at it, here's our inch ruler, I
14 measure it and I look at the characteristics of
15 the wound and determine where it is on the body,
16 make those measurements and how far from the top
17 of the head, how far to the left of the midline
18 and so forth. And so that's what we're looking at
19 here is the entrance wound.

20 Q Okay. And is there anything from the
21 external examinations of the entrance point
22 that -- you know, you sort of learned about this
23 injury just by examining it?

24 A Well, there -- when we're looking at
25 entrance wounds and we're trying to determine the

Cynthia Schandl - Direct Examination by Ms. Bannon

1 range of fire which is how far to the end of the
2 gun or the muzzle from the target, in this case,
3 Mr. Jones' head, we look for two things. We look
4 for either soot around the wound or we look for
5 stippling around the wound. Soot suggests that
6 the muzzle on the end of the gun was right up
7 against the target; stippling, which is actual
8 scraping of the skin from particulates that come
9 out of the end of the gun cannot come off and it
10 scrapes to the skin and that suggests a close
11 range or within about three feet, depending upon
12 the weapon and the ammunition.

13 So we're looking for those things when
14 we're looking at our entrance wound. And I did
15 not find either soot or stippling so there are two
16 things that that could mean. One is that, in
17 fact, it is a distant gunshot wound, meaning
18 outside of about three feet depending again upon
19 the -- the bullet and the weapon used, the
20 specific weapon used.

21 The other thing it can mean is that since
22 he's been in hospital, the wound may have been
23 washed and again, soot will wash off, so it's
24 possible that soot has washed off. So from my
25 point of view, those findings that I do not find

Cynthia Schandl - Direct Examination by Ms. Bannon

1 | soot and I do not find stippling make me conclude
2 | that it is an indeterminate range of fire. It may
3 | well be distant meaning more than about three
4 | feet, but there are other explanations for those
5 | lack of findings.

6 | Q Okay. Thank you. You can go back up to
7 | the stand.

8 | And when you were conducting -- when you're
9 | still conducting your external examinations, did
10 | you notice anything else that was unusual about
11 | Mr. Jones' conditions?

12 | A Well, since Mr. Jones had been on life
13 | support and there had been an opportunity to
14 | request organ donation, his family did permit
15 | that. So he also had a sutured incision on his
16 | front side that was suggested that he had donated
17 | organs for transplant.

18 | Q And so what you observed was consistent
19 | with his donating organs?

20 | A Yes, sir.

21 | Q Did you consider those to be injuries to
22 | him?

23 | A No, sir.

24 | Q And did you ever conduct an internal
25 | investigation into Mr. Jones?

Cynthia Schandl - Direct Examination by Ms. Bannon

1 A Yes. So after the external and after
2 documenting the entrance wound, we then go to the
3 internal portion of the examination of the autopsy
4 and again, we're looking at all the body cavities.
5 In this case, he did have several organs absent,
6 but then one of the organs, of course, is the
7 brain, and so looking at the brain, it was evident
8 that the bullet had gone through the skull,
9 through the -- both frontal lobes and through the
10 right parietal lobe, so all the way through the
11 brain somewhat of this orientation.

12 And we did recover the bullet; it was -- it
13 had gone through the skull on this side, but it
14 was still underneath the skin. So it was -- it
15 didn't go all the way through and through, so it
16 wasn't a perforated entry wound, it's what we call
17 a penetrating gunshot wound.

18 So it went in and it didn't quite come out,
19 but it did go all the way through the bone on both
20 sides and all the way through the brain. And
21 there were certain associated injuries including
22 hemorrhage into the regions around the brain,
23 destruction of the brain along where the bullet
24 went, Hemorrhage into the brain along where the
25 bullet went. All the things that you would

Cynthia Schandl - Direct Examination by Ms. Bannon

1 expect.

2 Q Dr. Schandl, were you able to take -- I
3 noticed that you had your -- sort of your hands up
4 to your head to sort of mark what you observed as
5 the trajectory of the bullet through Mr. Jones'
6 head; is that correct?

7 A Yes, sir.

8 Q Okay. I'd like to show you what we have
9 here. And I'd like to let you take a look at it.
10 It -- I mean, I'll just tell you sort of what it
11 is, it's a styrofoam head. And what I would like
12 for you to do, if you could is if you could sort
13 of make a mark on the head where you observed the
14 entry wound based off the measurements and the
15 examination that you conducted.

16 A Yes. So using this head, again, the
17 entrance wound was -- was to the forehead. Right
18 near, the hair line, so if we could imagine a hair
19 line perhaps right in this area here. And then as
20 the bullet traveled through the head, it didn't go
21 very much up or down, it went -- it went fairly
22 much straight across, but it went back. So it's
23 coming to the right and back.

24 So where we found the bullet, this is a
25 little misleading, it suggests that it went

Cynthia Schandl - Direct Examination by Ms. Bannon

1 through, whereas we found it underneath the skin.
2 So if you could imagine underneath the skin and
3 about here, so basically in the forehead on the
4 left side -- this isn't as easy as it looks -- and
5 then recover, in about this region underneath the
6 skin so there's still a bullet that suggests that
7 it went all the way through which it -- it's a
8 little bit misleading. And it should be more
9 straight then that.

10 Q Okay. Could you --

11 A Uh-huh.

12 Q Could you do me a favor and just mark just
13 by writing, sort of, entrance and exit so we
14 know --

15 A Yes.

16 Q -- for the record what you're talking
17 about?

18 A I'll put, ENT, next to where it went in on
19 the forehead and -- and also I'm going to put
20 bullet here because this is actually where we
21 retrieved the bullet. It's not -- not really an
22 exit wound.

23 Q Okay. And is this, in your opinion, a fair
24 and accurate depiction of sort of the path that
25 the bullet took through Ms. Jones' brain?

Cynthia Schandl - Direct Examination by Ms. Bannon

1 A It's very close.

2 Q Okay.

3 MR. BANNON: Your Honor, at this time the
4 State would move to have this marked and admitted.

5 THE COURT: Any objections?

6 MR. NEWMAN: No, sir.

7 THE COURT: No objections. What number?

8 MR. BANNON: It's --

9 THE COURT REPORTER: Seventy-five.

10 MR. BANNON: Seventy-five, yeah.

11 (WHEREUPON State's Exhibit 75 was marked
12 and entered into evidence.)

13 By Mr. Bannon:

14 Q And when you were conducting your internal
15 examination, were you ever able to find the
16 bullet?

17 A Yes, sir. The bullet was between the skull
18 and the scalp or skin in about this area of his
19 head; and so we did retrieve the bullet and take
20 photographs of the bullet and make measurements of
21 the bullet, uh-huh.

22 Q First, I'd like to have you take a look at
23 what's been marked as State's Exhibit No. 61. And
24 do you recognize it?

25 A Yes. This is a photograph with the bullet

Cynthia Schandl - Direct Examination by Ms. Bannon

1 that I retrieved from Mr. Jones.

2 Q Okay. And is it a fair and accurate
3 depiction of the bullet that you retrieved from
4 Mr. Jones' head?

5 A Yes.

6 MR. BANNON: Your Honor, the State would
7 move State's Exhibit 61, I believe -- 61 into
8 evidence?

9 THE COURT: Any objections?

10 MR. NEWMAN: No, sir.

11 THE COURT: Sixty-one into evidence without
12 objection.

13 (WHEREUPON State's Exhibit 61 was entered
14 into evidence.)

15 By Mr. Bannon:

16 Q Now, I'd like to show you what's been
17 marked as State's Exhibit 14-B, if you could take
18 a look at that for me.

19 A This is the container that I put the bullet
20 in and the bullet is here free in the bag. I
21 would have had it in the container when I -- when
22 I provided it to law enforcement as evidence. It
23 has our case label on it, my handwriting on it,
24 and then an additional notation on it that I did
25 not make.

Cynthia Schandl - Direct Examination by Ms. Bannon

1 Q Okay. Is that the bullet that you removed
2 from Mr. Jones' head?

3 A Yes, sir.

4 Q And is it in the same or substantially the
5 same condition as it was when you found it?

6 A Yes, sir.

7 MR. BANNON: Your Honor, the State would
8 move State's Exhibit 14-B into evidence.

9 THE COURT: Any objections?

10 MR. NEWMAN: No, sir, Your Honor.

11 THE COURT: Okay. 14-B is into evidence
12 without objection.

13 (WHEREUPON State's Exhibit 14-B was entered
14 into evidence.)

15 By Mr. Bannon:

16 Q And if you could just step down again very
17 briefly.

18 MR. BANNON: Can everybody see?

19 By Mr. Bannon:

20 Q Is that -- is that the photograph of the
21 bullet that we just talked about, was admitted?

22 A Yes, it is. That is the photograph of the
23 bullet and again, you can use this, this is one
24 inch, to get your bearings on its size.

25 Q Okay. And basically, that's the same

Cynthia Schandl - Direct Examination by Ms. Bannon

1 | bullet that has been admitted into evidence?

2 | A That's the same bullet.

3 | Q Okay. And is the -- is the size of that
4 | bullet sort of consistent with the injuries that
5 | you saw in Mr. Jones?

6 | A Yes, sir.

7 | Q Okay. Thank you, you can go back up.

8 | Did you ever -- you had mentioned that
9 | sometimes you draw blood from individuals that you
10 | perform autopsies on; is that correct?

11 | A Yes, sir.

12 | Q And what's the purpose for drawing blood
13 | from these people?

14 | A There -- there's several purposes -- are
15 | what we -- what we normally do for all of our
16 | forensic cases is we will draw blood for
17 | toxicology, as well as to keep a standard for
18 | potential DNA or other molecular studies, so those
19 | are the two main things that we draw blood for,
20 | toxicology and DNA.

21 | Q Okay. What were the results of your
22 | toxicology examination?

23 | A Well, in this case, keep in mind that Mr.
24 | Jones had been in the hospital for a couple of
25 | days before -- before he died and before the

Cynthia Schandl - Direct Examination by Ms. Bannon

1 autopsy, and so in this case, rather than running
2 toxicology analysis blood that we took at autopsy,
3 we were able to obtain blood much closer to his
4 admission time to the hospital to get closer to
5 those substances that may have been present in his
6 body closer to the time of the shooting rather
7 than two days later.

8 So those are the specimens that we sent
9 were what we call admission blood specimens. So
10 those are the specimens that we sent in this case;
11 we didn't send post-mortem specimens or autopsy
12 specimens.

13 Q Okay. And what were the results of that
14 analysis?

15 A The results -- the blood contains caffeine.
16 We also sent urine which contains caffeine,
17 theophylline and theobromine. Theophylline is
18 something you might find in a cold medicine;
19 theobromine is something you might get from eating
20 chocolate or other things like that; and we know
21 what caffeine is.

22 Q Was there any alcohol in his system?

23 A No, sir.

24 Q Okay. Were there any illegal drugs in his
25 system?

Cynthia Schandl - Direct Examination by Ms. Bannon

1 A No, sir.

2 Q Based on your examination in total, were
3 you able to determine like you said earlier a
4 manner of death and a cause of death?

5 A Yes, sir.

6 Q And could you tell us what those
7 determinations were and just a little bit about
8 how you reached them?

9 A Sure. The cause of death in this case is
10 cerebral maceration due to a gunshot wound to the
11 head. So cerebral maceration -- cerebral refers
12 to the cerebrum which is the brain; maceration
13 simply means it was mashed up basically as the
14 blood passed through. So cerebral maceration is
15 the cause of death; that is due to a gunshot wound
16 to the head.

17 The manner of death in this case is
18 homicide and simply put that means that one
19 person's life ended at the hands of another
20 whether it's by an action or inaction.

21 Q Okay. And how were you able to determine
22 that it was homicide?

23 A This is in concert with the investigation,
24 so we also tried to incorporate any information
25 that we were given from investigators, from the

Cynthia Schandl - Direct Examination by Ms. Bannon

1 coroner, and other individuals to determine that
2 manner of death.

3 Q So cause of death is maceration of the
4 brain -- cause of death is maceration of the
5 brain; manner of death is homicide?

6 A That's correct.

7 Q Okay. And at any point did you have to
8 make any alterations to your report?

9 A Alterations to my report?

10 Q Yeah.

11 A Yes -- yes, sir. I have a note here on my
12 report that I amended it on November the 3rd,
13 2009, as we had the name incorrect and we changed
14 it to the correct name of Henry Jones.

15 Q And in your opinion, but for -- well, let
16 me ask you -- let me ask one question, first. Is
17 -- aside from the wound to the head, did it
18 appear, based on your examination that Mr. Jones
19 was in good health?

20 A Yes. The clear determination -- I mean, I
21 didn't look at all the organs because many of them
22 were absent from transplantation. However, that
23 being said, they don't take organs for
24 transplantation that are not healthy. So one can
25 presume that those organs that were taken were

Cynthia Schandl - Cross-Examination by Mr. Newman

1 healthy. Those organs that were left -- we have
2 the lungs and he did have a bad infection of the
3 lungs, but this is extremely common in somebody
4 who is on their back in a hospital room.

5 Basically, it's an aspiration pneumonia; some
6 gastric contents at the time of the shooting or
7 soon thereafter are basically breathed into the
8 lungs and set up a bad infection. So that's very
9 common in this sort of a case. So he does have an
10 aspiration pneumonia, bad infection of his lungs.

11 Q But in your opinion, but for the gunshot
12 wound to Mr. Jones' brain, would he be alive
13 today?

14 A Well, I can't speak about today, but he
15 wouldn't have died at that time without a gunshot
16 wound to his head.

17 MR. BANNON: I beg the Court's indulgence.
18 No further questions, Your Honor.

19 THE COURT: Mr. Newman?

20 **CROSS-EXAMINATION**

21 By Mr. Newman:

22 Q Hey Doctor, how are you?

23 A Good, thanks.

24 Q Good. Let's -- without the medical terms,
25 the long and short of it is, would it be correct

Cynthia Schandl - Cross-Examination by Mr. Newman

1 to say that this poor, unfortunate gentleman died
2 of a single gunshot wound to the head?

3 A Yes, sir.

4 Q Okay. And when you labeled the manner of
5 death as homicide --

6 A Yes, sir.

7 Q Okay. That is a term limited to that he
8 died at the agency of somebody else through
9 somebody else's actions --

10 A Yes, sir.

11 Q -- or inactions?

12 A That's correct.

13 Q Okay. You don't label whether he died
14 legally -- the -- it would be murder, voluntary
15 manslaughter, involuntary manslaughter,
16 justifiable homicide -- you don't make those
17 determinations; isn't that correct?

18 A That's correct. Those would all fall under
19 homicide for my manner.

20 Q Okay. So when we say homicide, we're not
21 saying murder?

22 A That is correct.

23 Q Okay. Thank you, Doctor.

24 THE COURT: You got anything further,
25 Solicitor?

Tracey Thrower - Direct Examination by Mr. Bannon

1 MR. BANNON: No, Your Honor.

2 THE COURT: All right. You may step down.

3 Call your next witness.

4 MR. BANNON: And may Dr. Schandl be
5 excused, Your Honor?

6 THE COURT: Any objections?

7 MR. NEWMAN: No objections.

8 MR. BANNON: Your Honor, the State calls
9 Tracey Thrower.

10 THEREUPON,

11 TRACEY THROWER,

12 after being duly sworn, testified as follows:

13 THE CLERK: Please have a seat.

14 **DIRECT EXAMINATION**

15 By Mr. Bannon:

16 Q Good morning, Mr. Thrower?

17 A Good morning.

18 Q Would you please tell us where you work?

19 A I am employed by the South Carolina Law
20 Enforcement Division, also known as SLED in
21 Columbia.

22 Q What do you do there at SLED?

23 A I am a forensic firearm and tool mark
24 examiner.

25 Q And could you tell us a little bit about

Tracey Thrower - Direct Examination by Mr. Bannon

1 | what a forensic firearm examiner does?

2 | A I examine firearms or guns and firearm
3 | related evidence. I examine tools and tool mark
4 | related evidence. I perform general rifling
5 | characteristic examinations. I do serial number
6 | restorations, muzzle-to-target distance
7 | determination or physical pellet patterns; weapons
8 | destruction for different law enforcement agencies
9 | throughout the State of South Carolina; that sort
10 | of thing.

11 | Q Okay. And do you need any specialized
12 | training in order to conduct these sorts of
13 | comparisons?

14 | A Yes, sir.

15 | Q And could you tell us a little bit about
16 | the training that you've had?

17 | A I completed the course of instruction which
18 | was taught at SLED in firearm and tool-mark
19 | identification. This was approximately about a
20 | three, three and a half year mentor type program
21 | in which I had to assist examiners, court
22 | qualified firearm examiners, in preparing their
23 | cases.

24 | In the meantime, I had to perform extensive
25 | reading and studying on the subject of firearms

Tracey Thrower - Direct Examination by Mr. Bannon

1 and fire identification. I was given written
2 tests, practical tests, oral tests, practical
3 problems I had to solve.

4 After I completed that course instruction,
5 I was held to work cases of my own. Since then, I
6 have been through the course Specialized
7 Techniques and Firearm Identification, which is
8 taught by the Federal Bureau of Investigation.
9 I've also completed a course on serial number
10 restoration which was taught by the Bureau of
11 Alcohol, Tobacco, and Firearms. I have completed
12 the course on Scientifically Defensible Criteria,
13 the identification of tool marks which was taught
14 by Murdock and Moran, among numerous other armory
15 style courses and the like.

16 Q And how long have you been working in this
17 field?

18 A Approximately thirteen years now, I
19 believe.

20 MR. BANNON: Your Honor, at this time, the
21 State would move for Mr. Thrower to be deemed an
22 expert witness in the field of firearms and
23 ballistic forensics?

24 MR. NEWMAN: Without objection.

25 THE COURT: Granted.

Tracey Thrower - Direct Examination by Mr. Bannon

1 MR. BANNON: Thank you, Your Honor.

2 By Mr. Bannon:

3 Q Mr. Thrower, are you familiar with SLED Lab
4 No. L0907640?

5 A Yes, sir.

6 Q And do you know what investigation that
7 pertains to?

8 A Not off the top of my head, no.

9 Q Okay.

10 (WHEREUPON there was a discussion among the
11 attorneys.)

12 MR. NEWMAN: Can we approach, Your Honor?

13 THE COURT: Sure.

14 (WHEREUPON a bench conference was heard out
15 of the hearing of the jury and the court
16 reporter.)

17 MR. NEWMAN: If the solicitor moves to
18 enter that, there will be no objection, Your
19 Honor.

20 THE COURT: Any objection, Mr. Newman?

21 MR. NEWMAN: No, sir.

22 THE COURT: Okay. What number is that,
23 Solicitor?

24 MR. BANNON: I would move to admit State's
25 Exhibit 63, Your Honor.

Tracey Thrower - Direct Examination by Mr. Bannon

1 THE COURT: Sixty-three into evidence
2 without objection.

3 (WHEREUPON State's Exhibit 63 was entered
4 into evidence.)

5 By Mr. Bannon:

6 Q I'd like to show you what's been admitted
7 as State's Exhibit 63. Are you familiar with that
8 report?

9 A Yes, sir, I am.

10 Q And in that report, did you compare, to
11 your knowledge, bullets recovered from a Mr. Henry
12 Jones and from a Mr. Donald -- Donald Parker?

13 A Yes, sir.

14 Q Okay. And I'd like to show you what has
15 been marked as State's Exhibits 14-A and 14-B.
16 Take a look at those for me.

17 A Yes, sir.

18 Q And did -- are those the items that you
19 examined?

20 A Yes, sir.

21 Q One came from Mr. Henry Jones; one came
22 from Mr. Donald Parker?

23 A That's what was indicated on the packaging,
24 yes, sir.

25 Q Okay. I'd like to talk to you, I suppose,

Tracey Thrower - Direct Examination by Mr. Bannon

1 first about the one from Mr. Henry Jones. Can you
2 tell us what examination you were able to do of
3 the bullet that was taken from Mr. Jones?

4 A Essentially, State's Exhibit 14-B is a
5 fired bullet.

6 Q All right.

7 A My typical examination would have been to
8 document the bullet as received using departmental
9 worksheets looking for any sorts of markings that
10 are one it, measuring the overall diameter,
11 weighing the bullet to see how much it weighs,
12 looking at overall physical characteristics,
13 seeing if canalores (phonetic) are present or not.

14 Count -- looking for what type of rifling
15 impressions are on the bullet, rifling being the
16 spiraling grooves that are placed inside of a
17 barrel of a firearm by the manufacturer.

18 Different manufacturers can place different
19 numbers with these lands and grooves, known as
20 rifling. They can also vary the width of the
21 lands and grooves, so I would have measured how
22 wide each land and how wide each groove was. I
23 would have taken notice to these lands and
24 grooves; do they have a clockwise twist or a
25 counterclockwise twist? A left or right twist.

Tracey Thrower - Direct Examination by Mr. Bannon

1 I would have made note with this rifling if
2 it's conventional rifling which typically has
3 sharp ninety-degree style edges. Or is it what
4 they call polygonal rifling which is more of a
5 continuous wave shape; there's no defined edges to
6 these lands and grooves. I would have taken all
7 of this information, placed it into a computer
8 program to determine if -- it's a program called
9 general rifling characteristic program which is
10 provided to us by the Federal Bureau of
11 Investigation.

12 What this program does is based on all
13 these measurements and characteristics that
14 I've -- that I've taken note of, it basically takes
15 a list of every gun ever manufactured and it
16 divides them into groups. So based on these
17 characteristics, it gives me a much smaller list
18 of what guns may have fired the bullet. This list
19 is what I provide to investigators on the street
20 so that when they're going out looking for a
21 potential firearm, they can more narrowly search
22 out and figure out which one they need versus
23 bringing every firearm that they come in contact
24 with.

25 Q Okay. And so in this particular case,

Tracey Thrower - Direct Examination by Mr. Bannon

1 based on your examinations of the bullet that was
2 taken from Mr. Jones' head, were you able to
3 determine what kind of firearm fired this bullet?

4 A I did come up with a list of potential
5 manufacturers that could have fired it, yes, sir.

6 Q Okay. And were you able to determine what
7 caliber of a bullet it was?

8 A My findings were that it was most
9 consistent with being from a .45 auto caliber.

10 Q And when you say auto caliber, what does
11 that mean?

12 A It's -- the -- this particular cartridge
13 was designed to be fired in a semi-automatic or
14 fully automatic firearms. So the auto comes from
15 the auto portion of that name as opposed to
16 something that's more of a lever action style or
17 revolver style. And the .45 just means that the
18 caliber, what the diameter of the base is.

19 Q Okay. So your findings was that the bullet
20 was most consistent of being a .45 caliber
21 automatic bullet?

22 A Correct.

23 Q Okay. And so could it have been fired from
24 .45 semi-automatic handgun in your opinion?

25 A Absolutely.

Tracey Thrower - Direct Examination by Mr. Bannon

1 Q And now, were you ever provided with a gun
2 in order to sort of compare a bullet from that gun
3 to this bullet?

4 A No, sir, I was not.

5 Q Okay. So were you able to make a
6 comparison between a known bullet, so to speak,
7 and the bullet recovered from Mr. Jones' head?

8 A No, sir.

9 Q Let's talk a little bit for a second about
10 the bullet that was removed from Donald Parker's
11 leg. What were your findings when you examined
12 that bullet?

13 A As this one came in, as you can see it's in
14 two parts. It's actually the lead core which is
15 the center of the -- of the jacket and bullet,
16 it's the majority of it. And then there's this
17 copper colored piece, which is called jacket,
18 which simply just covers the outside with just a
19 thin layer of copper. The core and the jacket
20 total weight combined were consistent also with
21 being a .45 caliber. The dimensions that were on
22 the jacket, once again, the diameter of the base,
23 the overall weight of these two items combined, if
24 you can consider them combined, the rifling
25 impressions, once again, everything came back with

Tracey Thrower - Direct Examination by Mr. Bannon

1 being -- most consistent with being fired out of a
2 .45 auto.

3 Q Okay. Now, I'll ask you the same question
4 that I asked about the first bullet. Were you
5 ever given a firearm to have sort of a known
6 standard or a known bullet to compare to the
7 bullet that was taken from Donald Parker's leg?

8 A No, sir.

9 Q Now, were you ever able to compare the
10 bullet from Henry Jones' head to the bullet that
11 was taken from Donald Parker's leg?

12 A Yes, sir, I was.

13 Q And what were your findings based on that
14 examination?

15 A My findings were inconclusive, which
16 essentially means I could not tell if they were
17 fired by the same firearms or two different
18 firearms that just have similar, general rifling
19 characteristics. The individual characteristics
20 that I needed to be able to actually say they were
21 fired by the same firearm were simply either too
22 damaged or this fire -- this particular firearm
23 did not mark well or consistently. So I was not
24 able to determine if it was one gun or two guns.

25 Q Okay. And in your opinion, is the --

Tracey Thrower - Direct Examination by Mr. Bannon

1 | what's the sort of relative value of the condition
2 | of the bullets? Are they in good condition, are
3 | they in bad condition?

4 | A They were -- according to -- from my notes
5 | here, they were fairly not in real good condition.
6 | They were -- in my notes -- or in my report, I
7 | said, They may or may not be suitable for
8 | identification, which tells me that even if I had
9 | the gun, I may not be able to make an
10 | identification with either one. There's a
11 | possibility, but not a good one.

12 | Q And you mentioned that there's a computer
13 | program that you can sort of plug in, you know,
14 | your findings and striations from these bullets
15 | into in order to try to identify them; is that
16 | correct?

17 | A The general rifling characteristic
18 | program --

19 | Q Yes.

20 | A -- or the IBIS program?

21 | Q Well, let's talk about both.

22 | A Okay.

23 | Q Which one would you like to talk about
24 | first?

25 | A Well, I've already kind of described the

Tracey Thrower - Direct Examination by Mr. Bannon

1 general rifling characteristics program and the
2 fact that both of these bullets had all of the
3 same dimensions including land width and groove
4 width. Where the same -- just the individual
5 markings were not there to actually make the
6 identification. That's why I say they could have
7 been fired by the same gun or two different guns;
8 I could not tell.

9 The Integrated Ballistic Identification
10 System, also known as IBIS is a federally owned
11 machine that is owned by the Bureau of Alcohol,
12 Tobacco, and Firearms essentially is a database of
13 pictures or images of certain areas of fired
14 bullets and fired cartridge cases, you know,
15 ammunition components from using a gun.

16 In this case, neither of these bullets were
17 entered into IBIS because I did not believe their
18 condition was good enough to be suitable for
19 entry.

20 Q So sort of at the -- at the end of the day,
21 you were able to take a look at both bullets and
22 they could have come from the same gun or they
23 could've come from different guns?

24 A Yes, sir.

25 Q Okay. Would -- would it have helped you to

Tracey Thrower - Cross-Examination by Mr. Newman

1 have had a firearm to which to compare these
2 bullets?

3 A It certainly could have. If I had a
4 firearm and I could test fire it with different
5 types of ammunition, there's a possibility that I
6 could have matched one or both of these bullets to
7 that gun. At the same time, depending if the core
8 markings on these bullets were due to a gun that
9 was not marking consistently, it may not have. I
10 simply don't know without having that gun to
11 compare to.

12 Q Thank you.

13 MR. BANNON: No further questions, Judge.

14 THE COURT: Mr. Newman?

15 **CROSS-EXAMINATION**

16 By Mr. Newman:

17 Q Hey.

18 A How you doing?

19 Q Good morning. In SLED and firearms and
20 tool markings, how many of your guys work up
21 there? How many examiners do you have that do
22 like what you do?

23 A I believe we have seven court qualified
24 examiners right now.

25 Q Okay. And at SLED, not only do they have

Tracey Thrower - Cross-Examination by Mr. Newman

1 firearms, they have a DNA lab there; is that
2 correct?

3 A Yes, sir.

4 Q They have a fingerprint lab?

5 A Yes, sir.

6 Q And a good number of fingerprint examiners?

7 A Yes, sir.

8 Q All right. SLED also has a specialized
9 crime scene team, don't they?

10 A Yes, sir.

11 Q That will come and assist sheriff's
12 departments?

13 A Yes, sir.

14 Q Such as photographing evidence at the
15 scene, documenting evidence, taking measurements,
16 doing angles, things like that?

17 A Yes, sir.

18 Q Okay. And were you provided with the -- is
19 this called a cartridge casing?

20 A Yes, sir, a fire cartridge casing.

21 Q Fired cartridge -- were you provided with
22 these?

23 A I do not believe so.

24 Q All right. And if the cartridge casings
25 were sent to SLED for, say, fingerprinting

Tracey Thrower - Cross-Examination by Mr. Newman

1 examination, a fingerprint examiner would attempt
2 to raise a latent print off the shell casing,
3 would they not?

4 A If that was requested -- if that was the
5 request, yes, sir.

6 Q If that was the request, okay.

7 And in -- would it be your section if I
8 examine -- ask you to examine a casing since
9 there's -- even in the casing there's different
10 components?

11 A Yes, sir.

12 Q Correct?

13 And you're the expert, not me, so if I get
14 it wrong, you just tell me.

15 There's a primer in there?

16 A Yes, sir. In this portion at the end which
17 is known as the head of the cartridge case,
18 there's a little circle here in the middle known
19 as the primer. The primer essentially is the
20 ignition component of the cartridge case. The
21 firearm -- the fire pin strikes the primer which
22 crushes the small pellet which basically catches
23 on fire, a small explosion and it's -- the primer
24 then -- that explosion is what ignites all the gun
25 powder within the cartridge; it causes the round

Tracey Thrower - Cross-Examination by Mr. Newman

1 fire.

2 Q Right. And that turns into gas and

3 pushes --

4 A Yeah.

5 Q -- the bullet out of the gun?

6 A Yes, sir.

7 Q And you're able to examine bullet casings,
8 are you not?

9 A Yes, sir.

10 Q And in tool marks, some guns -- or there's
11 a firing pin that strikes that primer, correct?

12 A Yes, sir.

13 Q All right. And you've performed an
14 examination on bullet casings -- in other words, a
15 firearm may have a unique signature due to a
16 defect, something you can see under the
17 microscope; is that correct?

18 A Absolutely. Cartridge cases can have
19 firing pin impressions, breech face markings,
20 striker markings, ejector markings, different kind
21 of feed lips from magazines. There's a number of
22 areas that -- of a firearm that can contact a
23 cartridge during normal operation and leave a
24 signature behind, yes, sir.

25 Q So if you were presented with a number of

Tracey Thrower - Redirect Examination by Mr. Bannon

1 different cartridges, if sufficient conditions
2 existed, you'd be able to say this cartridge and
3 that cartridge either were or were not fired, in
4 your opinion, by the same gun?

5 A Yes, sir.

6 Q Okay. Thank you, sir.

7 MR. NEWMAN: I don't have any further
8 questions.

9 THE COURT: Any redirect?

10 MR. BANNON: Beg the Court's indulgence,
11 Your Honor.

12 **REDIRECT EXAMINATION**

13 By Mr. Bannon:

14 Q Did you ever -- or -- well, did you ever
15 examine any shell casings in this case?

16 A No, sir.

17 Q Okay. So is it possible for you to say
18 whether or not they came from the same gun or a
19 different gun?

20 A Not at this time. I would have to examine
21 them.

22 Q Okay. And would it have been helpful
23 relative to the cartridge casings to have a
24 firearm to compare them to?

25 A Absolutely.

Tracey Thrower - Recross-Examination by Mr. Newman

1 Q Okay.

2 MR. BANNON: No further questions.

3 THE COURT: Re-cross?

4 MR. NEWMAN: Yes, sir.

5 **RECROSS-EXAMINATION**

6 By Mr. Newman:

7 Q I just want to be clear, without the
8 firearm, though, there is a possibility had these
9 been sent to you, even as late as last week, that
10 you could microscopically examine them for the
11 different characteristics and be able to say one
12 bullet -- one, two, and three were, in your
13 opinion, fired by the same gun, bullet four and
14 five were fired from a different gun or different
15 guns?

16 A Cartridge cases, yes, sir, I could
17 potentially determine how many guns were used
18 based on cartridge casings.

19 Q Right. You don't need a firearm for that?

20 A No.

21 Q Thank you.

22 THE COURT: All right. You may step down.

23 Any objections to this witness to be
24 excused?

25 MR. NEWMAN: No, sir.

John Roberts - Direct Examination by Mr. Bannon

1 MR. BANNON: No, Your Honor.

2 THE COURT: How many more witnesses do you
3 have, Solicitor?

4 MR. BANNON: Just one, Your Honor.

5 THE COURT: All right. Go ahead and call
6 your next witness.

7 MR. BANNON: The State calls John Roberts.

8 THEREUPON,

9 JOHN ROBERTS,
10 after being duly sworn, testified as follows:

11 THE CLERK: Please be seated. State your
12 name and spell it for the Court please.

13 THE WITNESS: John Roberts. R-o-b-e-r-t-s.

14 **DIRECT EXAMINATION**

15 By Mr. Bannon:

16 Q How are you doing this afternoon, Mr.
17 Roberts?

18 A Doing well.

19 Q Where do you work, sir?

20 A I work for the South Carolina Law
21 Enforcement Division, more commonly called SLED in
22 the --

23 Q What --

24 A -- trace evidence department, forensics
25 services unit.

John Roberts - Direct Examination by Mr. Bannon

1 Q Thank you. And what do you do in the trace
2 evidence department?

3 A Trace evidence, in our department, we do
4 gunshot residue, bullet hole analysis, which is
5 missile-to-target distance determination. We do
6 paint, fiberglass, explosives, bank dye packs, and
7 duct tape.

8 Q Okay. And what is gunshot residue?

9 A Gunshot residue is the term that we give to
10 the particles that are ejected from a firearm when
11 it is fired. What we look for gunshot residue is
12 three elements, lead barium and antimony, which are
13 contained in the primer of a cartridge case.

14 Q And how long have you been looking for
15 gunshot residue for SLED?

16 A Since 2006.

17 Q And did you need any specialized training
18 or education in order to, you know, work in trace
19 evidence for SLED?

20 A Yes, sir. I've got a Bachelor's in Science
21 degree in Chemistry from Texas A&M Corpus,
22 Christi. After I got the job at SLED in 2005, I
23 went -- underwent the inhouse training program for
24 gunshot residue, which consisted of me helping my
25 lieutenant with case work. And we get a lot of

John Roberts - Direct Examination by Mr. Bannon

1 | gunshot residue in, so I got a lot of practice
2 | following him around, helping him work cases,
3 | learn how to run the instrumentation, how to pull
4 | the data off the instrumentation right before it's
5 | made conclusions and after about six months I was
6 | given a case of my own to work and then I was
7 | tested and cross-examined by the other four
8 | qualifying examiners in my department and after
9 | that I was given my own GSR cases to run which
10 | I've been doing since 2006.

11 | MR. BANNON: Your Honor, at this time, we
12 | would ask that Mr. Roberts be deemed an expert in
13 | the field of trace evidence examinations,
14 | particularly with gunshot residue.

15 | THE COURT: Any objections? Any
16 | objections, Mr. Newman?

17 | MR. NEWMAN: No, sir.

18 | THE COURT: All right. Go ahead.

19 | By Mr. Bannon:

20 | Q And I'd like to show you what's been marked
21 | as State's Exhibit No. 64. If you could take a
22 | look at that for me please?

23 | A Yes, sir.

24 | Q Do you recognize it?

25 | A Yes, sir, I do.

John Roberts - Direct Examination by Mr. Bannon

1 Q What is it?

2 A This is a copy of my report that I issued
3 in this case.

4 Q Okay. And could you tell me what -- what
5 did you examine in order to help you generate this
6 report?

7 A I received a pair of black pants.

8 Q Okay.

9 A When I got the pants, the request was to
10 analyze it for gunshot residue, for particles,
11 which are sticky tabs with carbon tape on them and
12 analyze those tabs for the gunshot residue.

13 Q Okay.

14 A And what sort of tests did -- well, when
15 you -- if you're able to lift particles off of a
16 piece of clothing, let's say, how do you test to
17 determine whether or not for gunshot residue.

18 A Well, in this case, with clothing, what
19 we're looking for are the actual particles that
20 are ejected from the firearm when it's fired.
21 They consist -- are unique particles of -- gunshot
22 residue consist of lead bearing antimonium, all
23 together in a round spherical particle. We also
24 look for particles that are round and just contain
25 lead. In addition to those other ones, we look

John Roberts - Direct Examination by Mr. Bannon

1 | for particles that are not round, but contain lead
2 | barium antimonium. In this case, I found gunshot
3 | residue particles on the pants.

4 | Q Okay. I'd just like to have you take a
5 | look at what's been marked as State's Exhibit --
6 | let's see -- State's Exhibit No. 21-A, if you
7 | would?

8 | A I'm going to stand up because it's easier
9 | to --

10 | Q Sure.

11 | A -- to just stand up.

12 | Q Did you examine those pants?

13 | A Yes, sir, I did.

14 | Q Okay. And what case were they in regards
15 | to?

16 | A This one. My Lab No. L0907640.

17 | Q Okay. And that's the case that pertains to
18 | Mr. Jaquwn Brewer?

19 | A Yes, sir.

20 | Q All right. Now, what do you do, say, when
21 | you get a pair of pants to analyze them and see if
22 | gunshot residue is present?

23 | A What I do is I take particulates as I
24 | described earlier and I -- what happens is you dab
25 | them like a BINGO dotter on the pants, and in this

John Roberts - Direct Examination by Mr. Bannon

1 case what I did is I did the right front pocket
2 area, the left front pocket area, the right back
3 pocket area, and the left back pocket area and
4 after I dabbed the pants, I run them on a really
5 powerful microscope that identifies the gunshot
6 residue particles.

7 Q Okay. And in this particular case, did you
8 find gunshot residue?

9 A Yes, sir, I did.

10 Q And did you find it in only one place or in
11 different places?

12 A I found -- I've got a little piece of paper
13 here that tells me what exactly I found and where.
14 I found a gunshot residue particle on the left
15 back pocket area. I found two round lead
16 particles on the right back pocket area, three
17 non-round, lead bearing antimonium containing
18 particles on the left front pocket area, and two
19 non-round lead bearing antimonium particles on the
20 right front pocket area. So something from every
21 single area but gunshot residue particles -- a
22 unique gunshot residue particle on the back left
23 pocket.

24 Q Okay. And essentially, when you find
25 gunshot residue, what exactly does that tell you?

John Roberts - Direct Examination by Mr. Bannon

1 A It tells me that the -- in this case, the
2 garment was near a firearm when it went off.

3 Q Okay. I'd like to have you take a look at
4 what has been marked as State's Exhibit No. 22.
5 Could you take a look at that for me?

6 A Yes, sir.

7 Q And do you recognize it?

8 A I do.

9 Q And what is it?

10 A These are the particle lifts that I took
11 from the pants.

12 Q And from the pants that we mentioned
13 earlier?

14 A Yes, sir.

15 Q And so when you say particles -- are those
16 actually the particles that you found on these
17 pants?

18 A These are the lifts that have the particles
19 that I found on those pants.

20 Q Okay. And are they in the same or
21 substantially the same condition as it was when
22 you lifted the particles from those pants?

23 A It appears to be. When I run them, they go
24 on a tray that slides underneath the microscope;
25 when they're done, I pull them out and put them

John Roberts - Direct Examination by Mr. Bannon

1 back in their container, put the container in a
2 sealed envelope like this, which is still sealed
3 with my initials on it, the date that I sealed it.
4 So there is -- the way they are when I sealed them
5 up.

6 Q Okay.

7 MR. BANNON: Your Honor, at this time, the
8 State would move State's Exhibit 22 into evidence.

9 THE COURT: Any objections?

10 MR. NEWMAN: I reckon not. His opinions
11 are already in, Your Honor.

12 THE COURT: State's No. 22 is in evidence
13 without objection.

14 (WHEREUPON State's Exhibit 22 was entered
15 into evidence.)

16 MR. BANNON: Your Honor, at this time the
17 State would move State's Exhibit 64 into evidence.

18 THE COURT: Any objections?

19 MR. NEWMAN: That's the report?

20 MR. BANNON: That's the report, yes, sir.

21 MR. NEWMAN: That was just testified to?

22 MR. BANNON: Yes, sir.

23 MR. NEWMAN: No objections.

24 THE COURT: State's 64 is no in evidence
25 without objections.

John Roberts - Direct Examination by Mr. Bannon

1 (WHEREUPON State's Exhibit 64 was entered
2 into evidence.)

3 By Mr. Bannon:

4 Q I'd like to show you the pants again and if
5 you would, if you could step down here. And what
6 I'd like for you to do is, if you could please
7 just sort of hold up the pants or if it'd be
8 easier then I could hold them up and you could
9 sort of show the jury where we're talking about
10 here?

11 A The front pocket area is exactly as I
12 described it. It's basically -- it's easier to
13 show it with one pocket. It's from the waistband
14 to about here, so about the mid thigh and making
15 sure to cover as much area as I can with the
16 particle lifter.

17 And the same for this side as well. The
18 back pocket area is exactly as it sounds. It's
19 from about here to about here.

20 Q Okay. So those are the areas that you
21 examined?

22 A Yes, sir.

23 Q Okay. And where -- where again did you
24 find GSR particles?

25 A Left, back pocket area.

John Roberts - Direct Examination by Mr. Bannon

1 Q And was there any other place where you
2 found GSR particles?

3 A Not the unique particles, no.

4 Q Okay. And now when you collect this
5 evidence, is it -- is it a quantitative test, like
6 are you looking for how much gunshot residue is on
7 there?

8 A Sort of. If I had just found the one
9 particle, I would have sent it back inconclusive.

10 Q Okay.

11 A I have to have something -- I have to have
12 more than one. So it is a quantitative and a
13 presence of test. I can't just say that it was
14 there, just because I have one. I have to have
15 supportive evidence along with it.

16 Q Okay. And in this case, did you have
17 supportive evidence?

18 A I did. I had the -- the other seven
19 particles.

20 Q Okay. All right.

21 MR. BANNON: No further questions, Your
22 Honor.

23 THE COURT: Cross?

24 ///

25 ///

John Roberts - Cross-Examination by Mr. Newman

CROSS-EXAMINATION

1
2 By Mr. Newman:

3 Q Correct me if I'm wrong, if I get the sum
4 and substance of your testimony, what this can
5 tell you is that those pants had been near an area
6 where a gunshot was fired or gunshots fired.

7 A Yes, sir.

8 Q Okay. You can't say that it came from
9 blow-back from the front?

10 A All I can say is that it's more than likely
11 that it came near -- it was that they were near a
12 gun when it was fired. I can't tell whether it
13 was in front or back --

14 Q Right, that's what I'm saying.

15 A -- to the side.

16 Q You can get GSR from out of the barrel?

17 A Yes, sir.

18 Q You can get it if it's a wheel gun from out
19 of the cylinder?

20 A Yes, sir.

21 Q If it's an automatic, from out of the
22 ejection port I would assume?

23 A Yes, sir.

24 Q Okay. They didn't tell you anything with
25 direction --

John Roberts - Cross-Examination by Mr. Newman

1 A Can't --

2 Q -- or...

3 A -- tell you the direction of the gun or
4 anything like that.

5 Q Okay. And in trace evidence, have you ever
6 been called to examine bullet casings?

7 A No.

8 Q Okay. That would be this other fellow?
9 The tool --

10 A The other fellow --

11 Q -- the tool mark guy?

12 A Yeah.

13 Q And you have been called into cases to
14 determine the missile-to-target; is that correct?

15 A We have. We don't do it very often
16 anymore.

17 Q Okay.

18 A Usually, you can tell, I mean, if
19 somebody's been shot, that's really all you need
20 to know. You don't need to know how far away they
21 were. Sometimes it comes up, but we -- we don't
22 do it much, sir.

23 Q Okay. Thank you.

24 MR. BANNON: No more questions for this
25 witness, Your Honor, we would just ask for a brief

1 recess.

2 THE COURT: Any objections to this witness
3 being excused?

4 MR. NEWMAN: Oh, no.

5 THE COURT: All right. You may step down.
6 Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: What do you need a recess for?

9 MR. BANNON: Your Honor, we just wanted to
10 double check with the court reporter and make sure
11 that what we have is being in evidence and what
12 she has is being in evidence.

13 THE COURT: All right. Why don't we go
14 ahead and take a lunch break. How about if the
15 jury comes back at 2:30. Again, do not discuss
16 the case at all. I'll see you at 2:30 and we're
17 going to finish this trial today. Everybody else
18 remain seated until the jury is excused.

19 (WHEREUPON the jury left the courtroom at
20 12:57 p.m.)

21 THE BAILIFF: The jury is clear, Your
22 Honor.

23 THE COURT: All right.

24 MR. BANNON: We intend to rest, we just
25 want to make sure that everything matches up

1 correctly before we do.

2 THE COURT: Go ahead and do that real quick
3 and we'll put it on the record.

4 (WHEREUPON the lawyers and the court
5 reporter conferred about the State's Exhibits.)

6 THE COURT: Everything in order?

7 MR. BANNON: Yes, Your Honor.

8 THE COURT: Y'all want to talk about the
9 charge a little bit or you want to wait on that?

10 MR. NEWMAN: I think the only housekeeping
11 things we need to do is I do not plan on -- I've
12 discussed this with my client -- plan on putting
13 up a defense. We're going to rest on the --
14 burden on the State.

15 I assume Mr. Brewer will need to be
16 questioned by the Court about his rights to
17 testify and not to testify and then if -- I guess
18 it'd probably be prudent in this case if we either
19 had a charge conference in chambers or on the
20 record?

21 THE COURT: All right. We can do that
22 right here. Why don't we have the defendant come
23 on up. Place your left hand on the Bible and be
24 sworn in.

25 (WHEREUPON Jaquwn Brewer was sworn.)

QUESTIONING OF THE DEFENDANT

1
2 THE COURT: All right, Mr. Brewer. I want
3 you to understand that you can testify if you
4 would like. You can get on the witness stand, you
5 can tell your own side of the story, you can waive
6 it as you and your lawyer see fit; however, if you
7 do testify, I want you to understand that if you
8 have any crimes in your background, a criminal
9 record, and they involve crimes of dishonesty or
10 false statements or crimes that are punishable by
11 imprisonment for more than one year and I
12 determine that admitting the same, the probative
13 value of outweighs it's prejudicial effect, then
14 your record will be introduced to attack your
15 credibility.

16 Furthermore, if you testify, you may be
17 asked any and all relevant questions in connection
18 with this case. Do you understand the risk of
19 testifying?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: However, I want you to
22 understand that you do not have to testify. You
23 have the constitutional right to remain silent.
24 You can exercise that right. You don't have
25 anything to prove, you don't have to get on the

1 stand, you don't have to say any word. And in
2 fact, if you choose to exercise that right and not
3 testify, I will tell that jury specifically that
4 they cannot use that against you in any way
5 whatsoever. And I'll tell the jury that the fact
6 that you did not testify is to have absolutely no
7 prejudice against you. And I'll tell the jury
8 that they cannot even discuss the fact that you
9 did not testify in the jury room.

10 Do you understand your right to remain
11 silent.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you talked with your
14 lawyer about whether or not you intend to testify
15 or not testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have y'all discussed it in
18 detail?

19 THE DEFENDANT: Not really.

20 THE COURT: All right. Why don't y'all
21 talk about it right now.

22 MR. NEWMAN: All right. Can we step back
23 in there?

24 THE COURT: All right. Then I want you to
25 come back in here and talk to me.

1 (WHEREUPON the defendant had a conference
2 with his attorney off the record.)

3 THE COURT: All right. Mr. Brewer, have
4 you had enough time to talk with your lawyer about
5 your right to testify or not to testify?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. What's your
8 decision?

9 THE DEFENDANT: No, sir.

10 THE COURT: You do not intend to testify?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. For the record, I
13 find that the defendant made his decision freely,
14 voluntarily, and intelligently and with the advice
15 of competent counsel.

16 Thank you. You may be seated.

17 **JURY CHARGE CONFERENCE**

18 THE COURT: All right. How about the
19 charge itself? I'll tell y'all what I think about
20 charging and then y'all tell me if you have any
21 objection.

22 I'm going to give a brief introduction,
23 reasonable doubt, that comes from Victor v.
24 Nebraska; failure of the defendant to testify;
25 direct and circumstantial evidence; duties of the

1 judge and jury; power of record and witnesses,
2 expert witness, police officer; charge, murder,
3 assault and battery with intent to kill,
4 possession of a weapon during the commission of or
5 attempt to commit a violent crime, 16-23-490 and
6 then I close.

7 Any objection from the State?

8 MS. BANNON: No, Your Honor.

9 THE COURT: How about from the defendant?

10 MR. NEWMAN: As to the ABWIK charge?

11 THE COURT: Assault and battery with intent
12 to kill. I've got that in there.

13 MR. NEWMAN: All right. Well, number one,
14 on the failure of the defendant to testify, I ask
15 that the word not be used because it's not a
16 failure to testify, it's a right not to testify.

17 THE COURT: That's just my label, that's
18 just my little index.

19 MR. NEWMAN: Okay.

20 THE COURT: Yeah, I'm going to get into all
21 that.

22 MR. NEWMAN: Okay. All right. Your Honor,
23 based on that, I would ask under the circumstances
24 of this case that as to Mr. Parker, as to the
25 assault and battery with intent to kill that under

1 the circumstances of this case that there could be
2 a lesser finding of assault and battery with high
3 and aggravated nature if the jury finds that this
4 was committed without malice and forethought and
5 with a dangerous weapon in the spirit of
6 recklessness or reckless disregard for the safety
7 of others to reduce the -- the intent to kill to
8 an assault and battery of a high and aggravated
9 nature is a lesser included offense.

10 THE COURT: All right. What says the
11 State?

12 MR. BANNON: Your Honor, I think it seems
13 clear from the evidence that the use of the -- of
14 the deadly weapon would -- we would object to
15 charging them an ABHAN instruction. We would just
16 like the charges of ABWIk.

17 THE COURT: Let me take a look at it for
18 one second.

19 MR. NEWMAN: I also think it'd be proper
20 under the State versus Belcher case there was
21 inferences.

22 THE COURT: In what regard are you talking
23 about?

24 MR. NEWMAN: In the regard that -- that
25 under these circumstances, there is evidence out

1 from the witnesses that Mr. Brewer just waived the
2 gun around and began shooting which would be a
3 reckless act and a reckless disregard to the
4 safety of others. We believe that if the jury
5 found that, they could find that he did not have
6 the intention to kill anybody, however, he did act
7 recklessly and an assault and battery occurs, that
8 would make it an assault and battery of a high and
9 aggravated nature.

10 THE COURT: I'll tell you what, I'll think
11 about it over lunch, come back here and figure it
12 out.

13 All right. See y'all at 2:30.

14 MR. NEWMAN: Well, I'm sorry, I apologize.

15 THE COURT: Go ahead.

16 MR. NEWMAN: As to the -- as to the -- on
17 the indictment for the murder, we would also ask
18 that -- as a lesser included offense, involuntary
19 manslaughter, under 16-360, be charged as a
20 killing without malice as a result of the reckless
21 disregard for safety of others, involuntary
22 manner -- manslaughter is the unlawful killing of
23 another without malice but by some act of omission
24 constituting criminal negligence.

25 Criminal negligence is defined as

1 | recklessness -- reckless disregard for the safety
2 | of others. I believe under the facts, there's at
3 | least a scintilla of evidence out there that, once
4 | again, that Mr. Brewer, should they so find, was
5 | acting, with a firearm, was acting in a reckless
6 | manner that caused death and we believe that that
7 | lesser-included charge of involuntary manslaughter
8 | be included.

9 | THE COURT: Okay. What says the State?

10 | MR. BANNON: Your Honor, I would -- I would
11 | disagree that there is a scintilla of evidence.
12 | Essentially every witness has stated that Mr.
13 | Brewer was firing into a crowd. I mean, to simply
14 | say that that is reckless and not that it is a
15 | willful act in order to bring around, you know,
16 | the clear results that that would -- you know,
17 | which would occur from that -- I mean, I just
18 | don't see how that can be construed as reckless
19 | and not a deliberate act.

20 | THE COURT: I'm going to deny that request.
21 | Anything further.

22 | MR. NEWMAN: No, sir.

23 | THE COURT: Okay. Anything from the State
24 | before we take a break?

25 | MR. BANNON: No, Your Honor.

1 THE COURT: All right. 2:30.

2 MR. NEWMAN: When we come back, is the
3 State then going to rest and we renew our motion?

4 THE COURT: Yes. I would assume so.

5 MR. BANNON: Yes, Your Honor.

6 MS. BANNON: Your Honor, would you like to
7 do the motion or directed verdict before the jury
8 comes back?

9 THE COURT: Why don't you rest on the
10 record and then we'll do it in order.

11 MR. BANNON: Okay.

12 MS. BANNON: In front of the jury?

13 THE COURT: Yeah.

14 MS. BANNON: Your Honor, we would ask that
15 Mr. Newman then limit his motion without going
16 into argument of that motion of why it should
17 be -- why it should be granted.

18 MR. NEWMAN: The judge will have to send
19 the jury out.

20 THE COURT: Yeah. I'm going to send the
21 jury out.

22 MS. BANNON: Okay. I just wanted to make
23 sure that --

24 THE COURT: No, I'm not going to have them
25 in here.

1 MR. BANNON: Oh okay.

2 (WHEREUPON a recess was observed for
3 lunch.)

4 THE COURT: I am printing out the charge,
5 so everybody needs to look at it, see what it
6 looks like, and we'll go from there.

7 But on the record I'm going to go ahead and
8 go over what I want to do.

9 All right. Of course, I'm going to have an
10 introduction. I'm going to go over reasonable
11 doubt, the right of the defendant to remain
12 silent, direct and circumstantial evidence, duties
13 of judge and jury, the prior record of a witness,
14 expert witness, police officer charge, murder,
15 assault and battery with intent to kill -- and
16 Belcher does apply to that, assault and battery of
17 a high and aggravated nature, possession of a
18 weapon during the commission of intent to commit a
19 violent crime.

20 Sound okay to the defense.

21 MR. NEWMAN: Yes, sir.

22 THE COURT: All right. How about the
23 State?

24 MR. BANNON: Yes, Your Honor.

25 THE COURT: All right. Sounds good. I'm

1 going to try and print it out and give it to you
2 in just a quick second. We're printing the
3 verdict form for you look at right now.

4 MR. NEWMAN: And I believe we have last
5 argument?

6 THE COURT: You do.

7 Now that you've finished reviewing the
8 charge, I do have one correction I'm going to make
9 to the verdict form. We get that right out
10 Getting close, Mr. Newman?

11 MR. NEWMAN: Yes, sir, I apologize. Yes,
12 sir.

13 THE COURT: Let's take a look at the
14 verdict form. I think if you go to Item No. 2 and
15 you see where it says not guilty of assault and
16 battery with intent to kill Mr. Donald Parker, if
17 not go to three. It may be prudent to put after
18 the other one that says guilty of assault and
19 battery with intent to kill Mr. Donald Parker, if
20 guilty, skip three and go to four. That sound
21 okay?

22 MS. BANNON: That's fine by the State.

23 THE COURT: How about the defense?

24 MR. NEWMAN: And I apologize, Judge, I
25 missed not sure of what you were saying.

1 THE COURT: Come on up and I'll show you.

2 MR. NEWMAN: Just trying to be...

3 (WHEREUPON there was a bench conference out
4 of the hearing of the Court Reporter.)

5 MR. NEWMAN: Oh okay, yes, sir. I
6 understand, yes, sir.

7 THE COURT: Is that okay with the defense?

8 MR. NEWMAN: Yes, sir.

9 THE COURT: All right.

10 Okay. How about the charge? Anything you
11 want to be changed on it? Add to it, delete from
12 it?

13 MR. BANNON: No objections from the State.

14 THE COURT: How about the defense?

15 MR. NEWMAN: No, sir.

16 THE COURT: All right. We'll go ahead and
17 bring out the jury. You can rest on the record
18 and you can do the same for the record.

19 If the bailiff would go ahead and get the
20 jury.

21 MR. NEWMAN: You want me to likewise rest
22 and then we'll send them out for the directed
23 motion.

24 THE COURT: Don't you think?

25 MR. NEWMAN: Yes, sir, because I --

1 THE COURT: I'm going to let them rest and
2 then you can argue your directed verdict and then
3 you can rest and I'll see if they have any
4 motions. We'll go from there.

5 MR. NEWMAN: All right.

6 THE COURT: Is that okay?

7 MR. NEWMAN: Here's what I'm going to do --
8 what I'm going to have to say is when I rest, I
9 renew all my motions --

10 THE COURT: Yeah.

11 MR. NEWMAN: -- that I just made.

12 THE COURT: That's fine.

13 MR. NEWMAN: I just want to make sure we
14 cover the record.

15 THE COURT: That's fine.

16 Are they getting the jury?

17 THE CLERK: Yes, sir.

18 THE BAILIFF: The jury is ready to enter.

19 THE COURT: Go ahead and bring them on in.

20 (WHEREUPON the jury entered the courtroom
21 at 2:42 p.m.)

22 THE BAILIFF: The jury is present.

23 THE COURT: Thank you.

24 Solicitor, if you'd call your next witness.

25 MR. BANNON: Thank you, Your Honor. At

1 this time, the State rests.

2 THE COURT: All right. Members of the
3 jury, we're going to play musical chairs at this
4 juncture, I have to send you back out and take
5 motions from the lawyers. If you don't mind, go
6 back into the jury room. Kind of like you're at
7 church you get up and down. (Laughter).

8 (WHEREUPON the jury left the courtroom at
9 2:43 p.m.)

10 THE BAILIFF: The jury is clear, Your
11 Honor.

12 THE COURT: All right. I'd be glad to hear
13 your motions, Mr. Newman?

14 **MIDTRIAL MOTIONS**

15 MR. NEWMAN: As to the charges contained,
16 the defendant would, as to the murder, move for a
17 direct verdict of acquittal because there's
18 insufficient evidence identifying Mr. Brewer as
19 the shooter. There is no evidence of that and
20 that the State has a failure of proof as to the
21 charge of murder, number one.

22 As to the charge of assault and battery
23 with intent to kill, well, we do believe there is
24 circumstantial evidence as to that charge, we move
25 for a directed verdict as to the -- as to the

1 intention to kill based on the evidence that came
2 in the record merely reckless conduct and would be
3 proper, and the charge should be assault and
4 battery of a high and aggravated nature.

5 Of course, I can't really move for a
6 directed -- weapon -- directed verdict as to the
7 weapons charge because I don't the jury has got
8 there yet. They first have to consider these two.

9 THE COURT: All right.

10 MR. NEWMAN: That is our motion.

11 THE COURT: Anything you want to place on
12 the record?

13 MR. BANNON: Your Honor, I would say that
14 certainly -- well, especially in the light -- when
15 viewed in the light most favorable to the State,
16 that there has been ample evidence to support the
17 defendant's guilt and so I would just oppose to
18 the motion.

19 THE COURT: Those motions are denied.

20 Anything further?

21 MR. NEWMAN: No, sir, Your Honor, and with
22 that, we rest.

23 THE COURT: All right. Do you want to rest
24 in front of the jury or --

25 MR. NEWMAN: I can do that -- I can do

1 that, Your Honor, but --

2 THE COURT: Whatever suits you.

3 MR. NEWMAN: Well, what I was going to say
4 to shorten it up, since I have now rested, I now
5 move to renew all of my motions and also renew all
6 of my trial motions as to the evidence of the --
7 the statement of Mr. -- not necessarily the
8 statement of Mr. Brewer, but the actual playing of
9 the recording of the interview of Mr. Brewer. I
10 move for a directed verdict based on those.

11 THE COURT: All right. Those motions are
12 denied.

13 MR. NEWMAN: All right, sir. And if you
14 want, when they come in, I can just say I rest
15 because I think I've covered it and I would ask,
16 too, while we've got the jury out that the State
17 sounded like from a question from the SLED agent
18 that the State be precluded from inferring in any
19 way whatsoever that Mr. Brewer had a duty to bring
20 a pistol in or could have shown as evidence or
21 even to the police in showing this evidence by
22 bringing the pistol to the police department.

23 THE COURT: All right.

24 MS. BANNON: Your Honor, we've discussed
25 this previously; the State does not intend to do

1 that. The State would also move, having seen Mr.
2 Newman in trial before, we would ask that he not
3 reference to any members of the defendant's family
4 who might have been seen at the bar who have not
5 been called as witnesses in front of the jury.

6 THE COURT: Sure. Any further?

7 MR. NEWMAN: I don't -- I don't know why I
8 would do that. I don't know why it'd be
9 prejudicial to say the defendant's here with his
10 family.

11 THE COURT: All right. I think you can say
12 he's here with his family and that's about it.

13 MR. NEWMAN: That -- that's --

14 THE COURT: An no witnesses --

15 MR. NEWMAN: I said that; that's all I
16 intend to say.

17 THE COURT: All right. Anything further?

18 MS. BANNON: Not by the State, Your Honor.

19 THE COURT: Anything further?

20 MR. NEWMAN: No, sir.

21 THE COURT: Bring the jury out, rest on the
22 record. Then you want to go right into closings?
23 Or do you want me send them back out and you make
24 your motions again?

25 MR. NEWMAN: I think what I was trying to

1 do on the record is to have this Court note that I
2 have rested and I have renewed my motions, they
3 have been denied, and we're merely formally
4 stating that in front of the jury.

5 THE COURT: All right. So you're going to
6 rest and then we're going to call on the State to
7 bring their closing argument?

8 MR. NEWMAN: Yes, sir.

9 THE COURT: All right. Who's going to do
10 it?

11 MS. BANNON: I'm going to do it, Your
12 Honor.

13 MR. NEWMAN: And since it's been referred
14 to in trial, I do intend -- because evidence is
15 over with -- to use the diagram when I'm doing my
16 closing.

17 THE BAILIFF: The jury is ready to enter.

18 THE COURT: All right. Go ahead and bring
19 them on in.

20 (WHEREUPON the jury entered the courtroom
21 at 2:48 p.m.)

22 THE BAILIFF: The jury is present.

23 THE COURT: Thank you. All right. Mr.
24 Newman, if you'd call your first witness.

25 MR. NEWMAN: If it pleases the Court, Your

1 Honor, the defense rests.

2 THE COURT: Okay. Thank you very much.

3 Members of the jury, at this time, we're
4 going to proceed with the closing arguments. The
5 State is going to give their closing argument
6 followed by the defense.

7 I recognize the State for their closing
8 argument.

9 **CLOSING ARGUMENTS**

10 MS. BANNON: Thank you, Your Honor.

11 What we talked about in the beginning
12 remains the same now at the end. All that
13 happened on that night, on May 23rd or early
14 morning of the 24th, 2009, drastically changed the
15 lives of everyone you heard from, all the people
16 you've referenced; all set into motion by one man,
17 Jaquwn Brewer, all because he wanted to feel big.

18 Now, the Judge is going to talk to y'all a
19 lot about burden, the law, and reasonable doubt.
20 What he says, goes; he is the expert on the law.
21 Please make no mistake, at no time during this
22 trial or my closing argument will that burden
23 shift to anyone. It remains with the State. It
24 is the way our legal system is designed and that
25 is a job that the State is held to.

1 Mr. Newman is going to tell you a lot more
2 about that, about the whole reasonable doubt,
3 burden thing; and the reason he's going to do that
4 is because he's a good lawyer and that's what good
5 defense attorneys do.

6 We're lucky. We live down here by the
7 beach. I like to take my dog to the beach, let
8 him run around. We always go at low tide because
9 I'm worried that they're not quite bright enough
10 to avoid drowning themselves. So we go at low
11 tide and they go frolicking off and there's always
12 tidal waves. And usually as we're walking along,
13 we look down, and there's a sand dollar or an
14 interesting crab, something left by the tide.
15 It's nice because you can see down into it. The
16 water's clear. You can see the sand at the
17 bottom. You can see that pretty sand dollar.
18 Occasionally, one of the puppies will run through
19 that tide pool, stirring up the sand again and the
20 silt. After they run off, you look down again and
21 you can still tell it's the bottom. That water
22 has gone clear again. They can kick up as much
23 sand as they want, but they cannot hide or move
24 that sand dollar as long as it stays in that
25 puddle.

1 Think about the points that the defense has
2 made and what they're going to make, and ask
3 yourself are they legitimate or is that a good
4 attorney just stirring up that puddle? Think
5 about everything that we talked about, the
6 questioning of the nicknames, who's Shawnee, who's
7 Octavia? Same person. Three or four people told
8 us that. We have nicknames for family members, we
9 all know people by different names. Is that real
10 confusion or is that some stirring up the tide
11 pool?

12 What about saying having to call all fifty
13 or sixty people that were potential witnesses? Is
14 that legitimate or are there legitimate reasons
15 for it such as Investigator Fraser told us?
16 People are unavailable, unwilling to talk, didn't
17 offer anything that helped you. Would hearing
18 from sixty people greatly help you in deciding
19 this case, versus the twenty that we've heard over
20 the course of the last three days? Or would it
21 add to the confusion and lead to more stirring of
22 that pool?

23 You're going to hear about reasonable
24 doubt. Last week, the multi-state jackpot lotto
25 was really big, it was like \$200 million dollars,

1 right? If I had gone and bought a ticket, would
2 it have been possible for me to win that big
3 lotto? Sure. If I bought a ticket. Was it
4 reasonable for me to think that I was going to
5 win? No.

6 A lot of the way that the justice system
7 works is a guessing game. One thing that we're
8 afforded is hindsight. We know which evidence --
9 which evidence there is, which evidence was
10 collected, which witnesses are willing to come
11 forward, which ones don't want to cooperate so
12 much. We know what was found that night, what
13 statements were given. Don't fall into the
14 would-have, could-have, should-have trap. That's
15 not what this case is about. This case is about
16 what we have, the witnesses we have, the physical
17 evidence, not what we're missing. It is not a
18 case of absences, it is a case of fact and
19 physical evidence.

20 Investigator Chapman and Fraser are put in
21 the unfortunate position of being called out to a
22 situation they don't know, locations they don't
23 know, talking to people who are probably
24 experiencing some of the worst days of their
25 lives. They're not afforded that hindsight that

1 we have. They don't know what evidence they're
2 ultimately going to collect. They don't know what
3 statements people are ultimately going to give.
4 They arrive on the scene and they follow the
5 evidence where it takes them. And in this case,
6 every piece of evidence took them to Jaquwn
7 Brewer. That's what they did. They followed that
8 evidence.

9 Think about what we heard from the
10 witnesses, the people who were there that night,
11 firsthand witnesses.

12 Now, did a lot of people know each other?
13 Yeah. Ivori, Sheena, Octavia, and Deon. Were
14 they related to Henry Jones? Yeah. Why? Because
15 it was a family reunion. They were all having a
16 party that they opened up to other people in the
17 community. Just kind of like the saying, you
18 can't choose your family. You're going to have
19 some people who are really good, upstanding people
20 and some people who might not be. Keep one thing
21 in mind. They got to choose who they invited to
22 this party, but one person, one single person
23 chose who the witnesses were, what his actions
24 were, what the evidence was. And that one single
25 person was Jaquwn Brewer.

1 The Judge is going to explain
2 circumstantial and direct evidence. I really
3 enjoy law shows and if you've seen like Law and
4 Order, they always reference circumstantial versus
5 direct evidence, it distinguishes them. The Judge
6 will tell you, under the law, there's no
7 distinction there between direct and
8 circumstantial evidence. Direct evidence is
9 pretty straight forward. The witness says, I saw
10 Jaquwn with a gun; I saw Jaquwn shoot at people; I
11 saw Jaquwn shoot back at the building; this is
12 direct evidence. Gunshot residue, direct physical
13 evidence; photos, direct physical evidence.
14 Sometimes where people get confused is the
15 circumstantial evidence and it's not because you
16 don't know what it is, it's just a different
17 label.

18 We use circumstantial evidence every day of
19 our lives. It's basically things that we see put
20 together conclusions. Y'all might have noticed
21 that Mr. Bannon and I share the same last name.
22 Well, I think that either we're related somehow or
23 it's just weird coincidence. You might have also
24 noticed that he carries my files, sometimes he
25 does something I don't like and I cut my eyes at

1 him. We might just have a good relationship or
2 work well together, or we might have a connection
3 somewhere.

4 You might have noticed that we both have
5 wedding rings. From all this, you put together
6 these little facts and you've figured out we're
7 married. You're firmly convinced that we're
8 married; which is the same way.

9 You look at my stomach; you see I've been
10 jumping. You see how I've been walking and
11 standing. No one's told you I'm pregnant; are any
12 of you not firmly convinced that I'm pregnant?
13 This is all circumstantial evidence. Y'all didn't
14 need anyone to come out and say that, but you knew
15 it because that's what we do with our daily lives
16 and that's why we have this jury system. You
17 bring in all your different life experiences, all
18 your different backgrounds, things that you use to
19 evaluate decisions and people every single day and
20 you apply that to the inference.

21 Now, this is our last chance to talk to
22 y'all, Mr. Newman gets to talk to y'all last.
23 While he's talking though, I just ask that y'all
24 ask and question yourselves. Does this take away
25 from the physical evidence the State has proven or

1 is this mere tidal pool stirring. Just ask
2 yourself that.

3 Now, there is no real "ah-ha" moment here
4 in this case. Rather, we have a bunch of small
5 things. We have a lot of witnesses who put a gun
6 in Mr. Brewer's hand. We have a lot of witnesses
7 who tell us that they were shooting. We have
8 physical evidence to corroborate the fact that
9 there was shooting. We have a picture showing
10 that Mr. Brewer had a gun. We have GSR. You've
11 got to take each of these little things, add them
12 together, become firmly convinced.

13 Think about it. What about this bullet
14 that struck Mr. Jones directly in the head? We
15 know a couple of things. It's a disturbing
16 picture, I'll grant you that; it's a disturbing
17 thing that happened and I ask that you look at
18 this photo, not the shock value but to what it
19 tells us.

20 We know that he was standing right here
21 with his niece Shawnee, Octavia, Shawnee, if you
22 will. Standing right here. They thought they saw
23 the shooters outside the club, thought the coast
24 was clear. Shawnee goes up to her uncle, Uncle
25 Henry, Uncle Henry, call 9-1-1, call 9-1-1. Why?

1 Why call 9-1-1? Because that's what good people
2 do. They call 9-1-1.

3 What do we have here substantiating what
4 Shawnee said? We have a phone; it's lying open.
5 Now, with cell phones, couldn't see the cell
6 phone. When you open them or turn them on, they
7 light up. We know the club is dark, don't we? If
8 your phone lights up in a dark room, what's that
9 do? Creates something someone can see, doesn't
10 it?

11 So Jaquawn is standing outside that club
12 firing back into that club and he sees this little
13 light. Shawnee told us that she was standing mere
14 inches from her uncle when that bullet came in and
15 knocked him down. Why him, not her? He was being
16 a good man. He was calling 9-1-1 to get some help
17 to stop the shooter.

18 Something else we know about the lights and
19 the darkness is a lot's been made about Dominique
20 Middleton. Right? One identifying factor is that
21 he had this red laser sight.

22 Now, when I first started this case, I was
23 like, there's no way someone has a laser sight,
24 but wouldn't you know it, sure enough, what did
25 Investigator Fraser find -- I'm sorry,

1 Investigator Chapman find at the scene? A laser
2 sight. I didn't even know people still used
3 these. How is it helpful in this case though?
4 Well, it was found next to bullets about forty
5 yards from that club. What else does it tell us?
6 Well, Ivori, Shawnee, Sheena, no one reported
7 seeing a red dot inside the club. No one reported
8 seeing a red dot focused directly on Henry Jones'
9 temple. There was absolutely zero testimony about
10 that.

11 Think about what else we know. Who
12 couldn't give a statement, right? It's not a
13 confession, it's just a statement. What can we
14 get out of the statement? Look at what he said
15 versus what we know; compare it. Is it the truth
16 or a lie? First he says, I don't know what you're
17 talking about, I didn't have a gun. Sorry, I put
18 down my pointer. He says, I don't know what
19 you're talking about, I didn't have a gun. Is
20 that the truth or a lie? It's a lie. Not only
21 are we resting on this gun photo, what else do we
22 know to know that's a lie? Think about Charles
23 Cox's description. Short man, close-cropped hair,
24 black shirt, with a gun, in the club. What did
25 Sheena say? I saw Queezy with a gun and he

1 started shooting. What did Deon say? He pulled
2 the gun out, he shoved it in my face, said, Mind
3 your own business and started firing. These
4 things match up.

5 Think about Donald Parker too. He didn't
6 want to be here; it was clear he didn't really
7 want to talk to us, right? But his statement that
8 he gave to Investigator Fraser at the hospital
9 mere minutes after being shot gave a description;
10 what was it? Short guy, close-cropped hair, black
11 shirt with a gun. He's at the hospital.

12 Remember what Investigator Fraser said. I
13 went to the hospital. He didn't have this photo;
14 he wasn't showing this photo to Donald Parker.
15 Donald Parker on his own volition, from his
16 own memory perfectly described Jaquawn Brewer as
17 the man who shot him.

18 What else do we know? Well, Mr. Brewer
19 says, Well, all right, you do have this photo, I
20 had a gun, but I didn't shoot anybody, that's not
21 what I did, I didn't shoot anybody. Well, we know
22 that's a lie. Why? Charles Cox, Sheena Parker,
23 Deon Stevenson, and the gunshot residue. Four
24 things showing that's a lie.

25 What about Jaquawn Brewer saying in his

1 statement to Investigator Fraser, I was at the
2 Budget Inn with this girl named Sherri. You know
3 that's a lie. Why? Because Investigator Fraser
4 was following the evidence and there was none. We
5 went to the hotel and nothing. No record, no
6 Sherri, nothing.

7 Listen to the tape with Mr. Brewer's mom.
8 The point when you can hear her being like, I
9 don't believe you, basically. If your own mama
10 doesn't believe certain things that you're saying,
11 you're probably doing something wrong, because if
12 there's one person that's going to believe you,
13 it's going to be your mom.

14 Mr. Brewer made a point in his
15 confession -- I'm sorry, his statement that, If I
16 had killed these people, why would I come in? Ask
17 yourself something, he's trying to get out in
18 front of it like he was trying to do with the, I
19 didn't have a gun, I didn't shoot anybody, I was
20 somewhere else; or just give them a little bit
21 until confronted with the truth; or it's actually
22 a true statement.

23 Another thing that struck me about this
24 case is stupidity is not defense. Every day,
25 people do things that are against their own self

1 interest. Why -- why would someone go to a club
2 with a gun? I don't know. Why would someone go
3 to a club where everyone knows them because
4 they've lived together, gone to school together,
5 and start throwing up gang signs and flashing
6 guns? I don't know. Why would someone then open
7 fire in a crowded club with people who can easily
8 identify him? I don't know. But just because it
9 doesn't make sense in your own self interest and
10 it's not the smartest thing to do doesn't mean it
11 didn't happen.

12 I -- you know, I was looking at some of
13 these photos, I'm not trying to belabor the point
14 about the photos, I think y'all can get their
15 significance, but look at this photo. Think of
16 the testimony of Sheena, Investigators Fraser and
17 Chapman. Out here is where Dominique Middleton
18 was standing. Does it make sense? For we know
19 that Jaquawn Brewer was standing right up against
20 that building.

21 Think about a cookie jar. Come home, your
22 child has crumbs all down the front of his pants,
23 chocolate smeared on his face. Look in the cookie
24 jar, three cookies missing. Are you going to be
25 calling in for other evidence or are you going to

1 follow the crumbs and based on your experience and
2 figure out, well he was the closest to the cookie
3 jar, my other children were out of the house at
4 the time, they were playing outside, he was the
5 only one inside the house.

6 So looking at the photos, we know from Gary
7 Bright's testimony that the first few photos
8 weren't from that night, it was from another club.
9 And at first, I don't know if y'all noticed, but
10 Gary Bright was looking down here on the photos.
11 I couldn't figure it out. 'Mr. Newman was asking
12 him questions and he'd stop, look, look somewhere
13 around here and then say whether or not it was
14 from that night. So I was like, let's look at
15 these photos again, right? Look, there's a blue
16 line right here. This is not from that night.
17 This is not from that night. Why? Blue photo --
18 blue line, that's what Mr. Bright told us, right?
19 Same people, blue line, not that night. Blue
20 line, not that night. Blue line, not that night.
21 What's this photo? No blue line. Wood, from that
22 night.

23 If you remember, Ivori was able to tell us
24 mostly who these people were. Remember this is
25 cousin and that was his girlfriend, who are no

1 | longer together. Why did she know these people?
2 | It was a family party; it was a community party.
3 | This isn't some big conspiracy. So after doing
4 | that and noticing that, I was like, what else do
5 | these photos tell us? Right? Look. He's wearing
6 | a green wristband, right? Let's look at what's --
7 | the other photos I have. That's the same couple,
8 | he's wearing a green wristband, it looks like the
9 | wristband goes on that arm. This couple, the same
10 | couple, he has a wristband. These fellows, green
11 | wristband, green wristband. They do a couple more
12 | poses for us. You can still see the green
13 | wristband, green wristband. Green wristband,
14 | green wristband, green wristband. There and
15 | there, it's kind of sweet how they're holding
16 | hands like that but you can see the green
17 | wristbands. Green wristbands, see them poking out
18 | there and there.

19 | How about this group shot. Green
20 | wristband. This guy's wearing a watch, but if you
21 | look close, there's green behind it so we know he
22 | has another green wristband. Green wristband,
23 | green wristband. We get to this photo, green
24 | wristband, green wristband. No wristband. That's
25 | kind of weird. You can't really see this guy's

1 arm yet, but let's look at the next photo. Green
2 wristband, green wristband, no green wristband.
3 Green wristband, green wristband, no wristband.
4 What else do you notice about the photo? No gun,
5 no gun, no gun, no gun, gun.

6 Now, all these photos, the only person with
7 a gun is the same one who's not showing that green
8 wristband. Ah-hah moment? No. Something you can
9 put together with everything else you heard?
10 Certainly.

11 Now, think about what we know, okay? We
12 know that Mr. Brewer was planning on something
13 that night. How do we know that? Well, he was
14 getting ready for a party, putting on his shirt
15 and his pants, shoes, gets his hair done, puts a
16 gun in his pants, right? That doesn't magically
17 appear there. That's not what he said in his
18 interview of, I don't know how it got there. I
19 don't know about y'all, but usually things I have
20 in my pants, they get there because I put them
21 there.

22 He gets there, by all accounts, the party's
23 pretty good. There are young pretty girls, people
24 are dancing, having a good time. And we heard
25 from Deon and Sheena that, Yeah, we heard this guy

1 had a gun, but we weren't really going to let it
2 stop a good time. We were just going to go tell
3 him to go put it outside. We weren't even kicking
4 him out of the party, we just wanted the gun out.
5 We didn't want that there at the party.

6 That's normal, right? You're at someone
7 else's party, they're like, Hey, maybe we don't
8 need to do this right now. The normal reaction
9 would be like, I got you, I'm going to go put this
10 in the car. That is not what Jaquwn did, because
11 he came prepared; he had that gun in his pants
12 already. He felt threatened, his masculinity, and
13 someone stepping up to him in front of his boys
14 after he's been throwing up these signs and acting
15 all big.

16 So what he does instead is pull that gun
17 out of his pants and points it directly at Deon's
18 face. And what does he say then? Mind your own
19 f'ing business. Does that sound like someone who
20 knows what they're doing? Yeah. Because you have
21 a gun, you're feeling pretty big, and you're
22 threatening somebody.

23 Then Deon does what pretty much anyone else
24 would do, swats the gun away. Then we heard from
25 multiple people, think about this, Sheena, Deon,

1 Charles. Where was this guy aiming? What was he
2 pointing at? The crowd, the people, think about
3 that. Mr. Newman was like, Oh, well, y'all didn't
4 find any bullet holes in the ceiling or the walls.
5 Yeah, because he was aiming at people. That is
6 why you don't have bullet holes in the ceiling.
7 That is why you don't have bullet holes in the
8 wall, because if you're aiming at a group of
9 people, you're going to be firing into the group
10 of people. You know what you're doing and you're
11 recklessly disregarding everyone's life when
12 you're doing that in a crowded club.

13 We know that once the shooting started it's
14 chaos; look at this. The chairs are tumbled
15 everywhere. Everything's been pushed aside, shoes
16 have been left. If you look at this one, some
17 poor lady is missing a high heel because she lost
18 it in the rush to get out of there. Chairs are
19 toppled over. I think there's a flip flop missing
20 in this one. Drinks are all over the floor.
21 People are running to hide. People go to the
22 bathroom to hide. We heard John Doctor say that
23 he ran into the women's room with the women. We
24 know that Henry Jones took cover behind the bar
25 and what else do we know? We know that Ronald

1 (sic) Parker got shot, back of his leg while he
2 was running from that club, don't we? A lot has
3 been made up -- made about these casings. Look at
4 the casings. Not a single one was ever identified
5 as, this is the casing and it came from the bullet
6 that killed Henry Jones. Not a single one is
7 labeled as the bullet that struck Donald Parker in
8 the leg. What do they tell us? They tell us that
9 there are witnesses telling the truth, that there
10 was a shooting in that club, that there were
11 multiple shots in that club. That there was a lot
12 of chaos going on in that club. There's no
13 smoking gun, but there are things that build upon
14 each other that lend credibility and support to
15 other people, pieces of evidence.

16 Now, we have all of these casings in
17 zip-lock baggies. Why do we have them in these
18 baggies? Because they roll around, they're
19 slippery, right? They're small. They can be
20 easily kicked and moved. Would anyone feel
21 comfortable with me opening these, pouring them
22 out on the floor right now? No. Why? Because
23 they would roll all over. They could easily move
24 and we know exactly how many are right here, don't
25 we? So imagine the chaos of that club. People

1 running everywhere, people trying and scurrying to
2 get out, losing big things like their shoes,
3 toppling over chairs. Y'all saw the pile of
4 chairs. Does that look like an orderly exit from
5 a club?

6 Think about Mr. Newman's questioning of
7 Investigator Chapman. The defense absolutely
8 refuses to accept the fact that there were shell
9 casings that were -- just were never found. If
10 chairs can be tossed like kindling like that,
11 don't you think tiny little shell casings like
12 that can be scattered to the four winds and they
13 were just never found?

14 Think about the questioning. Think about
15 the photo and the measurement that y'all never got
16 to see. Think about all of the hoopla about the
17 casings. Ask yourself, does that take away from
18 the actual evidence that we have, the multiple
19 witnesses that saw Mr. Brewer with the gun,
20 pointing the gun, firing back at the building or
21 is it more bolstering.

22 I also ask that when you go back into
23 deliberation, rely upon your own recollection of
24 everything. Don't rely upon my version of how I'm
25 telling you the facts, that's just how I remember

1 | it -- we all remember things differently -- how
2 | Mr. Newman remembers the facts. How a witness
3 | recounted another witness' testimony when we were
4 | all here and we can all perfectly remember what
5 | they actually said. And that's the thing.
6 | Memories are funny. Think about the statements
7 | that we have heard. Some changed, yeah. How many
8 | times do you tell a joke or a story the exact same
9 | way? Or do you add different details? You tell
10 | it slightly differently just because that's how we
11 | work.

12 | Think about other stories that changed.
13 | Donald Parker's: His didn't change. There is no
14 | great conspiracy going on there. It doesn't mean
15 | they contradict each other. Think about that.
16 | Think exactly what was strung out.

17 | Sheena Parker, her statement. He was
18 | inside the club, shot back into it or he was
19 | outside the club, shot back into it. It became
20 | clear as we were talking about a matter of about a
21 | foot; was he inside or outside; this is not a
22 | children's game. Does it matter? We have an eye
23 | witness saying it was one person who shot back
24 | into the club and it was one bullet that killed
25 | Uncle Henry. Do you really care if he was inside

1 or outside? There's that puddle stirrer.

2 Is Sheena Gardner changing her testimony to
3 match the evidence that was collected two years
4 ago? Is she that much of a mastermind? Don't you
5 think she'd do a better job if she was? Or is she
6 a witness relying on how she remembered it and
7 what she saw? That is the best we can ask of
8 people to do.

9 Think also of people's prior convictions
10 that we heard from. There was a party going on;
11 they weren't asking to be called and questioned
12 and grilled and have this shown to everybody.
13 Why? Why were they here? Because Jaquwn Brewer
14 picked them as witnesses when he opened fire,
15 deciding to shoot Donald Parker and killed Henry
16 Jones.

17 Once you get back in that jury room, go to
18 the evidence, look at the pictures. Feel what you
19 have to feel. And I know y'all take this job very
20 seriously. After you've done that, be calm. Let
21 the silt settle. Once you have taken in
22 everything and allowed it to settle, that sand
23 dollar's going to come and be clear again.

24 That water's going to be clear and you will
25 know. You will know that it was Jaquwn Brewer at

1 the club that night. You will know that it was
2 Jaquwn Brewer with the gun that night at the club.
3 You will know it was Jaquwn Brewer who opened fire
4 in that club that night. You will know it was
5 Jaquwn Brewer who caused the chaos in the club
6 that night. You will also know that it was Jaquwn
7 Brewer who was closest to the club and Jaquwn
8 Brewer fired back into the club and it was Jaquwn
9 Brewer who shot and killed a good man.

10 Thank you for your time.

11 THE COURT: Mr. Newman?

12 MR. NEWMAN: Give me one second to set up.

13 Mr. Foreman, ladies and gentlemen of the
14 jury, we've been through the case, fortunately,
15 it's not as long as others are going to be. The
16 judge did a good job managing our time. We got a
17 lot of witnesses in and heard from a lot of
18 witnesses in a very short amount of time. It does
19 not mean that this is not a very important case to
20 the State, the Jones family, and to Mr. Brewer,
21 all parties involved.

22 I do want to talk about the fact that there
23 are two separate charges. Assault and battery
24 with an intent to kill charge that the judge is
25 going to tell you that if you examine the evidence

1 and look at it and you don't find that reckless
2 and malice aforethought but you find reckless
3 conduct, then Mr. Brewer would be guilty -- this is
4 on Donald Parker -- of assault and battery of a
5 high and aggravated nature; that's assault and
6 battery that causes an injury and with an
7 instrumentality such as a gun or a weapon. If Mr.
8 Brewer is guilty of that, that's what he's guilty
9 of. That's what the State, through circumstantial
10 evidence, may have shown. That charge stands all
11 on it's own.

12 That was Donald Parker, if you recall the
13 fellow that came in, that would stand on its own.

14 We heard a lot of evidence about a lot of
15 different things, but what I want to focus on at
16 this point is the murder charge because the State
17 is alleging that Jaquawn Brewer shot and killed
18 Henry Jones. They made a stern and passionate plea
19 for that. But this is a rational process, not a
20 passionate process; it's an analytical process.
21 It's an analytical process to look at evidence or
22 the lack thereof.

23 In this case, Sergeant Wilson got there,
24 and photographed the scene when they got there,
25 and said the doors were open. You will have these

1 | photographs back in the jury room. It's very
2 | difficult to see on these that are dark, but like
3 | when we went with Detective Fraser the other day,
4 | you'll see a big man in this door, and it's
5 | clearly open. You will see right behind the blue
6 | lights, there is another door, a smaller door that
7 | is closed. You'll have these in evidence. The
8 | door is closed on their arrival. Although the
9 | officer said he thought they were opened, one of
10 | them is clearly closed. That's this small door
11 | right here.

12 | Now, the State has played a switch-a-roo in
13 | this case. The original theory was fired shots
14 | inside, hit Mr. Parker somewhere in here and hit
15 | Mr. Jones. Well, sorry the State didn't
16 | investigate it enough, talked to your witnesses,
17 | that theory didn't work. We know that could not
18 | have happened. We know that because of the
19 | gentlemen, Gary Bright, y'all remember him. He
20 | was the photographer that was there; I think he
21 | charged \$5 a picture he said, making a little
22 | extra income taking pictures. He had this
23 | backdrop back here at the back of the club. He
24 | told you the DJ booth was right here.

25 | Now, Mr. Bright's testimony was, if y'all

1 will recall it, was that some guy fired -- he
2 thought, three, four, maybe five shots inside the
3 club; and said he went back over here and just
4 kind of hung out. He told you that the shooter
5 left the club and never came back in because Mr.
6 Bright never left the club. So we've got to go to
7 theory two that couldn't have been Jaquwn inside
8 the club because, according to Mr. Bright, who is
9 an independent witness in this and is not related
10 to anybody in this, said the fellow that did the
11 shooting never came back in the club.

12 We talked about this big door. I was
13 asking Investigator Fraser, Do you know where you
14 got this bullet casing found over here. He
15 said -- you remember, he said, bullet casings can
16 maybe get thrown eight to ten feet. Well, he
17 measured, and low and behold, it's seventeen to
18 eighteen feet. Okay. So that doesn't work that
19 Mr. Brewer was right here shooting. That theory
20 doesn't work.

21 So they go to Sheena Gardner and, you know,
22 God bless her, it's one of my relatives, I might
23 want to help them out, too. I'm sure it's tragic.
24 You saw her demeanor on the stand when she got
25 cross-examined about her statement. Her statement

1 | was to the police, she wrote down and gave, I had
2 | her read it: Jaquwn Brewer, he went outside,
3 | started shooting outside, and came back -- came
4 | back in and started shooting again. That's when
5 | he shot my uncle.

6 | Well, she now tells us, Well, I didn't see
7 | him shoot my uncle; I didn't go back inside. I
8 | actually stayed outside and Mr. Brewer was out
9 | here shooting through this door. We'll find out
10 | that that has to be categorically, absolutely
11 | improbable; it can't happen. Her testimony
12 | changed to fit the facts in the physical evidence.
13 | The solicitor had told you, Well, this was a
14 | family reunion and a party. You'll have this in
15 | here, this was the pre-Memorial jump off at the
16 | Shriner's club. Food and drinks, \$10 admission.

17 | They also say on here that they have a DJ
18 | Dat Daddy and a DJ Boo. I'm assuming these are
19 | people who are making music in the place and the
20 | DJ booth was right here. Where is DJ Dat Daddy
21 | and DJ Boo? If the shooting had come in through
22 | this door right here and the DJ booth is right
23 | there, don't you think the State would try to find
24 | these people and say, what'd you see? What'd you
25 | hear? Nothing. They don't even know who they are

1 | because they didn't ask. And if you get into
2 | crime scene investigation 101; this was horrible,
3 | this is terrible, terrible documentation. And the
4 | reason -- the problems with bad documentation is
5 | because now we have to rely on scattered,
6 | fractious, eye witness testimony that doesn't even
7 | reconcile with each other.

8 | The detectives, when they came in and
9 | investigated this, never made an even basic floor
10 | plan of the building into the parking lot where
11 | shell casings were found. They don't have them
12 | documented where they were found, they just put
13 | them in a bag. Say, we found them. Where? In
14 | the parking lot. Where? I don't know, there's a
15 | picture of one here with no reference point,
16 | there's a picture of one there with no reference
17 | point. The solicitor will tell you that these
18 | could have been all fired in the club and somehow
19 | in the midst of it knocked out of the club. All
20 | of them.

21 | And she told you quite incredibly that
22 | there were a bunch of shots in that club so those
23 | shell casings could have been inside that club.
24 | And she told you there were no bullet marks in the
25 | wall, there were no bullet marks in the ceiling,

1 he was aiming at people. Well, if he's aiming at
2 people, then people should have been hit. There
3 was one person, one shot. And that was Donald
4 Parker who was hit in the lower back of his calf.
5 He even tried to say that his wound was life
6 threatening.

7 If you remember Dr. Strohmeyer that came in
8 and testified, he's the orthopedic surgeon. The
9 solicitor asked him was his wound life threatening
10 and the doctor kind of looked up and was like, I
11 guess if you didn't treat it, it would be; he
12 would have had an infection. So you have one shot
13 and they can't account for all of these shots.

14 In the investigation, you have witnesses
15 just write statements with vague, vague
16 references. He went outside, shot, came back in
17 and started shooting again. Came back in to
18 where? If you're an investigator, you can ask a
19 witness, you're going to take them -- you're at
20 the scene with the witnesses at the scene. Say,
21 Ma'am, show me where you were standing. They
22 didn't do that. They got a statement later on
23 with vague references to nothing. That's why the
24 testimony can change to fit the facts. And
25 there's only one that markedly changed and that's

1 Ms. Gardner's, the niece.

2 She now has Mr. Brewer out here in the
3 grass, firing. She said she's outside, not back
4 inside looking at this. When she said, gave a
5 statement, and gave the statement to the
6 detective -- I read her the statement she gave the
7 detective. Sheena stated shortly after she got
8 outside she observed Jaquwn come out of the door.
9 He began shooting outside. Sheena stated that she
10 ran back into the party. Just after making it
11 inside the door, Jaquwn came back into the
12 building and began shooting. Gary Bright
13 disagrees with that and we have no idea about the
14 DJs.

15 What about security? Do you think the
16 investigators would like to talk to the people at
17 security. By one account, there was two guys
18 wearing a security shirt. By another account,
19 there's two guys wearing a security uniform. By
20 another account, they're wearing some type of
21 security and they're wandng people. In another
22 point, they're patting people down. Where are the
23 security? Why didn't the police interview the
24 security? I mean those guys were paid to look out
25 and at least try and observe. I understand

1 partygoers might be -- might not be able to
2 rationally relate and recall. And if you
3 remember, there's about a hundred people inside
4 this place according to one of the witnesses.
5 There were still fifty to sixty according to the
6 detective when they rolled up.

7 And Mr. Bright told you, nobody came back
8 in. And almost immediately after the shooting,
9 what'd he tell you? That law enforcement arrived
10 on the scene.

11 Mr. Parker told you this scene was
12 absolutely pitch black when he was in there. Had
13 the solicitor mentioned about -- let me get this
14 off before I step on it. She mentioned about
15 buying a lottery ticket. Well, don't buy a
16 lottery ticket, you're not going to win; you know
17 that for a fact. Here's kind of an old joke, you
18 may have heard it, there's a poor fellow who prays
19 to God. He says, Dear God let me -- let me hit
20 the lottery. He didn't hit the lottery. He prays
21 the next night, says, Dear God, I'm getting old,
22 please -- please before I go, just let me hit the
23 lottery. Nothing. Prays the third night, please
24 let me hit the lottery, Dear God, I'm getting very
25 old. Nothing. He looks up at God and says, God

1 | why do you forsake me? Why won't let you let me
2 | hit the lottery? And God yells down, Buy a
3 | ticket. And that's what the police could have
4 | done in this. They could have bought a ticket.

5 | They could have bought a ticket straight to
6 | the firearms expert at SLED. And the firearms
7 | expert told you, Well, we don't need the gun. We
8 | can look at these bullets and he show you the part
9 | where the -- the part where the primer is. We can
10 | look at the traction marks on it, we can look at
11 | pen marks under a microscope, and if nothing else,
12 | we can tell you the same gun fired all of these,
13 | three different guns fired. But they didn't send
14 | any if those for comparison.

15 | So you are left, as what the State wants
16 | you to do, to guess Mr. Brewer guilty of this
17 | murder. To guess which bullet shot and killed Mr.
18 | Jones, when they could've done that. Likewise, on
19 | the casings that are in here, they could've done
20 | that.

21 | The other thing that they could have done
22 | was to see if they could get fingerprints because
23 | the Investigator Chapman, and I think the other
24 | officer agreed with me, if you're not familiar
25 | with it, when you load a semi-automatic pistol,

1 | it's got the clip in it and you push the bullets
2 | down to the -- it's got a spring -- and you push
3 | the bullets down into the spring. And when you do
4 | that -- one, when you pull it out of the box, you
5 | put prints on it. Two, when you push it down into
6 | the thing, you do it with your thumb. They have a
7 | whole laboratory for fingerprints at SLED. They
8 | never did that.

9 | So we've got to rely on inaccurate,
10 | contradictory, and confusing statements that were
11 | not even put in context by the investigator. The
12 | investigator never said -- took one witness'
13 | account that says it happened this way
14 | diametrically opposed to another witness's account
15 | and re-interviewed the witness to say, are you
16 | sure or are you mistaken? We have another witness
17 | that says that. They didn't do that. Write me a
18 | statement, run off, no diagram, no nothing. So we
19 | are left to guess.

20 | And on the burden of proof as the judge
21 | told you, Mr. Brewer has absolutely no burden of
22 | proof because if you think about it, you may never
23 | be able to prove yourself innocent. It's up to
24 | the State and the solicitor mentioned the burden
25 | thing. I hold the burden thing very close to my

1 heart as an attorney because it's in our
2 constitution. Hopefully in this country, gone are
3 the days that we convict people merely on
4 inaccurate eye-witness statements. When there's
5 the clear availability for forensic evidence to
6 match up. And if you take the forensic evidence
7 in this case, it's not here.

8 The investigators told us, and you can see
9 in the picture, this door actually opens all the
10 way up. It's not like some house doors that just
11 kind of stop there. It opens all the way up.
12 We've got Mr. Jones standing in this area by the
13 picture. We have Ms. Shawnee, Octavia, says she's
14 standing there. Mr. Jones is on the phone. What
15 Ms. Gardner would have you believe and the State
16 cannot verify her statement one width because it's
17 not the statement that she gave to the detectives
18 that this door right here -- and if you remember
19 that door, and it's in the photograph, the ladies
20 testified to it, that's about a foot, a foot and a
21 half up off the ground and there's no step to it.

22 So they're having Mr. Brewer open this door
23 and fire through this door, saying that it hit Mr.
24 Jones in the head. And if you look at the angles
25 on it, which they never tried to do or look at,

1 that's dadgum near impossible. Especially for a
2 shot that hits in the left temple.

3 Mr. Jones would have had to have been
4 facing this way. And do you think that with the
5 shooting and the commotion going on that a grown
6 man is going to be facing a wall? No. He's going
7 to be out looking, making his phone call. And if
8 you line the head up to the door in this area, you
9 get a shot coming in.

10 Now, what did John Doctor tell you? John
11 Doctor was one fellow that's not related to all
12 these people. He told you that he was in the
13 club; he was having a good time like everybody
14 else. The shooting starts, Mr. Doctor retreats to
15 the men's and women's restrooms to the door to the
16 restroom. Things calm down, says he waits a
17 couple of minutes and he comes out. He says he
18 comes out at the front door and as he gets to the
19 door, what does he see? Do you recall? He sees a
20 red light on him. And he knew what that was. And
21 says, Oh, hell no, I don't want any part of this,
22 and he retreats back into the bathroom.

23 That red light was on Mr. Doctor when he
24 was right there; Mr. Doctor retreats. The reason
25 Ivori Polite who's in the bathroom, they know

1 | their uncle gets hit but they don't hear it, they
2 | don't see it. Octavia doesn't hear anything, she
3 | gets hit. The reason these women don't hear
4 | anything when their uncle tragically was shot, was
5 | because the shot came from a distance. And what
6 | do we know about the speed of sound? It takes a
7 | little time to get there.

8 | By the time the bullet got to Mr. Jones,
9 | the sound comes later, that's why they didn't hear
10 | it. That tells you that the bullet came from a
11 | distance. And what did the other SLED fellow tell
12 | you, the trace guy, they can do? They do
13 | recreations on muzzle-to-point of impact and walk
14 | it back and these are the exact type of things
15 | they do. They were never asked to do that in this
16 | case. We're left to guess just on the statements,
17 | in fractious statements that don't marry up with
18 | each other from various witnesses who can't even
19 | place themselves in certain places.

20 | We have the laser sight.

21 | I think I just cut it on.

22 | We have the laser sight. Who was out
23 | there? We know Jaquwn Brewer's gun because I
24 | asked Deon Stevenson, that's the fellow with the
25 | drug record and carrying the gun record that

1 | approached him. He said, No, man, he didn't have
2 | a -- he didn't have a laser on his gun. This fits
3 | either -- I think he said it fits under -- he had
4 | a pistol that attaches to it; it came off of the
5 | gun. Where was this laser sight found in relation
6 | to anything? I've got no idea; it's not
7 | documented.

8 | Ms. Gardner had you believe he was way over
9 | here with this. Could've been found here,
10 | could've been found right there, here. We don't
11 | know. But what we do know, through Investigator
12 | Chapman, is that he came from this side. This is
13 | the SUV. This came from the driveway, this shell
14 | casing, about sixty feet, twenty yards from the
15 | front driveway of the Semper Fi Club. Don't know
16 | if it's got Dominique Middleton's fingerprint on
17 | it, touch DNA, or would match a gun that Dominique
18 | Middleton had.

19 | The other thing that is frustrating, if
20 | nothing else -- and life threatening to Mr.
21 | Brewer -- they never interviewed Dominique
22 | Middleton. They never looked for him even to talk
23 | to him. When he's been identified by two of the
24 | witnesses of having a laser sight and shooting out
25 | there. They get on Jaquawn about the gun. They

1 | never did a search warrant for his house, they had
2 | him in jail, but they never interviewed, care
3 | about, charge, talk to Dominique Middleton who
4 | they knew was shooting in the parking lot.

5 | They dropped the ball and now Mr. Brewer's
6 | holding this. He stands in jeopardy of being
7 | convicted as a murderer on this evidence.

8 | Wouldn't you have liked the State to say,
9 | Hey, Mr. Middleton, can you chat with me for a
10 | minute? Didn't do it. The reason they didn't do
11 | it is because originally, they thought they just
12 | had a slam dunk case. One shooter inside the
13 | club, two people were shot. Well, it had to be
14 | Mr. Brewer, it couldn't have been anybody else.
15 | That's where they were wrong. They found out
16 | later when they actually hear their witnesses, Oh
17 | boy, he was still alive and Mr. Brewer was out of
18 | the club.

19 | Now, they've molded testimony to say Mr.
20 | Brewer was over here on this door that doesn't
21 | open all the way up, next to the DJ booth with the
22 | two DJs that they don't have and Mr. Bright who
23 | says there's no shots fired inside the club.

24 | Because if he came out here into there, Mr.
25 | Bright would have never heard that because it

1 | would have been clearly from outside the club, not
2 | right by him and through the door. Investigator
3 | Chapman says, Well, why didn't you -- there's no
4 | fingerprints, Well I've never had one that they
5 | found fingerprints on. Well, if you don't send
6 | them in, you're not going to have one that comes
7 | back with fingerprints. At least try. That's why
8 | we have these forensics.

9 | As I said, hopefully, gone are the days
10 | that we convict young men in this country based on
11 | testimony like this. I would submit that there
12 | are lots of reasonable doubts as to how and where
13 | Mr. Briar -- Brewer could've shot Henry Jones.

14 | And Henry Jones' killer should be brought
15 | to justice. And part of that is asking Dominique
16 | Middleton, Let us talk to you. Let us -- see if
17 | we've got a gun for you. Let's look at the shell
18 | and the shell casings that we found over here.
19 | And we know Mr. Brewer was never over here, if you
20 | believe Ms. Gardner's testimony, but there dadgum
21 | sure is a bullet casing that's down in front of
22 | that door, sixty feet out, twenty yards out as the
23 | investigator said.

24 | John Doctor was very, very clear in his
25 | testimony where he was when he saw the red light

1 on him and where he went, right out of that line
2 of fire. Right back into the bathroom. As I said
3 in this case, you didn't see me object to a lot of
4 evidence; there wasn't any reason to. We know,
5 for example, John Doctor (sic) was shot and he
6 went to the doctor and they took the bullet out of
7 his leg. We know Mr. Jones died. Those aren't
8 things that have a hill of beans to do with this
9 case. That's just the fluff to make it sound like
10 we've got a lot in this case. They don't have
11 anything in this case.

12 They've got Sheena Gardner's statement and
13 some fractured statements from other people and
14 that's it. This is as to the murder charge.

15 Now, if you talk about circumstantial
16 evidence as to the charge of assault and battery
17 of a high and aggravated nature, it sure looks
18 like it; y'all talk about that. That's where you
19 should be able to piece together evidence. Not
20 assault with intent to kill, shooting him down in
21 the leg, but assault and battery of a high and
22 aggravated nature. That's what Jaquwn Brewer's
23 guilty of, if you so find, not to murder. They
24 haven't proven that.

25 The solicitor gave you an example -- the

1 State gave you an example of circumstantial
2 evidence. She said, you notice both of us have
3 the same last name, you'll notice that we're both
4 wearing wedding rings, you'll notice that Jim
5 carries some stuff for me. You'll notice that I'm
6 pregnant. Now, is that circumstantial evidence
7 that they're married? Some. Is that
8 circumstantial evidence that you would find them
9 married beyond a reasonable doubt or would you
10 want to go say, Tell me you're married or say,
11 let's see the marriage certificate; let's see that
12 it's signed. Now I'll say beyond a reasonable
13 doubt, I think you guys are married. Not on that.
14 Because your verdict, whatever it be, you shall
15 forever be married to that verdict from which
16 there is no divorce.

17 If you look back twenty-five, thirty-five
18 years from now, you can't change your mind or
19 think, did I do the right thing. You've got to
20 know because no judge in the world, in the world,
21 can change your verdict. Chief Justice of the
22 Supreme Court of the United States of --

23 MS. BANNON: Objection. Improper
24 representation of the law.

25 MR. NEWMAN: Seventh Amendment of the

1 United States Constitution --

2 THE COURT: Overruled. You can go ahead.

3 MR. NEWMAN: The verdict of the jury shall
4 be held inviolate because mistaking of the law,
5 that might be corrected on appeal, but your
6 verdict is held inviolate. And you may not get
7 the right verdict, but you sure as heck could get
8 the wrong verdict in this case. And that's why
9 that proof standard beyond a reasonable doubt is
10 so important.

11 There are so many holes in this case, the
12 investigation was so sloppy, it wasn't finished up
13 good, and stuff just wasn't done. And sometimes
14 God punishes for things done and sometimes He
15 punishes for things undone, left undone. The
16 State left a lot undone in this case.

17 You saw how Sheena Gardner's demeanor
18 changed when she started getting cross-examined
19 about her prior testimony. She knows that's not
20 what she told investigators because what she told
21 investigators could not happen.

22 And ask yourself, why not one question to
23 Dominique Middleton in this case. Not one.

24 You'll have a lot to think about. I never
25 envy any jury for having to sit in judgement and

1 sit through these. But our constitution, as I
2 said that I believe in, and I'm fairly confident
3 y'all do too, says that the State must prove each
4 and every element of murder beyond a reasonable
5 doubt. They have to prove that it was Jaquwn
6 Brewer that shot Mr. Jones; that it was his gun,
7 his bullet. They can't do that. They can raise
8 some evidence, a little bit here and there, but
9 the burden of proof is not, it smells bad, we
10 think he did it. He might have done it. He's the
11 most likely suspect to have done it. He probably
12 did it. I think he really probably did it, are
13 not good enough. You have to know without
14 hesitation that he did it, that the State proved
15 it and I am not hesitating to act. That I can
16 sign my name or your name, Mr. Foreman, to the
17 verdict.

18 If there are doubts that causes you to put
19 the cap back on that pen for even a moment, then
20 that's a reasonable doubt and you find those, as
21 the judge will tell you, based on the evidence
22 that you've heard, more importantly in this case,
23 the lack of evidence.

24 I know I've talked on for a while. This is
25 Mr. Brewer's life that will be coming into your

1 hands shortly. I appreciate you being here. And
2 as I said, this has got to be a difficult job to
3 sit in judgement. But I ask if you will follow
4 that oath, there's no way that the State has
5 proven this murder case beyond a reasonable doubt.
6 If you follow that oath, I do not believe that you
7 will find Mr. Brewer guilty of an assault with an
8 intent to kill, but a reckless assault, a high and
9 aggravated assault.

10 Mr. Foreman, ladies, gentlemen, thank you.

11 **JURY CHARGE**

12 THE COURT: All right. Members of the
13 jury, it is now my duty to instruct you on the law
14 applicable to this case. And it is -- it is your
15 duty as jurors to accept and apply the law as I
16 now state it to you. Furthermore, it is your
17 exclusive duty to decide all the issues of fact in
18 this case and to determine the effect, value,
19 weight, and truth of the evidence.

20 Both the State and the defendant have a
21 right to expect that you will carefully consider
22 and evaluate the evidence and apply the law of
23 this case to it so that in the end, both the State
24 of South Carolina and this defendant will have
25 received a fair trial.

1 I want you to further understand that when
2 I use the word defendant, I refer to Mr. Jaquwn
3 Brewer. Furthermore, it is important to
4 understand that the State charges the defendant,
5 Jaquwn Brewer with the offenses known as murder,
6 assault and battery with intent to kill, and
7 possession of a weapon during the commission of or
8 attempt to commit a violent crime and assault and
9 battery of a high and aggravated nature. To these
10 charges, the defendant has entered a plea of not
11 guilt. These pleas of not guilt places the burden
12 of proof on the State to prove the guilt of the
13 defendant to you beyond a reasonable doubt.

14 It is valuable to understand that the
15 defendant is presumed under the law to be innocent
16 of these charges. It is a fundamental rule of our
17 law that a defendant irrespective of the
18 seriousness of the charges against him is presumed
19 innocent of the charges for which he is charged
20 unless and until his guilt can be proved by
21 evidence that satisfies you beyond a reasonable
22 doubt. The presumption of innocence is not a mere
23 legal theory or legal phrase. The presumption of
24 innocence is very important and you need to
25 understand that this presumption accompanies the

1 defendant from the time of his arrest and
2 appearance in this court and continues with the
3 defendant even after you retire to the jury room
4 to deliberate.

5 In other words, the defendant receives the
6 benefit of the presumption of innocence until the
7 very end of this trial when you, the jury, will
8 deliberate upon the evidence and decide whether
9 the State has proved his guilt beyond a reasonable
10 doubt.

11 Proof beyond a reasonable doubt is proof
12 that leaves you firmly convinced of the
13 defendant's guilt. There are very few things in
14 this world that we know with absolute certainty.
15 So even in criminal cases, the law does not
16 require proof that overcomes every possible doubt.
17 However, if based on your consideration of the
18 evidence, you are firmly convinced that the
19 defendant is guilty of the crimes charged. You
20 must find him guilty.

21 However, if on the other hand, you think
22 there is a real possibility that he is not guilty,
23 you must give him the benefit of the doubt and
24 find him not guilty. Please understand that
25 reasonable doubt may arise from evidence which has

1 | been presented in the case or from the lack of
2 | evidence in the case. It is your responsibility
3 | to determine whether or not reasonable doubt
4 | exists as to the guilt of this defendant.

5 | I further charge you that the defendant is
6 | entitled to every reasonable doubt arising in the
7 | whole case. If upon any issues of fact essential
8 | to conviction and the verdict of guilty, you have
9 | a reasonable doubt as to how that issue should be
10 | resolved, it would be your duty to resolve that
11 | reasonable doubt in favor of the defendant. Thus,
12 | in summary, it is important to understand that the
13 | defendant is not required to prove his innocence.
14 | Instead, the State is required by law to prove
15 | every essential element of the offenses charged
16 | against the defendant by evidence which satisfies
17 | you of his guilt beyond a reasonable doubt. Only
18 | then can you convict the defendant and find him
19 | guilty.

20 | I further instruct you that the fact that
21 | the defendant in this crime did not testify on his
22 | own behalf is not a factor to be considered by you
23 | in any way in your deliberations and in your
24 | consideration on the question of guilt or
25 | innocence. In this regard, the defendant has the

1 constitutional right to remain silent and the
2 exercise of this right must not be considered by
3 you in your deliberations. The fact that the
4 defendant did not testify should not even be
5 discussed in the jury room.

6 The burden of proof as I have stated to you
7 is on the State. The defendant has no obligation
8 to prove his innocence. The burden of proof
9 remains with the State to prove the defendant's
10 guilt beyond a reasonable doubt and the fact that
11 the defendant did not testify is not a factor to
12 be considered by you in deciding the guilt or the
13 innocence of the defendant. When you consider the
14 whole case, if you have a reasonable doubt as to
15 the guilt or the innocence of the defendant, then
16 he is entitled to that reasonable doubt and would
17 be entitled to a verdict of not guilty. However,
18 if upon considering the whole case, you find that
19 the State has proved by evidence which satisfies
20 you of the guilt of the defendant beyond a
21 reasonable doubt, then in such circumstances, it
22 would equally be your duty to convict the
23 defendant and find him guilty.

24 Members of the jury, there are two types of
25 evidence which are generally presented during a

1 trial: Direct evidence and circumstantial
2 evidence. Direct evidence is the testimony of a
3 person who claims to have actual knowledge of a
4 fact, such as an eye witness. It is evidence
5 which immediately establishes the main fact to the
6 proved.

7 Circumstantial evidence is proof of a chain
8 of facts and circumstances indicating the
9 existence of a fact. It is evidence which
10 establishes collateral facts from which the main
11 fact may be inferred. Circumstantial evidence is
12 based on inference and not on personal knowledge
13 or observation.

14 The law makes absolutely no distinction
15 between the weight or value to be given to either
16 direct or circumstantial evidence. Nor is a
17 greater degree of certainty required of
18 circumstantial evidence. You should weigh all of
19 the evidence in the case. After weighing all of
20 the evidence, if you are not convinced of the
21 guilt of the defendant beyond a reasonable doubt,
22 you must find the defendant not guilty.

23 During this trial, you and I had certain
24 duties to perform. As the trial judge, it is my
25 responsibility to preside over this trial and I

1 have the duty to rule on the admissibility of the
2 evidence offered during the process of this trial.
3 In that regard, you are to consider only the
4 competent evidence before you and you are to
5 disregard from your mind any testimony ordered
6 stricken from the record of this case during the
7 progress of the trial if there be any. And you
8 are to consider only the testimony which has been
9 presented from the witness stand together with any
10 exhibits admitted into the record of the case.

11 Furthermore, I have the additional duty to
12 charge you on the applicable law of this case and
13 in that regard, it is your duty to accept and
14 apply the laws I now stated to you. If you have
15 any preconceived ideas as to what the law is or
16 what the law ought to be and it does not agree
17 with what I tell you the law is, you are obligated
18 under your oath to abandon these preconceptions
19 because you are sworn to accept the law precisely
20 as I now state it to you.

21 In this trial, you are the sole and
22 exclusive judge of the facts. Therefore, I ask
23 that you not infer that I have any opinion about
24 the facts in this case from anything that I have
25 said during the course of this trial. In this

1 regard, the law simply does not permit me to have
2 an opinion about the facts. As jurors, it is your
3 duty alone to determine the effect, value, weight,
4 and truth of the evidence presented during the
5 course of this trial.

6 In determining what the facts in this case
7 are, you must judge the credibility, which simply
8 means the believability of the witnesses and the
9 value of weight to be given to their testimony.

10 In making this decision, there are many
11 things that you may and should take into
12 consideration such as, the appearance and manner
13 of the witness on the stand, a characteristic
14 often referred to as the demeanor of the witness.
15 Was the witness forthright or hesitant? Was the
16 witness's testimony consistent or did it contain
17 discrepancies? What was the ability of the
18 witness to know the facts about which he or she
19 testified? Did the witness have any cause or
20 reason to be biased and prejudice in favor of the
21 testimony he or she gave? Was the testimony of
22 the witness corroborated or made stronger by other
23 testimony in evidence or was it made weaker or
24 impeached by some other testimony and evidence?

25 Furthermore, a person who has a past

1 criminal record is competent to testify during a
2 trial. A past record does not affect the ability
3 of that witness to testify. The past record may
4 only be considered by you, if at all, in deciding
5 the witness's believability. Remember, you are
6 the sole judges of the facts in this case and the
7 believability of any and all witnesses.

8 Furthermore, you have heard testimony from
9 persons described as experts. Persons who by
10 their education and experience have become an
11 expert in some field may state their opinion on
12 matters in that field and they may also state
13 their reasons for their opinion. You should judge
14 expert opinion testimony just as any other
15 testimony. You may accept it or reject it and
16 give it as much weight as you think it deserves
17 considering the witness's education and
18 experience, the reasons given for the opinion and
19 all the other evidence in the case.

20 Also please understand that the testimony
21 of a police officer is not entitled to more weight
22 than that of any other witness. You are the sole
23 judges of the credibility of the witness and you
24 are not to give more weight to a police officer's
25 testimony solely because he is a police officer.

1 Rather, you should judge an officer's testimony by
2 the same standards that you apply to all other
3 witnesses.

4 Please understand that you have the right
5 to believe a small portion of a witness's
6 testimony and discard the larger portion or
7 vice-versa. You may believe all of a witness's
8 testimony or none. You may believe the testimony
9 of a single witness against that of many or the
10 other way around. In exercising your mental
11 processes and attempting to decide the truth, the
12 law simply requires that you exercise your
13 judgement, your common sense, your sense of logic
14 and reason in your experiences in life. You then
15 apply these attributes to the evidence and apply
16 the law as I now state it to you and thus arrive
17 at a verdict.

18 The defendant is charged with murder. The
19 State must prove beyond a reasonable doubt that
20 the defendant killed another person with malice
21 aforethought. Malice is hatred, ill will, or
22 hostility toward another person. It is the
23 intentional doing of a wrongful act without just
24 cause or excuse and with intent to inflict an
25 injury or under circumstances that the law would

1 infer an evil intent. Malice aforethought does
2 not require that malice exists for any particular
3 time before the act is committed, but malice must
4 exist in the mind of the defendant just before and
5 at the time the act is committed.

6 Therefore, there must be a combination of
7 the previous evil intent and the act. Malice
8 aforethought may be expressed or inferred. These
9 terms express and inferred do not mean different
10 kinds of malice, but merely the manner in which
11 malice may be shown to exist. That is either by
12 direct evidence or by inference from the facts and
13 the circumstances which are approved.

14 Express malice is shown when a person
15 speaks words which express hatred or ill will for
16 another or when the person prepared beforehand to
17 do the act which was later accomplished. For
18 example, lying in wait for a person or any other
19 acts of preparation going to show that the deed
20 was within the defendant's mind would be expressed
21 malice.

22 Malice may be inferred from conduct showing
23 a total disregard for human life. Inferred malice
24 may also arise when the deed is done with a deadly
25 weapon. A deadly weapon is any article,

1 | instrument, or substance which is likely to cause
2 | death or great bodily harm. Whether an instrument
3 | has been used as a deadly weapon depends on the
4 | facts and circumstances of each case. The
5 | following are examples of instruments which may be
6 | deadly weapons: A pistol, shotgun, a rifle, a
7 | dirk, a dagger, a knife, a slingshot, metal
8 | knuckles, a razor, gasoline, or firebombs, or
9 | molotov cocktail and lighter fluid. A gun may be
10 | a deadly weapon even if it is not operating.

11 | The defendant has been charged with assault
12 | and battery with intent to kill. In order to
13 | prove assault and battery with intent to kill, the
14 | State must prove beyond a reasonable doubt that
15 | the defendant committed an unlawful act of a
16 | violent nature to the person of another with
17 | malice aforethought.

18 | An assault occurs when a person unlawfully
19 | attempts or offers to commit a violent injury upon
20 | another person. An act of present ability to
21 | complete the injury. An assault is the
22 | intentional creation of a reasonable fear of
23 | immediate bodily harm. It is not necessary that
24 | the attempted injury or harm actually take place.
25 | For example, if I walk up to you and when we are

1 within arms reach, I draw back and hit you, that
2 is an assault. A battery is an unlawful touching
3 of another person by a person who has committed
4 the assault. And unlawful touching can be caused
5 by a person or the accused body or by any object
6 the accused puts in motion. A battery is a
7 completion of the assault by using or applying
8 force to another person, however slight, in a
9 rude, angry, or resentful manner, without legal
10 justification for doing so. Using my earlier
11 example, if I carry through with the assault by
12 hitting you then that is battery.

13 Earlier in this charge, when I charged you
14 on elements of murder, I defined malice
15 aforethought. That same definition for malice
16 aforethought applies to the element in this charge
17 for assault and battery with intent to kill.
18 However, in regards to this charge for assault and
19 battery with intent to kill, malice may be
20 inferred only from conduct showing a total
21 disregard for human life and not from the use of a
22 deadly weapon as stated previously. A specific
23 intent to kill is not an element of assault and
24 battery with intent to kill, but there must be a
25 general attempt to commit serious bodily injury.

1 Intent means intending the result that
2 actually occurs, not accidentally or involuntary.
3 Intent may be shown by acts and conduct of the
4 defendant and other circumstances which you may
5 naturally and reasonably infer intent. Evidence
6 of the character of the assault and character of
7 instrument use, the manner in which it was used,
8 the purpose to be accomplished, and the resulting
9 wounds or injuries may be considered in
10 determining intent with which the assault was
11 committed. Intent may be inferred when it is
12 demonstrated that the defendant voluntarily and
13 willfully commits and act. The natural tendency
14 of which is to destroy another's life.

15 If you find that the State has not proven
16 that the defendant is guilty of assault and
17 battery with intent to kill, you must then
18 determine whether the State has proved that the
19 defendant is guilty of assault and battery of a
20 high and aggravated nature which includes all of
21 the elements of the assault and battery with the
22 intent to kill as previously stated except it does
23 not include malice aforethought.

24 In addition, the State must prove beyond a
25 reasonable doubt an aggravating circumstance.

1 Assault and battery of a high and aggravated
2 nature is an unlawful act of violent entry to the
3 person of another accompanied by circumstances of
4 aggravation. Earlier in this charge, when I
5 charged you on the elements of assault and battery
6 with intent to kill, I've defined assault and
7 battery. Those same definitions for assault and
8 battery apply through the elements of assault and
9 battery of a high and aggravated nature. In this
10 regard, the State must also prove a circumstance
11 of aggravation.

12 Circumstances of aggravation include the
13 use of a deadly weapon, the intent to commit a
14 felony, the infliction of serious bodily injury, a
15 great disparity between the ages or physical
16 conditions of the parties, a difference in the
17 gender of the parties, the taking of indecent
18 liberties with a female through the use of force,
19 the purposeful infliction of shame and disgrace
20 and the resistance of lawful authorities. These
21 are only examples of circumstances of aggravation.

22 The defendant is also charged with the
23 possession of a weapon during the commission of or
24 attempt to commit a violent crime. The State must
25 prove beyond a reasonable doubt that the defendant

1 was in the possession of a firearm or physically
2 displayed what appeared to be a firearm during the
3 commission of a violent crime. A firearm means
4 any machine gun, automatic rifle, revolver,
5 pistol, or any weapon which is designed to or may
6 be readily converted to expel a projectile. In
7 order to find the defendant guilty of possession
8 of a weapon during the commission of a violent
9 crime, you must first find the defendant guilty of
10 either committing a violent crime or attempting to
11 commit a violent crime. Murder, assault and
12 battery with intent to kill, and assault and
13 battery of a high and aggravated nature are
14 violent crimes.

15 Ladies and gentlemen, I am now drawing near
16 the end of my charge and I want you to clearly
17 understand that you are not partisans or advocates
18 for the State of South Carolina or this defendant.
19 You do not serve as heroes to reward your friends
20 or punish your enemies. In this regard, you have
21 been selected by the State and this defendant to
22 be fair and impartial jurors. It is your duty by
23 your joint deliberations to determine the truth in
24 this case giving to this defendant the benefit of
25 every reasonable doubt on each and every issue.

1 Then to the facts which you determine to be true,
2 you should take and apply the law which has been
3 given to you by this Court and thus arrive at a
4 verdict which speaks the truth in this case. In
5 fact, the word verdict, which accurately
6 translated from the Latin derivative means a true
7 saying. Thus when you have accomplished these
8 responsibilities, you will have satisfied your
9 oath as jurors and you will have discharged your
10 duty to this Court.

11 Now, Ms. Bailiff, if you would hand the
12 foreman his verdict form, I would appreciate it.

13 Now, Mr. Foreman, regarding the verdict
14 form, you must render a verdict on the charges in
15 this case -- these charges. If the State has
16 failed to prove the guilt of the defendant beyond
17 a reasonable doubt, your verdict would be two
18 words, not guilty. Likewise for these charges, if
19 the State has proved the guilt of this defendant
20 beyond a reasonable doubt, your verdict would be
21 one word, guilty.

22 Mr. Foreman, once a decision has been made,
23 just check whichever choice is your verdict, then
24 sign and date the verdict form. The verdict that
25 you render in this case must be the verdict of

1 each and every juror. It must be your unanimous
2 verdict. All twelve jurors must agree on the
3 verdict which you authorize the foreman to write
4 for the jury.

5 Mr. Foreman and members of the jury, I want
6 you to further understand that the order in which
7 the choices of verdict appear on the verdict form
8 are not suggestive of any verdict on the part of
9 this Court. The verdict in this case is to be
10 determined by you, the jury, and not this Court.
11 Furthermore, please understand that even though I
12 have given the verdict form to the foreman, it is
13 not his verdict alone. It is the verdict of all
14 twelve of you and I emphasize again, it must be
15 unanimous.

16 I now ask that you please retire to the
17 jury room but do not begin your deliberations
18 until you are told to do so. The law requires
19 that I now check with the attorneys and make sure
20 that this charge has been given correctly. After
21 I have checked with the attorneys, the bailiff
22 will bring in the items of evidence and instruct
23 you to begin your deliberations.

24 Also should you have any questions during
25 your deliberations, you must put them in writing

1 and send them to me by the bailiff.

2 Furthermore, once you have reached your
3 verdict, please knock on the jury room door and
4 ask the bailiff to advise the Court that you have
5 reached a verdict and we will return to the
6 courtroom as promptly as possible to dispose of
7 this case.

8 Now, if you would go into the jury room,
9 but do not begin your deliberations.

10 (WHEREUPON the jury left the courtroom at
11 4:14 p.m.)

12 THE BAILIFF: The jury is clear, Your
13 Honor.

14 THE COURT: Any objections to the charge
15 given from the State?

16 MS. BANNON: No, Your Honor.

17 THE COURT: How about from the defense?

18 MR. NEWMAN: No objections, but I would ask
19 for an addition, Your Honor, and I apologize, it
20 skipped by me. I request a charge that -- I know
21 it's -- the way the verdict form is, but request
22 the charge that each charge stand on its own; that
23 they can find the defendant guilty of all three of
24 the indictments, two of the indictments, one, or
25 none.

1 THE COURT: I don't have a problem with
2 that, you?

3 MS. BANNON: Your Honor, I think that it's
4 clear from the verdict form and they don't need to
5 be told again.

6 THE COURT: I think I'm going to leave it
7 just like it is. I've never had any trouble
8 before.

9 MR. NEWMAN: I understand -- let the record
10 reflect --

11 THE COURT: All right. Y'all want to take
12 a look at the evidence? Review it, make sure
13 everything is in order to put on the record if it
14 is or is not.

15 MR. NEWMAN: We did this already.

16 THE COURT: You did? Just go ahead and do
17 it again.

18 MR. NEWMAN: Okay.

19 THE COURT: To make sure.

20 (WHEREUPON the exhibits were prepared.)

21 THE COURT: Let's just put it on the
22 record.

23 For the State, is everything in order as
24 far as evidence goes.

25 MS. BANNON: Yes, Your Honor.

1 MR. BANNON: Yes, Your Honor.

2 THE COURT: What about from the defense?

3 MR. NEWMAN: Yes, sir. That's what has
4 been introduced.

5 THE COURT: All right. If we could send it
6 all back, bring out the alternates and tell them
7 to begin.

8 THE BAILIFF: Bring the alternate back?

9 THE COURT: Yes, sir.

10 THE BAILIFF: All right.

11 MS. BANNON: Judge, may I approach?

12 THE COURT: Sure.

13 MS. BANNON: After you dismiss the
14 alternate, are you inclined to take pleas?

15 THE COURT: Sure.

16 MS. BANNON: Thank God. We're a little
17 backed up over there.

18 MR. NEWMAN: Your Honor, are we at ease?

19 THE COURT: We are.

20 MR. NEWMAN: I have some pending matters in
21 Courtroom 2.

22 THE COURT: All right.

23 MR. NEWMAN: If y'all need me, I'll be next
24 door if that's good with you, sir.

25 THE COURT: You did a good job and the

1 | solicitor did a good job as well.

2 | MR. NEWMAN: Thank you, Your Honor.

3 | MS. BANNON: Thank you, Your Honor.

4 | (WHEREUPON the alternate juror was
5 | dismissed.)

6 | (WHEREUPON it was reported to the Court
7 | that there was a question.)

8 | **JURY QUESTION**

9 | THE COURT: The question says, What
10 | qualifies: To intent to kill? Give examples. I
11 | think I'm just going to copy the charge and give
12 | them the charge. That way they can just go
13 | through it like a dictionary.

14 | MR. NEWMAN: Are you going to copy the
15 | charge on the ABWIK and the ABHAN?

16 | THE COURT: Just the whole charge from
17 | beginning to end.

18 | MS. BANNON: That's fine with the State.

19 | MR. NEWMAN: Probably the easiest way is to
20 | give them that charge and then the next question
21 | is, Well, can you give us the definition of
22 | something else.

23 | THE COURT: Sure. She's printing it now.

24 | MR. NEWMAN: I have an unblemished copy if
25 | you need it.

1 THE COURT: That's okay.

2 MR. NEWMAN: I have it to -- I did make a
3 note on the last page at the end of the charge.
4 The rest of it was just your instruction about a
5 unanimous verdict.

6 THE COURT: Do you have --

7 MS. BANNON: I think if we just print a
8 whole brand new one, that might be good for
9 everyone.

10 MR. NEWMAN: Why don't you just print the
11 last page and save some time? This is everything
12 but the very last page.

13 MR. BANNON: I think I have a completely
14 unblemished copy if you want to take a look at it.

15 MR. NEWMAN: You must find him guilty at
16 all cost. (Laughter).

17 Unblemished.

18 THE COURT: All right. Why don't you
19 staple that together.

20 (WHEREUPON the jury charge was marked as an
21 exhibit and sent back to the jury room.)

22 MR. BANNON: Your Honor, may I approach
23 briefly.

24 THE COURT: Yes, sir.

25 (WHEREUPON there was a bench conference out

1 of the hearing of the Court Reporter.)

2 (WHEREUPON Court was at ease while the jury
3 resumed deliberations.)

4 (WHEREUPON it was reported to the Court
5 that the jury had a question.)

6 **JURY QUESTION**

7 THE COURT: All right. It says, If the
8 jury cannot reach a 12-0 verdict on a given
9 charge, can he be retried on that charge.

10 MR. NEWMAN: I'm sorry, I missed the first
11 part, Judge.

12 THE COURT: If the jury cannot reach a 12-0
13 vote -- a unanimous vote -- on a given charge, can
14 he be retried on that charge?

15 How do you all want me to respond.

16 MR. NEWMAN: The legal answer is yes,
17 obviously. I would think that that's what you
18 tell them, what the law is; or option number two
19 is the Allen Charge, but in the situation of an
20 Allen Charge, even though they don't do King
21 charges anymore, I would ask for a King charge in
22 conjunction with an Allen Charge.

23 THE COURT: What do y'all want me to do? I
24 hate to given them an Allen Charge. It sounds
25 like they've got everything worked out maybe, but

1 one.

2 MS. BANNON: Well, Your Honor, I think if
3 we just responded with a yes, that wouldn't really
4 get us anywhere. I think it seems like an Allen
5 Charge would be the appropriate response to the
6 question.

7 THE COURT: I could do it either way,
8 actually.

9 MR. NEWMAN: The defense would move for the
10 legal answer is, Yes. Because it sounds like
11 they're deadlocked by just the --

12 THE COURT: On something.

13 MR. NEWMAN: On something, sure. It sounds
14 like they've got a verdict on something and
15 deadlocked on something else. Under those
16 circumstances, I would think that's what the
17 answer is. The answer is, Yes.

18 THE COURT: I think it is, too.

19 You want to do that and see where it goes?

20 MR. BANNON: Yes, Your Honor, that would be
21 fine.

22 THE COURT: All right. That's what I will
23 do.

24 (WHEREUPON the note was marked as an
25 exhibit.)

1 THE COURT: We'll be at ease until we hear
2 from the jury.

3 (WHEREUPON Court was at ease while the jury
4 resumed deliberations.)

5 (WHEREUPON it was reported to the Court
6 that the jury had a question.)

7 **JURY QUESTION**

8 THE COURT: I have a third question.

9 Jurors request photos of parking lot. May
10 be on disk. Shell casings.

11 MS. BANNON: I don't think we have them
12 printed out, Your Honor, but I believe it is on
13 Disk, 12.

14 THE COURT: Check and make sure.

15 MS. BANNON: Okay, Jared. If you want to
16 look, I have a copy of 12 on my computer.

17 THE COURT: Do they have a computer? This
18 is just on a disk?

19 MR. NEWMAN: What number? What evidence?

20 THE COURT REPORTER: It's 12.

21 MR. NEWMAN: No. 12.

22 (WHEREUPON the attorneys were conferring.)

23 THE COURT: Is that it? State's No. 12?

24 MR. NEWMAN: Yes.

25 THE COURT: And it's on a disk?

1 MS. BANNON: It is on a disk, Your Honor.

2 THE COURT: Ms. Clerk, do you have a
3 computer they can use?

4 THE CLERK: We can use mine.

5 THE COURT: Any objections to using her
6 laptop, putting the disk on it?

7 MR. BANNON: No, sir.

8 THE COURT: Why don't you go ahead and put
9 it on your computer.

10 MS. BANNON: It's back in the jury room.

11 THE COURT: How about if she just goes in
12 there and shows them how to do it?

13 MR. NEWMAN: That's all right. If she just
14 takes this in, get it up and running and get it up
15 to photo one and then just show them how to go
16 forward and backwards.

17 THE COURT: Any objection to that?

18 MS. BANNON: No, Your Honor.

19 (WHEREUPON the clerk took the computer back
20 to the jury.)

21 **JURY QUESTION**

22 THE COURT: We've got yet another note. It
23 just says, can we go home tonight and return to
24 continue tomorrow. And I'm going to let them go
25 home. I'm just going to instruct they don't talk

1 about it or investigate it or all that kind of
2 stuff, come back at 9:30 in the morning and start
3 it again. All right.

4 MR. NEWMAN: If you would, Judge, just give
5 them the media instruction.

6 THE COURT: I will.

7 MR. NEWMAN: There was an article in the
8 paper today and I think there was something on TV
9 the other day.

10 THE BAILIFF: The jury is ready to enter.

11 THE COURT: You can bring them on in.

12 (WHEREUPON the jury entered the courtroom
13 at 8:25 p.m.)

14 THE BAILIFF: The jury is present.

15 THE COURT: Thank you very much.

16 All right. Members of the jury, I'm going
17 to let you go tonight and ask if you come back at
18 9:30 in the morning. However, I would ask that
19 you not read the newspaper, don't watch the news,
20 don't get on the internet, and do not investigate
21 this case in any matter whatsoever. If you would
22 just do that for me. Be back at 9:30 in the
23 morning and I don't want you to start your
24 deliberations until all twelve people are in that
25 jury room together. You got that, Mr. Foreman?

1 THE FOREMAN: Yes, sir, I do.

2 THE COURT: All right. All of you come
3 back at 9:30. When all of you are here, you can
4 start again. All right. You are dismissed and
5 everybody else remain seated.

6 (WHEREUPON the jury left the courtroom at
7 8:27 p.m.)

8 THE BAILIFF: The jury is clear, Your
9 Honor.

10 THE COURT: All right. See everybody at
11 9:30 in the morning.

12 MR. NEWMAN: Thank you, Your Honor.

13 THE BAILIFF: Folks, I ask that y'all to
14 keep your seats for just a few minutes and let the
15 jury exit first and we'll get you out right away,
16 okay. I appreciate the favor.

17 (WHEREUPON a recess was observed for the
18 day.)

19

20

21

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24

25

1 State of South Carolina) In the Court
2 County of Aiken) Of General Sessions

3 Indictment No.: 2009-GS-07-1279
4 2009-GS-07-1293
5 2009-GS-07-1296

6 State of South Carolina,)
7 Plaintiff.)

 **ORIGINAL**

8 vs.)

9 Transcript of
Record

10 Jaquwn Brewer,)
11 Defendant.)

Volume IV

12 August 26, 2011
13 Beaufort, South Carolina

14
15 B E F O R E:

16 The Honorable William H. Seals, Jr.,
17 Judge, and a Jury.

18
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INDEX

2		<u>Page</u>
3	<u>Friday, August 26, 2011</u>	
4	Jury began Deliberations.....	692
5	Verdict.....	692
6	Polling of the Jury.....	694
7	Post-Trial Motions.....	699
8	Sentence.....	701
9	Certificate of Reporter.....	708
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1			
2			
3	S-1	Miranda Rights Form.....	234
4	S-2	CD of Interview - Brewer.....	357
5	S-3A	Victim's Wallet.....	133
6	S-4	Victim's Cell Phone.....	218
7	S-5A	Photo.....	132
8	S-5B	Photo.....	132
9	S-5C	Photo.....	132
10	S-5D	Photo.....	232
11	S-5E	Memory Card.....	132
12	S-6	Eight Shell Casings.....	221
13	S-7	Not Entered	
14	S-8	Shell Casing - Next to SUV.....	226
15	S-9	Shell Casing - Floor of Club.....	220
16	S-10	Laser Sight.....	224
17	S-11	Shell Casing - Parking Lot.....	226
18	S-12	CD - Crime Scene Photos.....	252
19	S-13	Not Entered	
20	S-14A	Bullet From Parker's Leg.....	265
21	S-14B	Bullet from Mr. Jones' Head.....	558
22	S-15	Not Entered	
23	S-16	Not Entered	
24	S-17	Lineup Shown to John Doctor.....	443
25	S-18	Lineup Shown to John Doctor.....	442

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
2	S-19A	Flyer for Party.....	299
3	S-20A	Parker's Pants.....	348
4	S-21A	Brewer's Pants.....	351
5	S-22	Trace Evidence Particles.....	590
6	S-23	Not Entered	
7	S-24	Photo.....	133
8	S-25	Photo.....	133
9	S-26	Photo.....	133
10	S-27	Photo.....	133
11	S-28	Photo.....	133
12	S-29	Photo.....	133
13	S-30	Photo.....	133
14	S-31	Photo.....	133
15	S-32	Photo.....	133
16	S-33	Photo.....	133
17	S-34	Photo.....	133
18	S-35	Photo.....	133
19	S-36	Photo	133
20	S-37	Photo.....	133
21	S-38	Photo.....	180
22	S-39	Photo.....	180
23	S-40	Photo.....	180
24	S-41	Photo.....	180
25	S-42	Photo.....	180

<u>1</u>	<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
2	S-43	Photo.....	180
3	S-44	Photo.....	180
4	S-45	Photo.....	180
5	S-46	Photo.....	180
6	S-47	Photo.....	180
7	S-48	Photo.....	180
8	S-49	Photo.....	180
9	S-50	Photo.....	180
10	S-51	Photo.....	180
11	S-52	Photo.....	180
12	S-53	Photo.....	180
13	S-54	Photo.....	180
14	S-55	Photo.....	203
15	S-56	Photo.....	345
16	S-57	Photo.....	346
17	S-58	Photo.....	347
18	S-59	Photo.....	548
19	S-60	Photo.....	548
20	S-61	Photo.....	557
21	S-62	Parker's Statement.....	314
22	S-63	Thrower's Ballistics Report.....	569
23	S-64	Robert's Trace Evidence Report.....	591
24	S-65	Schandl Autopsy Report.....	545
25	S-66	Photo.....	486

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1			
2	S-67	Photo.....	486
3	S-68	Photo.....	486
4	S-69	Photo.....	486
5	S-70	Photo.....	486
6	S-71	Photo.....	486
7	S-72	Photo.....	486
8	S-73	Photo.....	486
9	S-74	Statement of John Doctor.....	439
10	S-75	Head Bust.....	556
11	C-1	Mental Evaluation Report.....	35
12	C-2	State's Exhibit No. 1.....	65
13	C-3	State's Exhibit No. 2	
14	C-4	Jury Question.....	678
15	C-5	Jury Charge.....	680
16	C-6	Jury Question.....	682
17	C-7	Jury Question.....	683
18			
19			
20			
21			
22			
23			
24			
25			

1 (WHEREUPON the jury began deliberations at
2 9:32 the following morning.)

3 (WHEREUPON it was reported to the jury that
4 a verdict had been reached at 11:50 a.m.)

5 **VERDICT**

6 THE COURT: It's my understanding that we
7 have a verdict, but before we bring the jury out,
8 let me mention something especially to all of the
9 people in the audience. I know that there's
10 people here on behalf of the victims, and I know
11 that there are people here on behalf of the
12 defendant. When this jury comes back, they're
13 going to give us their verdict and I don't want
14 them to receive any pressure -- audible pressure
15 from anybody in the audience. In other words,
16 they had to do this job, they're being paid very
17 little to do this job, and they're doing what they
18 think is right.

19 So let me make it clear, if I hear anybody
20 clap or gasp or show any expression that I can
21 hear from anywhere in this courtroom, I'm going to
22 lock you up for ten days period. So I don't care
23 how old you are, how young you are, you're female
24 or male, I don't care. I'm going to lock you up.
25 If anybody has a problem with that, you can leave

1 the courtroom now. Does anybody have any
2 questions about that? If you do, raise your hand
3 because I'm going to hold you in contempt of court
4 if you can't. Everybody understand?

5 That goes for the defendant as well.

6 MR. NEWMAN: We were just talking about
7 that, sir.

8 THE COURT: All right.

9 You can go ahead and bring out the jury.

10 THE BAILIFF: The jury's here, Your Honor.

11 THE COURT: All right. Go ahead and bring
12 them in.

13 (WHEREUPON the jury entered the courtroom
14 at 12:00 p.m.)

15 THE COURT: Mr. Foreman, have you reached a
16 verdict?

17 THE FOREMAN: We have, Your Honor.

18 THE COURT: All right. If you would, hand
19 the verdict forms to the bailiff.

20 Madame Clerk, would you read us the
21 verdict, please.

22 THE CLERK: The State of South Carolina
23 versus Jaquawn Brewer, 2009-GS-719 -- sorry,
24 2009-GS-07-1293 for murder, We the jury find the
25 defendant, Jaquawn Brewer guilty of murder as to

1 Henry Jones.

2 2009-GS-7-1799, We the jury unanimously
3 find the defendant guilty of assault and battery
4 with intent to kill as to Donald Parker.

5 2009-GS-7-19 -- 1296, We the jury by
6 unanimous consent find the defendant guilty of
7 possession of a weapon during a commission -- or
8 attempt to a violent crime.

9 Mr. Foreman, was this your verdict?

10 THE FOREMAN: It was.

11 THE CLERK: If all agree, please raise your
12 right hands.

13 Thank you.

14 THE COURT: Thank you, Ms. Clerk.

15 Is there any further polling from the
16 defense?

17 MR. NEWMAN: Request polling of the jury,
18 Your Honor.

19 THE COURT: All right. It appears, Ms.
20 Clerk, that we need to poll the jury.

21 THE CLERK: Yes, sir.

22 POLLING OF THE JURY

23 THE CLERK: When I call your name, would
24 you please stand.

25 Mr. Foreman, Hugh Okane.

1 (WHEREUPON the juror stood.)

2 THE CLERK: Was this your verdict?

3 THE JUROR: It is.

4 THE CLERK: Is it still your verdict?

5 THE JUROR: It still is.

6 THE CLERK: Thank you, sir.

7 Melvin Brown.

8 (WHEREUPON the juror stood.)

9 THE JUROR: Yes.

10 THE CLERK: Was this your verdict?

11 THE JUROR: Yes, ma'am.

12 THE CLERK: Is it still your verdict?

13 THE JUROR: Yes, ma'am.

14 THE CLERK: Thank you, sir.

15 Elizabeth Brown.

16 (WHEREUPON the juror stood.)

17 THE CLERK: Was this your verdict?

18 THE JUROR: Yes, ma'am.

19 THE CLERK: Is it still your verdict?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: Thank you, ma'am.

22 John Gonzalez.

23 (WHEREUPON the juror stood.)

24 THE CLERK: Was this your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Is it still your verdict?
2 THE JUROR: Yes.
3 THE CLERK: James Hubbard.
4 (WHEREUPON the juror stood.)
5 THE CLERK: Was this your verdict?
6 THE JUROR: Yes, ma'am.
7 THE CLERK: Is it still your verdict?
8 THE JUROR: Yes, ma'am.
9 THE CLERK: James McCready.
10 (WHEREUPON the juror stood.)
11 THE CLERK: Was this your verdict?
12 THE JUROR: Yes, ma'am.
13 THE CLERK: Is it still your verdict?
14 THE JUROR: Yes, ma'am.
15 THE CLERK: Thank you, sir.
16 Whitney McDaniel.
17 (WHEREUPON the juror stood.)
18 THE CLERK: Was this your verdict?
19 THE JUROR: Yes, ma'am.
20 THE CLERK: Is it still your verdict?
21 THE JUROR: Yes, ma'am.
22 THE CLERK: Grace McGilton.
23 (WHEREUPON the juror stood.)
24 THE CLERK: Was this your verdict?
25 THE JUROR: Yes, ma'am.

1 THE CLERK: Is it still your verdict?
2 THE JUROR: Yes, ma'am.
3 THE CLERK: Thank you, ma'am.
4 Leah Ortega.
5 (WHEREUPON the juror stood.)
6 THE CLERK: Was this your verdict?
7 THE JUROR: Yes.
8 THE CLERK: Is it still your verdict?
9 THE JUROR: Yes.
10 THE CLERK: Thank you, ma'am.
11 Nancy Thurston.
12 (WHEREUPON the juror stood.)
13 THE CLERK: Was this your verdict?
14 THE JUROR: Yes, it was.
15 THE CLERK: Is it still your verdict?
16 THE JUROR: Yes, it is.
17 THE CLERK: Thank you.
18 Matthew Weldy.
19 (WHEREUPON the juror stood.)
20 THE CLERK: Was this your verdict?
21 THE JUROR: Yes, ma'am.
22 THE CLERK: Is it still your verdict?
23 THE JUROR: Yes, ma'am.
24 THE CLERK: And William Young.
25 (WHEREUPON the juror stood.)

1 THE CLERK: Was this your verdict?

2 THE JUROR: Yes, ma'am.

3 THE CLERK: Is it still your verdict?

4 THE JUROR: Yes, ma'am.

5 THE CLERK: Thank you, so much.

6 THE COURT: Members of the jury. I want to
7 thank you for your service this week. You have
8 been here, you've been here on time, you've paid
9 attention and you have worked hard and you have
10 fulfilled your duties to this Court and to this
11 state. For that, you have earned a three year
12 exemption from other service in this Court and you
13 will get paid. You will receive a check in the
14 mail.

15 When you do receive that check, I want you
16 to please remember, I did not authorize the amount
17 that they give you; I did not sign that check. It
18 in no way can compensate you for the work you have
19 done this week, but it is a small portion of the
20 county's appreciation.

21 You are dismissed.

22 And if everyone else would remain seated.

23 Have a good weekend.

24 (WHEREUPON the jury left the courtroom at
25 12:08 p.m.)

1 THE BAILIFF: The jury is clear, Your
2 Honor.

3 THE COURT: All right. I'd be glad to
4 entertain any motions from the defense.

5 **POST-TRIAL MOTIONS**

6 MR. NEWMAN: Thank you. The defendant
7 would move for a new trial on all of the charges
8 and renew the motions made during trial,
9 particularly the motions of -- with regard to the
10 playing of the audio tape statement. We believe
11 that that so effected this process in this case,
12 that the defendant did not receive a fair trial
13 based on that.

14 We would ask the Court to reconsider that
15 ruling and to grant Mr. Brewer a new trial based
16 on what we believe is the prejudicial effect of
17 the burden shifting and the other issues that we
18 raised would claim the statement of Mr. Brewer and
19 the statements and hearsay statements introduced
20 through the detective -- or through the
21 Investigator Fraser and Chapman on those -- on
22 that audio tape. And that is our motion, Your
23 Honor.

24 THE COURT: All right. Would you like to
25 respond to that, Solicitor?

1 MR. BANNON: Your Honor, only that we
2 believe that the Court's original rulings were
3 correct and that we would oppose Mr. Newman's
4 motion for a new trial.

5 THE COURT: Okay. Thank you.

6 Those motions are denied.

7 **SENTENCING**

8 THE COURT: Do you have the sentencing
9 sheets prepared.

10 MS. BANNON: We do, Your Honor, and we have
11 given them to Mr. Newman for review.

12 THE COURT: Okay. And are you prepared and
13 ready to go forward with sentencing?

14 MS. BANNON: The State is, yes, Your Honor.

15 THE COURT: All right, Solicitor. Are
16 there any victims that would like to speak for...

17 MS. BANNON: Your Honor, it does not appear
18 so. I would like it known that they have been
19 present every hearing and every step of the way.
20 And they feel that considerable amount of time we
21 were talking with Ms. Jones, the widow, in
22 preparation of this trial, I explained to her the
23 challenges we face with the evidence and the risk
24 you always take when you present evidence to a
25 jury, and I asked her her goals and she said she

1 would like to see life, but she would also just --
2 just like to see that justice is done.

3 Two people were shot that night, one man
4 was killed, and that when meeting with her
5 subsequently, she said something that really
6 struck home to Mr. Bannon and I; that she just
7 wants her family back. That she hasn't had that.
8 She's had to move; she's had to change her life
9 completely. She and Mr. Jones met each other in
10 the seventh grade and they married two years after
11 high school.

12 And this case was originally set for June
13 for trial; it got continued. And what was to be
14 the start of the trial date would have been their
15 twenty-fifth -- twenty-five year anniversary.
16 This is a sad case; there are no winners and the
17 State just asks that --- time be given to Mr.
18 Brewer.

19 THE COURT: All right. Thank you very
20 much.

21 Be glad to hear from you, Mr. Newman.

22 MR. NEWMAN: If it pleases the Court, Your
23 Honor, do you wish us to come around?

24 THE COURT: Sure.

25 MR. NEWMAN: If it pleases the Court, Your

1 Honor. I believe as I told the jury in the
2 opening statement, no matter what happens, this is
3 a tragic case and certainly our hearts go out to
4 the victims in this case; there's no doubt about
5 that. We proceeded the case based on the
6 evidence. I think, quite frankly, I told the jury
7 as to the charge on Mr. Parker -- we even thought
8 there was clear evidence on that; there wasn't an
9 issue on that. The issue as to the murder case,
10 the jury came down and they saw it the way they
11 saw it and that's, as you said, they struggled,
12 they worked hard, they worked for about
13 six-and-a-half hours for about, what, \$20 worth of
14 pay for a few days, \$40 for the week. And I don't
15 think I've ever argued with the jury's verdict. I
16 don't think I can, I don't think it's my place.

17 As to the issues of law, clearly there's
18 maybe review down the road, but I want to make
19 clear to the Court that we don't take exception
20 with the jury's verdict. In twenty-one years of
21 practicing, I never have. That's -- I think they
22 struggled with it and I think they -- they did
23 what they -- as you said -- did what they thought
24 was right after reviewing everything and Mr.
25 Brewer accepts that. He understands that.

1 He and I have had long talks about what a
2 trial is, what it's about.

3 I did have Mr. Brewer -- he's twenty-four
4 years old, he has no substantial criminal record.
5 He has a four year old daughter. He recently,
6 within months before this, had moved -- his mother
7 lives out of state. She lives in North Carolina
8 with her husband, who is not Jaquwn's father, but
9 with her husband. And Jaquwn has traveled back
10 and forth from North Carolina to Yemassee, living
11 in -- in various places. He does have a cousin
12 that lives here in Beaufort County, was living in
13 the Yemassee area. While Jaquwn's been
14 incarcerated, in jail for the approximate two
15 years or so that he has, his child has been cared
16 for by various family members. I think,
17 particularly, the aunt.

18 I wanted Jaquwn tested, I had some
19 questions as to his competency on understanding
20 maybe some of our discussions. You do have the
21 information. It was done in the process according
22 to State versus Blair and I think if you look
23 through that, unfortunately, you'll notice Jaquwn
24 has an overall global assessment of about a
25 sixty-eight which is -- which is a borderline

1 intellectual functioning. It certainly, as they
2 found at MUSC, that he's competent to stand trial,
3 but it certainly is in his lower ranges.

4 You can see he's small in stature. It
5 takes Jaquwn, in our talks, he's a little bit --
6 he'll answer your questions; he's not trying to be
7 evasive, but you can tell it takes him a little
8 bit longer to process information when you ask him
9 a direct question. You'll get an answer and
10 you'll get a direct answer out of him, but it is a
11 little bit slower.

12 Jaquwn, because of his stature and size was
13 unfortunately picked on when he was in his
14 childhood, growing up. Because of his
15 intellectual functioning, he was in special
16 education classes, not all the time; sometimes he
17 would be, sometimes he wouldn't. And, you know,
18 as Your Honor can see, you know, schoolyard
19 bullies tend to pick on smaller people and all
20 that. So Jaquwn's dealt with that during his
21 life.

22 I would ask Your Honor to consider his age,
23 consider the fact that he has a lack of any
24 significant prior record in the sentencing. I
25 understand and Jaquwn understands the charges are

1 | very serious. We think they stem from more
2 | reckless conduct than intentional conduct. I
3 | don't think he intentionally wanted to kill or
4 | wound Mr. Jones particularly in the facts -- you
5 | heard the facts of the case. Looked like Mr.
6 | Jones was a truly innocent bystander. He wasn't
7 | part of any crowd at the party. He was there
8 | basically to tend bar and be in the kitchen, those
9 | type of things. So I would ask Your Honor to
10 | consider the recklessness versus the -- you know,
11 | intentionality, but clearly firing -- firing the
12 | weapon, as the jury found, into a crowded -- into
13 | a crowded place and there's foreseeable conduct
14 | out of that.

15 | I do think that is somewhat distinguishable
16 | from having a motive and plan and setting out
17 | to -- to intentionally kill somebody with that
18 | plan in your mind and as to a particular victim.
19 | Luckily, for Mr. Parker, he was able to receive
20 | excellent medical treatment from Dr. Strohmeyer
21 | who saw it in challenges -- credentials. I've
22 | known him as an excellent excellent orthopedic
23 | surgeon and thankfully, I was glad to hear Donald
24 | when he testified. When they asked him how he was
25 | doing today and he said he was a hundred percent.

1 I would ask Your Honor to run any sentences
2 that you give concurrently in this matter. I
3 would ask you because the sentences, the minimums
4 on the sentences for murder is thirty, I would ask
5 Your Honor to sentence to that and run concurrent
6 what you can in this matter. And if Jaquwn wishes
7 to address the Court, I've opened that opportunity
8 up for him, but I would -- do want to tell the
9 Court as I told you, if you ask him questions, or
10 if he speaks, it may be a little bit slower, I
11 just ask for a little bit of patience.

12 Jaquwn, you want to go on up?

13 THE COURT: Anything you'd like to say?

14 THE DEFENDANT: No, sir.

15 MR. NEWMAN: Thank you.

16 THE COURT: The sentence of the Court in
17 reference to 2009-GS-07-01293 is that the
18 defendant is committed to the State's Department
19 of Corrections for life.

20 In reference to 2009-GS-07-01295 the
21 defendant's committed to State's Department of
22 Corrections for twenty years. That will run
23 concurrent.

24 And in reference to 2009-GS-07-01296, the
25 defendant is committed to the State's Department

1 of Corrections for a term of five years and that's
2 also concurrent.

3 MR. NEWMAN: We understand, sir.

4 MR. BANNON: Thank you, Your Honor. And
5 just administratively, I believe that that
6 conducts our term of court for this week. Thank
7 you, Your Honor.

8 THE COURT: Thank you.

9
10 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5 I, THE UNDERSIGNED, Brenda J. Sigwald,
6 Official Court Reporter for the Fifth Judicial
7 Circuit of the State of South Carolina, do hereby
8 certify that I reported the proceedings in the
9 captioned case in the Court of General Sessions in
10 and for the State of South Carolina on 23rd
11 through the 26th days of August, 2011.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 1 through 707 constitute a true, accurate
14 and complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin,
16 counsel, nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand and seal at Aiken County, this 10th day of
19 August, 2012.
20
21

22 Brenda J. Sigwald
23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020.

000709

WITNESSES

Fraser - BCSO

ARREST WARRANT NUMBER

J347620

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date.

Angela Courtney
6/25/09

VERDICT

Foreperson of Petit Jury

Date

INDICT

DOCKET NO. 2009GS0701279

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

June Term 2009

THE STATE

vs.

Jaquawn Dominique Brewer

Indictment for

Assault and battery with Intent to Kill
(ABWIK)

SC Code 16-03-0620
CDR Code 0014

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C C.C. PLS. and G S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2009GS0701279

FILED

BEAUFORT

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Beaufort County present upon their oath:

Assault and battery with Intent to Kill (ABWIK)

That in Beaufort County South Carolina, on or about May 24, 2009, the Defendant, Jaquawn Brewer, with malice aforethought, did commit an unlawful act of a violent nature upon the victim, Donald Parker, to wit, the Defendant did shoot the victim with a gun, all in violation of the Common Law of South Carolina and Section 16-03-620 of the Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

0-20 yrs

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Beaufort

VS.

Jaquawn Brewer

AKA:

Race: B

Sex: M

Age

24

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault / Assault and battery with Intent to Kill (ABWIK)

INDICTMENT/CASE# 2009GS0701279

A/W#: J347626

Date of Offense 5/23/2009

S.C Code § 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014

☐ 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.

ATTORNEY:

Bannon, Meredith

SC Bar# 77415

Defendant

Attorney for Defendant

SC Bar# 12930

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$, plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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)	\$	\$ 3.70
TOTAL		\$ 133.70

PTUP

days/hours Public Service Employment

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 \$ beginning _____

\$ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date

8-26-2011

000712

WITNESSES

Fraser - BCSO

ARREST WARRANT NUMBER

M055427

ACTION OF GRAND JURY

True Bill

Angela Courtney
Foreperson of Grand Jury

Date: 12/25/05

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS0701293

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

June Term 2009

THE STATE

vs.

Jaquwn Dominique Brewer

Indictment for

Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2009GS0701293

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Beaufort County present upon their oath:

Murder

That in Beaufort County, SC on or about May 24, 2009, with malice aforethought, Jaquwn Dominique Brewer did kill and murder Henry Jones by means of shooting the victim with a gun, and that Henry Jones did die in Beaufort County as a proximate result thereof on May 25, 2009, in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

LINE B10
SUT

000714

STATE OF SOUTH CAROLINA

30 yrs to life

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort

STATE VS

Jaquawn Brewer

AKA:

Race: B Sex: M Age: 24

DOB: SS#

Address

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder / Murder

INDICTMENT/CASE# 2009GS0701293

A/W#: M055427

Date of Offense: 5/24/2009

S.C. Code §: 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §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

Bannon, Meredith

77415

Defendant

Attorney for Defendant

12930

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee. \$ _____

Payment Terms

☐ Set by SCDPPPS

_____ days/hours Public Service Employment

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 \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

☐ 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 (03/2011)

Presiding Judge

Judge Code

Sentence Date

2157

8-26-2011

000715

WITNESSES

Fraser - BCSO

ARREST WARRANT NUMBER

M055428

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: 6/25/09

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2009GS0701296

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

June Term 2009

THE STATE

VS.

Jaquawn Dominique Brewer

Indictment for

**Possession of weapon during commission of
violent crime**

SC Code: 16-23-0490
CDR Code:0549

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I _____
Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

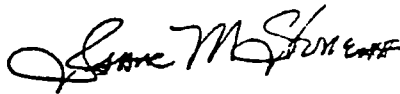
INDICTMENT
2009GS0701296

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Beaufort County present upon their oath:

Possession of weapon during commission of violent crime

That in Beaufort County, South Carolina, on or about May 24, 2009, the Defendant, Jaquwn Dominique Brewer, did possess a weapon, or did visibly display what appeared to be a weapon during the commission, or attempted commission, of murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

FILED
JUN 25 2009
CLERK OF COURT
BEAUFORT COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA *additional 5 yrs if not sent. to life*
COUNTY OF Beaufort
STATE VS.
Jaquawn Brewer
AKA:
Race: B Sex: M Age: 24
DOB: SS#
Address:
City, State, Zip:
DL# SID#
INDICTMENT/CASE#: 2009GS0701296
A/W#: M055428
Date of Offense: 5/24/2009
S.C. Code § 16-23-0490
CDR Code #: 0549
SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life witho

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTORNEY: *Meredith* 77415 Defendant *12930* Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

Recipient.
*Fine:
§ 14-1-206 (Assessments 107.5%) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
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) \$ 3.50
TOTAL \$ 133.50

_____ days/hours Public Service Employment
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 \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk *[Signature]* Presiding Judge *[Signature]*
Court Reporter *[Signature]* Judge Code. 2157
SCCA/217 (03/2011) Sentence Date: 8-26-2011

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Jaquwn Brewer, Appellant.

Appellate Case No. 2012-208487

Appeal from Beaufort County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 27487
Heard April 1, 2014 – Filed January 28, 2015

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

James A. Brown, Jr., of Beaufort, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Deputy Attorney General Donald J. Zelenka, all
of Columbia, and Solicitor Isaac McDuffie Stone, III, of
Bluffton, Respondent.

JUSTICE KITTREDGE: Appellant Jaquwn Brewer was convicted of multiple charges in connection with the shooting of two individuals at a nightclub. This direct appeal concerns the admission of Brewer's unredacted audiotaped interrogation by the police. The admission of Brewer's interrogation was error. We nevertheless affirm Brewer's convictions for assault and battery with intent to kill and possession of a weapon during the commission of a violent crime, for the

error was harmless with respect to these charges. We reverse the murder conviction and remand for a new trial.

I.

On May 23, 2009, a large group of people gathered at the Semper Fi Club (the Club) in Beaufort County, South Carolina, for a party. After midnight, as the party continued, law enforcement officers responded to a shooting at the Club. Two individuals were shot, one fatally. The investigation revealed that the first shooting occurred inside the Club and the second shooting occurred moments later in the Club parking lot.

A.

The First Shooting

Brewer and several of his companions were posing for photographs inside the Club. The photographer, Gary Bright, and several other attendees noticed that Brewer was posing with a handgun. A photograph introduced at trial confirmed that Brewer had a handgun in the front waistband of his pants. One of the organizers of the party, Deon Stevenson, was alerted, and he asked Brewer to take the gun out of the Club. Brewer responded by pulling out the handgun and pointing it at Stevenson's head, which others in the Club witnessed.

Immediately thereafter, Brewer shot his gun inside the Club, hitting Donald Parker, who was standing near the photo booth. There were numerous witnesses to the shooting of Parker. Parker survived the shooting. Brewer was charged with assault and battery with intent to kill and possession of a weapon during the commission of a violent crime as a result of shooting Parker.

B.

The Second Shooting

Patrons, including Brewer, fled the Club after the first shooting. Moments later, more shots were fired outside the Club in the parking lot by at least two individuals, including Brewer and Dominique Middleton. Henry Jones was standing in the entrance to the Club dialing 911 when a stray shot from the parking lot struck and killed him. Brewer was charged with murder for the killing of Jones.

C.
The Investigation

Law enforcement recovered numerous shell casings. One was found on the floor inside the Club, one directly outside the exit, one near the road, and eight on the left side of the parking lot next to a red laser sight. The investigation revealed that the laser sight was part of Middleton's gun. Trace metals and gunshot residue were found on the pants Brewer was wearing. The physical evidence showed that the bullets recovered from the victims were likely fired from a .45 caliber, semi-automatic handgun. However, a comparison of the bullets was inconclusive, and the SLED firearms examiner could not determine whether the bullets were fired from the same handgun. Despite learning from many witnesses that there were at least two shooters in the Club parking lot, investigators pursued Brewer as the only suspect.¹

In an interview at the Beaufort County Sheriff's Office, Brewer waived his *Miranda*² rights and agreed to speak with investigators. The recording of this interview, including the interrogators' hearsay-laden questions and comments, was played for the jury. The investigators informed Brewer that many witnesses observed him shoot both victims, which was true only with respect to the shooting of Parker inside the Club. Brewer denied involvement in either shooting, and approximately twenty minutes into the interview, Brewer told investigators that he wanted to end the interrogation. Yet the interrogation continued.³ The investigators employed various tactics to extend the interrogation, including bringing Brewer's mother into the room and repeatedly telling Brewer that he should "prove himself innocent" by turning in his handgun, all of which was audiotaped and played to the jury, over Brewer's objection.

¹ Investigators claimed they attempted to locate Middleton but were unsuccessful and quickly abandoned their efforts. Middleton was never charged in connection with the shootings.

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

³ The impropriety of law enforcement continuing a custodial interrogation following the accused's exercise of his right to terminate the interrogation is not before us.

We believe it is helpful to examine a sampling of the interrogation. Early on, Brewer stated multiple times he was "ready to go." Brewer reminded the officers that they said he could stop the questioning at any time. When Brewer continued to ask that the interrogation stop, an investigator answered, "No." Brewer finally stated, "Man, I don't wanna talk no more." The investigator responded that if Brewer were innocent, he could prove his innocence by producing his gun. The interrogation's mantra of demanding Brewer prove his innocence continued unabated,⁴ even after Brewer repeatedly said, "I can't say no more."

Brewer moved, on the basis of hearsay, to have the investigators' statements redacted from the audiotaped recording of his interrogation. The trial court denied Brewer's request. Brewer was convicted on all charges. We certified his direct appeal to this Court pursuant to Rule 204(b), SCACR.

II.

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012) (quoting *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001)). Here, the admission of the unredacted audiotaped interrogation was an abuse of discretion.

A.

We acknowledge the propriety of law enforcement interrogation techniques, including misrepresenting the existence and strength of the evidence against an accused, as well as asking the accused to produce evidence voluntarily. *See State v. Von Dohlen*, 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996) ("Both this Court

⁴ Examples include statements to the effect that, "If you didn't do anything, that gun will prove it," and "If that is not the gun that shot somebody, then we can prove it," as well as "If you didn't do anything, you should have that gun. This is it. Prove it. You can prove your innocence." Officers also stated, "Proving yourself innocent should be, you know, that would be my first priority," and "If you didn't shoot, that gun will prove it. That gun will absolutely, positively . . . I'm saying that gun will prove you are absolutely innocent," along with "Help me prove you innocent," and "You're the only one here that—and you just absolutely don't want to prove yourself innocent." The final statement by an investigator was, "The point of my story is you can help yourself. Why don't you?" As noted, Brewer's objection to this evidence was overruled.

and the United States Supreme Court have recognized that misrepresentations of evidence by police, although a relevant factor, do not render an otherwise voluntary confession inadmissible." (citations omitted)). Such matters are typically examined *in camera* when the trial court is making a preliminary determination as to the admission of a confession. See *Jackson v. Denno*, 378 U.S. 368, 380 (1964) ("A defendant objecting to the admission of a confession is entitled to a fair hearing in which both the underlying factual issues and the voluntariness of his confession are actually and reliably determined."). But such evidence will rarely be proper for a jury's consideration.

During the interrogation, investigators frequently referenced *and quoted* many purported eyewitnesses to Brewer shooting both victims. This evidence was hearsay, offered for the sole purpose of proving the truth of the matter asserted, establishing Brewer's guilt to all charges. See *State v. Jennings*, 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011) ("Hearsay is defined as 'a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.'" (quoting Rule 801(c), SCRE)). The suggestion that this evidence served a nonhearsay purpose is patently without merit. See *Ezell v. State*, 345 S.C. 312, 315, 548 S.E.2d 852, 853 (2001) (finding out-of-court statements on an audiotape identifying the defendant as a drug dealer were inadmissible hearsay); see also *Windhom v. State*, 729 S.E.2d 25, 29 (Ga. Ct. App. 2012) (holding that an officer's statement during an interrogation that the victim believed that Appellant had acted in concert with other criminals was inadmissible hearsay); *Smith v. State*, 721 N.E.2d 213, 216 (Ind. 1999) (rejecting the State's argument that during an interrogation police questions and comments designed to elicit responses from the defendant constituted nonhearsay).

Indeed, we find no support in the law for the State's argument that the interrogators' statements were admissible for purposes of context or for the effect the statements had on Brewer. See *United States v. Silva*, 380 F.3d 1018, 1020 (7th Cir. 2004) ("So to what issue *other* than truth might the testimony have been relevant? . . . Allowing agents to narrate the course of their investigations, and thus spread before juries *damning information* that is not subject to cross-examination, would go far toward abrogating the defendant's rights under the [S]ixth [A]mendment and the hearsay rule." (second emphasis added)). The only effect these statements had on Brewer was to make him repeatedly deny shooting anyone. The meaning of these repeated denials is obvious and requires no explanatory context. The effort by the State to rescue the admission of this unmistakable hearsay must be rejected.

We emphasize that today's decision is not a categorical rule that any statement by an investigator during an interrogation is inadmissible at trial. As recognized by the North Carolina Court of Appeals, however, caution must be exercised in the admission of such evidence to ensure that all out-of-court statements are either "admissible for a valid nonhearsay purpose or as an exception to the hearsay rule in order to safeguard against an end-run around the evidentiary and constitutional proscriptions against the admission of hearsay." *State v. Miller*, 676 S.E.2d 546, 556 (N.C. Ct. App. 2009). To that end, "we would like to remind trial courts that the questions police pose during suspect interviews may contain false accusations, inherently unreliable, unconfirmed or false statements, and inflammatory remarks that constitute legitimate points of inquiry during a police investigation, but that would otherwise be inadmissible in open court." *Id.* (noting "the wholesale publication of a recording of a police interview to the jury, especially law enforcement's *investigatory questions*, might very well violate the proscriptions against admitting hearsay or Rule 403" and cautioning trial courts to be vigilant in redacting and excluding problematic portions of law enforcement's investigatory questions (emphasis added)).

Beyond the hearsay error, we wish to briefly comment on the grave constitutional error in the admission of the challenged evidence in this case. Law enforcement's *ad nauseam* insistence that Brewer prove his innocence has *no* place before the jury. It is chilling that we have to remind the State that an accused is presumed innocent and that the State has the burden to prove guilt beyond a reasonable doubt. See U.S. Const. amend. V ("No person . . . shall be compelled in any criminal case to be a witness against himself . . ."); *Sandstrom v. Montana*, 442 U.S. 510, 512 (1979) (noting that the Fourteenth Amendment requires that "the State prove every element of a criminal offense beyond a reasonable doubt").

We now turn to the State's alternative argument that any error was harmless in view of the overwhelming evidence of Brewer's guilt.

B.

The "[i]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice." *Jennings*, 394 S.C. at 478, 716 S.E.2d at 93 (citing *State v. Garner*, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct. App. 2010)). "Such error is deemed harmless when it could not have reasonably affected the result of trial, and an appellate court will not set aside a conviction for such insubstantial errors." *Id.* "Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding;

rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). For example, "[i]mproperly admitted hearsay which is merely cumulative to other evidence may be viewed as harmless." *Jennings*, 394 S.C. at 478, 716 S.E.2d at 93-94 (citing *State v. Blackburn*, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978)). A careful review of the evidence convinces us the error was harmless in connection with the first shooting inside the Club, but not harmless concerning the second shooting in the parking lot of the Club.

The evidence of Brewer's guilt is overwhelming as to the shooting of Parker inside the Club. The State introduced a photograph showing the gun in Brewer's waistband. Corroboration is found in the testimony of the many witnesses who were inside the Club. For example, Bright, the photographer, saw Brewer draw his weapon and point it at Stevenson, one of the organizers of the party. Immediately thereafter, Bright heard gunshots. Several witnesses saw Brewer shooting inside the Club, all of whom testified and were subject to cross-examination. By all accounts, there was only one shooter inside the Club—Brewer. Accordingly, we find that the error in the admission of the interrogators' statements was harmless beyond a reasonable doubt as it relates to the assault and battery with intent to kill and weapon charges. *See Mitchell*, 286 S.C. at 573, 336 S.E.2d at 151 ("Error is harmless when it 'could not reasonably have affected the result of the trial.'" (quoting *State v. Key*, 256 S.C. 90, 93, 180 S.E.2d 888, 890 (1971))); *State v. Johnson*, 298 S.C. 496, 499, 381 S.E.2d 732, 733 (1989) ("The admission of improper evidence is harmless where it is merely cumulative to other evidence." (citing *Blackburn*, 271 S.C. at 329, 247 S.E.2d at 337)).

The evidence regarding the second shooting stands in stark contrast, providing at best only a thin, circumstantial case against Brewer for Jones's murder. The shot that killed Jones came from the parking lot where Brewer and Middleton were both shooting their guns. Despite acknowledging that Middleton was shooting a handgun with a laser sight in the parking lot and that eight shell casings were recovered next to the laser sight,⁵ the lead investigator testified that he "didn't identify any other suspects" aside from Brewer. Given the presence of at least two shooters in the parking lot, and the lack of direct evidence pointing conclusively to Brewer as the one who fired the fatal shot, we hold that the admission of the challenged statements cannot be deemed harmless.

⁵ Those shell casings were never tested for evidentiary value or sent to SLED for analysis.

III.

We hold it was error to admit the challenged statements. We conclude, however, that the error was harmless as it relates to the assault and battery with intent to kill and gun charges. Regarding the murder charge, we reverse and remand for a new trial.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

TOAL, C.J., and HEARN, J., concur. PLEICONES, J., dissenting in a separate opinion. BEATTY, J., concurring in part and dissenting in part in a separate opinion.

JUSTICE PLEICONES: I respectfully dissent and would affirm both of appellant's convictions. I emphasize that my dissent is confined to the sole issue raised by appellant in his brief, which alleges error in the trial court's admission of certain hearsay statements.

In brief, appellant contends that the trial judge erred in admitting eight statements made by the detective during the course of appellant's more than hour long interrogation.⁶ Appellant contends, and I agree, that these

⁶ These are the eight statements, including the time during the interrogation at which they were made, as reproduced in appellant's brief:

- 4:00-4:30 "Word is you have been identified as somebody who did some shooting yesterday." "There's a bunch of people identified you..."
- 5:25-5:39 "When we was at the Shriner's club on May 24, [witness name] and my boyfriend [unknown name] was about to take a picture and he [Appellant] was already taking his picture with his gun up and we asked him what he was doing with it in there and he pointed it at us and he pointed it and he just started shooting everywhere." (Investigator Fraser purportedly reading a statement provided by a witness.)
- 6:06-6:10 "There's a lot people that saw you do it."
- 7:11-7:21 "Well there's too many people that saw you shoot it. ... Everybody's saying the same thing. They confronted you about having the gun in that picture and you started shooting."
- 9:58-10:13 "I've got statements from people that identify you as the shooter by name. ... They called your name... They wrote it in the statements, straight up."
- 12:04-12:08 "But people saw you. They know you. They called your name."

statements should have been excluded since they contain inadmissible hearsay. The vast majority of the eight objectionable statements relate to what the majority refers to as "The First Shooting," and I agree with the majority that the erroneous admission of these statements was harmless in light of the overwhelming evidence of appellant's criminal responsibility for the shooting of Donald Parker.

It appears the only portion of the eight passages that specifically relate to the Second Shooting, which occurred outside the club, is found in the last statement. That statement begins, "They're saying you came out of the club shooting. ... They're saying you were shooting in the air. That's what they are saying. That's exactly what they are saying you did." The remainder of this statement relates back to the Parker shooting. In my opinion, while this statement should have been excluded, its admission was harmless since it only accused appellant of shooting in the air once he left the club, and there is no question that he did fire his gun in the parking lot.

49:29 "All I have to go on is what the witnesses there said. That's it. I've got you with the gun. I've got them saying you are the one that shot.

53:10-55:18 "They're saying you came out of the club shooting. ... They're saying you were shooting in the air. That's what they are saying. That's exactly what they are saying you did. ... They're saying they confronted you. They are like 'What are you doing with the gun.' That's when you pulled out the gun and started shooting. ... That's exactly what they are saying. ... That's what they are saying. ... You're thinking that there's only one person saying you did it. There's a bunch of people; they were there, they saw you and they called your name ... They saw you with the gun."

Appellant seeks reversal solely on the basis of the trial court's refusal to strike these eight statements from evidence. While I agree these statements were inadmissible hearsay, I would affirm both of appellant's convictions as I find the appellant failed to establish prejudice warranting reversal. *State v. Brockmeyer*, 406 S.C. 324, 751 S.E.2d 645 (2013).

JUSTICE BEATTY: I concur in part and dissent in part. I agree that admission of Brewer's interrogation was error. I also agree that the murder conviction should be reversed as a result of this error. However, I depart from the majority's conclusion that admission of the interrogation was harmless as it relates to the charges of ABWIK and possession of a firearm during the commission of a violent crime.

But for the solicitor's numerous instances of burden shifting, via the interrogation tape, I would agree that the error was harmless as to the latter charges. However, the jury was repeatedly bombarded with the unconstitutional notion that Brewer had to prove that he was innocent. In my view, this created a due process structural defect in the trial. Structural defects are not subject to a harmless-error analysis regardless of the evidence presented. *See State v. Rivera*, 402 S.C. 225, 247, 741 S.E.2d 694, 705 (2013) ("[D]espite the strong interests upon which the harmless-error doctrine is based, there are certain constitutional rights which are so basic to a fair trial that their infraction can never be treated as harmless error. These are structural defects in the constitution of the trial mechanism, which defy analysis by harmless-error standards and which affect the framework within which the trial proceeds, rather than simply an error in the trial process itself." (internal quotations omitted) (citing *Arizona v. Fulminante*, 499 U.S. 279, 306-08 (1991))). Accordingly, I would reverse all of Brewer's convictions and remand for a new trial.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

The Honorable William Henry Seals, Jr.

Indictment Number 2009-GS-07-1279, 1293, & 1296
Appellate Case Number 2012-208487

The State,.....Respondent

v.

Jaquwn Brewer,.....Appellant

Published Opinion No. 27487
Heard April 1, 2014 - Filed January 28, 2015

PETITION FOR REHEARING

RECEIVED

FEB 12 2015

S.C. SUPREME COURT

The Appellant respectfully petitions this Court for rehearing of the portion of the ruling in this case which finds the error harmless as to his convictions for Assault and Battery with intent to kill and Possession of a Weapon during a Violent Crime. This petition is based upon this Court's misapprehension of the facts of the case relating to this prejudice analysis. No further review is sought as to the rest of the opinion.

South Carolina law recognizes that harmless error analysis applies to the erroneous admission of hearsay testimony. State v Jennings, 716 SE2d 91 at 93 (SC 2011). However, while such error may be harmless, the prejudicial nature of error is dependent on the "circumstances of the case." State v Mitchell, 336 SE2d 150, at 151 (SC 1985).

Contrary to the opinion, the trial did not involve the testimony of many witnesses who were inside the club *and saw Mr. Brewer shoot Donald Parker*. In fact, not one witness testified that they saw Mr. Brewer shoot Mr. Parker; only that they saw him either with a gun or fire a gun. See ROA, p. 46, l. 6-9; p. 76, l. 11-20; p. 107, l. 21-24; p. 110, l. 3-11; p. 123, l. 22-25; p. 130, l. 25- p. 131, l. 5; p. 207, l. 6-14 & p. 218, l. 10-13.

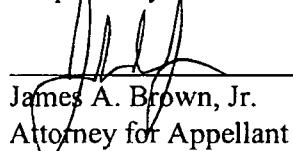
Also, the opinion indicates that there was only one shooter inside the Club but discounts the fact that another shooter shot towards the club. The opinion correctly emphasizes the significance of the second shooter during the prejudice analysis of the second shooting but does not reference this significance as to the first shooting.

Finally, both the majority opinion and dissenting opinion of Justice Beatty discuss burden shifting concerns which were not an issue before the Court on appeal. Nonetheless, the four justices who signed onto these two opinions raised concerns about the burden shifting. These burden shifting concerns are part of the "circumstances of the case." See generally State v Mitchell, 336 SE2d 150, at 151 (SC 1985)(quoted in the harmless error portion of the majority

opinion in the Appellant's case). the erroneously admitted evidence raised concerns about burden shifting. The justices concerns specifically involved the testimony that the Appellant could prove he was innocent of the shootings if he produced his gun. While the burden shifting issue is not the error being ruled upon, these concerns are part of the context of the case which should be considered during the prejudice analysis. In fact, Justice Beatty's dissent elevates this error to one which constitutes a structural defect in the trial. At a minimum, the fact the hearsay testimony was introduced contemporaneous with the burden shifting comments is a circumstance which must be considered in the harmless error analysis even if these comments are not properly before the court or arise to the level of a structural defect.

Therefore, the Appellant respectfully requests that this Court rehear the portion of the opinion regarding the prejudice analysis concerning the first shooting and reverse the Appellant's convictions for Assault and Battery with Intent to Kill and Possession of a Weapon during the Commission of a Violent Crime.

Respectfully Submitted,



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February 11, 2015

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

The Honorable William Henry Seals, Jr.

Indictment Number 2009-GS-07-1279, 1293, & 1296
Appellate Case Number 2012-208487

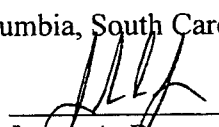
The State, ...Respondent
v.
Jaquwn Brewer, ...Appellant

Published Opinion No. 27487
Heard April 1, 2014 - Filed January 28, 2015

PROOF OF SERVICE

Counsel for Jaquwn Brewer hereby certifies that he has prepared and served a copy of the Petition for Rehearing on this 11th day of February, 2015, upon the State, by depositing a copy, postage pre-paid, in the United States Mail, addressed to Donald J. Zelenka, South Carolina Office of the Attorney General, PO Box 11549, Columbia, South Carolina, 29211.

February 11th, 2015


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FEB 23 2015

S.C. Supreme Court**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Beaufort County
William Henry Seals, Jr., Circuit Court Judge
2009-GS-07-1279; 1293; & 1296
Appellate Case No. 2012- 208487

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

JAQUWN BREWER,

Appellant.

RESPONSE TO PETITION FOR REHEARING

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ATTORNEYS FOR RESPONDENT

Respondent makes a response to the Petition for Rehearing of Appellant Jaquawn Brewer dated February 11, 2015. In the Petition, Brewer contends the Supreme Court erred in finding "harmless error" concerning the admission of the Petitioner's recorded statements in his convictions for assault and battery with intent to kill and possession of a weapon during a violent crime.

The Appellant contends that he is entitled to rehearing in the matter because he claims that, contrary to the Court's opinion, the trial did not involve the testimony of many witnesses who were inside the club and saw Mr. Brewer shoot Donald Parker, the surviving victim of the initial shooting. Petition, p. 2. Appellant contends that not one witness testified that they saw Mr. Brewer shoot Mr. Parker; only that they saw him either with a gun or fire a gun, citing ROA 46, 76, 107, 110, 123, 130-131, 207, 218. Petition, p. 1

Appellant further asserts that while "burden shifting" concerns were not raised in the appeal they are a circumstance of the case, concerning "testimony" that Appellant could prove he was innocent of the charges if he produced his gun. He suggests the Court should consider the error as a "structural error" adopting the dissent of Justice Beatty. Appellant suggests the combination should be considered in the harmless error context.

In determining that the admission of the Appellant's statements was harmless error, the Court concluded:

The evidence of Brewer's guilt is overwhelming as to the shooting of Parker inside the Club. The State introduced a photograph showing the gun in Brewer's waistband. Corroboration is found in the testimony of the many witnesses who were inside the Club. For example, Bright, the photographer, saw Brewer draw his weapon and point it at Stevenson, one of the organizers of the party. Immediately thereafter, Bright heard gunshots. Several witnesses saw Brewer shooting inside the Club, all of whom testified and were subject to cross-examination. By all accounts, there was only one shooter inside the Club—Brewer. Accordingly, we find that the error in the admission of the interrogators' statements was harmless beyond a reasonable doubt as it relates to the assault and battery with intent to kill and weapon charges. See *Mitchell*, 286 S.C. at 573, 336 S.E.2d at 151 ("Error is harmless when it 'could not reasonably have affected the result of the trial.'" (quoting *State v. Key*, 256 S.C. 90, 93, 180 S.E.2d 888, 890 (1971))); *State v. Johnson*, 298 S.C. 496, 499, 381 S.E.2d

732, 733 (1989) ("The admission of improper evidence is harmless where it is merely cumulative to other evidence." (citing *Blackburn*, 271 S.C. at 329, 247 S.E.2d at 337)).

Opinion, p. 7.

I.

Respondent submits that any alleged error in the admission of the unredacted interrogation was harmless error as assault and battery with intent to kill related to the shooting of Donald Parker. There is evidence to support the majority's conclusion of harmless error at the law enforcement questioning of Appellant was harmless because evidence of his guilt in the Parker shooting was overwhelming.

The majority applied an appropriate harmless error standard. "Improper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice." State v. Garner, 389 S.C. 61, 67, 697 S.E.2d 615, 618 (Ct.App.2010). Such error is deemed harmless when it could not have reasonably affected the result of trial, and an appellate court will not set aside a conviction for such insubstantial errors. *Id.* Improperly admitted hearsay which is merely cumulative to other evidence may be viewed as harmless. State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). See State v. Price, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006) (noting the admission of improper hearsay evidence is harmless where the evidence is merely cumulative to other evidence).

**The Trial Proceedings and Evidence Concerning the Identity
of the Parker Shooter and Possession of the Weapon**

The photographer from the event, **Gary Bright**, testified while he was taking pictures at the event, one of the people pulled out a gun. R. 41, 44-45, 60. At that point, someone went to get a security guard. *Id.* Bright stated that he knew the person with the gun previously in

passing and identified the Appellant. R. 41-42. Bright said the security initially came up to him and then went up to the defendant and told him that he could not be here with a gun. Then, Bright stated, the Appellant put the gun on the security guard's head and started walking backwards. The Appellant then pushed it off and then put the gun on promoter Deon Stevenson's head. Bright stated he turned away "because he did not want to see anything like that. R. 45. He stated Deon and the security guard did not have a gun. R. 45-46. At that point, he began hearing gunfire and people running. R. 46. Bright stated he did not see anyone else with a gun that night. He described the Appellant as being short, around five (5) feet tall. R. 47.

Bright stated he remained at the scene to collect his photography equipment. R. 47-48. He stated he heard a lot of gunshots outside the club. The Appellant was not in the club when he returned. R. 48.

Bright identified the gun in the picture with the Appellant. R. 56-57. Bright testified that he heard 3 to 5 shots inside the club and did not see who fired the shots. R. 67. He stated he then heard shots outside the club. Id. He stated he did not see the actual shooting because he turned away "because I didn't want to see anybody get shot." R. 69. He said that right before he saw the Appellant with the gun pointed at Deon. R. p. 69, ll. 7-13.

Houston Chaneyfield testified that he went to the party thrown by Deon Stevenson on May 23. He stated that he went to the party with Lawanda Ferguson (his girlfriend) and his cousin. R. 73. He stated he saw "Queezy" at the party. He stated that he saw Queezy (the Appellant) with something bulging out of his pants that he assumed was a gun and told Deon. R. 74. Houston said he decided to leave when he saw the gun and went out the door after telling

Deon. He was then outside when the shooting started. R. 76. He heard around 7 or 8 shots. R. 77.

Investigator Brian Chapman testified that he reviewed State Exhibit 54 (5-D). R. 87. He noted that the person wearing the Black T-shirt (Appellant) had a weapon located in the front waistband on his right-hand side. He stated the gun appears to be a 1911 .41 caliber handgun. R. 87-88.

Orthopedic surgeon Scott Strohmayr testified about his recovery of the bullet taken from surviving victim Donald Parker's right leg. R. 92-98. **Dr. Thomas Duff** testified about the gunshot wound to the head of the deceased victim, Henry Jones. R. 99-101.

Ivori Polite testified that her uncle Henry Jones was the bartender at the family reunion function. She stated that she knew Brewer from school and that he goes by the nickname "Quan" or "Queezy." R. 107-08. She stated she saw Appellant at the function. She described the shooting starting near the photo booth area. R. 109. She recalled hearing a bunch of shots. R. 110. When they started, she said she ran into the bathroom with her friends until it stopped. R. 110. At that point, Ivori stated she heard Shawnee tell Uncle Henry to call 9-1-1, but then there were 2 more shots and the last one hit him and he fell to the ground. R. 112. She said the bullet had to come through the door. R. 114. She identified Brewer in a photograph making a "Hill Posse" hand gesture. R. 118-21. Ivori confirmed that she never saw Brewer shoot. R. 123.

Donald Parker, the person who was shot in the leg at the function testified. R. 124. He stated he was in the middle of the room when the shooting started. R. 129. He was hit in the right calf. R. 129. He stated he was just standing around socializing, heard a bunch of commotion and as soon as he turned his head he saw fire coming from the gun, "first shot, hit me

in the back of the leg." R. 130, 132. All he saw was the pistol and he did not see who was holding it. R. 131, 135, 136.

Parker stated after he was shot, he heard more gunshots while he was inside the club. Parker recalled being carried to a truck once he got outside and still heard gunshots. R. 138. He stated they were taking him to the hospital when the police stopped them. R. 138-39.

Parker said he had seen the Appellant one time before, but did not recall seeing him that night at the club. R. 140.

Investigator Jeremiah Fraser testified before the jury. R. 144. Investigator Fraser testified that evening he went to the hospital because he knew there would be witnesses there with the two victims. R. 147. He stated Jones was unresponsive and he could not talk with him. R. 148.

Fraser stated that when he located Parker at the hospital, he described to him how he was standing near the photo booth with friends, that there was a commotion behind him, he then turned and saw the gunshots. R. 149. He stated Parker gave him a brief description of the gunman as a black male. He told him that the shooter was the smallest man at the club, with a black shirt and close-cropped hair. R. 150-51. He said he knew the guy and seen him before. R. 151.

He talked with the victim's brother, Ronald Parker (who had recently been drafted by the Seahawks out of Illinois). R. 153-54.

Fraser testified that they interviewed between 40 to 50 people. Fraser stated that they had quickly identified "Queezy" or Jaquawn Brewer as the person who had done the shooting. R. 155. He stated, without objection, this was from quite a few eyewitnesses. R. p. 155, ll. 24-25.

Fraser stated during the investigation Donald Parker gave a different statement than he gave at the hospital. At the point after his release, he said the gunshot and the gun was all he remembered. R. 163.

John Doctor testified that he was with Donald Parker and Ronald Parker at the club. He stated that he was standing by the photo booth and his partner told him "he got a gun?" and they decided to leave. He turns back and sees someone taking a picture. R. 206-07. He stated they then paid no attention and continued to party and then he heard a girl scream "he's got a gun" and then gunshots are heard. R. 207. At that point, everyone scatters. Doctor stated he went into the girls' bathroom. When he comes out, he sees a beam from a firearm in his face. R. p. 207, ll. 15-19. He sees Donald on the ground and Doctor picks him up and carries him to the nearest vehicle to get to the hospital. R. 207.

Doctor testified that he did not see anyone else there with a gun. R. 209.

Doctor testified he did not see the person who was shooting when it started. R. 211. However, Doctor confirmed that he identified the Appellant as a person he saw at the club that night with a gun. R. p. 212-214, l. 25. See also, R. 217-218. He said the only time he saw Appellant with the gun when the pictures were being taken. R. 218.

Doctor confirmed he only saw one gun that night and it was in the possession of the Appellant. R. 221-22.

Deon Stevenson testified that he was in Beaufort for a family reunion involving his girlfriend Sheena. R. 223. He stated they got to the party around 10:30. R. 225. He stated they did not allow guns at the party and were searching people. R. 226.

Deon stated that when he found out someone had a gun at the party, he approached them and told him to take the gun outside. R. 226. This occurred by the photo booth after Houston said to him that the guy (Brewer) had a gun in the club. R. 227.

Deon stated he approached Brewer nicely and told him to take the gun outside and that they did not want problems. R. 227-229. He said Brewer pulled out the gun, cocked it, and put it to his face telling him it was none of his business. Deon described slightly hitting the gun away and Brewer started shooting. R. p. 229, ll. 1-19. Deon said he started running back as Brewer was firing inside the club. R. 230. He stated he found his girlfriend outside. R. 231.

He recalled that there was 5 shots fired inside the club. He said he remembered it because the same gun had been in his face. R. 233. He stated that there was no laser beam on the gun when it was pointed at him. R. 234.

Sheena Gardener testified that she was in Beaufort at that family reunion. She stated that she knew Brewer as "Queezy." R. 240. She stated that someone came up to her at the party and told her Jaquwn had a gun. R. 243. She said she and Deon went over to him and told him to take the gun out of the club. R. 244.

Sheena stated Brewer was with Dominique (Dizzy) Middleton and Brian (Chocolate). R. 244-45. They were taking a picture at the time. When Deon told Brewer to take the gun outside, he responded mind your own business, pulled out the black gun from under his shirt and pointed it at Deon. R. 246. She said Deon swatted the gun from his face and Brewer started shooting. R. 247. She said Brewer was aiming at the ground. R. p. 247, ll. 19-25. However, she said he was aiming at people. R. 248. When he starts firing into the crowd, they run out the doors. R. 248-49.

She said people were running outside and that there was more shooting. R. 249. She stated she saw Brewer shooting outside the club. R. 250. She said Dominique was further back shooting and Jaquwn was up close to the building. R. 250. She said Dominique's gun had a laser. R. 251-52. She said Dominique was shooting up in the air, whereas Brewer was shooting toward the building. R. 252-53. She said she saw only one person, Jaquwn, shooting into the building. R. 254.

She stated Brewer was shooting from the grassy area right in front of the second door. R. 256. She denied that she saw the laser pointed into the club. R. 257-62, 273.

Octavia "Shawnee" Jones testified that the victim was her uncle. She got to the party at 10:30. She said she was in front of the ladies room when the shooting started. R. 278. She said she ran into the bathroom when it started with Ivori. R. 279.

She described Sheena's boyfriend as Deon Stevenson. R. 279. She heard more gunshots and left the bathroom after 5 minutes when it was clear. R. 280. She described talking to her uncle on the ramp to call 9-1-1 and then there was a couple more gunshots and her uncle hit the floor. R. 281, 289-90. She saw "brains and blood" when he fell. R. 282. She said she did not see the man who was shooting. R. 283.

She said that she did not see a red laser sight come into the club. R. 284-86.

Charles Cox testified that he saw a gun in the club that night right before it went off. R. 296. He said he saw the gun while he was dancing and was about to tell his friends to leave and then it went off. He described the person as a dark-skinned shorter fellow. R. 297-98. He felt he saw the person aiming at people. R. 298-99.

Tracey Thrower, a SLED forensic firearms examiner, testified that he analyzed the bullets recovered from the deceased and Donald Parker. R. 332. He opined that the bullet from the deceased was consistent with a .45 auto caliber weapon. R. 335. Concerning the bullet from Parker's leg, he opined that it also came from a .45 caliber automatic weapon. R. 335-37. However, his findings were inconclusive on whether they were fired from the same firearm. R. 337-38. He opined the bullets were too damaged or the firearm did not mark well. R. 337-38. However, he opined the bullets could have come from the same weapon. R. 339.

John Roberts of SLED testified that he analyzed the Appellant's pants and found the presence of gunshot residue. R. 345-350.

At the conclusion of the case, the defense renewed, in general terms, its prior motions. R. 351-52.

Respondent submits that the evidence of guilt as to the Parker shooting was overwhelming and the interrogation comments by law enforcement, if taken as hearsay, were harmless. As to the "comment" when the investigator was reading from a statement from a female about seeing the gun pointed at her boyfriend (Exhibit 2, 5:25), Sheena Gardner, Deon Stevenson's boyfriend testified about seeing the defendant with a gun and having her boyfriend Deon confront him and asked him to remove the gun from the area and points it at him and begins shooting. R. p. 244-249. She also testified about seeing him shooting inside and outside. R. p. 257-262.

As to whether Appellant was seen shooting inside the club, Deon Stevenson declared similarly that he learned about Brewer having a weapon and confronted him with the gun being placed to his head and then seeing the Appellant shooting. R. p. 227-229.

Others testified about seeing Appellant possession of a gun. These included Gary Bright who photographed Appellant with the gun and saw him put the gun to Stevenson head immediately prior to gunfire. R.p. 41-42, 45-46, 56-57. Houston Chaneyfield saw Appellant with the gun and reported it to Stevenson immediately prior to the shooting. R.p. 74-76. John Doctor saw the Appellant with the gun in his possession. R.p. 221-222. Charles Cox saw the gun with a shorter fellow aiming it at people. R.p. 297-299. However, Donald Parker was unable to identify his shooter, only the fact that he saw the gun fire. R.p. 130, 132, 149.

Simply put, there was no reliance by the prosecution upon the investigator's interrogation comments to prove that any witnesses had seen Appellant shooting that night. Instead, the witnesses themselves testified - although some were confronted with their prior statements - and were subjected to cross-examination. Any error in the admission of the interrogator's comments were harmless. The majority was correct in its assessment.

Respondent would note that confidence in the outcome was not undermined by the comments. The trial judge declared he would charge the burden of proof upon the state to show guilt beyond a reasonable doubt. Judge Seals responded that he was going to instruct the jury that the State has the burden of proof and that Brewer does not have any burden of proof. R. 181.¹

Further, Respondent would adopt the reasoning of Justice Pleicones in his dissent¹ concerning harmless error. As he noted the interrogator's comments are minimized by the actual testimony of the witnesses who addressed the individual challenged assertions.

II. Comments About the Prosecution

¹ The final instructions were not at issue. The trial transcript reveals a full instruction on the state's burden of proof beyond a reasonable doubt and presumption of innocence. Trial Transcript 658- 661.

Respondent, however, take issue with the critical comments of the Court and the Dissent to suggest there was an improper motivation on the part of the prosecution to shift the burden of proof by the admission of the entire interrogation. As evident by the argument of the prosecution in this particular case, the particular prosecutors (Meredith A. Bannon and John J. Bannon) did not have to be reminded that an accused is presumed innocent and that the State has the burden to prove guilt beyond a reasonable doubt. They proudly stated that knowledge in their closing argument to the jury. See ROA p. 353, l. 18-25 (**"at no time during this trial or my closing argument will that burden shift to anyone. It remains with the State. It is the way our legal system is designed and that is a job the State is held to."**).

At no time during the argument, did the prosecution ever use the statements of the interrogator as the truth of the matters asserted, rather completely relying upon the actual scene witnesses to satisfy the high burden of proof. ROA p. 358 ("the witness says I saw Jaquwn weith a gun"). At no time did the prosecutors ever stated that the Appellant had to prove his innocence. At no time did not the prosecutor state that Appellant had to testify to show his innocence.

It is unfortunate on this record that the particular prosecutors' understanding of the law and their responsibility was misapprehended by the Court and stated in its written opinion, when their own knowledge, motivation and duty is reflected by their on-the-record statements to the jury reflect otherwise. If rehearing is granted, it should – at the least – correct the mistaken impression that the opinion unfortunately gave.

III. Structural Error Comment

In the dissent, Justice Beatty suggested that the alleged burden shifting comments, presented through the interrogation comments, was a structural error, citing *State v. Rivera*, 402 S.C. 225, 247, 741 S.E.2d 694, 705 (2013). As noted, this issue was not before the Court, and if it is/was, the entire jury instructions must be considered and called up before this Court under SCACR Rule 212(A). See Trial Transcript 658-661.

Nevertheless, the Dissent confuses matters of "structural error" with prejudicial error. The jury was properly charged on the burden of proof on the basis of the record before this Court. ROA 181. The prosecution similarly acknowledged the burden of proof. ROA 353.

The United State Supreme Court recently addressed a similar misimpression in *Glebe v. Frost*, 135 S.Ct. 429 (2014). In *Glebe*, the Court summarily reversed the Ninth Circuit concerning a restriction in a defense summation which the circuit court had contended a shifting the burden of proof. In a criminal trial, whether at the state or federal level, "[t]he prosecution bears the burden of proving all elements of the offense charged, and must persuade the factfinder 'beyond a reasonable doubt' of the facts necessary to establish each of those elements." *Sullivan v. Louisiana*, 508 U.S. 275, 277-78, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993); *In-re Winship*, 397 U.S. 358, 363-64, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) ("The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence—that bedrock axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law

Sullivan provides that "the essential connection to a 'beyond a reasonable doubt' factual finding cannot be made where the instructional error consists of a misdescription of the burden

of proof, which vitiates all the jury's findings." 508 U.S. at 281, 113 S.Ct. 2078. The Court in *Sullivan* also engages in a useful discussion of structural versus harmless errors. *Id.* at 278–82, 113 S.Ct. 2078. The Court cites to *Arizona v. Fulminante*, 499 U.S. 279, 308–10, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991), which discusses the distinction between potentially harmless "trial errors," and never-harmless "structural errors." "Trial errors" are problems which occur during a case's presentation to the trier of fact and may be assessed in the context of other evidence. They may be harmless and are harmless if the error can be examined against the other trial evidence and a determination made that the error was not serious enough that it would have caused the jury to have a reasonable doubt of the defendant's guilt. *See id.* at 310, 111 S.Ct. 1246. In contrast, "structural errors" are "violations ... in the constitution of the trial mechanism," and are "defect[s] affecting the framework within which the trial proceeds" which inhibit the trial's "function as a vehicle for determination of guilt or innocence." *Id.* at 309–10, 111 S.Ct. 1246 (quoting *Rose v. Clark*, 478 U.S. 570, 578, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986)). They are never harmless.

As the Supreme Court has stated: "[W]e have repeatedly recognized that the commission of a constitutional error at trial alone does not entitle a defendant to automatic reversal. Instead, 'most constitutional errors can be harmless.'" *Neder v. United States*, 527 U.S. 1, 8, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 306, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991)). " '[I]f the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any other [constitutional] errors that may have occurred are subject to harmless-error analysis.' " 527 U.S., at 8, 119 S.Ct. 1827 (quoting *Rose v. Clark*, 478 U.S. 570, 579, 106 S.Ct. 3101, 92 L.Ed.2d 460 (1986)). Only in rare cases has this

Court held that an error is structural, and thus requires automatic reversal. In such cases, the error "necessarily render[s] a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence." *Neder, supra*, at 9, 119 S.Ct. 1827 (emphasis deleted).² This evidentiary issue does not rise to that level.

Here, the issue was not the reasonable doubt instruction by the Court, but the admission of evidence. Against that framework, it was not structural error, but alleged error that could be assessed against the entire record. Assuming admission was error, the Court properly found it to be harmless as related to the assault charge.

² See *Neder v. United States*, 527 U.S. 1, 8, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) (citing *Johnson v. United States*, 520 U.S. 461, 468, 117 S.Ct. 1544, 137 L.Ed.2d 718 (1997), in turn citing *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963) (complete denial of counsel); *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927) (biased trial judge); *Vasquez v. Hillery*, 474 U.S. 254, 106 S.Ct. 617, 88 L.Ed.2d 598 (1986) (racial discrimination in selection of grand jury); *McKaskle v. Wiggins*, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984) (denial of self-representation at trial); *Waller v. Georgia*, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984) (denial of public trial); *Sullivan v. Louisiana*, 508 U.S. 275, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993) (defective reasonable-doubt instruction)).

CONCLUSION

For all the foregoing reasons, the petition for rehearing should be denied.

Respectfully submitted,

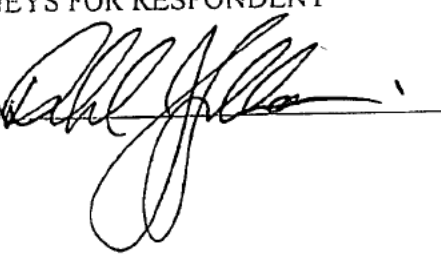
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Attorney General

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Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
S.C. Bar No. 5758

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

By 

Columbia, South Carolina
February 23, 2015

CERTIFICATE OF SERVICE

I, **Donald J. Zelenka**, hereby certify that I have served the Response in the foregoing action by depositing copies in the United States Mail, postage prepaid to:

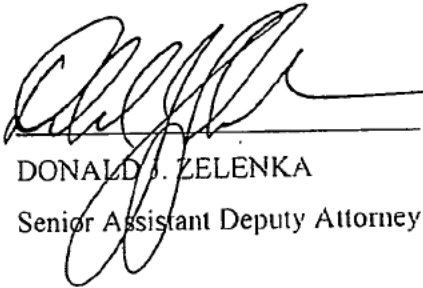
James A. Brown, Esquire

Law Offices of Jim Brown, P.A.

P.O. Box 592

Beaufort, SC 29901

This 23rd day of February 2015.



DONALD J. ZELENKA

Senior Assistant Deputy Attorney General

The Supreme Court of South Carolina

The State, Respondent,

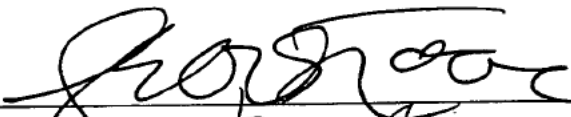
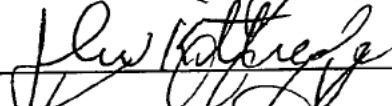
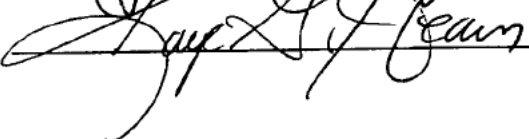
v.

Jaquawn Brewer, Appellant.

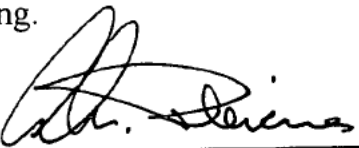
Appellate Case No. 2012-208487

ORDER

The Petition for Rehearing filed in the above entitled matter is denied.

 C.J.
 J.
 J.
 J.

I would grant the Petition for Rehearing.

 J.

Columbia, South Carolina

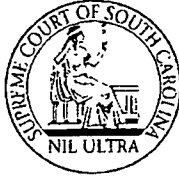
March 5, 2015

cc:

James Arthur Brown, Jr., Esquire

Donald J. Zelenka, Esquire

Isaac McDuffie Stone, III, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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29211

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COLUMBIA, SOUTH CAROLINA 29201
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March 5, 2015

The Honorable Jerri Ann Roseneau
Clerk of Court, Beaufort County
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The State v. Jaquawn Brewer
Lower Court Case No. 2009-GS-07-01293, 2009-GS-07-01295 and
2009-GS-07-01296

Appellate Case No. 2012-208487

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc:

James Arthur Brown, Jr., Esquire

Donald J. Zelenka, Esquire

Isaac McDuffie Stone, III, Esquire

FORM 5

STATE OF SOUTH CAROLINA'

County of Beaufort2015-CP-07-1939
IN THE COURT OF COMMON PLEASJaquawn D. Brewer #347482

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution, 430 Oaklawn Road
Pelzer, South Carolina 29669
2. Name and location of Court which imposed sentence Beaufort County Court of
General Sessions, Beaufort, South Carolina 29901
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) ABWIK - 2009-GS-07-01279

- (b) PWDCVC - 2009-GS-07-01296
- (c) Murder - 2009-GS-07-01293
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 20 year sentence for ABWIK / Date: August 26, 2011 / Term: Concurrent
- (b) 5 year sentence for PWDCVC / Date August 26, 2011 / Term: Concurrent
- (c) Life Sentence for Murder / Date August 26, 2011 / Term: Concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals (certified to S.C Supreme Court)
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed in part, Reversed in part, and Remanded.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 28, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No. 27487
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Attorney
 (b) Ineffective Assistance of Appellate Attorney
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachments
 (b) See Attachments
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Petition for Rehearing
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. The South Carolina Supreme Court, Columbia, S.C. 29201
 ii. _____
 iii. _____

iv. _____
 (c) the disposition thereof: _____

i. Petition for Rehearing Denied.

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition: _____

i. Petition for Rehearing Denied on March 5, 2015

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: _____

i. Not Known

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective Assistance of Counsel claims cannot be raised on Direct Appeals.
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 i. Jared Sullivan Newman, Esq. P.O. Box 515, Port Royal, S.C. 29935
 ii. James A. Brown, Esq. P.O. Box 592, Beaufort, S.C. 29901
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Jared S. Newman Esq. = Arraignment, Trial, Sentencing
James A. Brown, Esq. = Direct Appeal, Petition for Rehearing
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

Reversal of ABWIK and PWDCVC Conviction and Sentence

20. Are you now under sentence from any other court that you have not challenged?

No.

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Beaufort)

VERIFICATION

I, Jaguwn D. Brewer # 347482, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jaguwn Brewer

SWORN to and subscribed before me this 4th
day of August, 2015.

Tamara Conwell (L.S.)
Notary Public

My Commission Expires: 9/25/2023

Applicant's conviction and sentence was in violation of the 5th, 6th and 14th Amendment of the U.S. Constitution and Article I, Section 3 of the S.C. Constitution and laws of this state

- 1) Trial counsel was ineffective for conceding guilt on applicant's behalf, without his ~~consent~~ consent
- 2) Trial counsel failed to have applicant present at a 'critical stage' during deliberation to hear questions from the jury.
- 3) Applicant contended he was deprived effective assistance of trial counsel and due process of law.
- 4) Trial counsel was ineffective for committing gross misconduct. See Tran pg# 679 L. 15-16 and Rule 407.3.4(e)
- 5) Appellate counsel failed to raise applicant's mid-trial Direct verdict motion and post-trial motion for new trial on all charges including ABWIK Tran. pg# 611 L 3-12
- 6) Appellate counsel was ineffective for failure to advocate his cause skillfully on Direct Appeal by not raising the burden shifting issue which was preserved for appeal.
- 7) Self incrimination which is a fifth amendment violation

Counsel was ineffective for conceding guilt on applicant's behalf, without consent.

Applicant's trial counsel violated his Sixth Amendment right to the effective assistance of counsel when he conceded guilt on the applicant's behalf during closing argument without consent or approval, despite applicant taking a jury trial.

Applicant contended that his counsel argued to the jury in closing without his knowledge or consent to find him guilty of ABHANI as opposed to Not guilty on both charges. See Trial Trans pg #657L.6-9

Not even a prosecutor can express such a personal opinion as to the defendant's guilt. *Francis v. Spraggins*, 720 F.2d 1190, citing *U.S. v. Morris*, 568 F.2d 396, 401

What was presented to the jurors and the court as an admission of Applicant's guilt was in fact nothing more than defense counsel's opinion of the case.

See Canon 7 (EC 7-24) of Code of Professional Responsibility of the American Bar Association which provides, The expression by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact.

Counsel breached the duty of loyalty that he owed applicant despite him claiming his innocence. Counsel expressed himself to the jury that the applicant indeed shot the alleged victim Mr. Parker. The jury would also take into consideration that if he shot Mr. Parker, he fired the fatal bullet that killed Mr. Jones. This alleged trial strategy prejudiced the applicant and denied him a fair trial.

While law tradition allocate to counsel the right to make binding decisions of trial strategy in many areas, *Faretta v. CA*. 422 U.S. 806, 95 S. Ct. 2225 (1975) The accused

retains the ultimate authority to make certain fundamental decisions regarding his case such as whether to plead guilty, to testify in his own behalf or take an appeal, Jones v. Barnes, 463 U.S. 745.

When a lawyer concedes a client's guilt during the guilt-innocence phase of trial in spite of their client's plea of not guilty (jury trial request) and without the defendant's consent, counsel provides ineffective assistance of counsel regardless of the weight of evidence against the applicant or the wisdom of counsel's credibility approach strategy Wiley v. Sanders, 647 F.2d 642; A.C. v. Herbison, 315 N.C. 175 (1985).

The gravity of the consequences of a decision to plead or to admit one's guilt demands that the decision remain in the defendant's hand. An attorney cannot deprive his or her client of the right to have the issue of guilt or innocence presented to the jury as an adversarial issue in which the state bears the burden of proof without committing ineffective

assistance of counsel. See *U.S. v. Cronin*, 466 U.S. 648. The Due Process Clause does not permit the attorney to enter a guilty plea or admit facts that amount to a guilty plea without the client's consent. See *Brookhart v. Janis*, 384 U.S. 1, 86 S. Ct. 1245.

Clearly, the trial record is void of applicant's permission for his trial attorney to concede his guilt to any of the two charges he was on trial for can't be valid. Only a defendant can plead himself guilty, not his lawyer. So when a lawyer's admission of their client's guilt amounts to a guilty plea, the record must support Applicant wanted to plead guilty and in fact consented to pleading guilty. See *Brookhart supra*, and *Boykin v. Alabama*, 395 U.S. 239.

Applicant contend that his counsel acted less like an adversary and more like an advocate for the state when he made his unsolicited declaration of applicant's guilt. By effectively assisting the state in trying to convince the jury that Brewer was guilty of ABHAM as opposed to not guilty in his jury trial, counsel caused a breakdown in the

adversarial process that rendered the outcome of the jury trial unreliable and thereby violated applicant's 6th Amendment right to effective assistance of counsel, and violation of his Fourteenth Amendment to the U.S. Constitution. See Trial Trans. pg# 653 L 15-24 and pg# 702 L 69

When a defendant enters a plea of "not guilty" he preserves two fundamental rights. ① He preserves the right to a fair trial as provided by the Sixth Amendment. ② He preserves the right to hold the government to proof beyond a reasonable doubt. Wiley supra. An attorney may not stipulate to facts which amount to the functional equivalent of a guilty plea. If it were not for counsel's error/deficient performance, the outcome of his trial would have been different.

Trial Counsel failed to have applicant present during a 'critical stage' during jury deliberation to hear questions from the jury.

The right to counsel attaches not only at the trial itself, but at all critical stages of the prosecution, even at the deliberation stage of trial. This would involve the physical presence of the accused at a trial-like confrontation with the state, at which the accused/applicant requires the guiding hand of counsel, which did not happen in this case. See Trial Trans pg# 677 L. 18 & pg# 684 L. 11. During jury deliberations, the jury sent a note to the judge that they had a question to ask him. See pg# 678 L. 9-13 for 1st note/question. See also pg# 680 L. 12-14 for 2nd note/question. See pg# 682 L. 9-10.

At no time was the applicant brought back into the courtroom while the questions were asked and answered. Applicant was taken out of the courtroom to use the restroom while the jury started their deliberation, and never returned until after the three (3) questions were asked & answered.

The question is whether that procedure was such a critical stage that the Constitution required the presence of the accused during the questioning and answering of the jury's notes. Trial counsel violated applicant's 6th and 14th amendment rights by not having him present during this critical stage.

A defendant has a constitutional right to be present at every stage of the criminal proceeding against him. *State v. Whaley*, 209 S.C. 463, 351 S.E.2d 34, *In re Dwayne*, 287 S.C. 413, 339 S.E.2d 130. Applicant did not waive his right to be present, and there was no indication in the record that he was disruptive.

Applicant's exclusion during jury deliberation/jury questions to the trial judge deprived him of the means to challenge the sufficiency of the trial judge's inquiry before the determination of impartiality. Applicant was denied his 6th and 14th amendment rights.

Applicant contends he was denied effective assistance of trial counsel and due process of law.

Trial counsel failed to object to the solicitor's numerous instances of burden shifting, via the interrogation tape about the murder, ABWIK and Possession of a firearm during the commission of a violent crime, which were all discussed at the same time on the same tape. The jury was repeatedly bombarded with the unconstitutional notion that Brewer had to prove that he was innocent. This created a due process structural defect in the trial. Structural defects are not subject to a harmless-error analysis regardless of the evidence presented. See State v. Rivera, 402 S.C. 225, 247, 741 S.E. 2d 694, 705 (2013) (Despite the strong interests upon which the harmless-error doctrine is based, there are certain constitutional rights which are so basic to a fair trial that their infraction can never be treated as harmless error. These are structural defects in the Constitution of the trial mechanism,

000770

which defy analysis by harmless-error standards and which affect the framework within which the trial proceeds, rather than simply an error in the trial process itself. (Citing Arizona v. Fulminante, 499 U.S. 279, 306-08 (1991)). Trial counsel had a duty to object to the solicitor's actions and point out to the trial court applicant was being denied a fair trial. See also Strickland v. Washington, 466 U.S. 468, 104 S.Ct. 2052 and its progeny. It goes without saying an accused is presumed innocent and that the state has the burden to prove guilt beyond a reasonable doubt. See U.S. Const. Amend V (No person shall be compelled in any criminal case to be a witness against himself; Sandstrom v. Montana, 442 U.S. 510, 512 (1979) noting that the fourteenth Amendment requires that "the state prove every element of a criminal offense beyond a reasonable doubt". The error transcended the criminal process, Id. at 311, 111 S.Ct. at 1265

Without these basic protections, a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal

Punishment may be regarded as fundamentally fair. *Id.* at 310, 111 S.Ct. 1246 (quoting) Rose v. Clark, 478 U.S. 570, 577-78, 106 S.Ct. 3101, 92 L.Ed. 2d 460 (1986).

A criminal trial marred by a structural defect cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment [resulting from such a trial] may be regarded as fundamentally fair, quoting Arizona v. Fulminante, 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed.2d 302 (1991).

Allowing inadmissible confession testimony can never be harmless error because the impact of confession testimony in any criminal trial is devastating. That argument has been foreclosed however by the Supreme

The main issue at Brewer's trial was the identification of the person who had fired the gun(s). The state argued that Brewer was that person; witnesses testified that it may well have been someone else shooting instead that had a red laser Trial Trans. pg# 412 L. 15-24, pg# 450 L. 8-14, pg# 481 L. 8-9, pg# 501 L. 23-25. The issue affected by the error was not only "central," it was virtually

the only controverted issue at trial - the identification of defendant Brewer as the gunman. The first factor in the three-factor test militates against finding the error harmless.

As an initial matter, a trial court would have to go to extraordinary lengths to cure the harm caused by an erroneously admitted confession. Evidence of a confession can have such a devastating and pervasive effect that mitigating steps, no matter how quickly and ably taken, cannot salvage a fair trial for the applicant Brewer.

A confession is like no other evidence. The defendant's own confession is probably the most probative and damaging evidence that can be admitted against him. Confessions have profound impact on the jury, so much so that the court may justifiably doubt its ability to put them out of mind even if told to do so. The trial judge should have recognized the state's tactic for what it was - an attempt to circumvent the hearsay rule and to infect

the jury with otherwise inadmissible evidence of Brewer's alleged confession. Without the taped confession, the evidence against Brewer on the ABWIK charge was not weighty, as in Brecht, 507 U.S. at —, 113 S.Ct. at 1722, let alone overwhelming as in Correll, 63 F.3d at 1291-92.

Without the taped confession, all such evidence was meaning less, but with the taped confession, this evidence became highly relevant and corroborative of guilt. Applicant was denied his 6th and 14th Amendment right by counsel's failure to object.

Appellate counsel was ineffective for failure to advocate his cause skillfully on Direct Appeal by raising burden shifting.

An appellate advocate deliver deficient performance and prejudice the applicant by omitting a 'dead-bang winner', even though counsel may have presented strong claims on appeal.

In this case, appellate counsel failed to raise the preserved burden-shifting issue to the S.C. Court of Appeals. This issue was not frivolous or weak. This issue was clearly meritorious. See Order of S.C. Supreme Court

At the closing of the defense's case the trial attorney Jared Newman moved the court for a new trial based on the fact the state of South Carolina and its solicitor submitted evidence into Jazquawn Brewer's trial, that shifted the burden of proof from the state to the defendant, Brewer. This tactic misled the jury into believing that defendant Brewer had to prove himself innocent which automatically interquitt against the defendant at trial.

Attorney Jared Newman argued to the court, "Quoting"...

The defendant would move for a new trial on all of the charges and renew the motions made during trial, particularly the motions made during trial in regard to the playing of the audio tape statement. We believe that that so affected this process in this case, that the Defendant did not receive a fair trial based on that. . . . we would ask the court to reconsider that ruling and to grant Brewer a new trial based on what we believe is the prejudicial effect of the burden shifting.

Therefore, the trial court record reveals that trial attorney Jared Newman reserved the issue of burden shifting for the appellate court to review and rule on Direct Appeal.

Appellate Attorney James Brown should have raised this dead bang winner on Direct appeal which involved Brewers' substantial rights. The S.C. Supreme would had to reverse Brewers' conviction for (ABWIK) Assault and Battery with Intent to Kill on indict #2009-65-0701279. The holding in Belcher, case no: 26729 (that burden shifting presumptions or conclusive presumptions deprive a defendant of the (Due Process of Law) and are therefore unconstitutional. Mullaney v. Wilber, 42 U.S. 684 203-04, 955 CT 1881, 44 L Ed 2d 508 (1918)

holding that the Due Process Clause forbids a state from placing the burden on the accused. The S.C. Supreme Court took time to briefly comment on burden shifting in its order "quoting"

we wish to briefly comment on the grave constitutional error in the admission of the challenged evidence in this case. Law Enforcement's and prosecution insistence that Brewer prove his innocence has no place before the jury. It is chilling that we have to remind the state that an accused is presumed innocent and that the state has the burden to prove guilt beyond a reasonable doubt; See U.S. Const. Amend. V (No person shall be compelled in any criminal case to be a witness against himself...) Sandstrom v. Montana, 442 U.S. 510, 512 (1979) Noting that the Fourteenth Amendment requires that the state prove every element of a criminal offense beyond a reasonable doubt.

It is obvious that the S.C. Supreme Court would have reversed Brewer's 20 year conviction and sentenced he received for ABULK had appellate attorney raised the issue.

At the pre-trial hearing, a Herrey (Fred Newman) argued to the court - "Quoting", and then infected throughout the inhouse interrogation and interview of detectives, for the jury to hear; "that you can prove yourself innocent." Get, get us this gun, it'll prove you innocent. You can prove yourself innocent, Help me prove you innocent. JS#76L20-25

I believe it's contrary to the court's charge initially when you charge the jury and finally you're going to tell them; I believe in the general charge that the defendant is under no burden to prove himself innocent at any time. It's up to the state and the state solely to amass and collect evidence and present it to show guilt. JS#77L1-9

Infected throughout the entire interrogation that burden under Sandstrom v. Montana has shifted to the Defendant Breuer. (The jury's going to hear that and question themselves) "Well, if he were innocent, why didn't he come forward with the evidence to prove himself innocent?"

He does not have to do that and you can't un-ring that bell out of the jury's mind. It's wholly infected throughout that audio. These are the four problems I have, Your Honor. Thank you. JS#77L10-17

This ~~audio~~ tape should have never been allowed after knowingly acknowledging the unconstitutional violation of Brewer's rights. The undermining of Brewer's rights to remain silent and then tactically continue on after Brewer plainly stated - "No, I do not want to talk to you any more"

To know his right to remain silent and then use illegal means to try and get Brewer to be a witness against himself.

At the very heart of such subtle and crafty means of a faulty in-house interrogation we find such Miranda rights pushed far beyond constitutional rights.

The Due Process clause of the Fourteenth Amendment guarantees a criminal defendant the effective assistance of counsel on his first appeal as of right. A defendant is constitutionally entitled to the effective assistance of appellate counsel. See Sutherland v. State, 524 S.E.2d 833. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830. See Petition For Rehearing attached

The S.C. Supreme Court based their decision on the merits of hearsay statements only, which is the only issue appellate attorney Brown argued on appeal despite this dead bang winner-burden shifting. See Native v. Wainwright, 811 F.2d 1430, 1438 (11th Cir. 1987) (counsel's failure to raise issue which "was obvious on the record, and must have leaped out upon even a casual reading of the transcript" was deficient performance), and one which would have resulted in a reversal on appeal. By omitting an issue under these circumstances, counsel's performance is objectively unreasonable because the omitted issue is obvious from the trial record. Additionally, the omission prejudices the defendant because had counsel raised the issue, the defendant would have obtained a reversal on appeal.

The applicant can show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial/appeal. Strickland 466 U.S. at 694. Violation of 5th, 6th & 14th Amendments. +

Appellate Counsel WAS ineffective For Not Advocat
His Cause. Skillfully on Direct Appeal on Raising
Self incrimination which IS A fifth amendment
Violation

He could Have argued that prosecution use of the
Video Taped conversation where I Repeatedly told police
Officers I dont want to talk anymore violated my
Fifth amendment Right against Self incrimination
Since my Appellate counsel did Not Raise this issue
It amounted to ineffective assistance of counsel. *combv coyle*
205 F.3d 269. 6th cir 2000 *Noland v Dixon* 808 F. Supp 485
4.D.N.C 1992



ALAN WILSON
ATTORNEY GENERAL

May 13, 2016

The Honorable Jerri Ann Roseneau
Clerk of Court, Beaufort County
PO Box 1128
Beaufort, SC 29901-1128

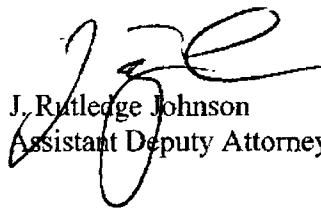
2016 MAY 17 PM 2:49

Re: Jaquwn D. Brewer, #347482 v. State of South Carolina
2015-CP-07-1939

Dear Ms. Roseneau:

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,


J. Rutledge Johnson
Assistant Deputy Attorney General

JRJ/jyb

Enclosure(s)

cc: Jaquwn D. Brewer, #347482

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Jaquwn D. Brewer, #347482,

2015-CP-07-1939

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on August 10, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted by the June 2009 term of the Beaufort County Grand Jury for one (1) count of Assault and Battery with Intent to Kill, one (1) count of Possession of a Weapon During the Commission of a Violent Crime, and one (1) count of Murder (2009-GS-07-1279, -1296, -1293). Jared Sullivan Newman, Esquire, represented him. On August 26, 2011, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable William H. Seals, Jr. sentenced the Applicant as recommended by the State to confinement for twenty (20) years for the count of Assault and Battery with Intent to Kill, five (5) years for the count of Possession of a Weapon During the Commission of a Violent Crime, and life in prison for the count of Murder. The sentences run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to

Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals sent a certified question to the South Carolina Supreme Court. The South Carolina Supreme Court affirmed in part, reversed in part, and remanded. State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015). The Remittitur was issued on March 5, 2015.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
2. "Ineffective Assistance of Appellate Attorney"

For the purpose of this Return, the Respondent incorporates the application, the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and the South Carolina Supreme Court opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegation as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C.

at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C.

535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

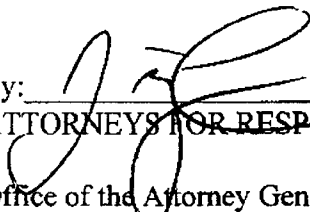
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

MAY 13th, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

2015-CP-07-1939

JAQUWN D. BREWER, #347482,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

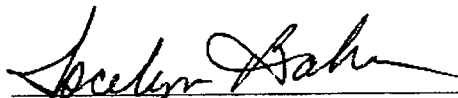
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jaquwn D. Brewer, #347482
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669-8704

DATED this 13th day of May, 2016.


 Jocelyn Baker, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2015-CP-07-01939

JAQUWN D. BREWER

APPLICANT

VERSUS

COPY

STATE OF SOUTH CAROLINA

RESPONDENT

FEBRUARY 13, 2017

TRANSCRIPT OF POST-CONVICTION

RELIEF HEARING

BEAUFORT, SOUTH CAROLINA

BEFORE HON. R. SCOTT SPROUSE, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF APPLICANT
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ON BEHALF OF RESPONDENT
STATE OF SOUTH CAROLINA:

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STATE OF SOUTH CAROLINA
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INDEX

Caption.....	1
Appearances.....	2
Index.....	3
By the Court.....	5

HON. JARED S. NEWMAN

Direct Examination	
By Mr. Falk.....	8
Cross-examination	
By Mr. Neely.....	19
Re-direct Examination	
By Mr. Falk.....	22

JAQUWN D. BREWER

Direct Examination	
By Mr. Falk.....	24

HON. JAMES BROWN

Direct Examination	
By Mr. Falk.....	25
Cross-examination	
By Mr. Neely.....	32

Re-direct Examination By Mr. Falk.....	37

ATTACHMENTS

Certificate of Reporter.....	42

EXHIBITS

APPLICANT:

1 Document Identified as Appellate Brief.....	39

2-13-17 BREWER V STATE - BY THE COURT

1 BEGINNING 9:49 A.M.

2 BY THE COURT:

3 THE COURT: Let's call the first case.

4 MR. NEELY: Thank you, your Honor. The State would
5 call the case of Jaquwn D. Brewer versus the State of
6 South Carolina, Case Number 2015-CP-07-01939. The
7 applicant is currently incarcerated with the South
8 Carolina Department of Corrections pursuant to Beaufort
9 County Clerk of Court's orders of commitment. Applicant
10 was indicted in the June 2009 term by the Beaufort
11 County Grand Jury for one count of assault and battery
12 with intent to Kill; one count of possession of a weapon
13 during the commission of a violent crime; and one count
14 of murder. Those indictment numbers are 2009-GS-07-
15 01279, 01296, 01293.

16 Jared Newman represented applicant at the trial.
17 On August 26, 2011, applicant was found guilty as
18 indicted. He was committed to twenty years for the
19 account of assault and battery with intent to Kill; five
20 years for possession of a weapon during the commission
21 of a violent crime; and life in prison for the count of
22 murder.

23 An notice of appeal was filed on Applicant's
24 behalf. South Carolina Court of Appeals sent a
25 certified question to the South Carolina Supreme Court.

2-13-17 BREWER V STATE - BY THE COURT

1 The Supreme Court affirmed in part, or reversed in part
2 and remanded. Remittitur was issued March 5, 2015.

3 THE COURT: All right. Mr. Newman.

4 MR. FALK: James Falk, your Honor.

5 THE COURT: Oh, Falk. Okay. I've looked at the j

6 MR. FALK: Your Honor, just to sort of summarize,
7 my client has raised claims of ineffective assistance of
8 appellate counsel and ineffective assistance of
9 appellate counsel. And I'm not sure if the State
10 provided you a copy of the opinion in this case, but the
11 Supreme Court opinion in this case, but it's really sort
12 of a road map of where we're asserting our ineffective
13 assistance of appellate counsel is coming out of this
14 opinion right here. There's two points that in the
15 opinion, really, that it would look like the Supreme
16 Court sort of asked appellate counsel whether or not
17 there was a *Mosley* violation or an *Edwards* violation as
18 far as whether or not -- let me back up.

19 The whole issue in this case is a fifty-minute
20 tape, a statement that was made by my client that was
21 played before the jury. The entire was played before
22 the jury. And it was not really a confession, as much
23 as possibly a statement. The reasons why there was some
24 concern about this tape is that for about fifty minutes,
25 Beaufort County Police Department or Sheriff's Office

2-13-17 BREWER V STATE - BY THE COURT

1 were constantly telling my client, you know, that we
2 have people who saw you; just go ahead and show us where
3 the gun is; if it's your gun, if we can get ballistics
4 testing on it, then you'll be out of here. Constantly
5 through this tape, the Police Department are, in effect,
6 asking my client to prove himself innocent; that further
7 during the middle of this tape that his mother is coming
8 in.

9 All of this testimony, all of this hearsay
10 testimony is coming before the jury. Part of that
11 issue, whether or not some of the testimony was hearsay,
12 that was the part that the Court of Appeals decided
13 their decision on, in reversing and remanding the murder
14 convictions. However, we think there are other
15 structural problems with this tape that were not
16 addressed in the appeal that should have been addressed
17 in the appeal that would have a different consequence.
18 So that's where we're going forward on, so.

19 At this time, I'd like to call Mr. Newman to the
20 stand, and he was his trial counsel. And he's going to
21 sort of walk through his representation and sort of the
22 context of this tape and how it affected this trial.

23 THE COURT: Okay. Yes, sir.

24 MR. NEWMAN: May I get a glass of water, Judge?

25 THE COURT: Yes, sir.

2-13-17 BREWER V STATE

-

NEWMAN - DIRECT - FALK

1 MR. NEWMAN: Warm weather. We've got the pollen
2 coming out.

3 MADAM CLERK: Do you solemnly swear or affirm that
4 the testimony that you give to the Court in this case
5 shall be the truth, so help you God?

6 MR. NEWMAN: I do.

7 MADAM CLERK: You may be seated.

8 MR. NEWMAN: Thank you.

9 HON. JARED S. NEWMAN

10 DIRECT EXAMINATION BY MR. FALK:

11 Q. Mr. Newman, can you explain how you came to
12 represent Mr. Brewer.

13 A. Mr. Brewer, I have practiced criminal law in
14 Beaufort County for -- since about 1989 when I graduated
15 law school. I was with the Solicitor's Office for about
16 four years, and since then, I've been in private
17 practice. Mr. Brewer was referred to me, I believe, by
18 one of his family members, and he did retain me for a
19 charge of murder and a charge of assault with intend to
20 Kill about a shooting that happened at a club called the
21 Semper Fi Club here in Beaufort.

22 Q. Okay, so this was a club shooting case?

23 A. Yes.

24 Q. Can you just sort of briefly, what type of
25 forensic evidence was it that tied my client to the

1 case?

2 A. There was none. There was a mishmash of witnesses
3 that gave conflicting accounts. Obviously, it's a club;
4 obviously, people were drinking. Witnesses had little
5 snippets, bits and pieces of -- of what they saw and
6 what they didn't see. And the -- in my opinion, the
7 Sheriff's Office, and I hate to say it, my former
8 office, because I was a deputy sheriff here for seven
9 years, did a terrible job of investigating the case.
10 And in fact, in the opinion, it actually looks like they
11 -- the Supreme Court found that another guy named
12 Middleton actually did what Mr. Brewer's alleged of
13 doing.

14 Q. Now, I'd alluded to this tape. Can you explain to
15 me -- or to the Court -- this tape that I'm referring
16 to?

17 A. Yeah. Mr. Brewer was in custody. They brought
18 him in. Detective Jeremiah Fraser, and I believe one or
19 two other detectives had an audio recording that lasted
20 about fifty minutes. And it was absolutely horrible.
21 Not what Mr. Brewer says. Mr. Brewer, I think, I think,
22 in fifty minutes, denies that he shot anybody about
23 twenty -- twenty or so times. And the -- the tape, we
24 vehemently objected to on a number of grounds, because
25 the only thing you hear Mr. Brewer saying on that tape

1 is I didn't shoot anybody; I didn't do it. And the
2 detective went on and on --

3 Q. Could I interrupt you for a minute?

4 A. Yeah, sure.

5 Q. You said a number of grounds. What grounds were
6 those?

7 A. The grounds were that I had moved under *Miranda*
8 and under *Edwards* a number of times Mr. Brewer says I
9 don't want to talk; I want to quit. And the detective
10 basically tells him you can't.

11 Q. Okay. And so, I objected on those grounds. And I
12 objected on what I thought was a structural defect,
13 because, the detective, all through the tape is -- is
14 leaning hard on Mr. Brewer, saying, look, dude, one, he
15 says we got all these witnesses that saw you do it.
16 That wasn't true, and that was heard by the jury. And
17 the other thing that was heard by the jury constantly
18 throughout the tape is, just give us the gun; just come
19 on, Jaquwn, give us the gun; if you give us the gun,
20 dude, you can prove you're innocent. And they kept
21 saying, you need to prove you're innocent; if I was in
22 your shoes, I would want to prove I was innocent; give
23 us the gun; we'll do ballistics; if it doesn't match up,
24 you're out of here. And that -- that was not once, but
25 that was all through that tape.

1 And I objected to Judge Seals that I thought if the
2 tape were admitted, it'd be a *Miranda* violation. Or
3 more aptly, and *Edwards* violation. I said, it's not
4 actually an admission against interest; I don't think it
5 comes in under hearsay, because Mr. Brewer does not say
6 anything that incriminates himself.

7 Jaquwn's mother is heard on the tape saying, come
8 on, Jaquard -- Jaquwn, just give up the, you know, give
9 up the gun.

10 Q. Pulling you back, how did this mother get into the
11 room?

12 A. They brought her in as part of a -- a tactic to
13 try and overbear Mr. Brewer's will.

14 Q. And we're sort of getting a little out of order
15 here, but had he -- is this one of the instances where
16 he said I don't want to talk anymore?

17 A. Yes. Yes, and his mom goes on and says, you need
18 to cooperate, and she jumps on the bandwagon about
19 having to prove your innocence and that type of stuff.

20 Q. So the jury heard his mother say, come on, just go
21 ahead and --

22 A. Yes.

23 Q. -- and be done.

24 A. Yes.

25 Q. Did she testify at the trial?

2-13-17 BREWER V STATE

- NEWMAN - DIRECT - FALK

1 A. No.

2 MR. FALK: And your Honor, if we -- I'm going to --
3 I'm in the process of getting a copy of this tape. It
4 obviously was a part of the record on the appeal. And
5 if we could just hold the in this case open long enough
6 for me to submit a copy of this tape for the record
7 here.

8 THE COURT: Okay. Any objection from the State?

9 MR. NEELY: No objection, your Honor.

10 THE COURT: All right. So we will do that, Mr.
11 Falk.

12 MR. FALK: Thank you, your Honor.

13 BY MR. FALK:

14 Q. All right. So he said he wanted to -- and just so
15 you're recollection, and obviously, you're familiar with
16 it and you heard the tape more than once?

17 A. Oh, yes. Many times.

18 Q. He had said, I don't want to talk anymore.

19 A. Words to those effect a number of times, I want to
20 quit, I want to stop, I want to quit, I don't want to
21 talk. And he was rebuffed at every turn by the
22 detective obviously wanting to stay on him.

23 Q. So what is your understanding when a -- when a
24 suspect says they don't want to speak anymore? You said
25 you were at the -- you were a detective at a certain --

1 or deputy at a certain period of time?

2 A. I did seven years here with the Sheriff's
3 Department.

4 Q. Can you keep asking questions?

5 A. No. I mean, that's an *Edwards* violation. It's
6 like the curtain comes down, it's supposed to stop. And
7 my understanding of *Edwards*, the detectives can't keep
8 going back to the -- the person they want to interview.
9 The only way that you can cure an *Edwards* violation, at
10 least in my opinion, is Mr. Brewer would have had to
11 affirmatively contacted the police and said, come on
12 down, I want to talk to you some more. But I think he
13 was clearly attempting to assert a *Fifth Amendment* right
14 that the detective just -- I think at one time he even
15 told them something -- were going on. But it -- it just
16 -- there were a number of those instances, so I objected
17 on all of those grounds.

18 The ground that I thought really was the strongest
19 that I told the judge -- I thought it was a structural
20 trial defect; that you can't unring that bell in front
21 of a jury. And I believe we had a colloquy, and I
22 haven't read the transcript, and the case happened a
23 number of years ago, but I think the judge says, well, I
24 can cure that because I'm going to give them a charge on
25 the, you know, what reasonable doubt is and the State

1 has the burden. But all through this, that jury was
2 infected with, you know, going back to the jury room,
3 why didn't -- if he didn't do it, why didn't he just
4 give up the gun and prove himself. I mean, I don't
5 think you can unring that bell.

6 Q. So it's your understanding it's supported in the
7 record that you objected to this tape on the grounds
8 that it was hearsay evidence that was going to be heard,
9 these police officers saying that other people said you
10 did it, that's part of the hearsay. Is that correct?

11 A. Correct.

12 Q. So there was hearsay in there that the jury was
13 going to be exposed to, there was a structural defect as
14 far as this whole burden shifting, and there was an
15 *Edwards* violation as far as the -- the interrogation
16 went beyond once he said he wanted to stop.

17 A. Correct, not allowing him to stop. That's
18 correct.

19 Q. Okay. Thank you. And what did the -- and what
20 happened? Did the tape get played?

21 A. Yes, I was overruled, and me sitting there, it's
22 the most horrible thing I'd heard in a criminal case. I
23 mean, it's fired up, and the jury, the whole -- I think
24 it lasts fifty minutes, fifty-one minutes, somewhere
25 around there. And Fraser just went on and on and on.

2-13-17 BREWER V STATE

- NEWMAN - DIRECT - FALK

1 MR. NEELY: Judge, I'm going to object to this line
2 of questioning any further. I've looked on for a long
3 time, but this is not a direct appeal. I don't
4 understand what the relevance of this line of
5 questioning is as to a PCR hearing. He obviously
6 objected. It was a grounds that the objection was used
7 against at the Supreme Court, and they reversed in part
8 and affirmed in part, based on his objections. I don't
9 understand how he can be arguing at a PCR hearing a
10 counsel's failure whenever we have the objections and
11 they reversed in part, based on those objections.

12 THE COURT: Overruled.

13 BY MR. FALK:

14 Q. All right. In fact, there was a charge conference
15 in this case?

16 A. I believe there was. I'd have to refer to the --
17 the transcript. I really don't remember. We did have --
18 -- we did have a charge conference, and I forget
19 specifically what the judge charged.

20 Q. Do you recall asking for a *Belcher* instruction?

21 A. I believe I did.

22 Q. And what was your -- why did you think that might
23 have been justified in this case?

24 A. Well, of course, you know the line in what *Belcher*
25 said. I was concerned about the -- the inference of --

1 of an intent to harm based on the use of a deadly
2 weapon. And I was overruled on that issue that since we
3 didn't prevent -- we did not present a defense, as I
4 recall, and the judge said you're not entitled to a
5 *Belcher* charge, and I'm going to charge the -- that
6 there is an inference of -- I believe it's an inference
7 of malice, based on the use of a deadly weapon.

8 Q. Did you think there was any evidence in the record
9 to support that there was some other justification for
10 using the gun?

11 A. No.

12 Q. Okay. At one point during your closing argument,
13 did you -- do you recall ever, prior to closing
14 argument, stating that -- well, let me just --

15 MR. FALK: If I may approach, your Honor.

16 THE COURT: Yes, sir.

17 BY MR. FALK:

18 MR. FALK: I should have probably gotten the whole
19 thing, but this is one of your --

20 A. Yeah, I'm sorry. It's been a number of years ago.

21 Q. I know. If you could just sort of familiarize
22 yourself with that. Does it look your argument?

23 MR. FALK: I'm showing him Page 653.

24 A. Yes, sir, I've -- I've read -- I've read it.

25 Q. It would appear, when I read over that, that you

1 were sort of conceding that he fired a gun that evening?
2 aa I think through all the evidence that I saw at trial,
3 a number of witnesses actually saw Mr. Brewer fire
4 inside the club. There was a photograph or two
5 photographs of Mr. Brewer with a pistol in his
6 waistband. I believe the D.J. testified in the case
7 that he actually witnessed Brewer fire the case. And
8 then, there was --

9 Actually, the reason I remember this, it made the
10 cover of the newspaper. There was actually a girl. Her
11 photograph is doing like this, pointing -- pointing a
12 gun out from the witness stand that she thought Mr.
13 Brewer fired that inside the club. My thought was, I
14 did not think, because the State's kind of alleging it
15 was just a random -- that he just shot inside a club,
16 that I didn't think there was any intent to Kill. And
17 my thought was the jury was going to find him guilty in
18 my mind. I thought it was a foregone conclusion. What
19 I wanted to argue that it wasn't an assault with intent
20 to Kill; it was the lesser of assault high and
21 aggravated. And that was my thought, and yes, I did
22 concede that to the jury, because I thought that's the
23 only way I could maintain credibility with the jury.
24 And I did say, you know, shooting him in the leg, that's
25 an assault and battery of a high and aggravated nature;

1 that's what Jaquwn Brewer's guilty of; if you so find;
2 not murder.

3 Q. Now, was that -- did you discuss that with Mr.
4 Brewer?

5 A. As to what my closing argument would be?

6 Q. Well, in effect, I mean, Mr. Brewer was asserting
7 his innocence in this case; was he not?

8 A. We went to trial. Mr. Brewer was basically
9 offered nothing in this case. Or if it was, it was
10 really lengthy, and Mr. Brewer wanted to exercise his
11 right to trial. We did discuss general strategy and
12 what the case would be. We did discuss him not
13 testifying so that we would have -- the only way I
14 thought we could sell this case would be in closing
15 argument.

16 Q. Um-hmm.

17 A. Plus, in talking with Mr. Brewer and what we went
18 over with, I do not think he would have done well on
19 cross-examination. And I also think that it -- if he
20 had testified and we put up a case, that it might
21 somehow damage what I thought was a pretty good
22 preserved argument on that audio tape being played to
23 the jury.

24 Q. But was he aware that you were going to, in
25 effect, put a gun in his hand on the night of the

1 shooting in your closing argument?

2 A. I just don't recall. I mean, I -- I don't think I
3 specifically discussed with him that we were going to
4 concede that element. And if I didn't, I probably
5 should have.

6 MR. FALK: I have no further questions, your Honor.

7 THE COURT: Thank you, Mr. Falk. Mr. Neely?

8 MR. NEELY: Thank you, your Honor.

9 HON. JARED S. NEWMAN

10 CROSS-EXAMINATION BY MR. NEELY:

11 Q. Mr. Newman, going back to clarify something you
12 just said.

13 A. Sure.

14 Q. When you said, if you didn't discuss it, you
15 probably should have, it's understandable, but weren't
16 there pictures of your client with a gun in his hand?

17 A. Yes, and they were -- I objected to the pictures,
18 but they were pretty inflammatory, because he's holding
19 a gun and he's making -- I don't know how to describe it
20 for the record to you, Judge, he's kind of making -- I
21 wouldn't say gang signs, but he's kind of making a
22 threatening posture that he's proud. And you can see, I
23 mean, there's no doubt there was a large-caliber pistol
24 in his waistband. I think there were two pictures. I
25 know there was definitely one.

1 Q. And wasn't the photographer of those pictures
2 testified that he started shooting almost immediately
3 after the picture was taken?

4 A. Yes. The photographer was within several feet of
5 Mr. Brewer, and I think the photographer testified that
6 he had noticed a pistol in there. Because somebody came
7 up to Mr. Brewer, I think somebody that was running this
8 little event, whatever it was, was going to ask Mr.
9 Brewer -- I think this -- this whole thing started was
10 asking Mr. Brewer that he needed to get out of the club
11 because he's got a gun on him.

12 Q. That was club security?

13 A. Yeah, kind of informal. That's what they were
14 calling themselves, yeah.

15 Q. And he testified Mr. Brewer pointed the gun at his
16 head?

17 A. Yes.

18 Q. And most witnesses inside the club testified that
19 he had a gun and he pulled out the gun and was shooting
20 in the club.

21 A. Yes. And as I said, that -- that one girl
22 actually made the gesture, and it made the front cover
23 of our newspaper, because when she was testifying, she
24 reaches across the -- that was the photograph that was
25 in the paper, and said she was standing a few feet away

2-13-17 BREWER V STATE

- NEWMAN - CROSS - NEELY

1 from him and he fired at least one shot in the club.

2 Q. And the Supreme Court agreed with you to some
3 extent on letting that -- the audio in; that the
4 investigator asking all those question, that was beyond
5 the purview of an investigation, and they reversed the
6 murder charge on that basis; did they not?

7 A. And -- that -- that's correct. They -- they did
8 -- Pleicones dissented, if I remember. And Justice
9 Beatty would have reversed both convictions. They used
10 the harmless error analysis as to the club shooting
11 because that -- as I read the opinion, they found there
12 was overwhelming evidence of guilt as to the shooting
13 inside the club, and that there was on a paucity of
14 evidence for the shooting which probably occurred
15 outside the club wherein the guy got hit in the head and
16 died.

17 Q. Okay. And so, did they agree with you up to the
18 point where you say it affected the jury across the
19 entire case? They obviously considered that because
20 they said it was harmless error as to the ABWIK charge
21 after looking at all the evidence.

22 A. Correct.. And I mean, I believe the Supreme Court
23 opinion was pretty strong, because it said something
24 we're loathe to remind prosecutors that this kind of
25 evidence can't come before juries.

1 Q. And did you have any part in the appeal?

2 A. I did not. I did come up and listen to oral
3 argument just because I was interested in the case, but
4 no, I didn't -- I was not appellate counsel and had
5 nothing to do with representing Mr. Brewer on his
6 appeal.

7 Q. Other than making objections on which they based
8 their appeal.

9 A. Correct. And I may have had a couple of
10 discussions with Mr. Brown, you know, asking me certain
11 things that might not be apparent from the record. But
12 no, I had absolutely no part in the appellate part of
13 the case.

14 MR. NEELY: I think that's all the questions I
15 have.

16 A. Yes, sir.

17 HON. JARED S. NEWMAN

18 RE-DIRECT EXAMINATION BY MR. FALK:

19 Q. You said that you were -- you watched oral
20 arguments in this case?

21 A. Yes.

22 Q. Was the Court concerned about the -- were there
23 any questions to counsel about any issues that were not
24 raised in the brief?

25 A. The -- the two things that I remember, Justice

1 Toal wanted to hear argument about the -- the
2 Edwards/Miranda-type issue about stopping. And I think
3 Mr. Brown switched gears and went to something else.
4 And I'm not criticizing him. And I believe it was
5 Justice Beatty who wanted to inquire -- argument about a
6 structural trial defect with the burden shifting.

7 Q. Okay. Thank you.

8 MR. FALK: No further questions.

9 THE COURT: All right, anything further from this
10 witness?

11 MR. NEELY: Not from the State, your Honor.

12 THE COURT: All right. Thank you, Mr. Newman.

13 MR. NEWMAN: You want me to take -- all right.
14 Thank you. I'm surprised witnesses don't break their
15 neck coming down off that thing.

16 MR. FALK: We'd call Mr. Brewer to the stand.

17 MADAM CLERK: Right here. Place your left hand on
18 the Bible, and raise your right, please. Do you
19 solemnly --

20 MR. BREWER: You say to my left?

21 MADAM CLERK: Yes. Do you solemnly swear or
22 affirm that the testimony you give to the Court in this
23 case shall be the truth, to help you God?

24 MR. BREWER: Yes, ma'am.

25 MADAM CLERK: You may be seated.

2-13-17 BREWER V STATE - BREWER - RE-DIRECT - FALK

1 JAQUWN D. BREWER

2 DIRECT EXAMINATION BY MR. FALK:

3 Q. Mr. Brewer, did you discuss the trial strategy
4 with your lawyer in this case?

5 A. No, sir.

6 Q. Did he tell you prior to going into the trial that
7 he was going to concede the point that you were going to
8 have a gun in your hand; that you had a gun in your hand
9 on the night of that shooting?

10 A. No, sir.

11 Q. Would you have wanted him to have made that
12 argument to the jury?

13 A. No, sir.

14 MR. FALK: No further questions.

15 THE COURT: Cross-examination.

16 MR. NEELY: None from the State, your Honor.

17 MR. FALK: Nothing further.

18 THE COURT: All right. Thank you, sir. You can
19 step down.

20 THE COURT: Mr. Falk.

21 MR. FALK: Call Mr. Brown, please, to the stand.
22 James Brown.

23 THE COURT: See if you can find him. Mr. Brown.

24 MADAM CLERK: Do you solemnly swear or affirm the
25 testimony you give to the Court in this case shall be

2-13-17 BREWER V STATE

- DIRECT - BROWN - DIRECT

1 the truth, so help you God?

2 MR. JAMES BROWN: I do.

3 MADAM CLERK: You may be seated.

4 HON. JAMES BROWN

5 DIRECT EXAMINATION BY MR. FALK:

6 A. Good morning.

7 Q. How are you, sir?

8 A. I'm fine. How are you?

9 Q. I'm wonderful. You represented Mr. Brewer on this
10 appeal?

11 A. I did.

12 Q. And was that a retained or appointment?

13 A. I was retained.

14 Q. Okay. You were retained?

15 MR. FALK: May I approach?

16 THE COURT: Yes, sir.

17 BY MR. FALK:

18 A. Thank you.

19 Q. Is that the brief that you filed in this case?

20 A. It appears to be.

21 Q. Okay. What issues did you raise on appeal?

22 A. That there was a hearsay problem with statements
23 included on a audio recording.

24 Q. Okay.

25 A. As one issue.

1 Q. Did you consider whether or not there were
2 possibly other bases for --

3 A. My recollection of the issues, I raised it as a
4 hearsay issue. I did not raise it as a confrontation
5 clause issue. And I tell you that because I haven't
6 heard any discussion of that today. I did not think
7 that that issue was explicitly argued. I did think that
8 the hearsay issue was exclusively argued. I don't know
9 of the analysis would have come out any differently
10 regarding prejudice, if prejudice was a factor that
11 would be considered under a confrontation issue. If it
12 was preserved as a confrontation issue, then it was my
13 fault that I did not raise that issue should that that
14 had been raised, and if that would have been successful
15 for Mr. Brewer under another analysis.

16 Q. Sure.

17 A. And -- and that's one I recall. The burden-
18 shifting issue is like the elephant sitting in the room,
19 but I will tell you, and I -- and I may be wrong on this
20 statement of law -- the burden shifting was by the
21 witness. And actually, I say the witness. It was by
22 the participant law enforcement detective in the case,
23 and I didn't raise it as a burden-shifting issue because
24 it was a statement made on a piece of evidence that was
25 introduced in court, not by a participant, such as the

1 prosecutor's office. Certainly, it was their evidence
2 they put up. If I'm wrong on that, then I am wrong
3 without a reason to have made that wrong decision. But
4 I did not raise the burden-shifting issue because, like
5 I said, I assume since the party didn't argue it, that
6 it was just a participant during the recording. And
7 those are the two other issues that I know I considered.

8 Q. When you said party, which party did you --

9 A. The State of South Carolina. The prosecutor
10 themselves did not make a burden-shifting argument. To
11 the extent that the evidence, the video-taped statements
12 from the detective during the interrogation that were
13 played before the jury, they clearly shifted the burden
14 to Mr. Brewer. But I've never seen a case where the
15 burden shifting was made by a piece of evidence.

16 Q. Sure.

17 A. And so, I just pointed that out there. I didn't
18 brief that issue either.

19 Q. But to the extent, I mean, you would admit that, I
20 mean, you read the record, you read the transcript of
21 this case?

22 A. Absolutely.

23 Q. And you would admit that Mr. Newman had preserved
24 that issue.

25 A. The burden shift was discussed over and over and

2-13-17 BREWER V STATE

- DIRECT - BROWN - DIRECT

1 over again, absolutely.

2 Q. How about an issue about whether or not there was
3 an *Edwards* violation or maybe a *Mosley* violation as far
4 as the cessation?

5 A. And the only thing I can say is that I was also
6 counsel at some point in a PCR in the case of Bayan
7 Aleksey, which, interestingly, was a case defended by
8 our current elected prosecutor down here. If you read
9 that case, I don't know if you throw a fit, walk out the
10 room, and everything else if that would be consider an
11 invocation of your rights. It may just be that that was
12 an outcome-oriented opinion in Aleksey, and an
13 intellectually dishonest effort by our state courts.
14 But in that case, you know, he says that he didn't want
15 to talk anymore, and they let it in. To the extent that
16 that was an issue that I should have raised because it
17 was successful, I did not feel to raise it for strategy
18 reason. It was just an error in my part.

19 Q. But you're familiar with the Supreme Court
20 decision in *Michigan versus Mosley*?

21 A. Absolutely.

22 Q. Okay. And you said that you had an opportunity to
23 review the transcript in this case. Is that correct?

24 A. Before today or --

25 Q. No. I mean --

2-13-17 BREWER V STATE

- DIRECT - BROWN - DIRECT

1 A. Yes, I've read -- yes, yes.

2 Q. Okay. And -- and of course you heard the tape
3 several times; did you not?

4 A. Yes.

5 Q. Okay. And it is true that he tried to end the
6 interview at some point. Is that correct?

7 A. It is true. It does -- it absolutely feels like
8 he did not want to be in that room any longer.

9 Q. Cause, actually, on your brief, you cite -- if I
10 could approach, I could find it for you.

11 THEE COURT:: Yes.

12 BY MR. FALK::

13 Q. Yeah, it's right in here. I'm drawing your
14 attention to Page 11 of your brief, where you summarize
15 some of the conversations. Or some of the statements on
16 the tape.

17 A. I see that.

18 Q. And there is one where it says *interview stopped*
19 or -- what does it say?

20 A. It says, questioning stopped at appellant's
21 request.

22 Q. Okay.

23 A. And then, ten minutes later, *questioning resumes*.

24 Q. When the questioning resumed, was it clear that
25 Mr. Brewer initiated that questioning?

1 A. That, I can't tell from this.

2 Q. Okay.

3 A. I don't know why it was re-initiated.

4 Q. Was it your recollection that he was re-
5 Mirandized? Was it -- was he --

6 A. I'll be honest, I can't recall.

7 Q. No. Of course. Then, you obviously -- Mr. Newman
8 said it was his recollection from the arguments that you
9 were asked questions about -- by Judge Toal about a
10 question about the *Edwards'* issue on this.

11 A. And -- and this is by memory, but I also recalled
12 I believe it was both Toal and Kittredge had concerns
13 about the burden shifting as well.

14 Q. Okay.

15 A. Which was interesting, because, of course, the
16 dissent -- and I say that -- the partial dissent by
17 Beatty goes actually a step further. It suggests that
18 he thought that issue was there and ready to be ruled
19 upon. I'm assuming because Toal and Kittredge did not
20 opine on that part of the burden shift, that they didn't
21 believe it had been preserved, but I count those three
22 votes.

23 Q. Um-hmm.

24 A. So, I mean, either -- assuming three votes find
25 that it was a burden-shifting problem, it would either

2-13-17 BREWER V STATE- DIRECT - BROWN - DIRECT

1 be I should have argued it to get the three votes, or
2 Mr. Newman should have preserved it so I could argue it
3 to get the three votes, but I see Mr. Brewer with three
4 votes that that was improper burden shifting.

5 Q. Okay. If I could just bring to you a copy of the
6 opinion in this case?

7 THE COURT: Sure.

8 BY MR. FALK:

9 Q. And that highlighted sentence.

10 A. Absolutely, and the footnote that goes right with
11 it.

12 Q. And what does that say?

13 A. Oh, it clearly says that the impropriety of their
14 continuing the investigation is not an issue before the
15 court.

16 Q. Okay.

17 A. But it's clearly one of these footnotes where, for
18 somebody like you, it's kind of highlighting an issue
19 that needs to be explored.

20 Q. Thank you.

21 A. I don't know if that was exactly your question,
22 but.

23 Q. That was absolutely my question, more articulate
24 than I could have said it. I don't believe I have any
25 further questions.

2-13-17 BREWER V STATEBROWN - CROSS - NEELY

1 THE COURT: Okay. Mr. Neely?

2 HON. JAMES BROWN

3 CROSS-EXAMINATION BY MR. NEELY:

4 Q. Just briefly going over again, the Supreme Court
5 agreed with you on that, on the hearsay issue, and found
6 that the murder charge should be reversed, correct?

7 A. They did.

8 Q. And in essence, agreed with you as to the ABWIK
9 charge, but found that it was harmless error.

10 A. Let me say this. This is not something that I
11 discussed with Mr. Brewer, and he wasn't there at the
12 argument. And I actually believe -- I mention it
13 because I think it is correct. The prejudice analysis,
14 I don't think it's the same on the two shooting cases.
15 One is a death and one somebody did not die. I do think
16 the analysis is different on that. And that is one
17 thing that I did make a strategic decision was to
18 suggest to the court that they didn't have to reverse
19 both convictions; that the error regarding that hearsay
20 was more prejudicial to the murder charge than it was to
21 the other one. And that was a strategy decision that I
22 made. I was a little afraid that that they would have
23 come back with a hearsay ruling, but harmless to both
24 charges. But that's only on the hearsay issue, to let
25 you know. And I don't know if that's exactly what you

2-13-17 BREWER V STATE

BROWN - CROSS - NEELY

1 asked, but they did agree on one. In fact, it was non-
2 prejudicial on the second one. And I did invite them to
3 do that. And that was a strategy call to the extent
4 that if I would have said otherwise, and it was the same
5 analysis, and they would have reversed both, then that
6 strategy decision may not have been a good one for Mr.
7 Brewer. To the extent that it kept them from finding it
8 harmless to both, then it was a good decision for Mr.
9 Brewer. But that is one that I do recall making in
10 there on that.

11 But I do know the Court did continue to argue or
12 have concern -- and I would just say this, I remember
13 Toal saying over and over this was the worst tape she'd
14 ever seen played in a criminal trial. I mean, she was
15 very clear that she had problems. And it was clear like
16 I say, with Kittredge as well. The problem seemed to be
17 more than just what was before the Court. It was just a
18 problem wrapped in another problem.

19 Q. But obviously, I mean, and obviously had concerns
20 for the tape just like Mr. Newman and just like yourself
21 did, but they chose to find harmless error on the
22 applicants murder charge and reverse on the murder
23 charge.

24 A. That's correct on the hearsay issue. And I don't
25 believe the confrontation issue, which hasn't actually

2-13-17 BREWER V STATE

BROWN - CROSS - NEELY

1 been brought up, I don't know that that was preserved,
2 and that's why I raise it as hearsay only. Normally, I
3 would raise it as a hearsay and a *Sixth Amendment* issue
4 for the statements included on the tape. The burden-
5 shifting issues are different. And I don't have a
6 strategy reason on that, except I just don't know that
7 the -- and if I'm wrong, I'm wrong -- I don't know that
8 the law is burden shifting if a piece of evidence shifts
9 the burden contained within the evidence itself.

10 Q. But even though you just raised the hearsay issue,
11 the Appellate Court -- the Supreme Court had the
12 opportunity to listen to the tape and determine its
13 prejudicial value as a whole on the charges.

14 A. They did on the prejudicial issue. I think that
15 Beatty's dissent -- and I haven't read this in probably
16 a year. I think Beatty's dissent takes it out of this
17 there's no -- not a prejudice analysis under his take on
18 the case, being it structural error. I don't know that
19 I ever used the phrase *structural error* at all in my
20 appeal. So that's certainly not something they picked
21 up from me on that part of it. I mean, I'm going to say
22 it this way. I think I did a good job for Mr. Brewer.
23 Could there have been more done? Boy, if I would have
24 tried to argue what Beatty did, maybe there would have
25 been some more votes picked up. I don't know if it was

2-13-17 BREWER V STATE

BROWN - CROSS - NEELY

1 there for me to argue or not. I don't know.

2 Q. And Beatty was the dissent in this case.

3 A. Partial dissent. He actually agreed with the
4 relief on the murder charge. So it's actually unanimous
5 on that part. That's not before this court.

6 I'll tell you two other interesting things. This
7 was set for oral argument at Court of Appeals, and I
8 want to say within two or three days of that, it was
9 taken to the Supreme Court, which I find somewhat
10 significant, because I already had my hotel. They
11 changed the month and of argument and all. So, I mean,
12 that was -- I just remembered that, because I had -- my
13 bags are packed and calendar cleared, and they postponed
14 it.

15 And the second thing, and I have great respect for
16 this lawyer in your office, but at some point in time,
17 this case became the case -- Don Zelenka showed up on
18 it, which the Court even remarked as, you know, about
19 the is there another message being sent here with, I'm
20 going to say, the most experienced appellate lawyer in
21 the state of South Carolina shows up for the State in a
22 case he hadn't been involved with. I don't think he was
23 involved in any of the briefing or anything else. And
24 so, there were a lot of issues out there. The opinion
25 certainly is somewhat far reaching for other reasons. I

2-13-17 BREWER V STATE

BROWN - CROSS - NEELY

1 mean, it creates a lot of work for trial lawyers. And
2 me included. When I want to introduce a tape, I peel
3 back and make sure everything's redacted and everything
4 else. I mean. So it -- I think it had a lot of issues
5 out there. I think the A.G.'s office recognized it.
6 I've never seen a case yanked like that up. I don't
7 know how they talk across the street, but somebody
8 talked about the case before the oral argument in the
9 Court of Appeals. I do think that that suggests that
10 there are potentially other issues out there. I mean,
11 to the extent that I raised one issue and that issue was
12 a winner, I think that was right.

13 I think the real question is whether I should have
14 raised some other issues, too. And the only one I
15 didn't raise by strategy was the issue with the
16 confrontation clause. The second issue about the burden
17 shifting, if you can show me a case that talks about
18 burden shifting from a piece of evidence. I'm not
19 saying it couldn't. Certainly, the State's evidence
20 that had internal component that shifted the burden, and
21 I think that's kind of interesting. I don't know
22 whether I'm right or wrong on not raising that.

23 Q. And I understand all that, but going beyond which
24 issues you raised or didn't raise, --

25 A. Right.

2-13-17 BREWER V STATE

BROWN - RE-DIRECT - FALK

1 Q. -- they were still able to look at the prejudicial
2 value as a whole hearsay argument as to the two charges.

3 A. As to the hearsay argument on both charges, yes.

4 MR. NEELY: I thank you.

5 A. Um-hmm.

6 MR. FALK: Re-direct?

7 HON. JAMES BROWN

8 RE-DIRECT EXAMINATION BY MR. FALK:

9 Q. You didn't raise confrontation clause issue,
10 because that was not preserved. Is that correct?

11 A. That's my feeling on it. And I'm not knocking
12 Jared. They track each other so much, I don't know that
13 there would be any different ruling at the end on
14 relief. And I don't know that.

15 Q. The underlying --

16 A. Sure.

17 Q. -- hearsay problem, it means that you did a
18 violation of the *South Carolina Rules of Evidence*. Is
19 that correct?

20 A. Yes, sir.

21 Q. However, if there's a confrontation clause
22 violation, that means we have a *Sixth Amendment*
23 violation.

24 A. That's correct.

25 Q. A constitutional violation.

1 A. That's correct.

2 Q. So the fact that there possibly were, and had it
3 been preserved as a confrontation clause, would you have
4 raised that?

5 A. Yes, I would have.

6 Q. And --

7 A. And if it was adequately preserved, then, it was
8 my fault for not raising that issue.

9 Q. Okay. And you believe -- and what was some of the
10 confrontation? You had witnesses alluded to that said
11 that you did it, right? I mean, the police officer said
12 that this person said that --

13 A. And not looking in the materials, my recollection
14 is everybody says you did it; and then they switch into
15 there's a girl that says you did it. I mean, and again,
16 this is from memory. But it's -- it's two things. It's
17 these -- these people, and then it's this one particular
18 person; and as much as, you know, a bunch of people say
19 you did it, it really, I think, the worst one is when he
20 alludes that there is a particular witness that he knows
21 that he's not going to tell anybody the name that that
22 person says he did it. And I don't know if that's true
23 or not, because I didn't go back and investigate the
24 case beyond what's in the record, but I recall those two
25 specific things. And of course, those witnesses weren't

2-13-17 BREWER V STATE

BROWN - RE-DIRECT - FALK

1 subject to cross-examination, the one particular witness
2 or everybody says you did it.

3 Q. But the results still was that the jury heard that
4 there's a witness out there that said he did it.

5 A. That's correct. And I would agree with you the
6 prejudice analysis, so to speak, might well be different
7 on a constitutional violation versus a rule of evidence
8 violation.

9 MR. FALK: No further questions.

10 THE COURT: Anything further from this witness?

11 MR. NEELY: No. No, your Honor.

12 THE COURT: Thank you, Mr. Brown.

13 HON. JAMES BROWN: Thank you, your Honor. Return
14 these or? I don't know if they're marked.

15 MR. FALK: This was the appellate brief. I think
16 it's probably already in the record.

17 THE COURT: Do you want to move that in as an
18 exhibit?

19 MR. FALK: Yeah. We think it's a public record,
20 but yeah, we'll move it in as an exhibit.

21 THE COURT: Any objection?

22 MR. NEELY: No, your Honor.

23 THE COURT: That will be admitted as an exhibit.

24 DOCUMENT IDENTIFIED AS APPELLATE BRIEF

25 MARKED APPLICANT'S EXHIBIT NUMBER 1,

1 ADMITTED AS EVIDENCE.

2 MR. FALK: That is also the opinion in the case, or
3 are we --

4 THE COURT: I believe that's already a part of my
5 packet.

6 MR. FALK: Okay.

7 THE COURT: The appellate, the 2012-208-487?

8 MR. FALK: February 28, 2015? Let me see the front
9 page.

10 THE COURT: Filed January 28, 2015.

11 MR. FALK: Yeah. Your Honor, we have no further
12 witnesses.

13 THE COURT: Okay. Anything from the State?

14 MR. NEELY: We have no witnesses, your Honor.

15 THE COURT: All right. Well, gentlemen, I'm going
16 to leave the record open so you can submit that tape.

17 MR. FALK: Yes, sir.

18 THE COURT: And how long do you anticipate it'll
19 take you to get a copy of the tape?

20 MR. FALK: Could I have thirty days?

21 THE COURT: All right. I'll hold the record open
22 for thirty days, and submit it, submit that to the
23 Court. Then we'll just keep the matter open until that
24 time.

25 MR. FALK: Thank you.

2-13-17 BREWER V STATE

BROWN - RE-DIRECT - FALK

1

THE COURT: Okay.

END PROCEEDING 10:24 A.M.

2-13-17 BREWER V STATECERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

FEBRUARY 13, 2017 TRANSCRIPT OF PCR HEARING

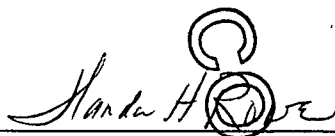
STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing February 13, 2017 Transcript of PCR Hearing is a true and accurate record of the proceedings had and exhibits admitted on said date, in the case of Jaquawn D. Brewer versus State of South Carolina, Beaufort County, Court of Common Pleas, Case Number 2015-CP-07-01939; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my original signature and is attached to a copy of this transcript requested by Hon. Tommy A. Thomas. Pursuant to SCACR 607, requests for copies of transcripts must be made to the court reporter. Unauthorized copying/mailing is prohibited.

Witness my signature June 8, 2018.


Wanda H. Rowe JVR-M
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT

Jaquawn Brewer, #347482

Case no. 2015-CP-07-1939

Applicant,

v.

State of South Carolina,

Respondent.

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ORDER OF DISMISSAL

DEC 07 2017

SC Court of Appeals

2017 NOV -8 PM 12:58
CLERK OF COURT
JARED S. NEWMAN
STATE ATTORNEY
GENERAL'S OFFICE

The above-captioned matter comes before the court via an application for post-conviction relief (PCR) filed by Jaquawn Brewer on August 10, 2015. This Court convened an evidentiary hearing into the matter on February 13, 2017, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by Jim Brown, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, Jared S. Newman, Esquire, (Counsel) and Applicant were both present and testified. This Court had the opportunity to listen to their testimony and rule on their credibility. This Court also had before it a copy of the trial transcript, the record on appeal, the audio tape of the Applicant's interview with law enforcement, the records of the Beaufort County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter.

I. PROCEDURAL HISTORY

Applicant was indicted by the June 2009 term of the Beaufort County Grand Jury for one (1) count of assault and battery with intent to kill (AWBTK), one (1) count of possession of a weapon during the commission of a violent crime, and one (1) count of murder (2009-GS-07-1279, -1296, -1293). On August 26, 2011, Applicant proceeded to a jury trial pursuant to which

245

he was found guilty as indicted. The Honorable William H. Seals, Jr. sentenced Applicant to confinement for twenty years for the count of ABWIK, five years for the count of possession of a weapon during the commission of a violent crime, and life without parole for murder. The sentences were ordered to be run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals sent a certified question to the South Carolina Supreme Court. The South Carolina Supreme Court affirmed in part, reversed in part, and remanded. State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015). The Remittitur was issued on March 5, 2015.

II. ALLEGATIONS

Applicant alleged the following grounds at the PCR hearing:

- I. Ineffective Assistance of Counsel
 - a. Failed to object to the interview tape on 5th amendment grounds.
- II. Ineffective Assistance of Appellate Counsel
 - a. Failed to brief the burden shifting issue.

III. SUMMARY OF FACTS

On May 23, 2009, a large group of people gathered at the Semper Fi Club (the Club) in Beaufort County, South Carolina, for a party. After midnight, as the party continued, law enforcement officers responded to a shooting at the Club. Two individuals were shot, one fatally. The investigation revealed that the first shooting occurred inside the Club and the second shooting occurred moments later in the Club parking lot.

Brewer and several of his companions were posing for photographs inside the Club. The photographer, Gary Bright, and several other attendees noticed Brewer was posing with a handgun. A photograph introduced at trial confirmed that Brewer had a handgun in the front waistband of his pants. One of the organizers of the party, Deon Stevenson, was alerted, and he

asked Brewer to take the gun out of the Club. Brewer responded by pulling out the handgun and pointing it at Stevenson's head, which others in the Club witnessed. Immediately thereafter, Brewer shot his gun inside the Club, hitting Donald Parker, who was standing near the photo booth. There were numerous witnesses to the shooting of Parker. Parker survived the shooting. Brewer was charged with assault and battery with intent to kill and possession of a weapon during the commission of a violent crime as a result of shooting Parker.

Patrons, including Brewer, fled the Club after the first shooting. Moments later, more shots were fired outside the Club in the parking lot by at least two individuals, including Brewer and Dominique Middleton. Henry Jones was standing in the entrance to the Club dialing 911 when a stray shot from the parking lot struck and killed him. Brewer was charged with murder for the killing of Jones.

Law enforcement recovered numerous shell casings. One was found on the floor inside the Club, one directly outside the exit, one near the road, and eight on the left side of the parking lot next to a red laser sight. The investigation revealed the laser sight was part of Middleton's gun. Trace metals and gunshot residue were found on the pants Brewer was wearing. The physical evidence showed the bullets recovered from the victims were likely fired from a .45 caliber, semi-automatic handgun. However, a comparison of the bullets was inconclusive, and the SLED firearms examiner could not determine whether the bullets were fired from the same handgun. Despite learning from many witnesses that there were at least two shooters in the Club parking lot, investigators pursued Brewer as the only suspect.

In an interview at the Beaufort County Sheriff's Office, Brewer waived his Miranda rights and agreed to speak with investigators. The recording of this interview, including the interrogators' hearsay-laden questions and comments, was played for the jury. The investigators

RSS

informed Brewer that many witnesses observed him shoot both victims, which was true only with respect to the shooting of Parker inside the Club. Brewer denied involvement in either shooting. Brewer told investigators that he wanted to end the interrogation. Yet the interrogation continued. The investigators employed various tactics to extend the interrogation, including bringing Brewer's mother into the room and repeatedly telling Brewer that he should "prove himself innocent" by turning in his handgun, all of which was audiotaped and played to the jury, over Brewer's objection. Investigators claimed they attempted to locate Middleton but were unsuccessful and quickly abandoned their efforts. Middleton was never charged in connection with the shootings.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds Applicant has failed to satisfy his burden to prove Counsel's actions were deficient. Applicant also failed to prove he was prejudiced by Counsel's alleged deficiencies. This Court finds Counsel's testimony was credible and Applicant's testimony lacked credibility. This Court finds Counsel properly prepared for Applicant's trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant and preparing for trial. This Court finds Counsel rendered adequate assistance and exercised professional judgment in his decisions at trial. This Court also finds Appellate Counsel's arguments were proper and the strongest issue was briefed. This Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Counsel

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668, 669 (1984). First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an

attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. "[E]very effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Failed to object to the interview tape on 5th amendment grounds.

The court has previously held an issue that was raised on direct appeal but found to be unpreserved may be raised in the context of a post-conviction relief claim alleging ineffective assistance of counsel. McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 47 (2013). However, to be entitled to relief on such a claim, an applicant must establish the underlying claim is meritorious and would have resulted in a reversal on appeal to a reasonable probability. "Since the [issue] was not considered on direct appeal because it was unpreserved, an examination of the merits of the issue is appropriate in analyzing the prejudice prong in [applicant's] PCR claim. When the defendant claims counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, [the] defendant must show that such claim is meritorious and that the

verdict would have been different absent the evidence that should have been excluded.” Id. at 465, 746 S.E.2d at 47. Therefore, this Court must determine whether the underlying claim was meritorious and there was a reasonable probability it would have resulted in reversal and a new trial.

Here, Counsel properly objected to the introduction of Applicant’s statement in a Jackson v. Denno hearing on four separate grounds:

1. The continuation of the interview after Applicant requested the interview stop.
2. The mother of Applicant was brought into the interview room to reopen the interview.
3. The hearsay testimony used by the interviewing officers.
4. Law enforcement’s insistence Applicant prove his innocence was burden shifting.

Tr. 72-77.

These issues were preserved and reviewed by the South Carolina Supreme Court. Brewer, 411 S.C. 404, 768 S.E.2d 656. The Court found the admission of the objected to portions of the audio tape was error. Id. Accordingly, the Court reversed the murder conviction. However, the Court upheld the ABWIK and weapon convictions because the State’s evidence against Applicant, for those charges, was overwhelming. This Court agrees and also finds the evidence against Applicant was overwhelming regarding the ABWIK and possession of a weapon during commission of a violent crime. Therefore, Applicant cannot prove prejudice where the evidence against him is overwhelming. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008). A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Accordingly, this Court finds Applicant failed to prove Counsel's actions prejudiced Applicant such that there was a reasonable probability the result of the appeal would have been different had Counsel objected on constitutional grounds. Accordingly, this Court denies and dismisses this allegation.

B: Ineffective Assistance of Appellate Counsel.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show appellate counsel's performance was deficient and he was prejudiced by the deficiency. Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Failed to brief burden shifting issue.

Counsel objected to the audio tape on the basis that law enforcement's statements were burden shifting. Tr. 76-77; 614. This ground was not briefed by Appellate Counsel. However, Appellate Counsel argued the admission of the audio tape was improper on other grounds. The Supreme Court reviewed the introduction of the audio tape and found the admission of the audio

tape was in error. Brewer, 411 S.C. 401, 768 S.E.2d 656. Appellate Counsel was not deficient for failing to raise a different ground, as to why the interview material was inadmissible, where the Court agreed with Appellate Counsel and found in their favor. Appellate Counsel's argument was successful. There can be no stronger argument than a winning argument.

The Court ruled the admission of the objected to portions of the audio tape was in error. Applicant argues Appellate Counsel should have briefed the burden shifting issue in order for the Court to rule the admission of the audio tape was in error. The Court ruled the admission was in error based on the issues Appellate Counsel chose. Therefore, Applicant has failed to prove he was prejudiced where the Supreme Court found the audio tape inadmissible based on the grounds raised.

Accordingly, this Court finds Applicant failed to prove Appellate Counsel's briefing decisions were deficient. Applicant also failed to prove he was prejudiced such that there was a reasonable probability the result of the appeal would have been different had Appellate Counsel had also briefed the burden shifting issue. Accordingly, this Court denies and dismisses this allegation.

V. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty 30 days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991),

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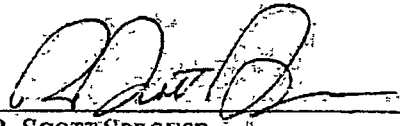
Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1g, SCRPC, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30 day of October, 2017.


R. SCOTT SPROUSE
Presiding Judge
14th Judicial Circuit

Waltham, South Carolina

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Honorable R. Scott Sprouse Circuit Judge

Case No.: 2015-CP-07-01939

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DEC 07 2017

SC Court of Appeals

Jaquwn Brewer 347482.....PETITIONER

V.

State of South Carolina.....RESPONDENT

NOTICE OF APPEAL

The Petitioner Jaquwn Brewer appeals the Honorable R. Scott Sprouse's October 30, 2017 Order of Dismissal. Undersigned counsel received notice of entry of the order on November 27, 2017. A copy of the order on appeal is attached hereto.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

November 29, 2017

Ruston Neely, Esq.
Office of S.C. Attorney General
PO Box 11549
Columbia, SC 29211-1549

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DEC 11 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Honorable R. Scott Sprouse., Circuit Judge

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DEC 07 2017

S.C. Court of Appeals

Case No.: 2015-CP-07-1939

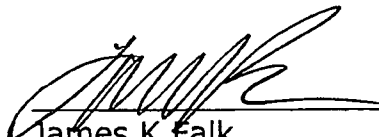
Jaquawn Brewer 347482 PETITIONER

V.

State of South Carolina.....RESPONDENT

PROOF OF SERVICE

I, James Falk, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the U.S. Mail, postage prepaid, addressed to its attorney of record, Ruston Neely, Esq. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule to be served have been served this November 29, 2017.



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402

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DEC 11 2017

S.C. SUPREME COURT

FALK LAW FIRM, LLC.

James K. Falk

000841

(843) 606-6007

(843) 972-9005 Fax

Admitted to practice: KY(1984) S.C. (2010) jfalklaw@gmail.com

November 29, 2017

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

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DEC 07 2017

SC Court of Appeals

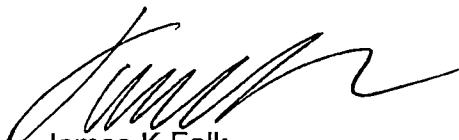
Re: Jaquwn Brewer 2015-CP-07-1939

Dear Clerk Shearouse:

Please find the enclosed Notice of Appeal, Proof of Service, and Order of Dismissal in the above Horry County PCR action. Please return a clocked copy of the Notice of Appeal and Proof of Service in the enclosed SASE.

Should you have any additional questions please do not hesitate to contact my office.

With best regards, I am,



James K Falk

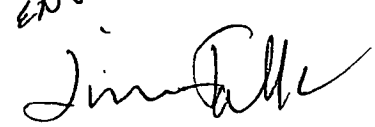
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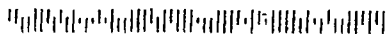
S.C. SUPREME COURT

Thank you for your assistance.

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BY USPS. I ENCLOSED THE
ORIGINAL ENVELOPE



Cc: Ruston Neely, Jaquwn Brewer 347482.

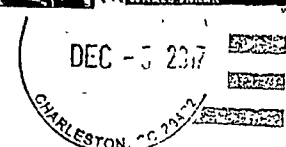
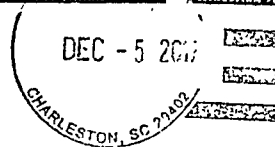


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FALK LAW FIRM

PO Box 1058

Charleston, SC 29402

Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

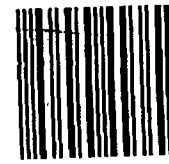
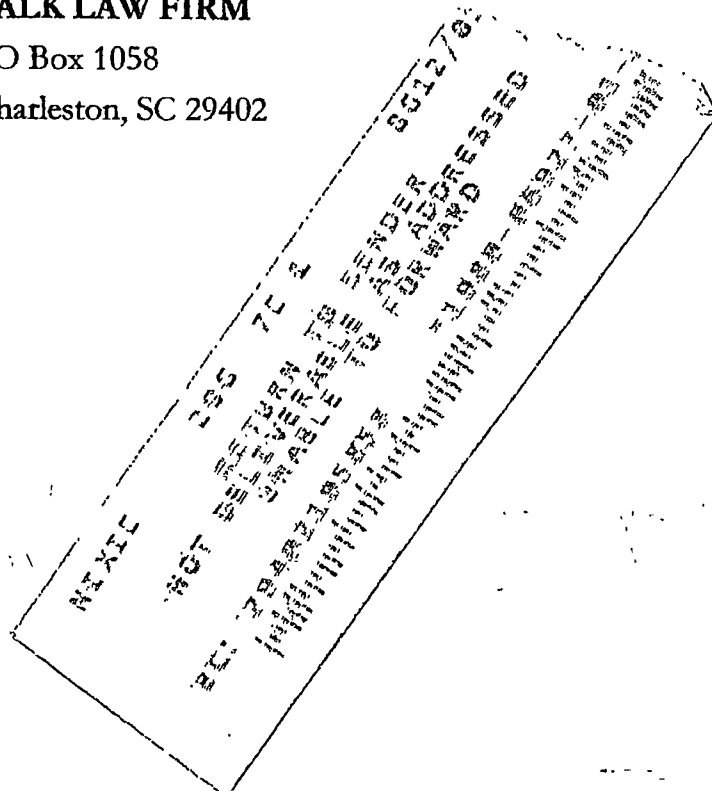
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